

**APPROVED MINUTES
VIRTUAL MEETING OF THE SEA BRIGHT PLANNING/ZONING BOARD
TUESDAY, MAY 11, 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 Planner Justin Auciello

Board Secretary Candace B. Mitchell

BOARD BUSINESS

Approval of 4/27/21 Meeting Minutes

Board member David DeSio 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, Smith

Nays: none

PB Application 2021- 07, carried from 4/27/21

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
- Letter to Chairman and Board from Rick Brodsky, Esq., Amendment to Application, dated 5/10/21
- 2020/2021 Seasonal Lease Agreement For The Use Of Municipal Property – Surf Camp, dated 7/22/20
- Resolution No. 101-2020, Consideration of Award Lease Agreement For Surf Camp, dated 4/7/20,
- Notice to Bidders, dated 4/3/20
- Council Workshop Meeting Minutes, dated 2/13/20

Board attorney Monica C. Kowalski, Esq. stated that this evening's hearing is a continuation of the April 27th hearing on the Sea Bright Surf School, LLC. On May 10th, the applicant's attorney, Rick Brodsky, submitted documentation which amends the application. The application was for two D variances, one variance to permit Surf School parking in the CP zone where no commercial use is permitted, and the other to allow Surf School customer parking where only property owners are permitted to park their vehicles. The second portion, with regard to customer parking, has been withdrawn. The parking shall be limited to surf instructors only. In conjunction with the discussion held at the prior meeting, the actual access by the Surf School to the public beach shall be by virtue of the existing public access located adjacent to the Beach Walk Hotel, with access approximately 200' north of the subject property. With these amendments the application now conforms to the terms of the lease agreement that was entered into. Therefore, discussion of where the school is going to be located on the beach is not up for discussion. What is up for discussion is whether or not parking is permitted for the surf instructors only. The Board is considering the remaining portion of the lease, which is for the 2021 season.

After discussion regarding whether former Councilman, Jon Schwartz, who is now a member of the Planning/Zoning Board, should recuse himself from hearing this application, considering he was a Borough Councilman when Council awarded the bid and offered the lease to the applicant's surf school, the Board attorney decided that Mr. Schwartz's participation presents a conflict, and he should step down.

Board member Marc Leckstein, Esq., who is a member of Council, stepped down because this application includes a request for use variance relief, and the Councilman is not eligible to participate. Councilman Leckstein, as well as other members of the Board with conflict, muted their microphones and turned their videos off to avoid any appearance of impropriety, as is customary and appropriate when ineligible by election, or in conflict.

Board member Cashmore asked for clarification as to the time frame on the Board's approval if granted. Ms. Kowalski explained that the approval would be a conditional use variance in the sense that approval would run with the lease agreement. If Council decides to renew the surf school's contract for another two years, and the Board determines that the use variance approval follows the surf school, then the surf school would not have to come back to the Board for this approval again.

Applicant attorney Rick Brodsky stated that, as Ms. Kowalski discussed, the application has been amended. Only automobiles owned by surf school instructors will park at the two lots involved. That amendment to the application was filed and is on the record. He added, as Ms. Kowalski had stated, that is all that is before the Board this evening as part of this hearing. Mr. Brodsky summarized the events of the last meeting. There was extensive testimony by the applicant/owner, Melissa D'Anna, and by the applicant's professional planner, Gordon Gemma. There was a lot of public interest in this application at the first hearing, as there is at this meeting. Mr. Brodsky said he wanted to finish the direct case as quickly as possible so that members of the public and Board members can have the benefit of public comment.

Mr. Brodsky stated that, in addition to the amendment, he had also filed for presentation to the Board a copy of the minutes of the Council Workshop meeting held on February 13, 2020, in which Council discussed lowering the minimum bid for Surf Camp since the camp is located in north beach and the surf camp will not receive any amenities from the town. He stated that the issue of the location and the permission of the camp to operate on the north beach area is not up for discussion, as Ms. Kowalski had indicated. In the Council Workshop meeting minutes, Council acknowledged the operation of the camp in the north beach area. The acknowledgement came up in the context that the camp was not utilizing any municipality parking and was sent to find parking in the north beach area on its own. Mr. Brodsky asked the Board to keep in mind that the nature of the relief here is solely and exclusively with respect to parking, and they are talking about parking for a few cars for surf school instructors, who are there to teach surfing to children for a few days a week, for a few hours a day, and for a few months of the year.

Mr. Brodsky expressed his wish that this evening's meeting would progress in accordance with protocols and procedures, as compared with the first hearing, when the hearing got a little out of hand with objectors making statements when they were supposed to ask questions. People were interrupting and chiming in. There are a number of members of the public who wish to speak. Also, Police Chief Friedman is planning to testify.

Ms. Kowalski suggested that, with regard to the amendment filed, Mr. Gemma may be questioned.

Mr. Gemma, the planner, was called to testify. He remained sworn in from the first hearing. Mr. Brodsky asked Mr. Gemma whether the amendment that was filed changes his testimony in any way from the first hearing's testimony. Mr. Gemma answered that the amendment reinforces his opinion about the particular suitability of the site. Similarly, he stated, the amendment reinforces his opinion about the usability of the north beach, given that this was the area intended by the Council in the context of the lease. Mr. Gemma said that the Council meeting minutes also go to an earlier concern about who owns the beach. Council could only give the lease for the municipal portion of the beach. They couldn't give the lease for a portion of the beach that the town didn't own or have rights over. The amendment provides access that is particularly suitable. Mr. Brodsky asked Mr. Gemma whether his testimony tonight strengthens the testimony he gave last time regarding the positive and negative criteria. Mr. Gemma stated that it does.

Before the meeting was opened to Board questions, Mr. Brodsky asked Mr. Gemma to reiterate, for Board member Dave DeSio, the number of parking spaces that will not be exceeded in the lots. Mr. Gemma stated that the number of spaces will not exceed 10, though the space could accommodate up to 18 spaces. Mr. Brodsky also asked Mr. Gemma to clarify for the record the answer to a question asked by Board member Stephen Cashmore, who had asked whether the variances were being granted for as long as the applicant is awarded the rights to operate the surf camp. Mr. Gemma stated that Mr. Brodsky was correct. It would. He added that if the surf camp changed location, he would suggest vacating the variance. Mr. Cashmore stated that he would like to have it

made a condition of approval that the variance relief will follow this location. If the surf camp relocates, then the variance is vacated.

The meeting was opened to members of the public for questions regarding the planner's testimony.

Charlie Rooney, 196 Ocean Avenue, was sworn in to testify. Ms Kowalski determined at this hearing, and had not known for the first hearing, that Mr. Rooney had been a member of Council through 2020 and had voted to award the surf school bid and lease to Ms. D'Anna. Because Mr. Rooney is still within his one-year conflict period for purposes of municipal officials, he should not make comments on this application. Ms. Kowalski expressed her appreciation for Mr. Rooney's cooperation. She further explained to the Board that, to protect the interests of the Board, the appearance of impropriety in this particular application has to be avoided.

Mr. Brodsky requested of the Chairman that the meeting move along. Mr. Brodsky stated that he knows certain members of the public had contacted Mr. Cunningham outside of the meeting. People have called and spoken about this application with Mr. Cunningham. Tonight, the Board members would be hearing from people with whom Mr. Cunningham hadn't spoken. Vice Chairman DeSio said that he would like to hear from people who are directly affected by the surf school operation. Chairman Cunningham reminded everyone that now is the time for the Board to hear questions regarding Mr. Gemma's testimony.

Janice DeMarco, 406 Ocean Avenue, remained sworn in from the first hearing. She stated that she is within 200 feet of the subject lots. She would like to know what plan has been made to monitor the parking to make sure the maximum number of cars will be 10 and that the only people who will be parking in the lots are the people who work for the camp. Mr. Gemma answered that the applicant had testified at the first hearing that there would be a monitor for parking at the site who will make sure only instructors will park there and no more than 10 vehicles at a time in the lots. Ms. DeMarco asked for verification that the monitor would be in the lots from when the first child is dropped off until the last child has been picked up and all the teachers have left. Mr. Gemma stated there would be someone there to monitor the parking for that period of time. Ms. DeMarco also asked where they will be parking on the weekend. Mr. Gemma answered there would not be adult lessons at this site on the weekend. Mr. Gemma stated there may be lessons at other sites on the weekend. The applicant has made clear that there will be no parking at this site on weekends or on holidays. Mr. Brodsky added that no one will be parking at the site for private lessons. The parking lots are to be used for dropping off campers and for instructor parking.

Board member Peggy Bills asked whether the Chief of Police was going to make recommendations.

Brett Friedman, the Police Chief, was sworn in to testify. Chief Friedman stated that he had taken a ride to the site with Chairman Cunningham to look at the parking, and they had determined there wasn't an issue there. He stated that the Police Department has never received a call or complaint about the surf school. Ms. Kowalski asked whether the Chief was aware that the application has been amended just for surf instructor access. The Chief stated that they have no problem at all and didn't realize there was an issue. The school has been great to the community and great for the area, and it has never been a problem at all. Peggy Bills asked whether, for verification, that there have been no issues of complaints and no issues of safety. Chief Friedman stated that is right. He invited Ms. Bills to take a look at the site with him.

Chairman Cunningham opened the meeting to members of the public for general questions and comments.

Christopher Capillo, 370 Ocean Avenue, had previously, at this meeting, been sworn in to testify. He stated that he has lived here for over twenty years and knows that the kids at Melissa's camp clean up the beach and take care of everything. He stated that, to him, the situation is a very simple one. It is comes down to safety. They have already been approved at the beach, and this is about dropping kids off. He said he didn't understand why there was such a big push to knock this down. Mr. Cunningham answered Mr. Capillo that the Board is listening to testimony and is not pushing to knock anything down. The application is for a huge variance in the CP zone.

Mr. Capillo stated that if the Board does not approve this application, people are going to be walking across the street carrying surfboards, because the business on the beach has already been approved. Ms. Kowalski then explained that, as she had stated at the beginning of the meeting, the applicant has actually amended the application so that all public access will be done at the public gated access and not through this particular property. There won't be campers walking across the street for this particular access. There will be up to seven instructors who will be accessing the beach through the private area, while the rest of the public have to access in accordance with the terms of the lease, using public access. This parking is just for seven instructors.

Mr. Brodsky clarified that the drop-off for the campers will continue at the subject site. Then, surf instructors will escort the campers to the beach using the public access stairs to the property adjacent to the subject lots. Mr. Capillo stated that if the Board doesn't allow the campers to be dropped off, then they are going to come on to private property to walk across the street. So, this comes down to a very simple thing, safety.

Chairman Cunningham answered that it really is not a very simple thing when you're in a residential zone and you want a commercial activity. He stated he is not convinced yet that it's not a commercial activity, and the drop-off for a business is a commercial activity. He agreed with Mr. Capillo that he didn't want the campers walking across the street. That is why he wanted the Chief to look at the site and advise the Board of what he thought, which he did. Mr. Capillo again stated that this is just a simple thing of people going over on that side of the street, and not on the west side of the street. Mr. Cunningham said that he appreciated Mr. Capilla's input.

Craig Lewis, 378 Ocean Avenue, was sworn in to testify. He stated that he lives adjacent to 400 Ocean Avenue, and he and his wife have no objections at all with cars parking across the street. His driveway is across the street from where the cars will be exiting, and he and his wife are supportive of the parking variances. From a safety perspective, there is no issue. He said that the school does a heck of a job taking care of the beach in the community.

Bill Dixon, 360 Ocean, was sworn in. He stated that he has a tremendous amount of respect for what the Board is doing and believes this process needs to take place. He and his wife have no issue with the plan as proposed and think it is carefully articulated and documented. He said they appreciate the care Ms. D'Anna put into this planning process and to make sure their concerns were heard, and they were resolved.

Ira Schusheim, 730 Ocean Avenue, was sworn in. He wanted to bring to everyone's attention to page 50 of the 2017 Sea Bright Master Plan, where it states, specifically, that the CP zone may not be used for commercial uses. The conditions are very specific and restrictive, and that is done for a purpose. There is no commercial operation allowed on that lot.

R.C. Staab, 290 Ocean Avenue, remained sworn in from the first hearing. He pointed out that when he walks his dog several times a day, he often sees vehicles that are part of a commercial operation parked in the CP zone. He stated that he has no issue whatsoever with the parking for Ms. D'Anna's

Company and is supportive of the application. He said it will not impede his walking by the sea wall or driving on Ocean Avenue, and he would hope the Planning Board will look at what is already existing and what they have approved in the past and understand that this is no different than the new condos up here and the marina. Mr. Cunningham commented that the Beach Walk Hotel was a pre-existing condition prior to the existence of the CP zones.

Robin Mattimore, 408 Ocean Avenue, was sworn in. She stated that she lives a couple doors down from the surf school parking area, and Ms. D'Anna has been diligent in contacting them. She said there were some issues with some of her patrons last year, but Ms. D'Anna addressed them. She said she realizes the Board wouldn't want to approve too many businesses in this area, but this one, to her, makes sense, and they are doing great things for the community.

Howard Steel, 280 Ocean Avenue, was sworn in. Mr. Steele testified in support of the application, stating the following reasons. He feels the business is integral to this community, he thought the Chief's testimony was very compelling. There have been no matters of disorderly conduct, there hasn't been a nuisance complaint, the situation will be monitored by thoughtful, responsible people, the parking will not exceed ten spaces, there will not be food vendors parking there, the surf school helps children during a pandemic, helps working parents deal with the strains of the pandemic, having their kids do something that's enriching and positive and fits in with the ethos of the community, his daughter attends the surf camp and loves it, her friends are at the surf camp and they love it, it is a safe environment where we are comfortable trusting the instructors, it is efficiently run, and the instructors are very thoughtful and environmentally conscious. It is the type of program the community should be proud of and support these efforts.

Janice DeMarco, 406 Ocean Avenue, had been previously sworn in. She stated that her only objection to this is that a residential use is being made into a commercial use. She wondered who else in the future is going to want to do the same thing. She does not want a commercial use in a residential zone. She has lived there 22 years and has lived in Sea Bright for over 60 years. She asked the Board to uphold the zoning ordinance and is not in favor of the application.

Douglas Bird, 1332 Ocean Avenue, was sworn in and spoke in support of the application. He stated that it is the cleanest operation he has ever seen, they do a great job, and he reiterates Mr. Steele's comments tenfold. There are people using the CP zone for storage of cars, for construction vehicles, and everything else, and he thinks the variance is the best use of this space that the Board can approve. He asked the Board to approve the application.

Michelle Prestininzi, 495 Ocean Avenue, was sworn in and spoke in support of the application. She stated that she and her husband are new to the area, but Ms. D'Anna approached them, and they know everything about the surf camp. She stated that, after listening to all of the arguments and counter arguments, she feels very comfortable if this is the safest option for these children in the community. She said that she and her husband are all for this.

Don Greenberg, 302 Park Place Avenue, Bradley Beach, was sworn in. He spoke in favor of the application. He stated that he is not a resident of Sea Bright, but he is a customer of Lucky Dog Surf and other businesses in town. The Board attorney advised the Board that Mr. Greenberg may not be considered an interested party for purposes of this particular application. She advised the Board that this testimony may not hold weight. Mr. Greenberg stated that Ms. D'Anna turned a not-so-busy store into a thriving business, bringing customers not only to her store but to other businesses in town as well. He said he thinks these use variances would be a very low impact use of the property. As has been said, this is not a bar or a restaurant. There is not a constant in and out, nor even a high flow of traffic. There is no constant flow of traffic over a long period of time but, simply, a limited use of pick-up and drop-off before and after lessons. The surf school also provides benefits to the

community. It serves a public benefit not only to the families that have signed up their children in town, but to the community and surrounding businesses as well. The surf school itself is integral to Lucky Dog's success as a business, and Lucky Dog benefits the town by being successful. The surf school benefits the community by teaching these children ocean safety, conservation, and respect for natural resources. None of these good things can happen unless the parents and their children can access the beach. Parking equals access, and the Town Council encouraged this use as a surf school by codifying a contract to run the school in the north end for the last three years. Mr. Greenberg further stated that he volunteers with the Surfrider Foundation. One of the missions of the Surfrider Foundation is to make sure that public access is advocated on the beach front. He stated that he has familiarity with the public trust doctrine. What is at its heart are guarantees of beach access to the beach by the public, and this goes back to the parking. Ms. Kowalski told Mr. Greenberg that nobody is denying the public access to the beach in this matter. There is municipal parking available. Mr. Greenberg stated that the variance should be granted.

Karen Schwartz, 884 Ocean Avenue, was sworn in. Ms. Schwartz spoke in opposition to the application. She explained that it is a bad precedent to be changing the zoning in a residential area to commercial. People are calling it low impact, but she thinks it would set a bad precedent. She thinks it is important to preserve the residential aspect of the neighborhood as in the master plan for the town. It shouldn't be turned into a commercial use, whether it's parking or food trucks or a fishing school or any kind of school. It is a residential area, and it should stay that way.

Stacey Feeney, 406 Ocean Avenue, was sworn in. Ms. Feeney stated that, according to the master plan, this variance goes against the use, and she believes this approval will also allow for other applications to come through to change the use in other areas. She said that the traffic on Ocean Avenue has changed significantly since the Highlands Bridge has been open. The traffic is constant and steady. Last year she noticed quite a few instances when people were trying to cross the street, there were some people in cars not paying attention, texting and driving, talking on their phone, and doing other things. She said that she appreciates the need for the surf school, but she believes approving the variance will be a hazard to the town, putting families in jeopardy. She strongly advised against approving the variance. She also feels that approving it would change the intent of the master plan and have a negative effect for the residential community.

Joe Coakley was sworn in. Mr. Coakley introduced himself as the Legislative Director for the Surfrider Foundation's Jersey Shore chapter. He stated that he does not live in town and would be brief. He said that he has had many opportunities to work with Ms. D'Anna through the local chapter of a non-profit that has been around for over 30 years. He stated that the chapter has the utmost confidence that Ms. D'Anna will run this safely and within the parameters that she has been given. Mr. Coakley stated that he has heard a lot of objections about setting precedents with the approval of this variance, but that each variance has to stand on its own merits, and they don't set precedents going forward.

Lisa Kozinn, 65 Waterman Avenue, Rumson, was sworn in. Ms. Kozinn stated that, though they don't live in Sea Bright, they do attend the surf school, and, so, have been involved in the drop-offs, pick-ups, and everything else that Ms. D'Anna and Mr. Stephan have done for the students. Besides the confidence level the school builds in the children, they have done nothing but support Sea Bright, and, in fact, bring "our town into your town." Everything they do, their school, their store, benefits Sea Bright, and they support them and anything they can do to keep their school running.

Jake Burns, 32 Lenox Avenue, Rumson, was sworn in. With Mr. Burns' experience as the former second Lieutenant for EMS and the current Captain in Rumson, he said that he has a good idea about safety and teaching kids about water safety as well as the beach. He said that this program instills a different level of confidence in the kids and teaches them a lot more about the sea that

most people don't get to learn about, like navigating the beach, clean-up, water confidence, and water safety. There has never been an incident because they have taught the kids proper water safety. He stated that he supports this fully and entirely. It's great for the community, and he stated that, on his behalf, he's recommended clients going into town and checking out new stores. He has never seen any issues, no near-crashes, no confrontations, and no one's ever come up to a car and had an issue with someone. Mr. Burns agreed with Mr. Cunningham's inquiry that he is comfortable with their operation.

Cole Barney, 24 Center Street, was sworn in. Mr. Barney said that he wanted to address the concerns of people as he understands them. He said that he supports what Lucky Dog is doing and thinks it is a very good idea for kids in the area. It teaches appreciation for our natural resources. He said that the whole point of these meetings is to hear out people's concerns. He said that he understands the worries that people who have been living on the ocean for a long time have about commercialization, but the town is not allowing another big business. This is an educational program with very minimal impact on the community and beachfront. In fact, the kids clean up the beach area. He stated that approving this variance does not set a precedent, as has been exemplified by how hard it is to have this conversation tonight. The Board has heard from some of the parents who drop their kids off, and they feel very comfortable in the safety of the operation.

Mike Flood, 2603 Sunset Avenue, Ocean Township, was sworn in. Mr. Flood stated that they have not had the opportunity to say what's really the matter here. It all has to do with the safety of the kids, and parking provides safety. He said that we can't deny the people who want to have access to the ocean.

Board attorney Monica Kowalski stated that she appreciates Mr. Flood's commentary. This is not an access issue to get to the ocean. No one is denying children access to the beach for purposes of the school operating. This application is strictly for the instructors to park in the lots.

Janice DeMarco wished to speak again. Ms. Kowalski stated that the decision to have members of the public speak more than once is up to the Chairman. Mr. Brodsky commented that the meeting will go on for a very long time if everyone is allowed to speak twice. Chairman Cunningham stated to the public that if someone wants to add something, please do, but if everyone is repeating the exact thing someone else has, it doesn't help this situation. Ms. Kowalski added that the Board wants to give everyone the opportunity to speak during the public comment portion, but that she understands the Chairman's concerns. She requested that if Ms. DeMarco has anything to state that she has not previously stated, she should come forth. Other than that, the Board has sufficient comments on the record. Mr. Brodsky stated that he wants to clarify that this ruling goes for everyone who has spoken already and wishes to speak again, and can speak again if they have additional comments to make. He wanted to know if that was permissible. It is highly unusual to have members of the public comment more than once. Chairman Cunningham said that they try to take care of everybody, and asked if Ms. DeMarco had another statement to make.

Ms. DeMarco proceeded. She said that we have two residential lots that are going to be converted to a commercial use. The Anchorage beach has lots of parking, showers, bathrooms, a crosswalk, it's close to town, close to the Rumson Bridge, and kids could bike over there. It would be a better alternative instead of turning a residential area into a commercial zone.

Laura Zeitlin, 9 Beach Street, was sworn in. She stated that her kids have been going to the camp since the beginning. They have learned an incredible amount, and if we don't allow the instructors to park, there will not be a camp for the kids to attend and learn everything they've been learning. She said that she would hate to see the kids not get what they should this summer. She really hopes it gets approved and the instructors are allowed to park.

Morgan Wilson from Red Bank was sworn in. She said that she would like to make a very objective statement. She said she doesn't understand how approving a few parking spots is commercialization, as some commenters have been saying. She said it is not changing the business dynamic. She said she would like somebody to answer for her that approving the variance would be commercialization in a residential area. Chairman Cunningham stated that it's operating on a residential lot. Ms. Kowalski stated, it is a change of use. Mr. Brodsky commented that he wanted to clarify for the record that when you're talking about the variances being sought, it is to park cars in the CP zone, not in the residential zone. Ms. Kowalski agreed with the clarification.

Chairman Cunningham said, "We're asking people to only speak if they can add something new to this application, and we know there's a lot of support here for it."

Karen Schwartz, who had been sworn in, stated that she wanted to add something that hasn't been said before. She said that she thinks it really needs to be made clear that this is really a business. It's not a school program being run by the municipality. She said that it sounds very worthwhile, but it still is a business. Ms. Schwartz further stated that she had seen the resolution last year. The applicant was operating the surf school at the stairs and beach that are across from 404 Ocean Avenue. She did not operate it at the municipal beach, and that is the permission she was given.

Nathan Kwikowsk, 270 Ocean Avenue, was sworn in. He said that he is very familiar with the surf school. His personal impression is that Ms. D'Anna is a very kind neighbor, thoughtful and considerate, and that he is very supportive of it.

Jason Kaspersetz, 404 Ocean Avenue, was sworn in. He stated that they are totally in support of Ms. D'Anna and everything Lucky Dog is doing over there. There are no problems with safety. The parking is just being used for instructors, not a business.

Steven Walsh, 14 Rosalie Avenue, Rumson, was sworn in to testify. He stated that Lucky Dog has previously been approved to operate as a business, and the parking issue is really tangential to the use that has already been approved by Sea Bright. He said that this is really an issue of access to the beach in order for people to get their kids onto the beach in order to use the business that's been approved by the town. He said that he really doesn't know what the legal basis is for the town to deny the application today. He further stated that the only reasons he has heard from the residents is that they are concerned over commercialization, but, as far as his understanding of the law goes, every variance application stands on its own. So, if this application is granted, it's not going to serve as any legal precedent which will lead to the general concern that these residents have. He also stated that Sea Bright has been overwhelmed with traffic for years and years due to tourism. The idea that a small surf school should be prevented from operating because of the possibility of a couple of extra cars is just not convincing.

Karen Fahrenholtz, 402 Ocean Avenue, was sworn in. She wanted to read into the record a statement of support for Ms. D'Anna and her business. "She has shown tremendous willingness to resolve, to respond to any and all concerns that have been raised regarding the well-being and safety for her students, staff, and the neighboring community. I think her plan, as presented, was sounding very well thought out, appears to be a solid strategy for success, and I strongly encourage the Board to grant approval. I applaud her entrepreneurial spirit and dedication, and I hope she is allowed to continue her business."

Nicole Czarnecki, 34 Poplar Avenue, Fair Haven, was sworn in. She stated that her son has been attending the surf school for 3 years. She commented that someone had mentioned having student drop-off and pick-up at the Anchorage lot. That lot is completely full, and you would really have to

get there by 8:00 a.m. She stated that she had heard someone comment that Lucky Dog was bringing extra traffic. She disagreed, stating that the parents are in and out quickly. There is always an attendant monitoring.

Kevin Mills, 34 Poplar Avenue, Fair Haven, was sworn in to testify. He stated that the definition of commercialization is doing something or managing or running something for financial gain. The parking has no financial gain. Ms. D'Anna is not charging anything to park. The commercial part takes place on the beach, and there is no profit from that parking lot.

Trey Cooper, 24 Osprey Lane, Oceanport, was sworn in. He commented that he has been giving surf lessons in Monmouth County for 15 years, from Asbury Park to Sea Bright. Long Branch gives parking passes for the instructors to be able to park to go to work, and the patrons were left to find parking themselves, which is pretty much what the variance says.

The public portion of the meeting was closed, and the meeting was opened to Board members.

Elizabeth DeGiulio said that she was very impressed with the Police Chief, and, if he is good with the school, then that is good enough for her. He is the one who makes the decisions about traffic, and if he thinks it's OK, then I think we should definitely go by his word.

Stephen Cashmore had a question for Mr. Brodsky about the difference between business use and recreational use. Mr. Brodsky answered that the variance they are seeking is for property located in the CP zone. He said that, clearly, the surfing and utilization of the public beach is a recreational use. The parking is an accessory to a recreational use. The actual use of property in the CP zone is parking. Parking is the only use that is permitted in the CP zone. The parking for the surf school is an accessory to the surf school. It is not a commercial enterprise. We're not looking to make any improvements. We are utilizing that opportunity in the CP zone for parking to enable access to the beach. We're proposing for cars other than the owner allowed to park in these CP zone lots. Mr. Cashmore specified that the business, Lucky Dog Surf Shop, is located in Sea Bright, the surfing is a recreational use taking place in North Beach, and, since they are not charging for the parking, the parking is not a business. Mr. Brodsky added that parking is a use permitted in the zone. Mr. Brodsky added that this variance is not setting a precedent. The decision stands on its own. The variance is an accessory enabling residents of Sea Bright and nearby towns to utilize a recreational use. Mr. Cashmore also asked Mr. Brodsky to clarify that, as some members of the public had incorrectly stated, the zoning is not changing with the granting of this variance. It is giving relief to the zoning that is in place. It is giving relief to the restrictions of the zoning that is in place. Any restrictions the Board puts into the resolution will follow the lease agreement with the Borough. Mr. Brodsky added that he doesn't see the reticence or hesitancy by the Board members because this is something that is unique and which stands on its own. It is an accessory to this twice-awarded lease agreement by the Council, and Council knew when the bid was awarded, parking would be a problem.

Mr. Brodsky thanked all the Board members for sitting through this and for going through the thoughtful process in terms of analyzing the variances. There is a significant standard of proof that has to be satisfied to have the variances granted, and he thinks it is clear that they have met the positive and negative criteria. The particular suitability was heard by the Board from the planner, who gave multiple reasons in support of the application. As to the negative criteria, the Board heard a lot of testimony from nearby residents who were fine with the proposed parking on this limited basis, subject to the conditions that were proposed. The planner had also pointed out the consistency of what is proposed as part of the application with the master plan, and who better than the Police Department to opine as to the safety of the proposed operation for the few cars that are being proposed for a few hours a day. Also, the Board's own planner adopted the arguments and

the findings of the applicant's plan. There is so much for the Board to use to base a decision to grant this "D" variance. We believe we have met our standard of proof, and based on that, the Board can act favorably on what is a very important application for the Borough of Sea Bright and the kids of the Borough.

Board attorney Monica Kowalski asked to add to Mr. Brodsky's statement. Ms. Kowalski said that she understands for the purpose of this entire application that there was some contention with regard to what testimony should or should not be admitted. She wanted to bring to the Board's attention the case law that she had referenced before. Ms. Kowalski read from the Cox book, and said that Board members do not, of course, lose their rights of citizenship by serving on the Board. If a member owns property within 200' of the applicant's property, the member has every right to enter objections or approbation. The question is whether that includes a right to appear in person, or whether an intermediary, such as a family member or an attorney, should be used. She further stated that the better practice out of an abundance of caution is to preclude Board members from personally appearing in favor of an application because of the possible influence on fellow Board members and because of the appearance of impropriety from the point of view of the general public. Courts have not always held that practice. Nevertheless, she said, a balance to be struck between the constitutional right of a Board member with the exercise of free speech and the rights of the property owner on one hand, and the obligation as a Board member not to use the position so as to gain or appear to gain especial advantage or favor on the other hand. Actions by Board members should be beyond reproach, and no appearance of undue influence or favoritism should appear. Ms. Kowalski said she just wanted the Board to understand that this is a transparent process and that she takes conflicts of interest very seriously. She said that it is her job to defend the Board's actions, and it is her responsibility; so, when you have Board members who have acted in the past as Council members who are now sitting as Board members, it becomes a very slippery slope. Her caution is always in favor of avoiding potential conflicts of interest with regard to Mr. Rooney, who is within that one-year timeframe. She said that she really appreciated Mr. Rooney's willingness to take a step back. He doesn't lose his rights, and if there had been a different opportunity, she would have advised him to go through a family member or provide counsel.

Ms. Kowalski asked that when the Board members are placing their reasons either in support or denial of the application she would appreciate their giving her some statement of facts with regard to their reasons of support or denial. Ms. Kowalski then thanked the Board.

Peggy Bills offered a motion to approve the "D1" variance for parking with the restrictions that the applicant has testified to. Ms. Kowalski added that there will be included the limitation on parking spaces, for five days a week, Monday through Friday, excluding holidays. Ms. Bills added that the variance is not setting a precedent, and the Board is not voting to change a zone. She is voting with the Chief of Police's statement in mind. Ms. Kowalski asked Ms. Bills whether there were any other conditions that Ms. Kowalski may have missed, or was that a fair summary of the conditions? Ms. Bills added that the variance granted will be only for the term of the lease. Ms. Kowalski added, for as long as the lease continues to be granted, to run with the operation of the surf school going forward. If their lease is renewed, the approval will continue on. Stephen Cashmore added "in this location." Elizabeth DeGiulio seconded the motion, and the motion was approved on the following roll call vote:

Ayes: Bills, Cashmore, DeGiulio, Gorman, Smith

Nays: Cunningham

Abstentions: DeSio

CLOSING ITEMS

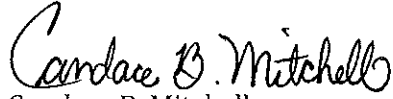
Meeting Announcement

There being no other public business before the Board, the Chairman announced the next regular meeting of the Planning Board is scheduled for May 25, 2021 at 7:30 p.m.

Adjournment

The meeting was adjourned at 9:53 p.m. on a motion offered by Ms. DeGiulio, a second offered by Mr. Schwartz, and approval upon a unanimous voice vote by the Board members.

Respectfully submitted,

A handwritten signature in cursive script that reads "Candace B. Mitchell".

Candace B. Mitchell
Board Secretary