

APPLICANT: SEA BRIGHT SURF SCHOOL, LLC
APPLICATION NUMBER: 2021-07
BLOCK: 23
LOT: 100, 101
ADDRESS: EAST OCEAN AVENUE
ATTORNEY FOR APPLICANT: RICK BRODSKY, ESQ.
RESOLUTION NUMBER: 2021-07



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

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

WHEREAS SEA BRIGHT SURF SCHOOL, LLC, hereinafter referred to as the “applicant” filed an application with the Unified Planning/Zoning Board of the Borough of Sea Bright, (hereinafter referred to as the “Board”) seeking the following relief:

To consider an application for Use “D” variances to permit certain parking of automobiles in connection with the Applicant’s surf school, with respect to premises located in the C-P Zone and known as Block 23, Lots 100 and 101 on the Tax Map of the Borough of Sea Bright, and commonly known as East Ocean Avenue, Sea Bright, New Jersey. The Applicant seeks the following variances:

1. Section 130.38.C(8)(a)[1]: Use “d” variance to permit automobile parking for surf instructors employed by the Applicant, as well as clients of the Applicant that are taking private lessons, as well as drop off only for surf school camps, in the C-P Zone, where no such use is permitted; and
2. Section 130.38.C(8)(a)[2]: Use “d” variance to permit automobile parking for surf instructors employed by the Applicant, as well as clients of the Applicant that are taking private lessons, as well as drop off only for surf school camps, in the C-P Zone, where only property owners are permitted to park their vehicles.

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

The application involves the property located at East Ocean Avenue, Sea Bright, New Jersey, more formally identified as Block 23, Lots 100,101(Zone C-P).

On May 10, 2021 the application was formally amended by letter to limit the pending application to the following:

1. The parking proposed for the lots that form the subject matter of the application shall be limited to surf instructors only.

2. Actual access by the Surf School to the public beach shall be by virtue of the existing public access located adjacent to the Beachwalk at Sea Bright Hotel, which access is located approximately 200 feet north of the subject property.

WHEREAS, the application pertains to premises known and designated as Block 23, Lots 100,101 on the Tax Map of the Borough of Sea Bright, which premises are located in the C-P Zone at East Ocean Avenue, Sea Bright, NJ 07760;

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

WHEREAS the Board held a public hearing with regard to the referenced application on the following date(s), **April 27th, 2021 cont. May 11th, 2021:**

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

- 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
- EXHIBIT A-1 PARKING AREA 13080 SQUARE FEET SURVEY

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

WHEREAS The Board listened to the Testimony of the following:

1. **MELISSA D'ANNA, APPLICANT (SEA BRIGHT SURF SCHOOL)**
2. **CHRIS STEPHAN, CO-APPLICANT (SEA BRIGHT SURF SCHOOL)**
3. **GORDON GEMMA, PP**
4. **BRETT FRIEDMAN, CHIEF OF POLICE (BOARD WITNESS)**

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

- 1. GREGORY HARGQUAL**
- 2. JANICE DeMARCO**
- 3. RC STAUB**
- 4. MELANIE DALY**
- 5. CHARLIE ROONEY (First Hearing, Prior to amendment)**
- 6. CHRISTOPHER CAPILLO**

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

- 1. CHRISTOPHER CAPILLO**
- 2. CRAIG LEWIS**
- 3. BILL DIXON**
- 4. IRA SCHUSHEIM**
- 5. R.C. STAAB**
- 6. ROBIN MATTIMORE**
- 7. HOWARD STEEL**
- 8. JANICE DeMARCO**
- 9. DOUGLAS BIRD**
- 10. MICHELLE PRESTINIZINI**
- 11. DON GREENBERG**
- 12. KAREN SCHWARTZ**
- 13. STACEY FEENEY**
- 14. JOE COAKLEY**
- 15. LIZ KOZINN**
- 16. JAKE BURNS**
- 17. COLE BARNEY**
- 18. MIKE FLOOD**
- 19. JANICE DeMARCO**
- 20. LAURA ZEITLIN**
- 21. MORGAN WILSON**
- 22. KAREN SCHWARTZ**
- 23. NATHAN KWIKOWSKI**
- 24. JASON KASPERSETZ**
- 25. STEVEN WALSH**
- 26. KAREN FAHRENHOLTZ**
- 27. NICOLE CZARNECKI**
- 28. KEVIN MILLS**
- 29. TREY COOPER**

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

1. The application in question originally requested two D variances; to permit automobile parking for surf instructors employed by the Applicant, as well as clients of the Applicant that are taking private lessons, as well as drop off only for surf school camps, in the C-P Zone, where no such use is permitted and then; to permit automobile parking for surf instructors employed by the Applicant, as well as clients of the Applicant that are taking private lessons, as well as drop off only for surf school camps, in the C-P Zone, where only property owners are permitted to park their vehicles. The Variance request was subsequently amended and was limited to parking for the surf instructors only at the subject site.
2. In conjunction with the discussion held at the meeting and the subsequent amendment, the 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 pursuant to the terms of their lease agreement with the municipality.
3. Discussion of where the school is going to be located on the beach is not applicable to the application and no testimony will be taken. Such discussion is more appropriately before the governing body in the bid process and reflected in any municipal lease granted.
4. This application is based upon whether or not parking is permitted for the surf instructors on the two referenced lots, one of which is owned by the applicant's father and the other is owned by the applicant's neighbor. The applicant testified that the surf school has been granted permission to utilize the two lots for the parking purpose requested in limited time frames during the day, for the length of the existence of the school, with consent.
5. The attorney for the applicant advised that these properties are not in the residential zone. They are in the CP zone, adjacent to the residence. Secondly, the owners of these particular properties have consented to this application they are on. Mr. Brodsky, on behalf of the applicant, advised they would be willing to enter into the letter of intent with the owners for a very limited use of these two lots for a few hours a day during the summer months.
6. The current municipal lease for the Surf School has one year remaining which is the upcoming 2021 season.
7. Board Member Cashmore asked for clarification as to the time frame on the Board's approval if granted. The Board was advised that the approval would be a conditional use variance in that approval would run with the lease agreement. However, if Council decides to renew the surf school's contract for another two years, and the Board determines in this hearing that the use variance approval follows the term of the lease to this particular surf school, then this surf school would not have to come back to the Board for this approval again.
8. The application was amended by the applicant and revised to indicate that only automobiles owned by surf school instructors will park at the two lots involved (perhaps a total of 7-10). That amendment to the application was filed and is on the record.
9. Ms. D'Anna testified, and the Board accepted, that she has been operating the surf school for the past few years with her business partner, Chris Stephan. She explained that her shop business is a seasonal one and that the surf school is an important part of her shop's operations. The surf school is essential to making her business viable and successful. The surf school was awarded a bid to operate in the northern region of Sea Bright. There was no public parking awarded with the surf school bid. They have a permit to operate the school in North Beach and the use of these two lots would serve

- a limited purpose for the school in the height of the summer. Applicant advised that they have had difficulty finding an appropriate place to hold the surf school because there are no public parking areas attached to the public access in north Sea Bright. They would love to be able to operate the school at the public beaches in the center of town, but conditions at the beaches in the center of town are not suitable for safely learning to surf. Also, the number of beachgoers and swimmers at the beaches in the center of town would prohibit properly spacing the surfers out in the water. The school operates only during low tide hours, which is approximately three to four hours per day. The school operates for one week in the month of June and the months of July and August. That is what their permit allows.
10. Ms. D'Anna advised that, while they have been operating out of North Beach, they were able to use the Beach Walk Hotel with the exception of the last two years. The application was subsequently amended to include only parking for surf instructors with access at the public beach for participants, as stated above.
 11. Applicant's attorney also advised 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. 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.
 12. Gordon Gemma, Professional Planner, testified on behalf of the applicant, which information was accepted by the Board and supported by the Board Planner, Christine Cofone (infra.).
 13. Mr. Gemma responded that this application is solely about parking for a surf camp in the CP zone. The Borough gave a two-year license to the camp, and it states, specifically, for portions at North Beach. He said that he found it interesting that in Sea Bright's ordinance, a surf camp is considered a personal service establishment. Personal service establishments must not have less than four parking spaces, and the parking must be on the same side of the street as the establishment. Also, there has been an issue with what is and is not permitted in this zone. Only parking is allowed in a CP zone. Parking in the CP zone is not a function of having a commercial use. Mr. Gemma presented an **Exhibit, marked A-1**: Parking Area 13,080 sq. ft., Bl. 23, L. 101 and 100. The property surveys show the area between the seawall and the walk is 2,000 sq. ft. of parking area. A standard parking space is 10 ft. by 20 ft. The two lots can easily fit a total of eleven spaces. The parking is sufficient. Gemma noted that he is testifying as a planner, and not as a traffic expert. As a planner, there is no issue about the safety and sufficiency of the parking. Because of its size, the lot is sufficiently suited for the accessory use addressed in the ordinance.
 14. Mr. Gemma said that the master plan sets forth specific goals and objectives of the Borough. The 2017 master plan, which was post-Sandy, states that the CP zone is to protect vulnerable areas that are subject to flooding, such that no buildings would be erected. In fact, the only use of the CP zone is a recreational use, as is being discussed. The recreation element of the master plan states that recreation areas play a key role in community life.

15. Mr. Gemma advised that the school is not only teaching surfing. They are teaching conservation, and that advances a specific purpose of the master plan. The beaches in the north beach area have never been cleaner because of the beach clean-ups the surf school does. That advances a part of the master plan that the Borough is saying is important. Mr. Gemma said that it is better to have a regulated entity, like a surf school, where the Board can put on mitigating conditions. Another thing the master plan says is a condition or a goal is that working with local civic organizations, organizing volunteers, beach clean-ups, and similar activities is right on point from the master plan. The conservation element talks about the protection of the dunes. Ms. D'Anna talked about doing conservation of wildlife and wildlife habitat. That is a key component of what the surf school teaches; the beach is a pristine resource to be preserved and not only used by those fortunate enough to live along the ocean; it's a resource to support the local economy by drawing visitors and a safe, effective, and environmentally conscious mind. Mr. Gemma stated that he can't think of anything better than the goals and objectives for the master plan, and the Borough thought about the surf school as not just a recreation element but also for teaching.
16. Mr. Brodsky asked Mr. Gemma whether the amendment that was filed changed 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 could not 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.
17. 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.
18. Board Member 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.
19. Mr. Gemma went on to talk about the positive and negative criteria. The positive criteria advance the purpose of the zoning that the master plan states. The ordinance says that you have to have parking next to the accessory use. The next criteria is particular suitability. The ordinance says you have to provide parking next to where you have the use that you need. It is not only particularly suited. It is particularly required. The applicant testified that North Beach is the best location to safely teach surfing. There is 2,000 sq. ft. of parking. This lot is particularly suited in almost every sense of the ordinance.
20. The negative criteria, first, talks about substantial detriment upon the public good. This is where, Mr. Gemma states, some neighbors have concerns. Is there going to be noise, too many people, a mess, or other issues? These concerns can be mitigated by

- putting constraints on what is approved. The agreement is only to exist for the period of time the license states. Access points were amended to public gates per the lease to have the beach be controlled. Approval of the application does not have to mean substantial detriment upon the public good. Mr. Gemma stated that approval of the application has more substantial benefit than substantial detrimental impact. Lastly, is there a substantial detrimental impact to the intent and purpose of the Borough's own plan? Mr. Gemma stated that it enhances the master plan, this element of why you want this type of re-use in this location.
21. Board Planner Cofone stated that in her opinion as a professional planner, a lot of testimony was not relevant to what the Board is here to evaluate. All the Board is being asked to evaluate is that the applicant is looking to have her instructors park on the subject lots for which a license was issued by the Borough. The CP zone allows owners of a property to park automobiles without charge. She further stated there is nothing inconsistent in the ordinance. The master plan sites beach access and activity as a key characteristic and community to support its economic base. The applicant is looking to park instructors here, which the ordinance contemplates, but, because she is parking in conjunction with a commercial use, applicant needs the variance relief.
 22. Ms. Cofone stated that there is a great context in the land use law that she is held to all the time when she testifies as a witness, and that in each case has to rise and fall on its own merits. Ms. Cofone does not think it is important on whether this is commercial or recreational camp being operated. What the Board has to drill down to is whether or not the Board is comfortable with the extremely limited use that this applicant is proposing for this parking in order for a surf school to occur at this location. The Board can impose reasonable conditions on it. It really comes down to whether the Board is alright with the applicant using this parking for three hours a day, nine weeks out of the year. Ms. Cofone stated that she issued a letter, that her letter stands on its own, and that this is her testimony. Ms. Cofone has no objection to the application and is supportive of same which the majority of the Board accepted.
 23. The school operates at low tide hours 3-4 hours per day. 1 week June and then July and August.
 24. Only people permitted to park in the lot are surf instructors. They cannot stay after their lesson is over and can then go to center of town.
 25. There will be 6-10 cars parked along these two properties between 3-4 hours per day. No camp lessons on weekends but there may be private lessons on weekends.
 26. Board Member Cashmore reiterates that any variance granted should belong solely to the applicant at this location for the term of this lease from the municipality or any future lease from the municipality, as long as said camp is owned/operated by these individuals and the said camp is operated at this location. The variance would be **vacated** if the lease were not renewed with these applicants or this surf school at this location or the property owners for the subject lot revoke their consent to utilize same.

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

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

- a. Based upon the aforesaid findings of fact, the Board concludes that:
 - i. The applicant has demonstrated that the proposed use of the property in question is substantially the same kind of use as that to which the premises were devoted at the time of the passage of the zoning ordinance.
- b. Based upon the aforesaid findings of fact, the Board further concludes that the granting of the approval set forth herein will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the zoning ordinance and the zoning plan of the Borough of Sea Bright.
- c. Special reasons have been demonstrated and the Board accepts the opinion of the Applicant's planner, with commentary from the Board Planner, as to these reasons as well as the enhanced proofs required.
- d. The Board specifically includes herein by reference, the Transcripts from the hearings, which provide the detailed basis and description of the decision as memorialized in this Resolution and do hereby rely upon same for further reference, as necessary.**

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

The applicants are GRANTED a Use Variance on the amended application which variance is conditioned upon the following in accordance with their lease to operate a Surf School under the terms as provided by the Borough of Sea Bright.

1. A Use Variance is granted per Section 130.38.C(8)(a)[1]: Use "d" variance to permit automobile parking for surf instructors employed by the Applicant, ~~as well as clients of the Applicant that are taking private lessons~~ (weekdays only, no holidays) in the C-P Zone, where no such use is permitted; and
2. All Access by the public (camp attendees) shall be at the public access gate pursuant to the lease agreement.
3. Applicant consents to the condition that no more than 7-10 cars (in total) shall be parked on the two lots and said parking shall be for no more than 3-4 hours per day on the days/times as set forth in the accompanying lease agreement.
4. Further, applicant stipulates and agrees that this variance shall not "run with the land" but shall belong solely to these applicants, at this location, for the current term of their unexpired lease agreement (2021) with the municipality as well as the length of time for any future lease agreement for a surf camp to operate by these individuals, as acquired by bid from the municipality, as long as said camp is owned/operated by these individuals and the said camp is operated at this location.
5. This conditional use variance will be **specifically vacated** if the Borough lease were not renewed with these applicants (or this surf school at this location) or the property owners for the subject lot revoke their consent to utilize said lots in the CP Zone, or a sale of any of the two lots occurs. The sale of one lot (without the continuing consent of the new owner), or the revocation of consent from one lot, vacates the variance granted.

ALL APPROVALS GRANTED HEREIN ARE SUBJECT TO THE FOLLOWING CONDITIONS:

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

- (2) SUBJECT TO ALL REPRESENTATIONS AND TESTIMONY OF THE APPLICANT BEING TRUTHFUL AND ACCURATE

APPLICATION VOTE:

Adopted on a roll call on a motion by Board member Peggy Bills and Seconded by Board member Elizabeth DeGiulio

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

THOSE OPPOSED: Cunningham

ABSTAINED: DeSio

MEMORIALIZATION VOTE:

Adopted as revised on a roll call on a motion by Board member Heather Gorman and
Seconded by Board member Elizabeth DeGiulio

THOSE IN FAVOR: Cashmore, DeGiulio, Gorman, Smith

THOSE OPPOSED: none

ABSTAINED: none

I hereby certify that the foregoing is a true copy of the Resolution adopted and memorialized by
the Unified Planning/Zoning Board of the Borough of Sea Bright at its meeting held on May 25,
2021.

Date: May 25, 2021

Candace B. Mitchell

Candace B. Mitchell
Administrative Officer of the
Unified Planning/ Zoning Board.
Borough of Sea Bright.