

**RESOLUTION OF MEMORIALIZATION OF THE
LAND USE BOARD OF THE BOROUGH OF BEACH HAVEN
COUNTY OF OCEAN AND STATE OF NEW JERSEY
DOCKET NO. 2015:11V/SP**

WHEREAS, 100 N. West Avenue, LLC has made application to the Land Use Board of the Borough of Beach Haven for variances together with preliminary and final site plan approval to develop Condominium Units 3, 4, 5, 6, 7 located at the "Poop Deck" Condominium, Lots 1, 1.01, 2. And 2.01 Block 141 commonly known as 100 North West Avenue, Units 3 -7, with a three (3) story mixed use building, including a new ticket booth for the Miss Beach Haven and Pirate Ship, a public bathroom and office and storage areas together with parking at grade; with three (3), four bedroom apartments there over on the second and third floor.; and

WHEREAS, applicant previously appeared before the Board with an application to develop the property with four (4) apartments over the grade level parking and commercial uses; which application was denied under Docket 2015-06 SP/V memorialized on June 1, 2015; and

WHEREAS, the Land Use Board considered this newly submitted application at a public hearing on August 3, 2015. The applicant was represented by Reginald J. Raban, Esq. The application dated July 17, 2015 was entered into evidence as Exhibit A-1; the plans prepared by Horn, Tyson and Yoder, Inc. titled "Site Plan Lots 1, 1.01, 2 & 2.01 Block 141 Tax Map Sheet #19, Borough of Beach Haven, Ocean County, New Jersey dated January 15, 2002 with a final revision date of July 16, 2015 under signature of James D. Brzozowski PE, PP and Robert G. deBlois, PLS was entered into evidence as Exhibit A-2; Architectural plans prepared by Borglund Associates, Inc., dated July 15, 2015, under signature and seal of Roland E. Borglund, RA, titled "Site Plan for 100 N. West Ave. Beach Haven, NJ" consisting of a Sheet A-1 Site Plan and Ground Floor Plan; Sheet A-2 First Floor Plan; Sheet A-3 Second Floor Plan and Sheet A-4 Third Floor Plan was entered into evidence as Exhibit A-3. A color rendering of the building and site was

entered into evidence as Exhibit A-4. 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 28, 2015 was entered into evidence as Exhibit B-1. Testimony was offered by James D. Brzozowski, the applicants' engineer; William Burris, member of applicant; and Tiffany CuvIELlo, applicants' professional planner. Public comment was offered by Michael Peler and Deborah Whitcraft; 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, 100 N West Avenue, LLC.
3. The property is located in the MC Marine Commercial Zone.
4. The property consists of upland lot with dimension s of 66.8' x 126' feet irregular, containing 8,092 square feet, together with a riparian area improved with a 20.2' x 56.4' irregular deck dedicated as a public access easement, together with two docks extending to the pier head line.
5. The property was previously improved with a two (2) story building containing two (2) apartments on the second floor and a retail/office area on the grade level. The building serviced commercial vessels docked at the site. On April 20, 1998 the owners of the property Black Whale, Inc. received a Certificate of Non Conformity from the Borough of Beach Haven to permit a waiver of parking requirements for three (3) commercial vessels with a combined licensed capacity of 610 passengers.
6. On April 1, 2002 the Board adopted Resolution of Memorialization 2002-13 granting site plan approval to Tad Stern and Elizabeth Stern permitting them to conduct a takeout food service business within the then existing building; with certain conditions, including limited hours of operation, and no additional seating.

7. The buildings on the site were demolished within the last two (2) years; leaving the ticket booth an area for dispensing ice, and a dumpster at the site. The aforementioned are for the use of the two (2) commercial vessels operating from the location, at Units 1 and 2.
8. Applicant currently presents a plan to redevelop the property with a three (3) story mixed use building.
9. The plans provide for the ground floor to be developed with an area for ticket sales for the two (2) commercial vessels; storage areas, a public bathroom, to be ADA compliant, and an office; there will also be a parking garage containing seven (7) of the eight (8) proposed parking spaces. The second and third story will be improved with three (3) apartments. The plan also proposes two (2) additional parking spaces at the site, which are substandard, extending into the Borough Right of way.
10. The mixed use is permitted in the MC Marine Commercial Zone; however under the permitted RB Zone regulations, only two (2) living units conform to the residential component. Applicant proposes three (3) living units; and is requesting variance relief. A special reasons/use variance is required for the proposed uses.
11. Applicant has requested a waiver from providing a ADA parking space; which the Board grants.
12. The plans also provide for an elimination of certain decking at the west of the building; the Board finds that the decking, as adjacent to the existing dock area should remain, and the plans revised; to allow adequate public access and room for the patrons of the commercial vessels. Applicant will further revise the plan to provide decking or hardscape for adequate access to the proposed bathroom.
13. Applicant will address drainage to be directed to Center Street and West Avenue; the property will be elevated if required; and a retaining wall will be installed if necessary, to be determined by the Borough Engineer.
14. Applicant will install a trash enclosure; trash will be hauled from the site by a private carrier. Trash from the commercial vessels will be disposed of

offsite and the trash from the proposed mixed use building will be contained within a trash enclosure, as set forth on the plan.

15. Applicant will adjust the plans to maintain the required impervious coverage of not greater than 75%; without eliminating the decking at the west, as aforementioned. The Board agrees that the existing decking adjoining the existing dock to the west will not be counted toward the impervious coverage.
16. Applicant does not propose any food service at the site; principals of the applicant, according to testimony of William Burris, will be acquiring the Boathouse Restaurant within the next year, currently scheduled to close title in November of 2016.
17. The twenty two (22) slips that exist at the site, as shown on the plan will be solely used for transient vessels; where the vessels will be arriving and departing from this site; there will not be any vehicle parking associated with this proposed use. Predicated upon this use the Board is not including the slips in the parking calculations for the site; the slips will be restricted for transient use and overnight dockage shall be prohibited.
18. But for the preexisting lot frontage, applicant is not seeking any bulk variances; all setback requirements will be maintained. Variance relief is requested for the three (3) family uses; as stated herein.
19. The parking garage area will remain open; without being gated; to provide parking for the commercial and residential uses proposed.
20. In conjunction with this approval applicant offered to have its certificate of nonconformity, exempting three (3) commercial vessels and 610 passengers from parking and zoning requirements amended to exempt two (2) commercial vessels with a total capacity of 400 passengers.
21. Applicant will further address the existing washout between the subject property and the property to the north; either by constructing a small retaining wall, installing sheathing, a higher bulkhead; or additional bulk heading, to be determined by the Borough Engineer.

22. The Board adopts the contents of the review letter of Owen Little, & Associates, Inc. dated July 28, 2015 entered into evidence as Exhibit B-1 as if set forth herein at length.
23. The mixed use is permitted; applicant has modified the building to conform with bulk requirements and has reduced the density from four (4) apartments, as requested under Docket 2015-06V/SP to three (3); which requires variance relief.
24. The plans show a gazebo to be created upon public property; and such construction is subject to approval by the governing body; the Board is not acting upon that matter; and

WHEREAS, the Land Use Board of the Borough of Beach Haven has determined that the relief requested by the applicant, 100 N. West Avenue, LLC for variances together with preliminary and final site plan approval to develop Condominium Units 3, 4, 5, 6, 7 located at the "Poop Deck" Condominium, Lots 1, 1.01, 2. And 2.01 Block 141 commonly known as 100 North West Avenue, Units 3 -7, with a three story mixed use building, including a new ticket booth, office use, an ADA compliant public bathroom, and storage areas at grade with a seven (7) space parking garage; together with two stories there over developed with (3) residential apartments 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 Beach Haven, as applicant has improved upon the proposed development of the site, by eliminating setback variances; reducing the density from four to three apartments; providing conforming parking; retaining the marine dependent uses at the site; and creating an aesthetically pleasing building. The development is consistent with the purposes of the master plan, albeit the density exceeds that which is permitted by one apartment unit. The benefit of the development and taking into account the location of the site and improvement to that area of the Borough, outweighs any detriment from increasing the permitted apartment use of two (2) units to the three (3) units as proposed.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Beach Haven that the application of 100 N. West Avenue, LLC for variances together with preliminary and final site plan approval to develop Condominium Units 3, 4, 5, 6, 7 located at the "Poop Deck" Condominium, Lots 1, 1.01, 2. And 2.01 Block 141 commonly known as 100 North West Avenue, Units 3 -7, with a three story mixed use building, including a new ticket booth for the two (2) commercial vessels, an ADA compliant public bathroom, office and storage areas, at grade with a seven (7) space parking garage; together with two stories there over including three (3) residential apartments as set forth on the plans submitted to the Board; 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 July 28, 2015, as entered into evidence as Exhibit B-1.

BE IT FURTHER RESOLVED that this approval is subject to applicant providing amended plans reflecting that the existing deck, located adjacent to the existing dock at the west of the site shall remain; providing for a drainage plan acceptable to the Borough Engineer; providing for impervious coverage not to exceed 75%, excluding therefrom the existing deck aforementioned; addressing the washout between the subject property and the property to the north, Polly's Dock, and providing suitable access and egress to the proposed public bath room facilities, noting that the bathroom facilities shall be ADA compliant; acceptable to the Borough Engineer; and

BE IT FURTHER RESOLVED that this approval is subject to applicant restricting the twenty two (22) boat slips to transient use only with a prohibition against overnight dockage.

BE IT FURTHER RESOLVED that this approval is subject to applicant entering into an agreement with the Borough of Beach Haven, modifying the existing

Certificate of Nonconformity to permit only two (2) commercial vessels at the site; with a limit of 400 passengers, eliminating a third vessel and 210 passengers from the prior approval.

BE IT FURTHER RESOLVED that this approval is subject to and conditioned upon all construction at the property conforming to all building, fire and safety Codes. The public bathroom facility shall be constructed to conform to all ADA requirements.

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, the Borough of Beach Haven water and sewer departments, the New Jersey Department of Environmental Protection, and the Ocean County Soil Conservation District, if applicable.

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.

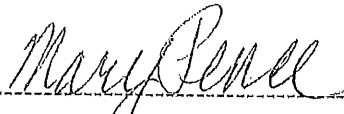
BE IT FURTHER RESOLVED that variance approval is granted solely to provide for three (3) residential apartments, where two units (2) are permitted by Ordinance. The development shall be constructed in compliance with all other Bulk Zoning requirement of the zone; a waiver is granted from providing an ADA parking space.

BE IT FURTHER RESOLVED that the Applicant is required to comply with all ordinances of the Borough of Beach Haven, 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 terms and conditions as set forth herein and as stated at the hearing conducted on August 3, 2015; and all representations applicants' witnesses and representatives placed on the record at the public hearing conducted on August 3, 2015, when this matter was considered.

BE IT FURTHER RESOLVED that this approval is subject to and conditioned upon applicants complying with any and all technical revisions and submissions as the Borough Engineer may require.

BE IT FURTHER RESOLVED that this approval is subject to and conditioned upon Applicant satisfying all Land Use Development fees as set forth in Chapter 102, Section 102-5 et seq. of the Code of the Borough of Beach Haven.



MARY PENCE, SECRETARY

---CERTIFICATION---

I, MARY PENCE, Secretary of the Land Use Review Board of the Borough of Beach Haven, County of Ocean and State of New Jersey, do certify that the foregoing is a true copy of a Resolution adopted by the Land Use Review Board of the Borough of Beach Haven at a public meeting held on September 8, 2015.



MARY PENCE, SECRETARY