

**City of Cape May Planning Board Meeting Minutes
Tuesday – September 14, 2010**

Opening: The meeting of the City of Cape May Planning Board was called to order by Vice Chairman Shuler, at 7:00 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
	Mr. Murray		Present
	Mr. Winkworth		Present
	Dr. France, 1 st Alternate		Present
	Mr. Briant, 2 nd Alternate		Present

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

Minutes: July 13, 2010

Motion made by Mr. Murray to approve the July 13, 2010 minutes. Seconded by Ms. Weeks and **carried 8-0.** Those in favor: Mr. Elwell, Dr. Mahaney, Ms. Weeks, Mr. Murray, Mr. Winkworth, Dr. France, Mr. Briant and Mr. Shuler. Those opposed: None. Those abstaining: Mr. Jones.

Application:

**Adis Inc./LaMer Beachfront, 1317 Beachfront Inn, Block 1146 Lot 6,7,10-24
Preliminary & Final Site Plan/Variiances**

Mayor Dr. Mahaney recused himself from the application.

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

Richard Hluchan, Esquire of Ballard Spahr Andrew and Ingersoll, LLP Attorney for the applicant, introduced owner/principal Gus Andy, Vincent Orlando, Engineer P.E. of Engineering Design Associates (EDA), Brian Stankus, Orth Rodgers and Associates and

were sworn in by Mr. Neidig. Mr. Hluchan conducted his presentation by stating they were present to seek preliminary and final site plan approval. He indicated the final phase would be to replace the existing restaurant, which is one (1) story with a new facility (restaurant) with an additional two floor above the structure that will consist of seventeen (17) new hotel units. He stated that in March of 2010 the applicant received approval for demolition of the laundry wing and to add a new laundry facility along with motel units. Mr. Hluchan stated this is the final phase for redevelopment of the facility.

Mr. Neidig referred to a telephone conversation prior to the hearing between Craig Hurlless, Mr. Hluchan and himself. He explained res judicata clarifying that Mr. Hurlless felt the application being presented resembled (no substantial difference) a previous application submitted by the applicant that was denied by resolution 10-22-2009:2. Mr. Neidig brought to the members attention and cited a law division case Cicchine v. Twp. Of Woodbridge, located at 413 New Jersey Super.393 (approved for publication on May 21, 2010), that states when an appeal is taken from a decision from the board, the board loses jurisdiction to hear a second application by that applicant. Mr. Hluchan strongly protested this, stating the case was a decision of a law division Judge in Middlesex County and it not binding outside of Middlesex and has no relevance to this application before the Board. He further elaborated on the Cicchine vs. Township of Woodbridge in detail. Sanford Schmidt attorney for the neighbors opposing the application is not familiar with the Cicchine case but begs to differ on Mr. Hluchan legal argument.

Mr. Hurlless referred to his report dated August 23, 2010 of the applicants proposal of 158 hotel units and raised his concern of other units adding on additional bedrooms to existing units bringing the total of sleeping rooms at 162. He addressed the parking demand of the sleeping rooms and is requesting clarification in detail of the applicant. Mr. Hurlless's concern is whether these sleeping rooms are the same as when the application was denied in 2009. He referred to the variances, setbacks and building height that is consistent with the 2009 application that was denied. Mr. Hurlless is requesting the Board review and determines whether res judicata applies to this application.

Mr. Neidig and Mr. Hluchan stated their differences on the impact of the Cicchine case and debated the issue. Mr. Neidig elucidated his belief that the same theory applies to this application as res judicata, that the Board must raise it this evening or lose the right should this application go to appeal. He clarified it is the Board's decision to make the determination.

Members questioned the law division case in depth and both Attorney's (Mr. Neidig and Mr. Hluchan) stated their reasons. Mr. Hluchan does not agree that the application of 2009 that was denied is the same application before the Board this evening. Members debated the issues at length of the pending case in Superior Court.

Motion made by Ms. Weeks to take into consideration the Planning Board Solicitor's ruling of Cicchine vs. Township of Woodbridge case, that the Planning Board of Cape May City lacks jurisdiction due to the pending case with substantial factors pending in the Superior Court. Seconded by Mr. Jones and carried 7-1. Those

in favor: Mr. Elwell, Ms. Weeks, Mr. Winkworth, Mr. Jones, Dr. France, Mr. Briant and Mr. Shuler. Those opposed: Mr. Murray. Those abstaining: Mr. Jones.

Adjournment: Motion made by Mr. Winkworth, Seconded by Mr. Jones to adjourn at 7:45 PM with all in favor.

Respectfully submitted: Edie Kopsitz, Recording Secretary

Adoption date: 10/26/2010
