

Chairman Cunningham called the meeting to order and requested those present to join him in the salute to the Flag.

Chairman Cunningham read the following statement:

The Borough of Sea Bright, in compliance with the "Open Public Meetings Act" has advertised the date, time and location of this meeting in **The Asbury Park Press** on January 20, 2012 filed it with the Clerk, and posted a notice on the bulletin board in the Borough Office.

**ROLL CALL:**

**PRESENT:** Beer, Cashmore, Cunningham, DeSio, Leckstein, Long, McBride, Smith (Alt. #1), Janey (Alt. #3)

**ABSENT:** Nott, Torcivia

**MINUTES:**

Boardmember Leckstein offered the following information to be inserted in the April 10, 2012 Unified Board Minutes:

Boardmembers Leckstein and Smith agreed with the elimination of Sections 2(c), 2(d) and Section 2(f) for the B-1 Zone as it relates to Ordinance 6-2012. However, Boardmembers Leckstein and Smith could not support the motion recommending Ordinance 6-2012 for adoption at the council level because they did not agree that a small parking variance should be used as a reason to require property owners to come to the board.

**A.** Boardmember Leckstein offered a motion approving the April 10, 2012 Unified Board Meeting Minutes as amended. Second by Boardmember Smith and adopted upon the following roll call vote:

Ayes: Beer, Cunningham, DeSio, Leckstein, Long, Smith

Nays: None

Abstain: None

Absent: Nott, Torcivia

**OATH OF OFFICE:**

**CHRISOPHER SANDEL**

Class IV - unexpired term

Alternate II

5/8/2012 to 12/31/2013

Attorney Higgins said that Chapel Beach Club noticed for tonight's meeting and will be heard on May 22, 2012 without requiring further notice.

**NEW BUSINESS:**

**A.**

**LBP, INC, d/b/a DONOVAN'S REEF  
1171 OCEAN AVENUE  
BLOCK 7, LOT 9  
B-1 ZONE**

**Appeal of Zoning Officer's Decision,  
Use "D" variance, for construction  
of a new 602 sf. exterior Tiki Bar.  
Variance for an accessory structure,  
Tiki Bar exceeding 500 sf**

**A-1:** Jurisdictional Packet

**A-2:** Mercantile license issued by the Borough of Sea Bright to Donovan's Reef Inc. dated May 24, 2011.

**A-3:** Board of Health permit issued by the Borough of Sea Bright to Donovan's Reef Inc. dated July 21, 2011.

**A-4:** State of New Jersey 2011-2012 plenary retail consumption of license - liquor license.

**A-5:** Donovan's Reef Inc. "The Reef Grill" menu.

**A-6:** Kelly A. Ryan food protection certification.

**A-7:** Page Two of the floor plan.

**A-8:** Architectural plans dated 2/1/2012 prepared by Mark Teichman.

**B-1:** T&M Associates engineering review dated April 12, 2012.

Martin McGann, Esq. represented the applicant, LBP, Inc., d/b/a Donovan's Reef. The applicant is challenging the Zoning Officer's interpretation of the ordinance as to whether Donovans Reef is defined as a restaurant or a bar. The general definition of restaurants is an establishment, which sells food for consumption to seated patrons within a building. Restaurants are permitted in the B-1 zone. Engineer Flor said that bars are not permitted in the zone but can be allowed if it is an accessory of the restaurant. The argument is whether this application is primarily a bar or a restaurant to be interpreted and determined by the board.

Mr. Philips testified that the establishment has chairs and tables inside and outside. Patrons eat inside the restaurant and they are not required to order an alcoholic beverage. He said that food is available daily to the patrons from 11 am to 1 am. managed by Kelly Ryan. The current floor plan depicted tables and chairs inside the establishment. Boardmember Cashmore said that the mercantile license issued by the Borough recognizes this establishment as a restaurant.

Raymond Liotta, a licensed planner of Maser Consulting testified that if food is served for consumption and the patrons are seated inside of a building is defined as a restaurant. He said that the business has a kitchen, employs a chef and staff and is open for food consumption indoors and outdoors. The term accessory use is a building or structure incidental and subordinate to the principal building for use on the lot. The tiki bar can be determined as an accessory because alcohol use is incidental and subordinate to the restaurant.

Boardmember Desio introduced a motion based on the testimony that food is prepared at this establishment and recognizes the application as a restaurant. Second by Boardmember McBride and approved upon the following roll call vote:

Ayes: Beer, Cashmore, Cunningham, DeSio, Leckstein, Long McBride, Smith, Sandel.

Nays: None

Abstain: None

Absent: Nott, Torcivia

Mr. Philips said that the proposed tiki bar will have running water, food will be served outside, new design has an overhanging to protect the patrons from the elements. The structure, north on the property is strictly for storage. The eight-foot cyclone fence and the board on board is pre-existing and will remain unchanged.

Mark Teischman, a licensed architect testified that the principal building will remain unchanged. The existing tiki bar is 160 sf and located at the end of the property by the sea wall. The proposed tiki bar will be expanded and have more accessibility around it and measured at 307 sf. and the area including the roof is 602 sf. This is an open structure and substantial roof overhang for all four sides. The overhang provides for protection from the elements. On the east elevation the overhang measures 2'7" from the face of the bar and 3'4" from the face of the wall. The material will be asphalt shingle roof and bamboo screening on the lower wall. Mr. Teischman said that the lot coverage mentioned by engineering review would be unchanged because the current structure is built on concrete. Mr. Philips said that palm trees are present every summer season for the past fifteen years.

There are 83 parking spaces on the property and four are marked handicap parking spaces. Presently, the concrete slab is under the current tiki bar. Electric service will be underground. Engineer Flor said that the location of the dumpsters be shown on the plans and enclosed. Mr. Philips said that the dumpsters have been in the same location for over 12 years. The proposed tiki bar will be set back further from the property line and

within the required building setbacks, where the prior tiki bar did not.

The Board said that the location of the dumpster should be on the plans and have the dumpster enclosed. The applicant needs to comply with the engineer's report as to what needs to be included on the plans. The board recommends the installation of a sanitary line.

Boardmember Leckstein introduced a motion approving the application. Second by Boardmember McBride and approved upon the following roll call vote:

Ayes: Beer, Cashmore, Cunningham, DeSio, Leckstein, Long McBride, Smith, Sandel.

Nays: None

Abstain: None

Absent: Nott, Torcivia

**B.**

**Kelly Management Group,  
d/b/a The Madhatter  
10 East Ocean Avenue  
Block 19, Lot 3  
B-1 Zone**

**Seeking to construct a one-story accessory structure for storage with roof deck.**

**Variances for front yard setback, maximum building coverage, lot coverage, variances for accessory structure for location, size, and height. Parking variance and variance for fencing around proposed roof/deck.**

Boardmember Leckstein had a conflict with this application and was recused. No member of the board was within 200' of the application.

Attorney Higgins marked into evidence the following:

**A-1:** Jurisdictional Packet

**A-2:** Architectural plans prepared by Robert Adler and Associates dated March 29, 2012.

**A-3:** Survey by Paul K. Lynch dated January 12, 2006.

**B1:** Fire Marshall Haege letter dated April 17, 2012.

Kevin I. Asadi, Esq. represented the applicant Kelly Management Group. The existing site is developed with an existing two-story wood framed building that contains a restaurant and two interior bars. An outdoor seating area, outdoor bar and two storage sheds exist at the rear of the property. The applicant proposes to remove the existing sheds and construct a 672 sq., one story

storage are and a 792 sf. outdoor deck above the proposed storage area.

Robert Adler, licensed architect testified that the maximum occupancy would be 52 persons, which are based on restaurant use. The Lighting on the deck's railing would be pointed down and inward not outward toward adjacent properties. There is an existing egress. The proposed storage structure would be fire rated required by code.

Dominic DePalo of East New Street testified that the Madhatter had numerous noise complaints in the past and that having a deck would increase the noise issue.

Mr. Procopio of East New Street testified that there is a noise problem connected with the Madhatter and that the Board should consider having the deck closed at 10 p.m.

Mr. and Mrs. Walsh of 2 East New Street testified that they were in favor of Mr. Kelly's application and that the deck would be an asset to the this well-managed business.

The Board said that the applicant must meet the following conditions: service on the deck to end at midnight and closed at 1 a.m., no entertainment on the deck, waiter service only, a bar shall not exist on the deck, the applicant is to install 6 ft planters for the purpose of buffers, there should be a 2<sup>nd</sup> egress, and the deck is not a standing area, it is for seated patrons only.

Boardmember Desio introduced a motion approving the application. Second by Boardmember Smith and approved upon the following roll call vote:

Ayes: Beer, Cashmore, Cunningham, DeSio, Janey, Long, McBride, Sandel, Smith.

Nays: None

Abstain: Leckstein

Absent: Nott, Torcivia

Mayor Long said that three members of the council would meet with three members of the planning board informally in a committee to discuss the severity of use in the downtown business area. Boardmembers Cashmore, Cunningham and DeSio would meet with three members of the council on Tuesday, May 15<sup>th</sup>, 6:30 p.m.

**ADJOURNMENT:**

There being no further business before the Planning Board Boardmember DeSio made a motion to adjourn the meeting at 11:23 P.M. Second by Boardmember McBride and approved upon unanimous

voice vote.

Respectfully Submitted,

Suzanne Branagan  
Board Secretary