

of Sea Bright (the "Board") for property known as Block 23, Lot 3 on the Tax Map of the Borough of Sea Bright, also known as 1023 Ocean Avenue for modification/amendment of a prior resolution granting variance approval regarding eight cabanas located within the side yard setback; and

WHEREAS, SBBP, LLC is the owner of the premises and Naughty Nora's, Inc., d/b/a Chapel Beach Club is the operator of the subject beach club; and

WHEREAS, the Applicant received site plan and bulk variance approval by resolution adopted April 23, 1996 which permitted, among other things, eight cabanas measuring 10 x 12 feet to the existing cabanas at the swim club. Up to six of the approved cabanas were permitted to be located on the southern perimeter of the swim club and up to three of the approved cabanas were permitted to be located on the northern perimeter provided that the northerly cabanas could not extend beyond (towards the water) the then existing fence line on the Sea Bright Beach Club (SBBC) property.

WHEREAS, several southerly cabanas were damaged or destroyed in Hurricane Irene and the Applicant proposes to relocate one of those cabanas to the more protected northerly side, extending 10' closer to the Ocean than the existing and going beyond the existing fence line of SBBC; and

WHEREAS, the 1996 approval called for cabanas measuring 10 x 12 feet and the proposed new relocated cabana is 10 x 10'; and

WHEREAS, Applicant has provided due notice to the public and all surrounding property owners as required by law, has caused notice to be published in the official newspaper in accordance with N.J.S.A. 40:55D-1 et seq. and, therefore, this Board has accepted jurisdiction of the application and has conducted public hearing on the matter at meeting on May 22, 2012, at which time all persons having an interest in said application were given an opportunity to be heard; and

WHEREAS, the Applicant appeared and marked into evidence certain documents including the following:

- A-1:** Jurisdictional Packet.
- A-2:** Partial survey map, Lot 3, block 23 prepared by Yorkanis & White dated 4-26-12.
- A-3:** Resolution granting site plan and variance approval dated April 1996.
- A-4:** Photo depicting damage from Hurricane Irene.
- A-5:** Photo depicting damage from Hurricane Irene.
- A-6:** Photo depicting damage from Hurricane Irene.
- A-7:** Photo depicting view from Chapel Beach Club of proposed cabana in proposed location.
- A-8:** Photo depicting view from Sea Bright Beach Club of proposed cabana in proposed location.
- A-9:** Aerial photo.

WHEREAS, the Applicant offered sworn testimony in support of the application by Alexander Mulheren;

WHEREAS, the Board considered the testimony and evidence presented and the Board makes the following findings of fact and conclusions of law:

1. Applicant is proposing to move one existing cabana from the southerly side to the northerly side of the property.

2. The relocation of the cabana will result in the cabana being located beyond the existing fence of line of the SBBP.

3. The relocation of the cabana to the northerly perimeter will move it further from the ocean than it was on the south side, minimizing the likelihood of future storm damage. It will be 10' closer to the ocean than existing cabanas on the north side.

The relocation will not increase the number of cabanas, but will merely change the location.

4. Alexander Mulheren testified that, due to the configuration of the land, the cabanas on the south side are actually closer to the water. He stated that during Hurricane Irene the south side cabanas were far more highly damaged than any damage on the north side. He indicated that with the new erosion, the south side is even more susceptible to storm damage. With the relocation, the south side cabanas will be pulled further inland to avoid damage.

5. Mr. Mulheren testified that since the 1996 litigation by the State of NJ, the goal has been increased access to the ocean. After the sand replenishment program, the current beach is much deeper or wider than it was in 1996. Mr. Mulheren explained that the existing access to the beach is on the south side. There is a gate that is used for access to the town beach also. It allows entry

for the beach rake, equipment, emergency services, etc. He stated that Chapel uses its beach rake to rake the Sea Bright public beach also. He can't move the cabanas on the south side more inland or it will block the access.

6. Mulheren also noted that it would improve safety to move the cabana to the north side as beach erosion has moved the high tide line closer to the existing cabanas on the south side.

7. Mulheren testified that the net number of cabanas will not change. Moving the cabana will not increase membership, parking demand or noise. The relocated cabana will be no closer to the property line, but will be 10' closer to the ocean. He indicated that the only view from SBBP affected by the relocated cabana was from the kiddie pool area.

8. SBBP appeared in opposition to the application through its attorney David Apy. SBBP presented testimony from Francis Branin, Jr., current governor of SBBP and former president. His concern is that the proposed cabana blocks a "window" view of the ocean between the dunes in front of SBBP and the Chapel cabanas. He indicates that the cabana will be visible from their property. He felt this would have a negative impact on their members.

9. Cathryn Carter, member and president of the board of governors of SBBP also expressed concern over the blocked view. Upon questioning by the Board, it was

determined that SBBP has 790' of ocean frontage. Dunes run across a major portion of their ocean frontage, which dunes block the view of the ocean from the pool and club area. Carter testified that they have applied to the State to allow them to maintain the current height and not let the dunes get any higher. She said that once the dunes were in, they were not allowed to groom them or keep them at a certain level. Accordingly, they have grown in height over the years.

10. The Board felt that the access point on the south side was important and should not be impeded by moving the southerly cabanas closer inland.

11. As to the blocked view, the Board noted that even without the proposed relocated cabana, the view was still blocked by the cabanas on the south side. Additionally, 790' of ocean frontage was more than adequate to provide ocean views. The Board noted that SBBP's own dunes presented the biggest impediment to their view and the proposed cabana was only 10' nearer the ocean than the existing conditions.

12. The Board felt that the beach itself was much more substantial than in 1996 so that moving the cabana 10' nearer the ocean was not significant.

13. The Board also felt that the proposed location improved safety and made it less likely to suffer damage from storms. The Board found that it was not

appropriate to move the southerly cabanas inland to keep the subject cabana out of danger from the storm and tidal surge as it would impede the access located on the south side.

14. The Board found that the impact of the cabana was minimal and did not block the view of SBBP.

15. The Board found that the variance for the cabana could be granted without any negative impact on the zoning ordinance or zone plan.

16. The Board made it a **CONDITION** that no deck or other obstruction be placed or erected to the ocean side of the subject cabana.

17. The Board found that the granting of the variance and amended site plan approval (amended from the approval granted in the 1996 resolution) will have no substantial detrimental impact on surrounding properties nor will it substantially impair the intent and purpose of the zone plan and zoning ordinance.

18. Therefore, the Board finds that the approval of this application will result in substantial safety improvements and maintain the circulation and traffic from the access gate on the southerly side. The bulk variances can be granted.

NOW, THEREFORE, BE IT RESOLVED by the Planning/Zoning Board of the Borough of Sea Bright that the application to amend the approval granted in the 1996 resolution and grant the variance

to allow the relocation of one cabana measuring 10' x10' from the southerly side to the northerly side, beyond the existing fence line of SBBP is hereby granted, with the **CONDITION** that no deck or other obstruction be placed or erected to the ocean side of the subject cabana.

BE IT FURTHER RESOLVED that is hereby granted subject to the following conditions:

GENERAL CONDITIONS

1. The applicant shall submit proof of payment of all real estate taxes applicable to the property and payment of all outstanding and future fees and escrow charges, posting of all performance guarantees, if any, in connection with the review of this application prior to and subsequent to the approval of this application.

2. The applicant must obtain the approval of all necessary and appropriate governmental agencies and compliance with all governmental regulations except those specifically waived or modified in this Resolution.

3. The applicant shall comply with all building, FEMA and fire codes including but not limited to, entrances and exits.

4. The accuracy and completeness of the submission statements, exhibits and other testimony filed with or offered to the Board in connection with this application, all of which are incorporated herein by reference and specifically relied by the Board in granting this approval. This condition shall be a continuing condition, which shall be deemed satisfied unless and until the Board determines (on Notice to the applicant) that a breach thereof.

5. All stipulations agreed to on the record, by the applicant.

6. In the event that any documents require execution in connection with the within approval, such documents shall not be released until all of the conditions of the approval have been satisfied unless otherwise expressly noted.

7. The Applicant shall pay to the municipality any and all sums outstanding for fees incurred by the municipality for services rendered by the municipality's professionals for review

of the application for development, review and preparation of documents, inspections of improvements and other purposes authorized by the MLUL.

8. The Applicant shall furnish such Performance Guarantees and/or Maintenance Guarantee as may be required pursuant to the MLUL and the Sea Bright Ordinances.

9. No site work shall be commenced or plans signed or released or any work performed with respect to this approval until such time as all conditions of the approval have been satisfied or otherwise waived by the Board.

SPECIFIC CONDITIONS

1. No deck or other obstruction be placed or erected to the ocean side of the subject cabana.

BE IT FURTHER RESOLVED that this Resolution memorializes the action taken by the Planning/Zoning Board at its meeting of May 22, 2012; and

BE IT FURTHER RESOLVED that the Chairman and Board Secretary are hereby authorized to sign any and all documents necessary to effectuate the purpose of this Resolution; and

BE IT FURTHER RESOLVED that the Board Secretary is hereby authorized and directed to cause a certified copy of this Resolution to be sent to the Applicant, the tax assessor and the construction department and to make same available to all other interested parties and to cause notice of this Resolution to be published in the official newspaper.

Second by Boardmember Isoldi-Jany(Alt. # 2) and approved upon the following roll call vote:

Ayes: Cashmore, DeSio, Torcivia, Smith (Alt. # 1), Isoldi-Jany (Alt. # 2)

Nays: None

Abstain: Leckstein, Long

Absent: Beer, Cunningham, McBride

NEW BUSINESS:

A. Boardmembers Long and Leckstein were recused.

**RICHARD G. SULLIVAN
14 BADMINTON COURT
BLOCK 16 LOT 18.01
ZONE R-3
TO CONSTRUCT A SINGLE-FAMILY DWELLING**

The Richard G. Sullivan application was re-scheduled to August 14, 2012.

B.

**FRANK NGO
1060 OCEAN AVENUE
BLOCK 16 LOT 6
ZONE B-1
MINOR SITE APPROVAL
CONVERT SPACE TO A RESIDENTIAL UNIT WITHIN EXISTING RETAIL
BUILDING**

A-1: Jurisdictional Packet.

John Guinco, Esq. representing Frank Ngo application requested a postponement to August 14, 2012. The request was granted by the Board.

ADJOURNMENT:

There being no further business before the Planning Board Boardmember Leckstein introduced a motion adjourning the meeting at 8:47 P.M. Second by Boardmember Torcivia and approved upon unanimous voice vote.

Respectfully Submitted,

Suzanne Branagan
Board Secretary