

2/7/2013

Mr. Kutosh offered the following Resolution and moved on its adoption:

**RESOLUTION PERMITTING WITHDRAWAL OF APPEAL  
WITHOUT PREJUDICE BY SANDPIPER CONDOMINIUM  
ASSOCIATION CONCERNING PROPERTY OWNED BY  
SEASTREAK, LLC AT 326 SHORE DRIVE (BLOCK 100, LOT 27)**

WHEREAS, the Applicant, SANDPIPER CONDOMINIUM ASSOCIATION, INC. filed an appeal to the Zoning Board of Adjustment, contesting the Borough Zoning Officer's determination to either issue a zoning permit or determine that the Tiki Bar use was permitted and no board approvals were required for the construction and establishment of a Tiki Bar on the property of SEASTREAK, LLC at 326 Shore Drive (Block 100, Lot 27); and

WHEREAS, the appellant, SANDPIPER CONDOMINIUM ASSOCIATION, INC., is represented by JAMES M. SICILIANO, ESQ.; and the property owner, SEASTREAK, LLC, is represented by MARTIN A. MC GANN, JR., ESQ.; and

WHEREAS, the Highlands Zoning Board of Adjustment considered this application during a review proceeding on September 6, 2012, at which time the matter was scheduled for a hearing on October 4, 2012; and

WHEREAS, the October 4, 2012, hearing date was subsequently adjourned, with the consent of both counsel, until November 1, 2012; however, Superstorm Sandy caused the

cancellation of all Highlands governmental functions on the scheduled hearing date, resulting in an adjournment of the hearing until December 6, 2012; and

WHEREAS, the aforementioned Tiki Bar structure was destroyed during Hurricane Sandy; and

WHEREAS, proper notice has been given to property owners within 200 feet, and the appropriate form of notice has been published, as required;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that:

1. The appellant's request to withdraw its pending appeal without prejudice, as described above, is hereby granted.

2. Seastreak stipulates that it will not reconstruct the Tiki Bar or operate the Tiki Bar under the prior Zoning Permit issued on 7/5/12 without first applying to the Zoning Officer for a Zoning Permit, on written notice to Sandpiper Condominium Association which will provide the appropriate protection to Sandpiper to be aware of the filing of such an application and their ability to file a timely appeal, should they desire to do so.

3. Should Seastreak once again commence operation of the Tiki Bar, the Appellant shall be entitled to reactivate this appeal without the payment of fees to the appropriate Board. Such reactivation without the payment of fees must be done by filing a written request with the Board no later than December

31, 2013. Should such a request be made, the applicant will not be charged another application fee.

5. Following the payment of the Board professionals for any services rendered thus far from the applicant's escrow account, the unused escrow shall be refunded by the Borough to the applicant. If the escrow account is insufficient to cover the Board's professional fees, the applicant shall make timely payment of the same to the Borough.

Seconded by Mr. Fox and adopted on the following roll call vote:

**ROLL CALL:**

**AYES:** Mr. Fox, Mr. Kutosh, Mr. Mullen, Ms. Pezzullo,  
Ms. Maresca, Mr. Braswell

**NAYES:** None

**ABSTAIN:** None

**DATE:** February 7, 2013

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**Carolyn Cummins, Borough Clerk**

I hereby certify this to be a true copy of a resolution adopted by the Borough of Highlands Zoning Board at a meeting held on February 7, 2013.

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Board Secretary