

**City of Cape May Planning Board Meeting Minutes
Tuesday, July 28, 2015**

Opening: The meeting of the City of Cape May Planning Board was called to order by Chairman Bill Bezaire at 7:00 PM. In compliance with the Open Public Meetings Act, adequate notice was provided.

Roll Call:	Mr. Bezaire, Chairperson	Present
	Mr. Shuler, Vice Chairperson	Absent - Excused
	Mr. Jones	Present
	Mayor Dr. Mahaney	Present
	Mr. Elwell	Present
	Dr. France	Present
	Council Member Meier	Present
	Mr. Winkworth	Present
	Mr. VanDeVaarst, 1 st Alternate	Absent - Excused
	Mr. Macciocchi, 2 nd Alternate	Present

Also Present: George Neidig, Esquire – Board Solicitor
Craig Hurless – Board Engineer
Jill Devlin, Board Assistant

Applications

**Sowers Site Plan – Extension Request
825 Washington Street
Block 1092, Lot(s) 19**

Frederick Schmidt, Attorney for Mr. Sowers, stated he was there seeking an extension for a ten unit condominium on Washington Street that was approved a few years ago, under Section 417-6G, which allows the Board to make a decision regarding an extension considering the number of dwelling units, economic conditions and the comprehensiveness of the development. He stated he felt the economic conditions have not been good which contributed to the delay. He also noted there were no changes to the plans; they are the same that were originally approved. The extension request is for an additional two years.

Motion made by Mr. Elwell to approve the site plan extension if the two year request is in conformity with the City ordinance, seconded by Dr. France and **carried 7-0**. Those in favor: Mr. Elwell, Mr. Jones, Mr. Meier, Dr. France, Mayor Mahaney, Mr. Macciocchi, Mr. Bezaire. Those opposed: None. Those abstaining: None.

Mayor Mahaney stated after reviewing the total duration of Mr. Sowers case, he more than likely would have built the project years ago had there been more aggressive and timely cooperation from the Historic Preservation Commission which delayed him for quite some time. By the time he overcame that hurdle the economy went into a recession. He also noted with that particular

size lot it will be a sensitive project when it is built and felt the Board would not want to rush and just have anybody come in and develop it.

Mark & Kathleen Platzer
1525 Yacht Avenue
Block 1160, Lot(s) 19, 19.01

George Neidig noted that Mr. Winkworth was disqualifying himself from this application as he is the applicant's neighbor.

Louis Dwyer opened by stating he was appearing for the applicants, Mark and Kathleen Platzer. John Kornic, Engineer, was also in attendance for the applicants. The applicants, Mr. Kornic and Craig Hurless were sworn in and stated their credentials for the record.

Mr. Dwyer stated their purpose this evening was to seek relief from the City's flood ordinance so break away walls would not be required at the applicant's property. He stated the property was severely damaged during Hurricane Sandy. The applicant went to the HPC and first got approval to raise and renovate. It turned out the building was neither able to be raised or renovated. They went back to the HPC which gave approval to tear the building down and re build in accordance with certain specifications. At that time FEMA maps placed this property in a V zone. The building was partially built when this happened and a lot of confusion ensued. FEMA then changed its mapping of this area and put it in an AE zone. The end result was the bottom of the first floor was built above the minimum. Because it was built above the minimum it took away the grandfathering. In the ordinance it would have allowed to build on this lot without variance relief. Also there was a slight increase in size of approximately 70 square feet. When the HPC approved it the second time they stated to use the footprint but wanted the house re oriented slightly inside the footprint. The applicants went to the Zoning Board and were granted all the required variances. Exhibits A1, Zoning Board Resolution; A2 HPC Resolution and A3 Certificate of Appropriateness were entered into the record.

Mr. Elwell questioned why the construction was halted mid way through. Mr. Dwyer stated that there was an internal change of Construction Officials and upon review they discovered the issue. He then asked Mr. Kornic to explain what transpired.

Mr. Kornic stated that after super storm Sandy the City took the appropriate measures and amended the ordinance for flood prevention. After the storm the state of New Jersey and FEMA effectively issued maps that he referenced as the "shock all maps". They basically showed that the areas that were severely impacted were all V zones. A V zone is a high velocity water zone during a flood event that would have a wave height of three feet or more and most of Cape May County along the waterfronts was mapped this way. During the construction process and after the HPC approvals, the applicants went through their construction permit process and were under the assumption they could construct the home under the new preliminary work maps that were issued not too far after the December 12, 2012 maps. That took Yacht Avenue out of the V zone and placed it in the AE9 zone.

Mr. Dwyer asked what the allowable height the first floor could have been built at without needing Zoning Board approval. Mr. Kornic stated if you were to apply the V zone criteria, the first habitable floor would be 2 feet above the elevation. The V zone equated to elevation 12 so the finished floor could be up at elevation 14 per the ordinance. If you utilize the AE9 zone criteria and don't put break away walls on the structure you could only bring the finished floor up to elevation 11 which is two feet above that flood zone.

Mr. Dwyer asked if by having that first habitable floor at 13.75 was a benefit for the flood insurance. Mr. Kornic stated it was.

Mr. Elwell asked if the applicant had stopped the work on their own or if the construction office had put a stop work order on the project. Mr. Kornic stated the construction office issued the stop work order. He noted the building permits were issued, the plans did not have break away walls, and when the new construction official was in place and reviewing the file, he identified the concern that they did not meet the City's flood ordinance 258 so therefore stopped construction.

Mr. Bezaire questioned if they were working off of the City maps or the FEMA maps. Mr. Kornic stated that was the conflict they were having. He said that most of the towns have been working to put a clause in their ordinance that indicated the most accurate maps are used. He also stated today if you go on to FEMA's ABFE mapping website and put in 1525 Yacht Avenue, it indicates that it is in an AE9 zone. The City ordinance still looks back at the original BFE maps which are the V zone.

Mayor Mahaney then asked Mr. Platzer if he had originally filed a claim after super storm Sandy. Mr. Platzer stated he had not. Mayor Mahaney then stated that after Sandy, there was a company called Dewberry that had a contract with FEMA to update the flood maps which were from the 1980's for this county. He stated they were well behind on their work, and with the devastation that was suffered, FEMA was told by Congress to get the maps done. Also, after Hurricane Katrina, the National Flood Insurance Program went from a positive cash flow to a negative cash flow. There was then an emphasis on getting new flood maps. There was also an emphasis on getting new legislation out. The new legislation really is designed to move the National Flood Insurance Program from a situation where everything is subsidized to a non subsidized actuarial rate. At some point over X number of years both permanent and secondary homes will go from subsidized to actuarial and for some people who are below flood level, it will be a tremendous increase in their flood insurance rates.

He also noted what happened was immediately after the storm they came out with the ABFE's. The contractor quickly put a map out that was the worst case scenario. It was a scenario that has never happened in Cape May County. As part of this they made every inland water way and bay and harbor a V zone including Cape May. That was because of the devastation in North Jersey. In order for that to work in the Cape May harbor you have to have a three mile wide harbor that can create a three foot swell that can have a fetch that will cause the flooding that the map says will happen. He remarked it's physically impossible in Cape May Harbor. Not only is the harbor not large enough, you have The Lobster House, the Harbor View Club, Ocean Drive, the

bridge and more. That is all what they call obstructions which will stop that from happening. It will stop the wind and the fetch.

He advised the second item that came up when these maps were looked at was that there were two types of modeling that should have been done by Dewberry, but they would have taken at least another six months. Both on the bay front and on the ocean front there were major errors in these maps. A coastal coalition was established and worked with the Governor's office, Rutgers, NJIT and Stockton. The group sat down and did all the modeling and also did all the point by point every property in every town. The group also looked at the history as to what flooded and what didn't flood, what's our worst storm and what could happen. They looked back at the City of Cape May at all beach replenishment that had ever been done, every new structure along the beach front and found that the Army Corps and FEMA had updated aerials, but they didn't have the most recent obstructions like the most recent beach replenishment on there. As a result the preliminary work maps came out. They were far and away from the ABFE's. They were like the 1980's maps. It took the coalition over a year and a half to go over everything.

Although FEMA said they were not going to remove the V zones, they weren't going to reduce the number of V zones, and they were going to make some of the A zones into V zones and that in no case would elevations in any part of any zone go down. The reverse of all that happened.

Mayor Mahaney stated what happened in this case and the reason the Board was there, and that he did not want to skew the vote in one way or another. He wanted to get the information out there. He explained when Mr. and Mrs. Platzer started the project the City was with the ABFE's, the 12 foot plus 2 foot free board. Our ordinance calls for two feet of free board. That free board plus going to the 14 feet, and they are at 13.75, FEMA, the National Flood Insurance Program and the CRS will rate the Platzers house at 14 which will give them a lower flood insurance premium for their house. They are less likely to flood. Then what happened was after they were into the building process, the preliminary flood maps came out. Some towns like Toms River did change their ordinance. Our ordinance was locked in because the Governor's office said to leave it like it is until we get through this because they were having problems state wide. At one point they weren't going to do the maps county by county, they were going to do it state wide.

He advised the Board they had the ABFE's, the preliminary work maps, and recently got the preliminary maps in December which is the same as the preliminary work maps. Those maps are now in the process of the appeal. About this time next year that map should be our permanent map. At that point the Platzers should be in an AE9. He stated in some way, speaking for himself and not as "the mayor", he would like to see how the situation can work for a very unusual case, but realizing the Board has to be careful how they do this because if we arbitrarily just say they are going to allow houses to be built out of conformance with what is in the ordinance and what the state has asked us to do, FEMA can then remove Cape May from the National Flood Insurance Program and can also automatically be taken out of the CRS Program. Out of the 4000 properties in town, 2700 have flood insurance. 2400 of those 2700 are in flood zones. The CRS gives everybody who is in the flood zone a 20% discount based on the beach replenishments.

He noted this wasn't the applicant's fault they just happened to get caught in the window of the changes. The other reason the Board has to be very careful is there is another property on Yacht Avenue where people want to make improvements. They were turned down by the DEP and the Army Corps. They went ahead and did the improvements anyway. Last year while the Army Corps was out in the harbor looking at the dredging they spotted the improvements and cited them. That is currently being worked through with the Army Corps, the DEP and now the City is involved.

Lou Dwyer thanked the Mayor for his input stating it was very helpful to explain it all. He asked Mr. Kornic to explain when someone would need flood gates. Mr. Kornic stated in this case if they apply the AE9 flood zone criteria they would be putting in flood vents on the first floor which is the access floor to the second and third floors of the structure. The first floor was originally the boat house, it is the access to the back of the house which is along Schellengers Creek and it is also acting like a garage for storage. It is not classified as habitable. If you appropriately flood vent it based on the provisions for flood vent square footage it meets the standard for the AE9 zone. He advised flood gates are stoppers; they would stop a flooding event from entering a structure. The entire first floor would have to be able to withstand the pressures of a flood of that elevation.

Lou Dwyer asked Mr. Kornic if there would be any reason to do that on this site and he stated no. Mr. Bezaire asked if he recommended flood venting for the first floor and he stated yes. None of the homes on Yacht Avenue have the breakaway walls now. Mr. Bezaire asked if the house had been raised to 11 feet instead of 14 if breakaway walls were needed. Mr. Kornic stated right now the City's ordinance has enacted the ABFE maps. That map classified Yacht Avenue as a V zone. By ordinance, this zone is a V zone. The ordinance also allows the ability to deviate or request a variance from that. The new preliminary maps dated June 30, 2014, will probably be law by this time next year. These maps have indicated Yacht Avenue as an AE9 zone.

Lou Dwyer noted that if they ask for relief from the flood requirements they have to show that what they are asking for is safe, that there will be no detrimental effects on this property and other properties. He felt given the facts outlined the flood vents would be sufficient.

Mr. Bezaire stated he has been on the Planning Board for 35 years and he's never seen this section of the ordinance used. Mayor Mahaney said the Platzers property is one of two that have been caught in this window of change. Mr. Dwyer stated that in the future when some of the other homes that need replacement along that street come, it will be AE9 and they won't be confronted with this problem. Mayor Mahaney stated one of the other factors was the request of the ordinance from the Governor's office, which came via an administrative order that tied the City to passing that ordinance if they wanted to continue to receive FEMA and state funding. Mr. Bezaire asked if the variance section was part of that ordinance. Mayor Mahaney stated that yes it was.

Mr. Hurless stated the flood ordinances were set up with the most protective part of this to establish base flood elevation and to get homes to build up and out of that. The applicant has built their house to the proper elevation. Even if it reverted back to the 1989 maps they would be

way over the requirement. The difference between the AE9 and the Velocity zone is the structural treatment beneath the structure. He believes that is what the applicant is asking for; the relief from the velocity structural requirements underneath the structure. At this point, knowing that it may at some point revert back to the AE9, they are going to build to the AE9 standards.

Dr. France asked if there were a risk of possibly losing insurance in the future for them. Mayor Mahaney stated he didn't think the Platzers would lose their insurance. Mr. Dwyer stated the bottom of the first living level is 14 feet. Mr. Kornic noted what they were asking for is a variance for the V zone and the breakaway walls. When you are in an AE9 zone you are dealing with flood coming up, not necessarily coming at the structure, and the flood vents are there to alleviate the pressure inside the building and let it drain back out.

Mr. Jones asked what the construction costs would be for breakaway walls vs. flood vents. Mr. Kornic confirmed the construction cost would be substantial as it is a completely different structure method.

Craig Hurless reviewed his memorandum dated July 14, 2015. He pointed to page 3 of 7, 1 A (4), which lists specific criteria as to when to grant variances and relief. He stated he felt through Mr. Kornic's testimony that he dealt with the dangers for flooding. Mayor Mahaney stated that no matter which way the Board voted, they should state their specific reasons because this case will become a precedent that the City may need to present to FEMA, National Flood Insurance and CRS as they go forward. Mr. Hurless stated his opinion is that the timing of this project in relation to the adoption of the maps certainly is a special circumstance. The fact that they know the mapping is going to revert from a velocity zone to an AE zone are some circumstances to lean to. He stated the other section the Board should note when making their decision is on page 4 of 7, section B (4). The remaining variances were reviewed as well as the general review comments and conditions.

Mayor Mahaney stated that if the Board were to pass the application tonight, it would take the Platzler property out of the realm of the difficulty the other property on the street is experiencing and resolve a year and a half's litigation for them and the expense.

The meeting was opened to the public at 7:45 PM and subsequently closed as there were no members of the public present to speak.

Motion made by Mayor Mahaney in the affirmative to grant the variance for §258-16 Variance Procedures on the basis that this is a unique application that was caught as the result of a damaged property under super storm Sandy in October of 2012 and as a result of federal government intervention the site was assigned a FEMA flood mapping under ABFE of a V zone, and under rectification in the preliminary work maps and the preliminary maps which will become the final maps at the end of the year it will then be in the AE9 zone, that this property deserves to be granted a variance because of the additional criteria that are met by this applicant and the testimony tonight under Craigs report, 1 A(4) a through k, and B 4 a through c, seconded by Mr. Elwell and carried 7-0. Those in

favor: Mr. Elwell, Mr. Jones, Councilman Meier, Dr. France, Mayor Mahaney, Mr. Macciocchi, Mr. Bezaire. Those opposed: None. Those abstaining: None.

Council member Meier stated the reason for his vote because of the unique situation and that failure to grant the variance will create a financial hardship for the applicant.

Motion made by Mayor Mahaney in the affirmative to grant §258-8C Basis for establishing areas of special flood hazard variance, based on the criteria that has been testified to by the applicant and their technical assistants and contained in sections 2 of Mr. Hurless's report of page 5 that they met all the requirements there, seconded by Mr. Jones and **carried 7-0.** Those in favor: Mr. Elwell, Mr. Jones, Council Member Meier, Dr. France, Mayor Mahaney, Mr. Macciocchi, Mr. Bezaire.

Mr. Bezaire stated his reasons for his vote, and that it highlights the difference between the AE9 and the Velocity zone.

Motion made by Mayor Mahaney in the affirmative for variance relief from §258-18G4(b) because this refers specifically to the structural requirements below the first floor and the testimony today and the plans that were submitted by both the architect and the engineer which clearly show the applicant will be in compliance with the FEMA regulations and that there will be an improvement in the safety of the building as well as also the neighboring structures on that street, seconded by Dr. France and **carried 7-0.** Those in favor: Mr. Elwell, Mr. Jones, Council Member Meier, Dr. France, Mayor Mahaney, Mr. Macciocchi, Mr. Bezaire. Those opposed: None. Those abstaining: None.

Mr. Bezaire stated his reason for voting in the affirmative is because there is no danger from a fetch occurring in this area.

Motion made by Mayor Mahaney in the affirmative for variance relief from §258-17E General Standards – Enclosure openings, based on the requirements under E of page 6 of Mr. Hurless's report, are shown to be met by the architectural renderings and testimony tonight on behalf of the applicant, seconded by Council Member Meier and **carried 7-0.** Those in favor: Mr. Elwell, Mr. Jones, Council Member Meier, Dr. France, Mayor Mahaney, Mr. Macciocchi, Mr. Bezaire. Those opposed: None. Those abstaining: None.

Motion made by Mayor Mahaney to approve the conditions discussed, 1, 2 and 3 on pages 6 and 7 of Mr. Hurless's report, seconded by Mr. Elwell and **carried 7-0.** Those in favor: Mr. Elwell, Mr. Jones, Mr. Meier, Dr. France, Mayor Mahaney, Mr. Macciocchi, Mr. Bezaire. Those opposed: None. Those abstaining: None.

Motion made by Dr. France to adjourn, seconded by Council Member Meier with all in favor.

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

Respectfully submitted: Jill Devlin, Board Secretary.