

**City of Cape May Zoning Board of Adjustment Meeting Minutes
Thursday, September 25, 2014**

Opening: In compliance with the Open Public Meetings Act of 1975, adequate notice of the meeting was provided. Chairman White called the meeting to order at 6:30 P.M.

Roll Call:	Mr. White, Chairperson	Present
	Mrs. Hutchinson, Vice Chairperson	Present
	Mr. Iurato	Present
	Mr. Meier	Present
	Mrs. McAlinden	Present
	Mrs. Inderwies	Present
	Mrs. Pharo	Present
	Mr. Furlin, Alt 1	Present

Also Present: George Neidig, Board Solicitor
Craig Hurless, PE, PP, CME, Board Engineer
Jill Devlin/Board Assistant
Edie Kopsitz, Secretary

Chairman White announced to the Board and the public that the application for Georgina and Thomas Lord, 1239 New York Avenue, Block 1132, Lot(s) 27, is being postponed until the November 13, 2014 Zoning Board Meeting.

Minutes: August 28, 2014

Mr. Iurato motioned to approve the August 28, 2014 minutes as presented. Seconded by Mrs. Hutchinson and **carried 7-0.** Those in favor: Mr. Iurato, Mr. Meier, Mrs. McAlinden, Mrs. Inderwies, Mrs. Pharo, Mr. White, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

Resolution(s):

**#9-25-2014:1, 412-414 West Perry Street
Block 1031, Lot(s) 17, 18 and 75**

Mr. Iurato motioned to accept Resolution #9-25-2014:1. Seconded by Mrs. Hutchinson and **carried 7-0.** Those in favor: Mr. Iurato, Mr. Meier, Mrs. McAlinden, Mrs. Inderwies, Mrs. Pharo, Mr. White, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

Applications:

Scott Peter, 508 Broad Street Block 1053, Lot(s) 3 Hardship and Substantial Benefit Variances

Chairman White noted that there was typo on the agenda and the engineering report, the address was noted as 528 Broad Street but is actually 508 Broad Street. Mr. Iurato noted on page 2 of the survey affidavit, it shows two Bank Streets. Lou Dwyer noted they would correct the plans.

Craig Hurless, Scott Peter and Howard Noone were sworn in and stated their credentials for the record.

Lou Dwyer questioned Mr. Noone regarding his survey of the site and variance plans. He stated an outbound survey was done of the property, and that the improvements were located on the adjacent lots. Mr. Noone also remarked this lot is a classic undersized lot in that it doesn't meet lot area, lot width or lot frontage. He noted there are three other similar size lots in the immediate area. Lou Dwyer added there were two additional variances being requested, one being rear yard setback, and asked if there would be any impact to the neighborhood if that variance was granted. The second additional variance being requested is floor area ratio. Lou Dwyer also asked if that variance were granted, would it cause any negative consequences to the neighborhood. The proposed house is slightly over 1600 square feet in size. Mr. Noone confirmed that was a reasonable size house for this lot. If a home were built smaller than that he believes it would be somewhat out of character for the neighborhood. Mr. Noone believed the site could nicely accommodate a house of the proposed size and saw no negative impacts to the area.

There were no questions from the board for Mr. Noone. Lou proceeded to question applicant Scott Peter regarding the proposed home. Mr. Peter stated the house was designed specifically to fit the lot. Exhibit A1, a drawing of the home proposed, was put into record. It is a 3 bedroom, 2 bathroom design. Mr. Peter noted that the plans were revised to satisfy requests from the Historic Preservation Commission, and that he will also be able to accommodate the required parking for this use. Lou Dwyer noted they are requesting a rear yard setback variance caused by the size of the lot to accommodate a reasonably sized house. Lou asked the Board if there were any questions for Mr. Peter. Chairman White had a few questions regarding the neighboring homes and lot sizes; Mrs. Inderwies questioned the FAR and building height. Mr. Iurato asked if the home was going to be a rental property; Mr. Peter advised it will not be a rental.

There were no other questions from the Board.

Craig Hurless reviewed his memorandum dated August 12, 2014, beginning with the completeness review, item numbers 12, 20, 21 and 24. Mr. Hurless reviewed the zoning requirements, and the review comments for the variances requested. He noted the initial variance requested for Lot Coverage (If required). The applicant provided additional information that they are not requesting that variance any longer, it has been withdrawn. Mr. Hurless reviewed his general review comments, items 1 through 12. There were no questions for Mr. Hurless from the Board.

Chairman White opened the meeting to the public at 6:55 PM.

George Neidig swore in member of the public, Joan Vekers, 501 Broad Street. Her question pertained to the home, whether it was a two family or a single family home, and if it would be a raised property. Lou Dwyer advised it would be a standard height, single family home with a foundation.

Chairman White closed the meeting to the public at 7:00 PM.

Mrs. Hutchinson motioned to approve Completeness Review Items 20, 21 and 24. Seconded by Mr. Meier and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Meier, Mrs. McAlinden, Mrs. Pharo, Mrs. Hutchinson and Mr. White. Those opposed: None. Those abstaining: None.

Mr. Meier motioned to approve Variance §525-16B(1) Table 1, Lot size. Seconded by Mrs. Pharo and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Meier, Mrs. McAlinden, Mrs. Pharo, Mrs. Hutchinson and Mr. White. Those opposed: None. Those abstaining: None.

Mrs. Hutchinson motioned to approve Variance §525-16B(1) Table 1, Lot With & Lot Frontage. Seconded by Mrs. Inderwies and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Meier, Mrs. McAlinden, Mrs. Pharo, Mrs. Hutchinson and Mr. White. Those opposed: None. Those abstaining: None.

Mrs. Pharo motioned to approve Variance §525-16B(1) Table 1, Habitable Ground Floor Area. Seconded by Mr. Meier and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Meier, Mrs. McAlinden, Mrs. Pharo, Mrs. Hutchinson and Mr. White. Those opposed: None. Those abstaining: None.

Mrs. Inderwies motioned to approve Variance §525-16B(1) Table 1, Rear Yard Setback. Seconded by Mrs. Hutchinson and **carried 7-0.** Those in favor: Mrs. Inderwies, Mr. Meier, Mr. Iurato, Mrs. McAlinden, Mrs. Pharo, Mrs. Hutchinson and Mr. White. Those opposed: None. Those abstaining: None.

Mr. Meier motioned to approve Variance §525-52, Floor Area Ratio. Seconded by Mrs. Pharo and **carried 6-1.** Those in favor: Mrs. Inderwies, Mr. Meier, Mrs. McAlinden, Mrs. Pharo, Mrs. Hutchinson and Mr. White. Those opposed: Mr. Iurato. Those abstaining: None.

Mrs. Hutchinson motioned to approve General Review Comments 1 through 12. Seconded by Mr. Meier and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Meier, Mrs. McAlinden, Mrs. Pharo, Mrs. Hutchinson and Mr. White. Those opposed: None. Those abstaining: None.

Mr. Iurato requested a five minute recess before beginning the next application at 7:00 PM.

Chairman White called the meeting to order at 7:05 PM.

**Daniel D. Cappelletti, “Cappelletti & Sons Italian Market”
458-460 W. Perry Street, Block 1031, Lot 1
Appeal Decision of Administrative Officer
Use Variance
Site Plan Waiver**

Louis Dwyer represented the applicant and introduced Vincent Orlando and Raymond Hober. George Neidig swore in Daniel Cappelletti, applicant, Raymond Hober, and Vincent Orlando, Engineer. Craig Hurless also stated his credentials for the record.

Lou Dwyer opened by stating he appealed the prior Zoning Officers decision because he felt it was made without all the facts. He stated there were some facts missing when the original decision was made that will now be brought to the Board. Lou Dwyer detailed the stores history as it was used for various retail businesses in the past. He introduced exhibit **A1** for the record; a resolution from the Cape May Zoning Board from June of 1998, wherein the property was granted a use variance to permit the use of the building for commercial use. Mr. Cappelletti wants to add two sinks to the shed and use the area for food preparation as well as storage. He states there is no change to the footprint; the square footage would be unchanged. They believe this is not an expansion of a non conforming use.

Lou interviewed Raymond Hober, who owned this property for a significant amount of time. Mr. Hober leased it to his son for a retail business, which was predominately a glass store, and that the shed was used for storage, and to fabricate and assemble materials.

Mr. Orlando then discussed the history of the property and the various ways this has been used for retail use, along with the sheds prior usage history. He stated there would be no cooking taking place in the shed. Exhibit **A2**, a photo of the shed and where the food preparation would be was entered into record.

Chairman White asked if there are any type of health regulations permitting such activity; prepping food in one building and moving it to another. Lou Dwyer stated the Board of Health has looked at the building, and pending City approval they would approve the installation of a hand sink and a food preparation sink. Mr. Cappelletti stated he had stainless installed on the walls per Health Department regulations. Questions were asked as to how many people would be working in the prep area; Mr. Cappelletti stated no more than one or two would be there.

Mr. Iurato read to the Board, Article 11, Non Conforming Uses and Structures. Mr. Iurato read section §525-67 from the Cape May City Code, and then read §525-69. Mr. Dwyer stated it was irrelevant and that the variance allows retail or office uses up to three, and doesn't distinguish what type of retail business. Mr. Meier asked who approved the Use Variance, Rear Yard Variance, Side Yard Variance Lot Variance and Parking Variance. George Neidig clarified for the Board that the City of Cape May allowed whatever is there presently. It was not appealed and therefore was not in front of the Board at present. Mrs. Inderwies asked if there would be any cooking in the shed and the answer was no.

Craig Hurless began to review his memorandum dated June 19, 2014. He stated the way he crafted his memorandum was to both frame the appeal of the decision of the Administrative Officer as well as indicate the other aspects if he is not successful with that, what it would entail should the Board determine he needs the variance approval. He noted that the only thing being discussed now was the appeal of the Zoning officer's determination in that it was an expansion of the use. Mr. Hurless proceeded to give his opinion of this piece of the report. This is a storage and work area structure that would now like to be changed to a combination storage and food processing prep area. Mr. Hurless stated that based on his reading of the past approval, the storage area was never calculated into any required parking for the site. Mr. Orlando placed into exhibit **A4**, a photograph of a past oil storage tank where the shed is today. The storage area never received formal site plan approval. Storage areas are never calculated towards parking. This area will be able to accommodate 2 employees. Mr. Hurless read §525-49C which details parking spaces, and employee parking. In his opinion the intensity of the use gets greater on the site with the shed in operation.

Lou Dwyer questioned Mr. Cappelletti about employees that would be in the ancillary building and he stated even if he didn't have the ancillary building, he would still have that an employee working inside the building; no new employees would be hired and he advised he would add any parking spaces required.

Mrs. Inderwies questioned the need for Board of Health approval, Mr. Orlando stated this was already obtained, exhibit **A3**.

Mr. Hurless stated he did not go over his General Review Comments because at this point he feels the Board needs to determine with regards to the Zoning Officers determination that they need a use variance for the expansion. Her determination was it was an expansion of the use and he agreed. The Board needs to decide before moving to any other comments.

Chairman White opened the meeting to the public at 7:50 PM.

Albert Navino from 51 Congress Street was sworn in. He stated he did not understand why the abandonment clause did not apply to this application. He also stated the building was moved. He was speaking for one of his neighbors, Mr. Nardone, who has an issue with the employees taking cigarette breaks and discarding their cigarette butts on the ground. He stated it is an eyesore for Mr. Nardones property.

Kari Fecca, Manager of Cappelletti's was sworn in. She questioned the issue regarding parking at the building. George Neidig stated that currently the Board was only considering the appeal of the prior Zoning Officers decision; if it were to be overturned then they would discuss parking and other issues. She stated that no cooking would be done in the shed, and as far as employees being hired, there would be no more employees being hired, that employees that were currently in the front would go in the back to do the prep work, instead of the prep work being done upfront. She noted they only want a little space to create what they are already doing up front, no other changes.

Mark Lare, 498 West Perry Street was sworn in. He asked the board to use common sense in making their decision. He didn't think having one person in the shed prepping food would have any impact on anyone's life. He stated the property has come a long way, it was once an eye sore for the city. He believes it's a huge improvement to the area and encouraged the Board to go and see the area.

Chairman White closed the meeting to the public at 7:55 PM.

Lou asked Mr. Cappelletti a few more questions regarding the current request. He stated he went to see Mary Rothwell to ask what he could do after his application for a restaurant was denied. She told him he could have a deli, a produce or an ice cream permit. He decided to go with all three and has just tried to enhance what he has. He noted he's done everything he can to keep everyone in the neighborhood happy and has always listened to their concerns. He stated he wants to be an asset to the community.

Lou closed the testimony by stating he does not believe this is a non conforming use, but a variance approved use. The site has always been commercial. It's not an expansion to warrant a D2 variance. He does not believe it is appropriate for a building that is already there and is in use. He stated there is no secret agenda to make this a restaurant and that Mr. Cappelletti just wants to use the area for food preparation.

Motion made by Mrs. Pharo to reject the prior Zoning Officers decision and allow the area to be used for food preparation. Seconded by Mrs. Hutchinson and **denied 4-3.** Those in favor: Mrs. Pharo, Mrs. Hutchinson and Mr. White. Those opposed: Mr. Iurato, Mrs. Inderwies, Mrs. McAlinden, and Mr. Meier. Those abstaining: None.

The prior Zoning Officers decision was upheld.

Chairman White called a recess at 8:10 PM.

After a five minute recess Lou Dwyer requested that the use variance application be continued to the November 13, 2014 meeting.

Motion to approve continuance of the Cappelletti application to November 13, 2014 by Mrs. Inderwies. Seconded by Mrs. Hutchinson and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Meier, Mrs. McAlinden, Mrs. Hutchinson and Mr. White. Those opposed: None. Those abstaining: None.

Motion to adjourn meeting at 8:20 PM by Mr. Meier and was in favor by all.

A verbatim recording of said meeting is on file at the Construction/Zoning Office.

Respectfully submitted: Jill Devlin/Board Assistant