

BOROUGH OF SURF CITY LAND USE BOARD
Remote Meeting via Go To Meeting™
May 26, 2021
7:00 pm

Chairman Hartney called the meeting to order, all present joined him in a salute to the Flag.

Roll call reflected the following in the affirmative: Peter Hartney, Gavin Hodgson, Paul Hoover, Sandra Klose, Alan Mannherz, James Russell, George Wachter & David Wright. Absent: John McMenamin & Emil TumSuden.

The Board Engineer, Frank Little, Jr. and the Board Attorney, Kevin Quinlan, were also present.

The Open Public Meeting Statement was read by Chairman Hartney, as follows: in compliance with the "Open Public Meetings Act" of the State of New Jersey, adequate notice of this meeting of the Board of Surf City Land Use Board has been provided to three newspapers & published in the February 3, 2021 edition of the Beach Haven Times.

Chairman Hartney also read the following statement: this meeting is a judicial proceeding. Any questions or comments must be limited to issues that are relevant to what the Borough of Surf City Land Use Board may legally consider in reaching a decision. Decorum appropriate to a judicial hearing must be maintained all the time.

Mrs. Klose moved to approve the April 28, 2021 regular meeting minutes. Mr. Wright seconded the motion. With a vote in the affirmative, the minutes were approved.

Roll call reflected the following in the affirmative: Mr. Hartney, Mr. Hodgson, Mr. Hoover, Mrs. Klose, Mr. Mannherz, Mr. Wachter & Mr. Wright. Nays: none. Abstained: Mr. Russell. Absent: Mr. McMenamin & Mr. TumSuden.

Mr. Russell moved to open public comment on Resolution 2021-13. Mr. Hodgson seconded the motion. With a vote in the affirmative, public comment was open. The vote reflected the following ayes: Mr. Hartney, Mr. Hodgson, Mr. Hoover, Mrs. Klose, Mr. Mannherz, Mr. Russell, Mr. Wachter & Mr. Wright. Nays: none. Abstained: none. Absent: Mr. McMenamin & Mr. TumSuden. There were no comments. Mr. Russell moved to close public comment. Mr. Hodgson seconded the motion. With a vote in the affirmative, public comment was closed. The vote reflected the following ayes: Mr. Hartney, Mr. Hodgson, Mr. Hoover, Mr. Mannherz, Mr. Russell, Mr. Wachter & Mr. Wright. Nays: none. Abstained: none. Absent: Mr. McMenamin & Mr. TumSuden.

Mr. Russell moved to approve Resolution 2021-13. Mr. Hodgson seconded the motion. With a vote in the affirmative, the following was approved.

WHEREAS, the New Jersey Municipal Land Use Act Law (N.J.S.A. 40:55D-89) requires that a municipality, by its Land Use Board, provide a general re-examination of its Master Plan and development regulations every ten years; and

WHEREAS, the Land Use Board of the Borough of Surf City has adopted a general re-examination of the Master Plan Re-examination Report dated April 17, 2019, attached hereto; and

WHEREAS, the Board held public hearing to adopt the Municipal Stormwater Management Plan with adequate notice as required by law; and

WHEREAS, the Board has reviewed the proposed Municipal Stormwater Management Plan and has had the opportunity to discuss same with the Borough Engineer; and

NOW, THEREFORE, BE IT RESOLVED, by the Land Use Board of the Borough of Surf City, that it hereby adopts the Municipal Stormwater Management Plan in full satisfaction as prepared by Frank Little Jr., P.E., P.P., C.M.E. of Owen, Little & Associates, as set forth in the Municipal Land Use Law (N.J.S.A. 40:55D-89).

BE IT FURTHER RESOLVED, by the Land Use Board of the Borough of Surf City that a copy of this Resolution and the Municipal Stormwater Management Plan be forwarded to the Ocean County Planning Board and the Municipal Clerks of each adjoining municipality to the Borough of Surf City.

Roll call reflected the following in the affirmative: Mr. Hartney, Mr. Hodgson, Mr. Hoover, Mrs. Klose, Mr. Mannherz, Mr. Russell, Mr. Wachter & Mr. Wright. Nays: none. Abstained: none. Absent: Mr. McMEnamin & Mr. TumSuden.

Request from Gerald Brubaker to carry his application to the next available meeting. With a vote in the affirmative, the request was approved to carry his application until the next Land Use Board meeting on June 23, 2021. The vote reflected the following ayes: Mr. Hartney, Mr. Hodgson, Mr. Hoover, Mr. Mannherz, Mr. Russell, Mr. Wachter & Mr. Wright. Nays: none. Abstained: none. Absent: Mr. McMEnamin & Mr. TumSuden.

Mr. Wright moved to approve Resolution 2021-12, memorializing the approval for Todd Kostrub of 1719 Long Beach Boulevard, Block 44, Lot 12. Mr. Mannherz seconded the motion. With a vote in the affirmative, the following was approved.

RESOLUTION NO. 2021-12

RESOLUTION OF THE LAND USE BOARD OF THE BOROUGH OF SURF CITY, COUNTY OF OCEAN, STATE OF NEW JERSEY GRANTING VARIANCES TO TODD KOSTRUB FOR PREMISES IDENTIFIED AS LOT 12, BLOCK 44.

WHEREAS, Todd Kostrub is the owner of the premises identified as Block 44, Lot 12 on the official tax maps of the Borough of Surf City and has standing to make the application.

WHEREAS, the applicant was represented by Robert Rue. Esq.

WHEREAS, the applicant has applied to the Borough of Surf City Land Use Board for approval to raise the existing structure and construct decks and stair cases to the existing duplex on a pre-existing undersized lot. The following conditions exist and are proposed:

1. Existing lot area is 4,250 square feet where 10,000 square feet is required. *
2. Existing lot frontage is 50 feet. where 100 feet. is required. *
3. Existing front set back on N. 18th Street is 9.7 feet where 10 feet. is required. *
4. Existing side yard setback is 2.4 feet* and 2.6 feet is proposed while 5 feet is required.
5. There are two existing parking spaces* where four are required and proposed.

*Pre-existing non-conformity.

WHEREAS, the site is located in the B-Business Zone however pursuant to Ordinance 30-5.2 the requirements of the RA Residential Zone shall apply.

WHEREAS, borough ordinance 30-5.3 prohibits a duplex on any lot less than ten thousand (10,000) sq. feet. Pursuant to Ordinance 30-12.5 a non-conforming use of a structure which existed on August 11, 1972 may continue so long as it remains otherwise lawful and is not enlarged, extended, constructed, reconstructed, moved or structurally altered in any manner which would increase or intensify the density or actual living quarters for such structure. ...and the enlargement, extension, construction, reconstruction or alteration is conforming in all other respects of this chapter. The construction or alteration proposed will not comply with all set back requirements and therefore variances are necessary.

WHEREAS, the board determines that variance approval is necessary.

WHEREAS, in support of the application, the following exhibits were offered and entered into evidence:

- A-1 Application (3 Pages as amended to correct number of lots in para. 6).
- A-2 Variance Plan prepared by Horn Tyson and Yoder dated 1/20/14 and revised 6/2/20.
- A-3 Architectural Plans prepared by CWB dated 2/24/20.
- A-4 Color photos (4)
- B-1 Board Engineer Letter dated 4/19/21.

The foregoing exhibits being marked and admitted into evidence.

WHEREAS, the following witnesses were sworn and testified on behalf of the application:

1. James D. Brzozowski, P.E., P.P., qualified as expert in land surveying and planning.
2. Todd Kostrub, applicant.

WHEREAS, James Brzozowski identified the Variance Plan which was marked and entered into evidence.

WHEREAS, Mr. Brzozowski testified that the proposed improvement will bring the property more into conformity. The ability of parking two cars under the raised structure will bring the off-street parking from two (2) vehicles to four (4) vehicles which complies with the requirements and removes one of the pre-existing non-conforming conditions. Additionally, the side yard set back as proposed will increase from 2.4 feet. to 2.6 feet.

WHEREAS, Mr. Brzozowski testified that the surrounding properties are fully developed and there is no opportunity to acquire additional land to reduce or remove the pre-existing nonconformities.

WHEREAS, Mr. Brzozowski testified that the proposed improvements will comply with the Proposed Base Flood Elevation and permit all mechanical systems to be located above the required flood elevation. Additionally, the redesign of the stairs and deck will improve safety in providing an alternate means of ingress and egress.

WHEREAS, Mr. Brzozowski testified that the granting of the approval will not have a detrimental impact upon the zone plan, master plan and ordinances of Surf City Borough. The reduction in pre-existing non-conformities outweigh any detriment from granting the approval. Additionally, the positive benefits of bringing the property into compliance with flood elevation regulations, increase in off-street parking and improvements in safety outweigh any negative impact. No detrimental impact on open air and light and an aesthetic improvement which fits within the neighborhood scheme.

WHEREAS, Mr. Brzozowski testified that the plan will be amended to reflect a finished building height of 30.3 feet

WHEREAS, the Applicant, Todd Kostrub was sworn and testified that he is the owner of the subject property having acquired the property in 1999.

WHEREAS, Mr. Kostrub testified that the structure was built in approximately 1962 and he has never owned any property adjacent to the subject property.

WHEREAS, Mr. Kostrob testified that the proposed improvements increase safety in that the entry ways will be covered and protected from rain and snow.

WHEREAS, Mr. Kostrob testified that the existing shed will be removed.

WHEREAS, Mr. Kostrob testified the decks will not be enclosed.

WHEREAS, Mr. Kostrob testified that there is no access directly from the garage/storage area on the ground level into the main structure. Further he testified that the ground level garage/storage area will not be living space and will not be heated.

WHEREAS, adequate off-street parking is proposed.

WHEREAS, the property is presently serviced by borough water and sewer.

WHEREAS, the hearing was opened to the public and all interested parties were given the opportunity to be heard.

NOW THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Surf City, County of Ocean, State of New Jersey, the Board makes the following findings of fact:

1. The applicant is authorized to make the application and has standing to make the application
2. The application is deemed complete and Jurisdiction lies within the Surf City Land Use Board.
3. Proof of service as required by law upon the appropriate property owners and governmental bodies has been provided and determined to be in proper order.
4. The adjacent properties are fully developed and there is no opportunity to acquire additional property to make the subject property conforming.
5. The witnesses offered credible testimony that the statutory requirements for granting of the requested variances have been satisfied in that positive impact on the aesthetics, safety, increased parking, reduction in pre-existing nonconformities and compliance with flood elevation requirements outweigh any potential detriment to the public good, ordinances and master plan,
6. The board finds that the pre-existing non-conforming conditions are not increased. Additionally, the board finds that there will be no intensification of use and there is no increase in livable floor space.
7. The board specifically finds that the decks shall not be enclosed.

NOW, THEREFORE, BE IT RESOLVED that the application for variances necessary for the raising of the existing duplex structure and construction of the proposed decks and stairs are hereby granted as follows:

1. Existing lot area is 4,250 square feet where 10,000 square feet is required.
2. Existing lot frontage is 50 feet where 100 feet is required.
3. Existing front set back on N. 18th Street is 9.7 feet where 10 feet is required.
4. Existing side yard setback is 2.4 feet and 2.6 feet is proposed while 5 feet is required. IT IS FURTHER RESOLVED that the contents of the preamble and board engineer review letter dated April 19, 2021 is adopted and made part of this resolution; and IT IS FURTHER RESOLVED that this Approval is expressly contingent upon the

applicant complying with the following, if applicable:

1. Proof of payment of real estate property taxes;
2. Payment of any outstanding professional fees;
3. Obtain any and all local building permits and pay all associated fees;
4. Posting of any performance guarantees and inspection fees, and
5. Obtain any outside agency approval as required.

6. Submission of revised plans showing the amendment regarding building height.
7. Compliance with applicable flood zone regulations, and
8. Curbing as may be required by the building department under applicable ordinances.

BE IT FURTHER RESOLVED that a copy of this Resolution be forwarded to the applicant, building department and Borough clerk by the Board Clerk.

BE IT FURTHER RESOLVED that notification of this favorable resolution shall be published in an official newspaper of Surf City Borough by the Land Use Board Clerk within ten (10) days of its passage.

Roll call reflected the following in the affirmative: Mr. Hartney, Mr. Hodgson, Mr. Hoover, Mr. Mannherz, Mr. Wachter & Mr. Wright. Nays: none. Abstained: Mrs. Klose & Mr. Russell. Absent: Mr. McMenamain & Mr. TumSuden.

John Novak, Esq. was present to represent FHW Land Acquisitions, LLC of 602 Long Beach Boulevard, Block 23, Lot 15 seeking an interpretation of Land Use Board case number 82-2. There was discussion in relation to the letter written by Mr. Andrew Marvel in regards to removing the lot consolidation. It was then discussed further that the original lot consolidation condition was brought forth in 1982 and therefore is not current.

The applicant proposed the demolition of the current commercial properties and build only residential homes. The applicant is seeking to subdivide the commercial properties into five residential properties.

Mr. Russell moved to approve the application. Mr. Wright seconded the motion. Roll call reflected the following votes:

Mr. Hartney: Yes, the applicant has provided the proper testimonies and certification, that the use in which the deed restriction was applied for is going to be null and void. So, therefore, it would interpret it as being formidable to build five residential lots.

Mr. Hodgson: Abstain.

Mr. Hoover: I vote yes. I agree with what Peter said. It's cut and dry, build the houses.

Mrs. Klose: I am going to go by the letter from Andrew Marvel that suggested that this be okay. That the deed restrictions are no longer applicable, but I am just not happy to see the businesses go and five homes being built there. I am going to go yes, because I am going to go on the letter from Andrew Marvel. Progress is progress.

Mr. Mannherz: Even though we didn't have the original resolution, and even though I echo Mrs. Klose's concerns about losing some commercial buildings, we're also going to lose the public parking in front of that entire block. As long as there is a restriction in the resolution, and an assurance that was already mentioned by Mr. Novak, that no commercial property will be built in those five lots. I vote yes.

Mr. Russell: I vote yes, also, for obvious reasons.

Mr. Wachter: Yes.

Mr. Wright: I vote yes, also. It will definitely be a decrease in the density of the use of that area. I approve of it. It is going to look good.

Abstentions: Mr. Hodgson. Nays: none. Absent: Mr. McMenemy & Mr. TumSuden.

Jim Raban, Esq. was present to represent Glenn and Virginia Friedman of 23 N. 16th Street, Block 43, Lot 9 for relief of the rear yard setback. There was discussion in relation to the pool and waterfall structure on the undersized lot. It was also discussed that the structure is currently existing and is located one foot into the five-foot yard setback.

The applicant proposed to keep the current structure since it does not impact the surrounding residents. The applicant stated that it was an error made by the architect and was constructed in the wrong location. Mr. Raban called upon Mr. John Kline to discuss the original application and to discuss more details of the pool and waterfall feature. Mr. Kline stated that it was noticed following the completion of the construction of the pool that the waterfall structure was located in the rear yard setback. It was then stated by the previous Zoning Officer that they would need to remove the feature or to seek a variance for the setback. There were questions about the size of the structure, as well as whether or not the waterfall would act as a filtration system.

Mr. Mannherz moved to open public comment. Mrs. Klose seconded the motion. With a vote in the affirmative, public comment was open. The vote reflected the following ayes: Mr. Hartney, Mr. Hodgson, Mr. Hoover, Mrs. Klose, Mr. Mannherz, Mr. Russell, Mr. Wachter & Mr. Wright. Nays: none. Abstain: none. Absent: Mr. McMenemy & Mr. TumSuden. There were no comments. Mr. Russell moved to close public comment. Mrs. Klose seconded the motion. With a vote in the affirmative, public comment was closed. The vote reflected the following ayes: Mr. Hartney, Mr. Hodgson, Mr. Hoover, Mrs. Klose, Mr. Mannherz, Mr. Russell, Mr. Wachter & Mr. Wright. Nays: none. Abstain: none. Absent: Mr. McMenemy & Mr. TumSuden.

Mr. Russell moved to deny the application. Mrs. Klose seconded the motion. Roll call reflected the following votes:

Mr. Hartney: I vote in favor of the motion to deny the application for the variance. Specifically, for two reasons, first in an extensive layman's understanding of the Land Use Law of the State of New Jersey, the court has, on a number of occasions, decided that the zoning ordinance and Land Use cannot be used to correct errors and mistakes. Otherwise, it opens up Pandora's Box, and secondly, the set back of five feet sacrosanct that five feet is five feet, four feet and again. It opens a slippery slope of a waterfall today, an outdoor kitchen tomorrow, and on Thursday a Copacabana.

Mr. Hodgson: Although this one is a tough one, we are not here to correct mistakes. We have had entire houses built in the wrong spot. The Ordinances are Ordinances for a reason. Although I feel for both the contractor and the attorney, and most importantly the homeowner. I've said it

once, I'll say it one thousand times, unfortunately, that's not the job of the Board to correct mistakes, it's our job to interpret the Land Use Laws. For that, I would have to deny.

Mr. Hoover: I'm going to abstain.

Mrs. Klose: I'm going to agree with my Board members, so far, for the fact that the Land Use Board is not here to correct problems or mistakes that were made and, sorry to say, but I am going to deny as well. I am voting yes.

Mr. Mannherz: I'm also voting yes to deny. I concur with the previous Board members reasons. It's an unfortunate situation, but the setbacks are an important part of the Boroughs zoning.

Mr. Russell: I vote yes to deny it. I find it difficult to believe that this beautiful home that was designed by an excellent architect that this mistake could have happened. If it's any consolation to the Board, we have denied applications for elevators, building heights, for even less than this. You are all correct, we are not here to correct other peoples' errors. I vote yes.

Mr. Wachter: I feel for all the parties involved, but I concur with the rest of the Board members. I vote yes.

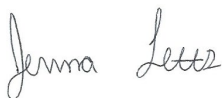
Mr. Wright: I vote yes, I concur with all the previous Board members. I feel bad for this situation.

Abstentions: Mr. Hoover. Nays: none. Absent: Mr. McMEnamin & Mr. TumSuden.

Mr. Russell moved to approve the bills. Mr. Wright seconded the motion. With a vote in the affirmative, the bills were approved to be paid. The vote reflected the following ayes: Mr. Hartney, Mr. Hodgson, Mr. Hoover, Mr. Mannherz, Mr. McMEnamin, Mr. TumSuden & Mr. Wright. Nays: none. Abstain: none. Absent: Mrs. Klose, Mr. Russell & Mr. Wachter.

Mr. Wright moved to adjourn the meeting. Ms. Klose seconded the motion. With a vote in the affirmative, the meeting was adjourned. The vote reflected the following ayes: Mr. Hartney, Mr. Hodgson, Mr. Hoover, Mr. Mannherz, Mr. McMEnamin, Mr. TumSuden & Mr. Wright. Nays: none. Abstain: none. Absent: Mrs. Klose, Mr. Russell & Mr. Wachter.

Respectfully submitted,



Jenna Letts

Land Use Board Clerk