

**City of Cape May Zoning Board of Adjustment Meeting Minutes  
Thursday, January 26, 2017**

**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.

<b>Roll Call:</b>	Mrs. Hutchinson, Chairperson	Present
	Mr. Iurato, Vice Chairperson	Present
	Mr. Murray	Present
	Mrs. McAlinden	Absent-Excused
	Mrs. Werner	Present
	Ms. Hesel	Present
	Mr. Van de Vaarst	Present
	Mr. Mullock (Alt. 1)	Present
	Mrs. Lukens (Alt. 2)	Present

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

**Business: Reorganization**

**Oath of Office:**

Theresa Werner, John Van De Vaarst, and Deborah Lukens were instructed to sign their Oaths of Office and return them to the Board Secretary.

**Chairperson:**

**Motion made by Mr. Murray to nominate Diane Hutchinson for Chairperson**, seconded by Mrs. Werner and **carried 7-0**. Those in favor: Mr. Murray, Mrs. Werner, Ms. Hesel, Mr. Van de Vaarst, Mr. Mullock, Mr. Iurato, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

**Vice Chairperson:**

**Motion made by Mr. Iurato to nominate William Murray as Vice Chairperson**, seconded by Ms. Mullock and **carried 6-0**. Those in favor: Mrs. Werner, Ms. Hesel, Mr. Van de Vaarst, Mr. Mullock, Mr. Iurato, Mrs. Hutchinson. Those opposed: None. Those abstaining: Mr. Murray.

**Board Attorney:**

**Motion made by Iurato to appoint Richard King, Esquire, as Board Attorney**, seconded by Mrs. Hutchinson and **carried 7-0**. Those in favor: Mr. Murray, Mrs. Werner, Ms. Hesel, Mr.

Van de Vaarst, Mr. Mullock, Mr. Iurato, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

### **Board Engineer:**

**Motion made by Mr. Murray to appoint Craig R. Hurless, PE, PP, CME of Polistina & Associates as Board Engineer**, seconded Mr. Van de Vaarst and **carried 7-0**. Those in favor: Mr. Murray, Mrs. Werner, Ms. Hesel, Mr. Van de Vaarst, Mr. Mullock, Mr. Iurato, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

### **Meeting Dates and Time:**

**Motion made by Mr. Iurato to adopt the meeting dates and time for the 2017 Zoning Board of Adjustment, with the meeting time changing to 6:00 PM**, seconded by Ms. Hesel and **carried 7-0**. Those in favor: Mr. Murray, Mrs. Werner, Ms. Hesel, Mr. Van de Vaarst, Mr. Mullock, Mr. Iurato, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

### **Official Newspapers:**

**Motion made by Mr. Iurato to appoint the *Cape May Star and Wave* as the primary newspaper for publishing purposes, and the *Press of Atlantic City* as secondary**, seconded by Mr. Murray and **carried 7-0**. Those in favor: Mr. Murray, Mrs. Werner, Ms. Hesel, Mr. Van de Vaarst, Mr. Mullock, Mr. Iurato, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

### **Minutes:**

**Motion made by Mr. Iurato to adopt the minutes of October 27, 2016**, seconded by Mr. Murray and **carried 6-0**. Those in favor: Mr. Murray, Mrs. Werner, Ms. Hesel, Mullock, Mr. Iurato, Mrs. Hutchinson. Those opposed: None. Those abstaining: Mr. Van de Vaarst.

**Motion made by Mrs. Werner to adopt the minutes of December 8, 2016**, seconded by Mr. Mullock and **carried 6-0**. Those in favor: Mr. Murray, Mrs. Werner, Ms. Hesel, Mullock, Mr. Iurato, Mrs. Hutchinson. Those opposed: None. Those abstaining: Mr. Van de Vaarst.

### **Resolutions:**

**Motion made by Mr. Iurato to approve Resolution number 01-26-2017 David Heuwetter and Geraldine Smith-Heuwetter**, seconded by Mrs. Werner and **carried 6-0**. Those in favor: Mr. Murray, Mrs. Werner, Ms. Hesel, Mullock, Mr. Iurato, Mrs. Hutchinson. Those opposed: None. Those abstaining: Mr. Van de Vaarst.

**Applications:**

*Charles and Yvonne Ryan  
428 West Perry Street  
Block 1031, Lot(s) 12*

*and*

*John McMahon  
430 West Perry Street  
Block 1031, Lot(s) 11*

Theresa Werner recused herself from the hearing due to her living within 200 feet of both applicants.

John McMahon, applicant, Jeffrey Maberry, Senior Project Manager with Hafer & Associates, P.A., and Matthew Hender, Professional Engineer with Engineering Design Associates, were sworn in and state their credentials for the record.

The representative for both above-referenced applications, Kyle D. Weinberg, Esquire, presented the two applications together since the properties are attached, and since the applicants wish to complete the proposed project simultaneously. Mr. Weinberg gave a brief summary of the proposed raising of the dwelling to meet FEMA requirements and construction of a new two story addition to the dwelling.

Mr. McMahon (who is related to the applicants Charles and Yvonne Ryan) testified to the existing conditions of the property and the history of the homes in question. He desires to make the dwellings symmetrical and more appealing to the eye.

Jeffrey Maberry, Senior Project Manager with Hafer & Associates, P.A., testified regarding the current conditions of the homes, and the proposed work including internal and external improvements. Mr. Maberry claimed that the proposed project would result in a more aesthetically pleasing property and dwelling than what currently exists.

Matthew Hender, Professional Engineer with EDA, testified in detail regarding the variances sought by both applicants, and the proposed landscaping plans, referring to the zoning chart and plans provided in the Board members' application packets. He claimed that it would be impossible to construct a conforming structure on the lots in question.

Board Engineer Craig Hurless, PE, PP, CME, then summarized his latest memorandums dated December 1, 2016. Mr. Hurless explained that the only permitted use in the R-2 district is single family detached dwellings. Since 428 & 430 West Perry Street are semi-detached dwellings, a use variance is required for both applications. Regarding the Ryan application (428 West Perry), Mr. Hurless explained the seven (7) variances required in detail (pages 3 and 4 of 5):

1. §525-15A Use Variance (Expansion of a non-conforming use)
2. §525-15B(1) Table 1 Lot Size
3. §525-15B(1) Table 1 Lot Width
4. §525-15B(1) Table 1 Lot Frontage
5. §525-15B(1) Table 1 Side Yard Setback (each & total)
6. §525-15B(2) Lot Coverage
7. §525-54 Accessory Shed & Play House - Side Yard Setback

The General Review Comments 1-10 (page 4 of 5) were reviewed and explained in detail, with all items being classified as conditions of approval. Regarding item number 2: the applicant agreed to redesign the stormwater system to accommodate the 25 year design.

Regarding the McMahon application (430 West Perry), Mr. Hurless explained the nine (9) variances required in detail (pages 3 and 4 of 5):

1. §525-15A Use Variance (Expansion of a non-conforming use)
2. §525-15B(1) Table 1 Lot Size
3. §525-15B(1) Table 1 Lot Width
4. §525-15B(1) Table 1 Lot Frontage
5. §525-15B(1) Table 1 Side Yard Setback (each & total)
6. §525-15B(2) Lot Coverage
7. §525-52 Floor Area Ratio
8. §525-49C(1) Parking
9. §525-54 Shed - Side Yard Setback

The General Review Comments 1-10 (page 4 and 5 of 5) were reviewed and explained in detail, with all items being classified as conditions of approval. Regarding item number 2: the applicant agreed to redesign the stormwater system to accommodate the 25 year design.

Mr. Hurless stated that it is a benefit to the community that the applicants are attempting to raise the entire dwelling at the same time to meet FEMA requirements, rather than doing one side at a time (as seen in other cases). Raising the home(s) simultaneously is more aesthetically pleasing to the neighborhood.

**Discussion was opened to the public within 200 feet at 7:48 PM.**

**Joan McGinley (432 West Perry)** spoke in opposition of the proposed projects, and voiced concerns regarding the second-story additions and decks.

**Mark Jacoby (434 West Perry)** voiced concerns regarding the immensity of the proposed dwelling and the depth of the dwelling within the lots.

**Roxanne Went (434 West Perry)** spoke in opposition of the project, calling it "intrusive."

**George Werner (311 Claghorn Place)** spoke in support of the proposed project and applicants.

**Discussion was opened to the public beyond 200 feet at 8:12 PM.**

**Ruth Leo (237 Capehart)** spoke in support for the proposed work, and encouraged compromise between the neighbors.

**Gary McGinley (432 West Perry)** spoke in opposition of the expansion on the lots in question.

**Sarah Werner (311 Claghorn Place)** attested to the applicants' character, and spoke in support of the proposed work.

**Discussion was closed to the public at 8:30 PM.**

**Motion was made by Mr. Murray to approve the §525-15A Use Variance (Expansion of a non-conforming use) for both the Ryan (428 West Perry) and McMahon (430 West Perry) applications, subject to all conditions of approval discussed at the hearing and outlined in the review memorandum from Board Engineer Craig R. Hurless, PE, PP, CME, dated December 1, 2016, seconded by Mr. Mullock and carried 7-0. Those in favor: Mr. Murray, Ms. Hesel, Mr. Van de Vaarst, Mr. Mullock, Ms. Lukens, Mr. Iurato, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.**

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

**Motion was made by Mr. Murray to approve the §525-52 Floor Area Ratio variance for the McMahon (430 West Perry) application, subject to all conditions of approval discussed at the hearing and outlined in the review memorandum from Board Engineer Craig R. Hurless, PE, PP, CME, dated December 1, 2016, seconded by Mr. Mullock, and carried 7-0. Those in favor: Mr. Murray, Ms. Hesel, Mr. Van de Vaarst, Mr. Mullock, Ms. Lukens, Mr. Iurato, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.**

Mr. Murray, Mr. Van de Vaarst, and Mr. Mullock stated their reasons for their votes in the positive for the record.

**Motion was made by Mr. Murray to approve §525-15B(1) Table 1 Lot Size, §525-15B(1) Table 1 Lot Width, §525-15B(1) Table 1 Lot Frontage, §525-15B(1) Table 1 Side Yard Setback (each & total), §525-15B(2) Lot Coverage, and §525-54 Accessory Shed & Play House - Side Yard Setback variances for the Ryan (428 West Perry) application, and §525-15B(1) Table 1 Lot Size, §525-15B(1) Table 1 Lot Width, §525-15B(1) Table 1 Lot Frontage, §525-15B(1) Table 1 Side Yard Setback (each & total), §525-15B(2) Lot Coverage, §525-49C(1) Parking, and §525-54 Shed - Side Yard Setback variances for the McMahon (430 West Perry) application, with all variances subject to all conditions of approval discussed at the hearing and outlined in the review memorandum from Board Engineer Craig R. Hurless, PE, PP, CME, dated December 1, 2016, seconded by Mr. Mullock and carried 7-0. Those in favor: Mr. Murray, Ms. Hesel, Mr. Van de Vaarst, Mr. Mullock, Ms. Lukens, Mr. Iurato, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.**

All voting members voiced their reasons for their votes in the positive for the record.

**A short recess was taken at 8:45 PM. The meeting resumed at 9:00 PM.**

***Scott Peter - Appeal of Historic Preservation Commission decision  
513 Elmira  
Block 1061, Lot(s) 7***

Scott Peter, applicant, briefly summarized the history of this application, detailing the approval received from the Zoning Board on September 22, 2016, and denial by the Historic Preservation Commission (HPC) on November 21, 2016 due to the proposed front yard parking. At the Zoning Board hearing on September 22, 2016, Board members and the Board Engineer voiced concerns regarding the proposed parking configuration and noted a safety issue with backing-out onto Elmira street at an angle. The parking configuration was then altered so as to mitigate those safety issues. On November 21, 2016, the HPC denied Mr. Peter's application due to the proposed front yard parking, which is deemed "not appropriate" by their guidelines.

The attorney for the HPC, Robert Fineberg, Esquire, and Thomas Carroll, Vice-Chairman, spoke defending the HPC decision, citing that the duty of the commission is to uphold the Department of Interior standards/guidelines, which clearly states that front yard parking is not appropriate in the Historic District. They stated that Mr. Peter had received HPC approval for the demolition of the existing dwelling on the lot, and would be starting with a "blank slate" and should be able to design a home that conforms to both the zoning regulations and the HPC guidelines.

Mr. Peter claimed inconsistencies with the HPC's enforcement of the guidelines, maintaining that he has built other homes in the neighborhood with front yard parking with no issues. He claimed that he has designed a house that conforms to all zoning regulations, and only had to go before the Zoning Board due to a non-conforming lot size. Extensive discussion ensued regarding the different possibilities for development on the lot in question. Board members and the professionals discussed whether the safety concern "trump" the design standards upheld by the HPC. The Board Engineer, Mr. Hurless, read from page 4 of 4 of his report dated January 6, 2017 regarding the role of the Zoning Board in the appeal process.

**Motion was made by Mr. Murray to overrule the decision the Historic Preservation Committee, and direct the Construction Official to grant the construction permit, pending the adoption of the resolution for the application and subject to permit application review, seconded by Ms. Hesel and carried 6-1.** Those in favor: Mr. Murray, Mrs. Werner, Ms. Hesel, Mr. Van de Vaarst, Mr. Iurato, Mrs. Hutchinson. Those opposed: Mr. Mullock. Those abstaining: None.

**Motion made by Mrs. Hutchinson to adjourn the meeting at 10:15 PM with all in favor.**

**Respectfully Submitted, Erin Burke/Board Assistant.**

