

City of Cape May Planning Board Meeting Minutes
Tuesday, May 26, 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	Absent
	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. VanDeVaarst to adopt the minutes of April 14, 2015, seconded by Mr. Macciocchi and **carried 8-0**. Those in favor: Mr. Meier, Dr. France, Mayor Mahaney, Mr. Winkworth, Mr. VanDeVaarst, Mr. Macciocchi, Mr. Shuler, Mr. Bezaire. Those opposed: None. Those abstaining: Mr. Jones.

Applications

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

Attorney Hluchan opened by stating when the meeting broke last time, they had concluded cross examination. He presented two small housekeeping items. Vincent Orlando and Mr. Shropshire were sworn in and stated their credentials for the record. Craig Hurless, Board Engineer, was also sworn in. Mr. Hluchan asked Mr. Orlando a few questions regarding the objectors concerns about the spa. He asked him to advise the status of the spa; Mr. Orlando stated the spa has been closed. He also asked him what his understanding of the conference facility and how it operates. He stated it is for guests of the hotel and predominately used during the off season.

Mr. Bezaire asked what would happen to the space where the spa is now. Mr. Orlando stated it's just open space and will not be used for anything additional. Mayor Mahaney asked if the space had been designated for anything. Mr. Orlando stated it was used for storage and office space. He also asked some questions regarding the lot coverage; under the proposed application it came out to be a new figure of 75.46% which exceeded the 75% limit. There was discussion that the .46% could be eliminated. Attorney Hluchan did state they were working to bring that down to 75%. He believes they can eliminate that extra 500 square feet.

He then submitted a report that Mr. Shropshire discussed as part of his presentation for the record, item A4.

George Neidig asked Mr. Kauffman if he had any questions before they began. Mr. Kauffman did ask Mr. Orlando if he had any knowledge of groups that had conferences or events at the conference facilities that did not stay at the LaMer. He stated he did not. Mr. Kauffman also asked if there was anything written that prevented anyone from outside booking the facility. Mr. Orlando stated he did not.

Craig Hurless reviewed his memorandum dated April 21, 2015. He stated this application was for both preliminary and final site plan with variances. The applicant proposes to demolish an existing restaurant located at the corner of Beach Avenue and Pittsburgh Avenue, erect a new 110 seat restaurant built in its place with three levels of 7 rooms for an additional 21 hotel units. The rest of the site is proposed to remain unchanged.

The completeness review items were discussed. Item 12 had been provided, item 16 needed to be provided. He recommended a NJDEP CAPRA approval. Attorney Hluchan stated they were waiting on the decision from the Board before they applied for approval. Item (w) is now supported. Item (aa) should be a condition of approval.

The zoning requirements were discussed in detail. There are two variances requested from the building setback line. For Pittsburgh Avenue there is a 20 ft setback requirement, 3.9 ft exists, 14.48 ft is proposed. Beach Avenue has a 20 ft setback requirement, 13.83 ft exists, and 16.35 ft is proposed. The maximum building height is 35 ft, 35 ft is existing and 37 ft is proposed. The lot coverage requirement is 75%; the existing is at 75.46%. The applicant did state they would reduce the lot coverage. The parking setbacks were summarized along with the parking space calculation. He noted the signage variances were withdrawn and if they are to be resubmitted they would be submitted at final approval. Craig stated a lot of signs were put up that were not approved by the Board.

Mr. Meier asked a question regarding the building height, if the new addition will be the same height as what is there now. Mr. Hurless stated that was correct.

The site plan general review comments were then discussed. Items 1-3 and 5-19 should be conditions of approval. Item 20 has been withdrawn. Items 21 through 28 are all standard conditions.

Mr. Meier asked if there were any requirements for handicapped parking spaces; Mr. Hurless stated that yes there were and the applicant met the criteria for those spaces. Mayor Mahaney asked for some clarification from the applicant on why they were asking for 21 additional hotel units. Mr. Orlando stated the reason for the additional units is simply because he has a need due to being 100% occupied the majority of the season. There were numerous questions regarding the setbacks from members of the Board. Mr. Jones asked Mr. Hurless his general thoughts on shared parking. Mr. Hurless stated as a planner and engineer he utilizes the shared parking concept to justify variances for parking spaces. When you have complimentary uses where the peak hours are not the same it's a very useful planning tool in justifying variances. In this case you have a shared parking study that demonstrates that there are parking spaces available on site.

There were no more questions from the board.

The meeting was opened to the public at 7:58 PM.

Mr. Kauffman stated he had questions of objectors Mr. Zeghibe and Mr. Glenn.

Richard Zeghibe, 1400 New Jersey Avenue, Cape May, NJ was sworn in. Mr. Kauffman asked Mr. Zeghibe when he acquired his property. Mr. Zeghibe stated they began construction of their home in 2004 and moved in in April 2005. It is directly across the street facing the parking lot. Mr. Zeghibe stated he has been in front of the Board at least 4 times regarding the LaMer since he built his home. Mr. Zeghibe stated he is a parking professional owning his own parking company. He read an excerpt from something he wrote for a prior Planning Board meeting in 2010 regarding shared parking. Mr. Zeghibe stated his concerns regarding the parking aspect of the application. He also commented on the signs that need to be removed. He feels if they are removed it will create chaos at the hotel in regards to parking.

Mr. Kauffman then questioned objector Mr. Glenn.

Matt Glenn, 1404 New Jersey Avenue, Cape May, NJ was sworn in. Mr. Glenn stated he also has been before the board in the past regarding this applicant. He stated from a prior application that a spa, gym and banquet facility had been put in with falsified plans and they were never approved by the Board. He stated a letter was sent from Construction Official Bill Callahan and Zoning Officer Mary Rothwell, stating they had to go back to the Planning Board. He stated it was over ridden because the spa only needed one additional parking space.

Charles Hendricks, 106 Trenton Avenue, Cape May, NJ was sworn in. Mr. Kauffman asked Mr. Hendricks if he had ever attended a conference at the facility while he was not a guest of the hotel. He stated when he ran for Council, there was a candidate's night at the conference facility, and present there were people who were not residing in the LaMer hotel.

Albert Fralinger, 1401 New Jersey Avenue, Cape May, NJ was sworn in. He asked the Board members to refer to his previously submitted report wherein he stated his objections to the proposed application. His biggest concern is parking issues.

The public portion of the meeting was closed at 8:37 PM.

George Neidig then discussed the issue of *res judicata*. He stated the first thing that needed to be done was to decide whether or not this application is *res judicata* and asked that both Mr. Kauffmann and Mr. Hluchan limit their arguments at that time to that.

Mr. Kauffman began by stating in 2009 the applicant brought to the Board an application that was greater in scope than what is before the Board currently. One of the components of that application was identical to what the Board just heard. He stated in 2009 the applicant sought to demolish the restaurant, reconstruct the restaurant with the exact same number of seats and to construct 20 new hotel rooms and three floors above the restaurant. At that time the engineers report identified the parking deficiency and the Board unanimously denied the parking variance. He stated the application that was just heard is the same thing. He noted they have already heard and decided this application.

Mr. Hluchan stated that the 2009 application was never decided on the merits. That application was for the demolition of the laundry wing, and the construction of new units, and, the demo of the restaurant and construction of new units. The parking variance was denied and that was the end of it. They then came back for the laundry wing and it was approved. He stated last year after a ruling by Judge Armstrong that the restaurant didn't require parking because it was grandfathered in; the Board still required they come back with a new application for a parking variance and that is what they have done. He felt the board should reject the *res judicata* issue and vote on this application tonight.

George Neidig asked Mr. Hurless to address the board regarding *res judicata*. Mr. Hurless stated he reviewed all the prior applications, 4 of which were most important to this one. He noted it was his professional opinion that *res judicata* does not apply in this case. He felt the board should consider the application on its own merits.

Mr. Shuler asked him how he came to his determination. Mr. Hurless stated the closest application was the March 2009 application, in which the laundry and 8 motel units and 146 restaurant seats and 21 hotel units were proposed. He felt the variance circumstances with regards to setbacks was different, the construction of this structure is different and requires different variances for that, he also believed the setback variances for parking spaces are not being requested here. There are differences in the variances alone.

Motion made by Mr. Meier that *res judicata* does not apply and that this is a new application, seconded by Mr. Macciocchi and **carried 9-0.** Those in favor: Mr. Jones, Mr. Meier, Dr. France, Mayor Mahaney, Mr. Winkworth, Mr. VanDeVaarst, Mr. Macciocchi, Mr. Shuler, Mr. Bezaire. Those opposed: None. Those abstaining: None.

Mr. Kauffmann and Mr. Hluchan then both presented their arguments in regard to the application.

Dr. France stated he felt this was a very complicated problem. Parking is a problem here, it has been for a while and it's going to be for a long time. He stated he doesn't know what the answer is, there should be some sort of balance and he can see the arguments on both sides are very logical. They Board has to make a decision as to what is best for everyone at this time.

Mr. Shuler commented on the data in Mr. Shropshires report, wishing there could have been more data reflected in it.

Mr. Bezaire commented regarding the parking and Mr. VanDeVaarst questioned the grandfather clause, if it would remain if the building was renovated. Mr. Hurless stated that was his understanding.

Motion made by Mr. Meier to approve §525-49C(4) – Parking Spaces Number Variance, seconded by Mr. Jones and **carried 7-2**. Those in favor: Mr. Jones, Mr. Meier, Dr. France, Mr. Winkworth, Mr. VanDeVaarst, Mr. Macciocchi, Mr. Bezaire. Those opposed: Mayor Mahaney, Mr. Shuler. Those abstaining: None.

Mr. Jones stated his reasons for his vote for the record. Mr. Meier also stated his reasons for his vote for the record. Mayor Mahaney wanted to point out that he did not sit on the Board for the LaMer applications between July 1, 2003 and June 30, 2012. He believes the City of Cape May needs to maintain a wider way of accommodation options for our visitors and at a high level of quality so we need to work with those owners to keep the facilities at a high level and also to meet the needs as they change in the city. He stated his problem was with the addition of 21 new units that will aggravate the parking requirements. There really hasn't been a focus on that aspect. It started with 33 spaces deficient and increases it to 45 which places the burden on the neighborhood. He stated he respects Mr. Shropshire and his study but believes it does not account for the confounding variable of the convenience of parking on the street, especially by the restaurant users. The other factor is in the City of Cape May in that area there is an internal shuttle that runs during the summertime so that people that stay at motels can come around town to eat at other restaurants, so their cars don't have to move. He noted that the addition of 21 rooms is triggering 7 variances for this application. Mr. Winkworth, Mr. VanDeVaarst, Mr. Shuler and Mr. Bezaire stated their reasons for the record for their vote.

Motion made by Mr. Meier to approve §525-24(B) (1) Table 2 – Building Setback Variance Pittsburgh and Beach, seconded by Mr. Jones and **carried 7-2**. Those in favor: Mr. Jones, Mr. Meier, Dr. France, Mr. Winkworth, Mr. VanDeVaarst, Mr. Macciocchi, Mr. Shuler. Those opposed: Mayor Mahaney, Mr. Bezaire. Those abstaining: None.

Mayor Mahaney stated his vote for the record was to be consistent with the Municipal Land Use Law, voting no on the first of the variances, so he votes no on the rest of the application. Mr. Bezaire also stated the reason for his vote for the record.

Motion made by Mr. Meier to approve §525-24B (2) Table 1 – Building Height Variance, seconded by Mr. Winkworth and **carried 8-1**. Those in favor: Mr. Jones, Mr. Meier, Dr. France, Mr. Winkworth, Mr. VanDeVaarst, Mr. Macciocchi, Mr. Shuler, Mr. Bezaire. Those opposed: Mayor Mahaney. Those abstaining: None.

Motion made by Dr. France to approve §525-49C (4) – Parking Size Variance, seconded by Mr. Meier and **carried 8-1**. Those in favor: Mr. Jones, Mr. Meier, Dr. France, Mr. Winkworth,

Mr. VanDeVaarst, Mr. Macciocchi, Mr. Shuler, Mr. Bezaire. Those opposed: Mayor Mahaney. Those abstaining: None.

Motion made by Mr. Jones to approve §525-49E (7) – Parking Within Setbacks Variance, seconded by Mr. Macciocchi and **carried 8-1**. Those in favor: Mr. Jones, Mr. Meier, Dr. France, Mr. Winkworth, Mr. VanDeVaarst, Mr. Macciocchi, Mr. Shuler, Mr. Bezaire. Those opposed: Mayor Mahaney. Those abstaining: None.

Motion made by Mr. Meier to approve §525-24B (2) Table 1 – Lot Coverage Variance, seconded by Mr. Jones and **denied 9-0**. Those in favor: None. Those opposed: Mr. Jones, Mr. Meier, Dr. France, Mayor Mahaney, Mr. Winkworth, Mr. VanDeVaarst, Mr. Macciocchi, Mr. Shuler, Mr. Bezaire. Those abstaining: None.

Motion made by Mr. Jones to approve Preliminary Site Plan subject to conditions, seconded by Mr. Meier and **carried 8-1**. Those in favor: Mr. Jones, Mr. Meier, Dr. France, Mr. Winkworth, Mr. VanDeVaarst, Mr. Macciocchi, Mr. Shuler, Mr. Bezaire. Those opposed: Mayor Mahaney. Those abstaining: None.

Motion made by Mr. VanDeVaarst to approve Completeness Waivers 3w, seconded by Mr. VanDeVaarst and **carried 7-2**. Those in favor: Mr. Jones, Mr. Meier, Dr. France, Mr. VanDeVaarst, Mr. Macciocchi, Mr. Shuler, Mr. Bezaire. Those opposed: Mayor Mahaney, Mr. Winkworth. Those abstaining: None.

Motion made by Mr. VanDeVaarst to approve Design Waiver – Storm water Management Report, seconded by Mr. Meier and **carried 8-1**. Those in favor: Mr. Jones, Mr. Meier, Dr. France, Mr. Winkworth, Mr. VanDeVaarst, Mr. Macciocchi, Mr. Shuler, Mr. Bezaire. Those opposed: Mayor Mahaney. Those abstaining: None.

Motion made by Mr. Winkworth to approve Conditions, page 3, numbers 12, 3b, as; General Review Comments 1 – 6, 7, 9, 11 – 19, 21 – 28; Condition that the prior spa area be kept as storage, and reconfiguration of the Lot Coverage Variance, seconded by Dr. France and **carried 8-1**. Those in favor: Mr. Jones, Mr. Meier, Dr. France, Mr. Winkworth, Mr. VanDeVaarst, Mr. Macciocchi, Mr. Shuler, Mr. Bezaire. Those opposed: Mayor Mahaney. Those abstaining: None.

Motion made by Mr. Meier to adjourn at 9:38 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.