

City of Cape May Zoning Board of Adjustment Meeting Minutes
Thursday, May 28, 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	Absent - Excused
	Mrs. Inderwies	Absent - Excused
	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 April 23, 2015, seconded by Mr. Murray and **carried 7-0**. Those in favor: Mr. Iurato, Mr. Murray, Mrs. Pharo, Ms. Hesel, Mrs. Werner, Mr. Furlin and Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

Applications

Jeff Herold
Block 1172, Lot(s) 3.13
27 Harbor Cove

Matthew Trella, Esquire, Stephen Filippone of EDA and Craig Hurless, Board Engineer, were sworn in and stated their credentials for the record.

Attorney Trella gave a brief overview of the application and turned the presentation over to Mr. Filippone. Exhibits A1 and A2 were entered into the record of the subject property. He stated the applicants were seeking variance relief for a swimming pool in the rear yard of the property and detailed the exhibits of where the pool would be placed. Exhibit A2 also depicted the other homes in the neighborhood that already have existing in ground swimming pools. He felt it was a reasonable request and asked the Board if they had any questions. Mrs. Pharo asked if the property at the rear of the homes was common property to the development; Mr. Filippone stated that was correct. Mr. Herold, applicant, stated that all the homeowners in the

development have a proportionate share of that property. Mrs. Hutchinson asked if that area had a restriction that it could not be built on; Mr. Trella stated that was correct. Mr. Murray asked if there were ever any problems with flooding and the applicant stated no.

Craig Hurless reviewed his memorandum dated April 23, 2015. Checklist waiver 5 was supported; item number 33 should be a condition of approval. Mr. Hurless gave a summarization of the variance relief being sought from his report, beginning with the Lot Coverage. Mr. Hurless stated this development was developed under a different zoning district. After completion of the project it was rolled into the R1 development. This was a unique situation where the comprehensive plan set forth specific lot coverage's allowed for each lot. It was done to set aside the large track of open space behind the homes. The Patio/deck width and Patio/deck setback variances were also discussed. He noted all the general review comments should be conditions of approval.

Mr. Iurato asked where the pool equipment was going to be located. The applicant Mr. Herold stated the pool equipment would be located on the side of the house on the existing deck. There will be no additions to store the pool equipment. Mr. Murray asked a general question about fencing around the pool. Mrs. Hutchinson also asked what the pool equipment would consist of.

The meeting was opened to the public at 6:50 PM and subsequently closed as there were no questions from the public.

Motion made by Mr. Murray to approve §525-14B(2) Lot Coverage Variance, §525-54A(5)9(a) Patio/deck width Variance and §525-54A(5)9(b) Patio/deck setback Variance, seconded by Mr. Furlin and **carried 7-0.** Those in favor: Mr. Iurato, Mr. Murray, Mrs. Pharo, Ms. Hesel, Mrs. Werner, Mr. Furlin and Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

Motion made by Mr. Murray to approve Checklist Waiver #5, seconded by Mr. Furlin and **carried 7-0.** Those in favor: Mr. Iurato, Mr. Murray, Mrs. Pharo, Ms. Hesel, Mrs. Werner, Mr. Furlin and Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

Motion made by Mr. Murray to approve General Review Comments 1-9, Condition #33, and condition that the pool equipment will be housed on the existing deck, seconded by Mrs. Werner and **carried 7-0.** Those in favor: Mr. Iurato, Mr. Murray, Mrs. Pharo, Ms. Hesel, Mrs. Werner, Mr. Furlin and Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

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

Steven Fenwick, Architect, Jim Hanson, applicant and Craig Hurless Board Engineer were sworn in and clarified their credentials for the record.

Mr. Dwyer opened by stating that the applicant went back after the first meeting and made numerous changes based on the feedback from the board and the neighbors. The roof design has been completely changed and he noted they were able to return to the HPC and get conceptual approval of the change to the roof. Originally the roof was 35 feet in height, now the roof height is proposed at 31.58 feet. The elevator no longer goes to the third floor. The driveway was also moved to the southerly side of the property. Steve Fenwick gave a detailed description of how the plans have changed since first presented.

Diane Hutchinson asked a question regarding the roof and how it is displayed on the plans for clarification. Mr. Fenwick explained how the roof will appear when the home is built since the plans were not clear for all members of the Board.

Craig Hurless reviewed his memorandum dated May 7, 2015. The completeness review items were discussed; all waivers were granted. A summary of the variances were reviewed that deal with the existing isolated undersized lot. He stated the applicant did comply with all the other bulk and area regulations including the accessory detached garage in the rear. He did have a question for the applicant regarding the window shown on that structure on the plans; if there is an upstairs or second floor in the garage or if the window was for decoration only. The applicant stated that was for decoration only. Mr. Hurless reviewed the general review comments and noted the conditions of approval, adding the condition that there is no upstairs to the garage.

The meeting was opened to the public within 200 feet at 7:15 PM.

Kathy Daniel, 1109 New Jersey Avenue was sworn in. She stated her concerns for the record on the setback of the home.

Peggy Jakacki, 1105 New Jersey Avenue was sworn in. She stated her concerns for the record and asked that the privet hedge between the properties be preserved.

Bob Kriebel, 1106 New York Avenue was sworn in. He stated his concerns for the record regarding the size and placement of the garage and asked the applicant if they would consider not building a garage.

Charlie Daniel, 1109 New Jersey Avenue was sworn in. He expressed his concerns for the record.

Robert Lamendola, 1110 New York Avenue was sworn in. He expressed his concerns for the record.

The meeting was closed to the public at 7:51 PM.

Motion made by Mr. Iurato to approve Checklist Waivers 20, 21, 24, 26 and 17, seconded by Mr. Murray and **carried 7-0**. Those in favor: Mr. Iurato, Mr. Murray, Mrs. Pharo, Ms. Hesel, Mrs. Werner, Mr. Furlin and Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

Mr. Murray asked Mr. Hurless before voting on the Lot Size Variance if a variance was required for the garage. Mr. Hurless stated it was not. He also stated the garage structure as proposed has been reviewed with regards to the bulk and area standards that govern accessory structures and complies 100% with the ordinance.

Motion made by Mr. Iurato to approve §525-15B(1) Table 1 Lot Size Variance, seconded by Mrs. Pharo and **carried 7-0**. Those in favor: Mr. Iurato, Mr. Murray, Mrs. Pharo, Ms. Hesel, Mrs. Werner, Mr. Furlin, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

Motion made by Mr. Iurato to approve §525-15B(1) Table 1 Lot Width & Lot Frontage Variance, seconded by Mr. Murray and **carried 7-0**. Those in favor: Mr. Iurato, Mr. Murray, Mrs. Pharo, Ms. Hesel, Mrs. Werner, Mr. Furlin, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

Motion made by Mrs. Pharo to approve §525-15B(1) Table 1 Side Yard Setback – Total & Each Side Variance, seconded by Mr. Furlin and **carried 7-0**. Those in favor: Mr. Iurato, Mr. Murray, Mrs. Pharo, Ms. Hesel, Mrs. Werner, Mr. Furlin, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

Motion made by Mr. Murray to approve General Review comments 2-14, Condition there will be no second floor in the garage and that the privet hedge along the driveway between two properties will be preserved and trimmed to accommodate the driveway, seconded by Mr. Iurato and **carried 7-0**. Those in favor: Mr. Iurato, Mr. Murray, Mrs. Pharo, Ms. Hesel, Mrs. Werner, Mr. Furlin, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

A short recess was taken at 8:10 PM.

The meeting resumed at 8:18 PM.

Richard and Elizabeth Smithson
115 Ocean Street
Block 1057, Lot(s) 1 and 2

Joseph Ross Architect, Doug Smithson Applicant and Craig R. Hurless Board Engineer were sworn in and clarified their credentials for the record.

Louis Dwyer stated the applicant has returned with a revised application to strictly seek variance relief for a garage. The garage has been designed to blend in with the historic structures on each side of it. The proposed garage is to add storage for both structures.

Joseph Ross detailed the property and stated the applicant recently purchased 115 Ocean Street. The common space in between the two properties had always been shared for parking when the properties were a bed and breakfast. The applicant now desires to have a garage on the site for cars and storage, but the parking will remain communal to both properties. They are no longer seeking for this property to be one lot; it will remain two lots. The garage and parking will be

shared by both properties. The garage has been reviewed by HPC and found appropriate for the site. Mr. Ross reviewed the variances required for the garage. It proposes no changes to the FAR or intensity of use of the property. He felt there would be no detriments to the property if the garage were constructed.

Craig Hurlless reviewed his memorandum dated May 11, 2015. These application now only deals with 115 Ocean Street which proposes parking comprised of off street parking spaces as well as a detached accessory garage that will also house two parking spaces. The completeness review items were reviewed and 8 of those waivers were supported. One of the items may need a cross access or parking easement, which information should be provided as a condition of approval. The variances were reviewed as well as the general review comments and conditions of approval.

Mr. Iurato asked if there was any correspondence from the HPC regarding this application. Mr. Ross addressed the question by stating it was given unanimous conceptual approval, the only condition being to adjust the parking spot for the landscaping along the front. Mr. Iurato asked Mr. Dwyer why the Board was not provided the HPC information along with the application. Mr. Dwyer stated that the HPC minutes or resolution was most likely not yet complete when the application to the Zoning Board was submitted. Mr. Furlin stated he did not think the HPC normally passed on information to the Zoning Board but it could be discussed if it is something the Zoning Board members would want. Mr. Hurlless stated the he did not know of anything that required the applicants to go the HPC before coming to the Zoning Board.

The meeting was opened to the public within 200 feet and beyond at 8:41 PM and was subsequently closed as no one from the public wished to speak.

Motion made by Mr. Murray to approve Checklist Waivers 17-28, 33, seconded by Mr. Furlin and **carried 7-0**. Those in favor: Mr. Iurato, Mr. Murray, Mrs. Pharo, Ms. Hesel, Mrs. Werner, Mr. Furlin, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

Motion made by Mr. Murray to approve §525-19B(1) Table 1 Lot Size per dwelling Variance, seconded by Mr. Iurato and **carried 7-0**. Those in favor: Mr. Iurato, Mr. Murray, Mrs. Pharo, Ms. Hesel, Mrs. Werner, Mr. Furlin, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

Motion made by Mr. Murray to approve §525-19B(2) Lot Coverage Variance, seconded by Mr. Murray and **carried 6-1**. Those in favor: Mr. Murray, Mrs. Pharo, Ms. Hesel, Mrs. Werner, Mr. Furlin, Mrs. Hutchinson. Those opposed: Mr. Iurato. Those abstaining: None.

Motion made by Mr. Murray to approve §525-54A(3)(h) Detached garage Setback – Side Yard Variance, seconded by Mr. Furlin and **carried 5-2**. Those in favor: Mr. Murray, Mrs. Pharo, Mrs. Werner, Mr. Furlin, Mrs. Hutchinson. Those opposed: Mr. Iurato, Ms. Hesel. Those abstaining: None.

Motion made by Mrs. Pharo to approve §525-54A(3)(e) Detached Garage – Distance to Structure Variance, seconded by Mr. Furlin and **carried 5-2**. Those in favor: Mr. Murray,

Mrs. Pharo, Mrs. Werner, Mr. Furlin, Mrs. Hutchinson. Those opposed: Mr. Iurato, Ms. Hesel. Those abstaining: None.

Motion made by Mr. Murray to approve General Review comments 1-8 and condition #32, seconded by Mrs. Pharo and **carried 7-0**. Those in favor: Mr. Iurato, Mr. Murray, Mrs. Pharo, Ms. Hesel, Mrs. Werner, Mr. Furlin, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

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

Mr. Iurato asked before Mr. Dwyer began his presentation to please correct the signature line on the plans from Planning Board to Zoning Board.

John Cornic Engineer, Mark and Kathleen Platzer the applicants and Craig Hurless Board Engineer were sworn in and stated their credentials for the record.

Before Mr. Dwyer began discussing the application he submitted photographs as exhibit A1 into the record.

Mr. Dwyer discussed the pictures that show the original structure and the new structure. He asked Mr. Cornic if there had been an existing structure on the site prior to what is there now and Mr. Cornic confirmed. He noted the original structure was severely damaged during Hurricane Sandy, stating the structure was flooded during the storm. One of the photos shows the deck starting to fail after the storm. The initial thought was to try and salvage the structure but it could not be done. The intent was to originally expose the walls, take a look at the foundation, reconstruct the foundation within the walls and then reconfigure the home as proposed initially to the city.

Mr. Cornic started to number the pictures on the exhibit board so all members of the Board were looking at the appropriate pictures as they were being discussed.

Mr. Dwyer stated Yacht Avenue was a unique street in Cape May and consists of numerous small lots with houses occupying most of them. Mr. Cornic stated that on the northwest side of Yacht Avenue starting at the Platzer residence heading south toward Lafayette Street, the homes on that water side predominately are located on top of the existing Shellingers Creek. Lou Dwyer stated that Cape May has a zoning ordinance that in a scenario like this, allows for a structure to be raised and basically rebuilt in its place. Mr. Cornic confirmed this was correct that the ordinance allows you to reconstruct a home without expansion as long as you are two feet above what they would call either the preliminary work map elevation or the ABFE elevation, which were the new maps issued by FEMA after the storm and revised a few times. This application did to go HPC for approval. The applicant then submitted plans to the construction office that were approved and construction commenced.

Mr. Dwyer asked if there was a period of time, post issuance of permit, that flood maps were in a state of flux. Mr. Cornic stated that the flood maps, when they were originally issued in December of 2013 took all the flood prone areas that did not have flood maps updated through time and put them in the V zone. V zones are high velocity water zones where during a storm event or a 100 year storm, the waters velocity is exceeding the wave heights. He stated since then a preliminary work map has been issued by FEMA which is dated June 13, 2014 and that has since changed the zone back to an AE zone, effectively reducing the flood hazard elevation to 9. Mr. Dwyer stated that when the permits were issued for this property at the time it was under the preliminary map which showed it to be in a V zone. During the course of the construction it changed to an AE zone. He stated Cape May's ordinance would allow the structure to be rebuilt without the need to come to the Zoning Board. It met the flood zone ordinance. Mr. Cornic noted that after Hurricane Sandy, the state enacted legislature that would permit a single family residence or other structure to be reconstructed in place without expansion and elevated to the appropriate height to the map that was enacted at that time. In this case that is what the applicant followed and performed. Mr. Dwyer asked what the actual height is; Mr. Cornic stated it is 13.74. He stated they went out and as built the first floor, in this particular site, 98% of the home is extended over the water line, so a small portion of the home is located within a bulk headed lot. The first floor is effectively acting as a garage. It is access to the second floor which is livable space and provides access to the traditional boat house that is at the rear of the property.

Mr. Dwyer noted that to comply with the AE requirements they would need to be raised to 11 feet. Mr. Cornic agreed stating Cape May's flood ordinance is unique with regards to the coastal region. Most towns require one foot of free board above the flood zone; Cape May requires two feet. He stated if you take that and apply it to FEMA flood insurance rates FEMA provides risk assessment based on one foot above base flood up to three feet above base flood. So in this case Cape May ordinance requires 11 feet, they constructed at 13.74 feet which is 2.74 feet above what is permitted to do in the City of Cape May. Lou Dwyer stated that reasons are there for the house to be built as high as it was but it doesn't meet the technical requirements of the City's ordinance that absolves the applicant from having to come for a variance. He stated this issue was captured after construction had begun.

Mr. Dwyer stated that when you look at the photos you will see there is a difference in the old building and the new building, and that was triggered by HPC comments during their review. Mr. Cornic stated that was correct. Mr. Dwyer stated the new building is not quite as long and is skinnier than the old building. Mr. Cornic noted the original building face to edge of deck was roughly 76 feet in length. In the proposed, the first floor, which we are calling the garage floor, is 74.2 feet, so they are 1.8 shorter than the original condition. On the second story the length is 76 feet with the deck and on the third story, that is the step back and that length is 60 feet.

Mr. Dwyer noted that as built the eaves on the property are still encroaching. Mr. Cornic agreed and said the original plans submitted to the HPC and to the City for construction permits had eaves on the structure but they were only 2". In the current as built condition they are 12" eaves so therefore are encroaching on both the north and south property lines. Mr. Dwyer stated they have agreed to cut back on the eaves to bring them into conformity.

Mr. Dwyer stated his clients would be happy to answer any questions.

Mr. Iurato asked if they were finalized with the HPC. He stated he looked at the site and saw there were Anderson windows on the building. Mr. Iurato asked if HPC gave them final approval using vinyl clad windows. Mr. Dwyer stated because of the location they were approved.

Mr. Murray wanted to clarify that exhibits 1, 2 and 3 showed the old building. He stated he understood because of the urgency of the situation they constructed a house from the maps that FEMA had at the time and built it high. He asked if that was the reason they needed to come to the Zoning Board for the variances. Mr. Dwyer stated that was correct. Mr. Murray asked if there was a need for a height variance. Mr. Dwyer stated they did not need a variance for height.

Mr. Hurless was asked to give his input. He stated if the applicant was to simply take the existing structure and raise it to conformance with the flood maps and the city's requirement of an additional 2' of free board, they could have done so without variance. He noted there are limitations to going up; you can go higher with certain limitations. If you exceed those with a non conforming structure you are no longer protected with your existing non conformity. Going higher triggers the variances from the existing non conformities.

Mr. Murray asked if the original FEMA requirements stayed the same, they would have been within the requirements of the City. Mr. Cornic said that was correct. He also stated if they had changed from a V zone construction methodology to an AE zone, it changes the treatment of the first floor which we are calling the garage. In the V zone your structures below the first habitable floor, in this case the second floor, would have to be breakaway structures. In an AE zone you are required to flood proof that area, adding flood vents. The applicant is proposing to add the flood vents.

Craig Hurless reviewed his memorandum dated May 1, 2015. There was one item not provided from the checklist waivers which was landscaping. The board can waive that requirement if there is no room for landscaping on Yacht Avenue. He stated he did not grandfather in the non conformities into his review that the construction official issued building permits for. He stated he treated this as a new structure before this board and expansion, vertical expansion, etc., necessitated variances and that is how the report is based. He then reviewed each of the variances in detail and moved onto the general review comments and conditions of approval. He asked that the applicant provide additional information in a condition of approval should be to change the signature line on the plans from Planning Board to Zoning Board.

Mr. Iurato asked what the open spot was on one side of the building. Mr. Cornic stated what he was looking at were lots 20 and 21.

Mr. Iurato asked Mr. Dwyer for the record if they tried to obtain any additional property. Mr. Dwyer stated there was no additional property to obtain. He asked what Anderson wood right windows were. Mr. Cornic stated it is a composite window.

The meeting was opened to the public within 200 feet at 9:29 PM.

Steve Bajus, 1527 and 1529 Yacht Avenue, Cape May, NJ was sworn in. He had a few questions regarding the height of the new building and the code.

The meeting was opened to the public beyond 200 feet at 9:35 PM.

Nick Hober, 1507 Yacht Avenue, Cape May, NJ was sworn in. He stated he has a property near the applicants and is in favor of the home and felt it would be an improvement.

Phil Cormin, 1518 Yacht Avenue, Cape May, NJ was sworn in. He asked a few questions about parking at the property.

Carl DePativo, 1515 Yacht Avenue, Cape May, NJ was sworn in. He spoke in favor of the applicants and the proposed home.

Lorraine Dunn, 1530 Yacht Avenue, Cape May, NJ was sworn in. She spoke in favor of the proposed property.

Gary Gilbert, 1517 Yacht Avenue, Cape May, NJ was sworn in. He spoke in favor of the home and of flooding issues.

William Kurtz, 910 Washington Street, Cape May, NJ was sworn in. He is the managing member of an LLC that owns a property at 1518 Yacht Avenue. He spoke in favor of the applicants and the home.

Bill Bezaire, 1314 Massachusetts Avenue, Cape May, NJ was sworn in. He spoke in favor of the property and the applicants.

Hark Wetherill, 1512 Yacht Avenue, Cape May, NJ was sworn in. He spoke in favor of the property.

The public portion of the meeting was closed at 9:45 PM.

Motion made by Mrs. Pharo to approve §525-52 Floor Area Ratio (FAR) Variance, seconded by Mr. Furlin and **carried 7-0**. Those in favor: Mr. Iurato, Mr. Murray, Mrs. Pharo, Ms. Hesel, Mrs. Werner, Mr. Furlin, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

Mr. Murray stated his reasons for his vote for the record. Mr. Furlin also stated his reasons for his vote for the record.

Motion made by Mr. Iurato to approve §525-18B(1) Table A Lot Size per dwelling unit Variance, §525-18B(1) Table A Lot Width & Lot Frontage Variance, §525-18B(1) Table A Building Setback Variance, §525-14B(1) Table 1 Side Yard Setback (Each & Total)

Variance, seconded by Mrs. Werner and **carried 7-0**. Those in favor: Mr. Iurato, Mr. Murray, Mrs. Pharo, Ms. Hesel, Mrs. Werner, Mr. Furlin, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

Motion made by Mrs. Pharo to approve General Review comments 1-4, 6-8, Condition there will be no habitable space on the ground floor, condition to change the signature line on the plans from Planning Board to Zoning Board, condition that information regarding the right of way improvements for Yacht Avenue be provided to the Board engineer, seconded by Mr. Murray and **carried 7-0**. Those in favor: Mr. Iurato, Mr. Murray, Mrs. Pharo, Ms. Hesel, Mrs. Werner, Mr. Furlin and Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

The meeting went into closed session to discuss a legal matter at 9:52 PM.

The meeting resumed from closed session at 10:10 PM.

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

Respectfully Submitted, Jill Devlin/Board Assistant.