

Elias T. Manos, Esquire
Attorney for the City of Ocean City Zoning Board of Adjustment

PROPERTY: 1168 Boardwalk **BLOCK 1101, LOT 14**

WHEREAS, the applicant has filed a complete application with the City of Ocean City Zoning Board of Adjustment (sometimes referred to as the “Zoning Board” or “Board”) seeking variance relief for the expansion of a nonconforming use pursuant to N.J.S.A. 40:55D-70d(2) (as detailed more fully herein) for the premises located at Block 1101, Lot 14, also known as 1168 Boardwalk, Ocean City, New Jersey 08226; and

WHEREAS, the property is located in the ON-BD, On-Boardwalk Zone (“ON-BD Zone”); and

WHEREAS, the Board has considered the plan submitted and the testimony on behalf of the applicant and it makes the following findings of fact:

The subject property is located at the Boardwalk and 12th street next to the Surf Mall. The property is currently the site of a two-story mixed use building with a commercial arcade and ice cream shop business on the first floor and two residential units on the second floor. The property also has an existing parking area and a storage POD. The commercial use at the property is a permitted use in the ON-BD Zone. The residential use is not permitted in the ON-BD Zone but was approved by way of a use variance granted by the Board on July 20, 1983.

The applicant is now proposing to construct a two-story addition over a ground floor to the existing building on the property. The ground floor space will provide for three additional parking spaces, arcade office entry and residential entry. The first floor addition will consist of storage, an employee bathroom and a mechanical room, all for the existing commercial use at the property. The second floor will contain an office, conference area, file room and bathroom for the management staff of the commercial business. A handicapped accessible parking space will further be provided on the property. No additional living space is being added to the residential units.

The existing commercial use is, as noted, a permitted use in the ON-BD Zone and the expansion of that use through the addition is also permitted. However, the residential use is not a permitted use, which was only approved through the grant of a use variance by the Board in 1983. Thus, although no additional living space is being added to the residential units, the applicant requires “d(2)” variance relief for the expansion of a nonconforming use pursuant to N.J.S.A.

40:55D-70d(2) since the overall mixed use building containing a nonconforming use is being expanded and the expansion does provide entry to the residential units. This is the only variance relief required by the applicant. It should also be noted that the applicant previously appeared before the Board on September 25, 2024 and was denied variance relief pursuant to both N.J.S.A. 40:55D-70d(1) for use and N.J.S.A. 40:55D-70d(2). That denial is memorialized in Resolution ZBA-24-013 adopted by the Board on October 23, 2024. As part of that prior application that was denied, and of particular concern to the Board was that, the applicant sought use variance approval pursuant to N.J.S.A. 40:55D-70d(1) to utilize a portion of the structure below the established bulkhead grade to store bicycles and surreys. That portion of the proposal, and the request for use variance relief pursuant to N.J.S.A. 40:55D-70d(1) that formed the main basis of the Board's denial, has been eliminated by the applicant. Therefore, the current application is not barred by the doctrine of *res judicata*.

The applicant provided testimony that the commercial office and storage space within the existing building is limited and that the proposed addition would provide for much needed additional space to allow for incidental game repairs, offices and storage for the commercial business. The applicant's testimony indicated that storage for the business is currently occurring off-site and outside of the City of Ocean City. The testimony indicated that the proposed addition would be incidental to the commercial business for offices, storage and game repair and that the commercial business itself (i.e. the portion open to the public) is not expanding. The testimony provided also indicated that the residential units would not be expanded and that those units are approximately 80 feet away from the proposed addition. The testimony further indicated that building coverage on the property will remain below the permitted maximum, parking on the property is compliant, the number of deliveries to the property would be reduced, the existing

storage POD on the property would be removed and that the addition would help shield the mass of the adjacent Surf Mall. The applicant, through the testimony provided, opined that granting the variance will advance the general welfare, promote the free flow of traffic, make efficient use of the property and would improve the aesthetics of the property, while not having a substantial negative impact on the public good or the zone plan or Zoning Ordinance of the City of Ocean City.

Public Comment: Henry Zepralka (8 Franklin Drive in Somers Point), Scott Simpson (10th & Boardwalk), Mark Benevento (1132-34 Boardwalk) and James Ford (2009 Simpson Avenue) each spoke in favor of the application.

Exhibits: A-1 (eight photos of site) and A-2 (rendering)

The Board having considered the testimony and evidence presented made the following findings of fact and conclusions of law.

The applicant proposes to construct a two-story addition to the existing building on the property over a ground floor. The existing building contains a commercial arcade and ice cream shop along the boardwalk, with two residential units on the second floor. The commercial use is permitted in the ON-BD Zone but the residential use is not permitted but received use variance approval from the Zoning Board on July 20, 1983.

The proposal by the applicant would advance several purposes of the New Jersey Municipal Land Use Law. In that regard, the proposal will advance the general welfare as the commercial use being expanded is particularly suited for the property as a permitted use in the ON-BD Zone, while the residential use which is not permitted is not being expanded. The proposal will also promote the free flow of traffic as the addition proposed by the applicant will allow for more space and thus reduce deliveries to the site, and the applicant is also providing for

additional parking. The applicant is further making efficient use of the property by providing much needed space for storage, which currently occurs outside of the City of Ocean City, as well for office and related space. The proposal will additionally improve the aesthetics of the property as the proposed addition has architectural features, as opposed to appearing as a box type structure, and the existing POD on the property will be removed. Moreover, there will be no substantial negative impacts associated with the proposal as building coverage on the property will remain well below the permitted maximum, parking is compliant, the existing POD on the property will be removed, the addition will meet all necessary flood requirements and help screen the mass of the adjacent Surf Mall, and the nonpermitted residential use is not being expanded. But for the presence of the existing residential units, variance relief would not be required for the applicant's proposal.

For these reasons, the applicant has established the necessary criteria pursuant to N.J.S.A. 40:55D-70d(2) of the New Jersey Municipal Land Use Law to support the requested variance for the expansion of a nonconforming use.

The Board determined that the variance could be granted without substantial detriment to the Master Plan or Zoning Ordinance of the City of Ocean City.

The purpose of the Municipal Land Use Act would be advanced by the deviations which would substantially outweigh any detriments. The granting of the variance to allow the expansion of a nonconforming use would not substantially impair the Zoning Ordinance or zone plan of the City of Ocean City. The site plan is also in accordance with the Zoning Ordinance such that, with the variance granted herein, preliminary and final major site plan approval can be granted. In addition, the doctrine of *res judicata* does not bar this application.

Prior to issuance of a certificate of occupancy all escrow monies must be paid to the City

of Ocean City in full.

NOW, THEREFORE, BE IT RESOLVED by the Ocean City Zoning Board of Adjustment at its meeting on April 15, 2026, that the variance requested to allow the expansion of a nonconforming use pursuant to N.J.S.A. 40:55D-70d(2), as well as preliminary and final major site plan approval, are hereby granted. Mr. Buck made the motion to grant the variance, Mr. DeMarco seconded the motion. Members Mr. Price, Mr. Logue, Mr. DeMarco, Mrs. Schneider, Mr. Becker Mr. Gallagher and Mr. Buck voted in favor \ zero members were opposed. Motion passed 7-0.

The granting of the variance is conditioned upon the applicant providing on the subject property ground level plant material of either grass or some other permanent green vegetative cover.

Further conditioned upon the applicant recording a deed restriction with the Cape May County Clerk's Office, in a form agreeable to the Board Solicitor, that the addition to be constructed shall not be utilized for residential purposes. The deed restriction shall also contain language that reaffirms the condition in the 1983 Resolution that the "occupancy of the apartments be limited to the owners and their immediate family."

Further conditioned on there being no crushed stone or like material in any area that is not in compliance with the City design standards.

Further conditioned that there be no substantial deviation in the design, construction material or building elevations from that which was presented to the Zoning Board.

Further conditioned that no subsequent additions, alterations or changes can be made without further review by the Zoning Board.

Further conditioned that the applicant will provide cost estimates for improvements in the

event the Board Engineer deems same appropriate as well as providing adequate performance guarantees.

Further conditioned that any plan revisions as required from the approval must be completed.

Further conditioned that the storage areas do not exceed the minimum IBC requirements as to lighting and electrical outlets; that the storage area not contain egress windows and that there be no phone jacks or cable outlets permitted.

Further conditioned that the applicant comply with Section 25-1700.3.1 and Section 25-1700.3.2 of the City of Ocean City Ordinance and/or as conditioned by the Board Engineer.

Further conditioned that the applicant provide copies of all approvals from any agency having jurisdiction over this application.

Further conditioned that the applicant provide seventy-two hour notice to the Board Secretary for all required inspections.

Further conditioned that all fees and real estate taxes associated with the application to the Zoning Board shall be paid current prior to building permits being issued.

Further conditioned upon any conditions in the Engineering and Planning report by Joseph Maffei, PE, PP, CME, of the firm of EDA, dated October 29, 2025 being complied with but not further contained herein.

Further conditioned upon agreement by the applicant to specific items not contained within this Resolution, but which were otherwise set forth in the record of the hearing before the Zoning Board, which are incorporated herein by reference though not set forth at length herein.

Further conditioned upon the applicant paying all fees pursuant to Section 25-1900 Affordable Housing Development Fees (COAH), if applicable.

The applicant shall comply with all provisions of the Zoning Ordinance and any and all municipal, County, State and/or Federal laws or regulations relating or applicable to the proposed project.

Any variance granted by the City of Ocean City Zoning Board of Adjustment shall expire one (1) year subsequent to the grant of said variance unless within that period of time the applicant has received a building permit from the Construction Official. In the event a building permit is obtained it shall be acted upon in conformity with the Uniform Construction Code.

ZONING BOARD OF ADJUSTMENT
CITY OF OCEAN CITY

Dated: 5/20/26

/s/_____
MICHAEL BUCK, Chairperson

The foregoing is a true copy of the Resolution adopted by the Zoning Board of Adjustment of the City of Ocean City at its meeting on the 20th day of May 2026 as held at said meeting.

Dated: 5/20/26

Jaime M. Felker, Secretary
Ocean City Zoning Board of Adjustment

A copy of this Resolution has been filed in the office of the Ocean City Zoning Board of Adjustment and is available for inspection during regular business hours.