RESOLUTION

City of Elizabeth Planning Board
In the Matter of Faros-Mas Elizabeth LLC
Application No. P-14-15
Application for Amended Preliminary and Final Site Plan Approval and Bulk Variance
Decided on January 5, 2017
Memorialized on February 2, 2017

WHEREAS, Faros-Mas Elizabeth, LLC (the "Designated Redeveloper") has made an application to the City of Elizabeth Planning Board for amended preliminary and final site plan approval and bulk variance relief for property that is commonly known Elizabeth Midtown Parcel "B", consisting of a total of twelve different properties; and

WHEREAS a public hearing was conducted on this application on January 5, 2017 at which the Board determined it has jurisdiction to hear this application from the Designated Redeveloper; and

WHEREAS, the applicant was represented by Stephen Hehl, Esq. of the Law Firm of Hehl and Hehl;

NOW THEREFORE, the Planning Board makes the following findings of fact, based upon evidence presented at the public hearing, at which a record was made. By way of background, at the September 1, 2016 hearing Mr. Hehl provided some introductory remarks on behalf of the applicant describing the series of amendments that have been made to the Midtown Redevelopment Plan that governs the zoning for this assemblage of parcels. This area is part of the City’s Elizabeth Midtown Redevelopment Area which had been modified in 2006, 2009 and in 2016. The properties are mostly vacant with only a restaurant and repair shop the only structures remaining.
The applicant is proposing a mixed use development for the site in accordance with the Midtown Redevelopment Plan. The projected development will consist of a new five story building which will include 258 residential units, a majority which will be a part of an extended stay residential hotel facility; this is an increase of 31 units compared to the prior preliminary site plan approval. The projected of breakdown of residential units is 63 studio units, 89 one-bedroom units and 106 two-bedroom units. Amenities will include a swimming pool, spa, club room, fitness center, a theater and a landscaped courtyard area for outdoor recreational purposes. The facility will also provide approximately 26,399 square feet of event and conference space.

The parking area consisting of approximately 227 parking spaces will also be provided. The designated developer anticipates the onsite parking be dedicated to the residential component of the project and the parking needs of the commercial users will be addressed by way of lease for at least 27 parking spaces with the City Parking Authority for space in the nearby Union Street parking garage. The lease must be entered into before any construction of this project is permitted to proceed.

At the time of the initial application The Board had the prior reports from Harbor Consultants dated February 25, 2016; a technical review letter dated August 24, 2016 and a detailed report dated August 30, 2016. Prior to this hearing, Harbor Consultants released another report, revised as of January 3, 2017. Mr. Anthony Gallerano of Harbor Consultants, City Planners was sworn in at the onset of the hearing. All these reports are incorporated into the record and incorporated into this Resolution as if set forth expressly herein. The Applicant has been advised and has agreed that all conditions and requirements set forth in these various reports from Harbor Consultants must be satisfied as per an express condition of approval for this proposed development.
The first and only witness on behalf of the Applicant was Mr. Raymond Beeler, a licensed professional architect who was sworn and qualified at the outset of his testimony. Mr. Beeler testified at the prior hearing on this application. Mr. Beeler proceeded to testify regarding the design of the building, referring to the various differences in the floor plans and the change in the mix of residential units since the initial hearing on this application. He also proceeded to describe the proposed courtyard area and parking. He stated that this was a pedestrian-friendly design. He then proceeded to testify regarding the revisions to the exterior and the type of exterior building materials that would be proposed for the building. The witness relied on Exhibits 2 through 7 to show the differences between the design that had been approved in September 2016, and the revised exterior design which incorporated suggestions from the Planning Board at that initial hearing. He said one of the challenges would be to design it in a way to activate the courtyard area in the non-summer months. He stated that one concept is to have the area accessible for various restaurants to use the space in all seasons.

Mr. Beeler testified that he reviewed the report from Harbor Consultants dated January 4, 2017 and testified the designated redeveloper would comply with all the conditions set forth in this report. To address the issue of adequate parking the applicant shall submit to this Board and to Harbor Consultants a valet parking plan to accommodate additional parking on site. This plan must be submitted to the Board and to Harbor Consultants prior to the applicant filing for a Certificate of Occupancy for the building. As to the issues of the building encroaching into a site triangle, which is governed by Ordinance Section 17.36.130, after extended discussion with Mr. Gallerano and the witness, the Board agreed to approve this as a bulk variance. A number of the streets are either one way or are signalized, thus minimizing the situation. The Board agreed
with the witness that the encroachment will not create a hazard or have a negative impact on surrounding roadways.

There were no members of the public who expressed questions concerning the proposed application.

**NOW, THEREFORE,** the Planning Board makes the following conclusions of law based upon the foregoing findings of fact. The Applicant/designated redeveloper is before the Board seeking amended preliminary and final site plan approval for the proposed redevelopment of what has been identified as Parcel B in the Elizabeth Midtown Redevelopment Area. The proposed development will be a mixed-use consisting of retail, non-residential type uses, as well as a residential component and an extended stay hotel type component. The application is governed by the Elizabeth Midtown Redevelopment guidelines. Applicant is seeking one bulk variance for site triangle encroachment.

The Municipal Land Use Law, at N.J.S.A. 40:55D-70(c) provides Boards with the power to grant variances from strict bulk and other non-use related issues when the applicant satisfies certain specific proofs which are enunciated in the Statute. Specifically, the applicant may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. An applicant may show that exceptional topographic conditions or physical features exist which uniquely affect a specific piece of property. Further, the applicant may also supply evidence that exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property or any structure lawfully existing thereon and that the strict application of any regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property. Additionally, under the (c)(2) criteria, the applicant has the option of showing that in a particular instance relating to a
specific piece of property, the purposes of the Act would be advanced by allowing a deviation from the Zoning Ordinance requirements and that the benefits of any deviation will substantially outweigh any detriment. In those instances, a variance may be granted to allow departure from regulations adopted pursuant to the Zoning Ordinance. Those categories specifically enumerated above constitute the affirmative proofs necessary in order to obtain "bulk" or (c) variance relief. Finally, an applicant for these variances must also show that the proposed relief sought will not have a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance. It is only in these instances when the applicant has satisfied both these tests, that a Board, acting pursuant to the Act and case law, can grant relief. The burden of proof is upon the applicant to establish that these criteria have been met.

Based upon the application's plans and reports submitted to the Planning Board and its professionals, and the record created before the Board at its January 5, 2017 hearing, the Board finds that the applicant has met the minimum requirements of the Elizabeth Midtown Redevelopment Plan, the Municipal Land Use Law and Case Law so as to enable the Board to grant the relief by way of amended preliminary and final site plan approval. This approval is conditioned upon the Designated Redeveloper satisfying all of the conditions set forth in all of the reports from Harbor Consultants. This includes but is not limited to certain streetscape and landscaping plans that are required to be submitted and reviewed by Harbor Consultants, which shall be delivered as a condition of this approval by the designated redeveloper to Harbor Consultants. The site triangle variance relief is minimal in nature. There is no evidence that there would be a significant impact on surrounding roadways. The designated redeveloper is not permitted to proceed in any way, shape or form with any type of construction activity upon the
property until it has secured all the other necessary permits and approvals necessary to proceed with the development of this project; this includes the lease for parking and the valet parking plan. The Board does find that based upon the record and the testimony placed before it, that it justifies the final approval sought by the designated redeveloper.

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Board of the City of Elizabeth that the application of Faros-Mas Elizabeth, LLC, as designated redeveloper is approved as follows: Amended Preliminary and Final Site Plan approval is granted for a period of two (2) years from the date of this Resolution pursuant to N.J.S.A. 40:55D-46 and 50; the bulk variance relief is granted pursuant to N.J.S.A. 40:55D-70(c).

**BE IT FURTHER RESOLVED** by the Planning Board of the City of Elizabeth the aforesaid approval is granted with the following conditions:

1. The applicant shall file with the Planning Board and Construction Official copies of all the necessary permits and agency approvals other than the municipal agencies having jurisdiction over this application, including but not limited to the following:

   (a) The Union County Planning Board,
   (b) Somerset-Union County Soil Conservation District;
   (c) Essex-Union Joint Meeting;
   (d) City of Elizabeth Fire Official;
   (e) City of Elizabeth Board of Health;
   (f) City of Elizabeth Department of Public Works;
   (g) City of Elizabeth Road Opening Permits;
   (h) Any and all permits required by the County of Union and/or the New Jersey Department of Environmental Protection;
(i) Any other permits required by any other local, state, regional or federal
governmental agency having any jurisdiction of the aforesaid project.

2. Certificate that taxes are paid to date of approval.

3. The applicant is not, as a condition of this approval, permitted to proceed with any type
of construction until it demonstrates to this Board and Harbor Consultants that it has secured all
other permits, approvals and the lease for parking from the City of Elizabeth Parking Authority
needed to proceed with construction of this project, and provides copies of same.

4. The applicant shall comply with all the conditions set forth in the February 25, 2016,
August 24, 2016, August 30, 2016 and January 3, 2017 reports from Harbor Consultants. All
conditions must be complied with before a building permit is issued and construction is started
on the project.

5. The applicant must post performance and maintenance guarantees and inspection fees as
per municipal ordinance and Municipal Land Use Law.

6. The development of this parcel and all structures thereupon shall meet the requirements
of the Americans with Disabilities Act, New Jersey Barrier Free Code, and their implementing
regulations.

7. As it pertains to the utility services to the Redevelopment Area, the applicant is required
to provide an update to the Board and to Harbor Consultants as to the availability of all utility
services for the contemplated development.

8. As it pertains to sewer services, it is the responsibility of the designated redeveloper to
secure approvals from the Essex-Union Joint Meeting and the NJDEP.
9. With regard to fire safety, as part of the review of this project, the designated redeveloper is required to submit fire flow capacity analysis which is subject to review and approval by the Elizabeth Fire Subcode Official and City Fire Department before the start of any construction.

10. The applicant shall see to the payment of all fees, costs and escrows due or to become due; any and all monies are to be paid within twenty (20) calendar days as said request by the Secretary of the Planning Board.

11. All terms and conditions of this approval are binding upon any successor or assignee of interest to the applicant. The applicant shall be required to provide a copy of this Resolution to any potential successor in interest or assign or as a subsequently designated redeveloper by the City.

12. This applicant and its professionals shall meet with Harbor Consultants and the City’s departments to make sure all permits have been secured, bonds posted and engineering’s estimate of costs submitted and approved, said meeting shall occur no less than two weeks prior to the start of construction.

13. The applicant shall submit a valet parking plan to the Board and to Harbor Consultants for review and approval prior to the issuance of any Certificate of Occupancy for the project.

14. This approval is subject to all other applicable rules, regulations or ordinances and statutes of the City of Elizabeth, County of Union, State of New Jersey or any other governmental agency in jurisdiction over the same.
The undersigned secretary certifies the within Resolution is adopted by this Board on January 5, 2017 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on February 2, 2016.

For 5
Against 0
Abstain 2

Thomas W. Urban, PB Secretary

Commissioners: Councilman Torres, Commissioners Gonzalez, Nuñez, Urban, Rivera, Vice-chairman Shallcross and Chairman Haas.