

**City of Cape May Zoning Board of Adjustment Meeting Minutes  
Thursday, September 24, 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.

<b>Roll Call:</b>	Mrs. Hutchinson, Chairperson	Present
	Mr. Furlin, Vice Chairperson	Present
	Mr. Iurato	Present
	Mr. Murray	Absent – Excused
	Mrs. McAlinden	Present
	Mrs. Inderwies	Present
	Ms. Hesel	Present
	Mrs. Werner	Present

**Also Present:** Ron Gelzunas, Board Solicitor  
Jill Devlin, Board Assistant

**Minutes**

**Motion made by Mr. Furlin to approve the meeting minutes of August 27, 2015**, seconded by Mrs. Werner and **carried 7-0**. Those in favor: Mr. Iurato, Mrs. Inderwies, Mrs. McAlinden, Ms. Hesel, Mrs. Werner, Mr. Furlin, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

**Resolutions**

**Motion made by Mrs. McAlinden to approve resolution 09-24-2015:1, Dolores Libretti/Santo Mancino, Block 1150, Lot 11.10, with corrections noted**, seconded by Mr. Furlin and **carried 6-0**. Those in favor: Mrs. Inderwies, Mrs. McAlinden, Ms. Hesel, Mrs. Werner, Mrs. Hutchinson, Mr. Furlin. Those opposed: None. Those abstaining: None.

**Motion made by Mr. Iurato to approve resolution 09-24-2015:2, Zyski Family Holdings, LLC, Block 1116, Lot 8**, seconded by Ms. Hesel and **carried 7-0**. Those in favor: Mr. Iurato, Mrs. Inderwies, Ms. Hesel, Mrs. Werner, Mr. Furlin, Mrs. McAlinden, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

**Motion made by Mr. Iurato to approve resolution 09-24-2015:3, James P. Shimalla, Amy Z. Shimalla, Block 1156, Lot 11.01, with corrections noted**, seconded by Mrs. Inderwies and **carried 7-0**. Those in favor: Mr. Iurato, Mrs. Inderwies, Mrs. McAlinden, Ms. Hesel, Mrs. Werner, Mr. Furlin, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

**Motion made by Mr. Iurato to approve resolution 09-24-2015:4, Scott Peter, 511 Bank Street, Block 1054, Lot 18**, seconded by Mrs. Werner and **carried 7-0**. Those in favor: Mr. Iurato, Mrs. Hutchinson, Mrs. McAlinden, Ms. Hesel, Mrs. Werner, Mr. Furlin, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

Mr. Iurato made some remarks regarding the Ocean Club application, which the applicant has requested be moved to the November meeting. Louis Dwyer stated they had a family emergency and were unable to attend the scheduled meeting. The applicant's attorney agreed to re notice and waive all time constraints.

**Motion made by Mr. Iurato to move the Ocean Club application to the November 12, 2015 meeting**, seconded by Mrs. Inderwies and **carried 7-0**. Those in favor: Mr. Iurato, Mrs. Inderwies, Mrs. McAlinden, Ms. Hesel, Mrs. Werner, Mr. Furlin, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

### Applications

Elaine's Dinner Theater  
513 Lafayette Street  
Block 1053, Lot (s) 13

Louis Dwyer, attorney for the applicant asked his client and professional be sworn in. Mrs. Shirley Phinney, owner, Vincent Orlando, Engineer and Craig Hurless, Board Engineer were sworn in and stated their credentials for the record.

Mr. Dwyer gave a short history of the property that included prior board approvals, stating everything that is there has been approved over the years by the board. This application he felt was relatively simple and asked Mr. Orlando to describe the application.

Mr. Orlando agreed this property does have a history of approvals and changes over the years. The applicant was approved prior for a 175 seat restaurant. The board also had granted variance relief for all the existing conditions that are currently there. Mr. Dwyer asked Mr. Orlando if the applicant was seeking to move 32 of the seats outside seasonally, Mr. Orlando confirmed it was 40 seats. He stated the applicant was seeking approval to create a small outside patio in front of the building, off the porches, which consists of 8 or 10 tables for a total for 32 seats and a small portable bar which will have 8 seats around it, for the total of 40 seats in that immediate area. These would be seasonable type seats and the seats would be limited in the restaurant accordingly. Mr. Dwyer confirmed with Mr. Orlando that seasonally the inside seating would be 135. Mr. Orlando stated he would provide a seating chart to Mr. Hurless.

Mr. Iurato remarked he felt the board could not approve an application without a complete seating chart on the plans. He stated he was by the property recently and saw tables on the porch. Mr. Dwyer stated his client has never violated the 175 seat count. He stated they would be happy to provide a seasonal seating chart as a condition of approval.

Mr. Iurato then asked if they had permission to have tables on the lawn. Mr. Dwyer said they did not, they stopped immediately and made the application to the board. Mr. Orlando also stated there was no outside service where people were sitting outside this past season.

Mr. Dwyer then stated that his client took over her father's property. She believed the entire grounds were licensed. Most properties like theirs are. The area where this is was not, so they made application for a license transfer. He noted it will be in the fall when they receive that approval. Mr. Orlando stated the outside area is not intended for dining. They are small bistro tables, it is more of a place before dinner to have a cocktail or an after dinner drink. He stated he will provide a plan that will accurately depict 175 seats.

Mr. Iurato stated he wasn't so much against the plan presented, he felt the board should have everything in order to vote.

Mrs. Inderwies asked if it would be more of an outdoor lounge rather than a dining area. Mrs. Phinney stated she is trying to reestablish Elaine's as not just a dinner theater. She noted she's thinking of getting into weddings and other events. She thought she had all the approvals she needed to install the patio and that she wasn't trying to create more dinner seats. She stated outside is popular and she wants to expand.

Mrs. Hutchinson asked Mrs. Phinney to explain what happened over the summer. She stated she got a ticket from the city for doing a patio without board approval. She also said she did have the permits. They then realized through the process that that piece of the property was not licensed for serving alcohol. Mr. Dwyer stated they do have an application to the governing body for the license.

Mr. Hurless stated they were approved under previous zoning board approvals for a use variance for more than one principal use on the site. When they altered multiple uses on a site, it triggers the use variance evaluation. The multiple uses are changing on the site and the outdoor tables need to be dealt with because they are outside the boundaries where they are permitted, they need to be 10' from the building, no more.

The liquor license was discussed in more detail as it related to this site.

Mr. Hurless asked if the porches would be used for outside dining and Mrs. Phinney stated that yes they would. His stated his memo directs them to provide a fixed plan to where the seating is going to be, how many will be inside and outside during the seasonal use, and then how the seating will be during the winter months. Mrs. Hutchinson asked if that could be a condition of approval.

Mr. Orlando stated the existing porch combined with the internal seating will be 135 seats. He will also show a seating plan for that. Mrs. Inderwies asked about lighting; Mr. Orlando stated there were no immediate plans to have lighting on the patio outside of the ambient lighting coming off the front porch. She also asked if there would be a loud speaker or intercom to announce seating available; Mrs. Phinney stated no there would not be. There was more discussion regarding the phases of a prior approval at the property in relation to the seating.

Craig Hurless then reviewed his latest review memorandum dated August 18, 2015. He noted the approvals that were necessary are site plan, amended and preliminary. He explained to Mrs. Phinney that because she was approved prior under another site plan by the board, any changes or alterations to the site require the original site plan to be amended. He stated the use variance deals with the change or expansion of the non-conforming use, the multiple uses on the site as well as the deviation from the seating that is located more than ten feet away from the structure. He also recommended the board deal with a parking variance. Whenever there is expansion for uses on the site he believes the parking variance is triggered to be reconsidered. Mr. Dwyer stated that he disagreed. The completeness waivers were all supported. As conditions for approval, a seating plan needs to be provided, a plan for the lighting for the outdoor seating area, and that the site plan be provided in digital format. The general review comments were discussed, in particular that a landscaping plan should be shown on the site plan.

**The meeting was opened to the public at 7:42 p.m. and subsequently closed as no members of the public wished to speak.**

**Motion made by Mrs. Inderwies to approve §525-9 & §525-22A Use Variance (Expansion of Non-conforming use),** seconded by Mr. Furlin and **carried 6-1.** Those in favor: Mrs. Inderwies, Mrs. McAlinden, Ms. Hesel, Mrs. Werner, Mr. Furlin, Mrs. Hutchinson. Those opposed: Mr. Iurato. Those abstaining: None.

**Motion made by Mr. Furlin to approve Checklist Waiver numbers 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 33,** seconded by Mrs. Inderwies and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Inderwies, Mrs. McAlinden, Ms. Hesel, Mrs. Werner, Mr. Furlin, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

**Motion made by Mrs. Inderwies that a parking variance not be required,** seconded by Mrs. Werner and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Inderwies, Mrs. McAlinden, Ms. Hesel, Mrs. Werner, Mr. Furlin, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

**Motion made by Mrs. Werner to approve site plan, amended and final, General Review comments 1-9,** seconded by Mr. Furlin and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Inderwies, Mrs. McAlinden, Ms. Hesel, Mrs. Werner, Mr. Furlin, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

**Motion made to approve Conditions #3 (i), (q) and (aa),** seconded by Mrs. Inderwies and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Inderwies, Mrs. McAlinden, Ms. Hesel, Mrs. Werner, Mr. Furlin, Mrs. Hutchinson. Those opposed: None. Those abstaining: None.

**Motion made by Mr. Furlin to adjourn at 7:50 p.m. with all in favor.**

**Respectfully Submitted, Jill Devlin/Board Assistant.**