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APPLICATION OF BOARDWALK : ABSECON PLANNING BOARD  
DEVELOPMENT AND DESIGN COMPANY, :  
LLC, FOR PRELIMINARY AND FINAL : APP. NO. 2-2011  
AMENDED SITE PLAN APPROVAL AND :  
FOR AGE RESTRICTION CONVERSION : DECISION AND RESOLUTION  
FOR LOT 1 OF BLOCK 161 AND LOT 8 OF :  
BLOCK 160, ABSECON GARDENS :  
(PREVIOUSLY THE PINNACLE CLUB AT :  
ABSECON) :

This matter having been heard by the Planning Board of the City of Absecon on March 22, April 26 and May 10, 2011, at its regular meeting at the Municipal Complex, 500 Mill Road, Absecon, New Jersey and a hearing on the application having been conducted with a quorum present; and

WHEREAS, the Absecon Planning Board has reviewed the application form submitted by the applicant and the following plans and documents:

Sheet	Title	Prepared By	Date	Rev'd
1 of 15	Cover Sheet	Marathon Engineering	11/19/10	2/28/11
2 of 15	Information Sheet	Marathon Engineering	11/19/10	4/14/11
3 of 15	Demolition Plan	Marathon Engineering	11/19/10	2/28/11
4 of 15	Site Plan	Marathon Engineering	11/19/10	4/14/11
5 of 15	Grading Plan	Marathon Engineering	11/19/10	2/28/11
6 of 15	Utility Plan	Marathon Engineering	11/19/10	2/28/11
7 of 15	Landscape Plan	Marathon Engineering	11/19/10	2/28/11

8 of 15	Landscape & Lighting Details	Marathon Engineering	11/19/10	2/28/11
9 of 15	Lighting Plan	Marathon Engineering	11/19/10	2/28/11
10 of 15	Road Profiles & Cross Sections	Marathon Engineering	11/19/10	2/28/11
11 of 15	Construction Details	Marathon Engineering	11/19/10	2/28/11
12 of 15	Stormwater Management Details	Marathon Engineering	11/19/10	2/28/11
13 of 15	Sanitary Sewer and Water Details	Marathon Engineering	11/19/10	2/28/11
14 of 15	Soil Erosion & Sediment Control Plan	Marathon Engineering	11/19/10	2/28/11
15 of 15	Soil Erosion & Sediment Control Narrative and Details	Marathon Engineering	11/19/10	2/28/11
1 of 5	Phasing Plan	Marathon Engineering	2/25/11	4/14/11
2 of 5	Phase 1 Parking Plan	Marathon Engineering	2/25/11	
3 of 5	Phase 2A Parking Plan	Marathon Engineering	2/25/11	
4 of 5	Phase 2B Parking Plan	Marathon Engineering	2/25/11	
5 of 5	Phase 3 & 4 Parking Plan	Marathon Engineering	2/25/11	4/14/11
AC-000	Cover Sheet	SOSH Architects	2/8/11	4/19/11
A-100	Overall Phase 2 Architectural Site Plan	SOSH Architects	12/23/10	
A1-101	School Street Bldg. #1 Floor Plans Type A: Optional Floor Plans	SOSH Architects	2/8/11	4/19/11
A1-301	School Street Building #1 Building Elevations	SOSH Architects	2/8/11	4/19/11
A2-101	New Jersey Avenue Building #2 Floor Plans	SOSH Architects	2/8/11	4/19/11
A2-301	New Jersey Avenue Building #2 Roof Plan	SOSH Architects	2/8/11	4/19/11

A3-101	Mechanic Street Building #3	SOSH Architects	2/8/11	4/19/11
A3-301	Mechanic Street Building #3 Building Elevations	SOSH Architects	2/8/11	4/19/11
A-111	Church Street Floor Plans	SOSH Architects	7/27/10	4/25/10
1 of 1	Boundary and Topographical Survey	Vargo Associates	7/12/10	8/9/10

WHEREAS, Consulting Engineer, Andrew Previti, P.E., of Maser Consulting, PA, has reviewed the application and has reported to the Board by his reports of March 17 and April 19, 2011, which are on file with the Absecon Planning Board; and

WHEREAS, Planning Consultant, Robert L. Reid, P.P. has reviewed the application and has reported to the Board by his reports of March 4, March 21, and April 4 (updated April 25), 2011, which are on file with the Absecon Planning Board; and

WHEREAS, Traffic Consultant and Lighting Consultant, Alexander J. Litwornia, P.E. of Litwornia & Associates has reviewed the application and has reported to the Board by his reports of March 21 and April 26, 2011, which are on file with the Absecon Planning Board; and

WHEREAS, the following additional findings of fact and conclusions are made at this time:

1. Application. This application proposes preliminary and final amended site plan approval and age restriction conversion of a project formerly known as the Pinnacle Club at Absecon which received site plan approval for the construction of an age restricted housing complex. The northern portion of the building has already been partially constructed. The Applicant proposes to amend the previously approved site plan and to remove the age restriction pursuant to N.J.S.A. 45:22A-66.3 et seq. (the Sarlo Bill or the Conversion Law).

2.     Preliminary and Final Approvals. This project previously received preliminary site plan and variance approval on May 24, 2005, under application number 4-2005. The project received final site plan approval on November 22, 2005, under Application Number 10-2005. The project also received amended site plan approvals on October 15, 2008, and July 27, 2010. The project as approved would include the construction of 85 units which would be located within lot 1 of block 161. Of these units, 77 would be located in a single “L” shaped building and 8 would be townhouses to be constructed along Church Street. 94 parking spaces will be included. As a result of the prior site plan amendments, upgrading and improvements to the facade of the existing north wing were approved as was the addition of the decks / balconies, the addition of the amenities in the basement, moving the 8 Church Street townhouses from Phase 2 to Phase 1, and moving the future south wing of 37 units to Phase 2.

3.     Documents and Submissions. In addition to the plans and documents referred to above, the following additional documents and submissions were submitted for review:

- a.     City of Absecon Planning Board Application for Land Development dated February 22, 2011;
- b.     Supplement to Application prepared by Richard DeLucry, Esquire, of Hill Wallack, LLP;
- c.     Traffic Engineering Analysis prepared by Shropshire Associates, LLC, dated February 10, 2011;
- d.     Stormwater Management Report prepared by Marathon Engineering dated November 19, 2010, and revised December 15, 2010;

- e. Fiscal Impact Analysis prepared by Richard B. Reading Associates dated December 31, 2010;
- f. Analysis of Compliance with Requirements of the Sarlo Bill prepared by Richard DeLucry, Esquire, of Hill Wallack, LLP;
- g. Correspondence dated August 23, 2010, from New Jersey American Water Company to Jason T. Sciullo, PE, of Marathon Engineering and Environmental Services, Inc.;
- h. Correspondence dated August 23, 2010, from the Atlantic County Utilities Authority to Jason Sciullo, PE, of Marathon Engineering and Environmental Services, Inc.;
- i. Correspondence dated March 8, 2011, from Richard F. DeLucry, Esquire, of Hill Wallack, LLP, to Absecon Planning Board Secretary Tina Lawler;
- j. Correspondence date March 9, 2011, from Absecon City Fire Company Number 1 Chief Butch Stewart;
- k. Memo from Absecon City Fire Department Chief Butch Stewart to the Absecon Planning Board regarding approved revisions;
- l. Correspondence dated March 22, 2011, from Absecon Police Department Chief Joseph J. Cowan;
- m. Handout prepared by Joseph A. Courter, Jr., A.I.A.;
- n. 2010 and 2011 Northfield School District Budgets and Room Inventories for the Marsh Elementary School and Attales Middle School;

- o. Outline of Power Point Presentation entitled Opposition to Lifting the Age Restriction / Absecon Gardens prepared by Eileen Muskett;

4. Notice Provided. Public notice in accordance with N.J.S.A. 40:55D-12 was provided by the Applicant. In addition, although pursuant to N.J.S.A. 40:55D-12 the Applicant is entitled to rely upon the information contained in such list, the Applicant found an apparent discrepancy in the tax list provided by the City and provided notice to additional property owners who appeared to be within or near the 200 foot boundary. Also, the Applicant had previously invited members of the public to sign a list of people requesting notice and notice of the hearing was also provided to these individuals although outside the required 200 foot notice area.

5. Applicant. The Applicant is Boardwalk Development and Design Company, LLC, with an address of 9615 Ventnor Avenue, Margate, NJ. Anthony Cappuccio holds a 100% interest in the Applicant.

6. Hearing. Appearing on behalf of the application was Richard F. DeLucry, Esquire, of Hill Wallack, LLP, attorneys at law. Testifying on behalf of the application were:

- a. Jason Sciallo, PE, of Marathon Engineering and Environmental Services, Inc.;
- b. Austin J. Gerber, R.A., of SOSH Architects;
- c. Nathan B. Mosley, P.E., C.M.E., of Shropshire Associates;
- d. David R. Shropshire, P.E., P.P., of Shropshire Associates;
- e. Richard B. Reading of Richard B. Reading Associates;
- f. Richard Baehrle of Prudential Fox and Roach Realtors;
- g. Brian Meyers, Project Construction Manager;

- h. Anthony Cappuccio, Principal of the Applicant Boardwalk Development and Design Company, LLC;
- i. Thomas J. Sykes, A.I.A., P.P., of SOSH Architects; and
- j. Lance B. Landgraf, Jr., P.P., A.I.C.P., of Marathon Engineering and Environmental Services, Inc.

7. Exhibits. During the hearing the Applicant submitted the following exhibits:

- A-1 Colored Rendering of the Site;
- A-2 Construction Phasing;
- A-3 Construction Phasing;
- A-4 Construction Phasing;
- A-5 Construction Phasing;
- A-6 Construction Phasing;
- A-7 Aerial Prospective
- A-8 Turning Movement Plan;
- A-9 Revised Site Plan;
- A-10 Revised Phasing Plan;
- A-11 Revised Sheet A1-101;
- A-12 Revised Sheet A-111;
- A-13 Further Revised Sheet A-111;
- A-14 Chart of Sarlo (Conversion Law) Compliance.

8. Public Comments and Questions. A number of members of the public presented comments and questions, primarily in opposition to the conversion of the project from age restricted housing to non-age restricted housing. Significant concern was expressed regarding the impact on the school system, as well as concern regarding the potential for crime, parking and traffic problems, and a potential for overall negative impacts on the community. Providing comments and questions were:

- a. Eileen Muskett presented a power point presentation entitled Opposition to Lifting the Age Restriction - Absecon Gardens and expressed her belief that the conversion would result in a substantial detriment to the public good, in particular to the school system;
- b. Robert Kusnirik testified that based upon his real estate sales and management experience that there is, in fact, a market for age restricted housing and that the conversion would result in a substantial detriment; he also expressed concerns regarding the number of bedrooms, traffic concerns and school budget issues;
- c. Joseph Courter, an architect, testified regarding the bedroom count and the square footage calculation and generally regarding the detriment which he believed would result from the conversion;
- d. Charles Coyle opposed the removal of the age restriction;
- e. Susan Rasera expressed concern regarding the potential noise, traffic and trash;
- f. Tula Christopoulos opposed removing the age restriction;



- g. Carey Yakita expressed concern regarding the narrow streets around the project and the potential for additional traffic problems;
- h. Wayne Korte believes that the project will become a center for drug dealing;
- i. Stanley Weiner praise the work that the Applicant has done so far to improve the building;
- j. Emily Guarriello wanted an ethics committee to investigate the application process;
- k. Judy Courter inquired what mechanism would be available to enforce the bedroom count and asked the Applicant why the conversion is being sought;
- l. Barbara Brown expressed the belief that there is a market for 55 and older which has not been reached and also that the project will not help business on New Jersey Avenue; she also expressed concern regarding an increase in crime and drew a comparison with other developments;
- m. Joseph Potkay explained that he is terrified of the impact to the Absecon school system;
- n. Gary Morfitt is a member of the Methodist Church and testified that there is a parking problem on Church Street;
- o. Louise Speitel testified against the project and expressed concerns regarding enforcement;

- p. Christopher Paxson inquired regarding the classroom availability in the schools;
- q. Edward Mogan testified that his daughter's house has more amenities than the proposed development;
- r. Alex Corkhill expressed concern about the number of children going to public high schools;
- s. Debra Silver inquired regarding special education children and the cost thereof;
- t. Eileen Kusnirik inquired regarding the availability of any affordable units to local people.

9. Testimony Requested by the Planning Board. The Planning Board requested the testimony of Absecon School Superintendent James A. Giaquinto and Absecon Chief of Police Joseph J. Cowan. Superintendent Giaquinto testified in detail regarding the present enrollment of the Absecon school system, the available capacity of the system for additional students, the enrollment trends and the cost associated with both the school system and with the sending of high school students to Pleasantville High School or to other public high schools. Superintendent Giaquinto testified regarding the severe financial constraints which impact the operation of the school district, including the need for staff reductions in recent years. Nevertheless, he testified that based upon the projection of 9 elementary school students by the Applicant's expert or the projection of the possibility of 27 such students by the Board Planning Consultant, the Absecon school system could accommodate such additional students within its additional physical capacity and likely without hiring additional teaching staff. Police Chief Cowan testified that he would

be unable to project additional crime or a disproportionate impact on the Police Department resulting from the conversion of the project from age restricted to non-age restricted. He testified that any development, whether age restricted or not, would result in additional police calls.

10. Site Plan Amendment. This Applicant proposes to expand the project to include lot 8 of block 160, which is located within the Redevelopment Area, but which was not included in the original approval. Lot 8 will be consolidated with lot 1. This Application proposes to relocate Mechanic Street and to incorporate a portion of the prior right of way of Mechanic Street into the project. The total number of units would be reduced from 85 units to 74 units. Forty units would be located in the already constructed northern portion of the previously approved “L” shaped building and 8 townhouses would be located along Church Street. These 48 units constitute Phase 1. The Applicant is also proposing a Phase 2 which would include four (4) two (2) bedroom townhouses, two (2) two (2) bedroom flats and two (2) one (1) bedroom flats to be located adjacent to Mechanic Street. Phase 3 is proposed to include seven (7) two (2) bedroom townhouses on School Street and four (4) two (2) bedroom townhouses on New Jersey Avenue. Phase 4 will include seven (7) two (2) bedroom townhouses located on New Jersey Avenue adjacent to the relocated Mechanic Street intersection with New Jersey Avenue. The project site is being increased from 2.4 acres to 2.8 acres. The number of parking spaces is being increased from 94 parking spaces to 161 parking spaces. The area dedicated to recreational amenities is being increased from 6,322 square feet to 7,134 square feet and a pool is being added. The number of bedrooms is being decreased from 151 bedrooms to 141 bedrooms.

11. Architecture. The architectural design, as well as the materials and finishes, are substantially improved from the original approval.

12. Stormwater Management. The stormwater management system has been designed to be consistent with the requirements set forth in the Absecon City Code in Chapter 224, Article XXII. In addition, the stormwater management system satisfied the requirements of Section 158H relative to the issue of increasing infiltration, a reduction in peak runoff rates and also provides the necessary water quality measures. In addition, the stormwater management system is designed to address the applicable New Jersey Department of Environmental Protection stormwater regulations. Technical revisions are, however, required as more specifically set forth in the report of the Planning Board Consulting Engineer.

13. Traffic Circulation. The revised site plan now provides for the realignment and widening of Mechanic Street for access to an internal 54 space surface parking area from either New Jersey Avenue or School Street. The parking lot is surrounded by townhomes fronting on New Jersey Avenue and School Street. Previously, the development included a 56 space surface parking lot which would be visible from New Jersey Avenue. Onsite circulation as now proposed is an improvement over the previously approved plan with the additional access from School Street, the screening of this surface parking lot from the adjoining streets and, in particular, the realignment and widening of Mechanic Street. The Applicant proposes to realign Mechanic Street so that it intersects the New Jersey Avenue at a 90 degree intersection, rather than the prior angle. This realignment of the mechanic street intersection has been a goal of the Redevelopment Plan. The concerns raised by the Fire Department concerning emergency access to the site have been addressed by the Applicant in cooperation with the Fire Department. The Applicant will continue to work with the Fire Department to ensure adequate turning movements for fire and other emergency response vehicles.

14. Landscaping. The Applicant has substantially complied with the intent of the requirements for landscaping. The Redevelopment Plan in Section 6.2.5 incorporate the landscaping requirements of Section 224-78 and Section 224-129B. However, the quantity of landscaping material required by Section 224-129B would only be appropriate for single family dwellings and it would not be practical for this project. The Planning Board has previously recognized such impracticality and a design waiver is appropriate. The Applicant has improved and upgraded the landscaping plan from the original approval and the upgraded and improved landscaping represents an aesthetic benefit. However, a number of mature trees which in the original approval were intended to be protected during construction and preserved, were lost as a result of the inappropriate actions of the original developer. Although the loss of these mature trees is not the fault of this Applicant and it is impractical to directly replace such mature trees, the Applicant can mitigate the impact on the neighborhood by such loss and the Applicant will work with the Planning Board Consultant Planner to increase the size of the replacement trees to the fullest extent practical.

15. Bedroom Count. In accordance with N.J.S.A. 45:22A-46.8c the Applicant may not exceed the 151 bedrooms contained in the original approval. Although the Applicant has represented that there are only 141 bedrooms proposed, the floor plans include 34 other rooms variously described as offices, media rooms or the like. Although the Applicant has represented that there is no intention to market these other rooms as potential bedrooms, the Applicant's originally proposed floor plans would have easily facilitated such bedroom use, thereby having the potential to significantly increase the number of bedrooms and exceed the permitted 151 bedrooms. The Applicant has, however, undertaken substantial revisions to the floor plans in

order to minimize the potential for such conversions. These physical alterations in the floor plans are in addition to the restrictions which will be set forth in the recorded deed restrictions for the future owners. The primary revision in the floor plans has been to remove from such other rooms the ability of the occupants to access a full bathroom without entering another bedroom. The Applicant will also adjust the doorways and doors to such rooms to avoid full privacy for such rooms and thereby minimize the potential for use as bedrooms. The details of these revisions remains subject to the review and approval of the Planning Board Consulting Planner. These modifications to the floor plans and the provisions to be included in the condominium documents and a recorded deed restriction, when combined, are deemed adequate to sufficiently limit the potential for the conversion of these other rooms into bedrooms and accordingly the Planning Board finds that the number of bedrooms will not exceed the permitted bedroom count of 151.

16. Conversion from Age Restricted to Non-Age Restricted. The original approval was granted pursuant to the Redevelopment Plan adopted by the Absecon City Council on February 19, 2004. The Applicant proposes to convert the project to non-age restricted housing pursuant to N.J.S.A. 45:22A-46.3 et seq. known as the Sarlo Bill or the Conversion Law. N.J.S.A. 45:22A-46.6c provides that if the requirements of the Conversion Law are satisfied and the conversion can be granted without substantial detriment to the public good and without substantial impairment to the intent and purpose of the zone plan and zoning ordinance, the application for conversion “shall be approved.”

17. Phasing Plan. The Application proposes construction in four (4) phases. Phase 1 will include the completion of the existing forty (40) unit building which is partially constructed. It will also include the construction of the eight (8) townhouse units fronting on

Church Street. Phase 2 has two (2) parts, Phase 2A and Phase 2B, and includes substantial site work. Phase 3 will include the construction of the townhouse units fronting on School Street and four (4) of the townhouse units fronting on New Jersey Avenue. Phase 4 will include the construction of the remaining seven (7) townhouse units fronting on New Jersey Avenue which will require a change in the applicable zoning.

18. Zoning. The Redevelopment Plan provided different permitted uses for Parcels 1, 2 and 3. The project as originally approved was located entirely within Parcel 1 which permits the residential use. However, Parcels 2 and 3 which have now been incorporated within the project do not permit the residential use. Accordingly, the seven (7) townhouse units which are located all or partially within Parcel 2 are subject to the requirement of a zoning change. Also, the existing building was constructed by the prior developer in violation of the applicable height limitation. The Applicant must obtain an amendment to the Redevelopment Plan, a change in the applicable zoning, or modify the building to conform.

19. Conversion Eligibility Pursuant to N.J.S.A. 45:22A-46.5. This Applicant meets the conditions set forth in N.J.S.A. 45:22A-46.5a for change to a converted development:

- (1) The original final approval for the project was granted November 22, 2005, which is prior to the effective date of the Conversion Law;
- (2) Neither the original nor the present developer is holding a deposit for or has conveyed any dwelling unit within the development; and

- (3) The Applicant has agreed that 20% of the units in the development will be provided as affordable units in accordance with the regulation promulgated by the Council on Affordable Housing pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. Although the Applicant has indicated an intent to approach Absecon City Council to suggest an in lieu contribution or other alternative to the actual construction of all or a portion of the required affordable units, nevertheless the Applicant has agreed that the required affordable units will be provided unless an appropriate and acceptable alternative is agreed to by Absecon City Council.

20. Site Improvement and Infrastructure Requirements for a Converted Development. N.J.S.A. 45:22A-46.6b sets forth the site improvement and infrastructure requirements which must be documented in order for an Applicant to receive amended approval for a converted development. The Applicant has adequately documented compliance with these site improvement and infrastructure requirements as follows:

- (1) The site meets the residential site improvement standards set forth in N.J.A.C. 5:21-4.14 through 4.16. The original application required 157 parking spaces, but relief was granted by the Planning Board to allow only 94 parking spaces. This Applicant now requires 155 parking spaces



and 160 parking spaces are provided which meets the requirements of the Residential Site Improvement Standards.

- (2) This Application has revised the recreation improvements and other amenities to meet the needs of a converted development. In fact, the recreation improvements and other amenities have been substantially upgraded to now include significant community recreation space, a full gym, an outdoor pool, video security and prewiring for the alarm, internet phone and video. Based upon the testimony presented on behalf of the Applicant regarding the targeted market for this project, recreation amenities specifically targeted to children would not be appropriate and are not required.
- (3) The water supply system is adequate as determined pursuant to N.J.A.C. 5:21-5.1 to meet the needs of a converted development. The Applicant has provided documentation from the New Jersey American Water Company confirming an adequate water supply capacity.
- (4) The capacity of the sanitary sewer system is adequate to meet the projected flow requirements of a converted development pursuant to N.J.A.C. 7:14A-23.3. The

Applicant has provided documentation from the Atlantic County Utilities Authority confirming that there is adequate capacity in the sanitary sewer system to meet the projected flow requirements of the project.

- (5) This provision is not applicable since additional water supply or sewer capacity is not needed.
- (6) This provision is not applicable since adequate parking is being provided.
- (7) Additional parking has been provided and the stormwater management system calculations and improvements have been acceptably revised as set forth in the stormwater report prepared by Marathon Engineering and Environmental Services.

21. Permitted Site Plan Revisions. In accordance with N.J.S.A. 45:22A-46.8 the layout of the previously approved site plan may be reasonably revised to accommodate additional parking, different recreation improvements and other amenities, infrastructure enhancements, a needed reduction in the number of units, height requirements, revision to dwelling footprints that do not modify square footage of the development or the individual dwellings, or a needed change to construct the affordable units as attached housing. The size, height, floor area ratio, number of bedrooms and total square footage of buildings established as part of the prior approval for the age restricted development shall not be increased, except for the number of bedrooms for the affordable units only may be increased. The site plan has been reasonably revised. In particular,

the Applicant has significantly increased the number of parking spaces and has also significantly upgraded the recreation improvements and other amenities. The total building square footage of the project as previously approved as age restricted housing was 153,140 square feet. This has now been slightly reduced to 153,000 square feet. The number of bedrooms previously approved was 151 and the Applicant now proposes a reduction to 141 bedrooms. The Planning Board does, however, note that compliance with the prohibition on an increase in the number of bedrooms is based upon the testimony presented by the Applicant that the additional rooms which may be labeled as offices, media rooms or the like will not be marketed as bedrooms or as rooms which may be converted to bedrooms. In addition, the association documents must contain acceptable provisions which will effectively restrict the future conversion of any room not approved as a bedroom into a bedroom or the conversion of any garage or portion of any garage into a bedroom. Also, the Association documents must contain acceptable provisions which will ensure that the garages remain available and usable for the parking of automobiles. Adequate provisions must be included to allow enforcement of such restrictions by the Association and granting the City of Absecon, the right, but not the obligation, to also enforce such provisions. Such provisions must not be subject to future alteration, modification or suspension by the Association or its members unless approved by the City of Absecon.

22. School Impact. In accordance with N.J.S.A. 45:22A-46.6c the Planning Board is obligated to approve the conversion if the requirements of N.J.S.A. 45:22A-46.3 have been satisfied and if the conversion can be granted without substantial detriment to the public good and without substantial impairment to the intent and purpose of the zone plan and zoning ordinance.

With respect to a potential detriment to the public good, a major concern is the impact on the Absecon School District and the school system. In this regard, the Applicant has submitted a Fiscal Impact Analysis by Richard B. Reading and the testimony of Richard B. Reading. In addition to the Fiscal Impact Analysis prepared by Mr. Reading, Board Consultant Planner Robert L. Reid prepared an independent analysis of the impact on the Absecon School District and school system using a different methodology. The Reading Fiscal Impact Analysis used standard demographic multipliers and estimated that the project would generate 9 public school children which would have a current tax supported cost amounting to 93,380.00, but found that these costs would be fully offset by the school district tax revenues of \$144,490.00. He also found a positive fiscal impact for municipal operations and county operations. Planning Board Consulting Engineer Robert L. Reid prepared an analysis for the Planning Board based upon the existing Oyster Bay, California Hill Development and the Absecon Village Townhouses presently existing within the City of Absecon. His analysis resulted in an estimate of 27 elementary students and 9 high school students. In his opinion, however, the actual number of students to be generated would most likely be somewhere in between the number projected by the Applicant and the number estimated from the local statistics. Mr. Reid also analyzed the available capacity within the Attales Middle School and Marsh Elementary School and found available capacity to absorb the additional students likely to be generated by this project, whether based upon the Applicant's calculation or his own, without significant additional cost. Also, his analysis found that the additional cost to the Absecon School District for the potential number of high school students who would likely elect to attend a public high school would be off set by the additional tax revenue generated for the district.

Absecon School Superintendent James A. Giaquinto testified in detail regarding the operation of the District, the severe financial constraints already effecting the District, and the potential impact of additional development such as this project. Assuming the relatively even spread of students, it is likely that the additional students generated by this project could be absorbed within the existing classes without the creation of additional classes. Also, because of the financial constraints affecting the district, it would be unlikely that any additional teaching staff could be hired, even if desired. Although not optimum, the existing class sizes could, if necessary, be slightly increased without a significant negative impact on the teaching environment. With respect to the cost incurred by the District for Absecon high school students who elect to attend a public high school, the trend has been significantly upward in cost and is likely to continue to increase. However, it appears that the additional tax revenue to be generated for the District by this project would be adequate to cover the likely cost for Absecon high school students.

23. Absence of Substantial Detriment to the Public Good. Overall the amenities being provided by the Applicant are now substantially improved from those originally proposed. The Applicant has elected not to provide amenities specifically targeted to young children, such as a tot lot, based upon its intent to market to different demographics. Therefore, the absence of a tot lot or similar amenities is reasonable. Concern was expressed by a number of residents concerning the potential for an increase in crime, but this concern is not supported by the testimony of Police Chief Joseph J. Cowan or other credible evidence. The Planning Board cannot make a finding of a substantial detriment to the public good by mere reliance upon speculation or inappropriate conjecture concerning the character of the future residents.

Although the project is located in an older area of Absecon with narrow streets, the increase in traffic likely to be generated by the conversion from age restricted to non-age restricted has been analyzed in the traffic study provided by the Applicant's traffic consultant Shropshire Associates and accepted by the Planning Board's Traffic Consultant Alexander J. Litwornia. The study found and the Board accepts that the anticipated traffic from the proposed development will have only a minimal impact on the adjacent roadways and intersections. In addition, the traffic engineering assessment analyzed the parking being provided for the converted project and the Planning Board Traffic Consultant agrees that the Applicant is providing an adequate number of parking spaces and the Planning Board so finds. Also, concerns were expressed regarding increased noise, trash and similar negative impacts which could be generated if the project is converted from age restricted to non-age restricted. However, there is no factual basis for such an assumption other than conjecture and the Board finds that any such increase, if present, would not be so significant as to constitute a substantial detriment to the public good. Some members of the public disputed the Applicant's inability to successfully market the project as age restricted and, therefore, questioned the appropriateness of the application for conversion. However, the testimony of both the Applicant's real estate expert Richard Baehrle and the Applicant's principal Anthony Cappuccio that it is not practical to market the project as age restricted is accepted by the Planning Board as credible. Additionally, however, the New Jersey State Legislature made a finding in N.J.S.A. 45:22A-46.3 that there is an oversupply of age restricted housing approvals and deteriorating economic conditions.

Accordingly, the Planning Board finds that, although there is a possibility of some detriment to the Absecon School District and school system resulting from the conversion, such

detriment cannot be found to be a substantial detriment. The legislature did not provide the authority for the Planning Board when reviewing a conversion application to make an independent evaluation and determination of the housing market and instead provided that the Planning Board must approve the conversion if the statutory requirements are satisfied. The provision in N.J.S.A. 45:22A-46.11, which would permit the Planning Board to extend the deadline for a conversion application, is not relevant to this application.

24. Absence of Substantial Impairment to the Zone Plan and Zoning Ordinance.  
N.J.S.A. 45:22A-46.6c requires that the conversion from age restricted to non-age restricted will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

The site is located within the RA1-Central Business District Redevelopment Area which was established by the Absecon City Council in a Redevelopment Plan adopted on March 4, 2004. On December 20, 2007, the Absecon Zoning Map was revised to show the subject property in the RA1-Central Business District Redevelopment Area with the prior C-1 District and prior Senior Citizen Housing Community Overlay District B removed as alternative zoning controls for the area. It had not previously been clear whether the Redevelopment Plan was intended to entirely supercede the prior Senior Citizen Housing Community Overlay District B and accordingly the 2005 approval was based upon compliance with both the requirements of the Redevelopment Plan and the Senior Citizen Housing Community Overlay District B. Also, although developed in accordance with the provisions of the Redevelopment Plan, the Applicant did not seek and the City of Absecon did not require that the Applicant be named as a redeveloper and enter into a redevelopment agreement with the City. Accordingly, there never was a redevelopment agreement executed with respect to this project.

As set forth in Section 2.0 Historical Review in the Redevelopment Plan the Absecon Mayor and Council originally directed the Planning Board to undertake a Preliminary Investigation to determine whether the City's central business district and surrounding areas met the criteria established in the Redevelopment Statute for Redevelopment Area designation. It states that the Mayor and Council issued such directive in response to a persistent loss of retail establishments in the City's Central Business District. Section 4.4 of the Redevelopment Plan explains that the Plan is expected to benefit businesses in the downtown shopping district primarily by "providing for an increased customer base in the area." Although this project does not address the other goal of the Redevelopment Plan to provide additional public parking for the downtown shopping district, it clearly addresses the primary goal of providing for the increased customer base in the area. Although the Redevelopment Plan provided for age restricted housing, the development of this project as non-age restricted housing will still be consistent with the goal of providing housing adjacent to the downtown shopping district and thereby helping to reinvigorate the area. Accordingly, the Planning Board finds that the conversion of the project from age restricted to non-age restricted housing will still address a primary goal of the Redevelopment Plan and, therefore, will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

25. Variances. No variances are required. The Applicant had initially submitted an application for a variance pursuant to N.J.S.A. 40:55D-70c for a proposed sign, but the request has been withdrawn and no variances are required. Neither the height of the existing building which exceeds the permitted height, nor the placement of townhouses in Parcel 2 of the Redevelopment Area which does not permit residential uses, are subject to variance relief under



N.J.S.A. 40:55D-70 and instead require relief in accordance with the Redevelopment Plan which is within the jurisdiction of the Absecon City Council.

26. Waivers. Various design waivers, including parking stall size and landscaping, are required and are approved. Various submission waivers, including an environmental impact statement and a block model, are required and are approved. The required waivers are more specifically set forth in the reports of the Planning Board Professional Consultants.

27. Satisfaction of Conditions. The Applicant will comply with all outstanding conditions of the Board Consultants set forth in the report of the Consulting Engineer Andrew Previti, P.E. dated March 17 and April 19, 2011; Consulting Planner Robert L. Reid, P.P., dated March 4, March 21, and April 4 (updated April 25), 2011; and Traffic Consultant and Lighting Consultant Alexander J. Litwornia, P.E., dated March 21 and April 26, 2011, and all representations made on behalf of the applicant during the hearing and will submit any required revised plans or other documents within 180 days from the date of this Decision and Resolution for the review and approval of the Board Consultants, and specifically these conditions include, but are not limited to the following:

- a. The Applicant must resolve the existing building height violation by an amendment to the Redevelopment Plan or such other form of relief as may be available to the Applicant. In the alternative, The Applicant must modify the building height to eliminate the violation. In the event that the Applicant proposes to modify the building in any manner, such modification is subject to the review of the Planning Board Consulting Planner and if the Consulting Planner deems the proposed modification to have a substantial impact on the design of the building, the

modification will be subject to the review and approval of the Planning Board.

- b. The proposed townhomes located within Phase 4 of the project may not be constructed unless the applicable zoning is modified so as to permit this use.
- c. The Applicant is required pursuant to N.J.S.A. 45:22A-46.5a(3) to agree that 20% of the units in the development will be provided as affordable units in accordance with the regulations promulgated by the Council on Affordable Housing pursuant to the Fair Housing Act N.J.S.A. 52:27D-301 et seq. The Applicant has agreed to provide such 20% affordable units, but has indicated its intent to seek approval from the Absecon City Council so as to permit the payment to the City of an in lieu contribution rather than the actual construction of affordable units. Unless the City of Absecon approves an appropriate alternative to the construction of affordable units, the Applicant must construct the affordable units. If constructed, 20% of the project's 74 units are required to be affordable. This would be 15 units. The affordable units should be evenly distributed throughout the 40 unit building in Phase 1. If affordable housing is constructed, the Applicant must provide such housing in accordance with the requirements of the Council on Affordable Housing and all other appropriate housing standards and must reimburse the City of Absecon for any administrative services associated with such housing.

- d. The required condominium and association documents remains subject to review and approval by the Planning Board Professional Consultants and Planning Board Attorney. These documents must adequately address the prohibition on the conversion of other rooms or garages into bedrooms and must provide adequate penalties and enforcement procedures, as well as the right, but not the obligation, of the City of Absecon to also enforce such restriction. A restriction will be provided which prohibits the rental of units for at least the first three years after the initial sale of the unit and such restriction shall not be subject to removal or modification without the consent of the City of Absecon. A restriction must be provided prohibiting the parking of recreational vehicles, boats, trailers or the like on site in order to preserve the available parking spaces. Also, a provision must be provided requiring that the garages remain available and usable for the parking of automobiles.
- e. The site now includes both lot 1 of block 161 and lot 8 of block 160 and the Applicant is required to file a deed of consolidation. The form of such deed is subject to the review and approval of the Planning Board Attorney and the recording of such deed of consolidation and the providing to the Planning Board Secretary of evidence of such recording are conditions of this Approval.
- f. The project includes the proposed vacation of a portion of Mechanic Street and the relocation of Mechanic Street at the intersection with New

Jersey Avenue. The vacation is subject to approval by the Absecon City Council. A dedication of right of way to the City for the relocation of Mechanic Street is also required.

- g. The original approval required an 8.5 foot strip to be reserved for future road widening along both School Street and Church Street. If not addressed, this remains a continuing condition.
- h. The Applicant has provided a stormwater management facility maintenance manual and the manual adequately addresses the stormwater requirements of the New Jersey Department of Environmental Protection as well as the requirements of the Absecon City Code. The stormwater management facility maintenance manual must be incorporated in a recorded deed restriction or similar document, the form of which remains subject to the review and approval of the Planning Board Professional Consultants and Planning Board Attorney. The recording of the document and the providing of appropriate evidence of such recording to the Planning Board Secretary are conditions of this approval.
- i. The Applicant provided testimony that the “target buyers” of units will be a mix of “young professionals, empty nesters and second home buyers.” The Applicant will, as a continuing condition of this approval, provide a good faith effort to market the units in accordance with such representation.
- j. The Applicant has proposed construction in 4 phases. Each subsequent phase will not begin construction until at least 50% of the units in the

prior phase have been completed and sold. Construction of Phase 4 may not proceed unless and until the applicable zoning for that area is modified.

- k. The project will require an amended Treatment Works Approval from the New Jersey Department of Environmental Protection for the extension and the relocation of the sanitary sewer system. That Applicant is required to be made in conjunction with the City of Absecon.
- l. All site improvements and landscaping applicable to each phase must be completed before a certificate of occupancy can be issued for any units in such phase.
- m. There is a potential for headlight glare from oncoming vehicles entering realigned Mechanic Street from New Jersey Avenue to adversely affect the residents on lot 6 of block 161. The Applicant is required to approach and offer to the owner of lot 6 the planting of an evergreen hedgerow on lot 6 along the property line. The design and adequacy of such landscaping remains subject to the review and approval of the Planning Board Consulting Planner.
- n. The architectural construction plans to be submitted to the City construction office remains subject to the review and approval of the Planning Board's Planning Consultant for consistency with this approval. In the event of any substantive inconsistency between the plans submitted for construction and the plans reviewed by the Planning Board for this

approval, the change will be subject to the review and approval of the Planning Board. This approval is based, at least in part, upon the specific architectural design, as well as the specific materials and finishes, proposed by the Applicant.

- o. To the extent permitted, in the event that affordable housing units are provided by the Applicant, a preference shall be given for occupancy for up to 50% to those households having members who work or reside in the City of Absecon. In addition, any affordable housing units being provided must be evenly distributed throughout the project and the phases of the project.
- p. The Applicant has agreed to comply with the recommendations of the Planning Board Consulting Engineer, the Planning Board Consulting Planner, and the Planning Board Traffic Consultant.

28. Payment of Taxes and Fees. This approval is conditioned upon payment of all taxes and assessments on the subject property and the payment of all application fees and escrows.

29. Compliance With Approval. This approval is based upon the full and diligent adherence by the Applicant to all representations made to the Board. Any failure of the Applicant or the Applicant's successors or assigns to fully adhere to all of the provisions of this approval and all representations made by or on behalf of the Applicant, directly or indirectly, in the hearing or in the application documents, may be deemed to be a material breach of this approval. Such a breach will constitute a violation of the Development Ordinance and the City

may remedy such violation by the withholding of building permits, certificates of occupancy, continuing certificates of occupancy, or any other permit, approval or certificate for the property which is the subject of this approval. In addition, the City may seek the imposition of fines or penalties pursuant to the Development Ordinance or may pursue any other remedy available to it at law or in equity, including an action in the Superior Court to enjoin such violation or to compel performance or compliance.

30. Other Approvals. The Applicant shall comply with all federal, state and local laws, rules and regulations and shall obtain any and all other necessary government approvals required for this approval. If as a result of the review by any other governmental agency there is any change in the approval by this Board or any modification of any statement or representation made by or on behalf of the Applicant, the Applicant must notify the Board and the Board shall have the right to review that issue as it may relate to or impact this approval and the Board may modify or amend this approval as appropriate. Approvals which may be required include, but are not necessary limited to, the following:

- a. Cape Atlantic Soil Conservation District;
- b. New Jersey Department of Environmental Protection Treatment Works Approval;
- c. New Jersey Department of Environmental Protection Coastal Area Facilities Review Act Permit (Amended);
- d. New Jersey Department of Community Affairs (public offering statement and condominium documents).

31. Enforceability. All references in this Decision and Resolution to the Applicant shall, where appropriate for the context, also mean the Applicant's successors or assigns. If any provision of this Decision and Resolution or the application thereof shall be held to be invalid or unenforceable to any extent, the remainder of this Decision and Resolution shall not be affected thereby and shall remain enforceable to the fullest extent of the law.

32. Prior Approvals. To the extent not inconsistent herewith, all terms and conditions of the prior decisions and resolutions for preliminary approval, final approval and amended site plan approval are incorporated as if set forth at length herein.

33. Performance Guarantee. This preliminary and final amended site plan approval and conversion approval is conditioned upon the review and approval by the City Engineer of an appropriate engineer's estimate for the cost of the site improvements. Such estimate to be submitted by the Applicant. Acceptable performance guarantees and inspection escrows must be posted in accordance with N.J.S.A. 40:55D-53.

34. Effect of Approval. This preliminary and final amended site plan approval confers upon the Applicant the rights set forth in N.J.S.A. 40:55D-52, subject to compliance with the outstanding conditions of this approval. Zoning requirements and all other rights conferred upon the Applicant pursuant to N.J.S.A. 40:55D-52, whether conditionally or otherwise, should not be changed for a period of two (2) years after the date in which this Resolution is adopted. However, if the Applicant has followed the standards prescribed for final approval, the Planning Board may extend such a period of protection in accordance with N.J.S.A. 40:55D-52.

35. Conversion. For the reasons set forth in detail in the testimony presented on behalf of the application and the documents submitted in support of the application, as well as



the testimony and reports of the Planning Board Professional Consultants, the previously approved age restricted development is changed to a converted development which is no longer age restricted and may be marketed with no age restrictions.

NOW, THEREFORE, BE IT DECIDED AND RESOLVED by the Planning Board of City of Absecon that this application for Preliminary and Final Amended Site Plan Approval is granted, subject to the conditions set forth above, by a vote of five (5) in favor and one (1) opposed.

NOW, THEREFORE, BE IT FURTHER DECIDED AND RESOLVED by the Planning Board of the City of Absecon that this application for Approval of the Conversion of an Age Restricted development to a converted development which is no longer age restricted is granted, subject to the conditions set forth above, by a vote of four (4) in favor and two (2) against.

DATED:

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Henry Gorohoff, Chairman

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Tina Lawler, Board Secretary

RE: Boardwalk Development and Design Company, LLC (Absecon Gardens)  
Preliminary and Final Amended Site Plan Approval  
Age Restriction Conversion  
Richard F. DeLucry, Esquire

SITE PLAN:  
VOTING IN FAVOR:  
Elco, Thomas, Dey, Howell, Gorohoff

OPPOSED:  
Cicccone

RECUSED:

CONVERSION:  
VOTING IN FAVOR:  
Elco, Thomas, Dey, Gorohoff

OPPOSED:  
Cicccone, Howell

RECUSED: