

PLANNING AND ZONING COMMISSION
MINUTES
September 1, 2015

ATTENDEES:

Members

Pam Buckley
John Staley
Peck Miller
Lauren Taylor

Staff

Blaine Smith
Bill Neville
Kay Gordy
Will Esham

6:30 PM

I. APPROVAL OF MINUTES

Minutes of July 7 & August 4, 2015

MOTION/Taylor SECOND/Miller Motion and second to approve as presented. (4-0-3) approved with Commissioners Shanahan, Brous, and Gillis absent.

Minutes of July 21, 2015

MOTION/Taylor SECOND/Staley Motion and second to approve as presented. (4-0-3) approved with Commissioners Shanahan, Brous, and Gillis absent.

II. SITE PLANS

1) Site Plan Review of proposed distillery operation in the LC-1, Local Commercial, District, as approved by the Mayor and City Council as a Conditional Use on June 15, 2015 (File #15-12100006). The site of the request is described as Parcels 6846 and 6847, located on the south side of 49th Street, situated just east of Seacrets Bar & Grill, and locally known as 113 & 115-49th Streets in the Town of Ocean City, Maryland.

APPLICANT: SEACRETS DISTILLING COMPANY (FILE #15-18100006)

Blaine Smith, Zoning Administrator, presented the application and gave a brief history of the site. He presented the staff recommendations to the Commission. Leighton Moore, Jr., owner and developer, was present to comment and answer questions. Following are the staff recommendations adopted by the Commission:

1. Design Guidelines, per Section 110-181, apply to all of the corporate limits of the Town of Ocean City.
2. Trash refuse containers and recycling containers shall comply with the minimum standards set forth in Chapter 70 subject to the Solid Waste Department approval. All exterior garbage or rubbish containers shall be screened from the street on all but one

side by an opaque fence, landscaping, an earth berm or other suitable opaque enclosure. The average height of the enclosure shall be one foot more than the height of the container but shall not be required to exceed eight feet in height.

3. The project is subject to the provisions of the Atlantic Coastal Bays Critical Area Protection Act and shall comply with all regulations pertaining to stormwater management, Chapter 30, Environment, Article III Stormwater Management, and all landscape shall be installed in accordance with Chapter 30, Article VII, prior to issuance of a building permit. **The site plan submitted indicates the applicant will provide 15% of the site area for landscaping; however, the landscape planting material plan has not been provided with this submission. Applicant will provide adequate landscape plantings material list prior to release of building permit and if necessary bring the completed landscape plan back to the Planning Commission for review.**
4. All construction and/or repairs of curb cuts, sidewalks and streets and/or street amenities shall be approved by the Department of Engineering and shall be installed in accordance with the specifications and standards of that department. Any existing curb cuts that are being abandoned must be removed and replaced with a sidewalk subject to city specifications.
5. **The Planning Commission requires 8' wide sidewalks on 49th Street on the south side adjoining the project and parking lots.** Pervious pavers may be considered to meet this need subject to specifications set forth by the Engineering Department.
6. All vehicular use areas shall maintain headroom clearance of seven (7) feet, clear of all obstructions including utilities and lighting fixtures. All supporting columns within the vehicular use areas shall not encroach into any minimum parking space.
7. All loading zones and service areas shall maintain a minimum headroom clearance of fourteen (14) feet, clear of all obstructions including utilities and lighting fixtures.
8. The parking lot shall be paved in accordance with Chapter 74 of the Town Code.
9. The remote parking lot shall be deed restricted by a recorded covenant as parking space to be used in conjunction with the principal use and shall be reserved as such through an encumbrance to be valid for a total period the use or uses for which the parking is needed are in existence. A certificate of recording shall be furnished to the Administrator prior to issuance of the Certificate of Occupancy.
10. All private utilities extending across property lines shall carry approved easements and/or the property shall be deed consolidated as per Section 110-874. As a policy of the City, private utilities may not extend across public ways.
11. Any existing power poles that interfere with the development of this project shall be relocated at the expense of the owner/developer with appropriate approvals.
12. The location of transformer shall be subject to the approval of Delmarva Power and the Zoning Administrator.
13. Location and/or relocation of fire hydrants shall be subject to the approval of the Water Department and the Fire Marshal.

14. Location, height, type, and direction of lighting designed per Section 110-876(h) Lighting Requirements, including at a minimum a photometric plan to illuminate site and off-street parking areas expressed in footcandles throughout the property **must be provided prior to issuance of building permit.**
15. It is required that the owner provides a location survey verifying compliance with minimum setbacks when the building foundation is completed above grade.
16. The project is subject to impact fees adopted by the Mayor and City Council.
 - a. Infrastructure impact fees are due as follows: One-half amount due at application for building permit; remainder due prior to issuance of building permit.
 - b. Water and sewer impact fees as due as follows: One-half amount at building permit issuance; the remainder at
17. The Mayor and City Council has approved a conditional use (File #15-12100006). The conditional use so approved shall lapse after the expiration of one (1) year if no substantial construction or change of use has taken place in accordance with the plans for which such conditional use was approved or if the Mayor and Council does not specify some longer period than one (1) year for good cause shown. Once a conditional use has expired, the provisions of these regulations shall thereafter govern. **Please submit the signed and notarized Conditional Use agreement by Monday, September 14, 2015 – 90 days after approval by the Mayor and City Council in order to keep the approved Conditional Use current.**
18. Whenever a conditional use which was approved by the Mayor and City Council remains idle or unused for a continuous period of two (2) years, whether or not the equipment or fixtures are removed, such use so approved shall be considered abandoned and thereafter shall be null and void and of no effect whatsoever.
19. All site plan approvals are subject to building code, fire code and all other applicable governmental regulations. **Should the building/fire code require a rated fence/wall on the south side of the property exceeding 6' in height to meet minimum ingress/egress requirements, the added height will be subject to review and approval by the Board of Zoning Appeals as a variance or special exception.**
20. The FEMA flood insurance rate map (effective July 16, 2015) includes the subject property within the **AE flood zone and establishes a base flood elevation of 4 feet** based on the NAVD88 datum. Chapter 38 of the Code of the Town of Ocean City, MD was revised on July 6, 2015 to require that all new construction of nonresidential structures shall have the lowest floor, including basement, elevated to a minimum of three feet above base flood elevation (4 feet + 3 feet = 7 ft. minimum elevation per Sec. 38-71(5) or, together with attendant utility and sanitary facilities, shall be flood proofed to the minimum elevation in accordance with the requirements of Sec. 38-73. Note: all site plan elevations and the required elevation certificate should be based on the NAVD88 datum (Section 38-55).

20. All work shall be completed as shown on the approved site plan and any revisions to the approved site plan shall be in accordance with Section 110-184.
21. All parcels shall be deed consolidated as per Section 110-894.
22. Final site plan approval shall expire eighteen (18) months after the date of approval unless a building permit for the project is obtained prior thereto pursuant to Section 110-52(c)(2).
23. All sign permits shall be issued in accordance with those signs shown on the site plan, **with the roof sign, Seacrets Distilling Company, not to exceed 150 square feet.**
24. Subject to obtaining a building permit for all site work.
25. **Final verification of 911 address shall be made prior to application of building permit.**

MOTION/Taylor SECOND/Miller Motion made to approve the site plan as presented with staff recommendations, and the request that the landscape plan be brought back to the Commission for review. All other changes noted in red. Vote was unanimous (4-0-3) with Commissioners Shanahan, Brous, and Gillis absent.

III. ADMINISTRATIVE DISCUSSION

- 1) Proposed text amendment to clarify amusement devices and water-related activities. To be presented by Brian Peter Cosby, P.A. on behalf of Bay Shore Development Corporation.

Pete Cosby, attorney for Bay Shore Development Corporation, presented information to ask the Commission to entertain a text amendment that would clarify the above request. The request originated with a BZA decision that a mechanical wave/surf machine called the "Flow Rider" was interpreted as a water-related recreational activity, allowing it as a permitted use in the M Manufacturing zoning district. Questions have arisen as to the proper definition for this activity and how it falls under amusement devices regulated by the state. Mr. Cosby added that an upcoming Conditional Use public hearing for a Haunted House attraction should also be considered under this proposed text amendment.

Attorney Regan Smith stepped forward in Joe Moore's absence to ask that this proposed text amendment be tabled until the Conditional Use public hearing is held. Mr. Moore represents the applicant in this upcoming hearing, scheduled for September 15, 2015.

Mr. Cosby argued that the Commission should make a recommendation for the text amendment in order to make clear what attractions and amusements fall under State regulation for amusement parks prior to the public hearing. He requested that he be allowed to draft legislation along with Commission attorney Will Esham's concurrence and have it placed on the next agenda to follow up and determine further action.

IV. PUBLIC HEARING

Pursuant to the provisions of Article II, Section 5, Conditional Uses, a request has been filed under the provisions of Section 110-544, Uses permitted by Conditional Use in the SC-1, Shopping Center District, to amend and/or alter an existing Conditional Use permit (#15-12100002) to change the condition of approval (#6) imposed by the Mayor and City Council that state no canning or bottling of beer or wine; only wholesale, kegged beer, to allow a portable bottle system to be utilized to bottle beer. The site of the request is described as within the 45th Street Shopping Village, Land Unit 4, 4.72 acs., 45th and 46th Street Land Condominium Plats, further described as located on the west side of Coastal Highway between 44th and 46th Streets, and specifically located at 4435 C Coastal Highway in the Town of Ocean City, Maryland.

APPLICANT: OCEAN TAP, LLC (AVRAHAM, DAVID & PROSPER SIBONY, PRINCIPLES)
(FILE #15-12100009)

Blaine Smith, Zoning Administrator, briefed the Commission on the existing Conditional Use that was granted in April by the Mayor and City Council, and then explained that the business wants to modify the condition of approval that prohibited bottling or canning of beer or wine onsite to allow limited bottling with a portable bottling machine within the brewery.

Brian Peter Cosby, PA, representing Ocean Tap, LLC, further explained the details of the request and introduced Jason Weissberg, brewmaster, who explained operational details and how it would be conducted. Mr. Cosby, with Mr. Weissberg's concurrence, offered limiting the bottling operation to a relatively conservative number per week, which was then discussed and determined by the Commissioners.

There was no opposition or support testimony offered from the audience.

MOTION/Taylor SECOND/Miller Motion made to close the hearing to deliberate at 8:00 pm.

MOTION/Miller SECOND/Staley Motion made to send a favorable recommendation to the Mayor and Council requested that condition #6 be altered or modified to allow on-premise bottling, limited to one portable bottling machine and 300 cases maximum a week. If the Mayor and Council agree to make this modification, the Planning Commission requests revisiting the Conditional Use permit in a year to monitor compliance. The vote was unanimous of the attending members (4-0-3), Commissioners Shanahan, Brous, and Gillis absent.

ADJOURNMENT – 7:25 PM

John Staley 10/6/15
JOHN STALEY, SECRETARY DATE