

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 September 20, 2017.

WORKSHOP MEETING

Chairman Cooper stated the following:

The workshop meeting of the Ship Bottom Land Use Review Board is now open. The time is 7:00 P.M. and the date is September 20, 2017. Upon completion of the Workshop Meeting the regular meeting will convene. Both meetings meet all the criteria of the Open Public Meetings Act.

Councilman Butkus stated that he read an article in the Sandpaper that the Arlington Beach Project between 8th and 9th street is going forward.

Chairman Cooper asked if any of board members would like to attend the League of Municipalities Conference in November.

On a motion by Mr. Basile, seconded by Councilman Butkus and all in favor vote, all aye, the workshop meeting was closed.

REGULAR MEETING

Chairman Cooper stated the following:

The Meeting of the Ship Bottom Land Use Review Board will come to order. The time is 7:03 P.M. and the date is September 20, 2017. The time, date and location of this meeting is listed in Resolution 2017-A, which was published in the Asbury Park Press, the Press of Atlantic City and Beach Haven Times. This was also posted on the Bulletin Board in the Municipal Building.

The next regular meeting of Ship Bottom Land Use Review Board is scheduled for October 18, 2017.

The conduct of this meeting is being recorded so all testimony can be clearly heard. At the appropriate time, the meeting will open to the public for any questions and comments. Maximum time period allowed to present testimony, witnesses and other proofs are limited to one hour and may be extended only at the discretion of the board. The meeting will adjourn at 10:30 P.M. with no further testimony being taken unless otherwise ordered at the discretion of the Board. All electronic devices and mobile phones should be turned off at this time.

Will the secretary please call the roll.

Roll call of members: Councilman English, Councilman Butkus, Mr. Basile, Mr. Bishop, Mr. Dixon, Mr. Hay, Ms. Schmidt, Mr. Panetta, Vice Chairman Tallon and Chairman Cooper, present. Mr. Fennimore 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, Sara Gresko.

CORRESPONDENCE:

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

MINUTES:

The minutes of the August 16, 2017 meeting were presented to the Board. On a motion by Councilman Butkus, seconded by Ms. Schmidt, the minutes were approved as submitted.

Roll Call Vote: Councilman Butkus, Mr. Bishop, Mr. Dixon, Mr. Hay, Ms. Schmidt, Mr. Panetta, Vice Chairman Tallon and Chairman Cooper, all aye.

OLD BUSINESS: NONE

NEW BUSINESS:

- (A) DOCKET NO. 17:15
ESTATE OF LAWRENCE J. CORNECK
NORMAN FIELD, EXECUTOR
2304 LONG BEACH BLVD.
BLOCK 30 LOT 11

Richard P. Visotcky, Esq. of Kelly & Visotcky, LLC representing the applicants.

The following were marked into evidence by Mr. Snyder:

- A-1 The application
- A-2 Site Plan by Horn, Tyson & Yonder, Inc.
- A-3 Architectural Plans by The Creative Minds Group Assoc., LLC
- B-1 Review letter prepared by Owen, Little & Associates
- A-4 Two 5x7 photographs
- A-5 8x10 photograph

James Brzozowski, Engineer and Planner of Horn, Tyson and Yoder and Frank provided testimony.

Frank Mileto, Architect and Planner for The Creative Minds Group Assoc., LLC provided testimony.

Board Members had questions regarding the heating/cooling system and the storage space under the stairwell.

Norman Field, Executor of Estate of Lawrence J. Corneck, was sworn in for testimony.

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

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

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

A motion to approve this application was made by Councilman Butkus and seconded by Councilman English with the condition that if the new structure were incapable of supporting the second story applicant must appear back to the board and adding storage under the stairwell.

Roll Call Vote: Councilman Butkus, Councilman English, Mr. Basile, Mr. Bishop, Mr. Dixon, Mr. Hay, Ms. Schmidt, Vice Chairman Tallon and Chairman Cooper, all aye.

RESOLUTIONS:

Councilman English and Mr. Basile stepped down from the meeting at 7:45 P.M. due to neither were present during the public hearing of the applications.

Stuart Synder, Esq. stated for the October meeting that he would provide an amended resolution for the following:

- DOCKET NO. 17:13
JOHN & PENNI BREITLING
107 WEST 23RD STREET
BLOCK 36, LOT 9

- A. DOCKET NO. 17:10
 DIANE-AMBERG BORSELLINO
 136 EAST 19TH STREET
 BLOCK 46, LOT 2

A motion to approve this resolution was made by Mr. Hay and seconded by Ms. Schmidt. It is as follows:

**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. 2017:10**

WHEREAS, Diane Amberg Borsellino has made application to the Land Use Review Board of the Borough of Ship Bottom for variances to the raise the existing two-family home; construct a stairway; construct a two-story addition; an additional second story addition; enclose certain decking and construct rooftop decking at property known and designated as Lot 2 Block 46; 136 East 19th Street in the Borough of Ship Bottom, County of Ocean and State of New Jersey; and

WHEREAS, the Land Use Review Board considered argument of Counsel at the August 16, 2017 public hearing, to determine whether or not the Board is vested with jurisdiction to consider the application. The applicant was represented by Katharine M. Shackleton, Esq.; for purposes of the hearing the application dated June 21, 2017 together with attachment, Ship Bottom Land Use Board Resolution Docket 2009:04V adopted by the Board on March 18, 2009 and the April 12, 2017 letter from Susan Kilcheski, the Ship Bottom Borough Flood Plain Administrator; and also the Borough Construction Code Official, was entered into evidence as Exhibit A-1; ; the plan prepared by Nelke/Tyszka Land Surveyors, Inc. entitled “Variance Plan, T. M. Lot 2 Block 46 Tax Map Sheet #9; Borough of Ship Bottom, Ocean County, New Jersey” dated June 26, 2016 with a final revision date of June 6, 2017 under signature and seal of Leon J. Tyszka, P.L.S. was entered into evidence as Exhibit A-2; a set of architectural drawings entitled “Amberg Residence 136 E. 19th Street, Ship Bottom, Lot 6 Block 4, Ocean County, New Jersey”, dated January 31, 2017, consisting of Sheet A1, Ground Floor Plan; First Floor Plan; Second Floor Plan and Roof Plan; and Sheet A2 East Elevation, West Elevation, South Elevation and North Elevation, prepared by Michael Pagnotta, Architect, PC, under signature and seal of Michael Pagnotta was entered into evidence as Exhibit A-3. The review letter from Owen, Little & Associates, Inc., under signature of Frank J. Little, Jr. P.E., P.P., and C.M.E., dated July 13, 2017 was entered into evidence as Exhibit B-1. Testimony was offered by Diane Borsellino, the applicant; and

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

1. All jurisdictional requirements have been met.
2. The property is owned by the applicant, having been acquired in June 2016.
3. The property consists of a lot with dimensions of 90’ x 100 feet located on the oceanfront at East 19th Street. The property is developed with a one story, elevated two family one story building. The property is located in the R-3 Residential One and Two Family Zone.
4. The property is traversed by the Oceanfront Building Line, whereupon less than 16 feet along the westerly portion of the property is not encumbered by the building line; the bulk of the existing structure is located eastward of the Oceanfront Building line.
5. The Board adopts the contents of the July 13, 2017 letter from Owen, Little and Associates, entered into evidence as Exhibit B-1 as if set forth herein at length.
6. The subject property is subject to the provision of Chapter 16.72 of the Borough Ordinances, Beach Protection.
7. The existing building maintains an elevation of 16.73 feet, at least three feet above the Preliminary Flood Zone and Elevation of VE 13 feet and

the effective flood zone and elevation requirement for the VE 11.0 feet. Applicant proposes to raise the property to an elevation of 24.49 feet and provide parking below. In conjunction with the raising of the property applicant proposes to construct stairs and a landing eastward of the Oceanfront Building Line.

8. There is not any requirement or authority to permit the raising of the existing house or permit the additional construction proposed eastward of the Building line.
9. The development of the property as proposed by applicant is prohibited under Chapter 16.72 Section 16.72-010 C. Construction.
 1. Construction Prohibited. Construction of any type, southeastwardly of the oceanfront building line, except protective works approved and/or undertaken by the borough, county, state or federal governments is prohibited.
 2. Construction Permitted. Construction is permitted in the remainder of the beach dune area subject to the provisions of this chapter and subject to the following restrictions and regulations:
 - a. No dwellings or any part of such dwellings shall be constructed eastwardly of the oceanfront building line. Every application for a building permit for construction within one hundred (100) feet of the oceanfront building line shall be accompanied by a plot plan prepared by a licensed engineer or surveyor showing the oceanfront building line, bulkhead line, placement and elevation of the proposed structure and all existing grades. ...
10. Pursuant to the controlling Ordinance; the residential development of this property is not permitted; the Land Use Board does not have jurisdiction to permit any deviation from the prohibition of residential development eastwardly of the Oceanfront Building Line.
11. Applicant is not required to raise the house to meet FEMA requirements, nor is she precluded from performing regular maintenance to retain that which she has; and

WHEREAS, the Land Use Review Board of the Borough of Ship Bottom has determined that it is without jurisdiction to entertain an application for the residential development of a lot eastward of the Ocean Front Building Line; as the relief requested by applicant specifically to the Borough Ordinances pertaining to Beach Protection; not zoning, planning or land development; and

WHEREAS, the Land Use Review Board of the Borough of Ship Bottom has determined that it has not impacted upon the use of the property by applicant, so long as the building remains, applicant may continue to use the property in the manner in which it was purchased; and

WHEREAS, applicant proffers that the Board has jurisdiction predicated upon the matter Raimo v Ship Bottom OCN-L-5-08PW and Ship Bottom Land Use Board Resolution 2009-04 adopted thereafter, which is distinguished from the matter currently before the Board; as there was not any further encroachment proposed eastwardly of the building line or disruption of the dune system contemplated;

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Ship Bottom that it does not have subject matter jurisdiction to consider the application of Diane Amberg Borsellino to permit the raising of an existing house and construction thereto eastward of the Ocean Front Building Line at 136 E. 19th Street Lot 2 Block 46 Ship Bottom, New Jersey.

Roll Call Vote: Mr. Bishop, Mr. Hay, Ms. Schmidt, Vice Chairman Tallon and Chairman Cooper, all aye.

B. DOCKET NO. 17:14
 ROBERT NUGENT
 1721 LONG BEACH BLVD.
 BLOCK 58, LOT 1

A motion to approve this resolution was made by Mr. Hay and seconded by Councilman Butkus. It is as follows:

**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. 2017:14**

WHEREAS Robert Nugent and Ship Bottom Shellfish, Inc. have made application to the Land Use Review Board of the Borough of Ship Bottom for preliminary and final site plan approval together with variances to permit the installation and use of a 2” x 18” inch countertop at its front porch, together with ten (10) stools for patrons use in conjunction with the 36 seat restaurant and seafood market located at 1721 Long Beach Boulevard, Lot 1 Block 58 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 August 16, 2017. The applicants were represented by Richard P. Visotcky, Esq. The application dated June 26 2017 was entered into evidence as Exhibit A-1; the plan prepared by Horn, Tyson & Yoder, Inc. titled “Site Plan Lot 1 and Block 158 Tax Map Sheet # 10 Borough of Ship Bottom, Ocean County New Jersey” dated July 25, 2017 under signatures and seals of James D. Brzozowski, PE, PP and Hayes A. Hewitt, PLS, was entered into evidence as Exhibit A-2; a photograph of the patio area was entered into evidence as Exhibit A-3; and two photographs of the front of the building was entered into evidence as Exhibit A-4., 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. 82-4 was entered into evidence as Exhibit J-1; 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. 82-12 was entered into evidence as Exhibit J-2 and 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. 01-13 was entered into evidence as Exhibit J-3 . The review letter from Owen, Little & Associates, Inc., under signature of Frank J. Little, Jr., dated August 11, 2017 was entered into evidence as Exhibit B-1. Testimony was offered by James D. Brzozowski, PE, PP, applicants engineer and professional planner and by Robert Nugent, the applicant. Public comment was offered by Howie Brecher and Larry Goral; and

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

1. All jurisdictional requirements have been met.
2. Robert Nugent and Virginia Nugent are the owners of the property; the property is improved with a restaurant and sea food market operated by Ship Bottom Shellfish, Inc.
3. The property previously was granted approvals by the Planning Board for the restaurant and seafood market use; together with variances for existing conditions and from parking requirements.
4. The property is located in the Shore Commercial Zone; at the northwest corner of Long Beach Boulevard and 18th Street. The lot dimensions are 55’ x 100’ feet; the existing front yard setback to Long Beach Boulevard is 1.4 feet; the setback to 18th Street is 2.5 feet; where 15 feet is required from both streets. The building coverage without the awning is 40.2% the awning is a permanent structure, whereupon the total building coverage inclusive of the awning is 42.9%. The lot coverage is 100% where 90% is permitted.
5. Applicant maintains six (6) parking spaces where nine (9) parking spaces are currently required.
6. Applicant has recently replaced the roof, siding and railings at the property; when performing the improvements; he replaced the front patio railing which previously was 2:’ x 6””; with a 2” x 18” countertop and removed two (2) of the four (4) benches on the front patio.
7. This application is to permit the countertop to be used for customer waiting and consumption of food, with the addition of ten (10) stools.
8. The increase in seating requires total parking of twelve (12) spaces; an increase of three (3) parking spaces.

9. The additional seating will enable patrons to obtain food while waiting for their tables and enhance the waiting area.
10. Applicant has been in business at the site for 36 years and has continued to upgrade the property and keeps the site well maintained.
11. The area is conducive to foot traffic; there is offsite parking across Long Beach Boulevard within the railroad cut out; and there is parking available on the street.
12. Applicant has not increased the size of the building but for making the awing permanent.
13. The Board adopts by reference all terms and conditions set forth in Resolutions of Memorialization 82-4; 84-12 and 01-13; together with the contents of the August 11, 2017 letter from Owen, Little and Associates, Inc. entered into evidence as Exhibit B-1.; and

WHEREAS, the Land Use Review Board of the Borough of Ship Bottom has determined that the relief requested by the applicants Robert Nugent and Ship Bottom Shellfish, Inc. for preliminary and final site plan approval together with variances to permit the installation and use of a 2" x 18" inch countertop at its front porch, together with ten (10) stools for patrons use, as a waiting area and for food consumption, in conjunction with the 36 seat restaurant and seafood market located at 1721 Long Beach Boulevard, Lot 1 Block 58 the Borough of Ship Bottom, County of Ocean and State of New Jersey may be granted without substantial detriment to the public good and without impairing the intent and purposes of the zoning ordinances of the Borough of Ship Bottom, as the use is permitted; the property is fully developed in accordance with prior approvals from the Ship Bottom Planning Board; the counter and ten (10) stools will enhance the operation of applicants business; without any impact upon the other uses in the area; there is not any additional lighting proposed; the stools will effectively be replacing two (2) benches which have previously been used; and the additional parking requirement of three (3) spaces, will be accommodated by the parking on the street and the area across Long Beach Boulevard; and should not impact the area in which the property is located. Applicant will comply with all conditions of the prior approvals; except as amended herein, with 36 seats inside the building and ten (10) stools on the porch. Two (2) benches will also remain on the porch to accommodate applicant's patrons.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Ship Bottom that the application of Robert Nugent and Ship Bottom Shellfish, Inc. for preliminary and final site plan approval together with variances to permit the installation and use of a 2' x 18' foot countertop at its front porch, together with ten (10) stools for patrons use in conjunction with the 36 seat restaurant and seafood market 1721 Long Beach Boulevard, Lot 1 Block 58 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 August 11, 2017, as entered into evidence as Exhibit B-1.

BE IT FURTHER RESOLVED that this approval is subject to and conditioned upon all construction at the property conforming to FEMA requirements and all building, fire and safety Codes.

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 development; including all municipal codes and requirements of the Board of Health.

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 development.

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 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 Review Board with respect to Borough Ordinances, including the Zoning Ordinances.

BE IT FURTHER RESOLVED that this approval is subject to all conditions

and representations made by applicants and their witnesses and as placed on the record at the public hearing conducted on August 16, 2017 when this matter was considered.

BE IT FURTHER RESOLVED that all conditions set forth in prior approvals granted to this property set forth in Resolution of Memorialization Docket Numbers 82-4; 84-12 and 01-13 shall remain in full force and effect; but for the amendments contained therein and as amended herein to permit 36 interior seats; and a 2 x 18 inch countertop at its front porch together with ten (10) stools for waiting and food consumption.; two (2) benches will also remain on the porch for patrons use; together with variance relief to maintain six (6) parking spaces where twelve (12) parking spaces are required.

Roll Call Vote: Councilman Butkus, Mr. Bishop, Mr. Dixon, Mr. Hay, Ms. Schmidt, Vice Chairman Tallon and Chairman Cooper, all aye.

ADJOURNMENT:

On a motion by Mr. Hay seconded by Councilman Butkus and an all aye vote, Chairman Cooper adjourned the meeting at 7:55 P.M.

Sara Gresko, Secretary
Land Use Review Board