

**APPLICANT: IVAN WANAT MARTIN**  
**APPLICATION NUMBER: 2021-8**  
**BLOCK: 16**  
**LOTS: 14**  
**ADDRESS: 3 BADMINTON COURT**  
**ATTORNEY FOR APPLICANT: HENRY F. WOLFF, III, ESQ.**  
**RESOLUTION NUMBER: 2021-08**



**RESOLUTION OF THE UNIFIED PLANNING/ZONING BOARD  
OF THE BOROUGH OF SEA BRIGHT  
FOR DENIAL OF A USE VARIANCE  
FOR A COMMERCIAL BUILDING (STORAGE) IN A RESIDENTIAL ZONE**

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**BOARD MEMBER MARC LECKSTEIN, ESQ.** , offered the following Resolution moved and seconded by **BOARD VICE CHAIR DAVID DeSIO**:

**WHEREAS, IVAN WANAT MARTIN**, hereinafter referred to as the “Applicant”, by and through their attorney, **HENRY F. WOLF, III, ESQ.**, 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:

The Applicant is seeking variance approval to permit primary use for storage where residential use is permitted, to wit:

1. Relief from Ordinance Section 130-49 C (2.1)(a) R3 Permitted use single family residential. Storage would need to be accessory to onsite permitted use.

**WHEREAS**, the application pertains to premises known and designated as Block 16, Lot 14 on the Tax Map of the Borough of Sea Bright, which said premises are located at 3 Badminton Court, Sea Bright, New Jersey in the R-3 Zoning District; and

**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: August 10, 2021 and February 8, 2022; and

**WHEREAS**, the following items were entered as Exhibits at the hearing which includes but is not limited to; any and all documentation as submitted and appearing on the Sea Bright website (seabrightnj.org) for presentation at the Public Meeting conducted in person, with public notice. The following exhibits had been made available for view on the Borough website:

- Zoning Permit Denial dated 1-29-20 (pdf)
- Application (pdf)
  - Property Survey, dated 9-24-18 (pdf)
  - Photo of Property, undated (pdf)
  - 3 Badminton Ct. 1st Engineer Tech Review, 1-20-21 (pdf)

- Board Planner 1st tech. review, 7-9-21 (pdf)
- Letter requesting adjournment, dated 7-12-21 (pdf)
- Letter requesting continuance, dated 10-14-21 (pdf)
- 3 Badminton Court Site Plan, dated 11-11-21 (pdf)
- Code Officer's Comments, 12-7-21 (pdf)
- Board Planner 2nd tech. review, 12-9-21 (pdf)
- 3 Badminton Ct. 2nd Engineer Tech. Review, 12-10-21 (pdf)
- Application, Tax and Sewer Cert., Affidavit of Proof of Service (pdf)

**EXHIBITS INTRODUCED AT MEETING (2/8/2022):**

1. **EXHIBIT A-1:** Photo taken by Mr. Martin

**WHEREAS**, The Board listened to the Testimony of the following:

1. **IVAN WINAT MARTIN (OWNER/APPLICANT)**
2. **ANDREW STOCKTON – PROFESSIONAL PLANNER-LAND SURVEYOR-PE**

**WHEREAS**, The Public Session provided Public Questions and then Commentary:

**NONE.**

**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 subject property was a bungalow home and is currently utilized as storage for dry goods for Angelica's Restaurant which use is the subject of this application. Applicant also advises that propane tanks are now properly stored for use as per advice of Fire Department. They are no longer out on the property. They will be inside building or on interior courtyard not visible. However, the Board questions the appropriateness of the storage of propane tanks in what is predominantly a residential neighborhood.
2. Applicant is will to install a chain link fence per recommendation. There is no electricity or heat or plumbing as same were all wiped out during Super Storm Sandy. This is currently perceived as a shed storage building by the owner.
3. There is ambient lighting from area lights but no other lighting from building. Applicant will add a stone/grass area or will add additional gravel or pave property.
4. The question remains as to whether the site particularly suited for this use and who owns the easement areas as same are a part of the application.
5. Upon looking at the Fire Marshall comments, the Board interprets there are more questions in the emails than opinions given.
6. Board Planner Beahm stated that if Applicant intends to use private property for access (per proposed plan), the subject lots need to be part of the application. Mr. Stockton stated that he hasn't done the research as to ownership of those areas and that there may not have been written easements.

7. Chairman Cunningham pointed out that during the first hearing the Board had requested being informed about how to access the building and who owns the property and that information appears to be lacking in the material submitted which inhibits the Board's ability to review as to accessibility.
8. The property in question has a small building with the building encroaching on the rear lot line. It is built into the back line of the squash club building and a privacy wall. It abuts it. It has always been that way.
9. Applicant proposes changing the use of the building from single family residential to commercial dry good storage arguing the building remains on the property and should be able to stay that way. The Applicant represents that the Board should allow the building to be used for storage of dry goods and retrieval of said dry goods and other storage. Applicant advises this is 100 percent storage space with access to this site from Angelica's. This is all foot traffic in an existing walkway. Walkway ownership/easement is suspect. There is no deed of easement for lot 5.
10. The applicant's planner, Stockton places alleged special reasons on record:
  - a. Building physical location to squash club and easy footpath access to rear of building
  - b. Storage building size and not practical for a single-family residence,
  - c. 1 story garage for condo on lot 15.01 is storage (immediately adjacent property – so character remains in sync).
  - d. The Right of Way with Badminton is available, and Lot 13 is separated by a wood fence.
  - e. Converting building to residential use would look out of character to this area at Badminton. Proposed storage does not generate traffic.
  - f. Converting use to a storage building goes to Sea Bright recovery plan which is to help businesses bring customers to the Borough and this use support's the business at Angelica's Restaurant.
11. Board Member discuss the potential of future development of the site and the particular suitability of the lot given the potential for future development.
12. The Board notes that the squash club (and the garage used for storage with the condominiums) are perhaps the only non-residential uses in the Badminton Court area and it is primarily residential development.
13. The Board discusses the whole of Badminton Court and the fact that it may be prime for redevelopment given the R-3 zone and the redevelopment taking place in the Borough.
14. The Board notes with particularity that this area is still zoned and developed as a residential neighborhood. The approved use for the site is for residential and while a new SFH in this location may look out of character at this time with the other existing residential dwellings along badminton court, it could set off a renovation of the entire Court which would be more beneficial to Sea Bright.
15. Board Planner Beahm advises based on Board discussion that the lot area is larger than minimum lot area in the zone.
16. Future development may move in a direction consistent with zoning.
17. Beahm does not agree with special reasons set forth by Applicant's planner and indicates a private shed does not promote health safety and welfare and "support" of business was not the intent for a storage shed and does not encourage coordination under item (k) which shapes land development (public/private procedure).
18. Board Planner Beahm advises further that any "idea that this looks like a storage building so therefore it should be", is completely unacceptable for purposes of zoning.
19. Planner Beahm does not agree with the goals of zoning employed by Applicant and advises the Applicant's interpretation is stretch for a D1 use variance.

20. Planner Beahm advises the Board that this is essentially an interim use and may have a negative impact on the area and same does to promote a public benefit. This area/zone was reviewed in the master plan and kept as a residential zone for a reason by the Committee/Council.
21. Applicant does offer a rebuttal and indicates it's their testimony that the goal is to promote and support businesses and this supports the business of Angelicas and opines that the proposed use of storage/support is the highest and best use of the building.
22. The Board, relying upon the Testimony of the Board planner that the subject property is not particularly suited for the proposed use, the lack of support for access, discovery of ownership or existing easements in the site plan for access, as well as the failure of the subject property to be re-zoned in the reexamination of the Master Plan and the continued pursued development of Sea Bright for single family residential leads the Board to its decision to deny the requested relief.

**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 hereby adopts the aforesaid findings of fact and specifically makes the following conclusions:

Based upon the aforesaid findings of fact, the Board concludes that:

- a. The applicant has NOT 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 cause substantial detriment to the public good and WILL substantially impair the intent and purpose of the zoning ordinance and the zoning plan of the Borough of Sea Bright.
- c. Special reasons have NOT been demonstrated and the Board accepts the opinion of the Board's planner, as to the lack of these special reasons as well as the lack of 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 Adjustment of the Borough of Sea Bright that the following be and are hereby **DENIED**:

Applicant **IS DENIED** relief by way of variance approval to permit primary use for storage where residential use is permitted, and Relief is **DENIED** from Ordinance Section 130-49 C (2.1)(a).

**APPLICATION VOTE:**

Adopted on a roll call on a motion by Board member Marc A. Leckstein, Esq. and Seconded by Board Vice Chair DeSio

THOSE IN FAVOR: DeSio, Gorman, Lawrence, Leckstein

THOSE OPPOSED: Cunningham

RECUSED: None

ABSENT:

ABSTAINED: Councilman Bieber (stepped down due to Use Variance) and Member Stephen Cashmore (stepped down due to a 200' list conflict of interest)

**MEMORIALIZATION VOTE:**

Adopted on a roll call on a motion offered by Board Member Councilman Mark A. Leckstein and Seconded by Board member Heather Gorman

THOSE IN FAVOR: DeSio, Gorman, Lawrence, Leckstein

THOSE OPPOSED: None

RECUSED: None

ABSENT:

ABSTAINED: None

I certify the foregoing to be a true copy of the Resolution memorialized by the Unified Planning/Zoning Board of Sea Bright at its meeting on February 22, 2022.

Date: February 22, 2022

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

