

City of Cape May Zoning Board of Adjustment Meeting Minutes
Thursday, August 25 2016

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

Roll Call:	Mrs. Hutchinson, Chairperson	Present
	Mr. Iurato, Vice Chairperson	Present
	Mr. Murray	Absent-Excused
	Mrs. McAlinden	Present
	Mrs. Werner	Present
	Ms. Hesel	Present
	Mr. Mullock Alt. 1	Present
	Mr. Pontin Alt. 2	Absent-Excused

Also Present: Richard King, Esquire, Board Solicitor
Craig Hurless, PE, PP, CME, Board Engineer
Erin Burke, Board Assistant

Minutes

Motion was made by Mr. Iurato to approve the meeting minutes of July 28, 2016, seconded by Ms. Hesel and **carried 6-0.** Those in favor: Mrs. McAlinden, Mrs. Werner, Ms. Hesel, Mr. Mullock, Mr. Iurato, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

Resolutions

Motion was made by Mrs. Werner to approve Resolution Number 08-25-2016:1 Lance and Bonnie Pontin, 30 Gurney Street, Block 1056, Lot(s) 4, seconded by Mr. Mullock and **carried 6-0.** Those in favor: Mrs. McAlinden, Mrs. Werner, Ms. Hesel, Mr. Mullock, Mr. Iurato, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

Motion was made by Mr. Iurato to approve Resolution Number 08-25-2016:2 Paul and Kristine Gentilini, 202 Queen Street, Block 1083, Lot(s) 15, seconded by Ms. Hesel and **carried 3-0.** Those in favor: Mrs. Werner, Mr. Mullock, Mr. Iurato. Those opposed: None. Those abstaining: Mrs. McAlinden, Ms. Hesel, Mrs. Hutchinson.

Board Attorney, Richard King, Esquire, addressed concerns regarding the method of voting for all variances sought by an applicant together, versus voting on the variances individually. Discussion ensued.

Applications

Edward and Karen McAllister
3 Mount Vernon Avenue
Block 1017, Lot(s) 5&7

Joseph Ross, Architect, Edward and Karen McAllister, applicants, and Board Engineer Craig Hurless, PE, PP, CME, were sworn in and stated their credentials for the record.

The representative for the applicant, Richard Mairone, Esquire, introduced himself and briefly summarized the proposed construction of a 20' x 25' detached garage and three variances sought by the applicant: Lot Width, Lot Frontage, and Shower Enclosure (attached to the proposed garage).

Project Architect, Joe Ross, testified regarding the proposed work, referring to **Exhibit A-1**: Complete architectural plans (submitted in Board members' application packets). Mr. Ross stated that the proposed garage complies to all zoning regulations except for the proposed outside shower enclosure attached. Mr. Ross explained that if the shower were to be attached to the home, it would interrupt the applicants' views from the back porch to the back yard. He affirmed that the garage would not serve as a "pool house", and that plumbing would only run to the outside shower attached to the garage. Mr. Ross testified that the proposed garage would add four (4) off-street parking spaces to the property. Board Member Clair McAlinden questioned the fence that currently exists on the property, which is not present in the pictures submitted to the Board. She questioned the location of the fence in regards to the proposed garage, and Mr. Ross and Mr. McAllister clarified.

Board Engineer Craig Hurless, PE, PP, CME, then summarized his latest memorandum dated June 8, 2016. He reviewed the checklist items for the C and D variances (page 2 of 5), with waiver items 20, 21, and 27 being requested and supported. Mr. Hurless explained the three (3) variances required in detail (pages 3 of 5):

1. §525-15B(1) Table 1 - Lot Width
2. §525-15B(1) Table 1 - Lot Frontage
3. §525-54A(6)(c)[1] - Shower Enclosure

The General Review Comments (page 4 and 5 of 5) were reviewed and explained in detail, with all items being classified as conditions of approval. Discussion was undertaken regarding General Review Comment number 2, and what qualifies as "habitable area", with Board Attorney Richard King quoting the definition for the Board Members.

Discussion was opened to the public within 200 feet at 7:05 PM, then beyond 200 feet, and subsequently closed with no public coming forward.

Motion was made by Mr. Mullock to approve the §525-15B(1) Table 1 - Lot Width, §525-15B(1) Table 1 - Lot Frontage, and §525-54A(6)(c)[1] - Shower Enclosure variances with waiver item numbers 20, 21, and 27 (page 2 of 5) subject to condition of approval items 1-9 (page 4 and 5 of 5), seconded by Mrs. Werner, and carried 6-0. Those in favor: Mrs. McAlinden, Mrs. Werner, Ms. Hesel, Mr. Mullock, Mr. Iurato, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

Mr. Mullock stated his reasons for his vote in the positive for the record.

***Robert Anderson-Appeal of Historic Preservation Commission decision
1240 Washington
Block 1128 Lot(s) 24-27***

The applicant, Robert Anderson, was sworn in. The representative for the applicant, Chris Gillin-Schwartz, Esquire, briefly explained that the applicant is appeal the decision of the City of Cape May Historic Preservation Commission to deny the installation of solar panels on his home. The applicant feels that the HPC members did not apply the correct standard when rendering their decision.

The solicitor for the Historic Preservation Commission, Robert Fineberg, Esquire, questioned the submission of additional materials by the applicant that were not presented to the HPC during the applicant's hearing. The Zoning Board Attorney, Richard King, clarified what is allowed to be presented to the Zoning Board for consideration, stating that the submission of pictures of the applicant's home is appropriate because the transcript of the HPC hearing detailed members stating that they had visited and viewed the property in question.

Mr. Gillin-Schwartz then described the standards of the United States Department of the Interior Guidelines, referring to **Exhibit A-1**: examples given on the DOI's website on how the standards are applied to historic properties in regards to solar panels. Mr. Gillin-Schwartz compared the home used as an example on the DOI website to the applicant's home. Mr. Gillin-Schwartz emphasized that throughout the applicant's HPC hearing (as shown in the transcript provided to the Zoning Board) multiple members claimed that since they could see the solar panels, they were not appropriate for a contributing structure in the Historic District. Mr. Gillin-Schwartz argued that that is not a correct application of the standard to be used in this situation. Rather, Mr. Gillin-Schwartz stressed that the standard discusses the level of visibility of solar panels, and the impact on the historic structure and surrounding neighborhood. He referenced and described **Exhibits A-4 through A-11**: photos of the property in question and surrounding neighborhood. Vice-Chairman Peter Iurato questioned the visibility of the solar panels, and Mr. Gillin-Schwartz expounded on the topic. Multiple Board members posed questions regarding the photos submitted and the roof of the structure in question. Mr. Anderson, applicant, testified regarding the condition of the current roof, and stated that the proposed panels would be removable.

Mr. Fineberg affirmed that the home in question is rated as a "contributing" structure in the Historic District, and read the definition of "contributing" from the standards for the Board. He stated that it is the HPC's charge is to protect the historic integrity of the City. He then summarized HPC resolution number 2016-10, detailing the reasons why the application was deemed not appropriate for the Historic District. The Zoning Board Attorney, Richard King, questioned what exactly the guidelines are for HPC, citing that what Mr. Fineberg submitted as guidelines from 2009 (**Exhibit HPC-2**) and what Mr. Gillin-Schwartz submitted as guidelines (from 2016) are different. In-depth discussion ensued regarding the interpretation of the Department of Interior standards.

HPC Chairman Warren Coupland was sworn in and testified to the experience of the HPC members, and the specific education that is required of them. Mr. Fineberg further expounded on the qualifications of HPC members. Mr. Coupland then discussed that the HPC must consider how

an application will impact the historic nature of structure and property in question, the surrounding neighborhood, and the City of Cape May as a whole. Mr. Coupland referred to a set of photographs of the home in question from different viewpoints (**Exhibit HPC-1**).

Board members posed multiple questions regarding the size of the proposed solar panels and the pitch of the roof, and the applicant clarified. They also questioned the impact the solar panels would have on the character of the house, citing electrical boxes, window units, and power lines that already exist on the property.

Discussion was opened to the public within 200 feet at 8:05 pm, beyond 200 feet, and subsequently closed with no public coming forward.

Mr. King opined that that while the HPC may not have applied the correct standard, it does not necessarily mean that they did not reach the correct decision, and urged the Board members to make whatever motion they felt was appropriate.

Motion was made by Ms. Hesel to reverse the decision the Historic Preservation Committee, and direct the Construction Official to grant the permit for the installation of solar panels, pending the adoption of the resolution for the application and subject to permit application review, seconded by Mrs. Werner, and **carried 4-2**. Those in favor: Mrs. Werner, Ms. Hesel, Mr. Mullock, Mrs. Hutchinson. Those opposed: Mrs. McAlinden, Mr. Iurato. Those abstaining: None.

Mrs. McAlinden and Mr. Iurato voiced their reasons for their votes in the negative for the record. Mrs. Werner, Ms. Hesel, Mr. Mullock, and Mrs. Hutchinson voiced their reasons for their votes in the positive for the record.

A short recess was taken at 8:20 PM.

The meeting resumed at 8:25 PM.

*Lubonty, J.L.D. LLC
1216 Maryland Avenue
Block 1132, Lot(s) 17*

Applicants Carol and John Andriello, and Christina Amey, Project Architect, were sworn in and stated their credentials for the record.

The representative for the applicant, Richard Mairone, Esquire, introduced himself and briefly summarized the proposed demolition of the existing dwelling, and the construction of a new two-story dwelling and detached garage. Mr. Mairone detailed the variances being sought by the applicant, and updated the Board that the applicant had decided to reduce the proposed plans to comply with the maximum floor area ratio for the district, so a variance for floor area ratio would no longer be sought.

Project Architect, Christina Amey, testified as to what is currently existing on the property in question, and what is being proposed by the applicant. She described in detail the changes that

would be made to the plans in order to achieve compliance with the floor area ratio regulation for the district. At the Board Engineer's questioning, Ms. Amey clarified various plan measurements and the variances being sought, drawing the modifications on the existing plans (**Exhibit A-1**). She testified that the proposed project is compatible with the surrounding neighborhood, and the proposed buildings would be up to current code and flood regulations.

Board Engineer Craig Hurless, PE, PP, CME, then summarized his latest memorandum dated July 14, 2016. He reviewed the checklist items for the C and D variances (page 2 of 5), with waiver item 26 being supported and item 33 being classified as a condition of approval. Mr. Hurless explained the four (4) variances required in detail (pages 3 and 4 of 5):

1. §525-15B(1) Table 1 - Lot Size
2. §525-15B(1) Table 1 - Lot Width
3. §525-15B(1) Table 1 - Lot Frontage
4. §525-15B(1) Table 1 - Side Yard Setback (each and total)

Mr. Hurless affirmed that the variance necessary for floor area ratio had been eliminated by the applicant's modifications.

The General Review Comments (page 4 and 5 of 5) were reviewed and explained in detail, with items 1-11, and 13 being classified as conditions of approval. Discussion was undertaken regarding the Shade Tree Commission recommendations for the property.

Discussion was opened to the public within 200 feet at 8:50 PM, beyond 200 feet, and subsequently closed with no public coming forward.

Motion was made by Mrs. Werner to approve the §525-15B(1) Table 1 - Lot Size, §525-15B(1) Table 1 - Lot Width, §525-15B(1) Table 1 - Lot Frontage, and §525-15B(1) Table 1 - Side Yard Setback (each and total) variances with waiver item number 26 (page 2 of 5), subject to condition of approval items 1-11 (page 4 and 5 of 5) and 33 (page 2 of 5), seconded by Mr. Iurato, and carried 6-0. Those in favor: Mrs. McAlinden, Mrs. Werner, Ms. Hesel, Mr. Mullock, Mr. Iurato, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

Mrs. Hutchinson voiced her reasons for her vote in the positive for the record.

***Patrick Nowakowski P.O.A. for Dorothy Lavin
276 Windsor Avenue
Block 1023, Lot(s) 14***

Patrick Nowakowski (P.O.A. for Dorothy Lavin), applicant, and Joseph Ross, Architect, were sworn in and stated their credentials for the record.

The representative for the applicant, Charles Sandman, Esquire, briefly summarized the proposed construction of a 15' by 16' two story building addition to "square off" the home, with a new paver driveway.

Joseph Ross, Project Architect, testified regarding the proposed work, referring to the complete architectural plans submitted in the Board members' application packets. He explained the existing conditions of the house and property in question, stating that the interior of the home is currently being renovated as a result of extensive water damage. He opined that the proposed addition is modest and compatible with the surrounding neighborhood. He stated that this application has already received HPC approval. Rather than exacerbating the existing lot coverage non-conformity with the proposed addition, the applicant has proposed to switch the concrete driveway to pavers, which results in a maintaining a 47% lot coverage. In regards to the variance sought for floor area ratio, Mr. Ross testified that the proposed FAR is consistent with surrounding properties in the neighborhood, referring to **Exhibit A-1: FAR study**. Mr. Ross affirmed that the proposed project is in keeping with the character of the surrounding neighborhood, and testified to the criteria for granting the requested variances in detail.

Board Engineer Craig Hurless, PE, PP, CME, then summarized his latest memorandum dated July 25, 2016. Through testimony, it was discovered that an additional Side Yard Setback variance would be necessary for the proposed addition, as a result of the applicant proposing a vertical expansion of an existing non-conformity. Mr. Hurless explained the six (6) variances required in detail (pages 2 and 3 of 4):

1. §525-14B(1) Table 1 - Lot Size
2. §525-14B(1) Table 1 - Lot Width
3. §525-14B(1) Table 1 - Lot Frontage
4. §525-14B(2) - Lot Coverage
5. §525-52 - Floor Area Ratio (FAR)
6. §525-14B(1) Table 1 - Side Yard Setback

The General Review Comments (page 3 and 4 of 4) were reviewed and explained in detail, with all items being classified as conditions of approval.

Discussion was opened to the public within 200 feet at 9:30 PM, then beyond 200 feet, and subsequently closed with no public coming forward.

Motion was made by Mrs. McAlinden to approve the §525-14B(1) Table 1 - Lot Size, §525-14B(1) Table 1 - Lot Width, §525-14B(1) Table 1 - Lot Frontage, §525-14B(1) Table 1 - Side Yard Setback, §525-14B(2) - Lot Coverage, and §525-52 - Floor Area Ratio (FAR) variances, subject to condition of approval items 1-12 (page 3 and 4 of 4), seconded by Mr. Mullock, and carried 5-1. Those in favor: Mrs. McAlinden, Mrs. Werner, Ms. Hesel, Mr. Mullock, Mrs. Hutchinson. Those opposed: Mr. Iurato. Those abstaining: None.

Motion to adjourn was made at 9:40 PM with all in favor.

Respectfully Submitted, Erin Burke/Board Assistant.