

## Memorandum

To: Sea Isle City Zoning Board of Adjustment

From: Andrew A. Previti, P.E.

Date: May 16, 2023  
***July 18, 2023 Update***

Subject: 9 42<sup>nd</sup> St. LLC - Variance Application & Request for Interpretation  
9 42<sup>nd</sup> Street  
Block 41.01, Lot 7.01  
C-4 Beach Business District  
City of Sea Isle City, Cape May County, New Jersey

Project No.: SIZ0232

---

### **I. Background**

The applicants have submitted an application which includes a request for an interpretation of the Zoning Ordinance, Hardship "C" Variance, a Use Variance if the Zoning Board determines that a use variance is necessary and a request for a waiver of Site Plan Approval.

The property in question is known as Block 41.01, Lot 7.01. Improvements which are adjacent to this property but are not on Lot 7.01 exists on Block 41.01, Parts of Lots 15 & 16 which are owned by the City. There is a proposal to improve the existing improvements within this area. The property is located at 42<sup>nd</sup> Street and the Promenade in the C-4 Beach Business District.

The parcel has forty six point six six (46.66) feet of frontage on 42<sup>nd</sup> Street and a lot depth of ninety two (92) feet. Therefore, the parcel has a lot area of four thousand two hundred ninety-four (4,294) square feet and is a non-conforming lot in the C-4 District which requires a lot area of five thousand (5,000) square feet.

The existing use on this property is a conforming use consisting of five (5) commercial units with parking beneath the building and a golf course on the roof area of the building. An access from the Promenade has been previously constructed within the Right of Way of the Promenade and occupies portions of Lots 15 & 16 as noted above.

The property is developed as a commercial building as noted above and sits at an elevated area above the Promenade and is accessed by steps and a ramp. The applicant is proposing to convert three (3) of the northern most commercial units to residential use and the two (2) remaining commercial units would continue as commercial uses. The existing mini-golf course which exists on the roof would remain. The application is requesting an interpretation from the Zoning Board as to whether the proposed use is a permitted use given the fact that the C-4 District, as do all the

commercial districts, requires that the permitted uses must occupy at least the first level and be on grade and also requires that residential units would be permitted above the commercial units.

To assist the Board in its determination as to whether what is being proposed meets the C-4 District requirements I will refer you to a project that was before the Sea Isle City Planning Board in 2008 and 2011, which was known as the DeCredico Living Trust and which is located also at 42<sup>nd</sup> Street and the Promenade on the south side of 42<sup>nd</sup> Street across from the subject property. One of the issues of the DeCredico application was the issue of where is "grade". The Planning Board determined that the Promenade is "grade". Finding of Fact No. 10 from Planning Board Resolution No. 2008-06-03 reads as:

**10. The Board finds that the Promenade is "grade". It notes that the Promenade has been considered "grade" for many years by the Board and the Zoning Official. It finds that the project complies with the requirement that the commercial use be at grade.**

The DeCredico project has been built and exists today at the location across from the property in question. The comment in Finding of Fact 10 that the Promenade has been considered "grade" for many years is an accurate one. I have been working for the City for fifty (50) years and all of the Zoning Officials and Construction Officials in the past have considered the Promenade to be at "grade". I have attached a copy of Planning Board Resolution 2008-06-03 to this report and I will include a recommendation relative to the interpretation issue as part of Section IV. Recommendations.

As an additional matter the City adopted Ordinance No. 703 (1981) which provided for the private sale of easements to certain public property including the property in question. I have included a copy of Ordinance No. 703 (1981) for the Board's use. The applicant should advise if they have a Deed of Easement for the portion of lots 15 & 16 which are occupied by the ramp, stairs and landing area adjacent to lot 7.01 and which are not part of that lot.

The application has been accompanied by the following plans which have been submitted for review:

<u>Drwg.</u>	<u>Title</u>	<u>Prepared By</u>	<u>Date</u>	<u>Revision</u>
G0.00	Cover Sheet	William C. McLees, AIA	3/29/2023	6/22/2023
A1.00	Floor Plans	William C. McLees, AIA	3/29/2023	6/22/2023
A2.00	Elevations	William C. McLees, AIA	3/29/2023	6/22/2023

- **Deed of Easement – Deed Book 1489 Page 540**
- **Letter to Genell Ferrilli, Board Secretary from Lyndsy M. Newcomb, dated June 27, 2023**

The applicants are asking for an interpretation by the Board as to whether what is being proposed is a permitted use. The applicant contends that the first level on grade is the parking beneath the building and is calling this a parking lot. The applicant contends that the proposed residential use

which is raised above the Promenade occupies a second level and would be consistent with the requirements for mixed use in the C-4 District.

The City's policy has always been that the Promenade is considered "grade" and therefore the requirements of the C-4 District would require that commercial uses be at this on grade level. The actions by the Planning Board in the DeCredito matter reinforces this and this has been the City's policy for as long as I have worked for the City as noted previously. Therefore, it is my opinion that what is being requested is not a permitted use and that a D variance would be necessary.

#### **VARIANCE CHART**

The following variances would be necessary if the Board determines that a use variance is required:

<b><u>Parameter</u></b>	<b><u>Required or Permitted</u></b>	<b><u>Proposed</u></b>	<b><u>Variance</u></b>	<b><u>Code Section</u></b>
1. Use	Commercial uses must occupy at least the first level and be on grade	Three (3) residential units are proposed on the first level (Promenade)	Three (3) residential units on first floor	26-55.1 & 26-55.13d
2. Min Lot Area	5,000 s.f. <b>ENC</b>	4,294 s.f.	706 s.f.	26-55.7.a
3. Min Lot Width	50 ft. <b>ENC</b>	46.66 ft.	3.34 ft.	26-55.7b
4. Min Lot Depth	100 ft. <b>ENC</b>	92 ft.	8 ft.	26-55.7b
5. Min. Bldg. Coverage of First Floor Non-Residential	40%	30.77%	9.23%	26-55.14.c2
6. Min. Unit Size - Non-Residential On First Level	750 s.f. <b>ENC</b>	656.02 s.f. Unit 1 665.09 s.f. Unit 2	93.98 s.f.  84.91 s.f.	26-55.14.d1



**VARIANCE CHART - continued**

<b><u>Parameter</u></b>	<b><u>Required or Permitted</u></b>	<b><u>Proposed</u></b>	<b><u>Variance</u></b>	<b><u>Code Section</u></b>
7. Number of Residential units permitted on the 2 <sup>nd</sup> floor & higher	1 per 1,250 s.f. 3 permitted on second floor or higher	3 Residential Units on first floor	3 Residential Units on first floor	26-55.13.b

**ENC=Existing Non-Conformity**

**Status: Comments continue. Revised Plans & Copy of Deed of Easement have been submitted.**

**II. Determination for Completeness**

I would advise the Board that in my opinion the Board has sufficient information to provide an interpretation as requested and to also rule on any variances, including a Use Variance if necessary. The application requests a waiver from site plan and I will be recommending that this waiver not be approved and that an actual site plan be required if the Board approves the use variance. If the Board determines that a use variance is necessary and denies that variance then the issue of site plan would be moot.

**III. Comments**

1. The variances listed in the Variance Chart include both Existing Non-Conforming Conditions, minimum lot area, minimum lot width, and minimum lot depth as well as minimum unit size for non-residential units on the first floor. However, the remaining variances will be necessary based on what is being proposed.

**Status: Comment Continues.**

2. A copy of a Deed of Easement for the applicants ability to use the portions of Block 41.01 Lots 15 & 16 which provide access to the building on lot 7.01 should be provided. The applicant should also identify if the City is indemnified from any law suits for use of the City property by the applicant.

**Status: Comment Satisfied. Applicant should testify relative to indemnification.**

3. The Zoning Schedule on Drawing G0.00 should be revised under the required column relative to front yard setback where fifteen point six seven (15.67) feet is noted. The actual setback is zero feet since the building sits right on the property line relative to the Promenade. The Zoning Schedule should also be revised to reflect the permitted number of stories is three (3) and not four (4).

**Status: Comment Satisfied.**

4. The impervious coverage calculation of seventy six point five (76.5) appears to be low and I would ask the architect to provide some backup information as to how that figure was calculated.

**Status: Comment Continues.**

5. The existing conditions survey on Drawing G0.00 refers to a fifteen (15) foot wide easement per Deed Book 1489 page 540. This would be the easement area noted above as established by City Ordinance No. 703 of 1981. This easement was the subject of Ordinance 703 of 1981 which purported to offer for sale an easement of the City owned property to the applicant or the applicant's predecessor. Therefore, the applicant should provide a Deed of Easement if one exists. Because the easement area is owned by the City and not the applicant the Board does not have jurisdiction over lots 15 & 16 since they are not really part of the application and the City is not an applicant. Therefore, any improvements within the Right of Way of the Promenade on lots 15 & 16 would have to be approved by the City. The applicant should testify as to whether the City has been approached relative to the proposed improvements.

The Planning Board in the DeCredico matter determined that it did not have jurisdiction within a similar easement area adjacent to the DeCredico property and made as a condition of approval that the review of improvements within the Right of Way of the Promenade and the easement area must be done by the City.

**Status: Comment Continues.**

6. Drawing A1.00 shows a "New Trash/Recycling" structure in the parking area beneath the existing building. Details for this new Trash/Recycling structure should be provided.

**Status: Comment Satisfied.**

7. The First Floor Plan on Drawing A1.00 indicates that Units 1 & 2 are existing restaurant uses. The applicant should provide testimony as to whether each of these units is a restaurant use or if one of the uses is another type of use.

**Status: Comment Continues.**

8. The applicant should provide testimony as to how the collection of trash and recycling will be handled. Will this be by private collector or is the applicant proposing the City be involved with trash collection.

**Status: Comment Continues.**

9. The applicant should explain the layout of the proposed residential units. It appears that the sleeping areas are adjacent to the kitchen area and the living area. The units appear to be more like motel units than residential units.

**Status: Comment Continues.**

10. The architect should provide testimony as to whether the existing ramp meets current ADA requirements.

**Status: Comment Continues.**

11. The architect should also provide testimony as to whether the proposed residential units require a fire suppression system.

**Status: Comment Continues.**

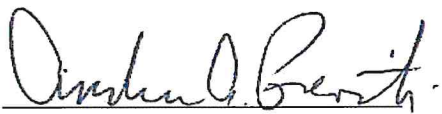
12. The architect should provide testimony as to whether the existing water and sewer services to the existing building will be utilized or whether new services will be necessary.

**Status: Plan has been revised to indicate that the existing building is serviced by existing utilities.**

#### **IV. Recommendations**

1. The applicants and their professionals should provide testimony as to why the Board should grant the variances necessary for this project.
2. The plans should be revised to reflect the comments contained in this report as well as any additional comments that the Board may have.
3. I would recommend that the proposed use be determined a use that is not permitted and that a "D" variance would be necessary in order to convert an existing conforming use, the five (5) commercial units, into a non-conforming use with the residential units being at "grade".
4. I would recommend that the requested site plan waiver be denied and that if a use variance is approved that a complete site plan be submitted for preliminary and final approval.

**Status: Comment. Continues**



Andrew A. Previti, P.E.  
Municipal & Board Engineer

AAP/dpm

enclosure

cc: Genell Ferrilli, Board Secretary w/enclosures (via email)  
Chris Gillen-Schwartz, Planning Board Solicitor w/enclosures (via email)  
Cornelius Byrne, Construction Official w/enclosures (via email)  
Lyndsy M. Newcomb, Esquire w/enclosures (via email)  
William C. McLees, AIA w/enclosures (via email)  
9 42<sup>nd</sup> Street LLC, 436 Spring Creek Drive, Nacogdoches, TX 75965 w/enclosures

8733.1



CITY OF SEA ISLE CITY  
PLANNING BOARD

RESOLUTION NO. 2008-06-03

Applicant, **DeCREDICO LIVING TRUST**, applied to the Planning Board of the City of Sea Isle City seeking variances, site plan waivers, and preliminary and final site plan approval for a mixed use building located at 42<sup>nd</sup> Street and the Promenade, also known as Block 42.01, Lots 13 and 14 as delineated on the Official Map of Sea Isle City, Cape May County.

**A. June 9, 2008 Hearing.** A hearing was held on June 9, 2008 at the Public Safety Building in Sea Isle City, at which time testimony was taken and exhibits were reviewed. The following testimony was offered by the applicant:

1. Applicant was represented by Vince Morrison, Esq. of Sea Isle City, New Jersey. Mr. Morrison informed the Board that he represented a Board member, the Mayor, in an application pending before the Board, but that he did not believe it was a conflict which would prohibit from representing other client's before the Board. The Board attorney concurred. Mr. Morrison indicated that this application was for preliminary approval alone, and that after obtaining this approval, the Applicant intended to go the State to obtain CAFRA approvals.

2. Applicant was represented by its architect and engineer, John Halbruner, Hyland Design Associates, 101 East 8<sup>th</sup> Street, Ocean City, New Jersey.

3. Applicant presented testimony from Steven DeCredico, 10 42<sup>nd</sup> Street, Sea Isle City, New Jersey (aka 4200 Boardwalk), Applicant's Trustee ("Applicant").

4. The meeting was opened to the public. Ellen N. Byrne, Esq., appeared on behalf of Frank and Susan Gargione, 4207 Pleasure Avenue. She raised several legal issues. She asserted that a "D" or "use" variance was necessary and that the Planning Board did not have jurisdiction



of the matter, that CAFRA does not preempt local zoning ordinances, that the failure to meet a minimum FAR requirement was also a "D" variance, and that because the ordinance does not say that the Promenade is to be treated as the first level or "grade" that it should not be considered as such for this application. She also raised some concerns with the building and site plan. It was agreed that the applicant would make the West wall at the parking lot level a solid wall and not leave it open as shown on the plans. It was determined that a loading zone is not required by the ordinance. It was discussed that deliveries would be made via the Promenade as they are currently. Delivery trucks currently park on 42<sup>nd</sup> Street. It was agreed that signs for pedestrians on 42<sup>nd</sup> Street would be provided for additional safety. It was agreed that the use of the walkways on the upper floors of the west side of the building would only be used for ingress and egress, and that the condominium documents would prohibit placing tables and chairs in the walkway to the residential units. Mr. Gargione testified that although the subject property is zoned commercial, the proposal only benefits the Applicant and does not help the neighborhood. He believes that the building is too large, that it will disrupt his access to air and light. He agreed that the building that is there now needs to be removed. He was concerned that his quality of life would suffer greatly.

5. Other members of the public testified: F. Emmit Ciccone, 304 Seaview Condominium, 42<sup>nd</sup> Street, Sea Isle City, New Jersey, testified that he was concerned about fire issues, and that the applicant will not be able to control people's conduct via condominium documents. He did not feel that there was sufficient parking, and that the density was too high which would be a burden on the community.



Larry Evans, 15 43<sup>rd</sup> Street West, Sea Isle City, New Jersey, felt that there would not be the necessity of any variances if the building was just made smaller.

Phyllis Evans, 15 43<sup>rd</sup> Street West, Sea Isle City, New Jersey, testified that she believed the proposed structure would lessen the breeze her property enjoys, and will negatively impact her quality of life. She was concerned about a negative visual impact. She said that if there were not any variances, she would not be attend the meeting.

George Morton, 26 42<sup>nd</sup> Street, Sea View Condominium, Sea Isle City, New Jersey, was concerned about sight lines, breezes, fire safety, and aesthetics.

Agnes Ruccia, #20 42<sup>nd</sup> Street, Sea Isle City, New Jersey, testified that she was concerned that the building was too large.

Mike Dominik, 26 42<sup>nd</sup> Street, Unit 301, Sea Isle City, New Jersey, also did not believe that the conduct of residents in the units could be controlled by the condominium rules.

Joe Prato, 23 43<sup>rd</sup> Street, Sea Isle City, New Jersey, stated that if the Applicant asked for less units, he would not need as many variances.

Steven Stier, 4109 Landis Avenue, Sea Isle City, New Jersey, stated that he is full favor of the project. He noted that it is in a commercial zone, in the heart of the commercial district of the City, and that it is in need of improvements.

6. Applicant agreed to all of the Statements in the Board Engineers report dated April 25, 2008 incorporated herein by reference.

B. **Findings of Fact and Conclusions of Law.** The Planning Board of the City of Sea Isle City, after carefully considering the evidence presented at the hearing held in this matter, has made the following factual and legal findings:

1. The application and supporting documents were properly filed within the time limits provided and the necessary fees were paid.

2. The proper notices were given to the persons and bodies as required by law and the necessary publications were made in accordance with law and proofs submitted with respect thereto; and

3. Proof of payment of all taxes currently required to be paid was made by Applicant.

4. Applicant is the owner of Block <sup>42.01</sup>442.01, Lots 13 and 14, also known as 42<sup>nd</sup> Street and the Promenade. The property is located in the C-4 Beach Business District. Applicant's family purchased the property in 1964. The lot fronts on the Promenade / Boardwalk. It has 110 feet of frontage, and is 93.3 feet deep. It is currently developed with one building, built in 1976, the condition of which is declining, and the aesthetics of which are poor. It is developed as an arcade with associated food services; there are two residential units above the arcade. The building does not have a fire suppression system. There is parking to the rear of the building which is not organized, but when full can park up to 16 vehicles. There are two curb cuts on 42<sup>nd</sup> Street.

5. Applicant's proposal will continue the current mixed use, and establish a more formal parking scheme than currently exists. The commercial unit will remain flush with the Promenade, and the western portion of the building will be elevated and "stepped back" in accordance with CAFRA requirements. Applicant will provide two parking spaces for each residential unit, a total of 16, which will be located under the proposed structure.

6. Applicant proposes a total of 8 residential units, 4 flats (single story units), and 4 two-story units each approximately 1,500 square feet. Trash will be stored beneath the building, and taken to the curb.

7 To replicate the current condition of the commercial floor being at the same grade as the Promenade will require the consent of the governing body. There is approximately 16 feet between the building and the bulkhead which is "bridged" by a platform or deck to be constructed by the Applicant.

8. Existing sewage flow is 1,584 gpd, and the proposed development would result in an anticipated flow of 3,225 gpd, a 1,641 gpd net increase, but still below the applicable 2000 gpd increase threshold. The water main is currently 4" in size, and will be replaced with a 6" main for fire safety.

*← must address as condition. Condition must include agreement with City. Speech Board to this if line needed.*

9. The Board finds that the project would benefit the community by replacing an old building which is below code and in need of repair with a new building that will meet code requirements; the new project will add aesthetic value; it will maintain the commercial use on the Promenade, reduce fire risk, and it will add residential units with available parking in the downtown area consistent with the goals of the State Plan, and maintaining a family run business that has been on this site for decades which is an entertainment business for all ages, and of which there are not many remaining in the City. Mr. DiCredico, a schoolteacher, runs this boardwalk business personally.

10. The Board finds that the Promenade is "grade". It notes that the Promenade has been considered "grade" for many years by the Board and the Zoning Official. It finds that the project complies with the requirement that the commercial use be at grade.

#### **Rear Yard Setback Variance**

11. A variance for rear yard setback is necessary. Five (5) feet is required and zero (0) feet is proposed. The rear yard is the southerly property line. The variance allows for a

continuous or solid front on the Promenade. Not granting the variance would result in a five (5) foot alley way extending from the Promenade to the rear of the property line. The Board does find that having such an opening on the Promenade is not desirable because the area will be accessed by the public, and some members of the public might use the area for nefarious purposes. This variance can be granted under the C(1) requirements because the front yard is on 42<sup>nd</sup> Street while the rear yard also has a boundary with the Promenade, which the Board finds is an extraordinary and exceptional situation uniquely affecting this property. Further, this variance could be granted under the C(2) requirements because the benefits of granting the variance outweigh any detriment, specifically because of the situation that would be created by a five foot alley if the variance were not granted. The Board finds that there is not a substantial detriment to the public good, and in fact, the public will benefit by not having this five foot alley off of the Boardwalk. The proposed setback deviation will not substantially impact any neighboring sight lines; the sight lines are currently blocked. Further, the Board notes that the existing condition is nearly as close as the proposed setback. The Board finds that granting the variance will not impair the purpose and intent of the zone plan or ordinance because it was not the purpose of the plan or ordinance to create gaps on the Promenade; rather, it was the purpose and intent of the plan and ordinance to encourage use of the Promenade, development for commercial purposes on the Promenade and the downtown area generally, and not to encourage areas where there could be nefarious activities.

#### **Floor Area Ratio Variance**

12. The floor area ratio requirement is met; the requirement is 3.0 and 1.88 is provided. The ordinance has a minimum commercial FAR requirement of .45. The purpose is to encourage



commercial uses on the first level. Applicant proposes a .42 commercial FAR. The proposed commercial space is actually 354 sf less than currently exists; a total of 4,316 sf is proposed. The Board finds that this is not a "D" variance. Typically, a variance from the FAR requirements is when someone wants to exceed the FAR requirements. Applicant pursued this variance as a C(2) variance. While applicant could meet the minimum requirement, doing so would require that the parking area be made smaller. The benefits of granting the variance are that the parking area is large enough to accommodate 16 spaces with appropriate drive aisle space. The deviation is small, and the purpose and intent of the ordinance is met in that the commercial space is on the first level. The Board does not find that there are any detriments to granting this variance. There is not a substantial detriment to the public good. Further, there is not any impairment of the purpose and intent of the zone plan and ordinance; in fact, the purpose and intent of the plan and ordinance are furthered by granting the variance in that the commercial space on the first level is met, and on site parking is promoted.

#### **Number of Stories Variance**

13. Applicant does not need a height variance. Applicant does, however, need a variance from the requirement that there only be four "stories". The Board notes that the word "stories" is not defined in the ordinance or the land use act. Giving the word its common meaning, the Board finds that the fourth level is a story and that a variance is necessary. The variance is necessary because the building is "stepped back" in order to meet the CAFRA requirements. The fourth floor area is necessary to make the units large enough to be economically viable and functional for current-day living. This variance can also be granted under the C(1) requirements because of the location of the lot on the beachfront, and the limitations of the CAFRA rules and

regulations; if the entire site could be used for the upper residential levels, the fourth floor square footage would not be necessary. It can also be granted under the C(2) requirements. The benefits are that the units are functional and economically viable. It is not in the public's interest to have residential units which are not functional and economically viable. There are not any detriments to granting the variance. Granting the variance would not result in a substantial detriment to the public good because a building could be constructed on this site that was just as high as this building proposed. The building will meet all applicable building codes and safety codes. Granting the variance will not impair the purpose and intent of the zone plan or ordinance because the height is permitted. The stepped back features provide an architecturally interesting and attractive building.

#### **Impervious Surface Coverage Variance**

14. A variance from the impervious surface coverage requirements is also required because the building occupies virtually 100% of the lot. The Ordinance allows 95% impervious surface coverage. Most of the 5% variance is due to the rear yard variance being granted. The Applicant could possibly meet the 95% requirement by meeting the rear yard setback requirement. The Board finds, however, as stated above, that the public benefits by that variance. This variance can therefore be granted under the C(2) requirements. The benefits of the deviation are the same as those associated with granting the rear yard setback variance. The Board does not find that there are any detriments. The building is attractive, while maintaining a sense of open space due to its setback design.

#### **Parking Space Size Variance**

15. The local ordinance requires a 10' by 20' parking space. The RSIS allows a 9' by 18'

parking space. Applicant proposes compliance with the RSIS standards. To comply with the local ordinance, a variance is required. The Board finds that the variance can be granted because the benefits of the smaller parking space size outweigh any detriments of granting the variance. The variance allows there to be 16 parking spaces on the site, two spaces for each residential unit. There are not any detriments. There is not a substantial detriment to the public good because this is on private property, and it is not a public parking lot. The public will benefit by having more cars parking on this private property than those residents parking on the street. The zone plan or zoning ordinance is not impaired because more parking spaces are provided.

#### **Parking Drive Aisle Variance**

16. During discussions with objectors, it was determined that the Applicant shall revise the plan by moving the west wall back one foot. This has the impact of reducing the drive aisle by one foot. The ordinance requires a 25 foot drive aisle; applicant proposes a 24 foot drive aisle. This can be granted under the C(2) requirements because the benefits of the variance, specifically, a wider side yard setback to the residential neighbors to the west, outweighs any detriment to the residential users having an extra foot of drive aisle. The public good is advanced, and there is not any detriment to the zone plan or zoning ordinance, and in fact the plan and ordinance are advanced due to the increased side yard setback.

#### **Landscaping Variance**

17. Applicant is proposing two trees and zero shrubs. The ordinance requires 17 trees and 166 shrubs. The Board finds that it can grant this variance due to the location of this property in the commercial district where commercial uses are encouraged, and because compliance would likely require less space dedicated to the commercial use, and less space for

off-street parking. The benefits of the deviation therefore outweigh the detriments. Granting the variance will not result in a detriment to the public good because this is a commercial site already fully developed, and the proposal will result in a much better aesthetic site. Applicant is placing trees where it appears they can be placed. There also would not be an impairment of the purpose and intent of the zone plan or zoning ordinance. The purpose and intent of the ordinance is aesthetics, and applicant is providing an aesthetically pleasing project. A design waiver for planting trees at intervals of no more than 50 feet is also required. The Board finds that the reasonable basis for granting this waiver is that the utilities, and the curb cut, must be located in such a place that will not permit compliance with the 50 foot interval requirement.

#### **Curb Cut Less than 100 feet from Intersection Waiver**

18. Applicant asked for a design waiver to allow a curb cut that is less than 100 feet from the intersection. The Board finds that there is a reasonable basis for granting this variance, specifically that the requirement is impossible to meet; there is not anywhere on 42<sup>nd</sup> Street where Applicant could place the curb cut which would be at least 100 feet from the intersection. Further, there are currently two curb cuts, which will be reduced to one.

#### **Waiver for plan size**

19. Applicant was seeking a waiver from plan scale to allow a scale of 1" = 10' which the Board finds can be granted.

#### **Preliminary Site Plan Approval**

20. The Board finds that preliminary site plan approval can be granted.



**C. NOW, THEREFORE, BE IT RESOLVED** by the Planning Board of the City of

Sea Isle City that the following is granted:

1. A rear yard setback variance where 5' is required and 0' proposed;
2. A floor area ration variance where a minimum of .45 is required and .42 proposed;
3. A variance from three stories to allow four stories as shown on the plan;
4. An Impervious Surface Coverage Variance to allow up to 100%. (It is noted that when revisions to the plan are made, this will be less than 100%.)
5. A Parking Space Size Variance where 10' by 20' is required, and 9' by 18' proposed.
6. A Parking Drive Aisle Variance where 25' is required and 24' is proposed.
7. A Landscaping Variance where 17 trees and 166 shrubs are required and 2 trees are proposed.
8. A site plan waiver to allow a Curb Cut Less than 100 feet from an intersection.
9. A waiver from the plan scale to allow a 1" = 10' scale.
10. Preliminary Site Plan Approval subject to the following conditions upon applicant's compliance with the Board Engineer's comments as contained in the report of Andrew Previti,

P.E., dated April 25, 2008, and:

- Must clarify*  
*Artificially restrictive. Revisions necessary as noted in report.*  
*Satisfies intent of*  
*Screen*  
*Board*
- (a) The water main shall be replaced with a 6" main.
  - (b) The plans shall be revised to show the location of proposed utilities.
  - (c) The plans shall be revised to show the location of the HVAC condenser units.
  - (d) The plans shall be revised to show a solid west wall of the building.
  - (e) The plans shall be revised to show signs warning pedestrians of the motor vehicle drive aisle crossing the sidewalk.

f. Applicant shall record a deed restriction satisfactory in form and content to the Board Solicitor which limits use of the outside walkways on the West side of the building which access residential units to ingress and egress only, and does not allow tables and/or chairs to be located there.

g. The plans shall be revised to show the west wall being moved one foot to the east, and the drive aisle narrowed from 25 feet wide to 24 feet wide.

**D. BE IT FURTHER RESOLVED** that:

1. The Applicant must secure all approvals required from all other governmental bodies and agencies having jurisdiction over the matter.
2. A copy of this Resolution shall be supplied to the Applicant and filed with the City Clerk.
3. A notice of this decision shall be published in the official newspaper of the municipality by the Board Secretary.
4. The proper Board officials are authorized to take all actions necessary to effectuate this approval.
5. Applicant shall comply in all respects with the comments in the Board Engineers report.
6. This approval is subject to the testimony, representations and stipulations of the Applicant, its attorney, and witnesses at the time of the hearing.

7. This Resolution shall take effect immediately subject to Applicant's compliance with the aforesaid conditions.

Memorialized: September 9, 2008


At the time of Memorialization:

Offered by: Mr. DeCesare

Seconded by: Mrs. Miller

	Present at Hearing June 9, 2008	Vote at Hearing	Vote on Resolution September 9, 2008
Patricia Urbaczewski	YES	YES	YES
Phillip Bonifazi	YES	YES	YES
Frances Steelman	ABSENT	ABSENT	ABSTAINED
Jeff DeCesare	YES	YES	YES
Mayor Desiderio	YES	YES	ABSENT
Donna Miller	YES	YES	YES
Joanne D'Intino	YES	YES	ABSENT
Maurice Murphy	ABSENT	ABSENT	ABSTAINED
Frank Edwardi, Jr.	ABSENT	ABSENT	ABSENT
Joseph Rush	YES	YES	YES
Kevin Gillespie	ABSENT	ABSENT	ABSTAINED

The foregoing Memorializing Resolution was passed by the Planning Board of the City of Sea Isle City on September 9, 2008. It memorializes a decision the Board reached at a meeting held on June 9, 2008.

  
Theresa Innes, Planning Board Secretary

CITY OF SEA ISLE CITY  
NEW JERSEY

ORDINANCE NO. 703 (1981)

AN ORDINANCE OF THE CITY OF SEA ISLE CITY,  
NEW JERSEY PROVIDING FOR THE PRIVATE SALE  
OF EASEMENTS TO CERTAIN PUBLIC PROPERTY AND  
SETTING CONDITIONS THEREFORE IN ACCORDANCE  
WITH NJSA 40A:12-13

WHEREAS, the City of Sea Isle City owns certain real property not needed for the public good except as an extension to the width of the Sea Isle City Promenade, and

WHEREAS, contiguous property owners have offered to construct, maintain and upgrade an extension to the Sea Isle City Promenade conditioned on the right to construct below ground parking under a portion of the property and use certain air space of the property in accordance with plans either already approved by the Sea Isle City Planning Board or to be approved, and

WHEREAS, the City of Sea Isle City deems it in the best interest of the City to grant an easement to the contiguous property owners conditioned upon compliance with the terms of this ordinance, and

WHEREAS, the properties involved herein are less than the minimum size required for development under the municipal zoning ordinance and is without capital improvement thereon,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS of the City of Sea Isle City, Cape May County, New Jersey, as follows:

1. The statements of the preamble are incorporated herein by this reference thereto.

2. The City of Sea Isle City herewith offers for private sale to the contiguous land owners the following three tracts:



(a) Tract I.

BEGINNING in the Southwesterly side of John F. Kennedy Boulevard (formerly 41st Street) at a point 140 feet south-eastwardly from the Southeasterly side of Pleasure Avenue, Thence;

1. Southeastwardly along said side of John F. Kennedy Boulevard, a distance of 15 feet, Thence;
2. Southwestwardly at right angle to John F. Kennedy Boulevard thru Lot 19, 18 and a portion of 17, a distance of 128 feet, Thence;
3. Northwestwardly parallel to John F. Kennedy Boulevard along Lot 7.02 and 14, a distance of 128 feet to the point and place of BEGINNING.

BEING a 15 foot wide portion of Lots 17, 18 & 19 in Block 41.01 on the official tax map of the City of Sea Isle City, Cape May County, New Jersey and containing within the above described bounds 1920 square feet be the same more or less.

(b) Tract II.

BEGINNING in the Northeasterly side of 42nd Street at a point 140 feet Southeastwardly from the Southeasterly side of Pleasure Avenue, Thence;

1. Northeastwardly at right angle to 42nd Street along Lot 7.01, a distance of 92 feet, Thence;
2. Southeastwardly parallel to 42nd Street through a portion of Lot 17, a distance of 15 feet, Thence;
3. Southwestwardly at right angle to 42nd Street through Lots 15, 16 and a portion of 17, a distance of 92 feet, Thence;
4. Northwestwardly along said side of 42nd Street, a distance of 15 feet to the point and place of BEGINNING.

BEING a 15 foot wide portion of Lots 15 & 16 in Block 41.01 on the official tax map of the City of Sea Isle City, Cape May County, New Jersey and containing within the above described bounds 1380 square feet be the same more or less.

(c) Tract III.

BEGINNING in the Southwesterly side of 42nd Street at a point 140 feet Southeastwardly from the Southeasterly side of Pleasure Avenue, Thence;

1. Southeastwardly along said side of 42nd Street, a distance of 15 feet, Thence;
2. Southwestwardly at right angle to 42nd Street thru Lot 19, 18 and half of 17, a distance of 110 feet, Thence;

3. Northwestwardly parallel to 42nd Street thru a portion of Lot 17, a distance of 15 feet, Thence;

4. Northeastwardly at right angle to 42nd Street along Lot 14, a distance of 110 feet to the point and place of BEGINNING.

BEING a 15 foot wide portion of Lots 17, 18 & 19 in Block 42.01 on the official tax map of the City of Sea Isle City, Cape May County, New Jersey and containing within the above described bounds 1650 square feet be the same more or less.

3. The contiguous land owners are:

- (a) Tract I - J.F.K. Associates
- (b) Tract II - Windrift Associates
- (c) Tract III - DeCredico

4. The sale price for the grant of an easement shall be one (\$1.00) dollar each and compliance with the terms and conditions of this Ordinance.

5. The easements provided herein are for the purpose of using a portion of the property for below ground parking and a portion of the airspace in accordance with those guidelines previously set or to be set by the Planning Board of the City of Sea Isle City at Site Plan.

6. The easements granted hereunder are expressly conditioned upon the grantees use of the said ground level of the granted property solely for an extension to the Sea Isle Promenade, with said extension to remain open to all pedestrian traffic, and the grantees are obligated to construct, maintain, and landscape the said extension. In the event that the grantees or their heirs, successors or assigns shall fail to strictly comply with the terms of this Ordinance, the said grants shall be null and void and said lands shall immediately revert to the City of Sea Isle City.

7. The Municipal Clerk be and she hereby is authorized and directed to post a copy of this Ordinance on the bulletin board


at City Hall and advertise a copy of the said Ordinance within five (5) days of its final passage. This advertisement shall be in addition to the regular publication of ordinances.

8. The grantees shall jointly bear all costs of advertising.

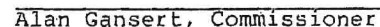
9. Acceptance of the offers contained hereby must be made in writing, setting forth acceptance of the grant and all conditions set forth herein within twenty (20) days of the advertisement set forth in section 7 of this ordinance.

10. The Municipal Clerk be and she hereby is authorized and directed to prepare and file an affidavit with the Director of Local Government Services verifying the publication of all advertisements of this ordinance.

11. This Ordinance shall become effective after adoption and publication in accordance with law.

  
Dominic C. Raffa, Mayor

  
William J. Kenner, Commissioner

  
Alan Gansert, Commissioner

The above ordinance was duly passed on first reading by the Board of Commissioners of the City of Sea Isle City, New Jersey, at the regular meeting of said Board held on the 11th day of August, 1981, in the Townsends Inlet Civic Center, 138 - 85th Street, Sea Isle City, New Jersey, and was taken up for second reading, public hearing at the regular meeting of said Board held on the 25th day of August, 1981, in the Commissioners' Room, Public Safety Building, 233 John F. Kennedy Boulevard, Sea Isle City, New Jersey, at 3:30 P.M. Further consideration of this Ordinance was taken up at the regular meeting of the Board held on the 8th day of September, 1981, in the Public Safety Building, 233 John F. Kennedy Boulevard, Sea Isle City, New Jersey, at 8:00 P.M., and was further considered for final passage and was adopted at the regular meeting of the said Board held on the 22nd day of September, 1981, in the Commissioners' Room, Public Safety Building, 233 John F. Kennedy Boulevard, Sea Isle City, New Jersey, at 3:30 P.M.

  
Municipal Clerk