City of Cape May Planning Board Meeting Minutes
Special Meeting
Wednesday - June 22, 2010

Opening: The meeting of the City of Cape May Planning Board was called to order by Vice Chairman Shuler, at 7:10 PM. In compliance with the Open Public Meetings Act, adequate notice was provided.

Roll Call:

Mr. Bezaire,	Chairperson	Absent
Mr. Shuler,	Vice Chairperson	Present
Mayor Dr. Mahaney		Present
Mr. Elwell		Present
Mrs. Nelson		Absent
Mr. Jones		Present
Ms. Weeks		Present
Mrs. Steenrod		Present
Mr. Winkworth		Absent
Dr. France, 1st Alternate		Present
Mr. Briant, 2nd Alternate		Present

Also Present: George Neidig, Esquire – Board Solicitor
Craig Hurless, PE, PP, CME Associate - Polistina & Associates
Edie Kopsitz, Recording Secretary
Mary L. Rothwell, Board Assistant/Zoning Officer

Applications: CONTINUATION

Cape Jetty LLC, Preliminary Site Plan/Minor Subdivison/Variances
Beach/Second/Third Avenues
12 Second Avenue, Block 1012 Lot 9
6 Second Avenue, Block 1012 Lots 10,11 & 12
11 Third Avenue, Block 1012 Lots 15 & 16

Craig Hurless, Board Engineer was sworn in and clarified his credentials for the record.

Mr. Neidig announced the procedures that will be followed for the Cape Jetty LLC application. Louis Dwyer, Esquire was present for the applicant Cape Jetty LLC, Emmanuel DeMutis, owner along with professionals Vincent Orlando - Engineering Design Associates, Louis Connelly, Engineer of Van Note Harvey Associates, Stephen Fenwick – project Architect of Fenwick Architects were sworn in by Mr. Neidig. Mr. Dwyer stated he was not presenting any further testimony or rebuttal testimony but wanted to move forward to closing arguments.

Mr. Neidig announced the procedures that will be followed for the closing arguments.

Jeffrey April, Esquire partner in the Firm April & Maudsley was present due to Mary Maudsley absence gave a summation that was dictated by her for Mr. April to read for the record. Their firm represents Ted and Deborah Hooven residents who oppose the application. The summation requested the Board to deny the application by stating the current Cape Jetty application replicates the prior applications by undermining the zoning plan and stated this subdivision is to create a revised version of non conforming non buildable lot (land locked) with the applicants knowledge when purchased. Other reasons stated were; Environmental Issues (all asbestos containing materials), lack of a detailed Environmental Impact Statement, lack of professional knowledge of all phases of demolition emphasizing the hazards and the residents that it will impinge on, erosion in a hazard zone, preservation of wildlife concerns, pedestrian and traffic safety, dune encroachment pertaining to the proposed hotel (closeness to ridge), shared driveway easements, trash removal, product delivery (congestion issues), questioned the employee count given by the applicant addressing the omission of numerous cleaning staff, the negative impact the mega structure and what a narrow single family home will have on the neighborhood. Concluding that this application will have severe negative impact on the neighbors and their way of life in the City.

Edward Johnston, Esquire representing the Cove Restaurant closing arguments reiterated what he stated on June 16, 2010 and felt the application was in very poor planning. He felt the proposed hotel would directly impact his business due to the fact that 35 windows (9 balconies) clarifying the units as #106, #107, #208, #209, #210, #308, #309 & #310 would be looking over his parking lot and restaurant. Mr. Johnston stated the City would be loosing 25 beach parking spaces. He shared his disappointment of why a new traffic impact study was not conducted for this new plan and felt the streetscape will have a negative impact on the City.

Mr. Dwyer reiterated that closing arguments are to be creditable proofs not contrived exaggerated proofs. He stated it was obvious the neighbors don't want a Hotel on the site and clarified that it is a zoned permitted hotel use site. His clients have reconfigured the hotel to meet all bulk requirements of the zoning ordinance. The hotel is designed to fit the area as a first class hotel in a Coastal resort and meets all height improving the neighborhood by creating a better situation. He stated the Master Plan encourages 1st class hotels that provide the same 1st class accommodations. He stated the application has vastly improved from three (3) years ago, that it does not violate the requirements for height, setbacks, lot coverage, omitted back out parking and created additional metered parking. The application does not require use variances and was presented in Land Use parlances as a clean application. He clarified the credentials of the Stephen Fenwick of Fenwick Architects commending the Area Architect. He clarified the easement stating it was the only variance required, reiterated the Fire Official written statement that the access is acceptable and will meet all governmental standards. He clarified the Commercial Zone regarding product deliveries and reiterated the trash containment will be inside the building. He stated he addressed all the statutory proofs required and clarified the Environmental Report regarding the removable asbestos indicating no friable

removable material. Mr. Dwyer stated the applicant will need CAFRA approval that satisfies the State of New Jersey Department of Environmental Protection (NJDEP) and it will produce an extensive report that will be submitted for final approval. Mr. Dwyer stated the Single Family structure would be owned separately and with a strenuous easement.

Members were afforded time questions and a member questioned the previous EIS report and wanted to know why it was not presented with the current application for the residential lot. Mr. Dwyer responded it was a CAFRA jurisdictional issue. Several members had concerns regarding maneuverability of the commercial vehicles on the site that was discussed at length with Mr. Dwyer responding addressing the members concern. One member requested another example of a flag lot involving a commercial building and Mr. Dwyer responding identifying the commercial property as (The Avondale). Mr. Hurless gave another example of a site as similar to this application regarding the shopping center on Texas Avenue also having an easement over a commercial property. Members questioned the status of the CAFRA application with Mr. Dwyer responding that the application will move forward pending the approval.

George Neidig summarized the history of the application including the litigation aspects in detail. He reiterated that the asbestos issue is the jurisdiction of the State of New Jersey along with the local Construction Official and must not be included with the member's decision. He then explained the procedures on voting to the membership in detail.

Motion made by Mr. Jones for approval of the proposed Subdivision. Seconded by Mr. Elwell **and carried 8-0.** Those in favor: Mr. Elwell, Ms. Weeks, Mrs. Steenrod, Dr. Mahaney, Mr. Jones, Dr. France, Mr. Briant and Mr. Shuler. Those opposed: None. Those abstaining: None.

Mayor Dr. Mahaney and Mr. Shuler stated their reasons for their affirmation.

Motion made by Mr. Briant to grant preliminary site plan approval. Seconded by Dr. Mahaney **and carried 8-0.** Those in favor: Mr. Elwell, Ms. Weeks, Mrs. Steenrod, Dr. Mahaney, Mr. Jones, Dr. France, Mr. Briant and Mr. Shuler. Those opposed: None. Those abstaining: None.

Motion made by Mr. Jones to grant variance for a lot not abutting a public street from Section 40:55D-35 and 40:55D-36 of the Municipal Land Use Law. Seconded by Mr. Briant **and carried 5-3.** Those in favor: Mr. Elwell, Ms. Weeks, Mrs. Steenrod, Dr. Mahaney, Mr. Briant and Mr. Shuler. Those opposed: Ms. Weeks, Dr. France and Mr. Jones. Those abstaining: None.

Members voiced their reason for voting in the negative and positive.

Motion made by Mr. Jones to grant that the completeness waiver of the Environmental Impact Statement prior to approval be waived pending the CAFRA report. Seconded by Mr. Briant **and carried 6-2.** Those in favor: Mrs. Steenrod, Dr.

Mahaney, Mr. Jones, Dr. France, Mr. Briant and Mr. Shuler. Those opposed: Ms. Weeks and Mr. Elwell. Those abstaining: None.

Members voiced their reason for voting in the negative and positive.

Motion made by Mr. Jones to grant a waiver of a Traffic Impact Report. Seconded by Mr. Briant **and carried 6-2.** Those in favor: Mr. Elwell, Dr. Mahaney, Mr. Jones, Dr. France, Mr. Briant and Mr. Shuler. Those opposed: Ms. Weeks and Mrs. Steenrod. Those abstaining: None.

Members voiced their reason for voting in the negative and positive.

Motion made by Mr. Elwell granting the site plan waiver per Mr. Hurless report dated June 9, 2010 page 4 §445-18 Map Details and "L"- for the location of existing or proposed street, roads, easements, public right of way, streams, bridges, culverts, drainage ditches and natural watercourses in and within five hundred (500) feet of the subdivision and "S" – Digital Format with AutoCAD on CD –ROM. Seconded by Mr. Briant **and carried 8-0.** Those in favor: Mr. Elwell, Ms. Weeks, Mrs. Steenrod, Dr. Mahaney, Mr. Jones, Dr. France, Mr. Briant and Mr. Shuler. Those opposed: None. Those abstaining: None.

Members voiced their reason for voting in the positive.

Motion made by Mrs. Steenrod for the approval of the conditions as discussed: Mr. Hurless memorandum dated June 9, 2010; page3 through 11, CD ROM, submission of CAFRA Documents, 525-59I(3), pages 8 through 11 #3, #4, #6, #7 §525-59I(3), #8, #9, #10, #14, #15, #16, #18 subject to approval NJDEP, #19, #20 last paragraph, #21, #22, #23, #24, #25; Members additional inclusions: Prior to final approval applicant will explore Green property geo-thermal rain water system, Pine trees located on access easement to the residential lot shall maintain/trim/remove or replaced, review and comply with the Backyard Habitat for Birds referred in §525-59i(3)2 and approval the applicant will submit prior to final approval to the Board Engineer a design depicting access to the easement for traffic (stripping for fire lane, loading area and signage) for both the residential lot and the commercial property Seconded by Jones **and carried 8-0.** Those in favor: Mr. Elwell, Ms. Weeks, Mrs. Steenrod, Dr. Mahaney, Mr. Jones, Dr. France, Mr. Briant and Mr. Shuler. Those opposed: None. Those abstaining: None.

Adjournment: Motion made by Mrs. Steenrod, Seconded by Mr. Jones to adjourn at 8:45 PM with all in favor.

Respectfully submitted: Edie Kopsitz, Recording Secretary

Adoption date: 8/10/2010