

City of Cape May Zoning Board of Adjustment Meeting Minutes
Thursday, October 22, 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	Absent
	Mr. Iurato	Present
	Mr. Murray	Present
	Mrs. McAlinden	Present
	Mrs. Inderwies	Present
	Ms. Hesel	Present
	Mrs. Werner	Present

Also Present: Ron Gelzunas, Board Solicitor
Craig Hurless, Board Engineer
Jill Devlin, Board Assistant

Minutes

Motion made by Mrs. Werner to approve the minutes of September 24, 2015, with noted correction, seconded by Mrs. McAlinden and **carried 6-0**. Those in favor: Mr. Iurato, Mrs. Inderwies, Mrs. McAlinden, Ms. Hesel, Mrs. Werner, Mrs. Hutchinson. Those opposed: None. Those abstaining: Mr. Murray.

Resolutions

Motion made by Mr. Iurato to approve Resolution #10-22-2015:1, CCK Equities, Inc., Block 1032, Lot(s) 8, 9, 13.02 & 14, with noted corrections, seconded by Mr. Murray and **carried 7-0**. Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Murray, Mrs. McAlinden, Ms. Hesel, Mrs. Werner, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

Motion made by Mr. Murray to appoint Ron Gelzunas as interim Board Solicitor through the end of 2015, seconded by Mrs. Inderwies and **carried 7-0**. Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Murray, Mrs. McAlinden, Ms. Hesel, Mrs. Werner, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

Applications

Scott Peter
549 Elmira Street
Block 1061, Lot(s) 15

Jim Pickering introduced himself, applicant Scott Peter and Vincent Orlando. Scott Peter, Vincent Orlando and Craig Hurless were sworn in and stated their credentials for the record. Mr. Pickering gave a short background of the property. It is an undersized lot and is proposed to be built as a single family home. The appropriate DEP permits have been obtained. The applicant is seeking a use variance and bulk variances due to the size of the lot. Because of the adjacent wetlands, only a portion of the lot can be built upon. He noted Mr. Peter is very well aware of the requirements, he is a builder in Cape May who has done many other nice homes and this will be an appropriate project for this lot. Mr. Peter remarked he did a very similar project on Bank Street that is right around the corner. He stated the Elmira Street is a unique lot and a unique setting. The home that is being proposed is a small modest home to complement the area. It is proposed to have three bedrooms and two off street parking spaces. It is more for a year round resident than it is for a seasonal property. Mr. Peter handed the design sheet to the members of the Board for review as he explained the details of the home. There will be a good amount of landscaping on the lot as well. The handout was entered into record as exhibit A1.

Mr. Orlando then gave a detailed review of the home being proposed. He stated the immediate neighborhood is developed as a residential neighborhood, on the cusp of the C5 zone. The area immediate to the left is a vacant old storage building. Immediately to the southeast of this property is the R3 zone, with all lots in that area being single family homes. The C5 zone is classified as the service business/light industrial district. The lot size is 6,230 square feet with a wetlands buffer. There was a wetlands analysis done on the property. The property only has a buildable area of 4,000 square feet or slightly less. It is not conducive to a C5 use, only a residential use. The remaining variances being sought were discussed.

Mr. Murray asked questions about the adjacent lot, if it will remain in the C5 zone. Mr. Orlando stated the adjacent lot is currently owned by the City. He also asked if the applicant was aware that this area is very prone to flooding. Mr. Orlando stated the DEP did condition their permit on a deed being recorded that this lot does flood occasionally. DEP permit was entered into record as exhibit A3. Mrs. Hutchinson asked if there would be a stormwater report.

There were no more questions from the board.

Craig Hurless reviewed his memorandum dated September 17, 2015. The completeness review was discussed, noting that number 27 should be a condition of approval which is the proposed utility layouts. The zoning requirements were then discussed. Mr. Hurless confirmed the lot next to the proposed lot is owned by the City of Cape May. The use variance was reviewed. Mr. Hurless agreed this lot would not be conducive to a light industrial use which is the C5 zone. It is more suited for a residential lot. The general review comments were reviewed, noting all should be a condition of approval, as well as the deed requirement stated by the DEP regarding the occasional flooding potential in the area.

The meeting was opened to the public at 7:16 PM and subsequently closes as no members of the public wished to speak.

Motion was made by Mr. Iurato to approve §525-26B Use Variance, seconded by Mr. Murray and **carried 7-0**. Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Murray, Mrs. McAlinden, Ms. Hesel, Mrs. Werner, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

Motion made by Mr. Iurato to approve §525-26C(1) Table 1 Lot Size Variance, §525-26C(1) Table 1 Lot Width & Lot Frontage Variance, §525-26C(1) Table 1 Side Yard Setback (Each & Total) Variance, seconded by Mr. Murray and **carried 7-0**. Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Murray, Mrs. McAlinden, Ms. Hesel, Mrs. Werner, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

Motion made by Mr. Iurato to approve Conditions #27; General Review comments 1 through 9, Deed required by DEP that notes occasional flooding, seconded by Mr. Murray and **carried 7-0**. Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Murray, Mrs. McAlinden, Ms. Hesel, Mrs. Werner, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

Adis, Inc.

La Mer Beachfront Inn

1317 Beach Avenue

Block 1146, Lot(s) 6, 7, 10-24

Before the testimony began Mr. Murray wished to put on record that in 2010 he was on the Planning Board and wanted to make sure it wasn't viewed as a conflict. He stated resolution 4-3-2010 he was part of the decision process on, which was the approval of the laundry wing. Attorney Hluchan stated he had no objection to Mr. Murray and that the laundry wing has nothing to do with this application.

Mr. Murray asked that both parties would have the opportunity to testify. Ron Gelzunas stated the Board would hear from Mr. Hluchan, and Mr. Feinberg on the part of the HPC.

Richard Hluchan stated that the La Mer Beachfront Inn has a proposal to demolish the restaurant out in front, and construct a new building with a restaurant on the ground floor and additional hotel rooms. The Planning Board granted preliminary approval on May 26, 2015 and a resolution memorializing that was adopted June 25, 2013. They then received final approval which was granted on August 25, 2015 and the resolution was approved at the October 13, 2015 meeting. The final remaining item is approval from the HPC. Mr. Andy appeared before the HPC on August 17, 2015 and he at that time sought a demolition permit to demolish the existing restaurant building and a construction permit for the new building. HPC denied both of those and their resolution reflects that denial. Under the ordinance any appeal from an HPC denial comes to the Zoning Board. He stated they were asking the Board to overturn the decision of the HPC. Although the demolition permit was denied by the HPC, Mr. Feinberg and Mr. Hluchan have since discussed it. They agreed that a demolition permit that was granted prior to Mr. Andy was still valid under the permit extension act. Mr. Feinberg has stated a letter to that affect and the demolition was no longer at issue. The only thing at issue is approval for the new building.

Mrs. Hutchinson stated she believed the HPC only heard for the demolition of the building, not the construction of the new building. Mr. Hluchan stated it was his understanding they needed approval for the building as well. Mr. Murray stated as well that he believed the issue they were to hear tonight was that HPC improperly denied the demolition of the building. Mr. Hluchan stated that has been resolved.

Mr. Feinberg stated he could clear the confusion. He stated Mr. Hluchan was partly correct and partly incorrect. He stated Mr. Andy did come before the HPC on August 17, 2015, by himself without council or other professionals with him. He did apply for the demolition permit which was denied. Mr. Hluchan contacted his office and pointed out there was no need to apply for a demolition permit because the HPC had approved that in 2007 and by virtue of the multiple amendments of the permit extension act, the demolition permit was still valid until June of 2016.

The issue now is his application for the construction permit. He stated that was never reached. The resolution only deals with the demolition permit. Since the demolition permit was denied there was no reason for them to move forward with the proposed construction and stated they never had the hearing regarding the construction permit. He stated it was not an application for a construction permit on August 17, 2015. It wasn't presented in that fashion. He read a portion of the transcript from that hearing. Mr. Gelzunas marked the transcript as HPC1 for the record. Page 5 of the transcript, lines 2 through 8, were read by Mr. Feinberg.

He noted there was a demolition and conceptual approval request only before the board that evening. It could only have been a conceptual approval as the Planning Board final approval did not occur until August 25, 2015. There were no final plans that could have been presented to the HPC on August 17, 2015.

Mr. Hluchan explained to the board what he was appealing. He stated when Mr. Andy went to the HPC in August, he sought demolition because he didn't realize the previous demolition permit was still valid, and he also sought construction approval. He submitted to HPC not a concept plan, but the exact same plan that the planning board granted final approval to a week later. He was trying to expedite the process. He stated he looked at the resolution from the HPC, #2015-23, dated August 17, 2015 and when he read it, it is entitled demolition permit and construction permit application. Mr. Hluchan read parts of the resolution to the Board. He also read the reason listed on the resolution for the denial, number 4 in particular, which denied the certificate of appropriateness. Mr. Hluchan stated he believes it was denied on the merits and that is why they are appealing. He also stated after reading the transcript he felt the HPC already made up their minds to deny the application. He read statements from the actual transcript as well. Both the resolution and the transcript were entered as exhibits for the record.

Mr. Murray stated when he read the transcript he felt Mr. Carroll was trying to justify the denial of the demolition permit. Mr. Hluchan stated the discussion was now about the merits of the application. After discussion it was determined the demolition permit was no longer at issue. The issue to be discussed is whether or not the HPC erroneously denied the criteria for this project.

The error to be looked at so all members understood, is that the HPC denied conditional approval. Mr. Hluchan is stating it was denied; Mr. Feinberg stated they never had the opportunity to deny

and only denied the demolition permit. Mr. Murray pointed out the resolution that Mr. Hluchan read from had not been provided to the Zoning Board members. He stated the Board members have the opportunity to read the resolution in question.

The board took a five minute recess to review the resolution in question at 7:56 PM.

Upon return from the recess, Vince Orlando read the resolution, #2015-23, into the record, entitled Demolition Permit and Construction Permit Application, in the matter of Adis, Inc., trading as La Mer Beachfront Inc., dated August 17, 2015. The exhibit was marked as A1.

Mr. Hluchan asked the Board to consider what was written in the transcript and the resolution. Mrs. McAlinden asked if the Board decides to disband tonight and the application goes back to the HPC, and they again reject, would the applicant be back in front of the Zoning Board asking for HPC relief, Mr. Hluchan stated yes. He respectfully asked the Zoning Board to allow them to present testimony from their HPC expert and their professional planner. If the Zoning Board would approve the application, they will not need to return to the HPC.

Motion was made by Mr. Murray, in the positive, the Board find there was an error on the part of the HPC and as a result the Zoning Board will hear the application as the HPC, using HPC criteria, seconded by Mrs. McAlinden, and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Inderwies, Mrs. McAlinden, Ms. Hesel, Mr. Murray, Mrs. Werner, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

Mr. Hluchan then introduced his two witnesses, Mr. Vince Orlando and Margaret Westfield, HPC architect. Both were sworn in and stated their credentials for the record.

Mr. Orlando then gave an overview of the proposed changes, submitting renderings into evidence, which Mr. Orlando detailed. Mr. Hluchan and Mr. Orlando discussed section 525-39C, Cape May City Ordinance. Mr. Orlando then gave the basis of his analysis of the HPC resolution that directly pertains to that ordinance. Mr. Murray stated that they need to know what the HPC criteria is so the Board can make their decision as the HPC.

Mr. Hluchan then introduced Margaret Westfield, HPC architect to provide testimony. He presented her resume to the Board for review of her qualifications. She gave an overview of her background for the Board, which included serving at one point as the State HPC Architect. Ms. Westfield proceeded to give her opinion as to why the plans presented by the applicant are the best possible changes and improvements for this property.

Craig Hurless then briefly reviewed his memorandum dated September 2, 2015 and gave his recommendations on what the Board should consider to issue a certificate of appropriateness.

The meeting was opened to the public at 8:58 PM and subsequently closed as no members of the public chose to speak.

Motion was made by Mr. Murray for issuance and authorization for a Certificate of Appropriateness, based on testimony from Margaret Westfield, HPC expert, meets §525-

337B criteria, seconded by Mrs. Inderwies, and **carried 7-0**. Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Murray, Mrs. McAlinden, Ms. Hesel, Mrs. Werner, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

Meeting adjourned at 9:03 PM.

Respectfully Submitted, Jill Devlin/Board Assistant.