

**APPROVED MINUTES  
VIRTUAL MEETING OF THE SEA BRIGHT PLANNING/ZONING BOARD  
TUESDAY, FEBRUARY 9, 2021**

**ADMINISTRATIVE MATTERS**

**Call to Order**

Chairman Cunningham called the meeting to order at 7:31 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 "Senator Byron M. Baer 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, Smith, Gorman

Not Present: Kelly, Leckstein, Schwartz

Also in attendance: Board attorney Kerry E. Higgins, Esq., Board engineer David J. Hoder, PE, PP,CME, and Board secretary Candace B. Mitchell

**Approval of 1/26/21 Minutes**

Vice Chairman David DeSio offered a motion to approve the minutes. Second was offered by Board member Stephen Smith and adopted on the following roll call vote of eligible members:

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

Nays: none

Absent: Kelly, Leckstein, Schwartz

**ITEMS OF BUSINESS**

**Memorialization of Resolution**

**RESOLUTION OF THE SEA BRIGHT UNIFIED PLANNING BOARD  
GRANTING USE VARIANCE AND SITE PLAN APPROVAL  
RE: THE BREAK AT SEA BRIGHT  
1080 OCEAN AVENUE  
BLOCK 15, LOT 3**

**WHEREAS**, The Break at Sea Bright, LLC, proposed developer of the premises commonly known as 1080 Ocean Avenue, Block 15, Lot 3, Sea Bright, New Jersey has applied

to the Unified Planning Board for use variance and site plan approval to construct a 4-story mixed-use building with commercial use on the first floor and residential use above.; 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 October 27,2020, December 8, 2020 and January 26, 2021, 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** Planning Board Application with Zoning Denial, received 10/2/20
- A-2** Jurisdictional Packet, received complete 10/26/20
- A-3** Preliminary and Final Site Plan prepared by Walter Joseph Hopkin, NJPE, LIC. No. 40673, WJH Engineering, dated 10/1/20, five (5) pages
- A-4** Architectural Plans prepared by Daniel M. Condatore, RA, NJ License #21A10798000, Monmouth Ocean Design Experts, dated 10/1/20, eight (8) sheets
- A-5** Architectural Plans prepared by Daniel M. Condatore, RA, NJ License #21A10798000, Monmouth Ocean Design Experts, dated 10/1/20, eight (8) sheets
- A-6** Architectural Plans Update Narrative, dated 10-21-20, three (3) pages
- A-7** Phase 1 Environmental Site Assessment prepared by Tulmark, LLC Geothermal & Environmental Services, dated 1/5/18, thirty-six (36) pages
- A-8** Stormwater Management Statement prepared by Walter Joseph Hopkin, NJPE, LIC. No. 40673, WJH Engineering, WJH Engineering, dated 10/1/20 two (2) pages
- A-9** Bureau of Fire Safety Plan Review and Comments prepared by Tomas K. Haege, Fire Official, dated 10/6/20, one (1) page
- A-10** Board Engineer First Technical Review prepared by David J. Hoder, P.E., P.P., C.M.E., Hoder Associates, dated 10/21/20, five (5) pages
- A-11** Board Planner First Technical Review prepared by Christine A. Nazzaro-Coffone, AICP, PP, Cofone Consulting Group, LLC, dated 10/22/20, six (6) pages
- A-12** Aerial Photo of site and surrounding blocks
- A-13** Aerial Photo – close-up of site/vacant lot
- A-14** Aerial Photo – side by side photos of site 11/12 and 4/13
- A-15** Street view/empty lot
- A-16** Street view with rendering of proposed building
- A-17** Street view/vacant lot
- A-18** Street view with rendering of proposed building
- A-19** Street view/vacant lot at night
- A-20** Street view with rendering of proposed building and lighting accents at night
- A-21** Preliminary and Final Site Plan prepared by Walter Joseph Hopkin, NJPE, LIC. No. 40673, WJH Engineering, dated 10/1/20, revised to 11/23/20, consisting of 5 sheets

**A-22** Architectural Plans prepared by Daniel M. Condatore, RA, NJ License #21A10798000, Monmouth Ocean Design Experts, dated 10/1/20 and revised to 10/13/20, 10 sheets

**A-23** Board Engineer Second Technical Review prepared by David J. Hoder, P.E., P.P., C.M.E., Hoder Associates, dated 12/7/20, five (5) pages

**A-24** Board Planner Second Technical Review, prepared by Christine Nazzaro-Cofone, AICP, PP, Cofone Consulting Group, LLC, dated 12/8/20, six (6) pages

**A-25** Board Planner's 3<sup>rd</sup> Technical Review, 1/5/21

**A-26** Board Engineer's 3<sup>rd</sup> Technical Review, 1/18/21

**A-27** Building Height Study, 11/5/20

**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 The Break at Sea Bright, LLC, members of which include Fuller Brooks, Luke Rudowsky, Matt Brady, Joe Caiola, Sean Lowery and Kevin Huddy.

2. The applicant's final proposal, after listening to concerns of the Board during public meetings, is to construct one building with parking on the ground level, commercial on the first floor and 6 residential units on the three floors above, for a total of 4 floors. Vehicle access will be from River Street.

The property is located in the FIRM Flood Zone AE with a minimum elevation of AE zone with a BFE of 9. Any buildings shall have the lowest horizontal structural member including basement, together with attendant utility and sanitary facilities, mechanical equipment, built to a minimum of three feet above the base flood elevation (elevation 12).

3. The property is located at the South East corner of Ocean Avenue and River Street in the center of town. The site has 55 feet of frontage on Ocean Avenue and 85 feet of frontage on River Street and is in the B-1 zone. It is an empty lot.

The applicant initial proposal was to construct one building with parking on the first floor, commercial on the second floor and 6 residential units on the three floors above, for a total of 5 floors. Vehicle access will be from River Street.

The Applicant made several changes during the course of the Application, in response to Board and public comment. These changes include:

- Trash room has been relocated to the ground floor.

- Parking spaces have been reduced from 13 to 12.
- Resident storage has been reconfigured to the end of the hallway.
- Retail has designated 60 person max. Occupancy limit.
- Residential bulkhead for roof access has been redesigned as a skylight access hatch.
- Roof deck railing has been modified from a cable railing to a glass railing.
- Roof deck pergolas have been removed.
- Roof parapet has been removed.
- Parking level has been aligned with the street level, reducing the height by 6 in.
- The roof skylight access hatch only extends 4'-7" above the roof, in lieu of the 10'-0" bulkhead.
- Additional sheet to show the design of the roof access hatch.
- Additional sheet with reference images for the design of the Break.

4. A "d" variance is required for the proposed building height. The applicant is requesting a height of 49.6 feet which is over 10% above the maximum height of 42 feet which is contrary to MLUL Section 40:55D-70.1d6.

5. Bulk variances are required as follows:

Item	Required	Provided
Min. Lot Area (sq. feet)	3,000 SF	4,675 SF
Min. Lot Width (feet)	50 Ft	55 Ft
Min. Lot Depth (feet)	60 Ft	85 Ft
Min. Front Yard Setback	0 Ft	0 Ft
Min. Side Yard Setback (feet)	0 Ft	0 Ft
Min. Combined Side Yard Setback (feet)	0 Ft	0 Ft
Min. Rear Yard Setback (feet)	15 Ft	0 Ft
Minimum Gross Floor Area	880 SF	2,800 SF
Max. Building Coverage	50 %	97.0%
Max. Lot Coverage	75 %	97.0%
Max. Building Height (feet/Stories)	42 Ft. / 3 Stories	49.6 Ft. / 4 Stories

6. Additionally, a parking variance/waiver is required as follows:

Parking Table		
Item	Requirement	Provided
2 bed room residence (6 each)	12	12
2800 SF Retail or restaurant (60 occupants plus 8 employees)	28	0

(1 space per 3 of  
occupancy plus 1 per  
employee)

Total 40 12

7. The Managing Member Fuller "Trip" Brooks described the concept for the Board. He noted that the commercial use needs to be above grade. He stated that they looked at the Rooney building when designing this proposed building.

8. The Architect, Daniel Condatore described the proposed building. He stated that the tried to achieve a modern/coastal style building with a balanced pedestrian experience. The retail will be 8' from the sidewalk. The building is stepped back to reduce the mass and appearance.

He noted that the plans were revised in response to Board and public comments and concerns. The trash room was moved from its original location to the garage level. This will reduce parking from 13 to 12 spaces. On the retail level, the trash room was removed and residential storage was provided.

9. Mr. Condatore noted that the retail space contained 2652 sq. ft. The Board had expressed concerns about the retail space being used for restaurant or other type of use and how that would affect parking. The Applicant **STIPULATED** that the occupancy for the retail level would be set at 60 persons. This occupancy load will be a part of the building permit, certificate of occupancy and will be posted.

10. Condatore testified that the roof deck level had been changed in response to Board and public comments. The pergola which had been 9' above the rood has been eliminated. The guard rail has been changed to a clear tempered glass. He removed the screening wall and replaced same with a 48' dividing screen.

Instead of the stairwell tower, they have designed a roof skylight hatch will rise only 4'7" above the roof, rather than the 9' for the stair tower.

There will be a 48" screen around the mechanicals. The revised plans removed the 2' parapet so the roof will be flat to the edge.

11. The architect testified that the highest protrusion on the roof is the elevator overrun at 4'9". The building was set down an additional 6". There will be a 9' and 14' setback to the glass railings.

The Applicant presented a height study of buildings in the downtown area, which was marked as A-27. The Board found this very helpful. The top of the Bain building's roof edge is

at 40' where the proposed is at 49.6'. The height difference will not be visible or appreciated from street level. Buildings with similar roof lines include Rooney Building, the Firehouse and Pavilion.

Additionally, the top floor has been set back 12' from Ocean Avenue and from the Bain building so that the subject building will not be overbearing on the streetscape.

The Board applauded the architectural design and changes made to meet Board and public concerns. The Board found that the proposed building is well-suited for this site. The Board was pleased with the changes made to the roof level.

12. In reviewing the appearance, the Board requested and the Applicant STIPULATED that the glass panels on the retail level would be extended another 9' to the West on River Road. The Board felt this would make the building more open looking.

13. Walter Hopkin, P.E. described the site plan. He noted that the BFE is 9' plus 3' to the underside of the structure. The sets the floor at a 10' minimum above grade, leading to the need for the height variance.

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 could be allowed which would affect parking. In response the Applicant STIPULATED to the 60 person load occupancy for the commercial floor.

14. Hopkin stated that the parking provided meets the residential needs, but that there is no parking for the commercial. He also described the bulk variances and the conditions giving rise to same. The Board noted that the revised plans lowered the proposed height from 52.5' to 49.6'.

15. Andrew Janiw testified as a Professional Planner on behalf of the Applicant. He noted that the design of the building was stepped in at the higher floors to reduce the mass of the building. He stated the design features added dimension to building.

As to the "D" height variance, same is necessary to accommodate the residential component. The mixed-use building with residential on upper floors is consistent with the goals and objectives of the Master Plan. The intent of the zone plan for the downtown area is to attract a mix of business and residential, with business on the first floor.

The height variance is necessitated in part by the BFE and flood requirements as previously stated. Mr. Janiw noted that the proposed building was consistent with the eye perception in the neighborhood.

16. Christine Nazzaro Cofone, AICP/PP submitted review reports marked as A-11, A-24 and A-25. She noted that the Sea Bright “Downtown & Oceanfront Smart Growth Plan proposed to retain and “spur more commercial vitality” along Ocean Avenue, while simultaneously encouraging higher density residential development. Moreover, the Sea Bright Recovery Plan after Superstorm Sandy noted that Sea Bright suffered a decline in economic vitality due to the storm and recommended an “attractive and vibrant business district” to draw residents and visitors alike to shop, eat, drink and spend time enjoying the area.

The Board found that the proposed development promoted the goals and objectives of these plans.

The bulk variances were consistent with the development in the downtown area.

17. The Board found 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;

The Board noted that the applicant proposes to activate an overall property that is a pivotal property in the downtown, is currently 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 Bright’s future.

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

The new development will be FEMA compliant.

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

The Board noted that with the changes, the building was airy and not overbearing on the streetscape.

d. 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 Board found that the property has sufficient space to accommodate the use and that adequate light, air, and open space will continue. While bulk variances are required and a D variance for height, the proposal is consistent with the character of the downtown area.

e. 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 Board noted that the parking area has been designed to accommodate safe vehicular flow, as testified by the engineer.

While parking is deficient, there is easily accessible public parking nearby. Parking is provided for the residential component of the development.

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

The Board noted that 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 Superstorm Sandy.

The height is appropriate given the surroundings (architectural/operation reasons).

For the foregoing reasons, the Board 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, Mr. Janiw testified that the proposal will present no substantial detriment to the public good. He noted that the applicant proposes a complete upgrade of the subject property, which is currently vacant. He stated that the use is clearly appropriate for the location.

He noted and the Board agreed 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, the Board found that there will be no substantial detriment associated with the proposed mixed commercial and residential use building with "D" height and bulk variances.

20. The Board also concurred with Mr. Janiw'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.



Mr. Janiw 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.

21. The Sea Bright 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.”

“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 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. 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.

26. 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 off-street parking for the residential use. 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. The commercial space shall be limited to an occupancy load of 60 persons. This will be a part of the permits issued, the certificate of occupancy and shall be posted in the building.

2. The glass panels on the commercial floor shall be extended by adding another 3 panels to the west on the River Street side.

**BE IT FURTHER RESOLVED**, that this Resolution memorializes the action taken by the Unified Planning Board at its meeting of January 26, 2021.

**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 Stephen Cashmore  
and Seconded by Elizabeth DeGiulio

Roll call vote:

Bills - Aye, Cashmore – Aye, Cunningham – Aye, DeGiulio – Aye, DeSio – Aye,  
Kelly – Absent, Leckstein – Absent, Smith - Aye, Gorman – Aye, Schwartz - Absent

C. Lance Cunningham

C. 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 February 9, 2021.

Candace B. Mitchell

Candace Mitchell, Secretary  
Sea Bright Planning/Zoning Board

**Capital Review**

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

Correspondence was received today, February 9, 2021, from Attorney Judith Fairweather requesting the Capital Review be carried to the meeting of March 9, 2021. Chairman Cunningham announced the matter will be carried to March 9, 2021. No public notice is required.

**New Application**

PBZB 2021-01  
Edgewater Beach and Cabana Club  
1465 Ocean Avenue, Bl. 4, L. 6  
Construction of a Sun Deck  
Site Plan approval; variances for size of deck; CAFRA approval

In attendance for the application were attorney Patrick McNamara, Esq., architect Michael J. Monroe, professional planner Paul Phillips, and President of Edgewater Beach and Cabana Club Gary Vialonga.

Board attorney Kerry Higgins stated that she had reviewed the service packet, and the Board is able to take jurisdiction over the application.

Attorney Higgins entered the following exhibits into evidence:

A-1 Jurisdictional Packet

A-2 CAFRA Permit Approval, dated 9/2/20

A-3 CAFRA Permit Plan, prepared by Mark E. Zelina, N.J.P.E., Lic. # GE31650, dated 3/2/18, rev. to 12/11/19, sheet No. 1 (of 2 sheets)

A-4 Application, filed 1/21/21

A-5 Zoning Denial, dated 12/10/20

A-6 Preliminary/Final Minor Site Plan, prepared by Michael James Monroe, Architect, N.J. Lic.-10814, dated 12/11/20, 3 sheets

A-7 Board Engineer's Technical Review, dated 2/5/21, 3 pages

Mr. McNamara introduced the application for Preliminary and Final Minor Site Plan approval to construct a 28' x 230' seawall deck where 20' x 6' is permitted. The property is located in the FIRM Flood Zone AE and VE zones. The CAFRA permit was included in the application which includes the deck and other items previously approved by the Board.

The property is located in the south section of Sea Bright between Ocean Avenue and the Atlantic Ocean. It is in the B-3 zone. The site contains a beach club and its amenities and has 688.5 feet of frontage on Ocean Avenue.

Architect Michael Monroe was sworn in to testify on behalf of the applicant. He described the proposed structure as a concrete structure that will sit entirely on the sea wall, which is on the subject property. The deck will cantilever over both sides and will be heavy enough to resist being knocked off by wind. There is no land disturbance. There will be no change in impervious coverage. The structure will have trex decking to look like a boardwalk. An additional set of stairs will be provided at the end.

The deck is being proposed in order to create open use for people at the club to enjoy. The sea wall protects the pool and clubhouse, but, when you're on the lower level of the facility, you can't see the ocean at all. So, the boardwalk will give a nice way to enjoy the ocean. It also allows people to spread out and not be congested in one area. It will be an attractive amenity without having any real negative impact. There will be no change in use or number of people using the facility and no change in parking.

The structure is being constructed on private property. The openings are on private property; so, there is no public use of the sea wall now on the property. There will be no change of use. Chairman Cunningham confirmed that there is really no access to the deck from the seawall.

Board member Peggy Bills asked whether there will be a ramp for handicapped access up to the deck. Mr. Monroe answered that there is not a ramp proposed. There is about a 12'

elevation difference. The ramp required would have to be about 150' long to get that high. It would be daunting. Ms. Bills asked whether a ramp has to be provided. That is something they would take up with the building department. It would be less expensive to provide an outdoor lift, similar to what you would have at a public swimming pool. There are other handicapped accessible areas in the facility. According to the ADA you can provide different facilities that are accessible, and not every part of a facility is required to be accessible. They will comply with the building department's interpretation of the ADA.

Board engineer David Hoder asked about proposed lighting – the nature of the lights and what intensity are they. The lighting will look like a boardwalk type of aesthetic. It will be shielded night-sky rated and will have a maximum average of 0000'4 foot candles, Mr. Monroe confirmed for Mr. Hoder. They don't have a super high fixture; so, the key is to avoid hotspots.

Chairman Cunningham asked whether there were any other questions or comments from the Board. Then, he opened the meeting to the public.

Erwin Bieber of 12 Tradewinds Lane stated that Edgewater had committed to having a public access way with the stairs on both sides. Mr. Monroe stated that they will fully comply with the CAFRA permit. If it states there are stairs on both sides, and it was not shown on the plans, it was an error and will be complied with.

Mr. Bieber questioned how a private structure can be built over a public structure. Mr. Monroe answered that they had already gotten comments back from the Army Corps of Engineers, and the Army Corps didn't have a problem with what is proposed. They requested that there would be no drilling into the rock, and it was agreed to. They have increased the weight of the structure so that it will not need to be attached to the rocks.

Gary Vialonga, President of Edgewater, testified that the design of the deck is completely in accordance with the CAFRA permit and that the current public access to the Trade Winds will not be affected. Where Mr. Bieber lives, Mr. Vialonga believes it is a staircase that goes over the wall. There is a break, an opening in the wall that the beach runs right up to the foot of the cabanas, and there is no public access provided, nor was that a condition of the CAFRA permit. Mr. Vialonga stated that the town Council originally had some concerns about the deck, and the plans were resubmitted. The Council rescinded their objection to the deck. Mr. Bieber's concerns were addressed at that time. The deck is designed in accordance with the CAFRA requirements. The permit does not require Edgewater to be responsible for removing the deck if the sea wall ever has to be repaired. The sea wall is on Edgewater's property. It is an easement.

Mr. Bieber then had a question about item no. 8 on the CAFRA permit. He said that during their conversations with the DEP, because of violations by Edgewater against CAFRA permits, they specifically got to the issue of public access. The Trade Winds community does have public access. It was deemed essential in order to get the permits to build, and, during the discussion with DEP, they stated it would be mandated that public access would be provided through Edgewater in order to get to the beach. Mr. Vialonga answered that the access Mr. Bieber is talking about was a settlement with the DEP that provides access parallel to the ocean, up to the mean water line, and, every year, Edgewater goes out and

posts the area in which people are not permitted to come up on the beach. That is what the access is, not access over Edgewater's wall or into Edgewater's private property. There is no access. He stated that Mr. Bieber is mistaken about his interpretation of no. 8 on the CAFRA permit. Mr. Bieber answered that he understood Mr. Vialonga's point and will research it further, because this point was specifically talked about with DEP. That area that runs right between Edgewater and Driftwood, that pathway which is intended to be public access, has no stairs to get over the wall. Mr. Vialonga answered that is not on Edgewater's property. Mr. Bieber stated that during the discussion with DEP it was indicated that a stair would be put there for the purpose of public access. Mr. Vialonga stated it is not in their permit, and it is not on their property.

Mr. Vialonga answered one last concern of Mr. Bieber's - that the seawall sits on Edgewater's property and the State of New Jersey has jurisdiction over what happens on it.

Chairman Cunningham added that during the original, first beach replenishment project there were many, many easements signed throughout the Borough of Sea Bright.

Board attorney Higgins clarified that, after reading the permit, this project is not going to interfere with the already existing public access easement set, as Mr. Bieber was referring to earlier. The public access is not going to be impacted by this project.

Board member Stephen Cashmore asked whether he could ask a question of the architect. What is the finish on the west side of the wall, the beach club side of the wall? What is the finish on the ground alongside there? Mr. Monroe stated that he believes it is patio. Mr. Cashmore stated that, where you have the concrete beam, it looks like it is very even with the bottom of the sea wall. He suggested that it becomes a hazard for anyone on that patio. It should be brought back closer to the inclined part of the wall so that people won't be walking into it. Mr. Monroe stated that he thinks it is going to be 10' above the walking area. They can stipulate that there will be no hazards less than 7'. It would be a minimum of 7' clear under any cantilever in concrete. Mr. Cashmore stated that he would be more comfortable with 8'. Mr. Monroe said it is going to be closer to 8'. Mr. Cashmore suggested 8' should be stipulated.

Mr. Cashmore also suggested that the matter of handicapped access to the deck should be revisited. He thinks it would be good business. If you have a deck this size on the sea wall, and you have senior members, members with handicaps, and guests with handicaps, they will be denied use of the deck. That would not sit well with members of the community that are affected with handicapped restrictions. Mr. McNamara stated that the applicant will certainly take that into consideration going forward.

Chairman Cunningham asked whether the deck will be used for public events. Mr. Vialonga answered that the deck is intended to be used by the members. It is really just an extension of the patio.

Licensed professional planner Paul Phillips was sworn in to testify regarding his analysis of the part of the ordinance for which bulk variance relief is being sought and the waiver of site plan requirement. He described the variance sought as being technical in nature because relief is actually in relation to a specification, which is where the sea wall stairs is

intended to regulate sort of pedestrian access over the sea wall. There is no specific provision which mentions residential stairs as part of that provision and is not what the applicant is proposing. The specification places limits on the associated platform area atop the sea wall, again, associated with the stairs. In particular, the platform area cannot have more than a maximum of 20' in the north-south direction. The application obviously does not comply with this standard as it is 230' in length. From the standpoint of the two C variances, the application will advance the purpose of the statute to provide sufficient space for a variety of recreational uses, in this case, and the statute says both public and private uses meet the needs of the citizens of the state.

With regard to the negative criteria, Mr. Phillips stated that, first, he saw no substantial detriment to the public good or to the zone plan. Second, the deck is being proposed on private property and does not impede any existing public access to the beach. Third, the applicants have obtained a CAFRA permit from the DEP for the construction. Fourth, there are no other changes proposed to the club as part of this application. The deck is not going to be visible from Ocean Avenue. He stated that he doesn't see any adverse impacts associated with the Driftwood property to the south. There are also intervening structures on the Edgewater premises so that conceivable impacts would be negligible at best. He stated that he believes there is a legitimate planning basis to grant the approvals without substantial detriment to the public good of substantial impairment of the zone plan.

There were no questions for Mr. Phillips from the Board members.

Mr. Cunningham asked whether anyone in the public had any questions about the witnesses' testimony or a statement about the project.

Erwin Bieber asked for clarification on the crossover structure-end of the proposed sundeck. He wanted to know what the crossover structure is. When he met with the DEP, the DEP said the Edgewater intended to have a crossover stair, and they committed to doing that. Ms. Higgins stated that Mr. Bieber is right, that the language is not very clear, because they are talking about a crossover structure. It does imply there is a staircase, but it doesn't imply public access to the deck. Vice Chairman Dave DeSio added that there is a staircase on one side of the wall, and you cross over by going back down another staircase. I don't think there's any public access. Mr. Bieber repeated that, in fact, in conversations with the DEP, they said that Edgewater committed to do it, whether or not that's true. Mr. Cunningham clarified that, if they require Edgewater to supply public access, it doesn't necessarily mean it has to be on this deck. Mr. Vialonga added that he thinks the section of the permit that Mr. Bieber is mentioning is simply a reference to acknowledge that if the sea wall has to be repaired, or maintained, that they clearly have the ability to do so, and Edgewater agreed to that in the permit. As far as the crossover, that is the stairway up and over onto the deck, and Edgewater is complying with the permit in its entirety. Ms. Higgins stated that the beach club must provide public access in accordance with the consent judgement, and the existing access points shall be maintained. The Board does not have jurisdiction to say what it is, but, certainly, if Edgewater is not doing what it is supposed to do, then CAFRE is going to come after them. Mr. Bieber thanked Ms. Higgins. Ms. Higgins added that whatever the CAFRA permit says, this Board can't really interpret it. She said that she does think there is a crossover and that they are putting in those stairs. Mr. Bieber



is just saying it is not public access. Ms. Higgins answered that whatever public access was required, under consent judgement, they've got to continue.

Mr. Cunningham added that, "the public access doesn't start at their private pool. He is interested in some additional public access so that everybody doesn't go through Tradewinds. That seems to be the point here. The point I am making is that one complete side of this is their private pool area, and you can't expect any public access crossover from their pool to the beach. I think we're looking at a separate issue."

Ms. Higgins stated that the easement Mr. Bieber is talking about is in the gap that doesn't have a crossover, that maybe they agreed to put one, and that's not the Board's jurisdiction. If approval is granted, it will be subject to CAFRA.

Mr. DeSio wanted to know whether the applicant is going to stipulate that there be no permanent structures added to the deck. Otherwise, he stated he has no problem with what they are proposing. Mr. Vialonga responded that they are specifically not putting any benches or other improvements there other than rails and attaching anything that would be put up and is removable. Mr. DeSio stated that he was satisfied with that answer and thinks this is a good improvement to the beach club.

Ms. Higgins went through the variances required under the borough's ordinance. The deck cannot be more than 20' x 6'. The application proposes a deck that is 230' x 28'. They have stipulated that the lighting will be shielded night-sky rated fixtures rated under 0004' foot candles. There will be a minimum of 8' clearance below any concrete cantilever or beam. No permanent structures will be added to the deck. Ms. Higgins asked whether the Board would like to make handicapped accessibility to the deck a stipulation. Mr. Vialonga responded that they had looked at this a bit, and it is a big investment. They would respectfully request that it is not a condition of approval. We do have a couple of members who are disabled, and we accommodate them in every way we can. We do comply with the ADA. Board member Peggy Bills stated that the beach club is accountable to its own members and to ADA. She doesn't think it should be made a condition. Mr. Cashmore stated that he thinks it is not for the Planning Board to make it a requirement. Ms. Higgins continued that the project will be subject to CAFRA and to any applicable building code.

Mr. DeSio offered a motion to approve the application, seconded by Ms. Bills, and carried on the following roll call vote:

Ayes: Bills, Cashmore, Cunningham, DeSio, Smith, Gorman

Nays: DeGiulio

Abstain: None

Absent: Kelly, Leckstein, Schwartz

## **CLOSING MATTERS**

### **Meeting Announcement**

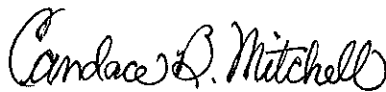
There being no other business before the Board and no general public comments, the Chairman announced the next regular meeting of the Planning Board is scheduled for February 23, 2021 at 7:30 p.m.

Kerry Higgins announced that this evening's meeting could very well be her last. She may be going to the state Senate on Thursday, February 18<sup>th</sup> for confirmation as a state Judge. Ms. Higgins stated the following, "If so, it's my last official, and I will thank every one of you, it's been a real pleasure to work with. Everyone loves Seabright, and this Board is one of the best boards I've ever worked with, and even though the faces have changed, it's always been filled with people who really, truly care about Seabright, and do the right thing."

**Adjournment**

The meeting was adjourned at 8:37 p.m. on a motion offered by Ms. Bills, a second offered by Ms. DeGiulio, and approval upon a unanimous voice vote by the Board members.

Respectfully submitted,



Candace B. Mitchell  
Board Secretary