

**REGULAR MEETING**

The following are the minutes of the Land Use Review Board of the Borough of Ship Bottom, Ocean County, New Jersey, which was held in Borough Hall, 1621 Long Beach Blvd., Ship Bottom, New Jersey on June 15, 2016.

The Work Session was opened at 7:00 p.m. by Chairman Butkus who announced to all present that the requirements of the Public Notice of the Meeting and of the Open Public Meetings Act had been satisfied.

**REGULAR MEETING:**

The Regular Meeting was called to order by Chairman Butkus at 7:01 p.m. He informed all those present that this meeting met all the criteria of the Open Public Meetings Act.

Roll call of members: Councilman English, Mr. Cooper, Ms. Schmidt, Mr. Bishop, Vice Chairman Tallon and Chairman Butkus present. Mayor Huelsenbeck, Mr. Basile and Mr. Dixon absent.

Also in attendance were the Board Attorney, Stuart D. Snyder, Esq., the Board Engineer/Planner, Frank J. Little, Jr., PE, PP, CME of Owen, Little and Associates and the Board Secretary, Danielle Mezzina.

**CORRESPONDENCE:**

The correspondence folder was passed around for all members to review.

**MINUTES:**

The minutes of the May 18, 2016 meeting were presented to the Board for review. Vice Chairman Tallon made a motion to approve the minutes as written, Ms. Schmidt seconded the motion. Roll call vote: Cooper, Schmidt, Bishop, Tallon and Butkus all aye to approve.

**NEW BUSINESS:**

- (A) DOCKET NO. 16:05  
KRIKAL, LLC  
133 28<sup>TH</sup> STREET  
BLOCK 20, LOT 25

James Raban from the office of Reginald Raban, representing the applicants.

The following were marked into evidence by Mr. Snyder:

- A-1 Application
- A-2 Plan of Nelke Tyska
- A-3 Architectural drawings prepared by Pagnotta
- A-4 4 Photographs on 1 sheet of the property
- B-1 Review letter prepared by Owen, Little & Associates

Frank Little sworn in as Board Professional Planner and Engineer

Mr. Raban explains the nature of the application and what they are seeking variances for. The hardship of this, is the shallowness of the lot.

Leon Tyska sworn in as the Professional Surveyor for the applicant. Mr. Tyska states that currently there is a duplex on the lot. The house that is proposed is a single-family and will meet the requirements as far as setbacks except the rear-yard setback. Curbing and sidewalks are proposed as well.

Michael Pagnotta, architect and planner for the applicant sworn in by Mr. Snyder. Mr. Pagnotta explains his design for the home.

On a motion made by Councilman English, seconded by Mr. Hay and an all in favor vote, the public portion was open.

Charles Swartz, 135 E. 28<sup>th</sup> Street, directly adjacent to the applicant. Concerns with parking in terms of the proposed curb cut and losing an on-street parking space.

Mary Jane Swartz, 135 E. 28<sup>th</sup> Street. Concerns with gutters and questions if the applicant will be required to have gutters.

Not recognizing anyone else from the public, on a motion made by Councilman English, seconded by Mr. Cooper and an all in favor vote, the public portion was closed.

Mr. Raban provided closing statements and discussion ensued amongst the Board.

A motion to approve this application was made by Mr. Cooper and seconded by Councilman English. Roll call vote: English, Cooper, Hay, Schmidt, Bishop, Panetta, Tallon and Butkus all aye to approve.

**RESOLUTION:**

**RESOLUTION OF MEMORIALIZATION OF THE  
LAND USE REVIEW BOARD OF THE BOROUGH OF SHIP BOTTOM  
COUNTY OF OCEAN AND STATE OF NEW JERSEY  
DOCKET NO. 2016:04**

**WHEREAS**, S & S, a Virginia Partnership has made application to the Land Use Review Board of the Borough of Ship Bottom for variances to permit the outdoor display and placement of certain merchandise along the front and sides of the existing “Sunsations” store, as well as along the perimeter of the parking lot at property known as designated as 2210 Long Beach Boulevard, Lots 11 and 12 Block 37 in the Borough of Ship Bottom, County of Ocean and State of New Jersey; and

**WHEREAS**, the Land Use Review Board considered this application at a public hearing conducted on May 18, 2016. The applicant was represented by Katherine M. Shackleton, Esq. The application dated April 27, 2016 was entered into evidence as Exhibit A-1; the plan prepared by Horn, Tyson & Yoder, Inc. entitled “Site Plan Lots 11 & 12, Block 37 Tax Map Sheet # 6 Borough of Ship Bottom, Ocean County New Jersey” dated June 22, 1999 with a final revision date of April 21, 2016, under signatures and seals of James D. Brzozowski, P.E., P.P., and Hayes A. Hewitt, P.L.S. was entered into evidence as exhibit A-2; series of photographs numbered 1 -4 was entered into evidence as Exhibit A-3; a series of photographs numbered 5 -8 was entered into evidence as Exhibit A-4; a series of photographs numbered 9 -12 was entered into evidence as Exhibit A-5; and a series of photographs numbered 13 – 15 was entered into evidence as Exhibit A-6. The review letter of Owen, Little and Associates, Inc. dated May 11, 2016 was entered into evidence as Exhibit B-1. Testimony was offered by James D. Brzozowski, applicants Professional Engineer and Professional Planner; and by Ofir Shrikiy, a principal and manager of the business located at the property “Sunsations”. Public comment was offered by Catherine Kulp; and

**WHEREAS**, the Land Use Review Board after considering the Application, testimony of the witnesses, documentation entered into evidence, argument of counsel and public comment has made the following factual findings:

1. All jurisdictional requirements have been met.
2. Applicant is the owner of the property; which is located on Long Beach Boulevard between 22<sup>nd</sup> Street and 23<sup>rd</sup> Street; having dimensions of 200’ x130’ irregular. The property is completely developed with two story building and parking lot.
3. The property is in the SC Shore Commercial Zone. The property maintains a retail store together with a second story apartment. Initially the store was divided into two units; with “Sunsations” utilizing a portion of the space for its retail sale and rental of beach supplies and other merchandise; and for many years the remaining retail space was used by another retailer selling patio and outside furniture and accessories. The second retailer relocated and Sunsations is now using the entire retail space for the

- sale and rental of beach merchandise; including but not limited to clothing, beach chairs, umbrellas, rafts and other assorted novelty items and bicycles. Suninations had previously expanded its business to include the rental of beach gear from the store including bicycles and helmets.
4. Applicant is requesting permission to provide outdoor displays of merchandise at the property. The application provides for a display area along Long Beach Boulevard; along a portion of 22<sup>nd</sup> Street and along a portion of 23<sup>rd</sup> Street. There also is a display area proposed along the interior of the parking lot.
  5. The outside display proposed by applicant is prohibited by Ordinance: *Borough of Ship Bottom Ordinance 16.44.010 E. 2.a. Unless otherwise specifically approved by the board as part of a site plan application, no merchandise, product, equipment or similar material or objects shall be displayed or stored outside. b. Where merchandise, products, equipment or similar material or objects are approved by the board to be displayed or stored outside, the materials shall be suitably screened to be obscured from view from adjacent uses and must be situated within the property lines of the principal use. c. In any case, no sidewalk area shall be obstructed or utilized for any commercial purpose and no food shall be dispensed directly to any person standing or occupying prescribed sidewalk area. Moreover, if approved, any dispensing of food or other merchandise shall be done only to persons actually within the lot lines of the lot occupied by the vendor.* Applicant is seeking Special Reasons/Use Variance approvals to permit the requested outside display areas.
  6. The property as developed maintains second floor fire escapes from the apartment on the north and south sides of the building. The property spans from the corner of Long Beach Boulevard and 22<sup>nd</sup> Street to the North to the corner of Long Beach Boulevard and 23<sup>rd</sup> Street to the South. Site triangles are required at both corners.
  7. There is a decorative overhang along a portion of the building that fronts 23<sup>rd</sup> Street, a portion of the building that fronts 22<sup>nd</sup> Street and along Long Beach Boulevard. There is an entrance to the building from the parking lot; and the main entrance appears to be located at the corner of 23<sup>rd</sup> Street and Long Beach Boulevard.
  8. Applicant has amended the application to eliminate the proposed outside display areas within the site triangle at 23<sup>rd</sup> Street and Long Beach Boulevard, and to eliminate the proposed outside display along 23<sup>rd</sup> Street and along 22<sup>nd</sup> Street.
  9. All items being displayed outside will be brought indoors at the close of business. Applicant will also limit the display of inflatable to the interior corner of the parking lot; and the inflatable will be properly secured to the ground and building.
  10. The proposed display area will be maintained under the overhang on Long Beach Boulevard; the sidewalk will remain clear for pedestrian traffic. The outdoor display area within the confines of the parking lot will not interfere with the vehicle parking; and applicant will not encroach upon the interior sidewalk, to provide an adequate area for pedestrian travel in that area. The display area will be limited to the areas under the building overhang and within the 5.4' foot gravel area therein. The emergency door on the north side of the building will not be blocked.
  11. Applicant has conducted its business at the site for many years, and is anxious to enhance its operation; the site is large enough to accommodate the outdoor display of merchandise without affecting the sidewalk and pedestrian safety and traffic flow.
  12. The Board is mindful of the difficulties local businesses are experiencing and the relief requested by applicant may assist in energizing the Shore Commercial Zone and applicant's business.
  13. Applicant acknowledges that Long Beach Boulevard is a County right of way; any use of the County right of way for applicants' merchandise display is subject to and conditioned upon Ocean County approval, if required; the Board's permission requested herein is subordinate to that of Ocean County.
  14. The Board adopts the contents of the letter of Owen, Little & Associates, Inc. dated May 11, 2016 entered into evidence as Exhibit B-1 as if set forth herein at length.
  15. Applicant shall provide a modified plan eliminating those areas within the site triangles and 22<sup>nd</sup> and 23<sup>rd</sup> Streets for proposed display of merchandise, and note on the plan the location of inflatable items; prohibiting them from elsewhere at the property.
  16. The Board finds that the outdoor display of merchandise for sale and rental, as requested by applicant, may be permitted, limited to applicant's business hours and only in those areas as presented to the board; to be delineated on a revised plan to be submitted in accordance with the testimony before the Board and as contained herein. The proposed display area fronting on Long Beach Boulevard is approved subject to

applicant obtaining permission and approval from Ocean County for the outdoor display of merchandise on Ocean County property; and

**WHEREAS**, the Land Use Review Board of the Borough of Ship Bottom has determined that the relief requested by the applicant, S & S, a Virginia Partnership for site plan and variances to permit the outdoor display and placement of certain merchandise along the front of the existing “Sunsations” store, as well as along the perimeter of the parking lot at property known as designated as 2210 Long Beach Boulevard, Lots 11 and 12 Block 37 in the Borough of Ship Bottom, County of Ocean and State of New Jersey can be granted without substantial detriment to the public good and without impairing the intent and purposes of the zone plan and zoning ordinances of the Borough of Ship Bottom; as the proposed display areas, as amended, will not interfere with the site triangles, and pedestrian flow of traffic. The outside display of merchandise, at this oversized parcel, will enhance applicants business and should support the Shore Commercial district.

**NOW, THEREFORE, BE IT RESOLVED** by the Land Use Review Board of the Borough of Ship Bottom that the application of , S & S, a Virginia Partnership for site plan and variances to permit the outdoor display and placement of certain merchandise along the front of the existing “Sunsations” store, as well as along the perimeter of the parking lot at property known as designated as 2210 Long Beach Boulevard, Lots 11 and 12 Block 37 in the Borough of Ship Bottom, County of Ocean and State of New Jersey, be and hereby is, conditionally approved.

**BE IT FURTHER RESOLVED** that this approval is subject to and conditioned upon Applicant’s compliance with all terms and conditions of the letter of the Board Engineer, Frank J. Little, Jr., P.E., P.P., and C.M.E., dated May 11, 2016 as entered into evidence as Exhibit B-1; and applicant complying with all other technical revisions as may be required by the Board engineer.

**BE IT FURTHER RESOLVED** that this approval is subject to and conditioned upon applicant submitting revised plans, eliminating all outside display areas from the site triangles at 22<sup>nd</sup> and 23<sup>rd</sup> Streets and Long Beach Boulevard; eliminating the outdoor display areas from 22<sup>nd</sup> Street and 23<sup>rd</sup> Street and restricting the display of inflatable items to a corner within the parking area; confirming that the sidewalk areas within the parking area will remain open and unobstructed. Said plans shall be subject to the approval of the Board engineer.

**BE IT FURTHER RESOLVED** that this approval is subject to all merchandise being taken inside after business hours; the display is permitted only when the store is open for business. The emergency door on the north side of the building shall not be blocked or obstructed.

**BE IT FURTHER RESOLVED** that this approval is subject to and conditioned upon the County of Ocean permitting the outdoor display of merchandise on property owned by the County of Ocean and upon property adjacent to Long Beach Boulevard which is an Ocean County right of way. The outside display will not encroach within the site triangles, to be reflected on the revised plans.

**BE IT FURTHER RESOLVED** that this approval is subject to and conditioned upon applicant indemnifying and holding the Borough of Ship Bottom harmless from any claims arising or resulting from applicant’s use of the sidewalk area for outdoor display of merchandise and any business purposes. As a condition precedent of applicant displaying merchandise and for continued use, applicant shall provide the Borough Clerk with a certificate of insurance naming said Borough of Ship Bottom as an additional insured on applicant’s liability policies of insurance.

**BE IT FURTHER RESOLVED** that this approval is subject to and conditioned upon Applicant obtaining all requisite permits and Applicant complying with all Federal, State and Local rules regulations and statutes and ordinances effecting this property and uses therein.

**BE IT FURTHER RESOLVED** that this approval is subject to and conditioned upon applicant obtaining all outside agency approvals from all agencies having

jurisdiction over this matter; including but not limited to Ocean County Planning Board approval, or a letter of no interest from the Ocean County Planning Board.

**BE IT FURTHER RESOLVED** that this approval is subject to and conditioned upon Applicant’s payment of all taxes and all other applicable assessments, and Applicant satisfying all fees and escrow fees as may be required.

**BE IT FURTHER RESOLVED** that this approval is subject to Applicant abiding by all requirements as established and mandated by the Borough of Ship Bottom and their various enforcement departments in policing the outdoor display of merchandise and assuring compliance with the intention of this approval to prohibit any interference with the health, safety and welfare of Borough residents and visitors; and to assure that the pedestrian traffic flow remains open and unobstructed in front of this property.

**BE IT FURTHER RESOLVED** that the Applicant is required to comply with all ordinances of the Borough of Ship Bottom, and failure to specify compliance herein shall not be deemed a waiver or recommendation by the Land Use Board with respect to Borough Ordinances, including the Zoning Ordinances.

**BE IT FURTHER RESOLVED** that this approval is subject to all conditions as set forth herein and at the public hearing, and all representations as placed on the record at the public hearing conducted on May 18, 2016.

**BE IT FURTHER RESOLVED** that this approval is subject to and conditioned upon Applicants’ compliance with the Ordinances of the Borough of Ship Bottom, as applicable, with respect to bonding, guarantees, inspection costs and payment of such fees as may be related thereto, including escrow fees as to this application and as may be required by the Board Engineer/Planner and/or Construction Official and/or Secretary to the Board and/or Clerk of the Borough. Any guarantees shall be subject to the written review and approval of the Board Engineer/Planner, the Borough Attorney’s office and the Mayor and Council.

**Adopted: June 15, 2016**  
**Moved By: Tallon**  
**Seconded By: Schmidt**  
**Roll Call Vote: Cooper, Schmidt, Bishop, Tallon and Butkus all aye.**

**ADJOURNMENT:**

On a motion by Ms. Schmidt seconded by Mr. Basile and an all aye vote, the meeting was adjourned.

Respectfully submitted,

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**DANIELLE MEZZINA, SECRETARY**  
**LAND USE REVIEW BOARD**