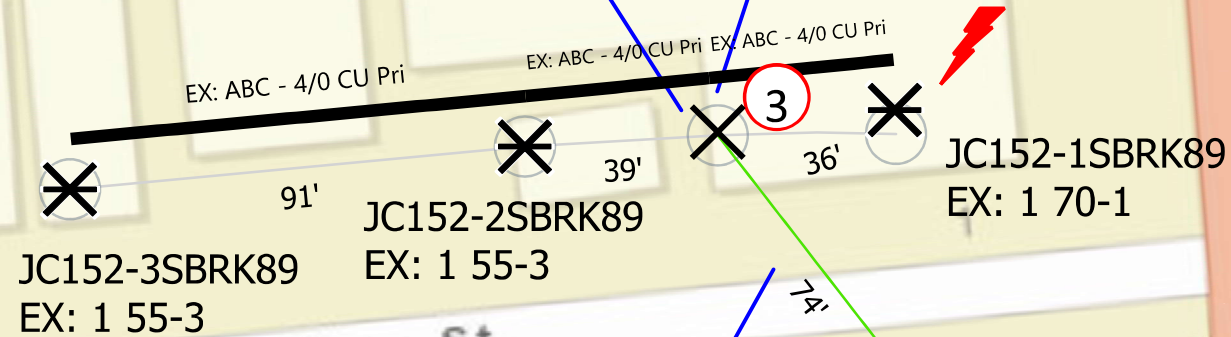


WR:61384617  
DR:348886466  
Break Real Estate  
1080 Ocean Ave  
Sea Bright

JCP&L DDS Map for 1080  
Ocean Avenue

JCPL TO  
INTERBUILD  
50FT CL 2 POLE  
& Install  
150KVA XFMR  
Bank 120/208v  
2.4/4.16kv

219279A55772  
3-50kVA, 120/208V  
INST: 1 3PH Fuse Bank: 25 AMP  
TYPE K  
INST: 1 50-2



JCPL TO RUN  
336AA SERVICE WIRE  
120-208V, 3PH with 2  
three phase meters  
& 6 single phase meters

**JCP&L contract for fabrication  
and installation of new service  
pole for 1080 Ocean Avenue**

**Work Request # 62796422  
Notification # 355149336  
SP Order # 17829855**

**THE BREAK AT SEA BRIGHT**



**AGREEMENT FOR INSTALLATION OF  
ELECTRIC DISTRIBUTION FACILITIES**

**Utilizing a "Refundable Customer Contribution"**

**THIS AGREEMENT**, made on **September 16, 2023** to become effective as set forth in Article 4 hereof by and between **Jersey Central Power & Light Company**, (hereinafter referred to as "JCP&L" or "Company"), and **BREAK REAL ESTATE PARTNERS LLC**, (hereinafter referred to as "Customer"), with Mailing Address of **32a Beach Rd, Monmouth Beach, NJ, 07750** with a service location of **1080 Ocean Ave, Sea Bright, Monmouth County** (the "Service Location" or the "Premises" (as defined later herein)). Hereinafter when referred to collectively, Company and Customer are the "Parties".

**WITNESSETH:**

**Whereas**, BPU No. 13, Electric, Company's Tariff for Service (the "Tariff") which is on file with, and approved by, the New Jersey Board of Public Utilities ("BPU" or "NJBP"), directs the Company to evaluate customer requests to increase capacity or extend facilities based on the expected return on investment to the Company, taking into account any contribution by the Customer to such costs; and

**Whereas**, in compliance with the Tariff, the Company has evaluated Customer's request to extend facilities and/or increase capacity (the "Extension"), and has determined that, considering the cost to accommodate Customer's request and the revenues necessary to be derived therefrom, the Company is agreeable to proceed with the installation of the Extension based upon the terms of this Agreement; and

**Whereas**, subject to the terms and conditions of this Agreement (including, but not limited to, Articles 16, 17, and 19), Customer will require, and the Company will provide facilities described as follows:

**JCPL to Interbuild 50/2 Pole (219279a55772) between JC152-2SBRK89 & JC152-1SBRK89 then Install 150KVA XFMR Bank 120/208v**

**Whereas**, for purposes of this Agreement, the cost to be paid in advance by Customer for the Extension (in accordance with Company's invoicing and payment instructions) is separated into two components: (a) the non-refundable cost for Customer requested special service location or installation costs which amounts to **\$0.00** (the "Contribution"); and (b) the balance of **\$56,188.56**, (the "Deposit") of which **\$56,188.56** is subject to refund as described in Article 7 of this Agreement; and

**Whereas**, the Company is willing to provide the funding for this Extension on the condition that the Company has the opportunity for a reasonable recovery of such investment during the term of this Agreement and in order for the Customer to realize the opportunity for possible refunding of the Customer's Deposit toward such Extension costs, through the ten (10) years term of this Agreement; and

**Whereas**, it is understood that nothing in this Agreement is to restrict the selection of an Electric Power Supplier by the Customer; and

**Whereas**, Customer is agreeable to this Agreement with Company in order to achieve the described Extension.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and the premises and promises herein contained, and intending to be legally bound hereby, the Parties agree as follows:

**Article 1 - Incorporation of Preamble:** The recitals contained in the Preamble of this Agreement are hereby incorporated into, and form a part of, this Agreement between the Parties.

**Article 2 - Location:** At Customer's sole expense, Company agrees: (a) to use its best efforts to obtain the necessary rights-of-way and consents, and having obtained same, (b) to furnish with reasonable diligence, the necessary labor and materials to construct and complete an Extension to serve Customer's service location ("Premises"). This Agreement shall become null and void and the obligations and covenants of the Parties under this Agreement shall cease to be effective in the event that the Company is unable to acquire any necessary rights-of-way and consents.

**Article 3 - Rate for Electric Service:** In order to induce the Company to make the investment required to extend the facilities as Customer has requested and to provide the Company with a reasonable assurance of payback on that investment, Customer agrees for the Term of this Agreement to be billed under the applicable Rate and Service Classification, indicated by the Company to apply to Customer, taking into account the Extension, in accordance with the provisions of Company's Tariff with applicable modifying riders and as it may be modified, supplemented or superseded from time to time. Such rates to include Customer Charges, Demand Charges, Minimum Charges and Energy Charges as defined in such rate schedules.

**Article 4 - Effective Date:** This Agreement shall become effective on the date of execution by the last of the Parties to sign (the "Effective Date"); provided, however, that the Customer executes in duplicate and returns the Agreement to the Company and the Company accepts and executes the Agreement within thirty (30) days from the day and year specified at the beginning of this Agreement. A fully executed duplicate of the agreement shall be provided to Customer by Company unless the Customer is the last to sign in which case Customer shall provide a fully executed duplicate of the Agreement to Company.

**Article 5 - Term of Agreement:** In order to accommodate Customer's need for the supply of electricity, and in order to provide Company with the opportunity to recover a reasonable return on its capital investment, the term of this Agreement as it relates to the provision and receipt of electric service shall be for a period of ten (10) years, beginning with the date the meter is set to begin registration of Customer's electric service usage at the Service Location utilizing the Extension (the "Commencement Date"), which is anticipated to be a date approximately ninety (90) days from the Effective Date of this Agreement. After the Commencement Date any further changes in the applicable Service Classification rates for such service shall be as duly authorized by the Tariff in effect and as approved by the BPU at the time. This Agreement shall terminate upon the fulfillment of all terms and conditions specified herein.

**Article 6 - Commencement of Service:** Beginning on the Commencement Date, the Customer shall take and pay for said electric service from Company in accordance with this Agreement.

**Article 7 - Conditions of Refund (For Non-Residential Customer per Section 10.05 of Part II of Tariff):** Customer shall be eligible for refunding of the **\$56,188.56** advanced Deposit over a period not to exceed ten (10) years and up to (but not in excess of) the refundable deposit as follows:

At the end of the first year, the Company will refund from the refundable deposit an amount equal to ten times the total actual distribution revenues billed during that period. At the end of each subsequent year, for an additional nine years, a refund will be equal to ten times the positive difference after subtracting: 1) the highest total actual distribution revenues that was used for calculating the refund in any previous year, from 2) the total

actual distribution revenues billed during each subsequent year, up to (but not in excess of) the remaining refundable deposit amount. It is recommended that the Applicant contact the Company at the end of each 12-month period, to determine eligibility for a refund. All refundable deposits shall be non-interest bearing. Any amount not refunded at the end of the ten-year period shall remain the property of the Company.

**Article 8 - Right of Way:** (This section is not applicable to this Agreement)

**Article 9 - Entire Agreement:** The provisions of this Agreement and its Attachments shall constitute the entire integrated agreement of the Parties. No prior or contemporaneous communications shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or other proceeding regarding same.

**Article 10 - Agreement Modifications:** No changes, additions, modifications or amendments of this Agreement shall be effective unless they are set out in writing and signed by the Parties hereto.

**Article 11 - Further Documents:** The Parties shall execute such other documents as may be reasonably necessary to effectuate the terms and conditions of this Agreement.

**Article 12 - Miscellaneous:** Except as otherwise modified by this Agreement or by the Tariff, Customer shall be subject to the terms and conditions of Customer's designated Service Classification.

**Article 13 - Successors and Assigns:** This Agreement shall be binding upon the Parties, their heirs, administrators, executors, successors and assigns, as the case may be; provided, however, Customer may not assign this Agreement to any entity, except upon Customer first giving Company written notice requesting the Company's consent to such assignment by registered mail, return receipt requested, and upon receipt of the Company's prior written consent from the Company of the assignment by the Customer.

**Article 14 - Counterparts:** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

**Article 15 - Approvals:** This Agreement is subject to Company's receipt of necessary regulatory approvals or authorizations, if any.

**Article 16 - Unanticipated Conditions:** If upon commencing installation of the line Extension, the Company encounters unanticipated conditions such as environmental concerns, digging in conditions that require equipment other than a backhoe, or other obstacles that do not allow standard design methods of construction to be employed, then the costs that were developed for this Agreements, which were based upon standard design, shall be deemed null and void. The Company will redesign the Extension job based upon actual field conditions and present the Customer with modified costs and/or methods of installation which will constitute an addendum to this Agreement.

**Article 17 - (If this Extension does not require installation of Underground wire, Article 17 is not Applicable) Trenching and Conduit:** If applicable to this Extension, at Customer's option, Customer has requested and hereby elects to perform (or have someone else perform on Customer's behalf) the trenching and installing conduit in such trench in accordance with Company's specifications as Customer's responsibility and at Customer's expense. In doing so, Customer acknowledges and agrees that it is not, nor will it at any time be, acting or performing the trenching or any other work (including conduit installation) as a contractor or subcontractor of Company or any Communications Company (Telephone and/or CATV Company). Unless indicated otherwise, Customer shall be responsible for all trenching and conduit required for this

Extension including, if applicable, trenching and conduit for road crossings.

The Customer hereby agrees to be fully and solely responsible for performing the trenching and installation of conduit and in doing so agrees that the trenching and conduit installation shall fully comply with and be performed in accordance with all applicable laws and regulations and the provisions of Company's specifications in Form 115, Customer Guide for Electric Service – NJ found at:

<https://www.firstenergycorp.com/content/dam/customer/service%20requests/files/Customer-Guide-for-Electric-Service-NJ.pdf>.

The trenching and conduit installation shall be coordinated and performed by Customer so as to coincide with the installation schedule of Company and Communications Companies, weather permitting. To the extent and for so long as the trenching and conduit installation is not so performed or does not comply, neither Company nor any Communications Company shall have any obligation to install its facilities therein or otherwise supply service for the Extension. However, Company shall have the right, but not the obligation, to bring the trenching and conduit installation into compliance and/or complete the trenching and conduit installation at Customer's expense.

Customer agree to indemnify, protect, defend, and save harmless the Company, and communications Companies, and their agents, officers and employees, from and against any and all claims, damages, losses, judgements, fines, penalties, costs and expenses (including, but not limited to, attorney's fees and disbursements and investigative costs) arising out of or resulting from, at any time and from time to time, any and all (i) bodily injury and/or loss of life to anyone (including, but not limited to, that sustained by employees and officers of Customer, subcontractors, Company and Communications Companies) and (ii) loss of and/or damage to property, including the loss of use thereof, belonging to anyone or anything (including, but not limited to, property of Customer, subcontractors, Company, the Communications Companies and their officers and employees) caused in whole or in part by the trench or the conduit or conduit installation, including but not limited to that caused by the performance of the trenching or conduit installation or the expense, use or condition of the trench or conduit, regardless or whether or not the same is partially caused by or partially results from the negligence of a party indemnified hereunder. In addition to Customer's responsibilities as set forth above, if applicable, Customer is also required to furnish and install a Company-approved meter-mounting device, as well as the 3" meter riser conduit on the utility side and any necessary service conduit on the load side of the meter-mounting device.

**Article 18 – Service Load:** The Company agrees to provide electric power for safe, adequate and proper service based upon load information that the Customer or the Customer's representative has submitted to the Company. Based upon that information, the Company has determined that the total diversified load to be served shall be 96 KW.

Prior to making any future material increase or decrease in connected load, demand, or other conditions of use of service or change of purpose, arrangement, or characteristic of electrical equipment, the Customer agrees to notify the Company of such intention so that the Company may determine if any changes in its distribution facilities will be required in order to maintain safe, adequate and proper service to the Customer under the changed proposed conditions.

Failure of the Customer to provide prior notice to the Company of such change shall render the Customer responsible and liable for any damage to the Company's facilities and injury to its employees caused by the changed conditions. In addition, any undisclosed Customer load increase may result in an interruption of electric service to the Premises during peak conditions.

**Article 19 - Service Installation Requirements:** All service installation work to be performed by the Customer at the Premises in order to accommodate the Extension is to be done in

accordance with the applicable National Electric Code and the most current edition most current edition of the Company's Customer Guidance for Electric Service (Form 115) and any changes, revisions or amendments thereto.

**Article 20 – Acknowledgement:** By signing this Agreement, Customer acknowledges receipt of a copy of the "Subchapter 8 – Extensions to Provide Regulated Services" under Title 14, Chapter 3 of New Jersey Administrative Code (N.J.A.C. 14:3-8.1 through 8.14), which governs line extensions installed by regulated utility, and which was made available, is available, and can be located, using the following link and listed steps:

1. Go to FirstEnergy website by typing: <https://www.firstenergycorp.com/> into your web browser;
2. At the bottom of the page, select "JCP&L" under Electric Companies;
3. Under "General Information", select "New Jersey Administrative Code on Extension Services" for a copy of "Subchapter 8. Extensions to Provide Regulated Services."

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed, in duplicate, in accordance with Article 4 hereof.

Jersey Central Power & Light Company

Witness/Attest: \_\_\_\_\_

Signed by: \_\_\_\_\_  
Supervisor

Witness/Attest:  \_\_\_\_\_

CUSTOMER: BREAK REAL ESTATE PARTNERS  
LLC,

Signed by:  \_\_\_\_\_

Print Name: Kevin Higgins

Title: Project Manager

Printed Name / Title:  
Susan McManus, office  
manager



Document E

Sewer Payment Confirmation

BREAK REAL ESTATE PARTNERS LLC


1051

Borough of Sea Bright				2/1/2023	
Date	Type	Reference	Original Amt.	Balance Due	Discount
2/1/2023	Bill	1080 Ocean Ave	9,675.00	9,675.00	
				Check Amount	Payment
					9,675.00
					9,675.00

Manasquan Bank

Sewer connection and inspection

9,675.00

 **Safeguard** SF5001-1 LITHO USA SFSL1 C/K7508111L

 **Safeguard**

TO REORDER, CALL YOUR LOCAL SAFEGUARD DISTRIBUTOR AT 800-992-7277

CC13KZ0010100 B21SF005774

B60963 STKDK07 05/21/2021 09:21 -77-

**From:** Kevin Higgins <kevin@kshawconstruction.com>**Sent:** Tuesday, January 31, 2023 1:20 PM**To:** Karen DiBerardino <kdiberardino@seabrightnj.org>
**Cc:** sue kshawconstruction.com <sue@kshawconstruction.com>; suep kshawconstruction.com  
 <suep@kshawconstruction.com>; Kenneth Shaw <kshawbuilt@gmail.com>
**Subject:** Re: 1080 Ocean Avenue

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hey Karen,

Just want to make sure, would you like 1 check for \$13,235, or two checks for \$9,625 and \$3,610.

Thanks,

## Kevin Higgins

Shaw Construction Co., LLC

Business Development &amp; Senior Project Manager

(908) 601-1366

32A Beach Road

Monmouth Beach, New Jersey 07750

<http://www.Kshawconstruction.com>



**Re: 1080 Ocean Avenue**

Karen DiBerardino <kdiberardino@seabrightnj.org>

Tue 1/31/2023 1:46 PM

To: Kevin Higgins <kevin@kshawconstruction.com>

Cc: sue kshawconstruction.com <sue@kshawconstruction.com>; suep kshawconstruction.com <suep@kshawconstruction.com>; Kenneth Shaw <kshawbuilt@gmail.com>

The sewer account monies go into a different account then the building department fees. The \$50 sewer lateral inspection fee and the \$9625 sewer connection fees can be on the same check (verified with the sewer collector), totaling \$9675. The building permit fees for \$3610 need to be on a separate check. Thank you

Karen DiBerardino  
kdiberardino@seabrightnj.org

Borough of Sea Bright  
1099 Ocean Avenue  
Sea Bright, NJ 07760  
Tel. 732-842-0099 ext. 110

---

**From:** Kevin Higgins <kevin@kshawconstruction.com>

**Sent:** Tuesday, January 31, 2023 1:20 PM

**To:** Karen DiBerardino <kdiberardino@seabrightnj.org>

**Cc:** sue kshawconstruction.com <sue@kshawconstruction.com>; suep kshawconstruction.com <suep@kshawconstruction.com>; Kenneth Shaw <kshawbuilt@gmail.com>

**Subject:** Re: 1080 Ocean Avenue

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hey Karen,

Just want to make sure, would you like 1 check for \$13,235, or two checks for \$9,625 and \$3,610.

Thanks,

## Kevin Higgins

Shaw Construction Co., LLC  
Business Development & Senior Project Manager  
(908) 601-1366  
32A Beach Road  
Monmouth Beach, New Jersey 07750  
<http://www.Kshawconstruction.com>



Document F

Original Resolution of Approval

**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, LLC. 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, LLC. 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. Haeger, 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, LLC. 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	<b>0 Ft</b>
Minimum Gross Floor Area	880 SF	2,800 SF
Max. Building Coverage	50 %	<b>97.0%</b>
Max. Lot Coverage	75 %	<b>97.0%</b>

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) (1 space per 3 of occupancy plus 1 per employee)	28	0
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 Contadore 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. Contadore 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. Contadore testified that the roof deck level had been changed in response to Board and public comments. The pergola which had been 9' above the roof 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.

- 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 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.

- 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 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.

- i. 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.

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 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.

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#### **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