

LEON S. AVAKIAN, INC. *Consulting Engineers*

788 WAYSIDE ROAD • NEPTUNE, NEW JERSEY 07753

LEON S. AVAKIAN, P.E., P.L.S. (1953-2004)
PETER R. AVAKIAN, P.E., P.L.S., P.P.
MEHRYAR SHAFAI, P.E., P.P.
GREGORY S. BLASH, P.E., P.P., CPWM
LOUIS J. LOBOSCO, P.E., P.P.
GERALD J. FREDA, P.E., P.P.
JENNIFER C. BEAHM, P.P., AICP
CHRISTINE L. BELL, P.P., AICP
SAMUEL J. AVAKIAN, P.E., P.L.S., P.P.

August 7, 2023

Kristie Dickert, Administrative Officer
Zoning Board of Adjustment
Neptune Township
P.O. Box 1125
Neptune, NJ 07754-1125

Re: 34 OPOG, LLC
34 Ocean Pathway
Block 129, Lot 6 (ZB #23/08)
Use Variance
Our File: NTBA 23-09

Dear Board Members:

Our office received and reviewed materials that were submitted in support of an application for use variance approval for the above referenced project. The following documents were reviewed:

1. **Documents Reviewed:**

- A. Survey of Property consisting of one (1) sheet, prepared by Rodolfo Pierri, PLS, of Landmark Surveying and Engineering, Inc., dated June 13, 2022, last revised October 5, 2022.
- B. Community Impact Statement prepared by M. McKinley Mertz, LEED Green Associate, AICP, PP of Heyer, Gruel & Associates, dated June 21, 2023.
- C. Architectural Plans consisting of 19 sheets, prepared by Mark A. Pavliv, AIA of McHugh Architecture, dated February 14, 2023.
- D. Grading Plan consisting of one (1) sheet, prepared by Daniel W. Caruso, PE of Landmark Surveying and Engineering, Inc., dated June 13, 2022, last revised March 14, 2023.
- E. Neptune Zoning Denial dated March 3, 2023.

2. **Site Analysis and Project Description**

The subject property consists of Block 129, Lot 6, a 0.12-acre (5,133.81 sq. ft.) site with frontage on both McClintock Street and Ocean Pathway in the HD-O Historic District Oceanfront Zone District. The site is currently developed with an existing 4-story historic building known as the Albatross Hotel. The historic hotel contains a total of 39 guest rooms, one (1) apartment for the Hotel Manager, and associated dining, guest convenience, and laundry uses. The site is also developed with an associated concrete driveway to McClintock Street, a covered porch along Ocean Pathway, a covered stoop along McClintock Street, and other site improvements. Residential uses are located to the west and south, the Ocean Pathway Condominium complex is located to the east, and the Ocean Path Park is located to the north across Ocean Pathway.

The Applicant is seeking use variance approval to renovate the existing historic Albatross Hotel and construct a second and third floor addition. The applicant intends to continue the hotel use as well as the existing dining, guest convenience and laundry uses. The applicant is proposing to reduce the existing 39 guest rooms to 27 guest rooms and to add a bathroom to each guest room, where currently there is access to one bathroom on each floor. The first floor will contain two (2) guest rooms, one (1) caretaker's quarters, a kitchen and dining area, and three (3) public bathrooms which will be renovated to ensure ADA compliance. The second floor will contain nine (9) guest rooms and a new covered porch, the third floor will contain ten (10) guest rooms, a housekeeping closet, a covered porch, and a fiberglass deck. The fourth floor will contain six (6) guest rooms. The basement will contain a spa area with two (2) massage rooms, a business office, meeting room, laundry area, elevator equipment room, refrigeration unit, janitor closet, and maintenance room. The applicant is also proposing to construct a new elevator with access to all floors.

Additional site improvements include renovation of the roof and building exterior, renovation of the existing historic sign, renovation of the front steps along Ocean Pathway, addition and removal of various concrete areas, and removal of the fire escape, chimney, bilco doors, and a planter. Additional lighting is also proposed. The proposed site improvements would reduce the total lot coverage from 90.05% (4,623 sq. ft.) to 87.65% (4,499.9 sq. ft.).

3. **Consistency with the Zone Plan**

The subject property is located in the HD-O Historic District Oceanfront Zone District. The HD-O Zone District recognizes the character and historic land use pattern of the oceanfront blocks in the Ocean Grove portion of the Township, east of Central Avenue. The purpose of the HD-O Zone District is to protect, preserve and perpetuate the historical framework in Ocean Grove. This framework includes single-family residences, bed and breakfasts, and historic hotels. Permitted uses in the zone include community shelters, detached single-family dwellings, parks, and

Ocean Grove Camp Meeting Association (OGCMA) facilities in accordance with permitted, conditional and accessory uses in the district. Conditional uses include bed and breakfast guesthouses, bed and breakfast homestays, historic hotels, and historic hotel restaurant/retail.

The existing historic hotel is a conditionally permitted use in the HD-O Zone District, upon which all of the conditions associated with the use have not been met. The proposed addition and renovations to the existing historic hotel constitute an expansion of a **conditionally permitted use upon which all of the conditions associated with the use have not been met, requiring d(3) variance relief.**

4. **Conditions for Historic Hotels**

- A. All guest rooms shall include full, private bathroom facilities. **The applicant meets this requirement.**
- B. All guest rooms shall average 175 square feet including required bathroom facilities. **The applicant should provide the total area for each guest room to confirm compliance with this condition. D(3) variance relief may be needed.**
- C. A minimum of fifteen (15%) percent of the total floor area of the historic hotel shall be devoted to common areas for the use and enjoyment of hotel guests and the general public. **Testimony should be given as to compliance with this ordinance section. D(3) variance relief may be needed.**
- D. All service, garbage and loading facilities shall be located in the rear portion of the building, shall not be located in required yard setbacks and shall be suitably screened from adjacent properties. **Testimony should be given as to compliance with this ordinance section.**
- E. No exterior light levels which exceed 0.5 foot candles shall cross property lines. **Testimony should be given as to compliance with this ordinance section. A lighting plan may be necessary for the Board's review.**
- F. No parking facility or portion thereof shall be permitted in front yard areas. **The applicant should provide testimony on the use of the exiting 45' long driveway.**
- G. Pre-existing historic hotel structures which are non-conforming with respect to the bulk requirements set forth in Zoning Schedule B-1 shall be permitted to be altered, enlarged, or extended provided that all conditions of this subsection are complied with, and existing nonconforming bulk conditions are not increased. **The applicant appears to meet this condition.**

- H. The minimum lot area for a newly constructed historic hotel lot shall be 10,000 square feet. The minimum lot area for a historic hotel utilizing an existing structure shall be 3,600 square feet. **The Albatross hotel is an existing historic hotel.**
- I. Cooking and smoking in rooms shall be prohibited. **The applicant is proposing a kitchen in the Empire Guest Suite located on the first floor. A d(3) variance is needed.**
- J. The structure shall not be a "rooming house" or "boarding house" as defined by N.J.S.A. 55:13B-3. **Testimony should be provided as to compliance with this ordinance section.**
- K. The facility shall not allow any guest to remain more than thirty (30) days, or more than thirty (30) days of any period of sixty (60) successive days. **Testimony should be given as to compliance with this ordinance section.**
- L. Historic hotels shall be located north of Main Avenue, including those properties fronting on both sides Main Avenue. **The applicant meets this requirement.**
- M. Parking shall only be provided for new historic hotels with a minimum lot area of 40,000 square feet or greater. **No parking is proposed. The applicant meets this requirement.**

5. **Bulk Requirements**

The required bulk requirements of the HD-O Zone district for existing hotels as they relate to the subject application are as follows:

	Existing Hotel Required	Proposed
Minimum Lot Area	3,600 sq. ft.	5,133.81 sq. ft.
Maximum Floor Area Ratio	3.5	Under 3.5
Minimum Lot Width	60	45 ft.*
Minimum Lot Frontage	60	45 ft.*
Minimum Lot Depth	60	111 ft.
Minimum Front Yard Setback	Section 413.06	0.93 ft.
Minimum Side Yard Setback	2	2.12 ft.
Min. Combined Side Yard Setback	4	4.96 ft.
Maximum Percent Building Cover	85%	67.72%
Maximum Percent Total Lot Cover	90%	87.65%
Maximum Number of Stories	4	4
Maximum Building Height	50 ft.	46.9 ft.
Minimum Improvable Area	1,900 sq. ft.	Over 1,900 sq. ft.
Minimum Improvable Diameter	28 ft.	Over 28'

*Existing non-conformity

6. **Ordinance Requirements**

A. *Height Exemptions and Permitted Projections*

- 1) As per §418B(3), cornices, eaves, cantilevered roofs, gutters, bay windows, and chimneys, provided they do not project more than twenty-four (24) inches from an exterior building wall into any required yard setback, and provided they remain at least two (2) feet from all yard lines. The proposed projections along the west elevation appear to project more than 24 inches into the required side yard setbacks. **As such, a variance is needed.**

7. **Required Proofs for Variance Relief**

- A. ***D(3) Conditional Use Variance.*** The application requires a d(3) use variance for the approval of a historic hotel where the conditions upon which the permitted use is predicated have not been met. To meet the positive criteria for a d(3) variance, the applicant should prove the particular suitability of the site in accommodating the use, despite its failure to meet the conditions set forth in the ordinance.

The negative criteria should focus on the impact of the deviation, not the impact of the use. The applicant must present evidence that the negative impacts of non-compliance with the conditions can be mitigated to the extent that the use will not cause a substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

B. ***C Variances***

A number of “c” variances are required. There are two types of c variances with different required proofs.

- 1) Boards may grant a c(1) variance upon proof that a particular property faces hardship due to the shape, topography, or extraordinary and exceptional situation uniquely affecting the specific property.
- 2) Boards may grant a c(2) variance based upon findings that the purposes of zoning enumerated in the MLUL are advanced by the deviation from the ordinance, with the benefits of departing from the standards in the ordinance substantially outweighing any detriment to the public good. The Supreme Court’s ruling in Kaufmann v. Planning Board for Warren Township provides additional guidance on c(2) variances, stating that “the grant of approval must actually benefit the community in that it represents a better zoning alternative for the property. The focus of the c(2) case, then, will be...the

characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community.”

- 3) C variances must also show consistency with the negative criteria as well.

8. **Site Plan & Use Review Comments**

- A. The Applicant should provide testimony on all required variances and clarify all points where additional information is needed.
- B. The Applicant should provide testimony regarding the general use of the site and all existing and proposed uses on site, including the days and hours of operation, existing and proposed events and the frequency of such, overall site circulation, anticipated traffic demand, and refuse generation and storage.
- C. The applicant should provide testimony regarding the existing and proposed uses on site. In particular, the proposed basement spa use appears to be a new use, which may require additional variance relief. The applicant should clarify if this use will be part of the hotel operations or if this will operate as a separate use. Additional variances may be required.
- D. The applicant has indicated they are requesting to continue the existing use of one (1) apartment for the hotel manager, whereas the proposed caretaker’s quarters does not include a kitchen space. Testimony should be provided as to the caretakers’ living space, if they will be living on site full time and how cooking will be handled.
- E. The site plan provided shows unclear overlaps between existing and proposed site improvements. The applicant should update the plans to clearly differentiate what is proposed, what is being removed, and what is to remain on site.
- F. The applicant should provide testimony as to the improvements proposed for the existing wall-mounted signs and ensure compliance with all requirements of §402 and §416.
- G. The Applicant should provide testimony regarding the proposed lighting and ensure compliance with all requirements of §511. A lighting plan may be required.
- H. As per Ordinance §515, all uses must provide an area used for refuse and recyclable disposal collection, whereas no refuse area is existing or proposed. Testimony should also be provided as to how refuse will be

managed on site, including the type of refuse to be generated and how it will be disposed of. If a trash enclosure is required, we recommend it be constructed of masonry block and a detail of same be added to the plans.

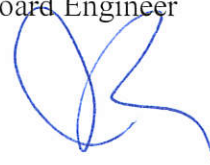
- I. The site plan indicates that the existing building is 3-stories, whereas a 4-story building is proposed. Testimony should be provided as to the existing number of stories of the building. The site plan may need to be revised or additional variances may be needed.
- J. The applicant should revise the zoning table included on the site plan to include the appropriate bulk requirements and all required bulk regulations. Some of the requirements listed pertaining to the lot appear to be for single-family homes and not existing hotels.
- K. HPC review and approval is required.

Very truly yours,

LEON S. AVAKIAN, INC.



Matt Shafai, P.E.
Board Engineer



Jennifer C. Beahm, P.P.
Board Planner

MS:clb/icr/mcs
cc: Monica Kowalski, Esq., Board Attorney
34 OPOG, LLC, Applicant
Chris Beekman, Esq., Applicant's Attorney
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