

MAJOR SITE PLAN REVIEW MEMORANDUM

DATE: June 23, 2008

TO: ABSECON CITY PLANNING BOARD

FROM: ROBERT L. REID, AICP, P.P., Board Planner

SUBJECT: Status of Project
The Pinnacle Club at Absecon
BLOCK 161, LOT 1
Project No. ABS 0015.01

As directed, the following is the status of the project. This memo includes a brief background; brief summary of events since the applicant was advised of building under construction is inconsistent with prior approvals as described in review memo dated February 29, 2008; applicant's obligation prior to CO being issued; status of affordable units; and status progress meetings and completeness review.

Background

Absecon Seniors, LLC was granted Preliminary Site Plan approval with conditions on May 24, 2005. Final Site Plan approval was granted with conditions on November 22, 2005. The approval included the granting of several variances. Variance relief granted included building length, parking, front yard setback and building coverage. The Planning Board determined at the time of approval that the architectural features (such as balconies with large round columns, turrets, and steep roof pitch), presented to the Planning Board as part of the application would be adequate mitigation to allow for the longer building. Approval included the demolition of the former Marsh Elementary School and construct an age-restricted housing complex consisting of eight (8) townhouses in two separate buildings and seventy-seven (77) apartment units in one building along with ninety-four (94) parking spaces. The architectural plans included 58 private balconies / decks and common areas consisting of a covered drop-off area with entrance foyer, Large entrance lobby area with front desk, two (2) elevators, management offices, common ADA restroom, common space – multipurpose room (approximately 2,500 SF), outdoor patio with seating for forty-eight (48) people at twelve (12) tables, and large common roof deck area (approx. 1,800 SF) with seating for forty (40) people at ten (10) tables over the common multipurpose room area. In addition to the open space common amenities graphically depicted on the architectural plans submitted, the applicant provided testimony stating that gathering places with card rooms and exercise equipment was part of the typical common amenities that would be provided for the residents.

Current Construction Status

A total of forty (40) apartment units (or approx. 52% of the 77 apartment units) are under construction without any of the private balconies / decks originally proposed. At this time none of the amenities as graphically depicted in the approved architectural plans or described during testimony by the applicant are being proposed as part of the construction of project.

Summary of Events

The following is a timeline summary of events:

On February 29th I prepared a review memorandum outlining inconsistencies with the project under construction with the approved plans. A copy was sent to the applicant / developer.

On March 26th Terry Dolan sent a letter to Mr. Mark Bergman regarding the inconsistencies with the approved plans and the status of Certificates of Occupancy (CO) for units.

On April 18th, May 14th, May 30th, June 9th and June 16th I Issued memorandums summarizing meetings with the applicant. (Refer to prior memorandums' each of which are available online at www.abseconplanner.com).

On April 11th, May 9th, June 6th and June 13th we met with the applicant / developer to discuss the progress of the submission of the revised site plan.

Prior to May 7th the applicant sent out invitations to the public to visit their sales office in the building under construction to review furnished models on May 17th

On May 7th I informed the applicant / developer that the Construction Official could not issue COs or TCOs to allow the public in the building without conditions of the prior approvals being addressed and all construction code regulations being complied with.

On May 9th the Construction Official issued a letter warning the applicant / developer that occupying the building under construction would be violation of the New Jersey Uniform Construction Code.

On May 17th the applicant opened the building to the public and remains open on a regular basis.

On May 30th the Construction Official issued a **"Notice of Violation and Order to Terminate"** for occupying the building without a CO.

On May 30th the Construction Official issued a **"Notice of Violation and Order to Terminate"** for the **"Construction of a Building in Violation of the Conditions of the Prior Approval"** with a compliance deadline date of June 30, 2008.

Applicant / Developer wishes to secure COs for Individual Units

The applicant / developer wishes to obtain a "Certificate of Occupancy" (CO) to allow the sale of the individual units within the 40 unit portion of the building under construction. The Planning Board and the City desires to continue to work with the applicant / developer to provide information and assist them through the approval process and offer guidance to allow the applicant / developer to sell units.

Applicants / Developers Obligation before CO can be issued

New Jersey State Law requires the applicant / developer comply with the requirements of the New Jersey Municipal Land Use Law and the New Jersey Uniform Construction Code. We have an obligation to the public to see that the applicant / developer complies with State Law and is held accountable. Before the applicant / developer can obtain COs for each unit the applicant / developer is required to address the following:

- Satisfy all conditions of approval listed in the Decision and Resolution which memorializes Preliminary Approval dated 7/12/05 and the Decision and Resolution which memorializes Final Approval dated 12/13/05.
- Construct the entire 77 unit building in accordance with the plans approved by the Planning Board or obtain site plan approval from the Planning Board to permit the phasing of the building.
- Obtain "Certificate of Approval" (CA) for the common elements of the building. This will include addressing all "Life Safety" requirements in accordance with the New Jersey Uniform Construction Code, such as the fire suppression system, fire ratings, ADA access, emergency lighting, etc.
- Obtain "Certification" from Cape-Atlantic Soil Conservation District office.
- In accordance with the policy of the Planning Board, the Planning Board planner will review construction plans submitted to the Construction Official for a Construction permit. The purpose of this is to review for consistency with the plans approved by the Planning Board.
- Provide for affordable units.

Status of Affordable Units

The applicant / developer has the obligation to provide for affordable units in accordance with Section 224-243 B I of Article XXXI, Senior Citizen Housing Community District which requires the inclusion of 5% low-income and 5% moderate-income housing. This includes the responsibility to retain an administrator for the selection of qualified residents for the affordable units.

The applicant / developer desires that the City provide an administrator for the selection of qualified residents for the affordable units. The municipality is not obligated to provide an administrator for the applicant / developer. The municipality is not obligated to provide affordable housing units or construct affordable housing units. The municipality has the obligation to provide a realistic opportunity in their land development ordinance. The municipality may offer assistance to the applicant / developer in the administration of the selection process of qualified residents. The municipality may also require the applicant / developer to reimburse the municipality for the administrative services provided.

It is understood that the applicant / developer is considering only providing one affordable unit in the portion of the building under construction with the remaining units to be included in the remaining portion of the 77 unit building at a later date. Ten percent of the projects 85 units are required to be affordable. The affordable units should be evenly distributed throughout the 77 unit building. Should the Planning Board approve a phasing plan as part of the revised site plan to permit only 40 units to be constructed in phase 1, a minimum of 4 affordable units should be included in phase 1.

Progress Meetings and Completeness Review

Since the applicants notice of inconsistency in early March, I met with applicant on numerous occasions. The purpose of the meetings were to review draft work in progress plans and to continue to provide information and guidance to assist the applicant with the re-submission of revised site plan and architectural plans to legalize architectural changes and site improvement changes made without approval from the Planning Board. More specifically we met on April 11th, May 9th, June 6th and June 13th to discuss the progress of the submission of the revised site plan. In each meeting we discussed the amenities and development phasing. In each meeting the applicant was asked to address each outstanding items in writing as part of the re-submission. At several meetings the applicant stated they would be submitting for completeness with adequate time for review for consideration for completeness at the June 24th Planning Board meeting. The applicant's professional was advised that we needed three (3) copies of the application packages be submitted by Thursday, June 19th to be reviewed for completeness. Submission was not made on June 19th. Andrew Previti and I had intended to review the submission for completeness with the submission being made only five days before the June 24th Planning Board meeting. The applicant's planner informed me today, June 23rd that the submission will be made later this week.

Both violation notices issued on May 30th informed the applicant that a \$2,000.00 per week fee could be imposed if they do not comply. To date the Construction Official has not exercised his authority to imposed fines or stopped construction at the site. It is my understanding that neither the Planning Board or the City Council desires to have the Construction Official rescind the Construction Permit and impose fines as permitted by the New Jersey Uniform Construction Code. Absecon would prefer that the applicant / developer construct the entire 77 unit building with the amenities in accordance with the approved plans or re- submit a revised site plan as discussed in numerous meetings with the applicant / developer.

Once the application package is received we will review it immediately for completeness and provide a review memorandum prior to the next scheduled Planning Board meeting. This is provided it is received with adequate time for review prior to the meeting. The Municipal Land Use Law allows a municipality to take 45 days to review an application for completeness. Historically we have not taken 45 days.

Please refer to my prior review memorandums for details of inconsistency and my recommendations.

My review memorandum of February 29, 2008 remains unchanged with the exception of added comments in subsequent review memorandums. It is understood that the recommendations stated herein and in all memorandums are subject to the Planning Board's review and the other board professionals review.

Additional recommendations and / or modifications to the above recommendations may be offered as we work through each issue with the applicant / developer.

CC: Andrew Previti, P.E., Board Engineer
Michael Fitzgerald, Esq., Board Attorney
Alexander J. Litwornia, P.E. Board Traffic Engineer
Mark Bergman, The Pinnacle Club at Absecon, Applicant
John Clark, The Pinnacle Club at Absecon, Applicant
Terry Combs, PP, Applicant's Planner
Terry Dolan, City Administrator
Michael J. Blee, Esq, City Attorney
Michael O' Hagan, Construction Official