



James Stewart
Partner

One Lowenstein Drive
Roseland, NJ 07068
T 973 597 2522
F 973 597 2523
jstewart@lowenstein.com

September 25, 2018

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

New Jersey Department of Environmental Protection
Division of Land Use Regulation
Attn: Meghan Kelly, Environmental Specialist
501 East State Street, Second Floor
PO Box 420
Trenton, New Jersey 08625-0420

**Re: CAFRA Individual Permit Application (the "Application")
NJDEP File No. 0505-03-0004.1, CAF180001
Archristavest Pier 6600, LLC
Hotel Icona ("Applicant")
9701 Atlantic Avenue
Block 710.01, Lot 1
Lower Township, Cape May County**

Dear Ms. Kelly:

We submit these comments regarding the Application on behalf of the Seapointe Village Master Association, Inc., which represents the owners of residential condominium units at Seapointe Village in the Diamond Beach area of Lower Township, Cape May County, New Jersey (the condominium units and the master association, "Seapointe"). Seapointe is located immediately south of and across Memphis Avenue from the ICONA Diamond Beach hotel ("Hotel Icona"), which is owned by Applicant. We oppose the Application because it violates the coastal high hazard zone rules, the dunes and beach rules and the impervious cover rules.

Coastal High Hazard Rules

Applicant proposes, in part, to relocate the existing bulkhead adjacent to the Hotel Icona approximately 195 feet to the east; and to construct on existing dune and beach, an event building, a separate event tent, a brew pub, a bungalow, thirty cabanas, and parking. All of this construction will take place in a coastal high hazard zone. The project is proposed in a location that is mapped by FEMA as Zone VE. Commercial development generally, as described in the Application, is prohibited in such areas, N.J.A.C. 7:7-9.18(b), unless the proposed buildings:

(1) will not exceed 15 feet; (2) will be located within areas that are already densely developed; and (3) will be landward of the boardwalk. N.J.A.C. 7:7-9.18(f)1-2. The Application fails all three of these requirements. Applicant proposes buildings with roofs reaching 16 feet and that will be in an area that is currently beach and dune and not developed at all. Furthermore, the development will not be landward of a boardwalk because there is no boardwalk in this location. If Applicant is permitted to violate these requirements, it will undermine the purpose of these rules to foster orderly and appropriately limited development of New Jersey's coastal resources.

Dune and Beach Rules

Applicant's proposal to relocate the existing bulkhead 195 feet to the east so that it can develop 195 feet of existing dunes and beach violates both dune and beach rules. N.J.A.C. 7:7-9.16(b) and -9.22(b) prohibit development unless an applicant has shown that its development "will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances, or activities." Seapointe developed a protective dune system that will not line up with the dune system further East proposed in the Application. By breaking the dune line and extending the bulkhead deep into existing beach, Applicant will create a gap that impedes the natural functioning of the dune system and risks flooding at Seapointe and into the neighborhood during storm surge events, especially the northeasterly storm winds commonly experienced at Diamond Beach. The Application fails to address this significant long-term impact.

The Application does not describe any activity that is acceptable on dunes, N.J.A.C. 7:7-9.16(b), or beaches, N.J.A.C. 7:7-9.22(b) (1) – (10). In addition, the Application has not addressed whether there is no practical, prudent or feasible alternative for constructing this project on the dunes and beach, as required by N.J.A.C. 7:7-9.16(b) (prohibits development on dunes unless there is "no practicable or feasible alternative in an area other than a dune"), and N.J.A.C. 7:7-9.22(b) (prohibits development on beaches unless there is no "prudent or feasible alternative").

Applicant attempts to justify its "disturb[ance]" of what it calls a "small dune area on the northern portion of the site" by stating that "a larger dune system is proposed ... to the east of the proposed buildings." However, there is simply no such mitigation permitted for dunes, except in limited circumstances in overwash areas. *See generally* N.J.A.C. 7:7-17. Mitigation, otherwise, of dunes makes little sense. The rules speak of a "beach and dune system," a sort of superstructure for a specific location whose purpose is to manage the flooding and property damage to which high hazard areas are prone. N.J.A.C. 7:7-9.16(b), -9.22(b). For this reason, the rules simply do not allow Applicant to "mitigate" the loss of some dunes as it proposes, without the required showing that its activities will not compromise the integrity of the dune and beach system which currently protects Seapoint and its neighbors. That showing has not been made here.


September 25, 2018

Impervious Cover

Finally, the Application also violates the requirements regarding impervious cover. Impervious cover is allowed upon the “net land area” of locations within the CAFRA area. N.J.A.C. 7:7-13.3(d). Calculating the net land area requires first summing the acreage of any “special water’s edge” areas present, then subtracting that sum from the site’s total land area. N.J.A.C. 7:7-13.3(e). However, special water’s edge areas include dunes and beaches—and the development proposed in the Application is 100% comprised of these two special area types. The site’s total land area is therefore completely netted out of the required calculation, and the rules do not allow Applicant to place impervious cover upon the beach and dunes at all. *See* N.J.A.C. 7:7-13.3(e)1, (e)2.i. & iii.

For all these reasons, the Department must deny the Application and refuse to issue an individual CAFRA permit for the project proposed. In addition to violating applicable rules, the proposed development will also disrupt the integrity of the beach and create a high water hazard for Seapointe’s members and their property. Seapointe asks that the Department prevent these negative outcomes by denying the Application.

Respectfully submitted,


James Stewart

12477/27
9/25/18 202895873.2

cc: Seapointe Village Master Association, Inc.