

City of Cape May Zoning Board of Adjustment Meeting Minutes
Thursday, April 23, 2015

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

Roll Call:	Mrs. Hutchinson, Chairperson	Present
	Mr. Furlin, Vice Chairperson	Present
	Mr. Iurato	Present
	Mr. Murray	Present
	Mrs. McAlinden	Present
	Mrs. Inderwies	Present
	Mrs. Pharo	Present
	Ms. Hesel	Present
	Mrs. Werner	Present

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

Minutes

Motion made by Mr. Iurato to approve the meeting minutes of March 26, 2015, with correction, seconded by Mr. Murray and **carried 5-0.** Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Murray, Mrs. Pharo, Mrs. Hutchinson. Those opposed: None. Those abstaining: Mrs. McAlinden, Mr. Furlin.

Resolutions

Motion made by Mr. Iurato to approve Resolution #04-23-2015:1, Larry Pray, 1015 Idaho Avenue, Block 1105, Lot(s) 36, seconded by Mrs. Inderwies and **carried 5-0.** Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Murray, Mrs. Pharo, Mrs. Hutchinson. Those opposed: None. Those abstaining: Mrs. McAlinden, Mr. Furlin.

Motion made by Mr. Iurato to approve Resolution #04-23-2015:2, Schanbacher, 1029 Idaho Avenue, Block 1105, Lot(s) 32, with correction, seconded by Mr. Murray and **carried 5-0.** Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Murray, Mrs. Pharo, Mrs. Hutchinson. Those opposed: None. Those abstaining: Mrs. McAlinden, Mr. Furlin.

Before the meeting began Chairperson Diane Hutchinson announced there were numerous applications on the agenda and that the meeting would not go beyond 10:00 pm.

Applications

**SJ Design Group, LLC
1107 New Jersey Avenue
Block 1116, Lot(s) 28**

Jim Hanson, applicant, Kevin Olan from Fenwick Architects and Craig Hurless, Board Engineer were sworn in and clarified their credentials for the record. Mr. Olan stated the house designed was designed to fit the lot and the neighborhood. The design meets front yard, rear yard and side yard setbacks, floor area ratio and is less than the allowable height.

Lou Dwyer confirmed with Mr. Olan that the subject property was a 5000 square foot isolated undersized lot, and that there was no ability to make the lot larger. Mr. Olan detailed the plans for the 2 ½ story proposed home, which did receive approval from the HPC. He noted the lot was narrow, the home would be a 20' wide home with a front porch and a two car detached garage at the rear of the property. The adjoining property to the right sits closer to the property line so the home would sit to the left of the property for more open space. Exhibit A1 was entered into the record. The windows on the upper level of the home are for the attic that was created for storage. Due to the flood plain there is no opportunity for storage underneath the home. The attic will remain unfinished. There will be an elevator in the home that goes up into the attic. He felt there are no detriments to the neighborhood with the style of the home designed.

Mr. Iurato asked what the height of the attic space would be. Mr. Olan stated it is high enough to walk in. Mrs. Inderwies asked why the elevator would go up into the attic. Mr. Olan stated simply for convenience. She also asked if the attic were to remain unfinished. Mr. Murray asked what the height of the current building was. Mr. Olan stated it is a one story home. The height on the proposed home is 35 feet.

There were no more questions from the Board.

Craig Hurless reviewed his memorandum dated March 4, 2015. Completeness checklist item numbers 20, 21, 24, 26, 27 were all supported. Mr. Hurless discussed the zoning review stating he agreed with the applicant's testimony; all bulk and area criteria were met as it relates to the proposed structure. All of the general review comments should be conditions of approval except for item number 4. The attic must remain unfinished and not habitable or it will trigger a D4 floor area ratio variance.

Mrs. Inderwies asked about page 8 on the application, the number of rooms, under section "other", what are the 2 rooms proposed? Mr. Furlin asked if the property was intended to be a rental or for occupancy. Mr. Dwyer stated it will most likely be for resale. The applicant stated they were undecided at this point but would most likely be keeping it for now. He also stated they were unsure if they would be using the home for a rental property. Mr. Furlin also asked

why the attic was so big. Mr. Olan stated that was mostly due to the style of home chosen for the lot width. They chose the gambel style mostly for aesthetics.

Mrs. Inderwies also questioned the setback on the right side, if it was for the overhang and Mr. Olan stated it was. Mr. Murray questioned Mr. Hurlless' report, item 3, that the attic must remain uninhabitable; if it was a deed restriction. A discussion ensued regarding deed restrictions, if it would be possible to enforce. The concern from some of the board members was if someone buys the house at some point in time in the future that they could add more rooms into the attic for living purposes. Mr. Dwyer stated they would be happy to comply with a deed restriction. Mr. Iurato questioned the height of the elevator car, not the shaft, if it was going into the attic. Mr. Olan stated it was possibly 7 feet high, a standard elevator. Mr. Iurato suggested putting a height restriction on the attic as a condition of approval.

The meeting was opened to the public at 6:55 PM.

Kathy Daniel, 1109 New Jersey Avenue was sworn in. She asked numerous questions and stated her concerns, introducing photo exhibits numbers 1 through 13.

Rob Jakacki, 1105 New Jersey Avenue was sworn in. He stated his concerns regarding the size of the home proposed.

Bob Kriebel, 1106 New York Avenue was sworn in. He stated his concerns also regarding the size of the home proposed compared to the size of the lot and asked if the applicant would consider reducing the size of the home.

Mike Furlong, 1105 New York Avenue was sworn in. He expressed his concerns regarding the size of the home on a small lot.

Lou Dwyer summarized the application stating he was open to compromise if needed, however they do meet the ordinance. The house was designed to fit the lot and felt it was a reasonable application. He feels they meet the criteria to grant the relief.

Mr. Murray stated he felt there are some legitimate grievances brought by the neighbors. He stated if the attic weren't there the design would fit into the neighborhood. The size being proposed would cutoff neighboring light, air and open space. He also stated that while the proposal is big, it definitely is a visual improvement to the home that is there now.

Lou Dwyer asked for a brief recess at 7:33 PM.

The meeting resumed at 7:40 PM.

Lou Dwyer stated they were willing to eliminate the gables, dropping the peak four feet down to 31 feet, only asking for an overhang on the roof for aesthetics on each side.

Craig Hurless asked if the overhang was going to extend further out than it is on the current plans. He stated that would necessitate side yard variances which would require the board to have new drawings.

Lou Dwyer stated they would present revised drawings if they could be placed on the May 28, 2015 meeting agenda. George Neidig noted they would have to re notice.

Motion made by Mr. Murray to table the SJ Design Group application to the May 28, 2015 meeting, with re-noticing and revised drawings, seconded by Mrs. Pharo and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Murray, Mrs. McAlinden, Mrs. Pharo, Mr. Furlin, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

George Neidig announced to the public that the applicant was going to make some changes which may require another variance. Anyone who received a notice for this application will be receiving another notice and is currently scheduled for May 28, 2015. He noted to check with the Board assistant to make sure the application is on the schedule that evening.

Richard and Elizabeth Smithson

115 Ocean Street

Block 1057, Lot(s) 1, 2

111 Ocean Street

Block 1057, Lot(s) 26

Applicants Doug and Beth Smithson, Architect Joe Ross and Craig Hurless Board Engineer were sworn in and clarified their credentials for the record.

Chairperson Hutchinson noted she had to declare she was the previous owners of this property and asked if anyone had a conflict with that.

Lou Dwyer questioned Joe Ross on the proposed changes for this application. He noted they were historic structures in Cape May and at one time part of the same Bed and Breakfast operation. Mr. and Mrs. Smithson purchased both properties in independent transactions. They converted 111 Ocean into a single family residence. They are proposing to now convert 115 Ocean Street to a single family residence. The site has been used as one site for a number of years, but it is actually two sites. They are seeking in the application to marry the two properties into one site and allow an accessory building to be built on the site. He noted there is no storage contained on either property. Joe Ross stated he designed a building, the garage, to capture the historic elements of both buildings. Joe Ross detailed the plans before the Board. It was also noted the HPC has approved the accessory building. A use variance is needed because they would like to utilize the buildings as one site instead of two. He also explained the lot coverage variance being sought. If the garage were to be attached they would not need the variance, however, it would be in contrast to historic guidelines and didn't feel it was appropriate to attach the garage. Lou Dwyer stated there is no problem with the deed to make this one property.

Mr. Furlin asked questions about the placement of the garage. Mrs. Pharo asked questions about the total lot size. Mr. Furlin also asked what the advantage is to combining the two lots into one. Mr. Dwyer stated the applicant thought it was too complex to create various cross

easements for shared parking, driveways and a shared garage. It's their desire to keep the properties as one and thought it would eliminate confusion by making it one property. Mr. Iurato asked if there have been two separate tax bills on the properties. Mrs. McAlinden asked if there were any other places in Cape May where this has occurred. Mr. Dwyer stated the Angel of The Sea and the Queen Victoria may be a similar situation. Mr. Iurato asked why the applicants think the Board should allow the garage to be only 5.8 feet away from a historic building when the ordinance states it must be 10 feet. Lou Dwyer stated to preserve the historic aspects of the building they chose not to attach the garage and seek the relief. Mrs. Inderwies asked if both of the homes had attics and basements; Mr. Ross stated no they did not.

Lou Dwyer stated if the board was concerned about the two principal uses and is more comfortable with the applicant asking for variances for cross easements and other things, they can do that. If it's a serious concern they will revise their zoning chart and will ask for the variances.

Mrs. McAlinden asked if it was combined into one lot and in the future the family decides to move, does the property have to then be marketed as one unit. Craig Hurless stated it would have to be re subdivided if they wanted to split them again. He also stated he felt the board's major focus with this application is the garage appropriate, does it belong there, does it provide appropriate light air and open space between the buildings, and it is a better alternative than having open parking.

Mr. Furlin asked if their intentions are to rent out 115 Ocean Street and how many cars they would be bringing in. The applicant stated there would be no more than two cars. Mrs. Inderwies also asked a question about using the garage for cars and storage.

There were no more questions from the Board.

Craig Hurless reviewed his memorandum dated March 23, 2015. The proposal is to consolidate two separate properties into one lot. Completeness checklist items 17, 20, 21, 24, 26, 27, 28, and 33. All waivers are supported. The zoning requirements and variances were discussed. He stated he did have one concern with the placement of the garage; they did not provide a grading and drainage plan. He would like to make sure they are providing drainage to Ocean Street. A grading and drainage plan should be required for approval. All items under the General Review Comments should be conditions of approval.

The meeting was opened to the public at 8:34 p.m. and subsequently closed as no members of the public wished to speak.

Motion made by Mrs. Pharo to approve checklist waivers 17, 20, 21, 24, 26, 27, 28 and 33, seconded by Mr. Murray and carried 7-0. Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Murray, Mrs. McAlinden, Mrs. Pharo, Mr. Furlin, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

Motion made by Mr. Murray to approve the Use Variance §525-19A to allow two uses on one lot, seconded by Mrs. Pharo and **carried 4-3**. Those in favor: Mr. Murray, Mrs. Pharo, Mr. Furlin, Mrs. Hutchinson. Those opposed: Mr. Iurato, Mrs. Inderwies, Mrs. McAlinden. Those abstaining: None.

Mr. Murray, Mr. Iurato, Mrs. Inderwies and Mrs. McAlinden noted the reasons for their vote.

Since a use variance needs 5 votes in the affirmative Lou Dwyer asked if the Board would allow them to amend the application and re notice for the variances to allow this to be a single property.

Motion made to table the remainder of the application to a date to be determined, seconded by Mrs. Inderwies and **carried 7-0**. Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Murray, Mrs. McAlinden, Mrs. Pharo, Mr. Furlin, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

The board took a short recess at 8:38 PM.

The meeting resumed at 8:44 PM.

**Ocean Club
1035 Beach Avenue
Block 1101, Lot(s) 2, 3, 4**

Daniel Mascione, Architect, Lea Elezar, part owner, 417 Sunset Boulevard, Leo Nejaz, General Manager, 307 Sunset Boulevard, Vince Orlando, Professional Planner and Municipal Engineer and Craig Hurless, Board Engineer, were sworn in and stated their credentials for the record.

Lou Dwyer gave a history of the Ocean Club which was the former Atlas Hotel. He detailed his client's history from purchase of the property to prior applications which have come before the Boards. He discussed an application that came before the Planning Board in 2011 in which a parking variance was granted. He continued to detail prior applications and how they came to be before the Zoning Board at this time. Their plans were delayed due to a death in the family. A new application was presented to the planning board and according to Craig's comments after his review; it was brought to the Zoning board. He felt that this evening there was no need to revisit parking testimony that's already been heard by the Planning Board.

Attorney William Kauffman approached the table stating he represented Mr. and Mrs. Wilkinson and Mr. Solar. He stated he felt what Mr. Dwyer put before the board was a legal issue that he would like to be heard on. He stated if you look at what occurred in 2013, if the Board is going to give any force and effect of what the Planning Board did in 2013 then you have to give force and effect for everything the Planning Board did in 2013, which included denying a parking variance for number of spaces. He asked to put the minutes from that meeting into evidence.

Mr. Dwyer read the comments from Craig's report from 2013 regarding the number of parking spaces. He stated the current plans have been modified to eliminate one space. He disagrees with opposing council regarding going over all of what was decided in 2013.

Mr. Kauffman stated he felt the reason the applicant was not entitled to anything that the planning board did was discussed by the appellant division because the planning board never had jurisdiction over the application. The applicant, as they do now and as they did then, need a height variance that only the zoning board can consider. The planning board had no jurisdiction to hear the application at all.

George Neidig asked Mr. Kauffman what he was referencing in regard to the appellant division. Mr. Kauffman quoted Najduch vs. Township of Independence Planning Board; it was a 2009 appellant division decision.

Attorney Kauffman and Attorney Dwyer discussed the parking variance and the City ordinance in relation to parking.

Craig Hurless stated that when the variances are granted, and the variance is in place it's fine. When you modify the building, it's an alteration of the structure. He read the ordinance into the record, section 525.49 off street parking standards, sub section C, number and location of required spaces. He asked the applicants if when they were granted the parking variance, if the configuration of the building internally, spatially, the rooms, the uses, the accessory uses as described, is exactly the way the plans were approved with the parking variance as they are now. Mr. Dwyer stated they were not.

Mr. Murray stated he believed there were two issues. First is whether the Board can rely on what the planning board did in regards to parking. If they can then they only need to worry about the height variance.

George Neidig asked Mr. Kauffman if what he was stating was that there was an attempt to get a height variance in front of the Planning Board, which was a use variance. Mr. Kauffman said they didn't realize it until June 11, 2013 after the parking variance was denied, the application was tabled and during that period of time that it was tabled it was realized there was a need for a height variance.

Mr. Hurless stated that Mr. Kauffman was correct; it was not picked up during the original planning board application. The applicant did not request a variance for the height. When they came back with this resubmission which was originally submitted to the planning board, during review he noticed there should have been a height variance. He recommended it be addressed with the Zoning Board.

George Neidig then addressed Mr. Kauffman to confirm that what he was saying was because it wasn't picked up, whatever relief the board got from the planning board, the board didn't have the jurisdiction to handle it. Mr. Kauffman stated that was correct.

George Neidig suggested to the Board that if the attorneys want to submit anything additional to him to review he will review it and he will give the Board an opinion letter regarding the application. Both attorneys will submit documents to George Neidig for review. Both attorneys stated it would take about two weeks to submit documentation; George stated he would need at least two weeks to review. Mr. Murray asked if they find in favor of Mr. Dwyer, the only issue in front of the Board would be the height variance. George Neidig confirmed that was correct.

Motion made by Mr. Iurato to table the Ocean Club application to the June 25, 2015 meeting, seconded by Mr. Murray and **carried 7-0**. Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Murray, Mrs. McAlinden, Mrs. Pharo, Mr. Furlin, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

Motion made by Mr. Murray to adjourn at 9:15 PM with all in favor.

Respectfully Submitted, Jill Devlin/Board Assistant.