

**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 May 15, 2019.

**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 May 15, 2019. Upon completion of the Work Shop Meeting the regular meeting will convene. Both meetings meet all the criteria of the Open Public Meetings Act.

**REGULAR MEETING**

Chairman Cooper stated the following:

The Meeting of the Ship Bottom Land Use Review Board will come to order. The time is 7:01 P.M. and the date is May 15, 2019. The time, date and location of this meeting is listed in Resolution 2018-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 June 19, 2019.

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. Hay, Ms. Schmidt, Vice Chairman Tallon and Chairman Cooper, present. Mr. Dixon and Mr. Yankowski 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 April 17, 2019 meeting were presented to the Board. On a motion by Mr. Hay, seconded by Ms. Schmidt, the minutes were approved as submitted.

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

DOCKET NO. 19:10  
TRITON PARTNERS, LLC  
2020 LONG BEACH BLVD.  
BLOCK 45 LOTS 14, 15 & 16

Nicholas Talvacchia, Esq., representing the applicants, wrote a letter requesting the application to be carried to June's meeting.

A motion to carry this application was made by Vice Chairman Tallon and seconded by

Ms. Schmidt.

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

**OLD BUSINESS:**

- A. DOCKET NO. 19:08  
WILLIAM & LINDA KILROY  
120 W. 3<sup>RD</sup> STREET  
BLOCK 133 LOT 5

Katharine Shackleton, Esq., representing the applicants requesting to reconfigure the outdoor decks, and add an outside shower.

The following were marked into evidence by Mr. Snyder:

- A-1 Application
- A-2 Revised Variance Map, prepared by Horn Tyson & Yoder, Inc.
- A-3 Architectural Plans, four (4) sheets, prepared by Musgnug & Associates Architects
- A-4 Five (5) colorized photos of dwelling Fall 2018, five (5) sheets
- A-5 12 colorized photos of current dwelling, three (3) sheets
- B-1 Review letter prepared by Owen, Little & Associates

Let the records reflect that Mr. Yankowski arrived at the meeting at 7:09 P.M.

James Brzozowski, licensed engineer and professional planner and Robert Musgnug, licensed architect, sworn in and provided testimony.

On a motion made by Ms. Schmidt, seconded by Councilman Butkus, and all in favor vote, all aye, the public portion was open.

Not recognizing anyone from the public, on a motion made by Ms. Schmidt, seconded by Vice Chairman Tallon and all in favor vote, all aye, the public portion was closed.

Mrs. Shackleton provided closing statements and discussion ensued amongst the Board.

A motion to approve this application as submitted was made by Councilman Butkus and seconded by Ms. Schmidt with the following conditions:

- Deed restriction for the deck to remain open
- No living permitted at ground level below base flood elevation

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

Mr. Snyder stated that a temporary resolution will be approved tonight for Kilroy’s application. Permanent resolution will be approved at June 19, 2019 Land Use Meeting.

- B. DOCKET NO. 19:09  
CHRISTOPHER & PATRICIA HEISER  
2418 CENTRAL AVENUE  
BLOCK 28 LOT 11

James Raban, Esq., representing the applicants, requesting to expand the first floor deck.

The following were marked into evidence by Mr. Snyder:

- A-1 Application
- A-2 Plan to Accompany Application for Variance, prepared by Land Line Surveyors
- A-3 Architectural Plans, prepared by The Creative Minds Group
- B-1 Review letter prepared by Owen, Little & Associates

Christopher Heiser, applicant, sworn in for testimony.

On a motion made by Councilman English, seconded by Mr. Basile 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 Ms. Schmidt and all in favor vote, all aye, the public portion was closed.

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

A motion to approve this application as submitted was made by Councilman English and seconded by Mr. Basile.

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

Mr. Snyder stated that a temporary resolution will be approved tonight for Heiser's application. Permanent resolution will be approved at June 19, 2019 Land Use Meeting.

Councilman English and Councilman Butkus recused themselves from the meeting at 7:54 P.M. due to the nature of the application.

Chairman Cooper called for recess at 7:55 P.M. The meeting reopened at 8:00 P.M.

C. DOCKET NO. 19:06  
THE BALDWIN RESIDENCE, LLC  
338-380 W. 8<sup>TH</sup> STREET  
BLOCK 103 LOTS 3 & 6

Mr. Snyder stated that the resolution drafted from last month's meeting will be amended with the additional proposed variances and will be approved tonight.

James Raban, Esq., representing the applicant, requesting variances for the northern portico and building coverage. This is a continuation from May's Land Use Meeting.

The following were marked into evidence by Mr. Snyder:

A-1 James Raban's May 3, 2019 letter with public notice  
A-2 Amended Preliminary Final Site Plan, 11 sheets,  
A-3 Architectural Plans, prepared by The Creative Minds Group  
B-3 Third Review letter dated May 8, 2019, prepared by Owen, Little & Associates

Chairman Cooper asked the applicant if he would summarize the progress of the project since last month's meeting.

Christopher Vernon, applicant, sworn in for testimony.

Mr. Vernon stated the following: eastern balcony doors have been bolted shut, therefore inoperable, exhaust fans have been relocated and the sidewalk and land scaping has been completed.

The following has been marked into evidence:

A-11 Department of Transportation Letter  
B-4 Reduced Color-Coded Site Plan, prepared by Frank Little, Jr.  
B-5 Copy of Bond Letter, dated May 8, 2019, prepared by Frank Little, Jr.

Robert Stout, professional engineer, sworn in for testimony.

Mr. Stout marked Colored Rendering of Sheet 3, plans submitted by Stout and Caldwell Engineers, LLC as A-12.

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

Robert Barnett, 52 S. 1<sup>st</sup> Street, Surf City, had concerns with portico and eastern balconies and overhang.

Attorney Vincent Ludwig, Esq., representing William Bori, owner of Java Properties, TBA Dunkin Donuts, boarding east on the subject property had concerns with the

following:

- Roofline over the property line
- Relocation of sign
- Eastern rooms should not be used

Mr. Bori was sworn in to give testimony. Mr. Ludwig asked Mr. Bori if there was an offer to purchase the property by the applicant. Mr. Bori replied yes, but offer did not ensue.

Joseph Mayo, Remax Building, W. 8<sup>th</sup> Street, had concerns with the following:

- Lot coverage
- Parking spaces
- Relocation of sign

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

Discussion between Mr. Raban and the board ensued.

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

A motion to approve this application was made by Mr. Hay and seconded by Ms. Schmidt with the following conditions:

- 0 foot setback for portico
- Building coverage of 67% adjusted to 76%
- Obtaining easement of 9,020 square feet, contingent upon Borough of Ship Bottom
- Temporary Certificate of Occupancy to expire February 28, 2020 having all reconstruction completed for permanent Certificate of Occupancy
- Performance bond must be posted, amount determined by Board Engineer

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

**RESOLUTIONS:**

- A. DOCKET NO. 19:05  
WAINWRIGHT AMUSEMENTS, LLC  
702-716 LONG BEACH BLVD.  
BLOCK 107 LOT 9

A motion to approve this resolution was made by Mr. Hay and seconded by Mr. Basile. 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. 2019:05 SP/V**

**WHEREAS**, Wainwright Amusements, LLC has 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 use of the property for a family entertainment use, which is not permitted in the GC-General Commercial Zone; and for waivers from submitting complete site plan detail due to the property being fully developed at 702-716 Long Beach Boulevard, known and designated as Lot 9 Block 107 in the Borough of Ship Bottom, County of Ocean and State of New Jersey.

**WHEREAS**, the Land Use Review Board considered this application at a public hearing conducted on March 20, 2019. The applicant was represented by James S. Raban, Esq. The application dated January 30, 2019 together with attachments, a copy of the Public Notice; and Resolutions of Memorialization 83-08 adopted June 9, 1983; 2006:05 SP/V adopted June 21, 2006; and 2006:05(A) adopted June 21, 2006; was entered into evidence as Exhibit A-1; the plan prepared by Horn, Tyson & Yoder, Inc. titled "Site Plan Lot 9 Block 107 Tax Map Sheet #18 Borough of Ship Bottom, Ocean County, New Jersey" dated October 10, 2018 under signature and seal of James D. Brzozowski, Professional Engineer, Professional Planner and Robert G. deBlois, PLS was entered into evidence as Exhibit A-2; conceptual plans prepared by the Dynamic Designs, Inc. dated December 10, 2018, containing nine (9) computer generated

sheets; Concept Presentation a computer generated façade of the building; Conceptual Floor Plan; Game Room ; Prizes; Café; Escape Room; Chaos Room; Virtual Reality; and XD Theater was entered into evidence as Exhibit A-3; the report from McDonough & Rae Associates, Inc. Traffic and Transportation Consulting dated March 14, 2019 under signature of John H. Rae, PE and Scott T. Kennel, Sr. Associate was entered into evidence as Exhibit A-4. The review letter from Owen, Little & Associates, Inc., under signature of Frank J. Little, Jr., PE, PP, CME, and dated March 13, 2019 was entered into evidence as Exhibit B-1, and the memorandum from the Ship Bottom Volunteer Fire Co. No. 1, Inc. Station 46 dated March 3, 2019 submitted by Todd MacLennan, Ship Bottom Fire Chief was entered into evidence as Exhibit B-2. Testimony was offered by James D. Brzozowski, the applicant's engineer and planner; Brian Wainwright, managing member of applicant; Scott Kennel, applicant's traffic consultant and Michael D. Kauker, applicants professional planner. Douglas J. Widman, Esquire from the law firm Davison Eastman, Munoz, Lederman & Paine, PA appeared on behalf of Hartland Golf & Arcade and Our Endless Summer, in objection to the application. He introduced O-1 into evidence, a copy of the Route 72 drawing form the New Jersey Department of Transportation dated May 2012; O-2 page four of the 2006 Master Plan Update; and O-3 a copy of Ordinance 8.2.2 referencing the licensing requirement for amusement games. Public comment was offered by Carl Czarzasty; Lindsay Meneses Skip Butler; Fred Madonna; Nicholas Garafola; John Battista; Mark Burgan; Duane Watlington; Katherine Shaw; Dan Malay; Neil Roth and Shawn McKillop; and

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

1. All jurisdictional requirements have been met.
2. The property currently is improved with a vacant commercial building containing 9,775 square feet, having been previously occupied by a CVS Pharmacy.
3. The property is located on the northeast corner of 8<sup>th</sup> Street and Long Beach Boulevard; it consists of a lot with dimensions of 200.00 x 160.00 feet; fronting on Long Beach Boulevard, 8<sup>th</sup> Street and 7<sup>th</sup> Street. improved with a one story building and blacktop parking area containing 42 parking spaces, four (4) being 8.6' x 20' where 9' x 20' feet is required.
4. The site is located in the GC - General Commercial Zone. The property is completely developed; the setbacks all conform to code. The building coverage is 29% where 30% is permitted; and the lot coverage appears to be nonconforming at 86% where 80% is permitted.
5. Applicant proposes to renovate the existing building, there are not any additions or modifications proposed to the footprint; the exterior will be cosmetically changed as depicted in Exhibit 3. The application calls for a family entertainment center; to include a game zone, escape room, chaos room, café, and XD Theater. The arcade and entertainment uses proposed at the site are not permitted uses in the GC-General Commercial Zone. Applicant is before the Board requesting a Use Variance under N.J.S.A. 40:55D-70d.
6. The site provides 17 parking spaces on the southerly side of the building, including 2 van accessible spaces, four of those spaced adjacent to the building are 8.6' wide where 9 feet is required; there are 25 conforming parking spaces in the front of the building adjacent to Long Beach Boulevard. The site was granted variance relief by the Zoning Board of Adjustment in 1983; which allowed the development of the CVS Store in the Commercial Zone and Hotel Motel Zone, the rear 60 feet of the property was located in the Hotel Motel Zone at the time of that application. The Zoning Board found the parking to be adequate; and reflected a building with dimensions of 70' x 120 feet; Planning Board approval was also required. It appears that the building was constructed and approved at the time of occupancy by CVS; the dimensions ate 73.2 x 122.7 feet; with an enclosed area in the southwest corner, adding additional square feet.
7. The site has two (2) loading zones, on 7<sup>th</sup> Street the loading zone has dimensions of 15.7 x 47 feet with a 15 x 26 foot trash enclosure to its; south. A six (6') foot high concrete wall is constructed at the easterly boundary of the loading zone and trash enclosure; where it abuts the adjoining property.
8. The property was acquired on February 14, 2019 by Park Property, LLC; Brian Wainwright is the managing member of that entity.
9. Applicant will be leasing and operating the property.
10. Ship Bottom provides for two (2) amusement facilities, which are preexisting, and are subject to licensing. The Master Plan specifically states that amusement type uses are not permitted in any Zone within the Borough
11. Applicant proposes a small format family entertainment center. It intends to keep the business open on a year round basis.
12. The proposed hours of operation are 10:00 AM until midnight; with 10:00 AM to noon being open for parties; and from noon to midnight the center will be open to the public.
13. Applicant anticipates 3-5 employees at any given time; and anticipates 40 to 60 guests at any time.

14. The XD Theater is a virtual reality ride; where the chair moves in place; the escape room and chaos room provide activities for the patrons where they will be purchasing time slots to use these facilities; the café will have pretzels, drinks, pizza, hot dogs, and other snacks and food items, there will not be any exhaust system outside of the building, will limit the foods to avoid the necessity for an exhaust system; the game room will have skee-ball, hoop shoots; video games, and other games; which will provide coupons for redemption for prizes; being located at the site as reflected in the Exhibit 3. The operation will be similar to the arcade operation at Fantasy Island in Beach Haven and the redemption and tickets may be shared between the locations. Applicant intends to provide different games at this location than at Fantasy Island.
15. According to Applicants' traffic consultant, the proposed use will generate less traffic than the prior CVS use at the site; there will be more walkers, bicyclists, and drop off and pick up of customers. With two points of access there will be a safer traffic flow, as there will be less K or U turns. His opinion is based upon his experience, and the 100 customers per hour that a pharmacy generated. He further indicated that the two (2) other amusement uses in the Borough have 15 and 16 parking spaces respectively. He finds that the site provides adequate parking for the proposed use.
16. The Board is aware of the surrounding area, a new condominium development has been constructed to the west across Long Beach Boulevard and there is a furniture store located to the west across Long Beach Boulevard; there are hotel/motel, multifamily and single family residential properties to the east, a surf shop is located across 7<sup>th</sup> Street to the north; and a 7-11 is located to the south across 8<sup>th</sup> Street.
17. According to applicants' planner, the site will provide amenities to residents and visitors; a vacant site will be repurposed and occupied; the site is specifically suited for this use; there is adequate parking and safe ingress and egress; the building can accommodate the proposed use. The proposed use will promote the general welfare of the community. There is not a need for a buffer, as there is a concrete wall at the property line between the site and adjoining residential uses on 7<sup>th</sup> Street; and there is adequate fencing between the site and the motel/multifamily use on 8<sup>th</sup> Street. He also opined that the improvements to the façade of the building will be aesthetically beneficial; all renovations will be within the building, there will not be any negative impact upon the site; and the commercial use will be maintained at the site in conjunction with the purposes set forth in the Master Plan.
18. The property currently is not maintained; there is trash and debris accumulation, and members of the public utilize the area in the rear as an outside bathroom.
19. There will not be any outside odors associated with the proposed use; applicant will maintain the exterior of the property; and provide security to keep the outside area free from congestion.
20. There is concern from the public regarding the hours of operation, where there is a request for closing at 10:00PM instead of midnight.
21. There are safety concerns raised due to the location of the site at a very busy intersection.
22. Applicant will address concerns of public regarding lighting, the exterior lighting will conform to ordinances, and shall not interfere with any of the surrounding residential units; lighting will be low level for security purposes.
23. Applicant proposes to soundproof parts of the building, and will conform to all noise ordinances of the Borough.
24. The Board adopts the contents of the March 13, 2019 letter from Frank J. Little, Jr, entered into evidence as Exhibit B-1, as if set forth herein at length.
25. The Board adopts the requirements and recommendations of the Ship Bottom Volunteer Fire C. No. 1, Inc. as set forth in Exhibit B-2; as if set forth herein at length; and

**WHEREAS**, the Board received a request from Counsel for the objector and consented to by Counsel for the applicant to adjourn the public hearing in this matter until the April 17, 2019 meeting of the Board, applicant waived all time constraints; and the Land Use Board voted to continue the application until the April 17, 2019 meeting of the Board; and

**WHEREAS**, the Land Use Board again considered this application at a public hearing conducted on April 17, 2019. The applicant was represented by James S Raban, Esq. Dennis Galvin, Esq. a partner in the law firm of Davison Eastman, Munoz, Lederman & Paine, PA appeared on behalf of Hartland Golf & Arcade and Our Endless Summer, in objection to the application. The following document were entered into evidence, O-1 Page 4 of 5 of the 2006 Master Plan Update and Reexamination; O-2 Page 5 of 5 2000 Master Plan Update and Reexamination; O-3 Police Ordinance 5.16.010 & 5.16.020; and O-4 DOT Plan titled Drainage and Operational Improvement dated May 2012. Testimony was offered by Paul Wood owner of Our Endless Summer in opposition to the application; testimony was offered by Andrew Thomas, P.P., objector's professional planner, in opposition to the application. Brian Wainwright

managing member of applicant testified. Public comment was offered by Rachel Colton; David Seegers, an employee of applicant; Jason Fagans; Kenneth Formica; Angela Trampota; Martin Stipicevic and Malcolm Leslie; and

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

26. Our Endless Summer is an approved licensee for amusement games. That facility provides an arcade with redemption prizes and an ice cream parlor. The arcade is 2,200 square feet in area; the property has 21 spaces. According to Mr. Wood, there is a demand for parking during the day; and the 42 spaces provided by applicant will not be adequate for the proposed arcade area of 4,430 square feet. Mr. Wood also testified that the average time spent at the arcade by a patron is 1 to 1.5 hours.
27. Andrew Thomas testified that applicant must demonstrate the positive and negative criteria to be entitled to the relief requested. He testified that the Borough has two permitted areas for the arcade use, 4<sup>th</sup> and Long Beach Boulevard where Our Endless Summer is located and 28<sup>th</sup> Street and Long Beach Boulevard where Hartland Golf and Arcade is located. According to Mr. Thomas there is not any need for additional entertainment uses, as proposed.
28. Mr. Thomas opined that the proposal by applicant does not meet the criteria for approval; the proposed use does not serve the public welfare, and is specifically prohibited under the Master Plan, whereupon the relief requested would impair the zone plan and zoning ordinances of the Borough of Ship Bottom.
29. Applicant has modified the application to provide a closing time of 11:00 PM.
30. Applicant also confirmed that there will not be any blinking lights; or lighting at the site to interfere with the surrounding residential uses.
31. The Board finds that the most recent approval granted to applicants predecessor in title in June 2006, permitting the expansion of the use for the sale of prepared foods, mandated that public bathrooms be maintained; and

**WHEREAS**, the Land Use Review Board of the Borough of Ship Bottom has determined that the relief requested by the applicant, Wainwright Amusements, LLC for Preliminary and Final Site Plan Approval together with variances to permit the use of the property for a family entertainment use, which is not permitted in the GC-General Commercial Zone; and for waivers from submitting complete site plan detail due to the property being fully developed at 702-716 Long Beach Boulevard, known and designated as Lot 9 Block 107 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 use may be conducted at this site, there is adequate parking; the use will be contained within the existing building; the area will be policed and secured; the hours of operation will be maintained not past 11:00PM; the site will provide year round entertainment to residents and guests; the lighting will be controlled not to interfere with any surrounding residential uses; and the proposed development will create additional commercial development within the commercial zone. The Board further finds that there has not been any reason to remove the requirement that applicant continue to provide public restrooms at the site. Approval by this Board is limited to zoning and planning only; this Board does not have any jurisdiction regarding licensing for the proposed use at the site, and approval is subject to applicants obtaining all licensing as may be required for the proposed operation.

**NOW, THEREFORE, BE IT RESOLVED** by the Land Use Review Board of the Borough of Ship Bottom that the application of Wainwright Amusements, LLC for Preliminary and Final Site Plan Approval together with variances to permit the use of the property for a family entertainment use, which is not permitted in the GC-General Commercial Zone; and for waivers from submitting complete site plan detail due to the property being fully developed at 702-716 Long Beach Boulevard, known and designated as Lot 9 Block 107 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 March 13, 2019, 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 for variance relief to permit the following family entertainment uses: game zone for arcade games, ball shoots, skee ball, electronic games and gift redemption, escape room, chaos room, café, and XD Theater; as set forth in testimony of applicant and A-3. This approval is subject to and conditioned upon applicant obtaining any and all licenses and approvals for the use and development from the Borough of Ship Bottom and State of New Jersey, and such other authorities having jurisdiction over the development and the use. This Board does not have jurisdiction under Title 5 of the Ordinances of the Borough of Ship Bottom.

**BE IT FURTHER RESOLVED** that that this approval is granted subject to applicants maintaining hours of operation not past 11:00 PM or before 10:00 AM; no expansion of the

footprint of the building; the trash being relocated to 8<sup>th</sup> Street as directed by the Board Engineer; applicant policing the exterior grounds and providing adequate security at the site; no blinking or moving lights, all lighting to be directed away from the surrounding residential uses; and removal of any offensive lighting, as requested by the Board Engineer.

**BE IT FURTHER RESOLVED** that this approval is subject to and conditioned upon Applicant's compliance with all Requirements and Recommendations of the Ship Bottom Volunteer Fire Co. No. 1, Inc. dated March 3, 2019 entered into evidence as Exhibit B-2; said compliance shall be a condition precedent for the issuance of a Certificate of Occupancy.

**BE IT FURTHER RESOLVED** that this approval is subject to and conditioned upon applicant of the Board Engineer, Frank J. Little, Jr., P.E., P.P., and C.M.E., dated March 13, 2019, 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 conforming to all ordinances pertaining to the use of the property and lighting, with all lighting being directed away for the adjoining residential uses, and in conformance with Borough Ordinances. All signage shall conform to Borough ordinances. Applicant shall also adhere to all Borough noise ordinances.

**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.

**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, including but not limited to Ocean County Planning Board and approval from the Ship Bottom Water and Sewer Departments' and in accordance with the State of New Jersey Amusement Games Licensing Law, as amended and supplemented, and the rules and regulations promulgated by the Amusement Games Control Commissioner of the State of New Jersey.

**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. Applicant shall also pay and post all inspection fees, performance guarantees and maintenance bonds as may be required, in amounts established by the Borough Engineer, and in such form as required by the Borough Solicitor.

**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 and representations by applicant and its representatives as set forth herein and as placed on the record at the public hearings conducted on March 20, 2019 and April 17, 2019 when this matter was considered.

**BE IT FURTHER RESOLVED** that applicant will repair/replace and install curbs, and sidewalks in accordance with Borough Ordinances and as directed by the Borough Engineer; Applicant will also replace and/or repair the water and sewer lines and laterals along the frontage of the property; as may be required by the Water and Sewer Department and Board Engineer. Applicant shall provide a note to this effect upon its plans.

**BE IT FURTHER RESOLVED** that this approval is subject to and conditioned upon applicant providing public restrooms for use of the general public and visitors to Ship Bottom. Applicant will provide adequate signage to notify the public of the existence of these facilities; as mandated under Resolution of Memorialization 2006-05(A) SP/V.

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

B. DOCKET NO. 19:09  
CHRISTOPHER & PATRICIA HEISER  
2418 CENTRAL AVENUE  
BLOCK 28 LOT 11

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

**TEMPORARY 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. 2019:09V**



**WHEREAS**, Christopher J. Heiser and Patricia B. Heiser have made application to the Land Use Review Board of the Borough of Ship Bottom for variances to permit the expansion of the elevated first story deck with encroachment of a post within the site triangle at the existing single family dwelling, located at 2418 Central Avenue, Lot 11 Block 28 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 on May 15, 2019. James S. Raban, Esq. represented the applicant. The application dated March 15, 2019 was entered into evidence as Exhibit A-1; the plan prepared by Land Line Surveyors titled “Plan to Accompany Application for Variance situate in Borough of Ship Bottom, Ocean County, New Jersey Block 28 Lot 11” under signature and seal of John M. Lis, PLS. dated February 18, 2019; the plans prepared by Creative Minds Group was entered into evidence as Exhibit A-3; The review letter from Owen, Little & Associates, Inc., under signature of Frank J. Little, Jr., dated April 9, 2019 was entered into evidence as Exhibit B-1. Testimony was offered by Christopher Heiser, the applicant. There was not any public comment offered

**WHEREAS**, the Land Use Review board after considering the Application, documentation entered into evidence and testimony of the witnesses, voted to approve the application for a; and

**WHEREAS**, the Final Resolution of Memorialization will be adopted at the June 19, 2019 meeting of the Board and a Temporary Resolution of Memorialization will enable applicants to procure building permits and complete the construction of the open deck; and

**WHEREAS**, notwithstanding the issuance and the receipt of this Temporary Resolution of Memorialization; applicant will adhere to all conditions imposed by the Resolution of Memorialization to be adopted by the Land Use Board on June 19, 2019. Applicant is not relieved from any conditions of said final approval, to be hereafter adopted, by the issuance of this Temporary Resolution, including but not limited to construction, fire and safety code compliance; FEMA compliance; and permitting for the contemplated work; and all other terms and conditions placed on the record on May 15, 2019; a final certificate of occupancy shall not issue until adoption of the final Resolution and compliance therewith.

**NOW THEREFORE BE IT RESOLVED**; that applicants herein, Christopher J. Heiser and Patricia B. Heiser, are authorized to receive permits and construct the addition to the first floor elevated deck at property located at 2418 Central Avenue, Lot 11 Block 28 in the Borough of Ship Bottom, County of Ocean and State of New Jersey; in accordance with the terms contained herein. A final certificate of occupancy shall not issue until the adoption of the final resolution on June 19, 2019.

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

C. DOCKET NO. 19:08  
 WILLIAM & LINDA KILROY  
 120 W. 3<sup>RD</sup> STREET  
 BLOCK 133 LOT 5

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

**TEMPORARY 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. 2019:08**

**WHEREAS**, William S. Kilroy and Linda Kilroy have made application to the Land Use Review Board of the Borough of Ship Bottom for variances to permit the construction of an elevated first story deck with dimensions of 11.3 x 37.2 feet, with stairs, at the existing single family dwelling, located at 120 West 3<sup>rd</sup> Street Lot 5 Block 133 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 on May 15, 2019. Katharine Schackleton, Esq. represented the applicant. The application dated March 15, 2019 was entered into evidence as Exhibit A-1; the plan prepared by Horn, Tyson & Yoder, Inc. titled “Variance Map Lot 5 Block 133, Tax Map Sheet # 19 Borough of Ship Bottom, Ocean County, New Jersey” dated September 24, 2018 with a final revision date of April 24, 2019, under signatures and seals of Robert G. deBlois, PLS and James D. Brzozowski, PE, PP was entered into evidence as Exhibit A-2; the architectural plans prepared by Musgnug & Associates titled Kilroy Residence, Block 133 Lot 5, 120 West 3<sup>rd</sup> Street, Ship Bottom, NJ dated June 12, 2018 containing Sheets TS-1, A-2, A-3, and A-5 title was entered into evidence as Exhibit A-3; a set of five (5) photographs taken before the house was raised during the fall of 2018 were entered into evidence as Exhibit A-4; a set of twelve (12) photographs, of the property were entered into evidence as Exhibit A-5. The review letter from Owen, Little & Associates,

Inc., under signature of Frank J. Little, Jr., dated April 9, 2019 was entered into evidence as Exhibit B-1. Testimony was offered by James Brzozowski, applicants engineer and professional planner, and by Robert P. Musgnug, applicant’s architect. There was not any public comment offered

**WHEREAS**, the Land Use Review board after considering the Application, documentation entered into evidence, argument of counsel and testimony of the witnesses, voted to approve the application for the construction of an elevated first story covered deck with dimensions of 11.3 x 37.2 feet; and

**WHEREAS**, the Final Resolution of Memorialization will be adopted at the June 19, 2019 meeting of the Board and a Temporary Resolution of Memorialization will enable applicants to procure building permits and commence and perform construction of the deck; and

**WHEREAS**, notwithstanding the issuance and the receipt of this Temporary Resolution of Memorialization; applicant will adhere to all conditions imposed by the Resolution of Memorialization to be adopted by the Land Use Board on June 19, 2019. Applicant is not relieved from any conditions of said final approval, to be hereafter adopted, by the issuance of this Temporary Resolution, including but not limited to construction, fire and safety code compliance; FEMA compliance; and permitting for the contemplated work, and all other terms and conditions placed on the record on May 15, 2019; a final certificate of occupancy shall not issue until adoption of the final Resolution and compliance therewith.

**NOW THEREFORE BE IT RESOLVED;** that applicants herein, William S. Kilroy and Linda Kilroy are authorized to obtain permits and construct an 11.3 x 37.2 foot deck, with stairs, at the existing single family dwelling, located at 120 West 3rd Street Lot 5 Block 133 in the Borough of Ship Bottom, County of Ocean and State of New Jersey; in accordance with the terms contained herein. A permanent Certificate of Occupancy shall not issue until the adoption of the final Resolution on June 19, 2019.

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

D. DOCKET NO. 19:06  
 THE BALDWIN RESIDENCE, LLC  
 338-380 W. 8<sup>TH</sup> STREET  
 BLOCK 103 LOTS 3 & 6

A motion to approve this resolution was made by Mr. Hay and seconded by Mr. Basile. 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. 2019:06 SP/V**

**WHEREAS**, The Baldwin Residence, LLC has made application to the Land Use Review Board of the Borough of Ship Bottom to further modify and amend the previously granted Variances and Site Plan approvals; and for variances and preliminary and final Major Site Plan approval for the development of Lot 6 Block 103 located at 338-380 West 8<sup>th</sup> Street including Lot 3 Block 103, 354 West 9<sup>th</sup> Street (pertaining to usage of 19 parking spaces on that property occupied by the CVS Pharmacy) in the Borough of Ship Bottom, County of Ocean and State of New Jersey to permit the modifications, deviations and changes from the approved development, performed during construction without Board approval or review, including increased building coverage of 78.5%, where 67% building coverage was approved; lot coverage of 93.6% where lot coverage of 80% was approved; a 0.0 foot setback from 9<sup>th</sup> Street where 3.0 feet was approved, only to the elevated swimming pool room, as reflected on the plans submitted; and setbacks of 8.07’, 13’, and 14.07’ as set forth on the approved plan under Resolution 2017-01; Sheet 3 of 5 dated December 19, 2017 prepared by Stout and Caldwell under Resolution 2017-01; an 8.16 foot setback from 8<sup>th</sup> Street where 12.62 feet was approved; easterly setbacks of 1.78 1.93 and 2.16 feet from balconies and roof overhangs, where a five (5) foot setback was approved; a setback to the east of 2.17 feet to a proposed stairway; and encroachments over the property to the west, consisting of stairs, landing, concrete wall and two (2) fountains. All previously approved variances and site development approvals, not modified herein shall continue; and

**WHEREAS**, the Land Use Review Board considered this application at a public hearing conducted on April 17, 2019. The applicant was represented by James S. Raban, Esq. The application dated January 30, 2019, together with copies of Resolutions of Memorialization 2006:16, 2007:10, 2015:04; 2018:13A and 2018:13 B was entered into evidence as Exhibit A-1; the plans prepared by Stout and Caldwell Engineers, LLC titled “Amended Preliminary / Final Site Plans for the Hotel LBI Tax Block 103, Lot 6 Tax Map Sheet 17 380 West 8<sup>th</sup> Street Borough of Ship Bottom, Ocean County, New Jersey” with a final revision date of April 1, 2019,

containing eleven (11) sheets; under signature and seal of Robert R. Stout, PE, PLS was entered into evidence as Exhibit A-2; the April 5, 2019 letter of James S. Raban, Esq., amending the application, was entered into evidence as Exhibit A-3; Presentation Building Plans prepared by Dever Architects and Craig W. Brearley, AIA, Architect titled "Hotel LBI (Extended Stay Hotel) Borough of Ship Bottom, Ocean County, New Jersey dated/submitted April 5, 2019, consisting of five (5) drawings was entered into evidence as Exhibit A-4; architectural plans titled Hotel LBI 351 West 9<sup>th</sup> Street, Ship Bottom, Ocean County, NJ" dated December 22, 2017 with a final revision date of April 5, 2019, containing 12 sheets; all under signature and seal of Thomas J. Dever, Registered Architect was entered into evidence as Exhibit A-5; a copy of Sheet 6 of 11, Existing Conditions, prepared by Stout and Caldwell Engineers, LLC, and colored for testimony purposes, was entered into evidence as Exhibit A-6; a copy of the previously approved architectural plan, prepared by Dever Architects, dated December 22, 2017 was entered into evidence as Exhibit A-7; and Drawing 301 prepared by Dever Architects, as part of Exhibit A-5 was entered into evidence as Exhibit A-8. The review letter from Owen, Little & Associates, Inc., under signature of Frank J. Little, Jr., PE, PP, CME, Second Review and dated April 10, 2019 was entered into evidence as Exhibit B-1. Testimony was offered by Christopher Vernon, member of applicant; Robert R. Stout, PE, PLS applicants Engineer and Surveyor; Tiffany Morrissey, applicants Professional Planner and Jeffrey J. Pack applicant's Architect. Public comment was offered by Angela Trampota, Vincent Ludwig, Esq. appeared on behalf of Java Properties, the adjoining property owner to the east; William Bori, the principal of Java Properties, Kenneth Formica, the owner of Surf City Marina, Raymond Ciccone, and Joseph Mayo; 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. The property is in the GC General Commercial Zone.
  3. The Board adopts the contents of the Resolutions of Memorialization Docket Numbers 2006:16, 2007:10, 2015:04, 2017:01, 2018:13A and 2018:13B, as if set forth herein at length.
  4. The aforementioned Resolutions document the proposed development and approvals at the site, whereupon the development and construction of the site is substantially completed.
  5. The Board adopts the contents of the April 10, 2019 letter from Owen, Little & Associates, Inc. under signature of Frank J. Little, Jr. entered into evidence as Exhibit B-1 as if set forth herein at length.
  6. In January 2019 applicant had filed the pending application to address the balconies and overhangs constructed on the Easterly portion of the building; the approved site plan did not reflect those balconies, the approved easterly setback was limited to five (5) feet. The setbacks of the balconies are 1.78, 1.93 and 2.16 feet respectively, with the roof overhangs also encroaching within the five (5) foot approved setback; the construction of the balconies and overhangs were not included in the approved building coverage and lot coverage calculations.
  7. Upon the filing and receipt of the aforementioned application, the Board Engineer requested that "as built" drawings and lot coverage and building coverage calculations be provided to the Board by applicant.
  8. Applicant provided the "as built" drawings which generated an amendment of the current application, as set forth in Exhibit A-3 the April 5, 2019 letter from James S. Raban, Esq. applicant's attorney. It appears that the building coverage was increased from the approved coverage of 67% to 78.5% building coverage; the lot coverage was increased from the approved coverage of 80% to 93.6% lot coverage; the approved setback of 8.07 feet to the building from 9<sup>th</sup> Street was reduced to a 0.0 foot setback; as was the approved setback of 3.0 feet to the elevated swimming pool room reduced to 2.95 feet. The approved setback from 8<sup>th</sup> Street of 12.62 feet was reduced to 8.16 feet; and the westerly portion of the building, which was approved to maintain a 0.0 foot setback to the Causeway. Applicant installed and constructed encroachments of stairs, a landing, concrete wall and two (2) fountains over the property line over the public property adjacent; applicant also constructed a platform at the northeast corner of the building with a 2.14 setback from the easterly property line; and requested variance relief to allow the platform to remain in that location and for the installation of stairs at a setback of 2.14 feet; applicant is also requesting variance relief to maintain the balconies with roof overhangs at 1.78 feet, 1.93 feet and 2.16 feet.
  9. The Board also found that the six (6) foot sidewalks to be provided around the property, as mandated under Resolution of Memorialization 2017:01 are installed, as of the May 15, 2019 meeting.

10. Applicant's engineer testified that the balconies were shown on the architectural plans; however they were not reflected in the engineering plans or included in the building and lot coverage calculations.
11. The adjoining property owner did not initially object to the development; however once it appeared that the balconies abutting its property were constructed in closer proximity than approved; expressed concern with the potential of damage to the vehicles of patrons at the property, who would park in the lot abutting the balconies; and also the potential for trash and refuse from the hotel on its property.
12. Applicant's architect testified that the modification to the 9<sup>th</sup> Street setback was triggered as a result of a change in the FEMA mapping and the Flood Zone designated for the site; the plans were initially prepared taking into account the AE Zone, which would have permitted the initially planned and approved retaining walls, backfill, and landscaped setback. The site is located in the Coastal AE Zone which, according to applicant's witnesses, only permits breakaway construction at the grade area. A choice was made by applicant and its professionals to construct breakaway walls at grade at a 0.0 foot setback. The Board finds that as a result of the change of flood zone, applicant could have maintained the approved 3 foot setback to the swimming pool room; and landscaped the property at grade to 8.06, 13 and 14.07 feet, the approved setbacks to the building, and constructed the breakaway walls at the approved setbacks. The breakaway walls were constructed at the property line and the entire decking above was expanded and constructed to create a roof/patio over the area, all at a 0.0 foot setback. Predicated upon the modifications the building and lot coverage were increased above the approved limitations. The limited space along 9<sup>th</sup> Street, creates a more dangerous condition than was approved with the landscaped setback; and furthermore a safer alternative was not implemented; nor were any of these changes brought before the Land Use Board for its review, comment or approval.
13. Exhaust fans were installed in the parking area at grade, which fans extended into the setbacks.
14. The Board has worked diligently with Applicant to permit the development; and has granted those variances that were necessary to permit the project to proceed without detriment to the public good and without impairing the intent and purposes of the zone plan and zoning ordinances. The setbacks, building and lot coverage were major considerations, and the applicant and its professionals were aware of the limitations imposed upon the development.
15. During the course of the hearing applicant modified its' request for variances; applicant agreed to eliminate the variance request to permit the balconies and overhangs on the east side of the building remain at the property; applicant's representative, Mr. Vernon testified that the balconies and overhangs would be removed; commencing not later than October 31, 2019; after further discussion, the balconies would not be used, and access thereto will be restricted until their removal. The fans currently encroaching into the setback will be recessed into the building walls; the lot coverage will be corrected and brought into conformity to the approved coverage by the installation of porous pavers; applicant shall submit a plan delineating the proposed lot coverage prior to the next meeting. Applicant will obtain permission from the State of New Jersey DOT, as a condition precedent for its use of that area where the stairs, landing, concrete wall and fountains are located on public property.
16. Applicant further offered to cooperate with the adjoining property owner to the east, JAVA Properties, to landscape the area between their respective properties; if JAVA Properties chooses to remove its fence.
17. The Board finds that the development along 9th Street is not acceptable; there is not any basis to permit the increased building coverage and further reduction of the setback at that major highway.
18. Applicant proffer that the intensity of the use of the property is not increased; the Board finds that the intensity of the utilization and development of the site is substantially increased with the reductions in setbacks, and the increased building coverage and lot coverage created
19. The board finds that the setback of 8.16 feet is for mechanicals in the northwest corner of the building on 8<sup>th</sup> Street. This setback will not have any deleterious impact upon the neighboring properties; or traffic flow.
20. The proposed steps at the northeast corner of the building, will provide a safer means of accessibility to patrons of the hotel; however, the platform and stairs shall be setback to the building 7.22 feet from the easterly

property line; a parking space may be utilized to accommodate the stairs;  
and

**WHEREAS**, the Land Use Review Board of the Borough of Ship Bottom, at its April 17, 2019 meeting determined that the relief requested by the applicant, The Baldwin Residence, LLC, to further modify and amend the previously granted Variances and Site Plan approvals; and for variances and preliminary and final Major Site Plan approval for the development of Lot 6 Block 103 located at 338-380 West 8th Street including Lot 3 Block 103 354 West 9th Street (pertaining to usage of 19 parking spaces on that property occupied by the CVS Pharmacy) in the Borough of Ship Bottom, County of Ocean and State of New Jersey to permit the modifications, deviations and changes from the approved development, performed during construction without Board approval or review including increased building coverage of 78.5%, where 67% building coverage was approved; lot coverage of 93.6% where lot coverage of 80% was approved; a 0.0 foot setback from 9th Street where 3.0 feet was approved, only to the elevated swimming pool room, as reflected on the plans submitted; with setbacks of 8.07, 13, and 14.07 feet approved to the building; easterly setbacks of 1.78 1.93 and 2.16 feet from balconies and roof overhangs, where a five (5) foot setback was approved; a setback to the east of 2.17 feet to a platform and proposed stairway at the northeast corner of the building; and encroachments over the property to the west, consisting of stairs, landing, concrete wall and two (2) fountains CANNOT 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 Board previously granted variance relief from setback requirements; building coverage and lot coverage to enable the project to be constructed; any further deviation from the relief previously granted has not been justified, and is contrary to the zone plane and zoning ordinances; the development along 9<sup>th</sup> Street is unsafe and eliminates a landscaped area and appropriate setback. Upon modification of the Flood Zone, the project could have been improved with grade landscaping; and the breakaway walls being constructed at the approved setbacks of 8.07, 13, and 14.07 feet. Applicant shall remove the breakaway walls and roof overhang; the 2.95)foot elevated setback to the swimming pool room may remain; and the breakaway walls may be installed at the approved 8.07, 13, and 14.07 foot setbacks; with the area adjacent thereto being landscaped; the building coverage and lot coverage is excessive and the 0.00 foot setback is not justified. Applicant can adjust the development at the site to maintain the building and lot coverage's that were approved; and the setback on the easterly property line should remain at 5 feet. Applicant has agreed to remove the balconies and overhangs to the east; to comply with the approved plans. The stairs proposed in the northeast corner of the building may be granted as they provide a safer means of accessibility for the patrons, said stairs and platform shall be setback 7.22 feet from the easterly property line; and may be constructed within one (1) adjoining parking space. The setback of 8.16 feet at the northwest corner to the mechanical area may be granted; as the area encumbered is limited to the mechanical equipment; and

**WHEREAS**, applicant by letter from counsel, James S. Raban, Esq. dated May 3, 2019, requested the Land Use Review Board keep the record open in this matter; and expanded the application to include relief from the setback requirement on 8th Street to permit a 0 foot setback for the overhead canopy/Porte Cochere; and to revise the approved Building Coverage to 76 % where 67% was stated on the plans and approved by Resolution; with applicant noticing and publishing the continuation of the hearing and additional variance relief requested; and

**WHEREAS**, this matter was considered again at a public hearing on May 15, 2019, applicant was represented by James S. Raban, Esq. The letter dated May 3, 2019 from James S. Raban, Esq. was entered into evidence as Exhibit A-9; the plans prepared by Stout and Caldwell Engineers, LLC titled "Amended Preliminary / Final Site Plans for the Hotel LBI Tax Block 103, Lot 6 Tax Map Sheet 17 380 West 8th Street Borough of Ship Bottom, Ocean County, New Jersey" with a final revision date of April 30, 2019, containing eleven (11) sheets; under signature and seal of Robert R. Stout, PE, PLS was entered into evidence as Exhibit A-10; the letter form Nonee Lee Wagner, Deputy Attorney General, as counsel for NJ DOT, dated May 14, 2019 was entered into evidence as Exhibit A-11; a color coded version of Sheet 3 of the plans submitted by Stout and Caldwell Engineers, LLC which were entered into evidence as Exhibit A-10, was entered into evidence as Exhibit A-12. The review letter from Owen, Little & Associates, Inc., under signature of Frank J. Little, Jr., PE, PP, CME, Third Review and dated May 8, 2019 was entered into evidence as Exhibit B-3; the reduced site plan color-coded by Frank J. Little, Jr. showing an area of 9,020 square feet owned by the Borough of Ship Bottom, and the area to be improved with porous pavers, totaling 3,646 square feet, was entered into evidence as Exhibit B-4; and a copy of the Bond letter issued by Frank J. Little, Jr. dated May 8, 2019 was entered into evidence as Exhibit B-5. Testimony was offered by Christopher Vernon, managing member of applicant; and Robert R. Stout, PE, PLS applicants Engineer and Surveyor. Public comment was offered by Robert Burnett; Vincent Ludwig, Esq. appeared on behalf of Java Properties, LLC, William Bori, and Joseph Mayo; and

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

21. Applicant's engineer testified that Applicant's plans have always reflected the proposed canopy/ Porte Cochere/ overhang, at the Hotel Entrance on 8<sup>th</sup> Street, at a 0 foot setback; he testified it has always been shown on the architectural plans, and was shown on the

site plan approved in 2017; with the area taken into account for lot and building coverage. It was not called out on the plan, and was not referenced under Note 9 on the plan under Zoning Requirements and Provided Conditions.

22. The approved plans and Resolutions of Memorialization approving the current hotel project at the site permit building coverage of 67%; variance relief for that coverage was approved by the Board. According to applicant's engineer, when their firm took over the engineering for the current project; modifying the prior 2015 approval under Resolution of Memorialization 2015:04 SP/V. Under that Resolution impervious lot coverage was limited to 80% and building coverage was permitted at 67%. In 2017 under Docket 2017 SP/V applicant was granted relief to modify the approved plans to relocate the building, and make modifications to the design. The engineering plans for that application and the subsequent applications regarding this development were prepared by Stout and Caldwell Engineers, LLC. Applicants engineer testified that his firm transposed the building coverage from the prior plans shown as 67% to the plans they submitted, designating 67% as the building coverage. He stated that the actual building coverage for the approved plan under Docket 2017:01 is 76.0%. Applicant is requesting the Board change the approval to reflect the actual coverage of the approved plan 76.0%; whereupon upon the removal of the balconies and overhangs on the easterly side of the building and restoration of the southerly portion of the building along 9<sup>th</sup> Street, the project will conform to the 76.0% building coverage.

23. The approved plans reflect the existence of the Canopy/Porte Cochere at a 0.0 foot setback; the posts and outline are reflected on the plans approved under Resolution 2017:01 SP/V and it is included in the architectural plans. Applicants engineer testified that the coverage of this appendage is included in his building coverage calculations. It appears that a corner the Canopy extends over the property line, a distance of .21 feet (2.52 inches), into an area of public property currently the Borough of Ship Bottom. The 0.0 foot setback to the canopy has always been reflected upon the plan; and affects an open area, that will not interfere with light, air, open space or traffic flow; and may be granted for the purpose presented, an overhang for dropping and gathering patrons at the hotel.

24. The Board does not have jurisdiction to grant approvals of encroachment on public property; applicant is negotiating with the Borough Council to acquire an easement for 9,020 square feet owned by the Borough of Ship Bottom adjoining applicants property to the south as delineated in yellow on Exhibit B-4 , the acquisition of the easement will permit the existence of the encroachment of the canopy; will reduce the actual lot and building coverage calculations; and will provide for the entrance of the trash enclosure area at the north west of the property to be within the easement, in lieu of encroaching into the public property. Applicant has testified that it is interested in obtaining the easement. The acquisition of the easement will also decrease the building coverage close to what was originally approved 67%.

25. In the event applicant does not acquire the easement as aforementioned; the encroachment of the canopy shall be removed by applicant as a condition precedent to obtaining a final certificate of occupancy.

26. The Board adopts the contents of the review letter from Owen, Little & Associates, Inc., under signature of Frank J. Little, Jr., PE, PP, CME, Third Review and dated May 8, 2019 was entered into evidence as Exhibit B-3, as if set forth herein at length.

27. Based upon the contents of the Letter from the State of New Jersey Office of the Attorney General dated May 14, 2019, applicant is negotiating in good faith to obtain a license, easement or fee title from the State of New Jersey for that property westerly of the subject property where the landing, stairs, concrete wall and fountains have been constructed. Initially it was the intention of the Board to have those encroachments removed as a condition for the issuance of a temporary certificate of occupancy. Predicated upon the letter, the Board will not object to those encroachments remaining in place, subject to the receipt of a license, easement or fee ownership, as a condition precedent to the issuance of a final certificate of occupancy; however those items may not utilized until such final approval from the State of New Jersey is obtained; and applicant shall provide a barrier to limit such use.

28. Applicant testified that the restoration of the building to approved setbacks will be completed by February 28, 2020. The Board recommends that any temporary certificate of occupancy that is issued, terminate on that date to assure compliance with the terms and conditions herein, the removal of the balconies and overhangs, and the restoration of the setbacks on the southerly side of the building on 9<sup>th</sup> Street, as approved under Resolution 2017:01SP/V.

**WHEREAS**, the Land Use Review Board of the Borough of Ship Bottom, at its May 15, 2019 meeting determined that the relief requested by the applicant, The Baldwin Residence, LLC, , to further modify and amend the previously granted Variances and Site Plan approvals; and for variances and preliminary and final Major Site Plan approval for the development of Lot 6 Block 103 located at 338-380 West 8th Street including Lot 3 Block 103 354 West 9th Street (pertaining to usage of 19 parking spaces on that property occupied by the CVS Pharmacy) in the Borough of Ship Bottom, County of Ocean and State of New Jersey to permit a 0.0 foot setback to 8<sup>th</sup> Street from the canopy/Porte Cochere and building coverage of 76% 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 Board approved the development with an actual building coverage of 76%; the approved development has not been enlarged to conform to the 76% requested; and the setback to the canopy was included in all of

the previously submitted plans, but not called out; and predicated upon the limited use as an open overhang, adjacent to an open area, there will not be any negative impact as a result of the proposed location of the canopy at a 0.0 foot setback. The Board further finds that applicant's acquisition of the easement for 9,020 square feet, as aforementioned will bring the development more into conformity with that which was specifically approved under Resolutions Number 2017:01.

**NOW, THEREFORE, BE IT RESOLVED** by the Land Use Review Board of the Borough of Ship Bottom that the application of The Baldwin Residence, LLC, to further modify and amend the previously granted Variances and Site Plan approvals; and for variances and preliminary and final Major Site Plan approval for the development of Lot 6 Block 103 located at 338-380 West 8th Street including Lot 3 Block 103, 354 West 9th Street (pertaining to usage of 19 parking spaces on that property occupied by the CVS Pharmacy) in the Borough of Ship Bottom, County of Ocean and State of New Jersey to permit the modifications, deviations and changes from the approved development, performed during construction without Board approval or review including increased building coverage of 78.5%, where 67% building coverage was approved; lot coverage of 93.6% where lot coverage of 80% was approved; a 0.0 foot setback from 9th Street where 3.0 feet was approved, only to the elevated swimming pool room, as reflected on the approved plans; with 8.07, 13, and 14.07 foot setbacks approved to the building; an 8.16 foot setback from 8th Street where 12.62 feet was approved; easterly setbacks of 1.78 1.93 and 2.16 feet from balconies and roof overhangs, where a five (5) foot setback was approved; a setback to the east of 2.17 feet to a proposed stairway; and encroachments over the property to the west, consisting of stairs, landing, concrete wall and two (2) fountains at the property be and hereby are, denied as to relief from the approved five (5) foot easterly setback requirement, to the increased building coverage of 78.5% , to the increased lot coverage of 93.6% and to the 0.0 foot setback to 9<sup>th</sup> Street. The variance relief to construct stairs at the northeast corner of the building is conditionally approved subject to the stairs being constructed at a setback of 7.22 feet from the property line using one (1) parking space to accommodate the stairs; and the relief to maintain a setback of 8.16 feet to the north from 8<sup>th</sup> Street, at the northwesterly corner of the building, for the mechanical equipment is conditionally approved. The relief requested to change the building coverage calculation to 76% and for a 0.0 setback for the canopy/Porte Cache at 8<sup>th</sup> Street, be and hereby is conditionally approved. The Board does not have jurisdiction to grant variance relief to permit the encroachments over the westerly property line with a concrete wall, staircase and landing, and two (2) fountains; however the Board does not object those encroachments remaining in place during the pendency of a Temporary Certificate of Occupancy; and they shall be legitimized by a license agreement, easement, or fee simple title prior to the issuance of a Final Certificate of Occupancy, or removed at that time. During the pendency of the legalization of the encroachments, applicant shall not utilize that area westward of the property; or the encroachments and shall barricade the steps to avoid use by its patrons and employees.

**BE IT FURTHER RESOLVED** that this limited approval and the Board action 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 April 10, 2019, and May 8, 2019 as entered into evidence as Exhibits B-1 and B-3; and applicant complying with all other technical revisions as may be required by the Board engineer.

**BE IT FURTHER RESOLVED** that the Board reconfirms all prior approvals not modified herein, and applicant shall be required to conform to all conditions and requirement's under such approvals, as set forth in Resolutions of Memorialization Docket Numbers 2006:16, 2007:10, 2015:04, 2017:01, 2018:13A and 2018:13B.

**BE IT FURTHER RESOLVED** that applicant shall submit revised plans locating the approved stairs, at a setback of 7.22 feet; being constructed within one (1) parking space; , reflecting the removal of the encroachments created to the east and south of the building; restoring the three (3) foot setback to the swimming pool room only, at the second story above the parking area; and restoring the 8.06, 13, and 14.07 foot setbacks from 9<sup>th</sup> Street; providing the lot coverage plan and calculations, removing certain impervious coverage, and locating pervious pavers, if being used; and further adhering to and providing the approved building coverage of 67% adjusted to 76%; and lot coverage of 80% . The receipt and approval by the Board Engineer of the revised plans are a condition precedent of the issuance of any temporary certificate of occupancy and applicant's occupancy of the building. The Board has permitted the building coverage calculation to be adjusted to 76% to conform to the actual coverage of the plan approved under Resolution 2017-01; which coverage has not been expanded. The coverage shall be decreased upon applicant obtaining an easement from the Borough of Ship Bottom, for 9,020 square feet as delineated in Exhibit B-4.

**BE IT FURTHER RESOLVED** that applicant shall submit plans reflecting the restoration of the building to the approved plans, the issuance of the Certificate of Occupancy shall be conditioned upon applicant's compliance with the terms of this Resolution; as a condition of a temporary certificate of occupancy, to expire on February 28, 2020, applicant must obtain building permits to remove the encroaching building coverage, walls and roof, decking, on the south side of the building abutting 9<sup>th</sup> Street and the balconies and overhangs on the east side of the building; with work to commence no later than October 31, 2019. Applicant shall provide a performance bond, in amounts determined by the Board engineer, as set forth in Exhibit B—5; to

assure applicants compliance with the restoration contained herein. The encroaching areas on the southerly side of the building may be used by applicant until October 31, 2019, when the demolition shall commence.

**BE IT FURTHER RESOLVED** that the balconies on the east side of the building shall not be used or occupied; applicant shall restrict the access to the balconies; in accordance with all applicable fire and safety codes; to be approved by the Building Department of the Borough.

**BE IT FURTHER RESOLVED** that Applicant shall obtain all requisite permits and Applicant shall comply with all Federal, State and Local rules regulations and statutes and ordinances effecting this development.

**BE IT FURTHER RESOLVED** that applicant shall obtain all outside agency approvals from all agencies having jurisdiction over this development, including but not limited to Ocean County Planning Board; Ocean County Soil Conservation District and from the Ship Bottom Water and Sewer Departments; the New Jersey Alcohol Beverage Commission and the Mayor and Council and Construction and Zoning Departments of the Borough of Ship Bottom; and the New Jersey Department of Transportation, as set forth in prior resolutions and as may be required for the modifications set forth herein.

**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. Applicant shall also pay and post all inspection fees, performance guarantees and maintenance bonds as may be required, in amounts established by the Borough Engineer, and in such form as required by the Borough Solicitor; including, but not limited to the bonding to assure applicant bringing the property into compliance with the approvals previously granted, and removal of those improvements specifically not approved herein, the balconies, roof overhangs, breakaway walls, and roof and decking, and building and lot coverage encroachments.

**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 Applicant 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 April 17, 2019 and May 15, 2019 when this matter was considered.

**BE IT FURTHER RESOLVED** that the concrete wall, stairs, landing and two (2) fountains located westward of the property line shall be legalized by a license agreement, easement or fee simple purchase from the New Jersey Department of Transportation, as a condition to use same; until legitimized as aforementioned, applicant shall prohibit the use of the encroachments by barrier; if not legitimized at the time of issuance of a final Certificate of Occupancy, applicant shall remove such encroachments, as a condition precedent for the issuance of such Certificate.

**BE IT FURTHER RESOLVED** that applicant shall negotiate in good faith to acquire an easement from the Borough of Ship Bottom for that area along its northerly boundary on 8<sup>th</sup> Street designated as 9,020 square feet on Exhibit B-4; if the easement is not in place on or before the issuance of a final Certificate of Occupancy, applicant shall remove the encroachment from the canopy/Porte Cache as a condition precedent to the issuance of such Certificate. Notwithstanding anything herein to the contrary, the issuance of a final Certificate of Occupancy is subject to and conditioned upon applicant acquiring the aforementioned easement for 9,020 square feet, from the Borough of Ship Bottom.

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

### **ADJOURNMENT:**

On a motion by Mr. Hay seconded by Mr. Basile and an all aye vote, Chairman Cooper adjourned the meeting at 10:14 P.M.

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Sara Gresko, Secretary  
Land Use Review Board