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IN THE MATTER OF THE APPLICATION
OF 952 BOARDWALK, INC.
FOR MINOR SITE PLAN APPROVAL
AND VARIANCES FOR
BLOCK 901, LOT 18

OCEAN CITY PLANNING BOARD

APPLICATION NO. PBA 26-010

DECISION AND RESOLUTION

BACKGROUND OF DECISION AND RESOLUTION

1. 952 Boardwalk, Inc. ["Applicant"] is the owner of certain lands and premises located in the City of Ocean City known as Block 901, Lot 18 as shown on the current official tax map for the City of Ocean City, New Jersey commonly known as 952 Boardwalk, Ocean City, New Jersey ["Property"].

2. The Applicant has made application to the Ocean City Planning Board for **(i) minor site plan approval** to divide one of the existing units at the Property into two (2) units, thereby creating a total of three (3) store units; **(ii) variances** to permit (a) a minimum store width of 13.20 feet for Unit 2; (b) a minimum store width of 12.56 feet for Unit 3; and **(iii) checklist waivers**.

3. The application to the Ocean City Planning Board as aforesaid was deemed complete and a public hearing in respect of the aforesaid application was held before the Ocean City Planning Board on August 12, 2026.

WITNESSETH

NOW, THEREFORE, the Ocean City Planning Board based upon the exhibits submitted and the analysis by the Planner for the Ocean City Planning Board, Randall E. Scheule, A.I.C.P. & P.P. [“Planner”] and the Engineer for the Ocean City Planning Board, David S. Scheidegg, P.E., P.P., C.M.E. [“Engineer”] and the testimony presented makes the following findings of fact:

1. Paragraphs 1 through 3 set forth above in the Background of Decision and Resolution are incorporated by this reference as if specifically set forth herein at length; all appropriate applications have been filed; all required application fees have been paid; and, all notices required by law have been given.

2. The Applicant has submitted and the Planner and Engineer have reviewed the plans and documents identified and delineated by the Planner in the Planner’s Report dated June 24, 2026 [“Planner’s Report”] all of which are incorporated by this reference as if specifically listed herein at this place and identified and delineated by the Engineer in the Engineer’s Report dated June 24, 2026 [“Engineer’s Report”] all of which are incorporated by this reference as if specifically listed herein at this place. The Planner’s Report is attached to this Decision and Resolution as Exhibit A and expressly made a part hereof and the Engineer’s Report is attached to this Decision and Resolution as Exhibit B and expressly made a part hereof.

3. The Applicant was represented by Michael A Fusco, II, Esquire at the time of public hearing. Mr. Fusco presented the Applicant's application for minor site plan approval and variances in respect of the Property. The Property is located in the On-Boardwalk Zone and is identified as Block 901, Lot 18 as shown on the current official

tax map for the City of Ocean City, New Jersey. The street address of the Property is 952 Boardwalk, Ocean City, New Jersey. Mr. Fusco indicated that it was the Applicant's intention to divide one of the existing units at the Property into two (2) units, thereby creating a total of three (3) store units. Minor Site plan approval and Variances are required to permit (a) a minimum store width of 13.20 feet for Unit 2; (b) a minimum store width of 12.56 feet for Unit 3; and completeness waivers are required for the project development. The commercial use of the Property as proposed by the Applicant is permitted in the On-Boardwalk Zone. Mr. Fusco provided a history of development at the Property. The Property originally had three narrow stores at a time when the zoning ordinance did not have minimum interior widths for stores in the On-Boardwalk Zone. The Property was later consolidated into two stores. The Applicant now requests to return the Property to its original configuration of three (3) individual store units. All three stores will have significantly more than the required minimum total square footage for floor area.

John E. Halbruner, P.E. and R.A was the first witness to testify in respect of the application. Mr. Halbruner is a professional engineer and a registered architect and was recognized by the Ocean City Planning Board as an expert. Mr. Halbruner is the engineer and architect engaged by the Applicant for the minor site plan and variances for the Property. Mr. Halbruner provided a general description of the Property and the project development proposed by the Applicant for the Property. No physical changes are proposed to the exterior of the building or site. Each of the units will have in excess of 1,000 square feet of floor area. In comparison, the ordinance requires a minimum floor area of 750 square feet (15 feet of width and 50 feet of depth). He identified the

variances required for the project development and the checklist waivers requested by the Applicant. He testified concerning the proposed division of one of the existing units at the Property into two (2) units, thereby creating a total of three (3) store units.

The Applicant proceeded under the c. (2) criteria of N.J.S. 40:55D-70 in presenting its proofs for the variances requested and Mr. Halbruner testified using the c. (2) criteria of N.J.S. 40:55D-70 as the basis for his professional testimony and opinions. Mr. Halbruner testified that there was no detriment resulting from the proposed minor site plan and the variances requested by the Applicant. He testified that the proposed project satisfied a purpose of zoning identified in N.J.S. 40:55D-2 a. (appropriate and efficient use and development of land). In summarizing the testimony, Mr. Halbruner offered his expert opinion that the positive criteria consistent with N.J.S. 40:55D-70 c. (2) to grant the variance relief requested by the Applicant were satisfied and particularly as to the c. (2) criteria, that the benefits of any deviation permitting the variance relief would substantially outweigh any detriment and that the negative criteria consistent with the standards required in N.J.S. 40:55D-70 were likewise satisfied, indicating that the relief requested by the Applicant, could, in his professional opinions, be granted without any substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

Upon completion of Mr. Halbruner's testimony, he addressed questions from Ocean City Planning Board Members. In response to those questions he testified that there will be no significant change in trash and recyclable volume or existing parking and three (3) different HVAC units are currently on site to service three store units.

4. Comments from the Planner were received consistent with Planner's

Report. The Planner's Report was received by the Ocean City Planning Board.

Comments from the Engineer were received consistent with the Engineer's Report. The Engineer's Report was received by the Ocean City Planning Board. The Applicant agreed to comply with (i) the Planner's Report and (ii) the Engineer's Report, as represented by Applicant's counsel, Mr. Fusco. The site plan will be revised to show all changes consistent with the foregoing conditions and all the representations and agreements placed on the record by the Applicant's counsel, professionals, and/or other representatives at the time of public hearing on August 12, 2026.

5. Upon completion of Mr. Fusco's presentation on behalf of the Applicant, receipt of the Planner's Report and the Engineer's Report, and receipt of comments by the Planner and the Engineer, the meeting was then opened to the public. The following member of the public testified and offered comments in respect of the application:

1. Norman Lawand, 944 Boardwalk—opposed to application due to concerns with parking and trash.

6. Upon conclusion and closing of the public portion of the meeting, there was further discussion and deliberation by the Ocean City Planning Board.

NOW, THEREFORE, the Ocean City Planning Board hereby makes the following conclusions of law based upon the foregoing findings of fact. The Applicant has made application to the Ocean City Planning Board for **(i) minor site plan approval** to divide one of the existing units at the Property into two (2) units, thereby creating a total of three (3) store units; **(ii) variances** to permit (a) a minimum store width of 13.20 feet for Unit 2; (b) a minimum store width of 12.56 feet for Unit 3; and **(iii) check list waivers.**

Under the Municipal Land Use Law, N.J.S. 40:55D-1 *et seq* and particularly, N.J.S. 40:55D-60, a Planning Board, when considering a site plan, as in this case, may grant variances as provided for in N.J.S 40:55D-70 c. The Applicant has the burden of proof to satisfy both the positive and negative criteria necessary to grant the variance relief requested. The Applicant must satisfy certain specific proofs which are enunciated in N.J.S 40:55D-70 c. Specifically, pursuant to N.J.S 40:55D-70 c. (2), the Applicant may be entitled to relief, if the Applicant can demonstrate that in a particular circumstance relating specifically to the Property, the purposes of the Municipal Land Use Law would be advanced by allowing a deviation from the Ocean City Zoning and Land Development Ordinance requirements and the benefits of any deviation will substantially outweigh any detriment. In those instances, variance relief may be legally granted. The categories specifically enumerated above constitute the affirmative proofs necessary in order to obtain “bulk” or c. variance relief. Finally, the Applicant must also show that the variance relief requested can be granted without any substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and Ocean City Zoning and Land Development Ordinance. It is only in those instances when an applicant has satisfied the statutory criteria, that a Planning Board acting pursuant to statutory and case law can grant relief. The burden of proof is upon the Applicant to establish these criteria.

Based upon the application, plans and documents, reports, and testimony, including the expert opinions of Mr. Halbruner, the Ocean City Planning Board finds that the Applicant **has met** the minimum requirements of the Municipal Land Use Law,

case law and the Ocean City Zoning and Land Development Ordinance so as to grant the relief requested.

Specifically, as it pertains to the c. variance relief sought by the Applicant, the Ocean City Planning Board finds that: 1. c. (2) criteria to grant the variances to permit (a) a minimum store width of 13.20 feet for Unit 2; (b) a minimum store width of 12.56 feet for Unit 3 **have been satisfied** and, specifically as to the c. (2) criteria, the purposes of the Municipal Land Use Law would be advanced by a deviation from the Ocean City Zoning and Land Development Ordinance and the benefits of the deviation would substantially outweigh any detriment, as the proposed project satisfied a purpose of zoning identified in N.J.S. 40:55D-2 a. (appropriate and efficient use and development of land); and, 2. There is no evidence before the Ocean City Planning Board that the minor site plan, variances, and check list waiver requests, if approved and granted, would have a substantial detriment to the public good or substantially impair the intent and purpose of the zone plan and the Ocean City Zoning and Land Development Ordinance. Specifically, the Applicant is reverting to a previously approved configuration of the building, recognition that it is important for boardwalk businesses to have the flexibility to flourish and the existence of significant total floor area within each of the three units.

NOW, THEREFORE, BE IT RESOLVED by the Ocean City Planning Board on August 12, 2026 that the application made by the Applicant, 952 Boardwalk, Inc. requesting land use approvals is determined as follows: **(i) minor site plan approval** to divide one of the existing units at the Property into two (2) units, thereby creating a total of three (3) store units; and **(ii) variances** to permit (a) a minimum store width of 13.20

feet for Unit 2; and (b) a minimum store width of 12.56 feet for Unit 3 are **APPROVED AND GRANTED**.

IT IS FURTHER RESOLVED that the above approvals all as aforesaid are **GRANTED** with and subject to the following terms and conditions:

A. The Applicant shall, prior to the issuance of any construction permit/building permit, reimburse the City of Ocean City for all professional fees and other expenses incurred by the City of Ocean City as a result of processing Applicant's application in accordance with the Ocean City Zoning and Land Development Ordinance.

B. The Applicant will comply with the Planner's Report and the Engineer's Report.

C. The Applicant shall comply with all the representations and agreements placed on the record by the Applicant's counsel, professionals, and/or other representatives at the time of public hearing on August 12, 2026.

D. The Applicant shall obtain the approval of all other municipal, county, state or federal agencies or boards having jurisdiction over the proposed minor site plan of the Property, including but not limited to approval from the Cape-Atlantic Soil Conservation District, if necessary.

E. The site plan plat will be revised to show all changes consistent with the foregoing conditions and all the representations and agreements placed on the record by the Applicant's counsel, professionals, and/or other representatives at the time of public hearing on August 12, 2026.

F. The Applicant shall provide utility letters from all utilities.

G. If applicable, the Applicant (or future owner) shall satisfy the legal requirements of § 25-1900 (Affordable Housing Development Fees) for any development of the Property.

H. The Applicant shall comply with Article 1600 of the Ocean City Zoning and Land Development Ordinance in respect of Guarantees and Improvement Procedures, including the delivery of an engineer's cost estimate.

I. The checklist waivers identified in the Planner's Report and Engineer's report are granted

J. The Applicant shall comply with all provisions of the Ocean City Zoning and Land Development Ordinance, including without limitation **§ 25-1500.13.3** thereof, and any and all other municipal, county, state, or federal laws or regulations relating or applicable to the proposed development of the Property, including but not limited to **§ 30-1**, Schedule L of the Revised General Ordinances for the City of Ocean City.

This Decision and Resolution was adopted upon a motion, to be considered in the affirmative to approve the Applicant's request for land use approvals with the conditions as aforesaid, made by Ocean City Planning Board Member Jessel and seconded by Ocean City Planning Board Member Bekier on August 12, 2026 ["Jessel Motion"]. The vote on the Jessel Motion was nine (9) in favor of and zero (0) against with Ocean City Planning Board Members, Sheppard, Adams, Bekier, Barnes, Jessel, Birch, Stell, Halliday and Loeper all voting in the affirmative.

OCEAN CITY PLANNING BOARD

JOHN LOEPER,
CHAIRPERSON

Dated: 9/2/26

CERTIFICATION

I, JAIME M. FELKER, Secretary to the Ocean City Planning Board, do hereby certify that the foregoing Decision and Resolution was duly adopted at the meeting of the Ocean City Planning Board held on August 12, 2026 memorialized herein pursuant to N.J.S. 40:55D-10 g. (2) on September 2, 2026. This resolution has been filed in the office of the Board and is available for inspection upon request.

JAIME M. FELKER,
Secretary, Ocean City Planning Board