

City of Cape May Planning Board Meeting Minutes
Tuesday, September 12, 2017

Opening: The meeting of the City of Cape May Planning Board was called to order by Chairman Bill Bezaire at 6:30 PM. In compliance with the Open Public Meetings Act, adequate notice was provided.

Roll Call:	Mr. Bezaire, Chairperson	Present
	Mr. Shuler, Vice Chairperson	Present
	Mr. Elwell	Present
	Mr. Macciocchi	Present
	Councilmember Hendricks	Present
	Mr. Inderwies	Present
	Mr. Jones	Absent - excused
	Mayor Lear	Present
	Mr. Picard	Present
	Dr. Maslow Alt #1	Present
	Dr. Wolf Alt #2	Present

Also Present: Richard King, Esquire - Board Solicitor
Craig Hurless - Board Engineer
Tricia Oliver - Board Assistant

Minutes:

Motion was made by Councilmember Hendricks to approve the minutes from the August 22, 2017 Planning Board Meeting, seconded by Mr. Inderwies and **carried 9-0**. Those in favor: Mr. Elwell, Mr. Macciocchi, Councilmember Hendricks, Mr. Inderwies, Mayor Lear, Mr. Picard, Dr. Maslow, Mr. Shuler, Mr. Bezaire. Those opposing: None. Those abstaining: None.

Resolutions:

Motion was made by Mr. Elwell to adopt Resolution Number 09-12-2017:1 Resolution Approving proposed change to Ordinance §525-72 "Expansion of Non-Conforming Structures and Structures on Non-Conforming Lots" as presented in Zoning Board resolution 02-23-2017: 5, seconded by Councilmember Hendricks, and **carried 9-0**. Those in favor: Mr. Macciocchi, Councilmember Hendricks, Mr. Inderwies, Mayor Lear, Mr. Picard, Dr. Maslow, Mr. Shuler, Mr. Bezaire. Those opposing: None. Those abstaining: None.

Resolution 09-12-2017: 2 Cape Jetty LLC "Jetty Hotel," 12 Second Avenue, Block 1012, Lot(s) 15.02, was tabled; to be adopted by the membership at the September 26, 2017 meeting.

Applications:

***Ronald Sowers
825 Washington Street
Block 1092, Lot(s) 19***

Ronald Gelzunas, Esquire, Mr. Ronald Sowers, property owner, and Board Engineer, Craig Hurless, were all sworn in.

The representative for the applicant, Ron Gelzunas, Esquire, gave a brief summary of the original June 2005 approval (resolution 6-14-2005: 6), reviewing the two (2) previously granted extensions, in September 2011 (resolution 9-27-2011: 11) and also August 2015 (resolution 08-25-2015: 1) adopted by the membership. Mr. Gelzunas referred to **Exhibit A-1**, original architectural plans. He explained that the applicant has made no changes to the previous approval and sited that a term of economic hardship fell upon the applicant in 2015, making Mr. Sowers unable to complete the approved project before the last extension of time ran out as of August 2017. The applicant now seeks a two year extension of approval for the application, in which time will be sufficient for the applicant to move forward with the proposed plan, or for Mr. Sowers to sell the property with respect to the buyer completing the project.

Mr. Sowers noted that in order to start the proposed planned project, consisting of 2 buildings on site, either a buyer or himself, must be financially ready to pull the trigger on both buildings. This project could not in fact be done piece meal.

Board Engineer Craig Hurless, PE, PP, CME, then summarized his latest memorandum dated August 11, 2017. Mr. Hurless explained the two previous variances granted (page 5 of 5):

1. §525-16B(1) Table 4 Building Setback
2. §525-16B(1) Table 4 Rear Yard Setback

The General Review Comments 1-5 (page 5 of 5) were reviewed and explained in detail, noting that a modification to item number 3 stating that the applicant is now seeking a two (2) year extension of approval, expiring August 8, 2019; with approval conditioned on all conditions of approval made part of resolution # 6-14-2005: 6.

Discussion was opened to the public within 200 feet and beyond at 6:43 PM and closed, with no one coming forward for comment.

Motion made by Mr. Elwell to grant the approval extension for two (2) years as presented; subject to all conditions of approval made part of resolution 6-14-2005: 6 as discussed at the hearing and outlined in the review memorandum from Board Engineer Craig R. Hurless, PE, PP, CME, dated August 11, 2017 seconded by Mr. Shuler and carried 9-0. Those in favor: Mr. Elwell, Mr. Macciocchi, Councilmember Hendricks, Mr. Inderwies, Mayor Lear, Mr. Picard, Dr. Maslow, Mr. Shuler, Mr. Bezaire. Those opposed: None. Those abstaining: None.

Thomas DiDonato
1105 Pittsburgh Avenue
Block 1172, Lot(s) 4

Christopher Baylinson, Esquire, Vincent Orlando, EDA, Professional Planner, and Mr. Thomas DiDonato, property owner, were sworn in for the record.

The representative for the applicant, Christopher Baylinson, Esquire, gave a brief summary of the existing property, a vacant lot under contract to purchase by his client, Mr. Thomas DiDonato, from military ownership. He detailed a previous application submitted to the Planning Board for a total of fifteen (15) lots, which triggered the need for numerous variances. The new application before the board is newly submitted with a proposed thirteen (13) lots. Mr. Baylinson continued to mention prior litigation in Appellate Court regarding the original application, noting that New Jersey Superior Court Judge Julio Mendez provided a "road map" for the completion of the new proposed subdivision, meeting the minimum lot size and lot width as calculated under Judge Mendez's formula set forth in his Decision detailed in Exhibits B-1 and B-2.

Mr. Salvatore Perillo, Mr. Norman Briggs, and Vincent Orlando, Professional Planner, were sworn in and stated their credentials for the record.

Mr. Norman Briggs indicated he represents the Association.

Mr. Perillo, representing Scott and Synda Willand, 23 Harbor Cove, introduced **Exhibit O-1** (bound packet of **Exhibits number 1 through 8**) and **Exhibit O-2** (16 page Resolution No. 8-12-2014: 3) and reviewed the packet with specific reference to numerous sections, some in great detail. Certain sections of **Exhibits B-1** and **B-2** were read into the record by Mr. Perillo for the Board to provide factual background for the consideration of the legal arguments that he was presenting.

A lengthy presentation ensued by Mr. Perillo, with short added commentary from Mr. Briggs. Throughout this discussion, Board Solicitor, Rich King, addressed both on counsel with **Exhibits B-1 through B-6** brought forth by the board; listed below.

Exhibit B-1 MOD August 25, 2016

Exhibit B-2 MOD February 14, 2017

Exhibit B-3 Order February 14, 2017

Exhibit B-4 Email from Richard King, Esq. to Mr. Perillo and Mr. Baylinson, August 26, 2017

Exhibit B-5 Appellant's Revised Brief to Appellate Division under CPM-L-312-14

Exhibit B-6 Letter from Richard King, Esq. dated June 26, 2015

To conclude his presentation, Mr. Perillo requested that the Board make an initial determination regarding jurisdiction. The Board found that there is sufficient information in the record, both at the present hearing and that which was summarized in the findings of Judge Mendez, and in

particular, the testimony presented of Board Engineer, Craig Hurless, regarding the original plan and constraints of the subdivision.

Discussion was undertaken by the professionals, including Mr. Orlando, regarding the definition of cart-way and widening the street with reference to both Resolution # 6-30-93 and Resolution # 1-11-2011.

Motion made by Mr. Elwell to hear the application, seconded by Mr. Shuler and **carried 9-0**. Those in favor: Mr. Elwell, Mr. Macciocchi, Councilmember Hendricks, Mr. Inderwies, Mayor Lear, Mr. Picard, Dr. Maslow, Mr. Shuler, Mr. Bezaire. Those opposed: None. Those abstaining: None

To begin the presentation, since the Board had agreed that there was in fact no jurisdictional issue, Mr. Vince Orlando detailed the most recent site plan, including reference to Exhibit A-1; an aerial photo of the existing vacant lot and the neighboring area. He continued on to mention that no variances are will be sought due to the way that the lot has been divided, with some lots exceeding certain allowances. Mr. Orlando also addressed the DEP approval for preserving the wetlands with a fence and also other approvals required for Affordable Housing; changing the indicated Affordable Housing lots to look less segregated, as Board Members had pointed out.

Seemingly not satisfied with the depth of site plan explanation, Mr. Perillo cross examined Mr. Orlando with regard to site elevation, possible drainage issues, and predominantly an issue of street parking. Each concern was addressed by Mr. Orlando, including thorough clarification of the underground water storage pipes and infiltration system, as well as stating that the parking issues are not uncommon and remedies are enforced by the county (re: curb cuts...etc.).

Discussion was opened to the public within 200 feet and beyond at 8:35 PM.

Mary McKenney, 33 Harbor Cove and 1005 Pittsburgh, stated for the record that she was the former president of the Association. Mrs. McKenney was negative on the application. A major concern that she has is that currently vacation rentals are not allowed in the community and she does not want the new development to offer vacation rentals.

Lester Katsanis, 31 Harbor Cove, opposed the application for development and does not think that it should move forward.

George Via, 35 Harbor Cove, agreed with the negative commentary of other neighbors.

Ms. Willand, 23 Harbor Cove, stated that she does not believe the development is appropriate for the location.

Frank Geco (son-in-law to the owner of a nearby property) does not believe the property should be developed in a way that negatively affects property values.

Mary Ellen Perillo, 29 Harbor Cove, opposed the application.

Bill Seeger, 1361 Vermont Avenue, inquired about the parking on Pittsburgh and was concerned with the effect the development will have on the preserved wetlands.

Ted McKenney, 33 Harbor Cove, was negative on the application; stating that he is concerned about his property value decreasing.

Ms. Bundschu, 1420 Missouri Avenue, believes parking is an issue on Missouri Avenue and introduced **Exhibit S-1** (picture on her phone) which she would provide to the Board Assistant.

Ray Keller, 42 Harbor Cove, introduced **Exhibit K-1** (which he promised to produce to the Board Assistant) a photo displaying what he believes is a big parking issue.

Jay Brauner, 43 Harbor Cove, encouraged the natural state of the property as it stands currently, citing that this is more beneficial to the community than the proposed development.

Discussion was closed to the public at 10:00 PM.

An extensive discussion amongst Board Members ensued and members commented on the lack of clarification as to proper ownership of the roadway, as well as the status of the previously granted dedication of this road to the City. Members were concerned that the issues brought to light by counsel, as well as the public and association members, create muddy waters with respect to determining a decision at this meeting.

Mr. Perillo interjected the discussion and was persistent on his presented case of Jurisdictional conflict.

Motion made by Mr. Elwell to grant preliminary approval for a major subdivision, subject to the Appellate Court decision regarding current ongoing litigation, seconded by Dr. Maslow and **carried 5-4.** Those in favor: Mr. Elwell, Mr. Macciocchi, Councilmember Hendricks, Mr. Inderwies, Mr. Bezaire. Those opposed: Mayor Lear, Mr. Picard, Dr. Maslow, Mr. Shuler. Those abstaining: None.

Discussion:

Discussion was undertaken by the Board members and professionals regarding Cape May City Ordinance 308-2016: An Ordinance Amending Chapter 199 of the Cape May City Code Regarding Construction Permit Fees. As a courtesy of City Council, members of the Board were able to discuss recent modifications to the ordinance and it was concluded that the Board was in support of the revisions.

Motion made by Mr. Elwell to support the revisions to Ordinance 308-2016, seconded by Dr. Maslow and **carried 9-0.** Those in favor: Mr. Elwell, Mr. Macciocchi, Councilmember Hendricks, Mr. Inderwies, Mayor Lear, Mr. Picard, Dr. Maslow, Mr. Shuler, Mr. Bezaire. Those opposed: None. Those abstaining: None.

Motion made to adjourn by Mr. Elwell at 10:57 PM with all in favor.

Respectfully submitted: Tricia Oliver, Board Assistant.

****Copy of presentation available on the City of Cape May website.**