

BOROUGH OF SURF CITY LAND USE BOARD
813 Long Beach Boulevard
September 28, 2022
7:00 pm

The meeting was called to order. Kevin Quinlan, Esq. administered the oath of office to John Franzoni.

All present joined Chairman Hartney in saluting the Flag.

Roll call reflected the following in the affirmative: Peter Hartney, Gavin Hodgson, Paul Hoover, Allen Mannherz, James Russell, Richard Savianeso, George Wachter, David Wright, John Franzoni & Jaime Ryan. Absent: Sandra Klose.

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 January 13, 2022, 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 August 24, 2022 regular meeting minutes. Mr. Mannherz 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, Mr. Mannherz, Mr. Russell, Mr. Savianeso, Mr. Wachter & Mr. Ryan, Nays: none. Abstained: Mr. Wright & Mr. Franzoni. Absent: Mrs. Klose.

Mr. Hoover moved to approve Resolution 2022-II. Mr. Russell seconded that motion. With a vote in the affirmative, the following resolution was approved.

WHEREAS, Edward and Ivy Wentzheimer are the owners of premises identified as Block 40, Lots 6 and 8 on the official tax maps of the Borough of Surf City and have standing to make the application.

WHEREAS, the applicant has applied to the Borough of Surf City Land Use Board for approval of a minor subdivision. Currently there are two existing conforming lots with non-conforming structures which traverse the property line. The proposed lots will be conforming.

WHEREAS, the applicant proposes to re-subdivide the lots so that both lots front on Ocean Terrace. The existing two-story dwelling on new Lot 6.01 will be removed and replaced with a new single-family dwelling and the existing two-story dwelling on new Lot 6.02 will remain. Concrete curbing and depressed driveway access along Ocean Terrace will be installed.

WHEREAS, the applicant submitted the following exhibits and evidence which was admitted by the board:

A-1 Application.

A-2 Minor Subdivision Map prepared by Horn, Tyson and Yoder, Inc. dated 3/3/22.

A-3 Tax Map.

A-4 Four color photographs.

B-1 Board Engineer's letter dated 8/15/22.

WHEREAS, Edward Wentzheimer was sworn and testified as follows:

1. He owns the property with his wife who was in attendance but did not testify.
2. They have owned the property for approximately 9 months.
3. No variances are being sought. One dwelling to remain and will meet all bulk requirements. The new dwelling shall comply with all bulk requirements.

WHEREAS, the site is located in the RA-Residential Zone and the proposed lots conform with the Ordinance requirements and no variances are being sought or needed.

WHEREAS, new curbing and depressed driveway access shall be installed along Ocean Terrace.

WHEREAS, the existing water and sewer laterals will be used for new lots.

WHEREAS, all interested parties were given an 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 represent the property owner and has standing to make the application.
2. The exhibits have been properly introduced and moved into evidence.
3. The application is deemed complete, and Jurisdiction lies within the Surf City Land Use Board.
4. The Board considered and determined that the application is properly heard as a Minor Sub-Division and no variances are required.
5. Installation of curbs and driveway access are required along the Ocean Terrace.
6. The proposed lots are consistent with the master plan and ordinances of the Borough of Surf City; the approval of the minor sub-division can be granted without detriment to the public; and the benefits of granting the minor sub-division outweigh any detriment.

NOW, THEREFORE, BE IT RESOLVED that the application for Minor Sub-Division approval is hereby Granted subject to the forgoing conditions and findings of fact.

IT IS FURTHER RESOLVED that the Board Engineer's review letter is incorporated herein.

IT IS FURTHER RESOLVED that the contents of the preamble is adopted and made part of this resolution.

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,
5. Ocean County Planning Board approval and
6. Obtain any other outside agency approval as required.
7. Subject to approval of the lot numbers by the Borough Tax Assessor.

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

Mr. Russell moved to approve Resolution 2022-10. Mr. Hodgson seconded that motion. With a vote in the affirmative, the following resolution was approved.

WHEREAS, Joan Weidner has made application to the Land Use Board of the Borough of Surf City for variances to construct an elevator shaft on the southwest side of the existing dwelling. The construction requires variance relief for side yard setback where 5 ft is required, and 4.9 ft is proposed and maximum building coverage where 35% is permitted and 36% is proposed.

WHEREAS, the Land Use Board considered this application at a public hearing on August 24, 2022. The applicant was represented by James S. Rabin, Esq.

WHEREAS, following exhibits were marked and entered in evidence:

- A-1 Application.
- A-2 Map of Survey prepared by Nelke, Constantine & Associates, Inc. dated 5/7/21.
- A-3 Building Permit Plot Plan for Variance prepared by Nelke, Constantine & Associates, Inc. dated 2/11/22.
- A-4 Architectural Plans prepared by Craig W. Brearley, AIA dated 10/28/21.
- A-5 Color Photos (4).
- A-6 Tax Map.
- B-1 Board Engineer Review Letter dated 5/31/21.

WHEREAS, Testimony was offered by Jeff Daum. P.E. who was qualified as an expert in professional engineering; Sarah Jennings, AIA who was qualified as an expert in architecture

design, and Joan Weidner the property owner and Applicant. All witnesses were sworn. All interested parties were given an opportunity to testify however no one sought to be recognized.

WHEREAS, Mr. Daum testified as follows:

1. Variances for Maximum building coverage and side yard setback are requested.
2. The addition of an elevator would improve safety.
3. A residential dwelling with an elevator is an improvement to housing stock.
4. Benefits outweigh any potential detriment.
5. Purpose of zoning is to create open air and light around structures. Any encroachment is not significant.

WHEREAS, Ms. Jennings, AIA testified:

1. The proposed elevator is the smallest ADA compliant model.
2. Elevator could be located within the structure however it would be more costly.
3. The existing footing is particularly suited to support an elevator.
4. Windows would need to be relocated no matter where the elevator is located.
5. The addition of the elevator is an aesthetic improvement.

WHEREAS, Ms. Weidner testified:

1. She is the owner of the subject property.
2. The proposed location of the elevator would have the least impact on the floorplan.
3. Relocating elevator would affect the same number of windows as the proposed location.

WHEREAS, the hearing was opened to the public and no one sought to be recognized.

WHEREAS, the Land Use Board, after considering the Application, exhibits entered in evidence, testimony of the witnesses, argument of counsel and public comment makes the following factual findings:

1. All jurisdictional requirements have been met as the Application having been deemed complete and proper notice having been published and served.
2. The applicant is authorized to make the Application.
3. The property is in the RA Residential Zone.
4. A variance for side yard setback of 5 ft. is required, and 4.9 ft. is proposed.
5. A variance for maximum building coverage where 35% is permitted and 36% is proposed.

6. The board finds that the applicant failed to satisfy his burden of proof under N.J.S.A. 40:55D-70(c) in that the applicant failed to offer credible testimony that the purpose of the Land Use Law would be advanced by deviation from the zoning ordinance requirements, that the variances could be granted without substantial detriment to the public good, that the benefits of granting the variances would substantially outweigh the detriment, nor that granting of the variances will not substantially impair the purpose and intent of the zone plan and/or zoning ordinances of the Borough of Surf City.

7. The Board finds that the Applicant has failed to establish that a hardship exists whereas testimony from Applicants' experts was that elevator could be constructed within the dwelling but would be more costly.

8. The Board finds that the detriment to open air and light outweighs any benefits to the granting of the variance where the benefit is to the Applicant alone.

9. The Board acknowledges that improvements in housing stock and ingress and egress are benefits but do not outweigh the detriment to open air and light by the required side yard setbacks and maximum building coverage variances.

10. The Board further finds that the purposes of the ordinances and master plan of the Borough of Surf City would not be advanced by the granting of a variance where an elevator could be constructed without the need for variance relief.

11. The proposed development does not represent a better planning option.

12. The Board does not find that the property is uniquely sized or shaped.

13. The Board has reviewed and adopts the engineering report of Owen, Little and Associates dated May 31, 2022 which comments therein shall be incorporated herein as if set forth in length in this resolution.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Surf City that the relief requested by the applicant, for variance relief is hereby denied.

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

James Raban, Esq. was present to represent Ryan and Tara Todd of 1301 N. Ocean Avenue, Block 40, Lot 1 for bulk variances. There was discussion in regards to the current dune walkover and additional pictures submitted for review.

Will Esarey was sworn in as the applicants engineer. He stated that the original property had a sky bridge that connected to the dune walkover, however when the NSFD was being constructed, it was ordered to be removed. He mentioned that with the proposed walkway to the walkover they will be at 35.9 percent lot coverage.

It was mentioned by the architect that the original building permit and survey submitted to the Zoning Officer did not show the sky bridge. He explained that he believed that the walkover and

sky bridge was exempt from lot coverage since it was over 8 feet and was not going to exceed the width of stairs.

There were questions about whether the dune is accessible with the use of dune mats. Mr. Esarey explained that the applicant could use mats, however it would be very steep and would be unsafe. He further explained that the use of large stones would disrupt the face of the dune and the rocks would shift over time creating a safety issue.

It was explained that this application does not fall under a C1 variance hardship application. This application would be a C2 and the applicant would need to show that the proposed is a more positive solution than what is available. It was further discussed that there are no hardships.

Mr. Hoover made motion to interpret that the sky bridge does not count as lot coverage. Mr. Wright seconded the motion. Roll call reflected the following votes:

Mr. Hartney: I vote no on the interpretation. If this was done properly prior to the application, when the application was submitted to the zoning office with the proper things on it, we would not be here. Or we would have already decided to go back to decide. To give something that was already denied, that is not what we are about.

Mr. Hodgson: I vote yes, it does not fall under lot coverage.

Mr. Hoover: I vote yes, for what I said previously and for what Mr. Hodgson said.

Mr. Mannherz: I vote yes for the interpretation, even though I think the stairs would look great.

Mr. Russell: I vote yes for the same reasons as Gavin.

Mr. Savianeso: I vote yes, even though I agree, I think the stairs would be hidden and would be a nice look.

Mr., Wachter: I vote yes, for reasons that were previously stated.

Mr. Wright: I vote yes.

Mr. Franzoni: I vote yes. It seems to me that this ordinance was written to accommodate such walkover to not count as lot coverage.

The applicant decided they would like to continue with their application for the stairs instead of the sky bridge.

Mr. Russell moved to open public comment. Mr. Hoover 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, Mr. Mannherz, Mr. Russell, Mr. Savianeso, Mr. Wachter, Mr. Wright & Mr. Franzoni. Absent: Mrs. Klose. Mr. Russell moved to close public comment. Mr. Wright seconded the motion. With a vote in the affirmative, public comment was open. The vote reflected the following ayes: The vote reflected the following ayes: Mr. Hartney, Mr. Hodgson, Mr. Hoover, Mr. Mannherz, Mr. Russell, Mr. Savianeso, Mr. Wachter, Mr. Wright & Mr. Franzoni. Absent: Mrs. Klose.

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

Mr. Hartney: I vote no on the motion to approve as post facto. This property was demolished and the expectation is that 35% is 35%. 35.9% although it may seem like a little, is in light of the size of the property and availability of land, it should hit 35%. It does not, in my opinion advance the zoning plan or the ordinances of the Borough. It creates a non-conformity that will be existing beyond its owners beyond that that we will have to keep addressing. My vote is no.

Mr. Hodgson: I vote yes. The reason is that as the walkway, I think it is a short jump from interpretation of sky bridge to a walkway, egress to egress. They have a deeded access and that means they have a right to use that dune access over to the beach. My feeling is that they have the right to walk up there and do that. And so doing the walkway does less damage to the dune, it's safer, and it does not impede the natural light of the town, versus what a sky bridge would. For those reasons, I vote yes.

Mr. Hoover: I vote yes. I believe it is a better plan and does not have any public detriment. I think it is a better thing to do. I vote yes.

Mr. Mannherz: I also vote yes for reasons previously stated. I do not see a detriment as to what was stated earlier. It is a better plan, assembling for the homeowner's use of the property as testified by Mr. Esarey. It is hidden behind the floor and fauna as you are walking up the dune entrance from the street. I think it will be better aesthetics.

Mr. Russell: Given the consideration when the house is being built, the opportunity was there to include this addition for the steps, and it wasn't. they had the opportunity to do it and they didn't and for that reason, I vote no.

Mr. Savianeso: I'm going to vote yes. I think it's hidden by the dune; it is more pleasing to the eye than the sky walk. I agree that it should have been done from the get-go, it should have been in the plans, but I am going to vote yes.

Mr. Wachter: I am going to vote yes for reasons previously stated, but also there is some ambiguity to the ordinances, is it a walkway or is it not. I think interpreting that, different people have a different point of view.

Mr. Wright: I vote yes. I think the Board had good feedback. I think it will blend in much better with the dune rather than something way up in the air. I vote yes.

Mr. Franzoni: I vote yes.

James Raban, Esq. was present to represent Cardom, LLC of 1409 Long Beach Blvd, Block 36, Lot 13 for preliminary and final site plan approval. There was discussion in regards to the interpretation of the use variance.

Mr. Mannherz made motion to interpret that a use variance is not required. for a takeout window. Mr. Wachter seconded the motion. Roll call reflected the following votes: Mr. Hartney, Mr.

Hodgson, Mr. Hoover, Mr. Mannherz, Mr. Russell, Mr. Savianeso, Mr. Wachter Mr. Wright, Mr. Franzoni & Mr. Ryan. Nays: none. Abstained: none. Absent: Mrs. Klose.

Mr. Raban stated that there are six parking spaces available. He further explained that the parking will not change from what was previously there. Mr. Brzozowski explained that 13 spots are required, however 6 is what is currently there and that amount will not change. He mentioned that the northerly unit will become a takeout only restaurant with no indoor seating that will only have two employees.

Mr. Brzozowski stated that 4 parking spots will be by the alley and 2 parking spots will be in the alley. The spots can be marked and have stops to designate them as parking spaces. He stated that the existing structure is already a non-conformity by covering 35.6% lot coverage. It was mentioned that the applicant may have 2 tables with 4 seats each outside. The applicant will also provide for a trash can to be out front of the building.

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

Mr. Hartney: I vote yes on the motion. There are a number of pre-existing conditions that will not be exacerbated by the addition of a takeout restaurant with a takeout window. The testimony provided by Mr. Brzozowski as in terms of the intensification of use by employees of that property from previous uses leaves me to believe that there is no intensification of use so it has a negative impact upon the Borough and is also consistent with the Boroughs master plan to encourage businesses in the business zone.

Mr. Hodgson: Yes, for the reasons Mr. Hartney said.

Mr. Hoover: Yes, for the affordable food.

Mr. Mannherz: Yes, for reasons previously stated and it's nice to know that businesses are still alive and well in Surf City.

Mr. Russell: I vote yes. I think it is going to be an improvement to the town and I can't wait to get a hot dog.

Mr. Savianeso: I vote yes also. I look forward to it.

Mr. Wachter: I vote yes for reasons previously stated.

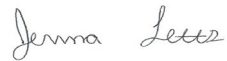
Mr. Wright: Yes, for everything.

Mr. Franzoni: I vote yes for the same reasons as everyone else voted yes.

Mr. Wright moved to approve the bills. Mr. Mannherz seconded the motion. With a vote in the affirmative, the bills were approved to be paid. 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. Savianeso, Mr. Wachter Mr. Wright, Mr. Franzoni & Mr. Ryan. Nays: none. Abstained: none. Absent: Mrs. Klose.

Mr. Russell moved to adjourn the meeting. Mr. Mannherz seconded the motion. With a vote in the affirmative, the meeting was adjourned. 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. Savianeso, Mr. Wachter Mr. Wright, Mr. Franzoni & Mr. Ryan. Nays: none. Abstained: none. Absent: Mrs. Klose.

Respectfully submitted,



Jenna Letts

Land Use Board Clerk