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VIA EMAIL AND REGULAR MAIL

May 31, 2022

Dewey Beach Board of Adjustment
c/o Bill Zolper, Town Manager
Town of Dewey Beach
105 Rodney Ave.
Dewey Beach, DE 19971

**RE: Bay Resort Hotel
Supplement to Board of Adjustment Application
TMP 334-20.18-39.00**

Dear Chairperson Johnson and members of the Board of Adjustment:

Thank you for the opportunity to present Moore Blue Water, LLC's application on May 16, 2022. At the conclusion of the hearing, the record was left open for written submissions until May 31, 2022. Please accept this correspondence into the record of the Board's proceedings.

During the Board of Adjustment hearing on May 16, 2022, residents of the Cajun Cove community expressed concerns over the relocation of the pavilion closer to their community and the proposed new outdoor pool. They discussed the incredible viewsheds of both nature and wildlife they enjoy. Having thoughtfully considered their concerns, my client has decided to withdraw its proposals to relocate the pavilion and construct the outdoor pool. ***Those variance requests are hereby withdrawn.***

The enclosed revised site plan shows those elements removed from the plan.

Because the Board has already granted my client's request for a special exception relating to the elevator bulkhead, the remaining variance requests include a variance to enclose the existing outdoor pool and construct the deck structure, a variance to allow for the most northerly cabana, and a variance for relief from the extra freeboard requirement.

As the Board considers these remaining variance requests, it is important to be mindful that this is an existing structure—not new construction—in one of the Town's commercial zoning districts, the Resort Business-3 (RB-3) zoning district. Moreover, the Town's 2018 Comprehensive Development Plan provides that "Redevelopment should contribute to the

Town's overall attractiveness as a vibrant place to live, work, play and recreate."¹ That being the case, it is entirely appropriate that the modest variance requests be granted.

I. Pool Enclosure/Decking Structure and the Dagsworthy Avenue Setback

During the May 16, 2022, hearing a question was raised concerning whether the Bay Resort lot qualifies as a through-lot, thereby requiring two front yard setbacks. Section 185-49(A) of the Town Code provides "On through lots, the required front yard shall be provided on each street." The definition of "Lot, Through (Double-Frontage)" located at Section 1-16 of the Code is "A lot having a frontage on two approximately parallel streets." Consequently, in its present configuration the Property is a through lot. At the time the Board of Adjustment application was filed, however, the Bay Resort property was comprised of two parcels that had not been combined previously (TMP 334-20-18-39.00 & 40.00), and that may have created some confusion. The parcels have since been combined into a single parcel that qualifies as a through lot.²

Because the Property qualifies as a through lot, the Dagsworthy Avenue setback is treated as a front yard setback of 18 feet, and my client's variance request is for the proposed pool enclosure and multi-level deck structure to extend 15 feet into the 18-foot rear yard (that is treated as a front yard) setback. Although we previously requested a rear yard setback variance to permit the proposed pool enclosure and multi-level deck structure to extend 7 feet into the 10-foot rear yard setback, rather than 15 feet into the 18-foot rear yard (that is treated as a front yard) setback, substantively the request has not changed. In fact the existing pool deck already encroaches the setback slightly further than the amount of encroachment requested here.

Notably, *no opposition to this variance request was expressed* during the May 16, 2022 public hearing, and the record is completely vacant of opposition to this variance request.

These circumstances illustrate the exceptional practical difficulty experienced by my client based upon the legally existing configuration of the Property and the configuration of the improvements on it. The revelation that the Dagsworthy Avenue rear yard is subject to a front-yard setback of 18 feet means that a significant portion of the legally existing main structure is within the current setback, and therefore even the most modest improvements would require a variance. Given this exceptional practical difficulty, and the fact that no opposition to the pool enclosure and deck structure has been expressed, the Board should grant this variance.

II. Cabana

The proposed renovations and additions include ground level cabanas along the western portion of the hotel structure. The most northerly cabana is proposed to be 12 feet from the front

¹ 2018 Dewey Beach Comprehensive Plan, p. 54, August 2, 2018.

² Notably, Section 185-48(A)(3) provides "Lots abutting on the water or beach and a street shall be deemed to front on the street or water or beach at the owner's discretion." Arguably, this section creates ambiguity that could result in the western/Bay side of the property being declared a front yard, and the Bellevue and Dagsworthy portions of the property being declared side yards. I raise this potential ambiguity as an additional consideration that favors the granting of a variance.

property line along Bellevue Street, and consequently extends 6 feet into the 18-foot front yard setback. The cabana would be located along the portion of the hotel that faces the Rehoboth Bay and would be barely visible from Bayard Avenue. The proposed cabana would be the last cabana in a series of 12 cabanas to be located at the first floor of the portion of the building that faces the Rehoboth Bay. While one owner in the Cajun Cove community did ask questions about this very modest improvement, the record is vacant of any meaningful opposition to this variance request, and the Board should grant the variance.

III. Freeboard³

In addition to the Board of Adjustment's authority to grant variances under Section 185-66(C) of the Town's Zoning Code, the Board of Adjustment also has the authority to grant variances under Section 101-34 of the Town's Flood Damage Reduction Code. The existing structure is located in the AE Flood Zone, with a Federal Emergency Management Agency (FEMA) Base Flood Elevation requirement of 6 feet. The elevation certificate that is in the record of this Application provides that the Bay Resort structure is at an elevation of 6.4 feet, *which is 0.4 feet above the FEMA requirement*. However, the first floor is 7 ½ inches below the Town's (not FEMA's) additional 12 inches of freeboard requirement (Section 101-27(A)(1) for residential structures and Section 101-28(A)(1) for nonresidential structures).

The uniqueness of the circumstances presented here is that **the building already fully complies with and exceeds FEMA's Base Flood Elevation of 6 feet for structures located in an AE Flood Zone and was built to standards in place when the building was constructed**. The Town's additional requirement of 12 inches of freeboard makes good sense for new construction and for many renovations—but this is an existing structure that exceeds FEMA's Base Flood Elevation and requiring that the building be further elevated 7 ½ inches would be cost prohibiting.

During the May 16 public hearing, one resident expressed concern that the Town's participation in the National Flood Insurance Program could be suspended if the variance from the freeboard requirement is granted. Title 42 of the United States Code, Section 4022, provides that “no new flood insurance coverage shall be provided under this chapter in any area (or subdivision thereof) unless an appropriate public body shall have adopted adequate land use and control measures (with effective enforcement provisions) which the Administrator finds are consistent with the comprehensive criteria for land management and use under section 4102 of this title.” As noted, the building already is compliant with Section 4102, so there is no risk that participation in the National Flood Insurance Program could be suspended. The only real issue presented by the current application relates to credits that can reduce flood insurance premiums in communities that exceed the Section 4102 requirements by, for example, adding a freeboard requirement above the Base Flood Elevation. Here, because the structure is already at an elevation higher than FEMA's required Base Flood Elevation, there is no risk that the Town would be suspended from the National Flood Insurance Program, and no tangible risk that flood insurance premiums would increase.

³ Under Section 101-12(B)(2) of the Town Code, whenever the cost of renovations equals or exceeds the fair market value of the existing improvements, the existing improvements must be brought into compliance with the Flood Damage Reduction Code.

Given that the structure fully complies with and exceeds FEMA's Base Flood Elevation, this is exactly the type of instance that warrants the granting of a variance. If the Board does not grant the variance—for a structure that already exceeds the Base Flood Elevation—the modest improvements proposed will not be possible, the Property will continue to deteriorate, and the Town will have missed a revitalization opportunity.

We appreciate the time and effort the members of the Board have put into this application, and we look forward to the Board's final decisions on the remaining variance requests.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn C. Mandalas". The signature is fluid and cursive, with the first letter "G" being particularly large and stylized.

Glenn C. Mandalas, Esq.

cc: Mr. Fred Townsend, Esq
Mr. Carl Kruelle
Mr. Steven Kremer
Mr. Jeff Schoellkopf