

APPLICANT: 1485 OCEAN AVENUE REALTY, LLC
APPLICATION NUMBER: 2021-05
BLOCK: 4
LOT: 5
ADDRESS: 1485 OCEAN AVENUE
ATTORNEY FOR APPLICANT: MICHAEL BRUNO, ESQ.
RESOLUTION NUMBER: 2021-05

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

WHEREAS, BOARD MEMBER MARC LECKSTEIN, ESQ., offered the following Motion moved and seconded by **BOARD MEMBER PEGGY BILLS:**

WHEREAS 1485 OCEAN AVENUE REALTY, LLC, ALSO DOING BUSINESS AS SEA HORSE BEACH CLUB, LLC AND THE DRIFTWOOD CABANA CLUB, hereinafter referred to as the “applicant,” by and through their attorney, **MICHAEL A. BRUNO, 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 application involves the property located at 1485 Ocean Avenue, Sea Bright, New Jersey, more formally identified as Block 4, Lot 5 (B-3 Zone). The applicants are seeking approval and bulk variance relief to permit an existing tiki bar structure with ancillary deck area. The tiki bar and deck area for which the applicant now seeks approval appear to have been previously approved or permitted as seasonal structures that were destroyed, along with other portions of the Property, by Hurricane Sandy in Fall 2012. As reconstructed (and as they presently exist), such structures encompass a larger area than did the previously approved seasonal structures and exceed the maximum size of accessory structures as permitted by the Borough Ordinance. Specifically, Section 130-49.D(1)(d) of the Borough Land Use Ordinance provides that an accessory structure may not exceed 500 s.f.; the tiki bar and deck for which the Applicant now seeks approval total approximately 2,793 s.f.;

Accordingly, the Applicant is requesting bulk “c” variance relief pursuant to N.J.S.A. 40:55D-70(c)(2) to permit the accessory structure area exceedance, along with amended preliminary and final site plan approval to permit the tiki bar and deck area as they exist, to the extent that same deviate from the previously approved site plan. In addition to the foregoing, the Applicant will seek from the Board, such other variance relief, design waiver relief, exceptions, approvals, authorizations, or the like as determined to be necessary by the Board or its consultants during the course of the Board’s deliberations on this matter.

WHEREAS, the application pertains to premises known and designated as Block 4, Lot 5 on the Tax Map of the Borough of Sea Bright, which premises are located in the B-3 Zone at 1485 Ocean Avenue, Sea Bright, NJ 07760; 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, **April 13, 2021**:

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

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

Exhibits offered for public inspection at least ten days prior to the meeting were as follows:

- Jurisdictional Packet, received 4/9/21
- Zoning Denial, dated 11/17/20 and 1/20/21
- Application, received 3/1/21
- 3 Photos
- CAFRA Permit, dated 7/29/20
- Amended Preliminary & Final site Plan prepared by Walter J. Hopkin, P.E. of WJH Engineering, LLC, dated 2/22/2021, consisting of two (2) sheets
- Boundary and Topographic Survey prepared by Colliers Engineering & Design (formerly known as Maser Consulting, PA) dated 3/18/19 and revised through 7/10/20, consisting of one (1) sheet
- Board Engineer's Technical Review, dated 4/7/21, consisting of 3 pages
- **Exhibit A-1** Color rendered version of the preliminary site plan, dated 2/22/21 (provided and marked at the Public Meeting)

WHEREAS The Board listened to the Testimony of the following:

1. **WALTER K. HOPKIN, PE**
2. **WILLIAM STAVOLA**

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:

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. This is an application to memorialize existing conditions. Improvements have been undertaken over the years, particularly since Superstorm Sandy in October 2012, and this application seeks to memorialize the existing deck and tiki bar area that have been there for quite some time. The tiki bar has been improved from time to time over the years and was never reflected on an approved site plan.
2. The renewal of the CAFRA permit that is needed for beach club activities requires the

addition of certain conditions, such as removal of certain permanent improvements, namely walls and windows for the tiki bar to make them of a temporary nature.

3. Licensed professional engineer Walter K. Hopkin testified as to Exhibit A-1. The property as depicted runs along the eastern side of Ocean Avenue and is located in the B-3 zone. The cabana club has existed there for quite some time. The tiki bar has existed since at least 2002, with an adjacent deck which deck has been in the same footprint since at least 2002.
4. The current ordinance does not permit accessory structures greater than 500 sq. ft. The tiki bar is approximately 1,050 square feet, and the adjacent deck is 1,743 sq. ft.
5. There is existing security lighting on the exterior of the tiki bar. The existing refuse and recycling must be relocated elsewhere on site and identified on the site plan.
6. It was also noted during testimony in response to direct inquiry from the Board Engineer that the pilings are not, in fact, located on top of the seawall. They are adjacent to the jetty and not on the seawall.
7. Mr. Bruno advised that the deck and tiki bar shown on the plan are consistent with the CAFRA permit that was issued in 2020. Mr. Bruno advised, and the Board accepted, that applicant's proposal will not cause any negative impacts and is justifiable under the municipal land use law for this type of variance.
8. Mr. Hopkin then testified in his capacity as a professional planner to substantiate this advice. Mr. Hopkin pointed out that there are several positive criteria in this application. Even with what is being considered, the site as a whole is well below the allowed building lot coverage. The public and the club members have been able to enjoy the structure for close to twenty years. Since it has existed for that length of time, Mr. Hopkin stated (and the Board accepted) there would be no negative impact to either the community nor to the zone plan or the zone plan's intent. Mr. Hopkin also agreed with Mr. Bruno's statement that there are no drainage concerns or negative visual impacts on any surrounding property owners.
9. Applicant, as a Condition of Approval, stipulated (and the Board accepted) that they are prepared to comply with the suggestions set forth in Mr. Hoder's Engineering Report for the Borough of Sea Bright.
10. Councilman Leckstein requested clarification for the historical record of the tiki bar and deck and asked whether this is the same structure that has been there for twenty years, or was the structure destroyed in Sandy and then rebuilt. Mr. Bruno advised that the tiki bar was destroyed in Sandy and was rebuilt in its place. The tiki bar has been improved from time to time, and side walls and windows were put in and some refrigeration service and gas service were added so that food could be served. Required permits were received to do that. The applicant did not appear before this Board for any of those improvements so no zoning determinations were made.
11. With the issuance of the new CAFRA, the applicant requests, and the Board consents, to memorialize the existing footprint so that the municipality has a record of it and their site plan is updated.
12. Councilman Leckstein advised the Board that he has no problem with the application itself and wished to clarify that the structure and deck has been there from approximately 2013, probably in the rebuilt structure, and that there was actually an application submitted to Zoning. It appears that, according to the application, the zoning application was actually denied by the zoning officer, and, then, no one appeared before the Board. Councilman Leckstein further stated that he wants to make sure the record is accurate as to the history of the improvements. Mr. Bruno stated that he thinks the testimony is that the tiki bar in the deck was there before Sandy. They re-built after Sandy, and that is the structure that is before you today, which tiki bar was enlarged to fit

the size of the deck as it existed.

13. The Board acknowledges that when the tiki bar was rebuilt it was not built to the same size and in the same footprint, which is why the applicant is here for relief. The deck appears to be in the same footprint as pre-Sandy. There was an expansion of the bar to fit the deck that was around the bar. Mr. Bruno clarified that it is fair to say that the deck is substantially the same as pre-Sandy, and the tiki bar is larger than it was pre-Sandy.
14. William Stavola, one of the owners of the property, testified that his family bought the Driftwood Beach Club in December of 2010. He believes the tiki bar and deck area date back to around 2002. After the storm in 2012, the deck was rebuilt as it was, as far as the footprint goes, the outer edge of the bar was expanded to the edges of the deck. Since 2012, outer walls, windows, a gas line, refrigeration, beer taps, lighting, and ceiling fans were all added. Gas and electric were approved through the construction department.
15. Board Vice Chair Dave DeSio questioned how the DEP permit would be responded to, which states that the tiki bar will be modified by removal of the walls and windows and will be converted to an open food concession bar. Mr. Stavola confirmed there is a plan to take out the windows and walls and make it structurally sound. They have hired a structural engineer to make the appropriate structural modifications. The state is allowing the applicant to put up a non-permanent roll-up type curtain in place of existing walls. It will be secured at night, as far as alcohol and the equipment inside.
16. Board Engineer Dave Hoder stated that Mr. Hopkin had taken care of the items in his review letter in terms of Mr. Hoder's concerns. Mr. Hoder wanted to confirm the seawall was not harmed in any way, and the applicant will comply and will add the items in number 2 and 3 on the plans for plan compliance as a condition of approval.
17. Mr. Hoder further advised that in terms of performance guarantees, there doesn't need to be any kind of bonding on this project because it's really under the purview of the building department. These changes are all going to be building changes, not site changes. There should be a small amount for inspection escrows to be deposited.
18. Board Member Peggy Bills questioned the DEP's guidance in creating a temporary structure on the tiki bar as opposed to a more permanent structure for safety from storm/winds but defers to their guidance and requirements in this application.
19. The applicant defines this as a C(2) flexible c variance, which the board accepts, to allow the previous structure to remain which has been enjoyed since 2012, if not earlier in a smaller footprint (building). This creates access of enjoyment of waterfront in an aesthetically pleasing manner.
20. As for the Negative criteria, applicant advises, and the Board agrees that there is no negative impact to zone plan or intent.
21. The variance can be granted because the benefits in allowing the condition to continue to exist outweigh any detriment and will not impair zone plan.

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**:

The applicants are GRANTED per the Plans submitted to the Borough of Sea Bright.

Applicant is GRANTED bulk “c” variance relief pursuant to N.J.S.A. 40:55D-70(c)(2) to permit the accessory structure area exceedance, along with amended preliminary and final site plan approval to permit the tiki bar and deck area as they exist, to the extent that same deviate from the previously approved site plan, PROVIDED, as a condition of Approval, that the details of the CAFRA permit have compliance as submitted and that Applicant stipulates to comply, and does comply, will all requests as set forth in the Board Engineer’s Review Letter with the posting of Inspection Escrows, as directed.

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 BOARD'S PROFESSIONALS.**

1. 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 Marc Leckstein, Esq. and Seconded by Board member Peggy Bills

THOSE IN FAVOR: Bills, Cashmore, Cunningham, DeGiulio, DeSio, Gorman, Leckstein, Smith

THOSE OPPOSED: None

ABSTAINED: None

MEMORIALIZATION VOTE:

Adopted on a roll call on a motion by Board member Marc Leckstein, Esq. and Seconded by Board member Lance Cunningham

THOSE IN FAVOR: Bills, Cashmore, Cunningham, DeGiulio, DeSio, Gorman, Leckstein, Smith

THOSE OPPOSED: None

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 April 27, 2021.

Candace B. Mitchell

Candace B. Mitchell, Secretary
Sea Bright Planning/Zoning Board

C. Lance Cunningham

C. Lance Cunningham, Chairman
Sea Bright Planning/Zoning Board

