

BOROUGH OF SURF CITY LAND USE BOARD

813 Long Beach Boulevard

March 22, 2023

7:00 pm

Chairman Peter 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, Sandy Klose, Alan Mannherz, James Russell, Richard Savianeso, George Wachter, David Wright, John Franzoni & Jaime Ryan. Absent: Gavin Hodgson.

The Open Public Meeting Statement was read by Chairman Peter 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 2, 2023 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 February 22, 2023 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. Hoover, Mrs. Klose, Mr. Mannherz, Mr. Russell, Mr. Savianeso, Mr. Wachter, Mr. Wright & Mr. Ryan. Absent: Mr. Hodgson. Abstained: Mr. Hartney & Mr. Franzoni.

Mr. Russell moved to approve Resolution 2023-04. Mr. Wright seconded that motion. With a vote in the affirmative, the following resolution was approved.

WHEREAS, Three I and F, LLC is the owner of the premises identified as Block 43, Lot 22 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 E. Rue, Esq.

WHEREAS, the applicant has applied to the Borough of Surf City Land Use Board for interpretation of the definition of 'take-out window' and if required, variance relief.

WHEREAS, an application and supporting documents had been submitted to the Board and deemed complete by the Board Engineer and Attorney.

WHEREAS, proof of service as required by law upon appropriate property owners and governmental bodies has been provided and determined to be in proper order; and

WHEREAS, required Notice was published in the official newspaper of the Borough advising of the nature, time and date of the application and satisfactory proof of same provided.

WHEREAS, this matter was heard at the January 25, 2023 regular meeting of the Surf City Borough Land Use Board.

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

- A-1 Application.
- A-2 Map Showing Survey of Lot 22, Block 43 prepared by Horn Tyson and Yoder dated 11/15/21 and last revised 1/6/22.
- A-3 Site Plan prepared by Horn, Tyson and Yoder dated 11/14/22.
- A-4 Color photos (4).
- A-5 Window Specification Sheet.
- B-1 Board Engineer Letters dated 1/10/23 and revised 1/24/23.

WHEREAS no expert testimony was offered by the Applicant.

WHEREAS Sharon Ingram, was sworn and testified as follows:

1. She is a member of the LLC.
2. The take-out window would be utilized primarily for the passing of food ordered within the establishment to patrons who would queue up outside the business to receive their order through the take-out window. Future use of the take-out window could be for the taking and fulling of orders.
3. The addition of the take-out window would not increase the number of employees or increase the intensity of the use of the premises.

WHEREAS Brian Ingram was sworn and testified as follows:

1. He is a member of the LLC.
2. The take-out window consists of four panes of glass. The middle two panes are fixed and the two outside panes open. The overall size of the four windows, fixed and moveable is eight foot by four foot.
3. A trash can is located in the front of the business for use by patrons and a dumpster is located in the rear which does not interfere with the parking.

4. The footprint of the structure is not being increased.
5. The pre-existing non-conformities are not being expanded.
6. The proposed take-out window will allow for more efficient operation of the business and reduce congestion inside the business.
7. Immediately in front of the proposed take-out window is an area where customers will congregate without obstructing the sidewalk.

WHEREAS the Board was asked to interpret the definition of a 'take-out window' as an initial determination if variance relief is required for the proposed window.

WHEREAS Take-out Windows are defined in §30-3 and §30-5.7:

§30-4 Shall mean an opening in the main or principal building of a retail food establishment used to receive and dispense take-out food orders.

§30-5.7 Take-out windows are permitted in the Business Zone in accordance with the following:

- a. Take-out windows shall not exceed four feet in height and six feet in width for a total area of 24 square feet.
- b. There shall not be more than one take-out window for each main or principal building.
- c. A take-out window on a front or side yard abutting a street shall have a minimum depth of 10 feet from the building line to the street. Take-out windows shall not be permitted abutting the rear yard.
- d. Take-out windows shall not be permitted on any side or rear yard abutting property in the Residential Zone.

WHEREAS, the hearing was opened to the public and all interested parties were given the opportunity to be heard. No interested party testified.

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 Board finds that the proposed take-out window does not comply with §30-3 and/or §30-5.7. When read together the applicable ordinances define a take-out window as a single opening whereas the proposed window consists of two openings. As such the Board finds that a variance is required.
5. The Board finds that the applicant has failed to satisfy the criteria under N.J.S.A. 40:55D-70(c)(1) in that no hardship was established.
6. The Board finds that the applicant has failed to satisfy its burden of proof under N.J.S.A. 40:55D-70(c)(2) in that the applicant failed to offer credible testimony that the proposed development represent a better zone plan than that which is permitted without variance relief.
7. The Board further finds that the applicant failed to satisfy his burden of proof under N.J.S.A. 40:55D-70(c)(1) and (2) 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 requirement, 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.
8. The Board finds that a conforming take-out window can be constructed which complies with the requirements of §30-3 and §30-5.7.
9. The Board finds that the governing body was very specific in the definition, size and location of permitted take-out windows and the Board finds the applicant has not produced sufficient evidence to grant relief contrary to the clear intention of the governing body.
10. The Board finds that a conforming take-out window is a better zoning option and would not require a variance.
11. The Board has reviewed and adopts the engineering reports of Owen Little

and Associates dated January 10, 2023 and revised January 24, 2023 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, County of Ocean, State of New Jersey that the application for variance relief is hereby denied.

NOW THEREFORE BE IT RESOLVED that notification of this Resolution denying the relief requested be published in official newspaper of the Borough of Surf City by the Land Use Board Clerk.

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

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

Mr. Russell 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. Hodgson, Mr. Hoover, Mrs. Klose, Mr. Mannherz, Mr. Russell, Mr. Savianeso, Mr. Wachter & Mr. Wright. Abstained: None. Absent: Mr. Hartney & Mr. Franzoni

Respectfully submitted,



Jenna Letts

Land Use Board Clerk

