City of Cape May Planning Board Meeting Minutes
Tuesday, October 8, 2019

Opening: The meeting of the City of Cape May Planning Board was called to order by Acting Chairperson Robert Elwell at 6:30 PM. In compliance with the Open Public Meetings Act, adequate notice was provided.

Roll Call: Mr. Bezaire, Chairperson Absent - excused
Mr. Shuler, Vice Chairperson Absent - excused
Mr. Elwell, Acting Chairperson Present
Mr. Macciocchi Absent - excused
Deputy Mayor Hendricks Present
Mr. Inderwies Present
Mr. Jones Present
Mayor Lear Present
Dr. Maslow Absent - excused
Dr. Wolf Alt #1 Present
Mr. Martz Alt #2 Absent - excused

Also Present: Richard King, Esquire - Board Solicitor
Craig Hurless – Board Engineer
Karen Keenan – Board Secretary

Minutes:

Motion was made by Mr. Jones to adopt the meeting minutes from April 9, 2019 and September 24, 2019 seconded by Deputy Mayor Hendricks and carried 6-0. Those in favor: Mr. Elwell, Deputy Mayor Hendricks, Mr. Inderwies, Mr. Jones, Mayor Lear, Dr. Wolf. Those opposed: None. Those Abstaining: None.

Resolutions: None

Application:

Bogle Investment Properties, LLC
506 & 506 Washington Street
Block 1050 Lot(s) 5, 6, 7 & 8

Prior to the start of presentation of the application, Board Solicitor King explained that the application has a complication, namely, the deed restriction that the upper floor be used only as storage space. He went on to say that the deed restriction was never recorded and that case law indicates that the Court has upheld deed restrictions that were never recorded are viewed as though they were recorded. So, there is a question as to whether the Planning Board can undo a deed restriction.

Mr. King said when affects the public good, a deed restriction can only be undone by a court and cited Soussa v. Denville and other case law. Mr. King expressed the belief that the Planning Board is the place to consider the application prior to the applicant going to the Superior Court, because the Master Plan addresses storefront second floors as apartments and the public interest is best
served at the Planning Board. It was agreed to allow the applicant to create their record, so the Planning Board can make a decision with the requirement that the applicant apply to the Superior Court to clear the title in an action.

Board Solicitor King and Applicant Attorney Anthony Monzo, Esq. disagreed on the purpose of the deed restriction of being a private restriction or a public or parking restriction.

Board Member Dr. Linda Wolf stated that this is a classic implementation issue of the Master Plan and questioned whether the Zoning Board of Adjustment should be hearing the application where it was initially heard. Board Solicitor King replied that undoing what has been done must be done cautiously and carefully, and that the conditions are appropriate for Planning Board review of the application.

Joseph Bogle, Paul Bogle, Architect Pamela Fine, and Board Engineer Craig Hurless were sworn in by Mr. King for the record. Attorneys Anthony Monzo, Esq. and Lyndsy Newcomb presented the application with explanation of the prior application and presented and described Exhibits A-1, A-2, A-3 & A-4 and Resolution 3-8-00: 1. Paul Bogle said that they wanted to change their storage area to residential solely for their workers on the mall and that he does not have recollection on the deed restriction from the prior application. Joseph Bogle was asked about a meeting with the then Mayor and stated that they discussed the large tax burden on a parking lot they owned. Joseph Bogle said that they wanted to gift the lot to the city and that he does not recall the second story storage restriction being due to parking.

Board Engineer Craig Hurless said he was at the prior meeting and presented Exhibits H-1 and H-2 which are engineer review memoranda dated March 8, 1999 and October 2, 1999 respectively. Mr. Hurless described the initial application with one parking scenario and the revised application with another scenario. Mr. Hurless stated that the Zoning Board of Adjustment heard the application because of the use variance proposed.

Architect Pamela Fine described the project and explained the application requiring a hardship variance and that there is no substantial detriment to the public good and no substantial impairment to the intent of the purposes of the zoning plan and the zoning ordinances. Architect Fine said the application promotes people to live and work in the same area—a new way of thinking about biking/walking to jobs. Architect Fine stated that the application proposes turning one half of the storage space for an apartment and the remaining half of the space to continue to be used for storage.

Dr. Wolf commented that the Master Plan did include workforce housing, but that there hasn’t been a comprehensive discussion about it. Dr. Wolf expressed concern when the Master Plan is quoted as the Master Plan is a work in progress.

There was discussion about limiting the apartment to the employees of the applicants only versus other individuals. Joseph Bogle explained the J-1 Visa program, that requires employers to guarantee housing which is becoming increasingly difficult to provide.

Mayor Lear asked about closet space and how many people would be in each room. Architect Fine replied that they will be four people in each bedroom with a total of twelve people housed in the proposed space. Board Member Jerome Inderwies explained about egress windows and stairs and said the Construction/Zoning Office would review plans to ensure compliance.
Board Engineer Craig Hurless then reviewed his memorandum dated 8/5/19 in detail and referred to the Master Plan for workforce housing and the requirement of a parking variance. Engineer Hurless listed his review of the proposed storage space to be 823 square feet and the new residence to be 1,432 square feet for a total of 2,255 square feet and stated that there was worry in the past that the second floor space would be converted to retail which would require 11 parking spaces.

Deputy Mayor Hendricks inquired about any changes to the windows and Architect Fine said there would be no change to the windows and no exterior changes are to be done.

**Discussion was opened to the public within 200 feet and beyond at 9:03 PM with no public coming forward to comment.**

Board Solicitor King explained the voting decisions to be considered by the Planning Board regarding this application.

**Motion made by Dr. Wolf to declare that the prior restriction was for a public purpose** seconded by Mr. Jones and **carried 6-0**. Those in favor: Mr. Elwell, Deputy Mayor Hendricks, Mr. Inderwies, Mr. Jones, Mayor Lear, Dr. Wolf. Those opposed: None. Those abstaining: None.

**Motion made by Mr. Jones to justify removal of the deed restriction** seconded by Mayor Lear and **carried 5-1**. Those in favor: Mr. Elwell, Mr. Inderwies, Mr. Jones, Mayor Lear, Dr. Wolf. Those opposed: Deputy Mayor Hendricks. Those abstaining: None.

**Motion made by Mr. Jones to grant the Site Plan Waiver, the variance for parking, with the condition that the applicant file an action in the Superior Court, that a deed restriction that only the employees of the owner are placed in the housing, and that the Planning Board retains jurisdiction to hear any future changes proposed regarding the employee housing and subject to all conditions of approval discussed at the hearing and outlined in the review memorandum from Board Engineer Craig Hurless, PE, PP, CME, dated August 5, 2019** seconded by Dr. Wolf and **carried 6-0**. Those in favor: Mr. Elwell, Deputy Mayor Hendricks, Mr. Inderwies, Mr. Jones, Mayor Lear, Dr. Wolf. Those opposed: None. Those abstaining: None.

Board members expressed the reasons for their votes.

**Discussion:**

**Historic Preservation Commission**

Mr. Warren Coupland, Chair of the Historic Preservation Commission was present to deliver maps to the Planning Board. These maps include a map that shows the current Historic District, a map that shows a proposed Historic District and a third map, prepared by Board Engineer Craig Hurless, that also shows a proposed Historic District. Also included was a list of the proposed properties that would be added in the proposed Historic District. Mr. Hurless also distributed a larger version of the proposed Historic District map.

Dr. Wolf summarized the discussion on adoption of historic surveys and the Planning Board’s desire for the surveys to be considered yearly as opposed to batching many years for consideration from the last meeting for Board Solicitor Rich King. Mr. King asked if the surveys are of
properties already in the district and when told yes, he said that no notice would be needed to the property owners prior to them being referred to City Council for incorporation into the Ordinance.

Deputy Mayor Hendricks asked if any surveys resulted in property ratings changing from being rated as Contributing that were formerly rated as Non-Contributing, and Mr. Coupland replied that there either was no change or it was the first time a property had been surveyed. The members exchanged dialogue about the properties being surveyed for the first time.

There was dialogue between Deputy Mayor Hendricks and Mr. Coupland regarding properties, in the Historic District, that had not been previously surveyed. Mr. Coupland stated that the surveys are mostly for the use by the Historic Preservation Commission, and that property owners have the option to go the Historic Preservation Commission to challenge the rating designated to their property.

**Discussion was opened to the public at 9:26 PM with no public coming forward to comment.**

**Motion made by Mr. Jones that the Historic Preservation Surveys are consistent with the Master Plan and are to be sent to City Council** seconded by Dr. Wolf and **carried 6-0.** Those in favor: Mr. Elwell, Deputy Mayor Hendricks, Mr. Inderwies, Mr. Jones, Mayor Lear, Dr. Wolf. Those opposed: None. Those abstaining: None.

**Other Discussion**

The Board decided that they would review the maps and list with a plan to cancel the next Work Session scheduled for October 22, 2019 and to place discussion of the Historic Preservation District maps and list onto the agenda for the Work Session scheduled for November 26, 2019.

**Motion made to adjourn by Dr. Wolf at 9:31 PM with all in favor.**

Respectfully Submitted by: Karen Keenan, Board Secretary