

**BOROUGH OF WEST CAPE MAY  
PLANNING-ZONING BOARD  
REGULAR MEETING – FEBRUARY 27, 2018**

The Regular Meeting of the Borough of West Cape May Planning-Zoning Board, held at the WCM Fire Hall Building, 732 Broadway, was called to order by Chairman Belasco at 7:00 PM. After reading the Open Public Meetings Act of 1975 he led all present in the flag salute.

**ROLL CALL:**

Members:

TJ Belasco	present	Kevin O’Neill	absent
Peter Burke	present	Lisa Roselli	present
Bob Hewitt	present	Carol Sabo	present
Doris Jacobsen	present	Alternates:	
Art Joblin	present	Lindsay Casale	present
Paul Mulligan	present	Barbara Lamb	absent

Also Present: Brock Russell, Esq., Board Solicitor  
Raymond Roberts, Board Engineer  
Theresa Enteadó, Board Secretary

**APPLICATIONS:**

**Application 002-180, Mark Lukas & Edward Celata, 119 Myrtle & 123 Broadway, Block 4, Lots 4, 20.01, Continued Application – Preliminary and Final Major Site Plan and Variance Relief-Preexisting Conditions**

Chairman Belasco decided to start with the application and asked Board Engineer Roberts to briefly explain the County Planning Board Letter dated February 21, 2018. Mr. Roberts explained that the letter goes into three items that need further clarification and/or action. The wording that it is disapproved doesn’t mean that the application has been denied, it means it is disapproved as submitted and the applicant must address the issues and re-submit.

Board Member Joblin asked Mr. Roberts if he was advising the Board that the County decision in no way impacts their ability to hear the application and make a decision tonight. Mr. Roberts replied that was correct. Mr. Joblin then asked if the county approval was based on a change to the application, would the applicants then have to return to the Board. Mr. Roberts said according to the items on the letter, he did not believe that would be necessary. Mr. Russell added that if the County said we will approve if you give up the front parking spot then the applicant would have to revise their plans and return to the Board. Mr. Joblin asked if the resolution, if approved, could state that it is subject to additional approvals, and if those additional approvals were not obtained would the Board’s approval then be void. Solicitor Russell advised that is correct and then added that would be up to the Zoning Officer to enforce. There was brief discussion and clarification about Myrtle being a county road. Mr. Russell also pointed out that if the County Board does not approve the use of Myrtle Avenue for deliveries

then the applicant would have to return to the WCM Planning Board.

Dorothy Bolinsky, applicant's attorney, asked that the team be introduced again for the record. Mark Lukas applicant and owner, Pamela Fine of Fine Architecture, and Vincent Orlando with EDA, licensed planner were all sworn in by Solicitor Russell.

Mr. Orlando said they applied to the County Board prior to the result of this hearing because of all the concerns raised by residents. He said the letter from the county indicates no issue with respect to access onto Broadway but they are doing a re-paving of the road and asked that they co-ordinate efforts with Mr. Dale Foster. Mr. Orlando testified that he has already requested that they be able to do their improvements when the county is ready to start their work and he does not see it being a problem. He said regarding Myrtle the county has a strict policy that any back-out parking should try to be eliminated but they do consider preexisting nonconforming conditions. Mr. Orlando testified that they would be requesting a waiver and that he would be going to the hearing before the County Board and presenting his case. Mr. Orlando said he was very confident that he would be able to address the items in the letter and gain county approval as it has been presented before this Board. He also testified that he recognizes that if the county does not approve the use of Myrtle that he would have to revise the site plan and return to the WCM Planning Board.

Dorothy Bolinsky said this is a beautiful application from two homeowners, not developers, who purchased a home that was in bad condition and spent time and resources to restore it historically. She spoke of their passion and wish to create something in the best way possible. Ms. Bolinsky acknowledged the many concerns of the residents and said they have tried to address as many of those concerns as possible and that they have substantially changed the application this time. She said it is much smaller, the building has been reduced by 20 feet, and they changed the entrance, reduced the restaurant size, increased the buffering on all of the neighboring lots, changed the roof drainage, changed the fence lines, and changed the parking layout. Ms. Bolinsky said the project is in the C-1 zone and is a conforming use, and it complies with the parking requirements of the Borough. She said the variance for parking, which is not significant, is needed because of the efforts they made to take resident complaints into consideration and create parallel parking. Ms. Bolinsky cited Cox that states "the landowner has the right to develop his property provided he can meet with reasonable requirements imposed by the government, he cannot be denied use of his property simply because neighboring landowners don't want change to occur, and of course no landowner can be forced to maintain a park-like setting for his neighborhood". Ms. Bolinsky said although the area is mixed and there are residential properties in the area, the project proposed is a permitted use. Ms. Bolinsky read the purpose of the C-1 zone: to create a thriving commercial district, encourage low impact commercial development, and promote diversity and services and accommodations, encourage year round commercial uses that serve the needs of the community and the re-use of valuable historic buildings to expand that commercial use. Ms. Bolinsky said she feels this project meets those purposes. She asked the Board to consider all the efforts made to accommodate the neighbors, to meet the purposes of the C-1 district, and to comply with Borough code.

Board Member Hewitt thanked the applicant for their efforts to come into compliance. He wanted to know, and directed his questions to the board engineer, what would happen if while in

the process of construction the applicants could not afford to finish. Mr. Roberts advised that a performance bond is posted for off-site costs and an escrow payment is made for on-site costs.

Board Member Joblin asked Mr. Roberts to recite the variances needed for this project. Mr. Roberts said the only variance that is required is the one for the drive aisle for the parallel parking. Mr. Joblin asked if Mr. Roberts finds the drainage plan to be sufficient to prevent water runoff onto neighboring homes. Mr. Roberts said it is actually more than necessary to meet requirements. Mr. Joblin asked if Mr. Roberts felt the parking configurations were adequate and Mr. Roberts said they were adequate. Mr. Joblin asked if the lots were going to be consolidated and wanted to hear the benefits of that condition. Mr. Russell said a deed of consolidation would be a condition of approval and it would mean that in the future the lot that is to be the parking lot only, could not be sold separate from the other lot, leaving the hotel and restaurant with no parking.

Board Member Burke wanted to advise the applicant of the time frame for the County project on Broadway as a courtesy.

Board Member Jacobsen asked about the historic barn that must be relocated. Mr. Lukas said he has two people interested and is waiting on a final decision. Mr. Lukas said he is aware that the HPC approval is contingent on relocating the barn first.

Solicitor Russell advised the Board this is a permitted use and a motion would be to grant minor site plan approval and variance for the parking stall which is de Minimis in nature with the various conditions that have been placed on the record.

On motion of Paul Mulligan, seconded by Art Joblin, the aforementioned application was approved on roll call vote as follows: all members present voting in the affirmative.

## **NEW BUSINESS:**

### **Microbreweries**

Mayor Sabo informed the Board that the Borough Zoning Officer was approached with an interest in creating a microbrewery in WCM.

Solicitor Russell said if a use is not a specified permitted use in a zone then it is not a permitted use. He said someone can make an application for an interpretation but they would end up needing a use variance. Mr. Russell said if you do not have a permitted use then you don't have standards specific to that use and it becomes difficult to make a decision. After some discussion of other breweries and distilleries, farm use, and NJ liquor license law, the Board agreed that the Commissioners should review ordinances from neighboring municipalities and consider allowing it as a restricted use in one of the commercial zones. Mr. Roberts reminded the Board that they need to consider it consistent with the Master Plan.

## **PRIVILEGE OF THE FLOOR:**

Mr. Mulligan wanted to share the construction official's checklist with the Board, noting that there are some newer members on the Board who may find it useful.

Mr. Mulligan asked for an update on the Dera project. He was informed that the applicant lost the appeal, that the court upheld the Board's denial. Mr. Mulligan said there is a for sale sign on the property and the Board held a brief discussion about condo ownership and the intent of approvals.

Mr. Joblin asked for an update on the Bayshore property. Mr. Roberts advised that there was supposed to be no certificate of occupancy issued until all the work was complete. Zoning Official, Mr. Roach, said the State has issued violations and stopped work on the entire property. He said the applicant clear cut trees that he was not permitted to do and dumped fill which was also not permitted. According to Mr. Roach the applicant cannot continue with any work until the issues with the State have been resolved. There was discussion about Construction enforcement versus Zoning enforcement and the legality of rescinding a resolution. Mr. Roberts said he would review the resolution and see if it was a condition to have utilities and storm drainage system installed prior to any construction. Mr. Roach added that he and Mr. Roberts attempted several times to set up a time to complete an inspection of the property and they received no response. Mr. Russell advised that if the applicant is not cooperating it would be appropriate to issue a summons. Ms. Sabo said she would reach out to the DEP to see what sort of timeline has been allowed for the applicant to resolve the violations. The Board requested that Mr. Roach get an answer from the Construction Office as to how a CO was issued on this property to be presented at the next meeting. The Board discussed DEP approvals and the language on the resolutions that reads subject to all additional approvals.

When no one else wished to speak, the meeting was adjourned at 8:38 PM on motion of Paul Mulligan, and carried by unanimous voice vote.

Respectfully submitted,

Theresa Enteadó  
Board Secretary