

APPLICANT: MARTIN AND THERESA PHAN
ATTORNEY FOR APPLICANT: RICHARD SCIRIA, ESQ.
APPLICATION NUMBER: 2021- 14
BLOCK: 33
LOT: 20.01
ADDRESS: 164 OCEAN AVENUE
RESOLUTION NUMBER: 2021-14



**RESOLUTION OF THE UNIFIED PLANNING/ZONING BOARD
OF THE BOROUGH OF SEA BRIGHT
FOR AMENDED SITE PLAN APPROVAL**

WHEREAS, BOARD VICE CHAIR DI SEO offered the following Motion moved and seconded by **BOARD MEMBER CUNNINGHAM**:

WHEREAS, 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:

Amended Site Plan Approval from the Resolution entered on February 13, 2018 in conjunction with the Settlement Agreement (NJ Appellate Docket A-004249-18) entered on December 6, 2019 between the Applicant’s Phan and The Land’s End Townhouse Condominium Association, Inc (upon Notice to The Borough of Sea Bright).

Specifically, the Applicant will be seeking Amended Site Plan/Bulk (“c”) Variance Approval for the following:

Eliminate the two (2) rear exterior decks;

Incorporate any front decks or balconies below the roof deck;

Incorporate “Juliet Balcony(ies)” on the rear elevation of the House;

Change the contour of the rear stairwell, thereby reducing the length as to the area of the rear stairwell from the back of the house by three (3) feet, which shall not change the footprint of the livable space;

Incorporate the planting of no less than five (5) trees of similar species, size, height, and caliper as currently exists on the Property in the buffer between the Property and the Association’s property;

Extend the brick wall that runs half-way up the Ocean Avenue exterior stairwell with any other non-transparent material to the entire height of the stairwell. The enclosure of the stairwell triggers a front yard setback variance from Ocean Avenue whereas 25 feet is required and 17 feet is proposed;

Install a solid barrier (non-transparent) at the left-side railing on the roof deck adjacent to the Lands' End Condominium.

The Applicant will also be seeking approval for any and all other Variances and/or Design Waivers which are necessary, or which may become necessary, during the Public hearing process.

WHEREAS, the application pertains to premises known and designated as Block 33, Lot 20.01 on the Tax Map of the Borough of Sea Bright, which premises are located at 164 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, **NOVEMBER 9, 2021 AND JANUARY 11, 2022**:

WHEREAS, the following items were entered as Exhibits at the hearing which includes but is not limited to; any and all documentation as submitted at the hearing as well as those appearing on the Sea Bright website (seabrightnj.org) for presentation at the Public Meeting as referenced above:

- Application, 6-25-21, with 2018 Resolution of Approval, 2-27-18 and Superior Court Stipulation of Settlement, 12-11-19 (pdf)
- Cover letter, 9-30-21 (pdf)
- Architectural Plans, dated 9-25-17 (pdf)
- Architectural Plans, revised to 4-24-21 (pdf)
- 2018 Application - Approved Architectural Drawings for comparison to 4-24-21 amended plans (pdf)
- Board Engineer's First Technical Review, 10-9-21 (pdf)
- Revised Architectural Plans, revised to 12-25-21 (pdf)
- Board Engineer Second Technical Review, 1-3-22 (pdf)
- Affidavit of Mailing, 10-5-21 (pdf)
- Reviewed Mail Service, 10-8-21 (pdf)
- Additional Mail Service, 10-15-21 (pdf)
- Affidavit of Publication, 10-18-21 (pdf)
- Reviewed Second Mail Service 10-28-21 (pdf)
- Affidavit of Mailing Mail Manifest, 10-28-21 (pdf)
- Affidavit of Publication, 11-9-21 (pdf)
- Tax and Sewer Certification, 11-9-21 (pdf)

WHEREAS The Board listened to the Testimony of the following:

1. CATHERINE FRANCO, ARCHITECT

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

1. NONE.

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

1. DAVID JANAZZO

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 Board reviewed the testimony of Architect Catherine Franco, Catherine Franco – AIA and PP 150 Monmouth Ave, Atlantic Highlands regarding the settlement and prior resolution
2. Ms. Franco testified to modifications from the Appellate Division:
 - A. Eliminate the two rear decks and the plans had to incorporate any front deck or balcony below the roof deck, create Juliet balconies;
 - B. Turn the contour of the stairwell facing Ocean Avenue by making a solid wall all the way up instead of a half wall appearance.
 - C. Add landscape bumper.
3. The testimony initially provided was that the change of plans in accordance with the Settlement Agreement triggered a front yard setback variance on Ocean Avenue as the Applicant's enclosed the stairs and added a deck which movement changed the setback.
4. Board Vice Chair DiSeo pointed out that the structure was enlarged by 400 square feet total (200 sq/floor)
5. Board Vice Chair DiSeo advised that a 25' set back on Ocean Avenue – measured to curb was a non-negotiable item given the addition to the structure and the room to move the structure towards the back of the lot per the survey. This "movement forward" into the Ocean Avenue setback was not contemplated by the original resolution of 2018.
6. The applicant, in consideration of comments made, revised and resubmitted their plans for the structure for the January 11, 2022 meeting with the Ocean Avenue set back variance being eliminated.
7. Further, applicant per the revised plans, will conform with other requirements and buffering to plant 5 trees in between properties, with 4 trees in back and 1 in the front pf the property, in the buffer as shown on the revised plans.
8. The Board, after revision of the plans, advised that the plans were now in compliance with the 2018 Resolution and subsequent Settlement Agreement.
9. Ms. Franco, testifying on the revised plans, stated that the building changes are found on sheet one (1) of the plans. The front circular driveway was now incorporated in the building and therefore, eliminated the variance. Instead of the proposed 17' front yard setback, the setback will now be 25' 6", which is above the requirement. The rear stairwell will now be placed horizontally, to go against the back wall, and its left wall will be a solid, instead of a half solid wall. Also, building coverage has been reduced by 100 sq.'. The only stair to the roof is a spiral staircase located on the front side of the house. The rear decks have been taken away. Everything else is the same as in the original application.
10. Vice Chairman DeSio commented that he was glad the front setback was improved. He noted that the property has two front yards, and the applicants were granted relief on the

Mountain View Way side in the first application's approval. He is pleased that the setback on Ocean Avenue is now in compliance.

11. Board Engineer David Hoder referenced his Second Technical Review, dated January 3, 2022, and stated the applicant should provide a place on the plan for the Board engineer to sign, which is a Condition of Approval. The applicant should also place on the plan a note that any curb, sidewalk, or road surface damaged during construction will be replaced according to the Borough or NJDOT standards, which is also a condition of approval.

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. **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**:

Applicant is granted Amended Site Plan Approval from the Resolution entered on February 13, 2018 in conjunction with the Settlement Agreement (NJ Appellate Docket A-004249-18) entered on December 6, 2019 between the Applicant's Phan and The Land's End Townhouse Condominium Association, Inc (upon Notice to The Borough of Sea Bright).

Applicant is **GRANTED** bulk variance relief pursuant to NJSA 40:55D-70.c **PER THE REVISED PLANS SUBMITTED AND REFERENCED ABOVE; TO**

Eliminate the two (2) rear exterior decks;

Incorporate any front decks or balconies below the roof deck;

Incorporate "Juliet Balcony(ies)" on the rear elevation of the House;

Change the contour of the rear stairwell, which was revised to show a solid wall;

Incorporate the planting of no less than five (5) trees of similar species, size, height, and caliper as currently exists on the Property in the buffer between the Property and the Association's property;

Extend the brick wall that runs half-way up the Ocean Avenue exterior stairwell with any other non-transparent material to the entire height of the stairwell;

Install a solid barrier (non-transparent) at the left-side railing on the roof deck adjacent to the Lands' End Condominium.

Requires the original (existing footprint) to be unchanged;

(Board Engineer Hoder indicates the plans reflect these changes 1/3/2022)

Further, as a Condition of Approval, Board Engineer David Hoder referenced his Second Technical Review, dated January 3, 2022, and stated the applicant should also provide a place on the plan for the Board Engineer to sign, and the *Applicant should also place on the plan a note that any curb, sidewalk, or road surface damaged during construction will be replaced according to the Borough or NJDOT standards by the Applicant.*

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. SUBJECT TO ALL REPRESENTATIONS AND TESTIMONY OF THE APPLICANT BEING TRUTHFUL AND ACCURATE
 - b. SUBJECT TO ALL TERMS AS CONTAINED IN THE REVIEW LETTER OF HODER ASSOCIATS DATED JANUARY 3, 2022

APPLICATION VOTE:

Adopted on a roll call on a motion by Board Vice Chair DeSio and Seconded by Board Chair Cunningham

THOSE IN FAVOR: Cashmore, Cunningham, DeSio, Gorman, Lawrence, Leckstein

THOSE OPPOSED: None

RECUSED: None

ABSENT: Bills, DeGiulio, Schwartz

ABSTAINED: None

MEMORIALIZATION VOTE:

Adopted on a roll call on a motion offered by Board Chair Cunningham and Seconded by Board member Lawrence

THOSE IN FAVOR: Cashmore, Cunningham, DeSio, Gorman, Lawrence

THOSE OPPOSED: None

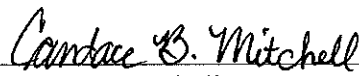
RECUSED: None

ABSENT: Bills, DeGiulio, Leckstein, Schwartz

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 January 25, 2022.

Date: January 25, 2022


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

