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December 27, 2023

VIA ELECTRONIC AND U.S. MAIL

Ms. Julie Johnson, Chairperson
Board of Adjustment
Town of Dewey Beach
105 Rodney Avenue
Dewey Beach, DE 19971

**RE: Request for Extension - Bay Resort Hotel Board of Adjustment Relief
Pursuant to Town Code § 185-70(D)**

Dear Chairperson Johnson,

I represent Moore Blue Water, LLC, (“client”) owner of the Bay Resort Hotel, which is located in the Resort Business-3 zoning district on the Rehoboth Bay between Bellevue Street and Dagsworthy Avenue, more particularly identified as Sussex County Tax Map Parcel No: 334-20-18-39.00 (the “Property”). Pursuant to Town of Dewey Beach Code § 185-70, I am writing to respectfully request an extension of the relief granted in relation to the Property by the Town of Dewey Board of Adjustment (the “Board”).

As you may recall, on September 22, 2023, I submitted a letter, attached hereto as **EXHIBIT A**, concerning an extension of the relief recently granted in relation to the Property by the Town of Dewey Board of Adjustment (the “Board”). After submitting that letter, the Town Building Official, Ms. Daune Hinks, kindly informed me that Town of Dewey Beach Code § 185-70 was recently amended. As a result, pursuant to § 185-70(B), it appeared that my client no longer required an extension of the relief granted by the Board. However, for reasons I will fully describe at a future meeting, it has become clear that my client does in fact require an extension of the relief granted in relation to the Property by the Board because my client will not be prepared to apply for a building permit “before the expiration of one year after approval of the [relief granted].” § 185-70(B).

For your reference, the relief previously granted by the Board includes:

1. A special exception to construct an elevator bulkhead extending beyond the Town’s height limitation of 42’;
2. A variance from the Zoning Code to permit the construction of a three-story pool enclosure over and around an existing pool and pool deck;

3. A variance from yard setback restrictions to allow a set of proposed cabanas to extend outside the northernmost hotel room unit; and
4. A variance from the Town's one-foot freeboard requirement above FEMA's six foot minimum above base flood elevation (7.2 inches).

By way of a written decision dated January 5, 2023, the Board, by majority vote, approved all four above referenced requests. For your convenience, I have attached a copy of that decision to this letter as **Exhibit B**.

On June 16, 2023, Town Council adopted Ordinance 813, which amended Town Code § 185-70. In relevant part, § 185-70 now provides:

§ 185-70 Lapse of special exception or variance.

“A special exception or variance approved by the Board of Adjustment shall lapse after the expiration of one year unless . . . **B.** A building permit has been applied for before the expiration of one year after approval of the special exception or variance **D.** The Board of Adjustment has specified a period longer than one year for good cause shown. . . . Any special exception or variance that is valid as of June 16, 2023 shall be extended until December 31, 2023.”

While we previously believed that we would be able to file a building permit application prior to the expiration of the variances and special exception on January 5, 2024, project construction has been delayed such that we respectfully request an extension of the relief previously granted. This request is made partially due to input from the State Fire Marshal's office, requiring certain changes to the construction design, including adding a staircase on the south end of the building, and adding a sprinkler system to comply with emergency exit requirements. As a result of these changes, my client engaged in a cost analysis and made architectural changes to the construction plans including a modification to the elevator plans. These construction plan revisions delayed commencement of construction such that my client believes that it is not practicable that they could be prepared to apply for a building permit prior to January 5, 2024.

Accordingly, pursuant to § 185-70(D), my clients are respectfully seeking an extension of the relief granted by the Board for good cause. More specifically, *my client respectfully requests an extension of the time period to apply for a building permit under § 185-70 until December 31, 2024*. We are hopeful the Board will agree that this request aligns with the intent of Ordinance 813, which amended Town Code § 185-70. More specifically, the preamble of Ordinance 813 states in relevant part that “the Commissioners wish to provide a reasonable opportunity for completion of projects for which special exception or variances have been granted.” Here, unforeseen delays in the construction process associated with variances necessitate a reasonable extension of relief.

We acknowledge that § 185-70(D) does not specifically address whether the Board must act within a year or whether this request must be made within the one-year time period to maintain the viability of the variances and special exception. However, we ask that the Board adopt the

more lenient interpretation such that while the Board will not be able to meet before January 5, 2024, the submission on this correspondence and my prior correspondence of September 22, 2023, adequately meets the spirit of the Code so the Board may proceed with the merits of our request for an extension of time.

Thank you for your consideration of this matter. I respectfully request that consideration of this matter be included on the Board's January 29, 2024 meeting agenda. Please contact me if you have any questions or need anything additional.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn C. Mandalas". The signature is fluid and cursive, with a long horizontal stroke at the end.

Glenn C. Mandalas, Esquire

cc:

Mr. Fred Townsend, Esq.
Mr. Bill Zolper
Mr. Jim Dedes
Ms. Daune Hinks
Ms. Emily Demarco



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(302) 645-2262
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September 22, 2023

VIA ELECTRONIC AND U.S. MAIL

Ms. Julie Johnson, Chairperson
Board of Adjustment
Town of Dewey Beach
105 Rodney Avenue
Dewey Beach, DE 19971

RE: Request for Extension - Bay Resort Hotel Board of Adjustment Relief

Dear Chairperson Johnson,

I represent Moore Blue Water, LLC, (“client”) owner of the Bay Resort Hotel, which is located in the Resort Business-3 zoning district on the Rehoboth Bay between Bellevue Street and Dagsworthy Avenue, more particularly identified as Sussex County Tax Map Parcel No: 334-20-18-39.00 (the “Property”). Pursuant to Town of Dewey Beach Code § 185-70, I am writing to respectfully request an extension of the relief recently granted in relation to the Property by the Town of Dewey Board of Adjustment (the “Board”).

My client applied to the Board for the following relief:

1. A special exception to construct an elevator bulkhead extending beyond the Town’s height limitation of 42’;
2. A variance from the Zoning Code to permit the construction of a three-story pool enclosure over and around an existing pool and pool deck;
3. A variance from yard setback restrictions to allow a set of proposed cabanas to extend outside the northernmost hotel room unit; and
4. A variance from the Town’s one-foot freeboard requirement above FEMA’s six foot minimum above base flood elevation (7.2 inches).

By way of a written decision dated January 5, 2023, the Board, by majority vote, approved all four above referenced requests. For your convenience, I have attached a copy of that decision to this letter.

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Town of Dewey Code Section 185-70 states in full as follows:

§ 185-70 Lapse of special exception or variance.

After the Board of Adjustment has approved a special exception or granted a variance, the special exception or variance so approved or granted shall lapse after the expiration of one year unless construction is completed or the use has taken place in accordance with the plans for which such special exception or variance was granted, or if the Board of Adjustment does not specify some longer period than one year for good cause shown, and the provisions of these regulations shall thereafter govern.

Project construction has been delayed such that we respectfully request an extension of the relief granted. Based on input from the State Fire Marshal's office, certain changes to the construction design were required, including adding a staircase on the south end of the building, and adding a sprinkler system to comply with emergency exit requirements. As a result of these changes, my client engaged in a cost analysis and made architectural changes to the construction plans including modification of the elevator plans. These construction plan revisions delayed commencement of construction such that the work could not be completed prior to the 2023 vacation season.

My client anticipates that construction will be completed, and the hotel will open by Spring 2025. Accordingly, my clients are respectfully seeking an extension of the relief granted by the Board for good cause through June 1, 2025.

Thank you for your time and consideration of this matter. Should you have any questions or need anything additional from me, please do not hesitate to contact me directly.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn C. Mandalas". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Glenn C. Mandalas, Esquire

cc:

Mr. Fred Townsend, Esq.
Mr. Bill Zolper
Mr. Carl Kruelle
Mr. Steven Kremer



Date of issuance of Decision: January 5, 2023
Dates of Hearing: May 16 and July 12, 2022

**BEFORE THE BOARD OF ADJUSTMENT
OF THE TOWN OF DEWEY BEACH**

IN RE:

**APPLICATION OF BAY RESORT HOTEL
RE: TMP 334-20.18-39.00
DEWEY BEACH, DELAWARE**

DECISION

The Board of Adjustment of the Town of Dewey Beach (the “Board”) convened on July 12, 2022 to continue consideration of a series of variance requests initially presented on May 16, 2022. The two-part hearing took place at the Dewey Beach Lifesaving Station at 1 Dagsworthy Avenue, Dewey Beach. Moore Blue Water, LLC (the “Applicant”) initially sought certain variances and appealed from interpretations of the zoning code that they later officially withdrew. The remaining variances and the special exception sought were addressed by the Board as set forth below.

The Bay Resort Hotel (“the Property”) is located along the Rehoboth Bay between Dagsworthy Avenue and Bellevue Street and is improved with a hotel and pool that Applicant desires to renovate. The Property is located in the Resort Business-3 Zoning District and the AE Flood Zone. Applicant acquired the Property in late December, 2018 and is seeking relief from the Zoning Code and the Flood Damage Reduction Code as follows:

1. A special exception to construct an elevator bulkhead extending beyond the town’s height limitation of 42’;
2. A variance from the zoning code to permit the construction of a three-story pool enclosure over and around an existing pool and pool deck;
3. A variance from the rear yard setback restriction to allow a set of proposed cabanas to extend outside the northernmost hotel room unit; and
4. A variance from the town’s one-foot freeboard requirement above FEMA’s six foot minimum above base flood elevation (7.2 inches).

Present for the Board of Adjustment on July 12, 2022 were Chairperson Julie Johnson, Esq. and members Rick Dryer, David Shuey, representing a quorum of the Board, who participated in the consideration of and decision on the application¹. Also present were Daune Hinks, the Building Official of the Town of Dewey Beach as well as the Board’s attorney, Fred Townsend. The application was presented by Glenn Mandalas, Esq. of the Baird Mandalas, Brockstedt, LLC.

¹ Member Kathy Cherico was present on May 16 when the special exception for the elevator structure was granted but absent on July 12, 2022.

SUMMARY OF EVIDENCE

The Property recently consisted of two lots that have been consolidated into one parcel constituting a “through lot” subject to 18-foot front yard setbacks from both Bellevue Street to the north and Dagsworthy Avenue to the south. The hotel structures form an “L” configuration – a portion of which extends north and south into each of the two front yard setbacks. A pool lies along the parcel’s southern boundary with Dagsworthy Avenue that also encroaches into that same front yard setback. The hotel structures and the pool are legal nonconforming in this respect.²

The hotel structures themselves are also legal nonconforming as to their elevation. The Town’s elevation requirement for structures in the FEMA AE flood zone is 6.0 feet above base flood elevation (“BFE”) plus a one-foot freeboard requirement. As they exist presently, the structures in questions are certified to be 6.4 feet above BFE, or approximately 7.2 inches below the current freeboard requirement. Thus they can be characterized as .4 feet above that which FEMA considers compliant for the AE zone, but .6 feet below the town’s added freeboard requirement.

Of legal significance is that the existing hotel complex is deemed a mixed-use structure under FEMA regulations. Because the structures making up the hotel are in part residential structures, they may not be redeveloped with what are known as “dry floodproofing” as an alternative measure to achieve FEMA compliance. And because the cost of the proposed renovations exceed 50% of the total value of the existing hotel complex improvements, the proposed renovation may only go forward with the requested variances. Without variances the entire hotel complex would have to be raised by an additional 7.2 inches to achieve elevation compliance, rendering the entire project financially unfeasible. Applicant’s budget evidences an intent to invest \$4-6,000,000 in renovations. The value of the current improvements on the site is represented to be in the range of \$4-\$6,000,000.

In addition to the variance needed to perform extensive renovations on a legal nonconforming building due to its elevation, the Applicant seeks setback variances to permit a cabana that would extend into one of the two front yard setback areas, a three-story transparent enclosure above an existing pool; and a special exception from the building height restriction to permit construction of an elevator bulkhead.

Two other variance requests and an appeal from the Town’s interpretation of the zoning code were officially withdrawn by the Applicant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The current elevation of the hotel complex was established to be above the applicable BFE. Consequently, the proposed renovations do not pose a substantial threat to be swept away by flood waters; nor do they represent a danger to the owners or to neighboring lives or property. However, in the event of floodwater damage, masonry construction of the existing hotel complex suggests that it is not likely to injure others.

² See depiction at Applicant’s Ex. marked C1.0

2. The pool is existing and the proposed multilevel flood vented structure covering it poses no new harm to surrounding properties.
3. This renovation will stave off the foreseeable attrition of the subject hotel complex to the benefit of the Town's resort driven economy.
4. The availability of alternative locations, particularly locations beyond the waterfront is not a consideration in this matter as the requested variances concern a renovation to an existing structure, rather than the construction of a new one.
5. The use of the parcel in question is not proposed to be changed and therefore is compatible with the character of the surrounding area.
6. The Comprehensive Plan does not offer significant guidance in this matter, but it generally supports the revitalization of existing structures through investment and renovations at section 3.11 thereof.
7. Safety of access to the parcel in the event of emergency does not mitigate against the relaxation of the elevation requirement (in this case the Town's freeboard requirement) as it constitutes a through lot accessible via two streets and by the bay.
8. The history of the BFE compliant site does not suggest that wave action should be a consideration in this variance application.
9. Cost of providing governmental assistance is also not an applicable consideration in this application as the renovation project poses no new demand of such services.
10. A good and sufficient cause for the granting of a variance exists due to the existing configuration of the hotel complex.
11. Failure to grant a variance results in exceptional practical difficulty as the developer cannot viably raise the hotel structure to bring it into compliance.
12. This proposal does not include new or significantly greater impervious surfaces that will aggravate the risks posed by flood waters.
13. Compliance with the freeboard requirements requires the demolition of existing structure due to the impracticality of the raising the structure.
14. No public safety considerations are implicated by this application.
15. Minimization of potential flood damage is also not a dispositive consideration in this application.
16. This application represents the minimum amount of relaxation of applicable standards necessary to relieve the asserted difficulty.
17. In considering a request for a variance or exception from a zoning requirement, a board of adjustment must determine whether exceptional practical difficulties exist. The exceptional practical difficulty standard is satisfied only when the difficulties alleged are practical rather than theoretical and exceptional rather than routine. *Bd. of Adjustment of New Castle County v. Kwik-Check Realty, Inc.*, 389 A.2d 1289, 1291 (Del. 1978). The following four factors must be considered when determining whether exceptional practical difficulties exist:
 - A. The nature of the zone where the property lies;
 - B. The character and uses of the immediate vicinity;
 - C. Whether removal of the restriction on the applicant's property would seriously affect the neighboring properties and their uses; and
 - D. Whether failure to remove the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in making normal improvements to the property.

18. The Board finds that the Applicant has demonstrated the presence of exceptional practical difficulties in making normal improvements to the Property. The subject hotel has been longstanding in its current location, thus it is not inconsistent with the character of neighboring uses; nor do the variances, if approved, allow for the construction of an improvement that is inconsistent with the current zoning requirements since the hotel complex is already in existence. The proposed renovation does not threaten to seriously impact neighboring properties, nor does it present public safety concerns.
19. The Applicant established an exceptional practical difficulty in making normal improvements to the existing hotel structure due to the impact of the 50% rule applying to legal nonconforming structures which effectively restricts Applicant to performing fewer and less extensive improvements to the complex than desired.
20. Written submissions in opposition to the variances did not cite specific potential harms posed by the proposed improvements rather they generally cited concerns related to the consistency of zoning code enforcement.
21. The extension of the cabana structures into the front yard setback as requested so as to include the northern most rental unit meets the exceptional practical difficulty as follows:
 - A. It is not inconsistent with permissible uses in the zoning district nor is it inconsistent with the character of the area;
 - B. It poses no harm to neighboring properties and uses; and constitutes a normal improvement given the redevelopment plan to add this feature to all the ground floor units and that owing to the encroachment of the legal nonconforming structure the Applicant faces an exceptional practical difficulty.
22. The Applicant's request for relief from the building height restriction so as to allow for the construction of an elevator bulkhead is subject to the standards applicable to special exceptions identified in the zoning code as 185-67.
23. Relief from the height restriction to allow for this proposed improvement is justified under the test as follows:
 - A. It is not inconsistent with permissible uses in the zoning district nor is it inconsistent with the character of the area because this hotel structure is already in existence;
 - B. It poses no harm to neighboring properties and uses; and
 - C. It constitutes a normal improvement to a hotel to install an elevator.
24. The Board's consideration of the variance to allow for an exterior pool enclosure and lobby addition is also subject to the Kwik-Check test.
25. Currently, the hotel is improved with an exterior pool that extends well into the front yard setback along Dagsworthy Avenue as depicted in the exhibits to the record.
26. The exterior pool and pool deck is legal nonconforming as to the applicable 18-foot setback and the proposed structure will be inset 2 to 3 feet inside the existing footprint of the pool deck.
27. Although the proposed three-story pool enclosure adds bulk it does not encroach further into the setback than the existing pool and decking improvements.
28. The proposed enclosed area will also serve as a lobby addition.
29. The proposed pool enclosure will serve to dampen noise from use of the existing pool.
30. The existing pool and pool deck constitute impervious surface, the enclosure of which will not serve to increase the flow of stormwater runoff.
31. No significant particular opposition to the pool enclosure feature was received.

32. Adjacent residential properties are separated from the pool by a broad right of way and the portions of the existing hotel structure already extend further into the said right of way than this proposed feature.
33. The application of the setback ordinance represents an exceptional practical difficulty in relation to the Applicant's efforts to make normal improvements to its pool facility.

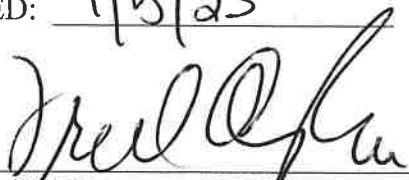
DECISION

- A. Based upon the foregoing and the evidence presented, a motion to approve the special exception to permit an elevator bulkhead to exceed the building height restriction was approved by a unanimous vote of four in favor thereof.
- B. Based upon the foregoing and evidence presented, a motion to approve the variance from the Freeboard requirement was made and approved by a vote of two in favor and one opposed to allow significant improvements to the legal nonconforming hotel structure.
- C. Based upon the foregoing and the evidence presented, a motion to approve variances from each front yard setback was approved by a unanimous vote of three so as to allow the construction of cabanas along the entire width of the restriction setback from the front yard setback requirement.
- D. Based upon the foregoing and the evidence presented, a motion to approve a variance from the front yard setback along Dagsworthy Avenue so as to allow for the construction of a three story enclosure over the existing pool and pool decking area as depicted in exhibits in record was approved by a vote of two in favor and one opposed.

BOARD OF ADJUSTMENT OF THE
TOWN OF DEWEY BEACH

BY: 
JULIE JOHNSON, Chairperson

DATED: 1/5/23

BY: 
FRED TOWNSEND, Town Solicitor

DATED: 1/5/23