

**City of Cape May Planning Board Meeting Minutes
Tuesday, April 28, 2015**

Opening: The meeting of the City of Cape May Planning Board was called to order by Chairman Bill Bezaire at 7:00 PM. In compliance with the Open Public Meetings Act, adequate notice was provided.

Roll Call:	Mr. Bezaire, Chairperson	Present
	Mr. Shuler, Vice Chairperson	Present
	Mr. Jones	Present
	Mayor Dr. Mahaney	Present
	Mr. Elwell	Present
	Dr. France	Present
	Mr. Meier	Present
	Mr. Winkworth	Present
	Mr. VanDeVaarst, 1 st Alternate	Present
	Mr. Macciocchi, 2 nd Alternate	Present

Also Present: George Neidig, Esquire – Board Solicitor
Craig Hurless, PE, PP, CME Associate – Polistina & Associates
Jill Devlin, Board Assistant

Minutes

Motion made by Mr. Elwell to approve the minutes of March 31, 2015, seconded by Dr. France and carried **7-0**. Those in favor: Mr. Elwell, Mr. Jones, Dr. France, Mayor Mahaney, Mr. Winkworth, Mr. VanDeVaarst, Mr. Shuler. Those opposed: None. Those abstaining: Mr. Meier, Mr. Bezaire.

Applications

LaMer Beachfront Inn

1317 Beach Avenue
Block 1146, Lot(s) 6, 7, 10-24

George Neidig asked that Attorney Kauffman and Attorney Hluchan approach the table to speak about their prior motion and responses. Attorney Hluchan stated he was representing the applicant; Attorney Kauffman stated he was representing objectors Mr. Zeghibe, Mr. Glenn and Mr. Parker. George Neidig recapped the last meetings discussion wherein Attorney Kauffman raised the issue of *res judicata*, which means the application has already been decided. Based on that Attorney Kauffman sent a brief dated April 15, 2015. Attorney Hluchan responded on April 21, 2015. The board members stated they all read the documentation ahead of this meeting. George stated he felt the attorneys had a right to argue on the briefs but asked that they keep it as compact as possible. The suggestion was satisfactory to the board. Attorney Hluchan stated he wanted to bring two typos in his letter to the attention of the board. He stated on page 3, second

paragraph where it says 190 spaces are proposed, it should read 182. In the next paragraph where it says 180 proposed parking spaces, 10 less than proposed now, it should say 2 less than proposed now.

Attorney Kauffman stated he didn't have much to add to what he had already written in his April 15th brief to the board. He compared and contrasted the 2009 application, or the portion of it, that is virtually identical to what is now before the board, the only difference being one parking space. He stated he read Attorney Hluchans response. He stated he felt Attorney Hluchan characterized their position as looking to seek a dismissal of this application on a technicality and he disagrees with that characterization. He stated he felt that the Board has already once considered exactly what was before the Board and the doctrine is designed to prevent the Board to having to hear the same thing over and over again.

Attorney Hluchan stated he felt it was clearly within the Board's discretion to hear the application on the merits. He cited a court case that decided even if the application is similar or identical to another, but it is alleged that surrounding circumstances have changed; the board has the discretion to hear the application. He has detailed in his letter how this application differs from prior applications, along with the history of the shared parking. He stated they have a renowned traffic engineer with them this evening who will explain the shared parking.

George Neidig stated that both attorneys cited in their briefs the requirements for *res judicata* be found. He noted they were 1) That the second application was substantially similar to the previous application; 2) That the same parties are involved; 3) There must be no substantial change in the application itself or the conditions surrounding the property; 4) There must have been an adjudication on the merits of the first case; 5) That both applications must involve the same cause of action.

He stated the board had to decide whether the current application met the elements. He also noted he felt the Board had three options; 1) Decide the elements have been met and if they have been met, make a motion to dismiss; 2) The Board can decide you haven't heard enough evidence to determine if it is *res judicata* and hear the case and then make the decision whether or not to dismiss the case; 3) The Board can decide that there are in fact substantial reasons, enough that *res judicata* shouldn't be granted. It was up to the Board to decide.

Motion made by Mr. Elwell that the elements warrant the Board hear the application and then decide if this is *res judicata*, seconded by Mr. Winkworth and **carried 9-0.** Those in favor: Mr. Elwell, Mr. Jones, Mr. Meier, Dr. France, Mayor Mahaney, Mr. Winkworth, Mr. VanDeVaarst, Mr. Shuler, Mr. Bezaire. Those opposed: None. Those abstaining: None.

George Neidig noted before Attorney Hluchan began his presentation that he had a court reporter present and to please speak clearly into the microphones.

Attorney Hluchan began his discussion of the application. This is an existing restaurant and hotel in the C3 district, where both are permitted uses. The proposal is to demolish the existing restaurant which is a separate building on the property and to build a new building which would contain a new restaurant and 21 new motel units on top. He stated to begin their presentation he

would have their Engineer Vincent Orlando give an overview of what is there today, what is proposed, what the applicable ordinances are in terms of parking, and talk about the existing number of employees the hotel and restaurant employ. David Shropshire who is the traffic engineer, will discuss in detail the concept of shared parking which is basically two principal uses sharing parking on the same lot. He will give everyone the benefit of his analysis of this property which he performed on a weekend last August and will demonstrate why there is adequate parking presently for both the restaurant and hotel, and why, with the restaurant staying the same and 21 new units added to the hotel, there will still be adequate parking even though they don't comply with the strict letter of the city ordinance.

After Mr. Shropshire's testimony, Vince Orlando would discuss the variances and why it would be appropriate to grant a parking variance in these unique circumstances. He noted he would also have Mr. Andy testify if needed.

Gus Andy, owner of the LaMer, David Shropshire, Traffic Engineer, Vince Orlando, Engineer and Craig R. Hurless, Board Engineer, were sworn in and stated their credentials for the record.

Vince Orlando gave a summary of the hotel in its current state. Exhibit A1 was entered into the record. Exhibit A2 was also entered into the record. Currently there are 141 rooms, with 162 rooms proposed. The restaurant has 146 seats (110 inside and 36 outside). There are currently 173 parking spaces and they are proposing 182 parking spaces. They are proposing to increase hotel unites by 21 and proposing to add 9 parking spaces. Attorney Hluchan stated at the current time Mr. Orlando was aware that the Board previously found that there is no parking requirement for the restaurant as currently constituted; Mr. Orlando stated that was correct. Attorney Hluchan stated since they are proposing to demolish the restaurant, even though the new restaurant will be the same size as the old one, meaning a total of 146 seats, they understand that under a strict reading of the ordinance they are required to provide parking for the restaurant. Mr. Orlando confirmed that was correct. The ordinance requires, for the 146 seat restaurant that 37 parking spaces would be required, which calculates as one space per four seats for a total of 37. Attorney Hluchan read from Ordinance 524-49 which is the off street parking provisional. It requires in subsection C2, for a restaurant, one parking space for each four seats which is consistent with what Mr. Orlando testified to. Subsection 4 for a hotel and motel says one parking space for each guest sleeping room, plus one space for employee for the largest shift. In subsection 11 another employee parking requirement unless otherwise specified, in addition to the above requirements, there shall be provided one space for each full time employee. Attorney Hluchan asked Mr. Orlando to give a summary of the information he received the summer of 2014 from the restaurant, of the number of employees, hours and shifts for the restaurant and the hotel, and to confirm that his plans were amended based on that information. Mr. Orlando detailed the hours of the restaurant and the hotel and the number of employees per shift, including check in and checkout times.

Attorney Hluchan called Mr. Shropshire to testify regarding shared parking. He gave the Board a description of his background and professional experience. He is a professional planner and professional engineer in the state of New Jersey, his specialty being traffic engineering and transportation planning. Attorney Hluchan asked how long he has been practicing that specialty in the State of New Jersey; Mr. Shropshire stated over 30 years and that he has testified for about

200 planning boards throughout the state, as well as has testified in the courts in New Jersey. He confirmed that parking is part of traffic engineering and transportation planning and elaborated for the board how it qualifies.

Mr. Shropshire and Attorney Hluchan discussed his report dated January 19, 2015 that was submitted to the Board. The report was entered into the record as exhibit A3. Mr. Shropshire began to summarize his analysis and what conclusions he came to in terms of the operation of the restaurant and the hotel and the shared parking. He stated that shared parking is where you can have different plan uses that would complement each other in terms of parking demands and the entire use. They are not looked at independently because you may provide more parking spaces than would ever be actualized on a particular development. The whole idea would be to not provide more parking spaces than would be necessary for the uses if they are complimentary to each other. Attorney Hluchan and Mr. Shropshire discussed the City Ordinance and how it treats the hotel and the restaurant for parking ordinances. There is nothing in the ordinance that recognizes those two uses on one lot for parking purposes. Attorney Hluchan continued to question Mr. Shropshire regarding his report and his analysis. Mr. Shropshire gave a detailed description of how he analyzed the shared parking for the restaurant and the hotel. Members of the board had some questions for Mr. Shropshire as to his analysis of the shared parking and why he chose the week he chose to do the analysis. He discussed the occupancy counts for the dates of the analysis and how the peak parking rate was determined. He also confirmed the reason he picked the first weekend in August to do the analysis was because that is when the contract went into effect and was also when Mr. Shropshire had the time to do the analysis. The first two weeks of August are typically the biggest weeks of the season. The 1.05 number represents the number of spaces that are demanded per occupied room which gives a way to project not only if the hotel was occupied 100% at 141 but also if it's going to be expanded by 21 rooms to 162 what that demand would be. At 162 rooms the demand at 1.05 would be 171 spaces. There are 182 spaces proposed which leaves an 11 space excess. Mr. Hluchan asked if in his expert opinion, and based upon the study he performed, if 182 spaces were adequate for 162 hotel units plus a 146 seat restaurant at the location. Mr. Shropshire confirmed that yes it was. He also asked him if he observed anything at all in the time that he was there that would be a negative toward this amount of parking spaces for those uses. Mr. Shropshire stated he saw nothing negative.

Members of the Board asked various questions regarding the study Mr. Shropshire performed.

Vincent Orlando then gave a detailed C2 variance analysis along with the other variances that were being requested at length. There was discussion regarding the signage variance which was then withdrawn.

A short recess was taken at 8:40 PM.

The meeting resumed at 8:46 PM.

William Kauffmann, Esquire, representing some of the objectors of the application, cross examined Mr. Shropshire regarding his report. He asked Mr. Shropshire if, in connection with his assignment to do the parking analysis, he had the opportunity to review the 2009 application and the data at that time. Mr. Shropshire confirmed he did review parts of the report. Mr. Kauffmann stated that currently there is a 141 unit hotel which has a 141 space parking requirement. A 146 seat restaurant divided by 4 computes out to a 37 space requirement, and Mr. Orlando testified there are 28 employees so there is a current parking requirement of 206 spaces. He then questioned Mr. Shropshire at length regarding the parking spaces and calculations. He discussed the conference room that is advertised on the web site as well as a spa within the facility. He also discussed and questioned Mr. Shropshire at length regarding some of the ordinances and accessory uses that would be found at a hotel. Attorney Hluchan objected to Mr. Kauffmann's cross examination as he felt the questions had nothing to do with what Mr. Shropshire testified to. Mr. Kauffman questioned Mr. Shropshire at length about his report and the way in which he came to his findings.

Mr. Kauffman then proceeded to cross examine Vincent Orlando regarding the parking spaces and their size. He noted that in the ordinance a parking space should be 9x18 and asked if all the parking spaces were that size. Mr. Orlando stated they were not. He asked Mr. Orlando how many spaces on the site were sized incorrectly and asked if he had done an analysis of how many spaces the site could hold if they were all sized 9x18. Mr. Orlando stated he had not. He asked if any part of this application would eliminate the non conformities in regards to the parking spaces; Mr. Orlando stated it would make it better. Mr. Kauffman also questioned Mr. Orlando regarding the conference facility and spa at the facility and how parking spaces were calculated for them. There were questions about the conference facility being used for non guests of the hotel, as well as the spa. Mr. Orlando stated it wasn't a spa, it's an area for if someone would request to have their nails done, something small of that nature. It is mainly for guests. If removing the spa was necessary they would make it a condition of approval. Mr. Kauffman submitted an 8/23/2012 letter from Mr. Orlando to former Zoning Officer Mary Rothwell, marking it O2. He stated there was a chart included in this letter that stated the various accessory uses in the facility, one of which was the restaurant, as well as the onsite laundry, and the spa is listed as well being sized as 972.7 square feet. He asked Mr. Orlando if the board deemed the spa required a parking space or spaces, would it be calculated using the square footage. Mr. Kauffman asked Mr. Orlando why he did not interview any members of the public before calculating the number of parking spaces for the variance. Mr. Orlando stated in land use law it is not a requirement to interview members of the public.

Chairman Bezaire stated there were members of the public present and since the application would probably not be heard in its entirety, he wished to open up the public portion at this time.

The meeting was then opened to the public within 200 feet and outside of 200 feet at 9:26 PM. The public portion was then immediately closed as no one wished to speak.

Mr. Kauffman called Brian Murphy as his next witness who was sworn in. Mr. Murphy stated he was obtained by some of the objectors to the application in front of the Board. He also stated he was able to review all the materials including Mr. Hurless' report. Based on his experiences he stated he felt the variances should not be granted. He reviewed in detail, why he felt each

individual variance should not be granted. He also discussed the conference facilities that are advertised on the applicant's website as well as the spa area. Mr. Hluchan then objected stating every question Mr. Kauffman was asking were leading questions. Mr. Murphy felt the spa and the conference facility would generate their own parking variance. Mr. Kauffman asked Mr. Murphy about the signage on the property, if it could negatively impact the number of spaces being utilized when Mr. Shropshire made his observations; Mr. Murphy stated it would. Mr. Kauffman asked if during review of any of the applicant's materials, if he came across anything related to a review of the application by any fire official. Mr. Murphy stated that no he did not. Mr. Murphy stated he interviewed members of the public regarding the parking. He gave the public's opinions weight in arriving at his final opinions.

Attorney Hluchan cross examined Mr. Murphy regarding his testimony. He asked Mr. Murphy if he considered himself a traffic engineer. Mr. Murphy stated he does not have the same qualifications as Mr. Shropshire. He asked Mr. Murphy if he believed that after reading the trip generation handbook that he can determine that the La Mer hotel should have 146 employees. He also stated to Mr. Murphy that he classified the La Mer as a specific type of motel and cited a specific percentage of employees to rooms and determined that they should have 37 to 110 employees per shift. Mr. Murphy stated that was correct. Attorney Hluchan asked him if he had any idea how many employees the La Mer had and he stated he did not. Attorney Hluchan asked if his estimation of employees needed was speculation, Mr. Murphy stated no, it was based off of the trip generation handbook. He also asked Mr. Murphy about his testimony regarding the conference room, what it says on the website, and that it was not limited to guests of the hotel. Mr. Murphy said he could not recall that was his testimony. Mr. Hluchan asked him if he had ever seen the conference room and Mr. Murphy stated no he had not. He then asked Mr. Murphy if in his testimony he stated that this project will compete with his clients for parking and Mr. Murphy confirmed. He confirmed with Mr. Murphy that Beach Drive is a public street and anyone can park there as well as the spaces on New Jersey Avenue and Pittsburgh Avenue, and any spaces in front of the client's homes.

Dean Parker, 1401 Beach Avenue, Cape May, NJ, stated his objections to the board regarding the property due to the fact that he would not be able to attend the next meeting.

Chairman Bezaire then stated that due to the late hour the meeting will be continued.

Motion made by Mr. Meier to table the application to the May 26, 2015 meeting, seconded by Mr. VanDeVaarst and **carried 9-0.** Those in favor: Mr. Elwell, Mr. Jones, Mr. Meier, Dr. France, Mayor Mahaney, Mr. Winkworth, Mr. VanDeVaarst, Mr. Shuler, Mr. Bezaire. Those opposed: None. Those abstaining: None.

Motion made by Mr. Shuler to adjourn the meeting at 10:12 PM, with all in favor.

A verbatim recording of said meeting is on file at the Construction/Zoning Office.

Respectfully submitted: Jill Devlin, Board Secretary.