

**Sea Bright, New Jersey
Unified Planning Board Minutes
September 9, 2014
7:30 p.m.**

Chairman Cunningham called the meeting to order and requested those present to join him in the salute to the Flag.

Chairman Cunningham read the following statement:

2. OPENING STATEMENT:

The Borough of Sea Bright, in compliance with the "Open Public Meetings Act" has advertised the date; time and location of this meeting in **The Asbury Park Press** on January 11, 2014 filed it with the Clerk, and posted a notice on the bulletin board in the Borough Office.

3. ROLL CALL:

PRESENT: Cashmore, Cunningham, Davis, Desio, Nott, Smith, Isoldi-Jany(Alt.#1)
Beer (Alt.#2) Marrone

ABSENT: Leckstein, Long, Marrone(Alt#3), McBride

4. Chairman Cunningham carried the approving of the August 12 , 2014 minutes.

5. MEMORIALIZATION OF RESOLUTION:

Councilman Leckstein introduced a motion approving the following application.

**RESOLUTION OF THE SEA BRIGHT UNIFIED PLANNING BOARD
GRANTING USE VARIANCE AND SITE PLAN APPROVAL
RE: ROONEY PLAZA, LLC.
1136 OCEAN AVENUE, 4 & 6 SURF STREET
BLOCK 11, LOTS 21, 22, 23**

WHEREAS, Rooney Plaza, LLC, proposed developer of the premises commonly known as 1136 Ocean Avenue, Block 11, Lots 21, 22, 23, Sea Bright, New Jersey has applied to the Unified Planning Board for use variance and site plan approval to demolish the existing structures and construct a 3.5-story building, including 3,378 square feet of retail space and 7 garden apartments with associated parking, lighting, and pedestrian circulation improvements.; and

WHEREAS, the Applicant has provided due notice to the public and all surrounding properties as required by law, has caused notice to be published in the official newspaper in accordance with N.J.S.A. 40:55D-1 et. seq., this Board gaining jurisdiction therein and a public hearing having been held on this matter at a regular Unified Board meeting of August 12, 2014, at which time all persons having an interest in said Application were given an opportunity to be heard, and

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

- A-1 Jurisdictional Packet
- A-2 Architectural plans by Monteforte dated 4-19-14
- A-3 Major Site Plan prepared by Kennedy Consulting Engineers dated 3-27-14
- A-4 Color rendering
- A-5 Aerial photo
- A-6 Revised sheet A104 of architectural plans revised to 8-11-14
- A-7 Small version of A-5
- A-8 Small color rendering of A-3
- A-9 Large color rendering of A-3, 3-27-14
- A-10 T&M review letter 8-11-14

WHEREAS, members of the public were given the opportunity to be heard regarding the Application; and

WHEREAS, the Board having considered the evidence presented, made the following findings:

1. The proposed developer of the subject property is Rooney Plaza, LLC, to which title to the subject property is proposed to be conveyed shortly after the adoption of the within Resolution. The existing lot fronting Ocean Avenue is currently a gravel lot with a hot dog stand, and single family dwellings currently existing on 4 and 6 Surf Street.
2. The Applicant seeks to demolish the existing structures and construct a 3.5-story mixed use building, including 3,378 square feet of retail space and 7 garden apartments with

associated parking, lighting, and pedestrian circulation improvements

3. The site spans two zones, the R-3 zone and the B-1 Zone.
 - a. Retail use is not a permitted use in the R-3 zone. Therefore, a use DI variance is required.
 - b. Multi-Family use is a conditional use in the R-3 Zone.
 - c. The B-1 zone permits residential uses in multistory buildings located above approved uses.

4. A “d” variance is required for the proposed retail use in the R-3 Zone and for the proposed building height.

5. Bulk variances are required as follows:

ZONING SUMMARY				
DESCRIPTION	REQUIRED R-3 ZONE	REQUIRED B-1 ZONE	EXISTING (ENTIRE TRACT)	PROPOSED (ENTIRE TRACT)
LOT AREA	1,800 SF	3,000 SF	9,016 SF	9,016 SF
LOT WIDTH	25 FT	50 FT	75 FT	75 FT
LOT DEPTH	60 FT	60 FT	67.9 FT	67.9 FT
FRONT YARD	5 FT	0 FT	3.0 FT	0.0 FT
EITHER SIDE YARD	3 FT	0 FT	16.8 FT	1.1 FT
BOTH SIDE YARDS	6 FT	0 FT	42.5 FT	58.1 FT
REAR YARD	15 FT	15 FT	N/A ¹	N/A ¹
BUILDING HEIGHT	42 FT ² 2 1/2 STORIES	42 FT ² 3 STORIES	< 42 FT 2 STORIES	49.05 FT ² 3 1/2 STORIES
BUILDING COVERAGE	50%	50%	11.1%	51.1%
LOT COVERAGE	70%	75%	14.6%	91.9%
MIN. GFA	880 SF	880 SF	+1,578 SF	+17,638 SF

NOTE: SEE PLANS FOR R-3/B-1 BOUNDARY

¹SITE HAS 2 FRONT YARDS & 2 SIDE YARDS

²FROM FINISHED GRADE AT BLDG CORNER (AVG EL= 3.825)

PARKING SUMMARY
RETAIL (PER ORD.): 1 SPACE PER 200 SF = 1 X 3,378/200 = 16.9 SPACES
1 BR APT (PER RSIS): 1.8 SPACES PER UNIT = 1.8 X 1 = 1.8 SPACES
2 BR APT (PER RSIS): 2 SPACES PER UNIT = 2 X 6 = 12 SPACES
REQUIRED = 31 SPACES (INCLUDING 2 BARRIER FREE)
PROVIDED: 12 (INCLUDING 1 BARRIER FREE)

6. The Architect James Monteforte described the proposed new structure. The first floor will contain up to 3,378 feet for retail uses. The second floor will contain three 2 bedroom

residential units and the third floor will contain four residential units.

It will be a seashore style building. Signs will be located in the recessed panels. The Applicant **STIPULATED** that the signs will meet the sign ordinance.

7. The Architect described the garbage/recycling storage will be located under the stairwells. Each can accommodate at least 5 standard cans.

8. Monteforte testified that the median height of the building, as measured in accordance with the Borough ordinance is 43.5'. The peak will be approximately 50.05'. There will be a 3' parapet wall to screen the mechanicals on the roof.

Monteforte further stated that there will be storefront windows along Surf Street for a better visual appearance. The front entry to the commercial units will be a stairway. Handicapped access will be from the rear. There will be a half stop elevator that will stop at the retail level.

The Board applauded the architectural design as being well-suited for this site. The Board was pleased that the mechanicals are hidden in the roofline.

9. James Kennedy, P.E. described the site plan. He indicated that there would be 1 parking stall for each residential unit (7) on the west side parking area and 4 parking stalls on the east side for the commercial uses. One handicapped stall will also be on the east side for a total of 12 parking stalls where 31 are required. He noted that by filling in the existing depressed curb cut on Surf Street they will likely open up additional 1-2 spaces of on street parking.

The Board engineer noted that the parking requirements assume Class II retail uses other than restaurant use. The Board found that restaurant use is permitted and would be allowed provided that the overall parking yield does not exceed the existing parking demand as determined by the engineer.

10. Kennedy described the side setback of 2.3' for the building which is reduced to 1.1' at the stair tower location.

11. The Board questioned the lighting plan. The Applicant **STIPULATED** that there would be no light spillage onto adjacent residential properties.

12. Kennedy testified that there is proposed a 6' fence along the side property line where 4' is permitted. The Board felt that a variance was warranted for the 6' fence to provide additional privacy to the adjoin property.

13. Kennedy also explained the proposed garbage storage and pick-up. Neighbors expressed concern over the garbage storage capacity. The Applicant **STIPULATED** that it would increase the frequency of pick-up if warranted.

14. Gary Dean, P.E. testified as a transportation engineer and planner. He noted that the removal of the driveway on West Ocean Avenue is a positive in that it removes potential traffic conflict and provides for safer ingress and egress. He opined that in an infill redevelopment in the downtown setting, it is impossible to conform to the parking requirements.

15. Gary Dean testified that the parking was adequate in this situation. The Applicant is creating new on-street spaces which will have a positive effect.

16. Christine Nazarene Corona, AICP/PP testified on behalf of the Applicant. She noted that the property is located in the B-1 and R-3 zones.

She noted that Application requires “d” variance relief to retail use in the R-3 zone.

Ms. Corona also noted the “bulk” variances described above, including front yard setback where 3’ is required in the R-3 zone and 0’ in the B-1 Zone and the proposed is 0’ to Ocean Avenue and Surf Street; maximum building coverage where 50% is permitted and 51.1% is permitted; maximum lot coverage where 70% is permitted in the R-3 zone and 75% in the B-1 zone and 91.9% is proposed; 2 ½ stories is permitted in the R-3 zone and 3 stories is permitted in the B-1 zone and 3 ½ stories is proposed; variance from the requirement for a 15’ buffer along the plot line abutting residential properties where 6.3’ to 3.5’ is proposed; variance for 6’ board fence along the residential property line 4’ is proposed; parking within the front setback; parking variance where 31 spaces are required and 12 spaces are proposed and variance for accessory parking in the R-3 zone.

17. As to the “d” use variance, the Planner testified that the property has frontage on Ocean Avenue, the major thoroughfare through the Borough. The proposed retail use on the first floor and residential on the second and third floor is consistent with the character of the downtown area.

The use variance is due to a portion of the parking lot and access aisle located within the R-3 Zone District. The structure is located on Ocean Avenue within the B-1 District.

She stated that the Application is consistent with many of the stated purposes of the Municipal Land Use Law, N.J.S.A. 40:55D-70, including sections:

a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare?

B. To secure safety from fire, flood, panic and other natural and man-made disasters;

- The applicant proposes to activate an overall property that is partially vacant, which does not advance the interests of improving the borough's downtown area. This project is a major benefit to the public good as it is an investment in Sea Bight's future.

c. To provide adequate light, air and open space.

g. To provide sufficient space in appropriate location for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens.

- The engineer testified that the property has sufficient space to accommodate the use and that adequate light, air, and open space will continue. While variances are required for building height, building coverage, lot coverage, front yard (R-3), either side yard (R-3), the proposal is consistent with the character of the downtown area.

h. To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight?

- The parking area has been designed to accommodate safe vehicular flow, as testified by the engineer.

- While parking is deficient, there easily accessible public parking nearby.

I. To promote a desirable visual environment through creative development techniques and good civic design and arrangement.

- The applicant is fully improving and upgrading the site. The structure will be aesthetically-pleasing and within downtown character.
- Perhaps most importantly, the applicant is significantly improving the property, which is located in a prominent location in the Borough. What the applicant intends to create will send a strong signal to the community and visitors that Sea Bright intends to push forward even better following the devastation inflicted by Superstore Sandy.
- The height is appropriate given the surroundings (architectural/operation reasons).

She also noted that the applicant also intends to comply with NJDEP flood requirements, securing it from future floods.

For the foregoing reasons, the Planner felt that the site is particularly suited for the proposed use. The Board agreed with the Planner's testimony and noted the property is in the heart of the downtown. The Board agreed that the Master Plan includes the goal of spurring more commercial vitality along Ocean Avenue in the downtown.

18. As to the negative criteria, Ms. Nazzaro-Cofone testified that the proposal will present no substantial detriment to the public good. She noted that the applicant proposes a complete upgrade of the subject property, which currently features a gravel lot which is highly visible on Ocean Avenue in the downtown area.

She stated that the use is clearly appropriate for the location...

She noted that the requested bulk variances are relatively benign and common in

the downtown area, and the site can accommodate the deviations, according to the testimony of the site engineer.

19. Therefore, Ms. Cofone opined that there will be no substantial detriment associated with the proposed mixed commercial and residential use. The Board agreed with the testimony and opinion of the Planner that the proposed mixed use will present no substantial detriment to the public good.

20. The Board also concurred with Ms. Cofone's testimony regarding the second prong of the negative criteria, that the proposal would not impair the intent and purpose of the zone plan and zoning ordinance.

Ms. Cofone noted the purpose of the Sea Bright Ordinance, set forth in Section 130-2, mirrors many purposes of the MLUL. Therefore, since the Application meets the multiple MLUL purposes described above in the Positive Criteria, it thus satisfies the purpose of the zoning ordinance.

There is no stated purpose of the R-3 Zone. While the property is located within the R-3 Zone, the immediate surroundings to the north, east, and south are of downtown-type. Only a portion of the property – parking lot serving the building – is within the R-1 Zone. Therefore, the main use is within the B-1 District and thus the variances will not impair the intent and purpose of the zone plan. Therefore, The Board agreed that the proposal will not impact the intent of the zone plan.

21. Ms. Cofone noted the Ordinance states: "The business districts established by this chapter are designed to provide sufficient space in appropriate locations for various distinct forms of business development; to satisfy the needs of modern business development by providing for off-street parking and loading and unloading areas, safe and efficient means of vehicular ingress and egress and continuity and homogeneity of business development frontage; and to encourage the development of more attractive and economic forms of building development under proper standards."

She further noted that the Ordinance states: "The B-1 Zone is the central or town business

zone designed to provide for local shopping and to include a wide range of retail business and service establishments which cater to the frequently recurring needs of the residents. The primary purpose of all permitted uses in this zone should be to encourage a pedestrian-friendly, mixed-use-Main-Street character for this zone. Retail and personal service with inviting storefronts would be most encouraged, with an open feel and small scale at street level. The purpose of future development and rehabilitation in this zone should be to retain the historic charm and character of Sea Bright's downtown."

The Board agreed that this project clearly meets the intent and purpose of the Ordinance for the Business District.

22. The Board concurred with the Planners testimony that in the "Borough of Sea Bright Downtown & Oceanfront Smart Growth Plan," March 2007, the Borough indicates that it is seeking to both retain and "spur more [commercial] vitality" along Ocean Avenue. Currently the front portion of the property is a gravel lot with a hot dog stand. The Board agreed that the proposal will contribute to the commercial vitality along Ocean Avenue.

23. The Board further finds, after evaluating all of the evidence and testimony that the applicant has met the enhanced burden of proof as to the positive and negative criteria as set forth in Medici v. BPR Co., 107 N.J. 1 (1987).

24. The Board found that the variances could be granted without any negative impact on the zoning ordinance or zone plan. The proposal is aesthetically pleasing, will enhance the Ocean Avenue vista, improves existing conditions and will further protect the property and its critical services from danger of flooding. The new building will be FEMA and building code compliant.

25. The Board found that the granting of the variances will have no substantial detrimental impact on surrounding properties nor will it substantially impair the intent and purpose of the zone plan and zoning ordinance.

24. The Board further finds that the Application does not substantially impair the intent and purpose of the Zone Plan in light of the downtown location and is consistent with

surrounding uses. The Board noted that parking in the downtown is difficult but similar to most downtown areas. Given the downtown conditions and this particular site, it would be impossible to meet all parking requirements. The Applicant is creating both off-street parking and adding new on-street parking. The Board felt that the project would add vibrancy to the downtown and improve current conditions.

NOW THEREFORE BE IT RESOLVED, that the Unified Planning Board of the Borough of Sea Bright, based upon the findings of fact set forth herein, that the variances requested and the site plan be approved subject to the following conditions:

GENERAL CONDITIONS

1. The applicant shall submit proof of payment of all real estate taxes applicable to the property and payment of all outstanding and future fees and escrow charges, posting of all performance guarantees, if any, in connection with the review of this application prior to and subsequent to the approval of this application.
2. The applicant must obtain the approval of all necessary and appropriate governmental agencies and compliance with all governmental regulations, including but not limited to CAFRA, NJDEP, except those specifically waived or modified in this Resolution.
3. The applicant shall comply with all building, FEMA and fire codes including but not limited to, entrances and exits.
4. The accuracy and completeness of the submission statements, exhibits and other testimony filed with or offered to the Board in connection with this application, all of which are incorporated herein by reference and specifically relied by the Board in granting this approval. This condition shall be a continuing condition, which shall be deemed satisfied unless and until the Board determines (on Notice to the applicant) that a breach thereof.
5. All stipulations agreed to on the record, by the applicant.

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

7. The Applicant shall pay to the municipality any and all sums outstanding for fees incurred by the municipality for services rendered by the municipality's professionals for review of the application for development, review and preparation of documents, inspections of improvements and other purposes authorized by the MLUL.

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

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

10. No mechanicals will be located in the setbacks.

SPECIFIC CONDITIONS.

1. Applicant will verify to the Board Engineer that there will be no light spillage onto adjacent residential properties.

2. The parking requirements have assumed Class II retail use with the exception of restaurant use. Restaurant use is permitted provided that the overall parking yield does not exceed the existing parking demand as determined by the Board Engineer. If any use is added that will increase the overall parking requirement, Applicant must seek a variance.

BE IT FURTHER RESOLVED, that this Resolution memorializes the action taken by the Unified Planning Board at its meeting of August 12, 2014.

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

and

BE IT FURTHER RESOLVED that the Board Secretary is hereby authorized and directed to cause a certified copy of this Resolution to be sent to the Applicant, the Borough Clerk, the engineer, tax assessor and the zoning officer and to make same available to all other interested parties and to cause notice of this Resolution to be published in the official newspaper at the Applicant's expense.

Adopted on a roll call on a motion by _____
and
Seconded by _____

Lance Cunningham, Chairman
Sea Bright Planning/Zoning Board

I certify the foregoing to be a true copy of a Resolution by the Sea Bright Planning/Zoning Board memorialized on August 26 , 2014.

Kathy Morris, Secretary
Sea Bright Planning/Zoning Board

6. MEMORIALIZATION OF RESOLUTION:

Boardmember Davis introduced a motion approving the following application.

**RESOLUTION OF THE SEA BRIGHT PLANNING/ZONING BOARD DENYING
AMENDED SITE PLAN AND USE VARIANCE
VICTORY SCUDIERY
150 Ocean Avenue
Block 34 Lots 4, 4.01**

WHEREAS, Victor Scudiery, (the "Applicant") made application to the Planning/Zoning Board of Sea Bright (the "Board") for property known as Block 34, Lots 4 and 4.01 on the

Tax Map of the Borough of Sea Bright, also known as 150 Ocean Avenue for preliminary and final amended site plan and use and bulk variance approval; and

WHEREAS, the Applicant previously received preliminary and final site plan approval to demolish an existing building, as part of a settlement of builder's remedy litigation, retain an existing building and construct 24 apartment units in two residential buildings and a swimming pool. The proposed residential buildings were to be 3 ½ stories and 44 feet in height.

WHEREAS, the prior approved plan limited the use of the existing marina solely for residents of the complex.

WHEREAS, the Applicant seeks to amend the prior approved plan as a result of changes it alleges are required by CAFRA, including the elimination of the pool and addition of 12 boat slips, 20% of which may be restricted to residents of the complex resulting in a use variance to expand the non-conforming marina use.

WHEREAS, Applicant has provided due notice to the public and all surrounding property owners as required by law, has caused notice to be published in the official newspaper in accordance with NJSA 40:55D-1 et seq. and, therefore, this Board has accepted jurisdiction of the application and has conducted a public hearing on the matter at its meeting on January 28, 2014,

at which time all persons having an interest in said application were given an opportunity to be heard; and

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

- A-1 Jurisdictional Packet,
- A-2 2011 Planning Board Resolution,
- A-3 CAFRA letter dated 9-21-12,
- A-4 Engineering plans prepared by Concept Engineering Consultants , John J, Ploskonka, dated 4-26-11, revised to 10-30-13,
- A-5 Aerial photograph
- A-6 Color rendering of sheet 3 of A-4
- A-7 packet of reduced size Exhibit A-5, A-6 and 2 photos
- A-8 T&M review letter dated 1-27-14
- A-9 Architectural Plans - first and second level plans prepared by Bach & Clark, LLC, Architecture, dated 7/23/13 revised to 8/12/13

WHEREAS, the Applicant offered sworn testimony in support of the application by the following:

Daniel Bach, Architect

John J. Ploskonka, P.E. Engineer, Concept Engineering

John Rea, P.E. McDonough and Rea Associates, traffic engineer

James Higgins, Professional Planner

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

1. Applicant is proposing to amend the prior approved plan as a result of changes it alleges are required by CAFRA, including the elimination of the pool and the addition of 12 boat slips, 20% of which may be restricted to residents of the complex, with the remainder open to the public. Under the original approval, the Applicant had stipulated that it was abandoning the commercial marina use and that the slips and marina would only be available for use by the residents of the condominium complex.
2. The Applicant's engineer, John Ploskonka testified that the changes were required by CAFRA. The addition of slips open to the public results in the need for a use variance to expand the non-conforming marina use. This change also gives rise to the need for additional parking. Sixty-one total spaces are required, 49 for the residential use and 12 spaces for the marina use. The application provides for 60 spaces on the main site and 8 additional spaces on the lot across Ocean Avenue on Block 23, lot 134.
3. For background purposes, the Borough of Sea Bright is a Barrier Island, located between the Atlantic Ocean to its East and the Shrewsbury River to its West. The entire Borough is intersected by Ocean Avenue which

also serves as State Highway 36. In northern Sea Bright where the applicant's property is located, the main tracts of property are located on the Shrewsbury River side of State Highway 36. There is however a small strip of land located across the State Highway, adjacent to the Sea Wall, which is also owned by the applicant. It is this smaller lot located across the State Highway on which the Applicant proposed to construct additional parking spaces in order to meet its parking requirements.

4. Due to the fact that State Highway 36 intersects the Borough, the Board has traditionally disfavored allowing parking across the Highway, instead restricting parking in Northern Sea Bright to the main lots located along the River.

5. The Board has grave concerns with the proposed parking lot across the State Highway. As residents of the Borough of Sea Bright, the Board Members are very much familiar with the site location. The applicant's property is located at the foot of the Captain Joseph Azzolina Memorial Bridge, which connects Sea Bright to the Borough of Highlands over the State Highway. The Board Members are well aware of the intensity of the

traffic which crosses the Bridge on a daily basis and how that traffic only increases during the summer months. This is one of the most dangerous access points in the Borough.

6. The Applicant proposed 8 spaces on the lot located across State Highway 36 from its property, though only 1 space was needed to meet the ordinance requirements. The parking configuration on this lot would require vehicles to back out onto the State Highway, which the Board felt was extremely dangerous. The Applicant agreed that it would revise the parking configuration, eliminate some parking spots to provide room for vehicles to u-turn in the lot and avoid backing out onto the State Highway. The Applicant represented that it would confer with the Board engineer in the new design and any re-design would need to meet the Board engineer's approval.

7. The Applicant's traffic engineer, John Rea testified that the on-site traffic flow did not change. He agreed that the parking area across the street could be revised as to the number of spaces and reconfigured to avoid vehicles backing out onto the State Highway. The revised plan would be subject to the Board engineer's approval.

8. The Applicant did not provide any testimony as to how it intended to police the lot across the street from its main site in order to ensure that visitors seeking parking would respect a redesign of the lot that would allow for the making of u-turns upon it. If visitors to the main site found the main parking lot to be full and wished to access the public marina or visit the residential units, they might very well attempt to park across the State Highway in the second lot. Without any plan in place to prevent this from happening, it would likely be impossible to ensure enough room was available for the u-turn now envisioned by the Applicant. This would only lead to vehicles backing out directly into the State Highway, as was called for by the original plans that were submitted.
9. Regardless of whether one (1) parking space or (8) parking spaces were provided on the lot located across the State Highway, the applicant also did not provide any testimony as to how it intended to ensure the safety of visitors to its site who would have no choice but to park in that lot. These individuals would be required to cross State Highway 36 in order to access the site in order to utilize the public marina or gain access to the residential units. Once again, due to the

site's close proximity to the foot of the Captain Joseph Azzolina Memorial Bridge, this raised grave concerns for the Board Members as to the safety of such pedestrians.

10. The Board had concerns regarding the expanded marina use. The Applicant stipulated that the use would be for slip use only, with no boat repair or drydock conducted on the premises. The Applicant did not address how the public aspect of the marina would be operated or managed. The Board had grave concerns with the mixed use of this particular site and the overall intensity of the two uses on the site.
11. John Ploskonka testified that CAFRA also required the elimination of the pool that was included in the original approval.
12. Board members questioned the need for additional boat slips. The Board was concerned that opening the marina to the public and adding 12 additional slips in addition to the 24 residential units increased the intensity of the uses on the site. The Board was concerned that the mix of the uses on this site with its location to the immediate south of the bridge ramp created a dangerous condition, both on-site and in the ingress and egress to and from the site.

13. The Board also expressed concern with the intensity of the two uses, residential and commercial on the one site. The public would be traversing through the residential uses to get to the marina area. The Board felt this was a dangerous condition on the site. The Board questioned, and the Applicant did not address, whether the number of residential units could be reduced, thereby reducing the intensity of the mixed uses and reducing the CAFRA required number of boat slips.
14. Due to the post-Sandy requirement to elevate above the BFE, the proposed residential structures will be higher than as under the previously approved plan. However, due to the change in the Borough height ordinance and the method for calculating height, no variance is required.
15. The Applicant's planner, James Higgins testified as to reasons a use variance was warranted. He stated that the expanded marina promotes the state policy of public use of waterfront properties for recreational purposes. The Board however noted that the originally approved plan already included the marina use for the residents and found no need for an expansion of an additional 12

slips, nearly doubling the size of the current 14 slip marina.

16. Mr. Higgins opined that the expansion of the non-conforming use of the marina was tied to the construction of affordable housing and was therefore an inherently beneficial use. The Board found that the Applicant did not present evidence that the construction of the affordable housing units was conditioned upon nearly doubling the size of the marina and opening it to public use. The Applicant presented no testimony regarding its discussions with CAFRA and/or whether any alternatives were proposed. The Applicant did not involve the Borough or the Board or its professionals in CAFRA discussions. While the Board certainly understood it was obligated to respect CAFRA regulations, it did not believe the Applicant had explored all alternatives with CAFRA that would mitigate the intensity of the site which was now being proposed. For example, the Board questions whether the number of residential units could be reduced, thereby reducing the intensity of the development and also reducing the number of boat slips required by CAFRA. If the number of residential units and boat slips could be reduced, this would also reduce the amount of parking

required for the site, thereby eliminating the need to have any parking located across the State Highway.

17. Mr. Higgins further noted that the proposed mixed use of residential and marina was more compatible with the zoning than the prior marina, restaurant and bar uses. The Board did not agree that this warranted an expansion of the marina from 14 slips to 26 slips and the necessity of creating the dangerous condition of having parking spaces located across a State Highway.
18. Board members expressed concern over nearly doubling the size of the marina which would now be open to the public and felt that the size and configuration of the site was not suited for the increase in intensity of the non-conforming use. The Board felt that the proposed mixed uses of public marina and private residences created a dangerous condition for the residents of the development.
19. Based on the evidence and testimony presented, the Board found that the Applicant did not meet its burden of proof in this matter. The Board found that there was no substantive reason for nearly doubling the number of slips in the previously approved plan, 80% of which would be open to the public. The Board found that the increased density was not warranted and not supported

by the evidence. The Board found the increased intensity of use and the design conflicts between the public marina and residential uses created a dangerous condition.

20. The Board had concerns over public safety and the safety of the residents with the conflicting uses on the site. The introduction of the public use of a nearly double sized marina into the residential complex was not warranted.
21. The Board found that the increased density could not be accommodated on the site. The Applicant has created its own hardship by maintaining the number of residential units. The Applicant could reduce the number of residential units on the site, thereby reducing the need for parking and other variances. This would also reduce the number of additional boat slips required by CAFRA, reducing the intensity of the mixed uses on the site. Accordingly, the Board found that the Applicant had not satisfied the negative criteria. The Applicant has the ability to reduce the overall development on the site to accommodate the mixed uses.
22. The Applicant has not demonstrated that the site is suitable for the proposed mixed use residential and

public marina on this site. The site is proposed to be densely developed with the previously approved residential use. The location of the site makes it difficult to navigate from the river side and difficult to access by vehicles from Ocean Avenue. Increasing the size of the marina and opening it for public use at the level now envisioned, is not suitable on this site given the scope and size of the residential development. Additionally, the parking lot across the street creates dangerous conditions for vehicles and for pedestrians crossing over Ocean Avenue to the main site. Simply put, the Board finds that the Applicant is seeking to overdevelop its property in a manner which is neither safe nor conducive to good zoning and planning.

23. The Board found that there were no special reasons demonstrated by the Applicant which would compel them to exercise their jurisdiction to grant a use variance to the Applicant.

24. Accordingly, the Board finds that the Applicant has failed to meet its burden of proof that the site is particularly suited to this use, that special reasons exist which justify the requested relief, and that the negative criteria have been satisfied. The Board

further found, after hearing all of the evidence presented, that the use variance cannot be granted without substantial detriment to the Zone Plan, to the Master Plan, and to the surrounding neighborhood, and does not promote the general welfare of the citizenry of Sea Bright.

25. Several neighbors spoke in opposition to the application. Neighbors were opposed to utilizing the site for an expanded commercial marina mixed with a large private residential development.
26. After evaluating all of the evidence and testimony the Board found that the applicant has not met the enhanced burden of proof as to the positive and negative criteria as set forth in Medici v. BPR Co., 107 N.J. 1 (1987) or the lesser burden of proof as set forth in NJSA 40:55D-70d(2); Burbridge v. Mine Hill Twp. 117 NJ 376 (1990).
27. The "D" variance relief sought cannot be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance for the reasons set forth above.

NOW, THEREFORE, BE IT RESOLVED by the Planning/Zoning Board

of the Borough of Sea Bright, based on the foregoing findings of fact, that the application for amended preliminary and final site plan and use variance approval be and is hereby denied.

BE IT FURTHER RESOLVED that this Resolution memorializes the action taken by the Planning/Zoning Board at its meeting of January 28, 2014; and

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

BE IT FURTHER RESOLVED that the Board Secretary is hereby authorized and directed to cause a certified copy of this Resolution to be sent to the Applicant, the Borough Clerk, the engineer and the zoning officer and to make same available to all other interested parties and to cause notice of this Resolution to be published in the official newspaper at the Applicant's expense.

I certify the foregoing to be a true copy of a Resolution by the Sea Bright Planning/Zoning Board memorialized on _____, 2014

Kathy Morris, Secretary
Sea Bright Planning/Zoning
Board

Adopted on a roll call on a motion by

and

Seconded by

Lance Cunningham, Chairman
Sea Bright Planning/Zoning
Board

7. NEW BUSINESS

**DONALD MACDONALD
25 VILLAGE ROAD
BLOCK 4.04 LOT 62**

As a result of an apparent discrepancy in the plans (essentially concerning the height of the fire wall as indicated on the approved plans and the actual height of the same), modification to the previously approved plans is now required.

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

- A-1:** Jurisdictional Packet
- A-2:** Letter dated 8-21-13 from Sea Bright Village Condominium Association
- A-3:** Site Plan prepared by Michael Savarese dated 6-19-13 , revised to 7-24-14

Chairman Cunningham had a conflict with this application. Boardmember Marrone was within 200ft of this application.

On October 22, 2013 the Applicant received approval for the demolition of the existing Superstorm Sandy damaged townhouse unit and to construct a new townhouse unit. Within the same footprint. During construction an apparent discrepancy was discovered concerning the height of the fire wall as indicated on the approved plans and the actual height. The Applicant proposed modifications to the structure including removal of the mansard roof rebuilding same so that the top of the mansard roof is below the existing fire wall The new parapet height will be 6' below the fire wall. There will be a modification to the slop of the mansard roof on both the

north and south facing elevations so as to adhere to an 8 inch projections past the party wall. The tower height will be at 35' height.

Construction Official Ed Wheeler explained the history of the project and the height discrepancy and recommended the approval of the revised plans. The condominium association submitted a letter to the Borough advising that it did approve the new plans.

The Board found that the proposed site plan is constant with the neighborhood and pre-existing dwelling

Boardmember Nott introduced a motion approving the Macdonald application. Seconded by Boardmember Cashmore and approved on the following roll call vote.

Ayes: Cashmore, Desio, Nott, Smith, Isoldi-Jany, Beer.

Nays: None.

Abstain: None.

Absent: Davis, Leckstein, Long, McBride.

ADJOURNMENT:

There being no further business before the Planning Board Boardmember Smith made a motion to Adjourn the meeting at 8:40 pm. Seconded by Boardmember Beer and approved on a unanimous vote.

Respectfully Submitted

Kathy Morris
Board Secretary

