

**APPROVED MINUTES  
VIRTUAL MEETING OF THE SEA BRIGHT PLANNING/ZONING BOARD  
TUESDAY, APRIL 27, 2021**

**ADMINISTRATIVE MATTERS**

**Call to Order**

Chairman Cunningham called the meeting to order at 7:30 p.m. and asked those present to join him in the Pledge of Allegiance.

**Chairman's Opening Statements**

Chairman Cunningham read the following Compliance Statements:

This meeting will be conducted by electronic means in accordance with the Open Public Meetings Act of 2020, which explicitly permits a public body to conduct a meeting electronically during a state of emergency. Governor Murphy issued Executive Orders 103 and 107 declaring a "Public Health Emergency and State of Emergency" and directing residents to quarantine and practice social distancing.

The Borough of Sea Bright, in compliance with the Open Public Meetings Act, has provided the time, date, and location of this meeting to at least two designated newspapers, published same in the Asbury Park Press, the official newspaper, filed notice with the Borough Clerk, and posted notice on the Borough website and in the Borough Office.

**Attendance Roll Call**

**Present:** Bills, Cashmore, Cunningham, DeGiulio, DeSio, Gorman, Leckstein, Smith, Schwartz

**Not Present:** Kelly

Also in attendance:

Board Attorney Monica C. Kowalski, ESQ.

Board Engineer David J. Hoder, PE, PP, CME

Board Secretary Candace B. Mitchell

**BOARD BUSINESS**

**Approval of 4/13/21 Meeting Minutes**

Board member Peggy Bills offered a motion to approve the minutes, with a second offered by Board member Elizabeth DeGiulio, and adopted on the following roll call vote of eligible members:

**Ayes:** Bills, Cashmore, Cunningham, DeGiulio, DeSio, Gorman, Leckstein, Smith

**Nays:** none

**Memorialization of Resolution**

**APPLICANT:** 1485 OCEAN AVENUE REALTY, LLC

**APPLICATION NUMBER:** 2021-05

**BLOCK:** 4

**LOT:** 5

**ADDRESS:** 1485 OCEAN AVENUE

**ATTORNEY FOR APPLICANT:** MICHAEL BRUNO, ESQ.

**RESOLUTION NUMBER:** 2021-05

**RESOLUTION OF THE UNIFIED PLANNING/ZONING BOARD  
OF THE BOROUGH OF SEA BRIGHT  
FOR BULK VARIANCE RELIEF**

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**WHEREAS, BOARD MEMBER MARC LECKSTEIN, ESQ.,** offered the following Motion moved and seconded by **BOARD MEMBER PEGGY BILLS:**

**WHEREAS 1485 OCEAN AVENUE REALTY, LLC, ALSO DOING BUSINESS AS SEA HORSE BEACH CLUB, LLC AND THE DRIFTWOOD CABANA CLUB,** hereinafter referred to as the “applicant,” by and through their attorney, **MICHAEL A. BRUNO, ESQ.,** filed an application with the Unified Planning/Zoning Board of the Borough of Sea Bright, (hereinafter referred to as the “Board”) seeking the following relief:

The application involves the property located at 1485 Ocean Avenue, Sea Bright, New Jersey, more formally identified as Block 4, Lot 5 (B-3 Zone). The applicants are seeking approval and bulk variance relief to permit an existing tiki bar structure with ancillary deck area. The tiki bar and deck area for which the applicant now seeks approval appear to have been previously approved or permitted as seasonal structures that were destroyed, along with other portions of the Property, by Hurricane Sandy in Fall 2012. As reconstructed (and as they presently exist), such structures encompass a larger area than did the previously approved seasonal structures and exceed the maximum size of accessory structures as permitted by the Borough Ordinance. Specifically, Section 130-49.D(1)(d) of the Borough Land Use Ordinance provides that an accessory structure may not exceed 500 s.f.; the tiki bar and deck for which the Applicant now seeks approval total approximately 2,793 s.f.;

Accordingly, the Applicant is requesting bulk “c” variance relief pursuant to N.J.S.A. 40:55D-70(c)(2) to permit the accessory structure area exceedance, along with amended preliminary and final site plan approval to permit the tiki bar and deck area as they exist, to the extent that same deviate from the previously approved site plan. In addition to the foregoing, the Applicant will seek from the Board, such other variance relief, design waiver relief, exceptions, approvals, authorizations, or the like as determined to be necessary by the Board or its consultants during the course of the Board’s deliberations on this matter.

**WHEREAS,** the application pertains to premises known and designated as Block 4, Lot 5 on the Tax Map of the Borough of Sea Bright, which premises are located in the B-3 Zone at 1485 Ocean Avenue, Sea Bright, NJ 07760: and

**WHEREAS,** all notice requirements were satisfied by the applicant and the Board has jurisdiction to hear, consider and determine the application at issue; and

**WHEREAS** the Board held a public hearing with regard to the referenced application on the following date, **April 13, 2021:**

**WHEREAS,** the following items were entered as Exhibits at the hearing:

Any and all documentation as submitted and appearing on the Sea Bright website (seabrightnj.org) for presentation at the Public Meeting conducted via the GoToMeeting platform with public notice. Exhibits offered for public inspection at least ten days prior to the meeting were as follows:

- Jurisdictional Packet, received 4/9/21
- Zoning Denial, dated 11/17/20 and 1/20/21
- Application, received 3/1/21
- 3 Photos
- CAFRA Permit, dated 7/29/20
- Amended Preliminary & Final site Plan prepared by Walter J. Hopkin, P.E. of WJH Engineering, LLC, dated 2/22/2021, consisting of two (2) sheets
- Boundary and Topographic Survey prepared by Colliers Engineering & Design (formerly known as Maser Consulting, PA) dated 3/18/19 and revised through 7/10/20, consisting of one (1) sheet

- Board Engineer's Technical Review, dated 4/7/21, consisting of 3 pages
- **Exhibit A-1** Color rendered version of the preliminary site plan, dated 2/22/21 (provided and marked at the Public Meeting)

**WHEREAS** The Board listened to the Testimony of the following:

1. **WALTER K. HOPKIN, PE**
2. **WILLIAM STAVOLA**

**WHEREAS** The Board took Questions from the following member of the Public as to the witnesses presented:

1. **NONE.**

**WHEREAS**, The Board took Public Commentary on the Application upon conclusion of the witness testimony as follows:

**NONE.**

**WHEREAS**, the Board, having given due consideration to the Exhibits moved into evidence and the Testimony presented at said hearing(s), does make the following findings of fact:

1. This is an application to memorialize existing conditions. Improvements have been undertaken over the years, particularly since Superstorm Sandy in October 2012, and this application seeks to memorialize the existing deck and tiki bar area that have been there for quite some time. The tiki bar has been improved from time to time over the years and was never reflected on an approved site plan.
2. The renewal of the CAFRA permit that is needed for beach club activities requires the addition of certain conditions, such as removal of certain permanent improvements, namely walls and windows for the tiki bar to make them of a temporary nature.
3. Licensed professional engineer Walter K. Hopkin testified as to Exhibit A-1. The property as depicted runs along the eastern side of Ocean Avenue and is located in the B-3 zone. The cabana club has existed there for quite some time. The tiki bar has existed since at least 2002, with an adjacent deck which deck has been in the same footprint since at least 2002.
4. The current ordinance does not permit accessory structures greater than 500 sq. ft. The tiki bar is approximately 1,050 square feet, and the adjacent deck is 1,743 sq. ft.
5. There is existing security lighting on the exterior of the tiki bar. The existing refuse and recycling must be relocated elsewhere on site and identified on the site plan.
6. It was also noted during testimony in response to direct inquiry from the Board Engineer that the pilings are not, in fact, located on top of the seawall. They are adjacent to the jetty and not on the seawall.
7. Mr. Bruno advised that the deck and tiki bar shown on the plan are consistent with the CAFRA permit that was issued in 2020. Mr. Bruno advised, and the Board accepted, that applicant's proposal will not cause any negative impacts and is justifiable under the municipal land use law for this type of variance.
8. Mr. Hopkin then testified in his capacity as a professional planner to substantiate this advice. Mr. Hopkin pointed out that there are several positive criteria in this application. Even with what is being considered, the site as a whole is well below the allowed building lot coverage. The public and the club members have been able to enjoy the structure for close to twenty years. Since it has existed for that length of time, Mr. Hopkin stated (and the Board accepted) there would be no negative impact to either the community nor to the zone plan or the zone plan's intent. Mr. Hopkin also agreed with Mr. Bruno's statement that there are no drainage concerns or negative visual impacts on any surrounding property owners.
9. Applicant, as a Condition of Approval, stipulated (and the Board accepted) that they are prepared to comply with the suggestions set forth in Mr. Hoder's Engineering Report for the Borough of Sea Bright.
10. Councilman Leckstein requested clarification for the historical record of the tiki bar and deck and asked whether this is the same structure that has been there for twenty years, or was the structure destroyed in Sandy and then rebuilt. Mr. Bruno advised that the tiki bar was destroyed in Sandy and was rebuilt in its place. The tiki bar has been improved from time to time, and side walls and windows were put in and some refrigeration service and gas service were added so that food could be served. Required permits were received to do that. The applicant did not appear before this Board for any of those improvements so no

- zoning determinations were made.
11. With the issuance of the new CAFRA, the applicant requests, and the Board consents, to memorialize the existing footprint so that the municipality has a record of it and their site plan is updated.
  12. Councilman Leckstein advised the Board that he has no problem with the application itself and wished to clarify that the structure and deck has been there from approximately 2013, probably in the rebuilt structure, and that there was actually an application submitted to Zoning. It appears that, according to the application, the zoning application was actually denied by the zoning officer, and, then, no one appeared before the Board. Councilman Leckstein further stated that he wants to make sure the record is accurate as to the history of the improvements. Mr. Bruno stated that he thinks the testimony is that the tiki bar in the deck was there before Sandy. They re-built after Sandy, and that is the structure that is before you today, which tiki bar was enlarged to fit the size of the deck as it existed.
  13. The Board acknowledges that when the tiki bar was rebuilt it was not built to the same size and in the same footprint, which is why the applicant is here for relief. The deck appears to be in the same footprint as pre-Sandy. There was an expansion of the bar to fit the deck that was around the bar. Mr. Bruno clarified that it is fair to say that the deck is substantially the same as pre-Sandy, and the tiki bar is larger than it was pre-Sandy.
  14. William Stavola, one of the owners of the property, testified that his family bought the Driftwood Beach Club in December of 2010. He believes the tiki bar and deck area date back to around 2002. After the storm in 2012, the deck was rebuilt as it was, as far as the footprint goes, the outer edge of the bar was expanded to the edges of the deck. Since 2012, outer walls, windows, a gas line, refrigeration, beer taps, lighting, and ceiling fans were all added. Gas and electric were approved through the construction department.
  15. Board Vice Chair Dave DeSio questioned how the DEP permit would be responded to, which states that the tiki bar will be modified by removal of the walls and windows and will be converted to an open food concession bar. Mr. Stavola confirmed there is a plan to take out the windows and walls and make it structurally sound. They have hired a structural engineer to make the appropriate structural modifications. The state is allowing the applicant to put up a non-permanent roll-up type curtain in place of existing walls. It will be secured at night, as far as alcohol and the equipment inside.
  16. Board Engineer Dave Hoder stated that Mr. Hopkin had taken care of the items in his review letter in terms of Mr. Hoder's concerns. Mr. Hoder wanted to confirm the seawall was not harmed in any way, and the applicant will comply and will add the items in number 2 and 3 on the plans for plan compliance as a condition of approval.
  17. Mr. Hoder further advised that in terms of performance guarantees, there doesn't need to be any kind of bonding on this project because it's really under the purview of the building department. These changes are all going to be building changes, not site changes. There should be a small amount for inspection escrows to be deposited.
  18. Board Member Peggy Bills questioned the DEP's guidance in creating a temporary structure on the tiki bar as opposed to a more permanent structure for safety from storm/winds but defers to their guidance and requirements in this application.
  19. The applicant defines this as a C(2) flexible c variance, which the board accepts, to allow the previous structure to remain which has been enjoyed since 2012, if not earlier in a smaller footprint (building). This creates access of enjoyment of waterfront in an aesthetically pleasing manner.
  20. As for the Negative criteria, applicant advises, and the Board agrees that there is no negative impact to zone plan or intent.
  21. The variance can be granted because the benefits in allowing the condition to continue to exist outweigh any detriment and will not impair zone plan.

**WHEREAS**, In order to prevail on an application for a variance, the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D – 70, requires the applicant to establish that the variance can be granted without substantial detriment to the public good and that the granting of the variance does not substantially impair the intent and purpose of the master plan, zone plan and zoning ordinance.

**NOW THEREFORE, BE IT RESOLVED**, by the Unified Planning/Zoning Board of the Borough of Sea Bright that it hereby adopts the aforesaid findings of fact and specifically makes the following conclusions:

- a. Based upon the aforesaid findings of fact, the Board concludes that:

- i. The applicant has demonstrated that the proposed use of the property in question is substantially the same kind of use as that to which the premises were devoted at the time of the passage of the zoning ordinance.
- b. Based upon the aforesaid findings of fact, the Board further concludes that the granting of the approval set forth herein will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the zoning ordinance and the zoning plan of the Borough of Sea Bright.
- c. **The Board specifically includes herein by reference, the Transcripts from the hearings, which provide the detailed basis and description of the decision as memorialized in this Resolution and do hereby rely upon same for further reference, as necessary.**

**BE IT FURTHER RESOLVED**, by the Unified Planning/Zoning Board of the Borough of Sea Bright that the following be and are hereby **GRANTED**, as follows:

The applicants are GRANTED per the Plans submitted to the Borough of Sea Bright.

Applicant is GRANTED bulk "c" variance relief pursuant to N.J.S.A. 40:55D-70(c)(2) to permit the accessory structure area exceedance, along with amended preliminary and final site plan approval to permit the tiki bar and deck area as they exist, to the extent that same deviate from the previously approved site plan, PROVIDED, as a condition of Approval, that the details of the CAFRA permit have compliance as submitted and that Applicant stipulates to comply, and does comply, will all requests as set forth in the Board Engineer's Review Letter with the posting of Inspection Escrows, as directed.

**ALL APPROVALS GRANTED HEREIN ARE SUBJECT TO THE FOLLOWING CONDITIONS:**

- (1) The applicant shall comply with any requirements established by, and obtain any necessary approvals of the following, IF APPLICABLE, to the proposed construction herein:
  - a. All Plans must be approved by Township Engineer and Code and Construction Departments for the issuance of Permits;
  - b. MONMOUTH COUNTY PLANNING BOARD;
  - c. FIRE MARSHALL;
  - d. BOARD OF HEALTH;
  - e. SOIL CONSERVATION AND SEDIMENT CONTROL APPROVALS AND PERMITS;
  - f. AFFORDABLE HOUSING CONTRIBUTION (ORD. 04-22)
  - g. BOARD OF ADJUSTMENT PLANNER
  - h. BOARD OF ADJUSTMENT ENGINEER
  - i. POSTING OF PERFORMANCE GUARANTEES AND INSPECTION FEES;
  - j. FINAL SITE PLAN DRAWINGS INCORPORATING ALL CHANGES AND/OR AMENDMENTS MADE AT THE HEARING.
  - k. **FINAL DESIGN SUBJECT TO APPROVAL OF THE BOARD'S PROFESSIONALS.**
  - l. **SUBJECT TO THE APPLICANT COMPLYING WITH ANY AND ALL FEDERAL, STATE, COUNTY AND LOCAL LAWS, RULES AND REGULATIONS AFFECTING AND PERTAINING TO THE DEVELOPMENT OR USE OF THE SITE IN QUESTION.**
  
- (2) SUBJECT TO ALL REPRESENTATIONS AND TESTIMONY OF THE APPLICANT BEING TRUTHFUL AND ACCURATE

**APPLICATION VOTE:**

Adopted on a roll call on a motion by Board member Marc Leckstein, Esq. and Seconded by Board member Peggy Bills

THOSE IN FAVOR: Bills, Cashmore, Cunningham, DeGiulio, DeSio, Gorman, Leckstein, Smith

THOSE OPPOSED: None

ABSTAINED: None

**MEMORIALIZATION VOTE:**

Adopted on a roll call on a motion by Board member Marc Leckstein, Esq. and Seconded by Board member Lance Cunningham

THOSE IN FAVOR: Bills, Cashmore, Cunningham, DeGiulio, DeSio, Gorman, Leckstein, Smith

THOSE OPPOSED: None

ABSTAINED: None

I certify the foregoing to be a true copy of the Resolution memorialized by the Unified Planning/Zoning Board of Sea Bright at its meeting on April 27, 2021.

*Candace B. Mitchell*

Candace B. Mitchell, Secretary  
Sea Bright Planning/Zoning Board

*C. Lance Cunningham*

C. Lance Cunningham, Chairman  
Sea Bright Planning/Zoning Board

**Memorialization of Resolution**

**APPLICANT: DAVID MEYERS/ CHRISTINA WALKER**

**APPLICATION NUMBER: 2021-02**

**BLOCK: 28**

**LOT: 10**

**ADDRESS: 548 OCEAN AVENUE**

**ATTORNEY FOR APPLICANT: RICK BRODSKY, ESQ.**

**RESOLUTION NUMBER: 2021-02**

**RESOLUTION OF THE UNIFIED PLANNING/ZONING BOARD  
OF THE BOROUGH OF SEA BRIGHT  
FOR MINOR SUBDIVISION APPLICATION**

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**WHEREAS, BOARD MEMBER MARC LECKSTEIN, ESQ.,** offered the following Motion moved and seconded by **BOARD MEMBER C. LANCE CUNNINGHAM:**

**WHEREAS DAVID MEYERS AND CHRISTINA WALKER,** hereinafter referred to as the “applicant” filed an application with the Unified Planning/Zoning Board of the Borough of Sea Bright, (hereinafter referred to as the “Board”) seeking the following relief:

The application involves the property located at 548 Ocean Avenue, Sea Bright, New Jersey, more formally identified as Block 28, Lot 10 (R-2 Zone). The applicants are seeking approval of a minor subdivision of the property into two (2) new, conforming lots, with respect to premises located in the R-2 Zone known as Block 28, Lot 10 on the Tax Map of the Borough of Sea Bright and commonly known as 548 Ocean Avenue, Sea Bright, New Jersey. No variances are required in connection with this application.

It is believed that the two proposed lots will be fully conforming to the provisions of the Sea Bright Zoning Ordinances. The Applicant will request such other variances, exceptions, interpretations, and design waivers as may be determined to be necessary by the Unified Planning Board, and/or its professionals, in order to develop this property as stated above and will amend its application on the record accordingly.

**WHEREAS**, the application pertains to premises known and designated as Block 28, Lot 10 on the Tax Map of the Borough of Sea Bright, which premises are located in the R-2 Zone at 548 Ocean Avenue, Sea Bright, NJ 07760;

**WHEREAS**, all notice requirements were satisfied by the applicant and the Board has jurisdiction to hear, consider and determine the application at issue; and

**WHEREAS** the Board held a public hearing with regard to the referenced application on the following date, **April 13, 2021**:

**WHEREAS**, the following items were entered as Exhibits at the hearing:

Any and all documentation as submitted and appearing on the Sea Bright website (seabrightnj.org) for presentation at the Public Meeting conducted via the GoToMeeting platform with public notice.

Exhibits offered for public inspection at least ten days prior to the meeting were as follows:

- Denial Letter from the Borough of Sea Bright dated February 13, 2021;
- A completed Planning/Zoning Board application (with attachments); and
- Survey & Minor Subdivision Plan prepared by MidAtlantic Engineering Partners, LLC and dated January 11<sup>th</sup>, 2021, consisting of one (1) sheet.
- **EXHIBIT A-1** (From Banich – marked and identified) Excel File “Ocean Avenue Houses.xlsx”
- **EXHIBIT A-2** (From Banich – marked and identified) Demo 111704 from Monmouth County Tax Assessment Website

**WHEREAS** The Board listened to the Testimony of the following:

**3. SUZANNE WARREN, SURVEYOR**

**WHEREAS** The Board took Questions from the following member of the Public as to the witnesses presented:

**2. NONE.**

**WHEREAS**, The Board took Public Commentary on the Application upon conclusion of the witness testimony as follows:

**1. MARIE BANICH: SB OCEAN HOUSE, LLC.**

**WHEREAS**, the Board, having given due consideration to the Exhibits moved into evidence and the Testimony presented at said hearing(s), does make the following findings of fact:

1. This application is seeking minor subdivision approval with no variances. The property is located in the R2 zone. The existing lot contains a single-family residential home which will remain. There is no construction proposed at this time.
2. Professional land surveyor Suzanne Warren prepared the survey for the application.
3. Vice Chairman DeSio stated that since the application is a subdivision creating two conforming lots, presentation to the Board is all that is required. The Board does not need testimony and cannot deny the application. Ms. Kowalski confirmed the statements made by Mr. DeSio and stated that the attorney for the applicant wanted to put testimony on the record based on the appearance required to confirm the submission.
4. Ms. Warren testified that the applicants would like to subdivide existing block 28, lot 10, on the corner of Ocean Avenue and Atlantic Way as shown on the plan. Proposed lot 10.02, if approved, in the back, shows the recently constructed improvements. Proposed lot 10.01 in the front, would front on Ocean Avenue and will be vacant. There is no development proposed at this time.

5. Ms. Warren confirmed that the existing home on its proposed new lot, 10.02, as well as proposed lot 10.01, will both fully conform with all requirements set forth in the zoning ordinance.
6. Ms. Warren also confirmed that the lot across the street on East Ocean Avenue, *Bl. 23, L. 66, will be, by deed, connected with the newly proposed lot 10.01.*
7. Chairman Cunningham confirmed that by dividing the lot, the existing structure on the back lot will remain conforming to all of the zoning requirements.
8. Board Engineer David Hoder referred to items 4 and 5 on his technical review. The overlying regulation in terms of subdivisions and residential, have a minimum of 50' right-of-way, which would be 25' on each side. That would be an additional 12.5' which would have to be requested. Mr. Hoder suggested the applicant ask for a waiver because now as the rest of the street it is not that wide, and there is no reason to increase the width in only one area. The second thing is that a 21' right-of-way is required. 20' would exist, and Mr. Hoder suggested the applicant ask for a waiver since the difference for the ROW is such a minimal amount. Mr. Brodsky amended the application on the record and advised that based on Mr. Hoder's information, the applicant requests a waiver for both items at this time. Mr. Hoder further clarified that this would not be out of the norm as Atlantic Way has been that way for many years, and the applicant is not proposing to change it in any way.
9. The Board was then advised that as there are no variances required and the application is for a subdivision that legally meets the criteria set forth in the ordinances of Sea Bright, the application actually cannot be denied and was set forth before the Board for review only. As the lots are fully conforming to ordinances of Sea Bright, no action other than approval need be taken.

**NOW THEREFORE, BE IT RESOLVED**, by the Unified Planning/Zoning Board of the Borough of Sea Bright that it hereby adopts the aforesaid findings of fact and specifically makes the following conclusions:

- d. Based upon the aforesaid findings of fact, the Board concludes that:
  - i. The applicant has demonstrated that the proposed use of the property in question is substantially the same kind of use as that to which the premises were devoted at the time of the passage of the zoning ordinance.
- e. Based upon the aforesaid findings of fact, the Board further concludes that the granting of the approval set forth herein will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the zoning ordinance and the zoning plan of the Borough of Sea Bright.
- f. **The Board specifically includes herein by reference, the Transcripts from the hearings, which provide the detailed basis and description of the decision as memorialized in this Resolution and do hereby rely upon same for further reference, as necessary.**

**BE IT FURTHER RESOLVED**, by the Unified Planning/Zoning Board of the Borough of Sea Bright that the following be and are hereby **GRANTED**, as follows:

In conjunction with the application, the applicant IS GRANTED the following approval of a minor subdivision for two fully conforming lots PER THE PLANS SUBMITTED:

The application involves the property located at 548 Ocean Avenue, Sea Bright, New Jersey, more formally identified as Block 28, Lot 10 (R-2 Zone). The applicants are GRANTED a minor subdivision of the property into two (2) new, conforming lots, with respect to premises located in the R-2 Zone known as Block 28, Lot 10 on the Tax Map of the Borough of Sea Bright and commonly known as 548 Ocean Avenue, Sea Bright, New Jersey. The applicant confirms that *Bl. 23, L. 66, will be, by deed, be connected with the newly proposed lot 10.01.*

Further, waivers are granted for applicant regarding the minimum 50' right-of-way, which would be 25' on each side so that the request for an additional 12.5' on each side is waived to reflect the condition of the existing street. Further, a 1' waiver is granted where a 21' right-of-way is required and only 20' would exist.



**ALL APPROVALS GRANTED HEREIN ARE SUBJECT TO THE FOLLOWING CONDITIONS:**

- (3) The applicant shall comply with any requirements established by, and obtain any necessary approvals of the following, IF APPLICABLE, to the proposed construction herein:
- a. All Plans must be approved by Township Engineer and Code and Construction Departments for the issuance of Permits;
  - b. MONMOUTH COUNTY PLANNING BOARD;
  - c. FIRE MARSHALL;
  - d. BOARD OF HEALTH;
  - e. SOIL CONSERVATION AND SEDIMENT CONTROL APPROVALS AND PERMITS;
  - f. AFFORDABLE HOUSING CONTRIBUTION (ORD. 04-22)
  - g. BOARD OF ADJUSTMENT PLANNER
  - h. BOARD OF ADJUSTMENT ENGINEER
  - i. POSTING OF PERFORMANCE GUARANTEES AND INSPECTION FEES;
  - j. FINAL SITE PLAN DRAWINGS INCORPORATING ALL CHANGES AND/OR AMENDMENTS MADE AT THE HEARING.
  - k. **FINAL DESIGN SUBJECT TO APPROVAL OF THE BOARDS'S PROFESSIONALS.**
  - l. SUBJECT TO THE APPLICANT COMPLYING WITH ANY AND ALL FEDERAL, STATE, COUNTY AND LOCAL LAWS, RULES AND REGULATIONS AFFECTING AND PERTAINING TO THE DEVELOPMENT OR USE OF THE SITE IN QUESTION.
- (4) SUBJECT TO ALL REPRESENTATIONS AND TESTIMONY OF THE APPLICANT BEING TRUTHFUL AND ACCURATE

**APPLICATION VOTE:**

Adopted on a roll call on a motion by Board member Marc Leckstein, Esq. and Seconded by Board member Lance Cunningham

THOSE IN FAVOR: Bills, Cashmore, Cunningham, DeGiulio, DeSio, Leckstein, Smith, Gorman

THOSE OPPOSED: None

ABSTAINED: None

**MEMORIALIZATION VOTE:**

Adopted on a roll call on a motion by Board member Marc Leckstein, Esq. and Seconded by Board member Peggy Bills

THOSE IN FAVOR: Bills, Cashmore, Cunningham, DeGiulio, DeSio, Leckstein, Smith, Gorman

THOSE OPPOSED: None

ABSTAINED: None

I certify the foregoing to be a true copy of the Resolution memorialized by the Unified Planning/Zoning Board of Sea Bright at its meeting on April 27, 2021.

Candace B. Mitchell  
Candace B. Mitchell, Secretary  
Sea Bright Planning/Zoning Board

C. Lance Cunningham  
C. Lance Cunningham, Chairman  
Sea Bright Planning/Zoning Board

**Memorialization of Resolution**

**APPLICANT: MICHAEL & GLYNIS BURKE**

**APPLICATION NUMBER: 2021-06**

**BLOCK: 32**

**LOT: 4**

**ADDRESS: 26 WATERVIEW WAY**

**ATTORNEY FOR APPLICANT: RICK BRODSKY, ESQ.**

**RESOLUTION NUMBER: 2021-06**

**RESOLUTION OF THE UNIFIED PLANNING/ZONING BOARD  
OF THE BOROUGH OF SEA BRIGHT  
FOR BULK AND USE VARIANCES**

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**WHEREAS, BOARD MEMBER PEGGY BILLS, offered the following Motion moved and seconded by BOARD MEMBER DAVID DESIO:**

**WHEREAS MICHAEL & GLYNIS BURKE, hereinafter referred to as the “applicant” filed an application with the Unified Planning/Zoning Board of the Borough of Sea Bright, (hereinafter referred to as the “Board”) seeking the following relief:**

The application involves the property located at 26 Waterview Way, Sea Bright, New Jersey, more formally identified as Block 32, Lot 4 (R-2 Zone). The applicants are seeking approval of bulk and use variance relief to amend approval granted by Board Resolution dated March 10, 2020 to include raising the 2-family structure in compliance with current flood regulations. The proposed first floor elevation will be 15.5 feet, whereas 13 feet is the minimum required. The interior floor plans have been revised to move the kitchen to the third level and relocate the bedrooms to the second level, and additional exterior stairs are proposed. The original approval included an addition at the rear of the main house for a new stairway to the second floor and removal of the existing stairwell, the construction of the balconies on the north and south sides of the main house and to raise the roof of the main house to provide greater headroom for the upper-level premises. Those improvements are still proposed. All with respect to premises located in the R-2 Zone and known as Block 32, Lot 4 on the Tax Map of the Borough of Sea Bright, and commonly known as 26 Waterview Way, Sea Bright, New Jersey. With this amended application the applicant continues to seek the following variances which were previously approved:

- i. “d” variance: 130-46.A(2) – Extension of existing non-conforming structures (two-family house and additional detached structure in a single family zone) where non-conforming structures shall not be extended.
- ii. “d” variance: 130-46.A(3)- Extension of existing non-conforming use (2-family house and additional detached structure in a single family zone) where a non -conforming use shall not be extended
- iii. “c” variance: 130-50.C- Side yard setback of 1 foot existing and proposed where a minimum of 7 feet is required
- iv. “c” variance: 130-50.C- Front yard setback of 4.8 feet existing and proposed where a minimum of 25 feet is required

In addition, the applicant will request such other variances, exceptions, interpretations, and design waivers as may be determined necessary by the Unified Planning Board, and/or its professionals, in order to develop this property as stated above and will amend its application on the record accordingly.

**WHEREAS, the application pertains to premises known and designated as Block 32, Lot 4 on the Tax Map of the Borough of Sea Bright, which premises are located in the R-2 Zone at 26 Waterview Way, Sea Bright, NJ 07760;**

**WHEREAS, all notice requirements were satisfied by the applicant and the Board has jurisdiction to hear, consider and determine the application at issue; and**

**WHEREAS the Board held a public hearing with regard to the referenced application on the following date, April 13, 2021:**

**WHEREAS, the following items were entered as Exhibits at the hearing:**

Any and all documentation as submitted and appearing on the Sea Bright website (seabrightnj.org) for presentation at the Public Meeting conducted via the GoToMeeting platform with public notice.

Exhibits offered for public inspection at least ten days prior to the meeting were as follows:

- Denial Letter from Borough of Sea Bright Zoning Officer dated February 23, 2021;
- A completed Planning/Zoning Board Application(with attachments);
- Resolution Granting Expansion of Non-Conforming Use and Bulk Variance Approval dated March 10, 2020;
- Photos of the property/dwelling as it currently exists;
- Proposed Addition and Alteration Plan prepared by Anthony M. Condouris, Architect, and dated February 18<sup>th</sup>, 2021, consisting of three (3) sheets; and
- **EXHIBIT A-1:** 3 D Rendering from Anthony M. Condouris, AIA, offered at Public Meeting.

**WHEREAS** The Board listened to the Testimony of the following:

**4. TONY CONDUOURIS, AIA**

**WHEREAS** The Board took Questions from the following member of the Public as to the witnesses presented:

**NONE.**

**WHEREAS**, The Board took Public Commentary on the Application upon conclusion of the witness testimony as follows:

- 3. CHARLIE ROONEY** – In support of Application.
- 4. MICHAEL BUTLER** - In support of Application
- 5. KATHLEEN FRANCO** - In support of Application

**WHEREAS**, the Board, having given due consideration to the Exhibits moved into evidence and the Testimony presented at said hearing(s), does make the following findings of fact:

1. Michael and Glynis Burke are seeking to occupy the two-story existing structure on a permanent basis and had obtained prior approvals for a Use Variance with corresponding bulk variances for both the continued non-conforming use and setbacks, along with other variance per the previous set of plans. There is also an existing cabana building located on the property, which is to remain.
2. However, when the Burkes went to obtain building permits, it was determined that, since the anticipated cost of the renovation was going to exceed 51% of the assessed value, the Borough's requirement to comply with its flood regulations had to be met and the home was required to be "lifted" to the minimum Base Flood Elevation. The flood elevation requirement for this flood zone is 13' above sea level.
3. While the original application did not propose raising the house, the Burkes had to redesign and raise the house in order to comply with the flood regulations and did so in the same footprint as previously approved while maintaining appropriateness of height (no variance required).
4. The variances sought in this application are the same as the March 2020 application yet, the zoning officer, when reviewing the plans, exercised discretion and decided that the plan should come back to the Board. He offered that the applicants have to raise the house to comply with the flood elevation requirement.
5. Anthony Condouris, licensed architect in New Jersey since 1996, was sworn in to testify and stated that the house didn't need to be raised to the height shown on the plans to

meet the flood elevation requirement, but, by raising the house 2' above the required 13', parking would be able to be provided underneath the house. So, two more off-street parking spaces will be added. The lot is fairly wide; so, there will actually be more parking spaces on the property.

6. Mr. Condouris described the floor plan changes which were minor; to wit: On page Z-2, the floor plans note that the footprint of the house remains exactly the same as it was per the prior approved variances. However, on the upper left corner of the plan an expansion of the kitchen is shown. About 4' was added to the kitchen (which enclosed a prior deck area). The kitchen was, in essence squared off without increasing the footprint of the building. Also, because the house was being raised, stairs had to be added. Further (which does not affect variances granted) with the house being raised, the owner decided upon a "flipped" floor plan to take advantage of some of the new views they would be gaining. So, the floors in which the bedroom area and the kitchen area were situated, were switched. There was no change in the use or an intensification of the use.
7. The only changes associated with the new plan are the 4' enclosure of the deck area for the kitchen and the larger staircase for accessibility and egress.
8. Board Member Dave DeSio asked for clarification on whether this home is being made into a two-family home. Mr. Brodsky answered (and the Board accepted) that it was always a two-family home. The cabana structure in the back will remain a cabana and this information was provided in the prior application which obtained variance relief for a use variance. Mr. Brodsky added (and the Board accepted) there had been D variance approval for a pre-existing non-conforming use in the first application. The front setbacks will also remain the same, and those were the only two variances associated with the prior application in the D variance.
9. Mr. Condouris discussed floor plan page Z-3, the elevations. The house does comply with the height ordinance despite raising it.
10. Board Member Mr. DeSio asked, based on the amount of reframing that has to be done, if the house was going to be raised or is a new house being built on top of the new raised foundation? Mr. Condouris answered that the plan is to raise the existing house. Mr. DeSio asked whether it wouldn't be cheaper to just build a new house there, and it could be moved over a few feet so that it's not one foot off of the property line. He expressed his opinion that the cost to raise a house is a waste of money, and they could build a new house on a new foundation. Mr. Condouris explained that one thing they are trying to do is use the existing foundation. The applicants have engineered the site based on prior approvals, have the cost of hiring a contractor, and are ready to proceed.
11. Mr. Condouris introduced Exhibit A-1, the north facing elevation on the street, showing the new staircases that had to be extended. Then he showed the squaring off of the first-floor kitchen area. Attorney Kowalski clarified this as an expansion of the non-conforming use, and, from the zoning officer's perspective, additional square footage has been added which is minor. This variance relief request does not interfere with the prior variances granted, which run with the land, but merely affect the design of the building. Mr. Brodsky agreed. The D variance for pre-existing non-conforming use and side yard setbacks as previously granted shall remain and the front setback as previously granted shall remain. This application relates to the kitchen expansion and stair addition. No variances are necessary due to the "raising" of the property as the structure remains in the footprint of the variances granted, and a variance for height is not required as the height meets ordinance standards.
12. The Applicant relied upon all previous testimony as set forth in March 2020 for the

*technical* expansion of the non-conforming use with regard to the positive and negative criteria and special reasons placed on the record. The Board was fully familiar with same.

**WHEREAS**, In order to prevail on an application for a variance, the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D – 70, requires the applicant to establish that the variance can be granted without substantial detriment to the public good and that the granting of the variance does not substantially impair the intent and purpose of the master plan, zone plan and zoning ordinance.

**NOW THEREFORE, BE IT RESOLVED**, by the Unified Planning/Zoning Board of the Borough of Sea Bright that it hereby adopts the aforesaid findings of fact and specifically makes the following conclusions:

- g. Based upon the aforesaid findings of fact, the Board concludes that:
  - i. The applicant has demonstrated that the proposed use of the property in question is substantially the same kind of use as that to which the premises were devoted at the time of the passage of the zoning ordinance.
- h. Based upon the aforesaid findings of fact, the Board further concludes that the granting of the approval set forth herein will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the zoning ordinance and the zoning plan of the Borough of Sea Bright.
- i. **The Board specifically includes herein by reference, the Transcripts from the hearings, which provide the detailed basis and description of the decision as memorialized in this Resolution and do hereby rely upon same for further reference, as necessary.**

**BE IT FURTHER RESOLVED**, by the Unified Planning/Zoning Board of the Borough of Sea Bright that the following be and are hereby **GRANTED**, as follows:

The applicants are GRANTED per the Plans submitted to the Borough of Sea Bright.

In conjunction with the application, the applicant IS GRANTED the following CONTINUING approval of bulk and use variance relief to lift the residential home and add interior and exterior renovations to previously approved plans per the plans submitted in conjunction with this application:

The application involves the property located at 26 Waterview Way, Sea Bright, New Jersey, more formally identified as Block 32, Lot 4 (R-2 Zone). The applicants are GRANTED approval of bulk and use variance relief to amend approval granted by Board Resolution dated March 10, 2020 to include raising the 2-family structure in compliance with current flood regulations. The proposed first floor elevation will be 15.5 feet, whereas 13 feet is the minimum required. The interior floor plans have been revised to move the kitchen to the third level and relocate the bedrooms to the second level, and additional exterior stairs are proposed. The original approval included an addition at the rear of the main house for a new stairway to the second floor and removal of the existing stairwell, the construction of the balconies on the north and south sides of the main house and to raise the roof of the main house to provide greater headroom for the upper-level premises. Those improvements are still proposed. All with respect to premises located in the R-2 Zone and known as Block 32, Lot 4 on the Tax Map of the Borough of Sea Bright, and commonly known as 26 Waterview Way, Sea Bright, New Jersey. With this amended application the applicant is granted continuation of the following variances which were previously approved:

- i. “d” variance: 130-46.A(2) – Extension of existing non-conforming structures (two-family house and additional detached structure in a single family zone) where non-conforming structures shall not be extended.
- ii. “d” variance: 130-46.A(3)- Extension of existing non-conforming use (2-family house and additional detached structure in a single family zone) where a non -conforming use shall not be extended
- iii. “c” variance: 130-50.C- Side yard setback of 1 foot existing and proposed where a minimum of 7 feet is required
- iv. “c” variance: 130-50.C- Front yard setback of 4.8 feet existing and proposed where a minimum of 25 feet is required

**ALL APPROVALS GRANTED HEREIN ARE SUBJECT TO THE FOLLOWING CONDITIONS:**

- (5) The applicant shall comply with any requirements established by, and obtain any necessary approvals of the following, IF APPLICABLE, to the proposed construction herein:
- a. All Plans must be approved by Township Engineer and Code and Construction Departments for the issuance of Permits;
  - b. MONMOUTH COUNTY PLANNING BOARD;
  - c. FIRE MARSHALL;
  - d. BOARD OF HEALTH;
  - e. SOIL CONSERVATION AND SEDIMENT CONTROL APPROVALS AND PERMITS;
  - f. AFFORDABLE HOUSING CONTRIBUTION (ORD. 04-22)
  - g. BOARD OF ADJUSTMENT PLANNER
  - h. BOARD OF ADJUSTMENT ENGINEER
  - i. POSTING OF PERFORMANCE GUARANTEES AND INSPECTION FEES;
  - j. FINAL SITE PLAN DRAWINGS INCORPORATING ALL CHANGES AND/OR AMENDMENTS MADE AT THE HEARING.
  - k. **FINAL DESIGN SUBJECT TO APPROVAL OF THE BOARD'S PROFESSIONALS.**
  - l. SUBJECT TO THE APPLICANT COMPLYING WITH ANY AND ALL FEDERAL, STATE, COUNTY AND LOCAL LAWS, RULES AND REGULATIONS AFFECTING AND PERTAINING TO THE DEVELOPMENT OR USE OF THE SITE IN QUESTION.
- (6) SUBJECT TO ALL REPRESENTATIONS AND TESTIMONY OF THE APPLICANT BEING TRUTHFUL AND ACCURATE

**APPLICATION VOTE:**

Adopted on a roll call on a motion by Board member Peggy Bills and Seconded by Board member David DeSio

THOSE IN FAVOR: Bills, Cashmore, DeGiulio, DeSio, Gorman, Smith

THOSE OPPOSED: None

ABSTAINED: None

**MEMORIALIZATION VOTE:**

Adopted on a roll call on a motion by Board member C. Lance Cunningham and Seconded by Board member Peggy Bills

THOSE IN FAVOR: Bills, Cashmore, DeGiulio, DeSio, Gorman, Smith

THOSE OPPOSED: None

ABSTAINED: None

I certify the foregoing to be a true copy of the Resolution memorialized by the Unified Planning/Zoning Board of Sea Bright at its meeting on April 27, 2021.

*Candace B. Mitchell*

Candace B. Mitchell, Secretary  
Sea Bright Planning/Zoning Board

*David DeSio*

David DeSio, Vice Chairman  
Sea Bright Planning/Zoning Board

**Capital Review – carried from 1/26/21**  
New Cingular Wireless PCS, LLC (“AT&T”)  
Communications/Cell Tower  
Wayne Street/Ocean Avenue  
Bl.20, L.7 and Bl 23, L. 2.01 and 2.02

In Attendance for the application were attorney Christopher Quinn, Esq., and engineer Brian S. Huff, P.E.

The following exhibits were available for viewing on the Borough website in advance of the meeting:

**Conceptual Plans** prepared by Brian S. Huff, P.E., NJ License No. 24GE05577300, Dewbury Engineers. Inc., Issued for resubmittal 4/12/21, consisting of 7 sheets:

- T-1 Title Sheet
- C-1 Conceptual Compound Plan
- C-2 Conceptual AT&T Equipment Plan
- C-3 Conceptual AT&T Generator Plan
- C-4 Conceptual Southeast Elevation
- C-5 Conceptual Detailed southeast Elevation
- C-6 Conceptual Detailed Southwest Elevation

**Photo-simulations:**

- Photo-simulation 1 of 7- Overhead view of area
- Photo-simulation 2 – Existing view facing S from Wayne St.
- Photo-simulation 3 – Proposed view facing S from Wayne St.
- Photo-simulation 4 – Existing view facing SE from Wayne St.
- Photo-simulation 5 – Proposed view facing SE from Wayne St.
- Photo-simulation 6 – Existing view facing NW from parking lot
- Photo-simulation 7 – Proposed view facing NW from parking lot

Attorney Christopher Quinn offered a brief introduction to the plans that had been revised as per the Board’s suggestion at the January 26<sup>th</sup> meeting. He stated they are here to seek the Board’s recommendation for an approval of the revised plans. They have revised their equipment to look pretty much like the Verizon installation.

Brian Huff, P.E., was sworn in to testify, gave his credentials, and was accepted by the Board as an expert witness. Mr. Huff shared and described the conceptual plans and photo-simulations of both existing and proposed views of the AT&T cell tower addition.

Board comments about the revised plans were positive. Stephen Cashmore stated that the new plans look great, and they incorporated what the Board had suggested. Chairman Cunningham stated that the new plans look great. Councilman Marc Leckstein thanked AT&T for going back to the drawing board and successfully revising their plans which are now much more consistent with what was originally built. He stated that he was totally happy with the design.

Councilman Leckstein offered a motion to have the secretary send a letter to Council expressing the Board’s acceptable review of the revised plans as presented, with no objections. A second was offered by Board Chairman, C. Lance Cunningham, and adopted on the following roll call:

Ayes: Bills, Cashmore, Cunningham, DeGiulio, DeSio, Gorman, Leckstein, Smith, Schwartz  
Nays: none  
Not present: Kelly

**New PB Application 2021- 07**

Sea Bright Surf School, LLC

East Ocean Avenue, Bl. 23, L. 100 and Bl. 23, L. 101

Use variance relief for parking

In Attendance for the application were attorney Rick Brodsky, Esq., professional planner Gordon Gemma, applicant Melissa D'Anna, and co-owner of Sea Bright Surf School, LLC., Chris Stephan.

The following exhibits were available for viewing on the Borough website in advance of the meeting:

Jurisdictional Packet, received, 4/21/21

Zoning Denial 2021-018, 400 and 401 Ocean Ave., Bl. 23, L. 101, dated 3/4/21

Zoning Denial 2021-022, 404 Ocean Ave., LLC, Bl. 23, L. 100, dated 3/10/21

Application, received 3/17/21

Survey of Property with Tidelands, Bl. 23, L. 101, and Bl. 30, L. 32, 33.01, and 32.01

prepared by Morgan Engineering and Surveying, dated 7/29/30, consisting of 1 sheet

Topographic Survey 404 Ocean Ave. LLC, Bl. 30, L. 100 and Bl. 30, L. 30

prepared by Paul K. Lynch Land Surveyor and Boundary Consultant, dated 11/5/07,  
consisting of 1 sheet

Board Planner's Technical Review, Bl. 23, Lot 100, 400 Ocean Avenue, and Bl. 23, Lot 101, 404  
Ocean Avenue, dated 4/26/21

Board member Marc Leckstein, Esq. stepped down because the application includes use variance requests, and the Councilman is not eligible to participate.

Board attorney Monica C. Kowalski, Esq. stated that she had reviewed the service, and the Board can accept jurisdiction.

She added that the notice was for use or D variances to permit automobile parking for surf instructors employed by the applicant, as well as clients of the applicant that are taking private lessons, as well as drop-off only of students for surf school camps in the CP zone, where no such use is permitted. The scope of the use variance is narrowed, it appears, to instructors and clients, and not to the group camp sessions, which would be drop-off.

Attorney Rick Brodsky introduced the application. He stated that the location of the Sea Bright Surf School is 1096 Ocean Avenue in Sea Bright. The application is limited to the proposed parking of cars used in connection with the employees and certain clients of the surf school. Both properties that form the subject matter of the application are located in the CP, Coastal Protection, zone. Parking, which is being proposed, is permitted in the CP zone. The parking is proposed by someone other than the owner of the property, and, therefore, it requires D variance relief.

Chairman Cunningham asked a question. He wanted to know if the D variance for the property stays with the property forever, whether the surf school stays there or not.

Board attorney Kowalski answered that she would recommend that if there is a variance granted that it be for the term of the lease-hold of the school or any renewals thereof, so that we don't have a conditional use. Mr. Brodsky stated that is perfectly acceptable. The applicant is in the middle of a two-year agreement with the Borough to operate the surf school.

Mr. Brodsky clarified that the applicant was awarded a contract pursuant to the public bidding process to operate a surf school in the Borough.



Chairman Cunningham asked where in the Borough the surf school is to be operated. Mr. Brodsky clarified that the application is not speaking of use variance relief to locate, operate, and run a surf school at the proposed site. The surf school has its own separate location, at 1096 Ocean Avenue, where their offices are. There they have their offices and sell various retail products. Mr. Brodsky added that it is really left to the operators with regard to finding the parking necessary to operate. The application is limited solely to permit parking on these proposed sites, to be utilized in connection with the surf school, the location of which is elsewhere in town.

Ms. Kowalski explained that the property to be leased is a portion of the municipal beach in the north end of Sea Bright. Alternate locations may be negotiated directly with the Beach manager. The lease does not specify a location for parking.

Mr. Cunningham asked whether the surf school locations are specifically Borough-owned or privately-owned beaches and stated that there are many privately-owned beaches all along the north beach. All along North Beach there are many King's grants, many privately owned beaches, and there are state owned beaches.

Ms. Kowalsky stated that this application, once again, is not about the use of the school that has been awarded. It is about the parking pursuant to the notice for instructors and students having private lessons.

Vice Chairman DeSio asked for clarification from Mr. Brodsky: Does the approval they received from the town specify this particular location? Mr. Brodsky answered that it does not specify. He stated that the variance is only granting the parking. The business is and will remain at the 1096 Ocean Avenue site, where the applicant has their office and retail location. Mr. DeSio asked whether this surf school could be held in any part of Sea Bright: north, south, or middle. Ms. Kowalski reiterated that, according to the lease agreement, the operation of the surf camp is subject to the direction of the Beach Manager, and entrance onto the beach is to be made from the beach gate entrances only. The lease agreement further states that all beach regulations will be followed except that beach badges during camp hours are not required.

Mr. Brodsky stated that the applicants will be testifying momentarily, and that they have been operating this school for the past four years. They have had interactions and discussions and have worked hand in hand with the Beach Manager, who has, basically, left it to them to find the location necessary for parking, where they can actually conduct the lessons. They have the contract with the Borough to operate the surf school, and it is left up to them as to where on North Beach the lessons can be. Pursuant to where the parking can take place, they have had various locations for the last few years, and they are happy to be able to secure a location subject to the Board's approval. They are here because, while parking is permitted in the CP zone, the proposed parking is not being used by the property owner.

Mr. Cunningham stated that, essentially, their property becomes a commercial parking lot. Mr. Brodsky responded that, to the extent the surf school is considered a commercial operation, it does. Mr. Cunningham asked whether it is a commercial operation or a Borough operation. Mr. Brodsky answered that it is a business providing surf lessons as well as selling surfing-related materials. Part of the business is providing surf lessons pursuant to the contract they were awarded to take place somewhere along North Beach.

Chairman Cunningham stated that this is a very different application for this Board, and the Board is being asked to grant a huge variance on someone else's property for somebody who actually has a store in town and who has permission to give surf lessons on the beach.

Mr. Brodsky answered that, yes, the reason they are here is that they need a variance, because, although parking is permitted in the CP zone, parking by a non-property owner or a commercial business is not permitted in the CP zone. They've come to the Board to ask that you grant that, and they are going to provide the testimony that supports it. It is a huge variance, and the standard of proof has to be satisfied.

Ms. Kowalski stated that she has had conversations with Mr. Brodsky, and she suggested to him that he should, perhaps, provide a letter of intent from the property owners with regard to either an easement or a conditional lease agreement that these particular areas would be allowed for school use during certain times. Mr. Brodsky would be open to doing that, subject to the approval of the use. They've discussed how it could work, but it is a Board decision as to whether or not it should work.

Chairman Cunningham added, "It breaches the residential zone, and this is a residential zone, and these are big beautiful homes. There are a lot of nice people up there that aren't involved in this commercial activity and might not want that commercial activity in their front yard. We're very happy to hear the testimony, but it would have been nice to have a little more feedback up front, instead of just saying, 'We're going to do this, and we want to do it because the town said we can use the beach.' The people that own those properties are the ones that are concerned here tonight, and I'm a little concerned myself, because it's an unusual request."

Mr. Brodsky stated that, in going through the testimony, they will hear the two property owners. First of all, these properties are not in the residential zone. They are in the CP zone, adjacent to the residence. Secondly, the owners of these particular properties have consented to this application they are on. They would certainly be willing to enter into the letter of intent, and, as Ms. Kowalski had indicated, they are talking about a very limited use of a few hours a day during the summer months. Mr. Cunningham asked whether this is limited use of the parking, or limited use of the beaches? Mr. Brodsky answered that they are asking for the limited purpose of the parking to a few hours a day at low tide. The public beach will also be used during those time frames.

Mr. Cunningham stated that he is aware there were complaints about the surf school last year. He doesn't know what happened last year and said that maybe it can come out in their testimony.

Board member Stephen Cashmore stated that he would like to have more information on the bidding process. Did the town feel an obligation to provide a surf school, and, therefore, they created a bid package, and put this surf school out for public bidding?

Board member Peggy Bills stated that these surf school operators are not the only ones. There are other surf schools that use our beach. She said to let them have that opportunity to run schools for kids. This application is not about the school. It's about parking. Mr. Cashmore added that he thinks knowing how it came about, or what the obligation of the school is, affects how the Board would look at the application.

Before testimony began, Mr. Brodsky explained that he wanted to quickly answer Mr. Cashmore's question. There was a bidding process, which was duly advertised and bid out pursuant to the laws, and there was a resolution adopted. Mr. Cunningham asked what the parking situation was when that bid was done. Ms. Kowalski stated that paragraph number five of the lease agreement says the participants of the camp will hold no special privilege in regard to Sea Bright's policy on parking. There was no parking award in conjunction with the lease agreement.

Sea Bright Surf School co-owner and operator Melissa D'Anna, who lives at 400 Ocean Avenue, was sworn in to testify. Mr. Brodsky asked Ms. D'Anna to walk through the history of Lucky Dog Surf

Company and through the award of contract to Sea Bright Surf School, LLC. Ms. D'Anna went on to explain the operation of the surf school.

Ms. D'Anna stated that she has been operating the surf school for the past few years with her business partner, Chris Stephan. She explained that her shop business is a seasonal one and that the surf school is an important part of her shop's operations. The surf school is essential to making her business viable and successful. The surf school was awarded a bid to operate in the northern region of Sea Bright. She said that the bid was left vague on purpose because they weren't sure where they would be able to find parking. There was no public parking awarded with the surf school bid. They have a permit to operate the school in North Beach.

They have had difficulty finding an appropriate place to hold the surf school because there are no public parking areas attached to the public access in north Sea Bright. They would love to be able to operate the school at the public beaches in the center of town, but conditions at the beaches in the center of town are not suitable for safely learning to surf. Also, the number of beach-goers and swimmers at the beaches in the center of town would prohibit properly spacing the surfers out in the water.

This past year the school was lucky to be able to use the ocean lot at 404 Ocean Avenue for the surf school. In September Ms. D'Anna's family purchased the property at 400 Ocean Avenue, including the ocean lot. Along with the lot at 404 Ocean Avenue there is enough space to accommodate the surf school going forward. Last year there may have been complaints because the school only had one lot on which to operate. With two adjacent lots this year the school has plenty of space to properly operate.

The school operates only during low tide hours, which is approximately three to four hours per day. The school operates for one week in the month of June and the months of July and August. That is what their permit allows. Parents are permitted to drop off and pick up campers in the ocean lot. They are not permitted to park in the ocean lot. Operating on a drop off and pick up basis for the past four years has been working very well. They are asking permission for instructors and students taking private lessons to be allowed to park in the ocean lots only while their lesson is in progress. They are not permitted to stay parked in the lot after their lesson is over. An attendant will be stationed at the lot during all operational hours making sure everything is going smoothly. Last year they did not have an attendant and feel this year will show a big improvement with the addition of an attendant. The attendant will make sure no one is parking illegally and that students make it onto the beach safely after drop-off. Each student will receive a map of the lot and where to enter and exit, and the attendant will guide them into the appropriate spot if they are taking a lesson. Cones will be used to block off the sidewalk from the lot to ensure the safety of people walking or biking. The school needs five instructors. With the attendant, that makes six people parked there, leaving space for one to two private lessons. For someone taking private lessons, there is also an instructor. At peak hours you will see ten cars parked in the lot. According to their professional planner, that number is easily accommodated.

At surf school the students are taught to surf with proper etiquette. They are taught about ocean and water safety. The instructors are educators first and foremost. Students are taught how to enter and exit the ocean safely, how to read the waves and the current, and they are taught about the tide, the sandbars, and wave height. They are taught how to handle a plethora of situations they may encounter in the water.

Ms. D'Anna also mentioned that surfing and environmentalism go hand in hand. Students are educated about conservation efforts, the importance of dune conservation, and replenishment initiatives. They are taught about the wildlife in the area and are encouraged to use fewer plastics.

Surf campers hold multiple beach clean-ups per week and have been doing so for four years. North beach areas are not typically groomed. North beach has seen a huge improvement in beach cleanliness due to the clean-up efforts.

Ms. D'Anna concluded her testimony by stating that the surf school is essential to her livelihood and the people they employ: high schoolers, college students, teachers, lifeguards, etc. The school also lends to the success of other businesses in the town. Their students are encouraged to patronize businesses in town, to eat in town, and to shop.

Chairman Cunningham asked Ms. D'Anna to explain why it's going to be fine for you and all of your neighbors for this to happen. Melissa answered that she has spoken to sixteen of her immediate neighbors, and all those within 200' were notified. Ms. Kowalski interrupted Ms. D'Anna to inform her that what she was about to impart would be hearsay information. Anyone wishing to object or support the application would have to come and testify. Ms. D'Anna stated that a lot of the supporters to whom she referred are logged on to this evening's meeting.

Ms. D'Anna continued that, while they have been operating out of North Beach, they were able to use the Beach Walk Hotel with the exception of the last two years. The new hotel owner wants to ensure enough space for his patrons, and he was hoping to open soon. So, the surf school had to find new parking arrangements. The ocean lots for which they are seeking approval to use will properly accommodate everyone. There shouldn't be any issues, especially since the drop-off and pick-up times will be staggered.

Mr. Brodsky asked a few questions of Ms. D'Anna in order to make perfectly clear what is being proposed. He verified that at no time would more than ten cars be parked at the site along these two properties. He verified that the school takes place during one week in June, and all of July and August, for somewhere between three and four hours a day. Ms. D'Anna stated that surf camp is scheduled for three hours a day. The extra hour is for any private lessons that may be added before or after the camp. Mr. Brodsky verified that the ages of the campers is between 8 and 15-years-old, and that the camp is held Monday through Friday. There may be some private lessons on the weekends, but they are for adults and are not part of the surf camp. Weekend lessons are avoided due to traffic in town. It's difficult for people to get to their lesson. There would be no more than five lessons on weekends. There would be five surfers and five instructors in the water. We do try to schedule it during the week and avoid lessons on the weekends.

Mr. Brodsky verified that surf school will have an employee who will be stationed in the parking area right on these properties to facilitate the pick-up and drop-off of the campers, and to ensure as to where the cars are parked, how they are parked, and who is parking them. Ms. D'Anna added that there will be training for the instructors regarding parking. The instructors know they are not allowed to stay and use the beach. No one is allowed to stay and use the beach. Mr. Brodsky asked whether, in Ms. D'Anna's dealings with the Borough, it was made clear that the surf school is obviously something the Borough wanted. Otherwise, they would not have awarded the contract. Ms. D'Anna stated that the Borough has been really supportive of her surf shop, but the surf school is actually a separate entity. She added that there have been surf schools operating in Sea Bright for more than twenty years. They may not have been official, and the town decided, for liability purposes, to make a formal bid so that there weren't just a bunch of people operating businesses on the beach. They decided to allow one surf school to operate in town, which is not an unusual thing. Every town along the Jersey Shore has a surf camp; so, this is not an unusual request. The school is fully insured. Any other school wishing to operate in Sea Bright is not allowed to operate. Ours is the only legally operating surf school.

Mr. Brodsky asked why the surf school is best in this location. Ms. D'Anna answered that this beach up in North Beach is famous in the surf community as a really awesome break. There are sand bars that make a lot of great breaks and, also, allow the instructors to stand and not have to tread water for hours. The waves break in a safe way, farther out, and not directly on the beach. On the beach in the center of town, where there has been a lot of beach replenishment, the waves break right onto the shore. It's not safe to surf there.

Mr. Brodsky stated that the license to operate the camp limits the number of campers to twenty. He asked Ms. D'Anna whether she has been able to fill twenty openings. She answered that they have to turn people away. They try to cut-off at seventeen campers to allow for private lessons to take place. When they do have twenty campers they do not have private lessons that week. Mr. Brodsky asked about the required ratio of instructors to campers. The required ratio is 1:5, but the surf camp keeps the ratio at 1:4. It is safer that way.

Board Questions for Ms. D'Anna:

Chairman Cunningham asked whether the instructors are certified lifeguards. Ms. D'Anna answered that they do have certified lifeguards on staff, and all instructors are CPR and first aid certified.

Vice chairman DeSio asked for verification of the dates and times of surf school. Ms. D'Anna answered that the camp takes place June 28 through July 2. No camp takes place over 4<sup>th</sup> of July. Then camp resumes for the remainder of July and all of August, three hours per day. There is no surf camp for the remainder of the year. People will be surfing there, but not through the camp. Mr. DeSio asked about restroom facilities. Ms. D'Anna answered that restrooms have not been an issue in the past because the school was using the restrooms at the Beach Walk Hotel. There are no public restrooms in North Beach. Needing to use the restroom has never been an issue because camp only lasts three hours. If a child needs to use the restroom, Ms. D'Anna's parents live across the street from camp, and they have agreed to be "on call."

Board attorney Kowalski asked whether Ms. D'Anna or her attorney have actually taken the municipal conditions for a parking space and applied them to each of those lots to see how many spaces each lot will fit. Ms. D'Anna answered that their planner did calculate that. Mr. Brodsky stated that a maximum of ten spaces had been calculated. With the size of the two properties more cars could be fit in, but it was decided that ten was the maximum to maintain sufficient room for drop-off and pick-up of campers.

Mr. Cunningham asked whether they had looked at the "in" and "out" curb cuts. The parking is in the middle of a residential zone. So, those questions need to be asked. Mr. Brodsky answered that they didn't have a traffic engineer look at this application because the use is limited to use for three or four hours. The North Beach zoning shouldn't be ignored. That is why they're here. Mr. DeSio added that this is a state highway and is not easy to deal with. Ms. D'Anna stated that they have had the school for three years and have not had any issues with traffic. With two lots instead of one, the traffic flow will be easier than it was. Mr. DeSio added that if they want to legalize parking there they have to meet certain requirements. Ms. D'Anna stated that on those lots you're not allowed to use them for anything but parking. Mr. DeSio added that it's supporting a commercial business.

Mr. Brodsky said that they feel strongly that the benefits outweigh any detriment there may be. Their planner will testify about the benefits to the Borough, which were recognized by the Borough in awarding a contract. Six or eight or ten cars parked there for three or four hours a day is what it comes down to, and that's what the Board has to decide. Property owners are allowed to use this property for parking. Commercial property owners along Ocean Avenue are allowed to use these lots for parking, which is not a foreign use. The applicant is not looking to build anything, not

looking to improve the lots. They are looking to leave gravel. There is not anything that is at odds with the language in the ordinance for the use of these CP properties. These applicants were awarded a contract and were given the mission to go and find their own parking. They have been working on it for the past few years. The obstacle of parking is a hard one to overcome. Mr. DeSio said that he has no objection to the operation the school is running. His only objection is creating a commercial business in a residential zone. He would prefer to see the surf school taking place in the center of town.

Board member Peggy Bills stated that she likes the idea of having someone monitor parking, drop-off, and pick-up. She asked whether there would ever be surf camp parties and birthday parties. Ms. D'Anna answered that there would not be parties.

Ms. Kowalski asked about the access to the beach. So that the Board can understand how the access is being granted in conjunction with the parking, is it private access to a public beach or private access to a private beach? Mr. Brodsky answered that the entirety of the beach is public beach. Chairman Cunningham stated that he didn't agree with Mr. Brodsky. There are many private beaches along that stretch. They have King's grants. He stated that he didn't think the Board's issue is on that side of the wall. Ms. Kowalski stated that the access by the surf school to the public beach is by a private walkway, and that has to be included in the Board's purview for anything coming forward. Mr. Cunningham stated that the Board has to look at the real business of planning and zoning, and there are some issues here.

Chris Stephan, the surf school co-owner/operator, was sworn in to testify. Mr. Stephan offered some background, that he owns a surf school called Big Dog Surf Academy, which he ran out of Spring Lake beach. When he first approached the Borough about operating his surf school in Sea Bright, he went through the Special Events Committee for approval. He worked out of Anchorage beach because the center of town is not ideal for conditions. A lot of his equipment was being damaged because the waves would break on dry sand instead of breaking farther out. There were no sandbars at all. He approached Don Klein, the Beach Manager, and was given permission to surf farther north. He used Beachwalk, which Ms. D'Anna used as well, and that is how they formed their relationship. Sea Bright was looking into how other towns go about their bid process and how they approve surf schools. Mr. Stephan was awarded the bid the first year, and when it was up for renewal, he teamed up with Ms. D'Anna.

Mr. Cunningham asked how he handled parking. Mr. Stephan answered that when he was stationed at Anchorage, he and his clients paid for parking but were allowed access to the beach without having to pay for badges. When Anchorage didn't work out, he was given permission to go to the Beach Walk area. He had worked with Don Klein and with Councilman Leckstein who gave him permission to be in North Beach. Mr. Stephan was having trouble finding parking and was told that, if he couldn't procure a spot by using any of the businesses on Ocean Avenue, maybe he could form a relationship with some of the residents and utilize their lots for parking. He was able to work with the Beach Walk until that relationship was no longer viable due to continued construction at the Beach Walk.

Gordon Gemma, professional planner, was sworn in to testify. He gave his credentials and was accepted by the Board as an expert witness. Mr. Brodsky asked Mr. Gemma to go through the zoning and variances requested. Mr. Gemma responded that this application is solely about parking for a surf camp in the CP zone. The Borough gave a two-year license to the camp, and it states, specifically, for portions at North Beach. He said that he found it interesting that in Sea Bright's ordinance, a surf camp is considered a personal service establishment. Personal service establishments must not have less than four parking spaces, and the parking must be on the same side of the street as the establishment. Also, there has been an issue with what is and is not

permitted in this zone. Only parking is allowed in a CP zone. Parking in the CP zone is not a function of having a commercial use next door.

Mr. Gemma presented an Exhibit, marked **A-1: Parking Area 13,080 sq. ft., Bl. 23, L. 101 and 100**. The property surveys show the area between the seawall and the walk is 2,000 sq. ft. of parking area. A standard parking space is 10 ft. by 20 ft. The two lots can easily fit a total of eleven spaces. The parking is sufficient. He noted that he is testifying as a planner, and not as a traffic expert. As a planner, there is not an issue about the safety and sufficiency of the parking. Because of its size, the lot is sufficiently suited for the accessory use addressed in the ordinance. Chairman Cunningham asked whether the space is safe and adequate for the drop-off of eight-year-olds. Mr. Gemma stated that, yes, it is safe and adequate for cars to queue up with enough space on either side. It provides a safe, adequate space that is appropriate for use.

Mr. Brodsky asked Mr. Gemma to talk about the master plan. Mr. Gemma said that the master plan sets forth specific goals and objectives of the Borough. The 2017 master plan, which was post-Sandy, states that the CP zone is to protect vulnerable areas that are subject to flooding, such that no buildings would be erected. In fact, the only use of the CP zone is a recreational use, as is being discussed. The recreation element of the master plan states that recreation areas play an important role in community life. As Ms. D'Anna pointed out, they're not only teaching surfing. They are teaching conservation, and that advances a specific purpose of the master plan. The beaches in the north beach area have never been cleaner because of the beach clean-ups the surf school does. That advances a part of the master plan that the Borough is saying is important. Mr. Gemma said that it is better to have a regulated entity, like a surf school, where the Board can put on mitigating conditions. Another thing the master plan says is a condition or a goal is that working with local civic organizations, organizing volunteers, beach clean-ups, and similar activities is right on point from the master plan. The conservation element talks about the protection of the dunes. Ms. D'Anna talked about doing conservation of wildlife and wildlife habitat. That is a key component of what the surf school teaches. When you look at your master plan, it says the beach is not a pristine resource to be preserved and only used by those fortunate enough to live along the ocean. It's a resource to support the local economy by drawing visitors and a safe, effective, and environmentally conscious mind. Mr. Gemma stated that he can't think of anything better than the goals and objectives for the master plan, and the Borough thought about the surf school as not just a recreation element but also for teaching.

Mr. Gemma went on to talk about the positive and negative criteria. The positive criteria advance the purpose of the zoning that the master plan states. The ordinance says that you have to have parking next to the accessory use. The next criteria is particular suitability. The ordinance says you have to provide parking next to where you have the use that you need. It is not only particularly suited. It is particularly required. The applicant testified that North Beach is the best location to safely teach surfing. There is 2,000 sq. ft. of parking that is more than adequate for the drop-off and pick-up. There is beach access there. You don't want kids walking along Ocean Avenue to get to the surfing area. This lot is particularly suited in almost every sense of the ordinance.

The negative criteria, first, talks about substantial detriment upon the public good. This is where, Mr. Gemma states, some neighbors have concerns. Is there going to be noise, too many people, a mess, or other issues? These concerns can be mitigated by putting constraints on what is approved. The agreement is only to exist for the period of time the license states. Access points to get over to the beach have to be controlled. Approval of the application doesn't have to mean substantial detriment upon the public good. Mr. Gemma stated that approval of the application has more substantial benefit than substantial detrimental impact. Lastly, is there a substantial detrimental impact to the intent and purpose of the Borough's own plan? Mr. Gemma stated that it enhances the master plan, this element of why you want this type of re-use in this location. When you look at the

purposes of zoning versus the negative impacts on the public good and upon the zone plan, the conclusion is in favor of granting the use variance. Most important is that you have to have parking, an accessory to the permitted use on North Beach.

The meeting was opened to Board questions.

Elizabeth DeGiulio stated that the Board had received a review by Christine Cofone Nazzaro, the Board planner, and Ms. DeGiulio feels that the planner's review pretty much backs up everything Mr. Gemma has said. Ms. DeGiulio would like to hear from the planner. Ms. Kowalski asked Ms. DeGiulio to hold that thought for when the planner testifies.

Ms. Kowalski had a question for Mr. Gemma. With regard to his exhibit, A-1, Ms. Kowalski asked him to repeat his testimony regarding the yellow area in the exhibit. Mr. Gemma explained that you see the lots and the number of parking spaces. The one with the yellow area was if you park nose-in instead of parallel. If you weren't nose-in, you could actually park two cars in almost every spot, going from eleven spaces to eighteen.

Also, Ms. Kowalski asked for verification regarding the two access points for the beach. She asked whether the two access areas are private access areas. Mr. Gemma stated that, yes, the two beach access areas are owned by the people who own the lots. Ms. Kowalski asked for verification that these two access areas are not public access areas. Based on the surveys they are not public access areas across the seawall. So, looking at the lease agreement, you see that the entrance onto the beach is only for purposes of establishing the principle use. If the principle use is established as being introduced to be made from beach gate entrances only, then the theory of the accessory use of parking to the primary use would hold for this particular application, because the license specifically provides the entrance. Mr. Gemma replied that the license doesn't say that you're limited solely to public access. The license states that if the license holder wanted to use a different portion of the beach, she would work with the Beach Manager. That doesn't negate what was said. The license holder is not limited to just public access. Ms. Kowalski responded that it was specifically stated in Mr. Gemma's testimony that the Borough tells you what it wants. If the Board relies on Mr. Gemma's testimony for purposes of one thing, then the entire testimony must be taken into consideration, because the Borough is telling you what it wants and where it wants it. That doesn't mean the surf camp can't be in North Beach. The accessibility becomes the question. The Board needs to understand that they are granting, in conjunction with this application for use variances for parking, they are granting entrance for the applicant to enter at a different location other than established in the lease agreement. Mr. Brodsky stated that the intent, initially, was to try and find parking where the school would be. That would be facilitated by public access, but it didn't preclude the ability to enter into private agreements. Ms. Kowalski answered by stating that she doesn't disagree with Mr. Brodsky in theory, but the Board needs to be aware that there is a specification in the lease agreement under paragraph 7 that says that the applicant is to use the entrances onto the beach to be made through beach gate entrances only. So, there is a certain amount of specificity, but that doesn't mean it is not a Board decision to alleviate that responsibility in conjunction with parking determination.

There was a continued discussion between Chairman Cunningham and Mr. Gemma. Mr. Cunningham stated that the school knew what they had at the time. They have access to the twenty-five feet along the high watermark. When it comes to Borough ownership, the Borough doesn't own those beaches. Either the state does or the private entities do. The Borough can't tell the lease holder to go and use anybody's beach. That is not the Borough's right to do, and, ultimately, the only thing they can say is to go over all of our public access points. Mr. Gemma agreed with Mr. Cunningham's statement and said that, at the time the Borough gave the license, they were constrained by that because the applicant didn't have this access point. Now, the applicant has the



rights to this access point as well. Mr. Brodsky added that there is nothing in the agreement that precluded the ability to secure parking access from a private property owner. It was encouraged by the Beach Manager because the Borough didn't have the ability to provide the parking. Mr. Cunningham asked whether the Board is agreeing to access or just to parking. Mr. Gemma answered that the Board is just agreeing to the parking. Ms. Kowalski added that the lease can only grant what the Borough owns. She stated that her real point was that Mr. Gemma's testimony was talking about the parking being an accessory to the permitted use. It is a permitted use, but it's not a permitted use at this particular location. It is really the Borough supporting a commercial entity which would have been fine at a Borough municipal entrance. The applicant is now asking the Board to think outside the box.

Mr. Gemma asked the Board to consider that public parking is in short supply. You wouldn't want the Borough to tell the licensee to park in the public parking which is limited to begin with. You would want the licensee to find parking some place else so that limited public parking is not being taken. Mr. Cunningham commented that the Borough has rather large public parking areas, and all have public access. Mr. Gemma stated that, when you are looking at access points and trying to park near those public access points that have parking available, it would not, in his opinion, be in the Borough's best interest. In fact, it would be a detrimental impact.

Vice Chairman DeSio said that he thought Ms. Kowalski was really on-point on this parking situation. He stated that he and Chairman Cunningham were both involved in the creation of the master plan. One specific part regarding the use of the CP zone is that no building can be erected in the CP zone, and that is not what the applicant is asking to do, but the rest of the sentence says "nor shall any commercial use be permitted in this zone." This surf school is a commercial operation, and granting parking for a commercial operation is not permitted in that zone. By granting a parking variance at this location, wouldn't that justify them running a commercial operation at that location, which is what we're trying to discourage? When the master plan was done, it was planned that the commercial activity would take place in the downtown area, with the exception of what was already in the north area. Zoning was changed to protect the overdevelopment of the north area, and, specifically, any more commercial use.

Mr. Gemma agreed that the master plan says the property North Beach, on the western side of ocean, is all residential. In the CP zone you want recreational use. This recreational use is a commercial use. The Borough said, by virtue of this license, that it wants this commercial use on the North Beach section. The issue is how to provide parking for this permitted commercial use in the CP zone. Mr. DeSio stated that the license was to use the beach and public access points, which have limited parking at them, and that was the intent. It wasn't intended to create more commercial parking along Ocean Avenue. Mr. Gemma stated, as a professional, that the Borough gave the licensee the right to use this location as a surf school. The parking for the school is not in the residential zone. The residential zone is on the other side of Ocean Avenue. Mr. DeSio stated that parking in the CP zone is to accommodate the residents across the street, not a business. Mr. Gemma said that the limitation in the master plan is that you can't put commercial vehicles on a parking lot. The applicant is not going to park commercial vehicles. The discussion is whether you can put a parking lot for services not permitted which are permitted by a license issued by the Borough.

Board member Stephen Cashmore asked whether this is considered a commercial use or a recreational use. It seems like it's a recreational use that's directed by the Borough. Ms. Kowalski answered that in looking at the lease agreement, the lease agreement just speaks to the leasing of the land and the ability to run a surf camp. The Borough has beach operations for junior lifeguard programs, public safety, public use, and enjoyment. The surf camp is not listed as being a recreational use that would be associated with the Borough. It is hard to know what the actual

municipal intent was without looking at the bid regarding a surf camp and how that relates to a lease agreement. It appears to be a straight-forward lease agreement to a business. It appears to exempt municipal recreational uses. Mr. Cashmore thanked the Board attorney for her answer and said that he would like to have input from Council as to what it intended. Ms. Kowalski said that she doesn't know if it's appropriate to have a Council person testify with regard to this matter, as to intent, but we can get a copy of the bid package to review so that we have a better understanding as to whether this was recreational or commercial. The intent would be the Board looking at the bid package and making a determination based on the evidence that's been presented, if necessary.

Mr. Brodsky asked to respond to Mr. Cashmore's inquiry. Mr. Brodsky stated that he doesn't think there is any dispute that surfing is a recreational use, and surfing is consistent with the master plan. It is clearly a recreational use. It is a recreational use run by a commercial business. If a recreational use is run by a business, it is still a recreational use, and that is why the applicant has plausible arguments for requesting the variances to allow a recreational use.

Ms. Kowalski stated that we get back to the primary use was allowed through beach, public access, and the argument being presented in this particular parking area should be accessory to the primary use, which is on a private lot.

Chairman Cunningham stated that he doesn't want the Board to vote on this application unless we have a police officer testify to operating a parking lot for that use. Regarding the safety of the operation of the parking lot on Ocean Avenue, whether it's called a commercial or recreational use doesn't matter.

Boardmember DeGiulio had suggested having input from the Board planner tonight, but Mr. Cunningham said that everyone has had a chance to read the planner's report and that she can testify at the next meeting.

Mr. Cunningham said that it is after 10:00, and there will be no more testimony tonight.

Chairman Cunningham opened the meeting to the public for questions about any of the testimony heard so far. Comments will come at the end of the next meeting.

Gregory Harquail, 434 Ocean Avenue, was sworn in. He suggested we need a deposition from the Council. He asked what is the authority of the Beach Manager. He asked if we are opening up for partial uses, for example, fishing camps or other camps. Are we setting a precedent? Also, he asked about the congestion created by entrance and egress on Ocean Avenue. Is it going to be safe? He questioned where they wanted the surf school to be located, at Anchorage?

Since this public portion is to ask questions of the testimony given, Mr. Gemma answered. He said that, regarding the safety of the ingress and egress onto Ocean Avenue, he is not a safety expert, but, pursuant to the design standards for ingress and egress, and the Borough ordinance, it meets the Borough's standards.

Janice DeMarco, 406 Ocean Avenue, was sworn in. She stated that last year she didn't realize that we had a surf camp until she saw the trailer pull up across the street, and it stayed the whole summer. It had a big banner on it.

Ms. D'Anna addressed the concern. She said it was brought to their attention in late August when they were told by Chief Friedman to move the trailer. They moved the trailer as soon as they were told. They did have a sign, and it was meant to be helpful so that people weren't pulling into the wrong place.

Ms. DeMarco stated that the sign on the surf school was more of an advertisement and not a directive. Parents and grandparents dropping campers off used her beach access. Will they be directed not to use her stairs and platform to access the beach?

Ms. D'Anna stated that she wanted to apologize for that. She had been under the impression that the owner of 404 Ocean Avenue, whose property they were allowed to use, also owned Ms. DeMarco's property. She apologized for the miscommunication. Last year was a learning curve. It was not understood where they were allowed and not allowed to park. That should not be an issue this year. There will be a parking attendant, and all of their clients will be given maps of how to get into the lot properly.

Ms. DeMarco asked whether the surf school would have used this lot if her parents had not bought the house at 400 Ocean Avenue.

Ms. D'Anna answered that, even if her parents had bought a house a mile down the road, she would be seeking a variance there as well. They need the space for the instructors to park so they can get onto the beach. She apologized for people using Ms. DeMarco's beach access and said they will be adamant this year about using the proper staircase.

R. C. Staab, 290 Ocean Avenue, was sworn in. He stated that he is confused because he has heard two Board members say that, if parking is allowed, this is the first time there is a surf camp in North Beach. He said that he has seen Ms. D'Anna's surf camp functioning for several years. He asked how many years the camp has been running in North Beach, which years it ran, and where was the parking in each of those years. Chris Stephan answered that the camp was operated out of the Beach Walk Hotel in 2016, 2017, and 2018. 2019 was the first year they operated out of Hans Kaspersetz's lot at 404 Ocean Avenue.

Mr. Staab asked in which of those years did they receive complaints from the Police Department about their activities? Ms. D'Anna answered that they have not received any complaints from the Police Department, and the Police Department has been totally helpful supporting them.

Mr. Staab asked if they have been operating for five years in North Beach, and have they received any complaints, other than last year, that they are aware of. Ms. D'Anna answered that they never received any complaints that she knows of.

Donald Pignataro, 414 Ocean Avenue, said he had a procedural question. He asked if it is acceptable for a third party to submit a land variance change application on a piece of property they don't own. Mr. Brodsky answered, yes, with the owner's consent. Ms. Kowalski added that it would be a conditional use variance until the end of the term of the lease and in conjunction with the ownership of the land. The letter or lease agreement would run in conjunction with whatever the Board decides.

Melanie Daly, 1540 Ocean Avenue, was sworn in. She asked whether this variance will only pertain to the surf school's lease hold. You (Ms. D'Anna) and Chris are asking to park ten cars for nine weeks in the summer. The rest of the year the lot would remain only residential use? Ms. D'Anna answered, yes. It's very seasonal.

Ms. Daly asked how would the students access the surf camp without the parking lot? How would they be able to safely access the surf lessons without this variance? Ms. Kowalski pointed out that the actual variance is not for the students. They will be dropped off. The variance is for the parking. In conjunction with it the students would have to be granted access through the lot. The access goes part and parcel with the parking. Ms. Daly asked for verification that the students, as the lot is now,

can be dropped off. Ms. Kowalski answered, yes, and it's a conditional use. They can use North Beach subject to the Beach Manager's discretion. Ms. Daly asked whether the students could be dropped off in a lot if they walked down to a public gate. So, as it is right now, Ms. D'Anna could have the children dropped off and they could go to a public gate. Ms. Kowalski answered, yes.

Ms. Daly asked whether it would be safe for them to be dropped off without this variance. It seems that it would be safer to grant the variance for the students. Chairman Cunningham said that he would like to hear the Police Chief's opinion on entry and exit. He said that everyone wants Ms. D'Anna to have her surf school. We have issues for the Borough of Sea Bright when kids start getting run over by cars. He stated that this is a very complicated issue for this particular Board.

Ms. D'Anna said that after years of doing this, they've been operating in a safe area. They have an attendant. They are doing everything right. Chris Stephan added that the students do not get dropped off on Ocean Avenue. The cars queue up and the students get dropped off in the parking lot and are escorted to the beach by an instructor. They are not roaming around on the streets.

Ms. Kowalski said that for purposes of legal determination she would agree with the applicant that if the students were dropped off on the property, the school is insured and bonded for it, for injuries, etc. Understanding the safety concerns with regard to this application, as it relates to the parking, the liability would remain with the applicant in the event that something did happen.

Christine Cofone, the Board planner wanted to ask a few questions. She asked Ms. D'Anna where they parked last summer. Ms. D'Anna answered, at Hans Kaspersetz's lot. Ms. Cofone continued by saying that the lots Ms. D'Anna is proposing to use are lots that are owned by her parents and one other entity. She stated that this is, in her opinion, whether the use is classified as commercial or recreation, doesn't matter, because the reality is that Ms. D'Anna holds a license issued by the Borough to operate a surf school in North Beach, and anybody who has kids knows that is where you surf. Ms. Cofone stated that the application is looking to have parking, not commercial parking, but just parking, on these two properties, one of which is encumbered by her parents. The instructors are going to park there, and the parents will drop their kids off. The surf school will take place Monday through Friday for nine weeks of the year, for approximately three to four hours a day, and not on weekends.

Ms. Cofone asked the Board to review the letters she wrote regarding the two lots. The way the ordinance reads is that no building whatsoever shall be erected for any purpose, nor shall any commercial use be permitted in the zone. The surf school is not doing a surf camp in the parking lot. Nobody is stretching or warming up or doing yoga. The school is not operating a commercial use in the parking lot. They are parking. The rest of the section reads that the owners of property in this zone may park non-commercial automobiles and non-commercial trucks no greater than one ton in weight, without charge, provided the cars are parked only on gravel. Even if the owners wanted to improve this, that is not allowed. If you wanted to run a book club on the beach for three hours a day, the book club members could park in the parking lot, and the impacts would be similar to what the application is proposing to do.

Ms Cofone stated that there was a lot of testimony heard this evening, and that, in her opinion as a professional planner, a lot of it was not relevant to what the Board is here to evaluate. All the Board is being asked to evaluate is that the applicant is looking to have her instructors park here and for people to drop off their children for an activity for which a license was issued by the Borough. The CP zone allows owners of a property to park automobiles without charge. She further stated there is nothing inconsistent in the ordinance. The master plan sites beach access and activity as a key characteristic and community to support its economic base. The applicant is looking to park here, which the ordinance contemplates, but, because she is parking in conjunction with a commercial

use, she needs the variance relief. Ms. Cofone stated that there is a great contract in the land use law that she is held to all the time when she testifies as a witness, and that in each case has to rise and fall on its own merits. Ms. Cofone doesn't think the Board should be getting hung up on whether this is commercial or recreational camp they are operating. What the Board has to drill down to is whether or not the Board is comfortable with the very limited use that this applicant is proposing for this parking in order for a surf school to occur at this location. The Board can impose reasonable conditions on it. It really comes down to whether the Board is alright with the applicant using this parking for three hours a day, nine weeks out of the year. Ms. Cofone addressed Mr. Cunningham and stated that she issued a letter, that her letter stands on its own, and that this is her testimony. She just wanted to drill down to the Board, from a planning point of view, what the Board is looking at here.

Charlie Rooney, 196 Ocean Avenue, was sworn in. Mr. Rooney stated that, first of all, the resolution says that it is for a surf camp at the municipal beach. Going back to what Mr. Harquail was saying, where is the municipal beach in North Beach? The furthest municipal beach is Anchorage. He said he is trying to figure out what the Council was getting at when they said "municipal beach." That's what the resolution said, and there is no municipal beach in the north end. He asked whether the surf camp was able to use public access when they used the Beach Walk. He stated that there is no public access at the 400 block, and that when he was there last summer with the Borough administrator, there was a cut-through on the dune which is not really permitted. The dunes are pretty sacred in this town. There are some things that need to be addressed as far as this resolution, such as where the access would be in the 400 block, where there is not a public access. The other thing is that people need to realize that living in certain parts of Sea Bright are pretty sacred where we live. In North Beach, low tide happens to be one of the nicest times to be on the ocean beach in the summer time, and that's when this surf camp seems to prosper. Mr. Rooney said that he is also worried that they're opening up a whole can of worms. The next thing the Borough could have is, for example, surf fishing camp, and the best time for that is during high tide. Mr. Rooney said he thinks the town needs to be careful what they're doing. He said that he has no problem with Ms. D'Anna. The Lucky Dog family is sacred to a lot of people. He hopes the planning is done very carefully. He would like an answer to his question about the resolution stating municipal beach and North Beach, where that location is.

Board member Jon Schwartz stated that he was on the Council and in charge of the beach when the bid was done. The intent was to have them surf at one of the public beaches, such as Anchorage. He said he doesn't think it was ever intended for the surf camp to be up on the north end, but when Ms. D'Anna came in and said that they would rather be up there, he can understand why the Beach Manager would be pretty happy about that because then the town wouldn't have to provide lifeguards. He said that is the way it came about.

Mr. Cunningham suggested carrying the application to the next available meeting and made a motion to carry it to May 11<sup>th</sup>. A second was offered by Stephen Smith, and carried on a roll call vote:

**Ayes:** Cashmore, Cunningham, DeGiulio, DeSio, Gorman, Smith, Schwartz

**Nays:** none

**Absent:** Bills (left the meeting at 10:10 p.m.)

Attorney Kowalski announced that the people present be advised that this matter will be carried to May 11, 2021 with no further notice.

Jeanette Jaworski asked to make a comment. Ms. Kowalski asked her to come to the next meeting. There was no more time for comments this evening. Mr. Cunningham apologized and said that the meeting will be carried.

Councilman Leckstein rejoined the meeting.

**CLOSING ITEMS**

**Meeting Announcement**

There being no other public business before the Board, the Chairman announced the next regular meeting of the Planning Board is scheduled for May 11, 2021 at 7:30 p.m.

**Adjournment**

The meeting was adjourned at 10:37 p.m. on a motion offered by Chairman Cunningham, a second offered by Vice Chairman DeSio, and approval upon a unanimous voice vote by the Board members.

Respectfully submitted,

A handwritten signature in black ink that reads "Candace B. Mitchell". The signature is written in a cursive, flowing style.

Candace B. Mitchell  
Board Secretary