

**MEMORIALIZING RESOLUTION OF THE
BOROUGH OF SEASIDE PARK PLANNING BOARD
APPLICATION NO. PB 19-08**

WHEREAS, the Borough of Seaside Park Planning Board is a duly constituted Planning Board pursuant to N.J.S.A. 40:55D-23 and 25c, and Borough of Seaside Park Development Ordinance §200-15; and

WHEREAS, **MAJOR BOARDWALK TRUST d/b/a FUNTOWN PIER AMUSEMENTS INC.**, applicant, Melanie Appleby, Esq. appearing, has applied to the Planning Board of the Borough of Seaside Park for amended preliminary and final major site plan approval to modify and expand an existing beach club on premises known as North Ocean Avenue (between Stockton Avenue and Porter Avenue), also known as block 97, lot 20.03 and 20.01 as designated on the official tax map of the Borough of Seaside Park; and

WHEREAS, the applicants have provided proper notice to all property owners within 200 feet and all other pertinent parties; and

WHEREAS, the applicants have submitted to the Board an Affidavit of Publication in proper form; and

WHEREAS, the applicants are requesting approvals as set forth in the Board Engineer report dated May 15, 2019 prepared by Douglas Rohmeyer, PE, CME, CFM which is incorporated herein by reference and adopted as part this resolution; and

WHEREAS, the Planning Board has considered the application and the documents filed by the applicants; having heard the testimony on behalf of the applicant and

witnesses, and having examined the exhibits submitted, and having heard the testimony of all interested parties during its meeting of May 21, 2019; and

WHEREAS, the Planning Board after carefully considering all the evidence provided, has made the following findings of fact:

1. All those exhibits contained in the Board file and discussed during the hearing are hereby considered evidence for the purpose of this application.

2. In addition to the exhibits noted above, the following exhibits were also specifically marked into evidence during the hearing:

- A-1 Development Application
- A-2 Tax Collector's Certification
- A-3 Water & Sewer Certification
- A-4 Tax Assessor's Certified List of Property Owners
- A-5 Affidavit of Service with attached certified mailing receipts
- A-6 Affidavit of Publication
- A-7 Hearing Notice
- A-8 Board Engineer review letter dated May 15, 2019 prepared by Douglas Rohmeyer, PE, CME, CFM.
- A-9 Preliminary and Final Major Site Plan prepared by Owen, Little and Associates, Inc. dated April 5, 2019, last revised May 8, 2019 (1 Sheet).
- O-1 Letter dated May 17, 2019 prepared by John A. Giunco, Esq., counsel to objecting adjacent land owner, Funtown Pier Associates, L.P.

3. The property in question is located in the Boardwalk Zone district which permits beach club uses.

4. The site was previously approved for a temporary dune buggy ride operation by resolution of this Board dated June 23, 2015, which use terminated under the terms of said resolution on or before October 1, 2015. The site was thereafter redeveloped as a beach club pursuant to Resolution PB/17-10 adopted June 27, 2017, and modified by Resolution PB/18-08 dated April 24, 2018.

5. The applicant is seeking amended preliminary and final major site plan approval to provide additional cabanas, a playground area and an additional tiki style hut to the existing beach club together with new pole mounted lighting and security cameras.

6. The applicant withdrew that portion of the application seeking a pole mounted portable grilling area and temporary food concessions / self-contained snack bar trailer on compacted surface; and

7. The applicant is the owner of the property and has standing to bring the application for development.

8. WILLIAM MAJOR, was duly sworn and testified as follows:

A. He testified he is the owner of the applicant herein, and the operator of the beach club.

B. He testified applicant seeks to construct additional cabanas on the beach for rental to patrons of the club. They will not have permanent foundations, will be temporary in nature, and be the same type as previously approved, i.e., approximately 12ft wide x 12 ft deep x 12 ft. high with an aluminum skeleton support system and fabric type walls on three sides that can all be rolled up and out of the way, leaving only the roof section and

supports visible (as required after 6:00 p.m.). Placement of the cabanas is now dictated by the new dune system recently constructed by the Army Corps of Engineers. Twelve (12) cabanas were approved by the Board in 2018, and he seeks permission to place a total of Thirty-Six (36) cabanas on the site. Six of the cabanas will be located west of the dune line, and thirty cabanas will be located east of the dune line.

C. He testified the applicant seeks to construct an additional "tiki hut" (25 ft. x 50 ft.; 1250 sf) on the site which will be used in the same manner as the existing one – storage and rental of chairs and umbrellas to members. The existing tiki hut was approved to be 20 ft. x 20 ft (400 s.f.); however, due to manufacturer availability the applicant located a smaller one onsite at 10 ft. x 30 ft. (300 s.f.) and applicant seeks approval of same.

D. He testified the existing ticket booth will remain.

E. He testified the applicant seeks to install four (4) light poles with fixtures facing east, and several security cameras. Lighting is required to maintain and clean the beach after hours of operation and for special events in the evening.

F. He testified the hours of operation will remain as previously approved.

G. He testified the beach club provides 3 ocean rescue certified lifeguards through an outside company while the club is open for swimming.

H. He testified the beach club received no code violations last summer, nor were there any police "incidents" at the property.

I. He testified the playground equipment will be enclosed with a snow fence, and the equipment will be removed from the site in the off season.

J. He testified trash collection is handled in-house by the employees. Approximately 25 trash cans are provided on the property which are collected with a trailer for disposal at an appropriate landfill. He possesses a commercial trash hauler's license for this purpose.

J. He testified there will be approximately 7 additional employees this season; 15 employees in total.

K. He testified all other operations will be as detailed in prior approvals.

9. DOUGLAS KLEE, PE, PP, was duly sworn and testified at follows:

A. He testified he is a licensed engineer and planner of the State of New Jersey, and prepared the plans on behalf of the applicant.

B. He testified all easements on the property will remain, and the proposal does not violate their terms.

C. He testified the application seeks no new variances.

D. He testified the applicant voluntarily provided a new Damage Reduction Easement to the Borough and the State in or about 2016 thereby allowing the dune and beach replenishment project to move forward.

E. He testified the new dunes block the public's easterly view along the boardwalk, and the applicant's operation is therefore largely screened.

F. He testified the applicant will obtain a jurisdictional determination from NJDEP/CAFRA, and obtain any permits required for the proposed development.

10. The meeting was opened to the public.

11. BARBARA EHLEN, PP, AICP was duly sworn and testified she was retained by the adjacent landowner, Funtown Pier Associates, L.P. She testified that the applicant's

use of this property requires a use variance as it does not constitute a permitted "beach club." She further opined that there must be 15 feet of separation between the cabanas.

12. The Board disagrees with Ms. Ehlen's opinions in this regard. The Board found in prior applications, and continues to so find, that a "beach club" as defined in the development regulations permits sales of daily memberships akin to a daily beach badge. There is no requirement of a longer-term membership arrangement. As to cabana separation, the cabanas more closely resemble a covered beach chair than they do a structure under the development regulations. Accordingly, the 15-foot separation requirement does not apply.

13. The meeting was closed to the public as no additional members of the public wished to be heard.

14. The Board considered the testimony of the applicant and the witnesses and all exhibits contained in the Board file and the same are hereby incorporated as the findings of fact of the Planning Board.

WHEREAS, the Borough of Seaside Park Planning Board has determined that amended preliminary and final site plan approval can be granted without substantial detriment to the public good, and will not substantially impair the intent and purpose of the zone plan and zoning ordinances of the Borough of Seaside Park.

NOW, THEREFORE, be it resolved by the Borough of Seaside Park Planning Board on this 28th day of May that the application of **MAJOR BOARDWALK TRUST d/b/a FUNTOWN PIER AMUSEMENTS INC.** for amended preliminary and final site plan approval shall be granted subject, however, to the following conditions:

1. There shall be no food or beverage sales on the property.

2. The applicant shall comply with all local, state, and federal regulations applicable to this use regarding the provision of bathroom facilities on site. If any outside agency requires bathroom facilities on site, the applicant shall return to the Board for amended site plan approval.
3. The applicant shall provide a written determination from the Ocean County Board of Health as to whether or not bathroom facilities are required on this site per N.J.A.C 8:26 et. seq. or any other law or regulation within their jurisdiction.
4. Hours of operation shall be limited as follows:
 - a. Cabana rentals shall be from 9:00 A.M. to 6:00 PM, 7 days per week.
 - b. General beach operations including chair and umbrella rentals shall be from 9:00 a.m. to midnight, 7 days per week.
 - c. All swimmers shall be cleared from the water beginning at 6:00 p.m.
5. The applicant shall submit a statement of operations in accordance with this approval.
6. The plan shall be amended to depict all existing and proposed cabanas, tiki huts, ticket booths, the storage shed (previously approved by variance) playground equipment, light poles, trash facilities, and any other structure or temporary item on the site. The cabana layout shall be modified in accordance with the testimony given at the hearing wherein the easterly protrusion of the "L-Shape" area will be eliminated; cabanas located on the east side of the dune (no more than 30, subject to available space) shall be lined up in a single row only, more or less following the easterly toe of the dune. The final layout of all cabanas shall be subject to review

and approval of the Board Engineer to confirm compliance with the representations made at the hearing, and terms of this resolution.

7. The applicant shall provide a solid waste management plan for review and approval by the Board Engineer.
8. The photometric plan shall be provided for review and approval of the Board Engineer depicting the limits and intensity of all proposed lighting and compliance with the Borough lighting ordinances.
9. The proposed light poles shall not exceed 35 feet in height. The plan shall be amended to depict electric service and meter locations with elevations noted, and all proposed electrical conduit locations.
10. A maximum of 36 cabanas are permitted on the site.
11. There shall be no less than five (5) feet of separation between each cabana.
12. The cabana rentals shall be daily only. No hourly rentals shall be permitted.
13. At least one side of each cabana shall have no wall or other enclosure so that they are not capable of creating a completely enclosed space.
14. Once the cabana rental operations cease at 6:00 p.m., all patrons shall be cleared from the cabanas, and all four sides shall be opened, and shall remain open until 9:00 a.m. the following morning at which time rentals / occupancy may resume.
15. Cabanas shall only be rented to persons 21 years of age or older, and all occupants shall sign a rental agreement that includes the rules established for the beach club.
16. No grills or other cooking equipment shall be permitted on the property.

17. No fence or other barrier shall be installed or permitted below the mean high water line, nor shall the applicant or its employees interfere with the public's right of access pursuant to the Public Trust Doctrine.
18. All easements benefitting third parties, including the public or otherwise, on the property shall remain, and the applicant shall not block or impede access to and along same, including but not limited to the 25 foot wide and 11 foot wide easements noted on the plan at the southerly property line.
19. All conditions of prior approvals not modified or superseded herein shall continue in full force and effect.
20. The applicant shall strictly comply with the plans and surveys submitted and discussed, as amended, during the hearing. Any deviation from said plans shall be subject to further review and approval by the Planning Board.
21. The applicant shall obtain any and all other federal, state (NJDEP, CAFRA or otherwise), county, or local approvals as required by law.
22. The applicant shall obtain a Coastal Applicability Determination letter from the NJDEP regarding applicability of the CAFRA regulations or any other law or regulation within their jurisdiction to this site.
23. The applicant shall provide performance bonds and inspection fees in accordance with the Seaside Park Borough Ordinances or any other law or regulation as required.
24. Proof of payment of real estate taxes to date, and any outstanding application or escrow fees. No building permit shall issue until proof of payment is submitted accordingly.

25. The applicant shall obtain a zoning permit from Borough Zoning Officer prior commencing operation of the beach club. The Borough Zoning Officer shall not issue a zoning permit unless and until all conditions of this approval have been satisfied.

Moved by: LOSEY

Seconded by: PITCHELL

ROLL CALL

Those in Favor: LOSEY, PITCHELL, DEMICHELE, BOAG, BUCCI, MATTHIES, WILK, GIULIANO

Those Opposed: NONE

Those Abstaining: NONE

CERTIFICATION

I, SANDRA MARTIN, secretary of the Borough of Seaside Park Planning Board, hereby certify the above Resolution to be a true and correct copy of a Resolution adopted by the Borough of Seaside Park Planning Board on May 28, 2019


SANDRA MARTIN, SECRETARY