

BOROUGH OF SURF CITY LAND USE BOARD

813 Long Beach Boulevard

October 26, 2022

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, Paul Hoover, Sandra Klose, Alan Mannherz, James Russell, Richard Savianeso, David Wright, John Franzoni & Jaime Ryan.

Absent: Gavin Hodgson & George Wachter.

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 September 28, 2022 regular meeting minutes. Mr. Hoover seconded the motion. With a vote in the affirmative, the minutes were approved.

Mr. Russell moved to approve Resolution 2022-12. Mr. Mannherz seconded that motion. With a vote in the affirmative, the following resolution was approved.

WHEREAS, Ryan and Tara Todd are the owners of the premises identified as Block 40, Lot 1 on the official tax maps of the Borough of Surf City also known as 1301 Ocean Terrace and have standing to make the application.

WHEREAS, the applicants were represented by James S. Raban, Esq.

WHEREAS, the applicants have applied to the Borough of Surf City Land Use Board for variances to construct a framed staircase to be built in line with the existing walkway instead of a raised walkway from the first-floor deck. The existing dune walkover shall remain. The proposed development requires a variance for lot coverage where 35% is permitted and 35.9% is proposed. The Board is also asked to interpret ordinance §30-3 to determine if the walkway is connected to the existing deck it is excluded from calculation of building coverage.

WHEREAS, the site is in the RA Residential Zone.

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

- A-1 Application.
- A-2 Variance Plan prepared by Nelke, Tyszka Land Surveyors, LLC dated 2/6/22 and revised 7/13/22.
- A-3 Architectural Plans prepared by Hard Line Architect dated 6/15/21 and revised 7/12/22.
- A-4 Color Photos (4).
- A-5 Tax Map
- A-6 Color photo from elevation cert.
- A-7 Color photo facing dune.
- A-8 Color photo showing new construction

- B-1 Board Engineer Review Letter dated 9/7/22.

The foregoing exhibits being marked and admitted into evidence.

WHEREAS, an initial question was presented to the Board as to whether a walkway connecting the deck to the dune walkover is included in the calculation of lot coverage. It was interpreted by the Board that such a walkway is not included in the calculation of lot coverage and could be constructed without variance relief.

WHEREAS, the Applicant elected to proceed with the application for variance relief to construct a staircase from the ground level to the dune walkover.

WHEREAS William Esarey, AIA was sworn and qualified as an expert in Architectural design and testified as follows:

1. If the proposed staircase is included in lot coverage a variance will be required where 35% is permitted and 35.9% is proposed.
2. The proposed development would be over lot coverage by approximately 45 sq. ft.
3. The original plans submitted with the permit application did not show the elevated walkway.
4. Other alternatives were pursued by the Applicant including dune matts and large retaining stones. These alternatives are not practical and would create unsafe conditions.
5. Due to the orientation of the deck and ingress and egress points of the dwelling there is no ability to remove the 45 sq. ft. from the structure to bring lot coverage into conformity.
6. The adjacent properties are fully developed and there is no property available to remove the need for a variance.
7. The construction of a staircase would be more aesthetically appealing then an elevated walkway which would be more visible to neighbors and the public in general.

WHEREAS the public was given an opportunity to be heard and no one sought to be

recognized.

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 authorized to make the application and have standing.
2. The application is deemed complete, and Jurisdiction lies within the Surf City Land Use Board.
3. Proof of service and publication as required by law has been provided and determined to be in proper order.
4. The Board interprets ordinance §30-3 that an elevated walkway connecting the deck and dune walkover is not included in lot coverage and could be constructed without variance relief.
5. The Board finds a variance is required to construct a staircase from ground level to the dune walkover.
6. A c(1) variance is not appropriate whereas the hardship is self-created.
7. The Board finds that the Applicant has satisfied the requirements for a variance under c(2) whereas the proposed staircase represents a better planning alternative and advances the master plan.
6. The impact upon adjacent properties is significantly reduce by the installation of the staircase then the originally proposed elevated walkway.
7. The benefits of the staircase, largely shielded from view by the dunes outweigh any potential negatives. There is no impairment of open air a light to adjacent properties.

NOW, THEREFORE, BE IT RESOLVED that the application for variance for lot coverage of 35.9% where 35% is permitted is hereby granted.

IT IS FURTHER RESOLVED that the contents of the preamble and board engineer's review letter dated September 20, 2022 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. Compliance with applicable flood zone regulations.
7. Submission of a revised plan. Mr. Russel

I moved to approve Resolution 2022-12.

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

Mr. Russell moved to approve Resolution 2022-13. Mr. Wright seconded that motion. With a vote in the affirmative, the following resolution was approved.

WHEREAS, Cardom, LLC (company) is the owner of premises identified as Block 36, Lot 13 on the official tax maps of the Borough of Surf City and have standing to make the application.

WHEREAS, the applicant was represented by James Raban, Esq.

WHEREAS, the applicant has applied to the Borough of Surf City Land Use Board for an interpretation and preliminary and final major site-plan approval to construct a take-out window along the front of the building in the Northerly unit. The applicant is not proposing any changes to the footprint of the structure. The southerly unit will remain “The Surf City Barber Shop” and the upper apartment is to remain unchanged. The Applicant seeks an interpretation as to whether take-out windows are permitted uses and therefore a Use Variance is not necessary. The property is encumbered by two pre-existing non-conformities; Lot Area of 4,250 sq. ft. where 5,000 sq. ft. is required, and Lot Coverage of 35.6% where 35% is permitted. A variance for parking is required where six (6) spaces are provided and thirteen (13) are required.

WHEREAS, the following exhibits and evidence were admitted by the Board:

- A1. Application.
- A2. Site Plan prepared by Horn, Tyson and Yoder, Inc. dated 11/23/21 and revised 7/19/22.
- A3. Architectural Plans prepared by Musgnug & Associates Architects dated 1/5/22.
- A4. Tax Map Sheet 5.
- A5. Color Photos (4).
- B1. Board Engineer Letter dated 9/2022.

WHEREAS, the site is located in the Business Zone, however since the proposed use is mixed commercial-residential, the RA - Residential Zone requirements shall apply.

WHEREAS, James Brzozowski, PE, PP, of Horn Tyson and Yoder, Inc. was sworn and qualified as an expert in planning.

WHEREAS, Mr. Brzozowski testified as follows:

1. There is no available property to remove the need for variance relief.
2. The pre-existing non-conformities of lot area and lot coverage are not being expanded.

3. The footprint of the structure is not being altered.
4. The public will not have access to the interior of the unit. All service to be provided through the proposed take-out window.
5. There is sufficient space in front of the building to accommodate people queuing for service. There is approximately 10 ft. from the front of the building to the property line and another 8 ft. to the edge of curb.
6. The proposed parking is existing and consists of four conforming spaces and two stacked spaces. Thirteen spaces are required. A variance is requested.
7. There will be no increase in the demand for parking.
8. The proposed use and development are consistent with the neighborhood.
9. The area is a walking/biking community.
10. Parking spaces will be stripped, and curb stops installed.
11. A trash receptacle will be in the front of the building for customer use. Location of same shall be after consultation with the board engineer.
12. No proposed changes in existing lighting or signage. All lighting and signage shall comply with applicable ordinances.
13. The proposed use is consistent with the master plan whereas it promotes and retains commercial uses within the business zone.
14. There are no negative impacts from the proposed development. The benefits of retaining a viable business within the business zone outweighs the detriments, if any.

WHEREAS Robert P. Musgnug, AIA was sworn and qualified as an expert in architectural design.

WHEREAS Mr. Musgnug testified as follows:

1. The footprint of the building is not being expanded.
2. An existing window will be removed, and a take-out window installed with minor exterior remodeling.
3. All signage and lighting shall comply with applicable ordinances.

WHEREAS, Carmine DiGiaino was sworn and testified as follows:

1. He is a member of the LLC and is authorized to testify on behalf of the LLC and to bind same.
2. The LLC has owned the property for approximately 2 years.
3. The barbershop has been on-site for approximately 12 years.
4. There will be no inside service or seating.
5. The Applicant seeks approval for possible outside seating consisting of 2 tables and 8 chairs pursuant to the Borough's outdoor seating ordinance.
6. The plan will be revised to remove the pavers to the north, locate the trash receptacle in the front of the building, and locate tables and chairs to the south side of the building.

WHEREAS, all interested parties were given an opportunity to be heard and no one sought to be recognized.

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 Applicant representative Carmine DiGiaimo is a member of the LLC and is authorized to make the application and to bind the LLC.
5. The pre-existing non-conformities for lot coverage and lot area are not being expanded.
6. All site signage and lighting shall comply with applicable ordinances.
7. Take-out window is a permitted use, and a use variance is not required.
8. The proposed development will not cause an intensification of use or increase in parking demand.
9. The parking stalls shall be striped, and curb stops installed.
10. A trash receptacle shall be installed in the front of the building.
11. The Site Plan shall be revised to show the location of the outdoor seating, trash receptacle, location of the trash receptacle in the rear of the property and remove the pavers on the north side of the dwelling.
12. Waiver of formal Major Site Plan requirements is appropriate.
13. The Board finds that the benefits of granting the variances outweigh any detriment and can be granted without substantial detriment to the zone plan, ordinances, and master plan of the Borough. Specifically, the Board finds that there is no intensification of use, change in the foot print nor increase in parking demand. The benefit of maintaining a commercial use within the Business Zone is a significant benefit and promotes the master plan.

NOW, THEREFORE, BE IT RESOLVED that the Board grants Preliminary and Final Site Plan approval with a variance for parking where 13 spaces are required and 6 are provided.

IT IS FURTHER RESOLVED that the applicant is granted design waivers and Preliminary and Final Major Site-Plan approval.

IT IS FURTHER RESOLVED that the applicant shall submit revised plans consistent with this Resolution.

IT IS FURTHER RESOLVED that the comments and conditions set forth in the Board Engineer's Review Letter dated September 20, 2022, not modified herein, are incorporated in this Resolution as if set forth at length 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,
6. Compliance with Flood Zone Regulations, and
5. Obtain any other outside agency approval as required.

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

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

Mr. Hartney brought to the attention of the public, that Step Into Liquid, LLC will be heard at the November 23, 2022 meeting.

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

Respectfully submitted,



Jenna Letts

Land Use Board Clerk