

BOROUGH OF SURF CITY LAND USE BOARD

813 Long Beach Boulevard

December 22, 2021

7:00 pm

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

The following members were present: Peter Hartney, Sandra Klose, Alan Mannherz, James Russell, Emil TumSuden, & George Wachter. Absent: Gavin Hodgson, Paul Hoover, Richard Savianeso & David Wright.

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 June 10, 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.

Mr. Russell moved to approve the November 24, 2021, regular meeting minutes. Mr. TumSuden seconded the motion. With a vote in the affirmative, the minutes were approved.

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

Mr. TumSuden moved to approve Resolution 2021-26. Mrs. Klose seconded the motion. With a vote in the affirmative, the following was approved.

WHEREAS, the Open Public Meetings Act, N.J.S.A. 10:4-6, is the law of the State of New Jersey providing for adequate public notice to be given for meetings of the Land Use Board of the Borough of Surf City; and

BE IT RESOLVED, by the Land Use Board of the Borough of Surf City that the Municipal Clerk be authorized and directed to proceed with providing adequate notice of the reorganization meeting and the first regular meeting of the year to be held on January 26, 2021, at 7:00 P.M.

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

A proposed amendment for the Ocean County Department of Solid Waste Management was received. No action was taken.

Mr. TumSuden moved to approve the memorialization of Resolution 2021-25. Mr. Russell seconded the motion. With a vote in the affirmative, the following was approved.

RESOLUTION OF THE LAND USE BOARD OF THE BOROUGH OF SURF CITY, COUNTY OF OCEAN, STATE OF NEW JERSEY GRANTING A PRELIMINARY AND FINAL MAJOR SITE PLAN APPROVAL TO HYB HOLDINGS RE, LLC FOR PREMISES LOCATED AT LOTS 23 & 24, BLOCK II.

WHEREAS, the applicant has applied to the Borough of Surf City Land Use Board for Preliminary and Final Major Site Plan Approval. The Applicant is proposing to construct a second story frame addition (28 ft. x 35 Ft.) to the southeast side of the building to be utilized by the

owner/staff of the business.

WHEREAS, the applicant is not proposing any intensification of use in either the number of employees or seats.

WHEREAS, the property was the subject of an approved Change of Use Variance by Resolution 2007-06. A Preliminary and Final Site Plan Approval by Resolution 2018-29 and an Amended Site Plan for expansion of seating and employees by Resolution 2020-10. All terms and conditions of those resolutions not modified herein remain in full force and effect.

WHEREAS, the site is in the Business Zone and the proposed use is a permitted use in the zone. The property meets or exceeds the requirements for lot area, lot width, front and rear setbacks, lot coverage and building height.

WHEREAS, the Applicant seeks waiver of full site plan requirements given that the site is already developed and no changes to the use and/or intensification of use is proposed.

WHEREAS, HYB Holding RE, LLC makes this application with the consent of the property owners, Daniel Malay and Lori Malay for premises identified as Block II, Lots 23 & 24 on the official tax maps of the Borough of Surf City and have standing to make the application with the consent of the property owner.

WHEREAS, the Applicant was represented by James Raban, Esq

WHEREAS, the Land Use Board considered this application at a public hearing on November 24, 2021. The following Exhibits were marked into evidence as follows:

A-1 Application.

A-2 Architectural Plans prepared by Smith and Davis Architects dated 10/1/21. A-3 Color Photos (4).

A-4 Color Renderings (2).

A-5 Tax Map.

B-1 Board Engineer Review letter prepared by Frank Little of Owen Little and Associates, Inc. dated 11/11/21.

WHEREAS, the Applicant's Architect, Matthew Davis, AIA of Smith and Davis Architects was sworn and qualified as an expert in architectural design.

WHEREAS, Mr. Davis testified as follows:

1. There will be no residential occupancy of the addition. The addition is being solely used for business purposes and will not contain any cooking facilities.
2. Access shall be by interior staircase only.
3. A side yard setback of .5 ft. is proposed with the construction of the required firewall.

WHEREAS, the Property owner, Daniel Malay, was sworn and testified as follows:

1. He is the owner of the property along with his wife, Lori Malay and is authorized to speak on her behalf.
2. There will be no increase or intensification of use of the operation of the business. No increase in employees or seating is proposed.
3. The proposed addition is not for residential occupancy and to be solely used for business purposes.
4. The second-floor windows are ingress/egress windows.
5. Access to the rear of the property is not being changed.

WHEREAS, all interested parties were given the opportunity to be heard and one member of the public spoke against the Application.

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 applicants are the lessees of the property which is the subject of this application and have standing to make the application.
2. The property owner is named and is a party to the application.
3. The application is deemed complete, and Jurisdiction lies within the Surf City Land Use Board.
4. 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.

5. The board considered and determined that the application is properly heard as a Preliminary and Final Major Site Plan without variances. The board further waives the design standards applicable to site plans.
6. The board finds that there is no intensification of use.
7. The board finds that the proposed addition is solely for business use and shall not be sued for residential occupancy or use.
8. The Applicant shall install a firewall along the property line which shall negate the need for variance relief where .5 ft. is proposed, and .0 ft. is permitted with installation of a firewall.

NOW, THEREFORE, BE IT RESOLVED that the application for Preliminary and Final Major Site Plan Approval by HYB Holding RE, LLC. is hereby granted subject to the forgoing conditions and findings of fact.

IT IS FURTHER RESOLVED that the contents of the preamble are adopted and made part of this resolution; and

IT IS FURTHER RESOLVED that the prior approvals identified in Resolution 2007-06, Resolution 2018-29 and Resolution 2020-10 remain in full force and effect to the extent not amended by this approval and are incorporated herein as if set forth herein in their entirety.

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.

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

James Raban, Esq. was present to represent FHW Land Acquisitions, LLC seeking a minor subdivision approval for 600 Long Beach Boulevard, Block 23, Lots 17, 18, 19, & 20. He described the proposed plan to reposition the four lots from facing Long Beach Boulevard to facing N. 6<sup>th</sup> Street and N. 7<sup>th</sup> Street. Leon Tyszka, licensed NJ Land Surveyor, explained the four 50 x 90 lots would be parallel to the Boulevard. It is not necessary to include Lot 15 on the subdivision because it is a conforming existing lot of record. Proposed driveway openings will be on the revised plans.

Chairman Hartney stated that repositioning the lots saved the parking along the Boulevard. Mr. Mannherz inquired about the handicap accessible parking and depressed curbing.

William Hodgson, 414 N. 3<sup>rd</sup> Street, was sworn in to discuss the fencing and curbing. He also pointed out that repositioning the driveways to the side streets is a safer plan due to the heavy foot traffic along the Boulevard and that area. The plan improves the overall parking scheme. The 9-foot setbacks will be on the westerly side.

Francis R. Hodgson, 432 N. 3<sup>rd</sup> Street, was sworn in to speak about the Borough's request to the U.S.P.S. to move the mail collection box to Borough Hall. The U.S.P.S. has been nonresponsive. He would be reaching out to Congressman Van Drew about the matter.

Mr. Russell moved to open public comment. Mr. Wachter seconded the motion. With a vote in the affirmative, public comment was open. The following members in favor: Mr. Hartney, Mrs. Klose, Mr. Mannherz, Mr. Russell, Mr. TumSuden & Mr. Wachter. Nays: none. Abstained: none. Absent: Mr. Hodgson, Mr. Hoover, Mr. Savianeso & Mr. Wright.

Mr. Russell moved to close public comment. Mrs. Klose seconded the motion. With a vote in the affirmative, public comment was open. The following members in favor: Mr. Hartney, Mrs. Klose, Mr. Mannherz, Mr. Russell, Mr. TumSuden & Mr. Wachter. Nays: none. Abstained: none. Absent: Mr. Hodgson, Mr. Hoover, Mr. Savianeso & Mr. Wright.

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

Mr. Hartney: I vote yes to approve this application. I find that it has met the positive and negative criteria of a C-2 variance. It is not detrimental to the Borough Master Plan and zoning ordinances. It is beneficial to the Borough overall as it improves the parking and the safety. The minimum of the side yard setback is mitigated by the fact that two of the lots are along the Boulevard and the other side stays within its own development. It is a positive thing for the Borough. I vote yes.

Mrs. Klose: I am a yes too. I have to say when I first looked at all of this, I thought who wants to live on the Boulevard. But now that I see that the lots are reconfigured, I am thinking that this makes perfect sense. The parking stays, I like the fact that the parking is staying. There is no increase of the lot coverage. I vote yes.

Mr. Mannherz: I vote yes for reasons previously stated. Echoing that the parking along the Boulevard is being preserved. I think that is a very good thing. Testimony was provided, for me, adequately to explain the variance requested for the side yard setbacks. Safety is paramount and reorganizing the properties to ingress and egress on the side streets is very important. It has been mentioned that the lot area is the same. It is just moving the property lines a little bit, here and there. So, I vote yes.

Mr. Russell: I vote yes too, because of all the previous positive statements made about this property.

Mr. TumSuden: I vote yes. Relaying the lots in a parallel direction, as in other properties which has occurred in Surf City such as the old supermarket block. They have homes now that face the side streets. I vote yes.

Mr. Wachter: I vote yes, as well, for all the reasons previously stated about the parking and the safety.

Nays: none. Abstained: none. Absent: Mr. Hodgson, Mr. Hoover, Mr. Savianeso & Mr. Wright.

Mr. Russell moved to approve the bills. Mr. Mannherz seconded the motion. Roll call reflected the following in favor: Mr. Hartney, Mrs. Klose, Mr. Mannherz, Mr. Russell, Mr. TumSuden & Mr. Wachter. Nays: none. Abstained: none. Absent: Mr. Hodgson, Mr. Hoover, Mr. Savianeso & Mr. Wright.

Mrs. Klose moved to adjourn the meeting. Mr. Mannherz seconded the motion. With a vote in the affirmative, the meeting was adjourned. Roll call reflected the following in favor: Mr. Hartney, Mrs. Klose, Mr. Mannherz, Mr. Russell, Mr. TumSuden & Mr. Wachter. Nays: none. Abstained: none. Absent: Mr. Hodgson, Mr. Hoover, Mr. Savianeso & Mr. Wright.

Respectfully submitted,



Christine Hannemann, RMC/CMR/QPA  
Borough Clerk/Administrator