

BOROUGH OF SURF CITY LAND USE BOARD

813 Long Beach Boulevard

December 16, 2024

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, Joe DeBenedetto, Paul Hoover, Sandy Klose, Alan Mannherz, James Russell, David Wright, & Jaime Ryan. Absent: Gavin Hodgson, Richard Savianeso & John Franzoni.

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 October 31, 2024, 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 27, 2024 regular meeting minutes. Mr. Hoover seconded the motion. With a vote in the affirmative, the minutes were approved.

Roll call reflected the following in the affirmative: Mr. Hartney, Mr. DeBenedetto, Mr. Hoover, Mr. Mannherz, Mr. Russell, Mr. Wright & Mr. Ryan. Abstained: Mrs. Klose. Absent: Mr. Hodgson, Mr. Savianeso & Mr. Franzoni.

Mr. Russell moved to approve Resolution 2024-12. Mr. Wright seconded that motion. With a vote in the affirmative, the following resolution was approved.

WHEREAS, New Eatery, LLC d/b/a Wally's Restaurant is the Applicant and makes this application with the permission of the Owners of premises identified as Block 29, Lots 19 & 20 on the official tax maps of the Borough of Surf City and have standing to make the application.

WHEREAS, the applicant was represented by Robin La Bue, Esq. of Rothstein, Mandell, Strohm, Halm & Cipriani, P.A.

WHEREAS, the applicant has applied to the Borough of Surf City Land Use Board for Use and bulk variances and Preliminary and Final Major Site-plan approval to create an outdoor seating area in the rear yard with 56 seats. The following variances are required:

1. Special Reasons/"D" Variance for outdoor seating in excess of 15% of approved indoor seating.
2. Minimum Front Yard Setback of 5.8 ft. where 10 ft. is required.\*
3. Minimum Side Yard Setback of 4.8 ft. where 5 ft. is required.\*
4. Maximum Building Coverage of 36.47% where 35% is permitted.\*

\*Pre-existing non-conformities which are not being expanded.

5. Parking where 54 spaces are required, and 1 space is proposed.

WHEREAS, the following exhibits were marked and admitted into evidence: A1. Application.

A2. Variance Plan prepared by Van Cleef Engineering Assoc., LLC dated 4/19/24 and last revised 11/15/24.

A3. Boundary and Topographic Survey prepared by Van Cleef Engineering Assoc., LLC dated 2/8/24.

A4. Planting Plan prepared by Bay Avenue Plant Company dated

10/11/2023 A5. Color Photos (6)

A6. Tax Map

A7. Typical Sail Detail

B1. Board Engineer Letter dated 11/8/24 and revised

11/22/24. WHEREAS, the site is in the B (Business) Zone.

WHEREAS, the Applicant's attorney advised that the Application is being revised to remove the proposed pergola and associated variances. Instead, the Applicant is proposing fabric sails with free standing supports.

WHEREAS, Michael I. Goldstein, P.E., P.P. of Van Cleef Engineering Assoc. LLC, was sworn and qualified as an expert in professional planning and engineering and testified as follows:

1. In 2018 the site received site plan approval under Resolution 2018-25 for construction of an addition on the south side of the existing restaurant. The application received approval with several variances including for parking where 44 spaces were required and 5 were granted. Additionally, 127 indoor seats were approved.
2. The Applicant currently has 127 approved indoor seats, and 24 outdoor

- seats located in the front yard of the site for a total of 151 existing seats.
3. The Applicant is proposing to reduce the indoor seating to 99, retain the existing 24 outdoor seats in the front yard and add an additional 56 seats in the rear for a total of 179 seats.
  4. The existing gravel area is being replaced with pavers which increases impervious coverage from 66.84% to 84.92%.
  5. Landscaping to be provided as per Exhibit A-4.
  6. The applicant proposes to replace the pergola with free standing sails to provide sun shading over the rear outdoor seating area.
  7. The parking space stall shall be 9' by 20' and the plan revised accordingly.
  8. Striping shall be added as per the plan.
  9. The existing residential apartment to remain and limited to employee use only.
  10. A detail of sails shall be provided and subject to approval by the Board Engineer and comply with all permitting requirements.
  11. The rear yard has not been used as a parking area at any time since the 2018 Site Plan approval. The site has functioned satisfactorily without the 5 rear parking spaces. The narrow alley way leading to the rear of the site was not a desirable nor safe circulation pattern.
  12. There is significant off-street parking in the immediate neighborhood which prior to 2019 was available to apply toward parking requirements.
  13. The variances can be granted without substantial detriment to the zone plan, master plan or ordinances of the Borough of Surf City.
  14. There are no substantial detriments.
  15. A hardship exists whereas prior to 2019 off-street parking was permitted to offset on-site parking. The ordinance was amended in 2019 to remove availability of off-street parking to offset on-site parking requirement. The Applicant's 2018 approval predated this change and negatively impacted the ability to expand the site post enactment of the 2019 parking ordinance.
  16. Outdoor seating is a benefit to the community and fills a need within the community.
  17. The proposed development advances the Master Plan whereas it preserves

an existing business. Promotes public health and safety by offering an outdoor dining option and provides adequate open air and space without infringing on adjacent properties.

WHEREAS Michael Tomko was sworn and testified as follows:

1. He is a member of New Eatery, LLC and is authorized to speak on behalf of the Company.
2. Since 2018 the rear yard has never been used as on-site parking and has not created an issue given the availability of off-site parking within the neighborhood.
3. The residential apartment shall only be used for employees.
4. There will be no outdoor live or amplified music.
5. There are presently 15 employees, which will be sufficient with the additional seating.
6. All lighting shall be downward facing or shielded so as to not reflect on adjacent properties or roadways.
7. Refuse collection is provided by the Borough and is sufficient for the proposed development.
8. The rear outdoor seating area is handicap accessible from the interior of the restaurant.
9. Hours of operation of the rear outdoor seating area to be between 8:30 am to 9:00 pm.
10. The Applicant further agrees not to seek additional outdoor seating in the future without approval from the Land Use Board.

WHEREAS Brian Tomko was sworn and testified as follows:

1. He is a member of the LLC.
2. The addition of the pervious pavers in the rear are a safer alternative then the existing gravel surface.

WHEREAS, all interested parties were given an opportunity to be heard and several interested parties spoke in favor of the requested relief and one interested party spoke against the requested relief.

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 has standing to make the Application.
2. The exhibits are moved into evidence.
3. The application is deemed complete, and jurisdiction lies within the Surf City Land Use Board.
4. The Application comes before the Board for Preliminary and Final Site Plan Approval, Special Reasons/"D" variances and bulk variances.
5. 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.
6. The granting of the Special Reasons/"D" variance promotes the public good in providing a needed outdoor dining experience.
7. The benefits of granting the relief requested outweigh any detriment caused by the variances. There are no substantial detriments to the zone plan, ordinances and/or Master Plan of the Borough.
8. The proposed development promotes the purposes enumerated in the Master Plan in that it preserves and/or promotes existing business.
9. The proposed use advances the public good in that the proposed outdoor seating represents an improvement in safer dining options and provides adequate air and space.
10. All provisions of Resolution 2018-25 not modified herein shall remain in full force and effect.

NOW, THEREFORE, BE IT RESOLVED that the Board grants the Applicant's request for Use and bulk variances and Preliminary and Final Major Site Plan approval.

IT IS FURTHER RESOLVED that the comments and conditions set forth in the Board Engineer's Review Letter dated 11/22/24, not modified herein are incorporated in this Resolution as if set forth at length herein.

IT IS FURTHER RESOLVED that the Applicant shall submit revised plans consistent with this approval.

IT IS FURTHER RESOLVED that the contents of the preamble are 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
7. Obtain any other outside agency approval as required.
- 8.

Roll call reflected the following in the affirmative: Mr. Hartney, Mr. DeBenedetto, Mr. Hoover, Mr. Mannherz, Mr. Russell, Mr. Wright & Mr. Ryan. Abstained: Mrs. Klose. Absent: Mr. Hodgson, Mr. Savianeso & Mr. Franzoni.

James Raban, Esq. was present to represent Robert and MaryAnne Riley of 254 N. 15<sup>th</sup> Street, Block 77, Lot 4. LLC for bulk variance approval. It was stated that the applicant is seeking to add two storm dormers onto the existing structure. The dormers would be on the 2<sup>nd</sup> story. The applicants are also seeking to enclose the existing 85sqft. deck over the existing garage. It was further explained that there would be no added lot coverage. The applicant's attorney stated that they were seeking variance relief for the pre-existing undersized lot and for parking.

James Cabinaugh was sworn in as the applicant's engineer. He stated that the applicant is seeking to raise the roof in two areas to increase space in two existing bedrooms. He stated that raising the height in these areas will not raise the overall height of the structure and will still be in compliance. He explained that the applicant is seeking one parking space where three spaces are needed. It was decided that the applicant will provide two parking spaces on the property.

It was mentioned that the structure will not affect air and light. It was mentioned that there are no renovations happening on the first floor of the structure and that the home currently has three bedrooms and an office off of the attached 12x22ft garage.

Robert Riley was sworn in as one of the owners. he stated that the air conditioning unit will remain in the same place. He further stated that he will add a gate opening to allow cars to park on the property, allowing for two parking spaces and removing the need for the parking variance. 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. DeBenedetto, Mr. Hoover, Mrs. Klose, Mr. Mannherz, Mr. Russell, Mr. Wright & Mr. Ryan. Abstained: None. Absent: Mr. Hodgson, Mr. Savianeso & Mr. Franzoni. Mr. Mannherz moved to close public comment. Mr. Russell 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. DeBenedetto, Mr. Hoover, Mrs. Klose, Mr. Mannherz, Mr.

Russell, Mr. Wright & Mr. Ryan. Abstained: None. Absent: Mr. Hodgson, Mr. Savianeso & Mr. Franzoni

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

Mr. Hartney: Having heard the testimony provided by the property owner and his professionals, I vote yes. There is no increase in the intensification of use. There are adjustments to the parking, to improve the parking. The existing variances are pre-existing. It meets the zoning and masterplan requirements. There's no negative impact on light and air.

Mr. DeBenedetto: Yes, there's no difference on the property line, the boundaries are the same. I think it's a safety issue in my opinion for anyone staying in those rooms. There's an existing structure beneath it. simply covering that area. I think it's a well needed addition. I vote yes.

Mr. Hoover: I vote yes to approve for the reasons that have been mentioned already. As I said before, all good.

Mrs. Klose: I vote yes to approve the application. The height stays the same, the footprint stays the same, the lot coverage stays the same. I think it will be nice if they can stand up and not hit their heads. I vote yes.

Mr. Mannherz: I also vote yes on the application. As some of the board members have previously stated their reasons. It's a difficult situation with a 3,000sqft property. The applicant and the engineer did well with the improvements on the housing to stay under the 50% threshold. The willingness of the applicant to adjust the fencing to accommodate another car off-street. And as previously mentioned, the building footprint is not changing and it's an improvement.

Mr. Russell: The footprint's the same, the parking situation has been addressed. I vote yes.

Mr. Wright: I vote yes for the reasons previously stated.

Mr. Ryan: I also vote yes for what the other members have already articulated.

James Raban, Esq. was present to represent Ziman Development, Inc. of 258 N. 23<sup>rd</sup> Street, Block 91, Lots 20, 22, 24, 24.01. He stated that the property's front on the bay. He stated that there is an existing 25ft easement that shrinks to 20ft. It is proposed that the 25ft easement would extend throughout the new proposed lot 24.03. It was mentioned that the proposed lot 24.03 would be 4807.42sqft without the easement. He stated that the applicant is proposing to construct a new single-family dwelling on the two properties.

Jim Brozowski was sworn in as the applicant's engineer. He stated that the applicant is seeking to extend the existing easement to access the proposed westerly lot. He mentioned that both lots are exceeding 5,000sqft. He further explained that the portion of the property they are dealing with have an existing 25ft easement.

The members of the board proceeded to poll if the application needs a variance. Roll call reflected the following votes:

Mr. Ryan: Yes.

Mr. Hoover: Yes.

Mr. Wright: Yes.

Mr. Mannherz: Yes.

Mr. Hartney: Yes.

Mr. Russell: Yes.

Mrs. Klose: Yes.

Mr. DeBenedetto: Yes.

It was determined that the application will need a variance.

Mr. Mannherz moved to open public comment. Mr. Russell seconded the motion. With a vote in the affirmative, public comment was open. The vote reflected the following ayes: Mr. Hartney, Mr. DeBenedetto, Mr. Hoover, Mrs. Klose, Mr. Mannherz, Mr. Russell, Mr. Wright & Mr. Ryan. Abstained: None. Absent: Mr. Hodgson, Mr. Savianeso & Mr. Franzoni.

Edward Libstein, Esq. was present to represent David Dutkis. He stated that the application should need a specific variance application. He stated that there are specific statutes naming emergency vehicles on easements. Mr. Dutkis explained that there is about 7ft of space to drive down the easement between the trash corrals and the foliage. He further stated that there are current safety concerns and fears it will get worse with the proposed construction.

Russell Matla of 232 N. 23<sup>rd</sup> Street stated that the easement did not list utilities in the notice and has concerns about the size of the easement.

John Rauen of 239 N. 22<sup>nd</sup> Street had concerns about traffic flow and parking.

Mr. Wright moved to close public comment. Mr. Russell seconded the motion. With a vote in the affirmative, public comment was closed. The vote reflected the following ayes: The vote reflected the following ayes: Mr. Hartney, Mr. DeBenedetto, Mr. Hoover, Mrs. Klose, Mr. Mannherz, Mr. Russell, Mr. Wright & Mr. Ryan. Abstained: None. Absent: Mr. Hodgson, Mr. Savianeso & Mr. Franzoni.

Mr. Ryan moved to deny the variance. Mr. Russell seconded the motion. Roll call reflected the following votes:

Mr. Hartney: I vote in favor to deny the variance. It doesn't make sense to go from 20 to 25 feet. There are safety issues with the increasing density. All the comments made by the neighbors which we take into consideration.

Mr. DeBenedetto: I vote to deny as well. For everything that Pete just said, I agree with.

Mr. Hoover: I vote to deny for the safety issues.



Mrs. Klose: I vote to deny as well.

Mr. Mannherz: I also vote to deny the variance based on testimony from the witnesses.

Mr. Russell: I also vote to deny.

Mr. Wright: I vote to deny.

Mr. Ryan: I also vote to deny. A lot has been said about the size of the lot. I vote to deny.

Mr. Hartney and Mr. DeBenedetto recused themselves for the remainder of new business due to the application being a "D" Variance.

Christopher Dasti, Esq. was present to represent Surf City Hotel, LLC of 800 N. Long Beach Boulevard, Block 30, Lots 15, 16, 17, 18, 19 & 20 for preliminary and final site plan approval. There was discussion in regards to the amount of approved indoor seats. It was explained that the applicant was previously approved for 24 outdoor seats.

Greg Gewirtz was sworn in as one of the owners. It was stated that they were permitted to have 24 outdoor seats on their "patio" until the pandemic. The applicant stated that during the pandemic, they were able to utilize a portion of the parking lot area for outdoor dining. He stated that with the current change to the outdoor seating regulation made by the Governor, he is seeking 140 permanent additional outdoor seats. He mentioned that there are 20 seats available on the open-air porch.

Sara Jennings was sworn in as the applicant's architect. She explained that the applicant is seeking an open-air structure that has permanent roof wood frame structure. The structure would be 1461sqft. The structure will be free standing with pavers and will be used for outdoor seating only. It was stated that the proposed side yard seatback will be 5.9ft where 10ft is needed.

Jim Brozowski was sworn in as the applicants engineer. He stated that the mixed-use property is 29,000sqft lot. The application is seeking 15 parking spaces and 59% lot coverage. He stated that the proposed structure will be fully in the business zone. He further stated that the applicant is seeking a permanent structure for safety and financial reasons. He mentioned that there will be no change in signage or trash. It was stated that the doors for outdoor and open-air dining will close at 9:00PM.

Mr. Wright 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. Hoover, Mrs. Klose, Mr. Mannherz, Mr. Russell, Mr. Wright & Mr. Ryan. Abstained: Mr. Hartney, Mr. DeBenedetto. Absent: Mr. Hodgson, Mr. Savianeso & Mr. Franzoni.

Leslie Bitman of 32 N. 8<sup>th</sup> Street had concerns about the parking, noise level and amount of bikes on the sidewalk.

Colleen Gerwitz was sworn in as one of the owners. She stated that the landscaping is higher than an 8ft fence and that there is already a buffer for noise.

Lauren Swane was sworn in as the Surf City Hotels Manager. She stated that they are constantly trying to keep the noise level low and make it comfortable for everyone.

Jim Hines of 11<sup>th</sup> Street stated that a landscape fence is better than any regular fence.

Margerat Ellis of 22N. 9<sup>th</sup> Street stated that the noise level was much better this past summer than in years past.

Ron Fiory of 248 S. 1<sup>st</sup> Street questioned why we are concerned for music on the property.

Mr. Wright moved to close public comment. Mr. Russell seconded the motion. With a vote in the affirmative, public comment was closed: Mr. Hoover, Mrs. Klose, Mr. Mannherz, Mr. Russell, Mr. Wright & Mr. Ryan. Abstained: Mr. Hartney, Mr. DeBenedetto. Absent: Mr. Hodgson, Mr. Savianeso & Mr. Franzoni.

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

Mr. Hoover: Yes, I vote to approve for the reasons that have been discussed by Mr. Quinlan when talking about and overall, it will be a better and a safer situation. I know we were not supposed to mention the other application, but it is definitely an improvement. I think it doesn't really affect anything terribly with the masterplan. No bar, no outside music. I approve.

Mrs. Klose: I have a lot of concerns with that, but eventually I'm going to go with Mr. Hoover. I like the part that the state has us in a bind, but he is not increasing the total number of seats that he already has. I think then, that the parking and things like that become a moot point. I think it will make an improvement. I like the idea of the foliage. I'm going to go with yes.

Mr. Mannherz: I also vote to approve the application. Parking has been addressed superficially and that's as much of an issue as what I occurred as far as the use of the pavilion. The control that the Borough and this board does have with noise issues, I echo Mrs. Klose about the plantings. Please do all you can to help prevent the bleeding of the light and sound from the pavilion. What the applicant had mentioned about they are able to have 140 during covid and I understand you experienced a hardship to setting up and tearing down the temporary structures. And Mrs. Jennings talked about the pavilion and how that was proposed for being constructed in a safe and effective manner. I vote yes.

Mr. Russell: We addressed parking, we addressed the seating, the lighting, fencing, we never really addressed lot coverage. I find it very hard in my heart to go along with this. Up to this point I'm the minority, but I can't see where adding 1400ft to a building that's already over lot coverage. The side setbacks, some aren't even close. The front yard is almost on the street. I have to vote no.

Mr. Wright: I vote yes. I know Mr. Russell has problems with how the building is described but they had the outside dining anyway. I think this manifests the operation itself; they seem like good business people to have in this community. Hopefully they will keep things going good.

Mr. Ryan: I also vote yes. I think they have proven hardship and that they've done a great job putting it all together. The beautifications of the neighborhood. I would like to have seen it go to the setback of the porch but I understand if it's not possible. So, I vote yes.

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

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

Respectfully submitted,

A handwritten signature in cursive script that reads "Jenna Letts".

Jenna Letts

Land Use Board Clerk