

**City of Cape May Zoning Board of Adjustment Meeting Minutes
January 24, 2013**

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

Roll Call:	Mr. White, Chairperson	Present
	Mrs. Hutchinson	Present
	Mr. Iurato	Present
	Mr. Schmidtchen	Present
	Mr. Todd	Absent - excused
	Mr. Meier	Present
	Mrs. Inderwies	Present
	Mr. Atwell, Alt 1	Present
	Mrs. Pharo, Alt 2	Present

Also Present: George Neidig, Board Solicitor
Craig Hurless, P.E., P.P., Board Engineer
Mary Rothwell, Board Assistant/Zoning Officer
Edie Kopsitz, Recording Secretary

Reorganization:

Oath of Office: For Members, Lydia Inderwies, Peer Schmidtchen, Ralph Atwell, Alt 1 and Marilyn Pharo, Alt 2. George Neidig, Board Attorney witnessed their signatures.

Chairperson:

Mrs. Inderwies nominated Mr. White for Chairperson. Seconded by Mr. Meier. Those in favor: Mr. Iurato, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Meier, Mrs. Inderwies, Mr. Atwell and Mrs. Pharo and **carried 7-0.** Those Opposed: None. Those Abstaining: Mr. White.

Vice Chairperson:

Mrs. Inderwies nominated Diane Hutchinson for Vice Chairperson. Seconded by Mrs. Pharo and **carried 7-0.** Those in favor: Mr. Iurato, Mr. Schmidtchen, Mr. Meier, Mrs. Inderwies, Mr. Atwell, Mrs. Pharo and Mr. White and **carried 7-0.** Those Opposed: None. Those Abstaining: Mrs. Hutchinson.

Board Attorney:

Mr. Meier moved to appoint George B. Neidig, Esquire as Board Attorney. Seconded by Mrs. Hutchinson and **carried 8-0.** Those in favor: Mr. Iurato, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Meier, Mrs. Inderwies, Mr. Atwell, Mrs. Pharo and Mr. White. Those Opposed: None. Those Abstaining: None.

Board Engineer:

Mrs. Hutchinson moved to appoint Craig Hurless, PE of Polistina & Associates as Board Engineer. Seconded by Mrs. Inderwies and **carried 8-0**. Those in favor: Mr. Iurato, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Meier, Mrs. Inderwies, Mr. Atwell, Mrs. Pharo and Mr. White. Those Opposed: None. Those Abstaining: None.

Official Newspaper:

Mrs. Inderwies moved to recognize the Star & Wave as the Zoning Board's primary newspaper and the Press of Atlantic City as the secondary. Seconded by Mr. Iurato and **carried 8-0**. Those in favor: Mr. Iurato, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Meier, Mrs. Inderwies, Mr. Atwell, Mrs. Pharo and Mr. White. Those Opposed: None. Those Abstaining: None.

Meeting Dates 2013: November 28, 2013 is Thanksgiving Day and will be cancelled. December 26, 2013 will remain on list with discussion noted.

Mr. Schmidtchen moved to approve the 2013 Meeting dates as presented and discussed. Seconded by Mr. Meier and **carried 8-0**. Those in favor: Mr. Iurato, Mr. Schmidtchen, Mr. Meier, Mrs. Inderwies, Mr. Atwell, Mrs. Pharo, Mrs. Hutchinson and Mr. White. Those Opposed: None. Those Abstaining: None.

Resolutions:

Snyder, 105 First Avenue, Block 1017 Lot 12 - Resolution #1-24-2013:1

Mr. Iurato moved to approve the Snyder Resolution with the noted corrections on pages 1, 3 and 7. Seconded by Mr. Meier and **carried 5-0**. Those in favor: Mr. Iurato, Mr. Meier, Mrs. Inderwies, Mrs. Hutchinson and Mr. White. Those Opposed: None. Those Abstaining: Mr. Schmidtchen and Mr. Atwell.

Mockus, 810 Sewell Avenue, Block 1073 Lot 6 - #1-24-2013:2 – Resolution #1-24-2013:2

Mr. Meier moved to approve the Mockus Resolution as presented. Seconded by Mrs. Inderwies and **carried 5-0**. Those in favor: Mr. Iurato, Mr. Meier, Mrs. Inderwies, Mrs. Hutchinson and Mr. White. Those Opposed: None. Those Abstaining: Mr. Schmidtchen and Mr. Atwell.

Applications:

**Robinson & Azar, 2 Swan Avenue
Block 1100 Lot(s) 1
Hardship and Substantial Benefit Variance**

Craig Hurless clarified his credentials for the record.

Louis C. Dwyer, Jr. Esquire representing Martha Robinson and John Azar whom were present and sworn in by George Neidig. Mr. Dwyer described the application indicating that the lot has a very irregular shape, has a triangle that fronts on Swan and Wenonah Avenue with one side yard. Variance Plan by Stephen C. Martinelli dated August 24, 2012, Site photographs and drawings (by the applicant) including 6 sheets of the West and North elevations, garage, deck and storage detail dated September 28, 2012 provided by the existing building has an attached garage with a deck above in place of the storage building and the applicant proposes to demolish the storage building and construct an attached garage addition (for two vehicles) with a deck located above. Variance to have a setback of 5 feet instead of 8 feet is proposed a detached garage could be 5 feet from the side line without a variance relief due to the existing site and building configuration there is no other reasonable place to accommodate the garage.

Board Engineer, Craig Hurless then reviewed his report of October 4, 2012 clarifying the description for the membership. He detailed the proposal and clarified, NJSA 40:55D-70c (1) Hardship Variance and NJSA 40:55D-70c (2) Substantial Benefit Variance. Mr. Hurless refers to his completeness review on pages 2, C & D Variances & Conditional Use Approval items, #5, #13, #20, #21, #22, #24, #26, #27, #28, #30, #31, #32 and #33. He addressed the Zoning table on page 3 for the R-3A District and sited ordinance §525-16.1 and clarified the standard, required, existing, proposed and status. He continued with the variances sought on page 4, §525-16.1B (1) Table 1 Building Setback and §525-16.1B (1) Table 1 Side Yard Setback. His General Review comments on pages 4 & 5, items #1, #2, #3 (condition provide 2 street trees on Wenonah Ave, Mr. Dwyer agreed), #4, #5, #6 (condition), #7 (condition), #8 (condition), #9 (condition), #10 (condition), #11 (condition) and #12 COAH (condition).

Chairman White opened the meeting for public comment at 6:55pm to those 200 feet and beyond, with no one coming forward the public portion was closed.

Members were allotted time for questions to the applicant and their professionals. Member Schmidtchen questioned the proposed lot coverage with Mr. Dwyer responding in detail.

Motion made by Mr. Meier to approve the checklist waivers as noted on Mr. Hurless completeness review report dated October 4, 2012 pages two (2) of 5 (five), #3, #5, #13, #20, #21, #22, #24, #26, #27, #28, #30, #31, #32 and #33. Seconded by Mr. Schmidtchen and **carried 7-0.** Those in favor: Mr. Iurato, Mr. Schmidtchen, Mr. Meier, Mrs. Inderwies, Mr. Atwell, Mrs. Hutchinson and Mr. White. Those Opposed: None. Those Abstaining: None.

Motion made by Mrs. Inderwies to grant the Building Setback §525-16.1B (1) Variance. Seconded by Mr. Meier and **carried 7-0.** Those in favor: Mr. Iurato, Mr. Schmidtchen, Mr. Meier, Mrs. Inderwies, Mr. Atwell, Mrs. Hutchinson and Mr. White. Those Opposed: None. Those Abstaining: None.

Motion made by Mr. Meier to grant the Building Setback §525-16.1B (1) Variance. Seconded by Mr. Schmidtchen and **carried 7-0.** Those in favor: Mr. Iurato, Mr. Schmidtchen,

Mr. Meier, Mrs. Inderwies, Mr. Atwell, Mrs. Hutchinson and Mr. White. Those Opposed: None. Those Abstaining: None.

Motion made by Mrs. Hutchinson to impose the following conditions: Craig Hurless report dated October 4, 2012 of the General Review Comment's pages 4 & 5 - #3, #6, #7, #8, #9, #10, #11 and #12. Seconded by Mr. Meier and **carried 7-0.** Those in favor: Mr. Iurato, Mr. Schmidtchen, Mr. Meier, Mrs. Inderwies, Mr. Atwell, Mrs. Hutchinson and Mr. White. Those Opposed: None. Those Abstaining: None.

**Ocean Club, 1035 Beach Avenue
Block 1101 Lot 1
Appeal – Historic Preservation Commission**

Craig Hurless clarified his credentials for the record.

George Neidig clarified the procedures to be followed and explained the Appeal process; he believes it is a de novo process. The request is before the Board is whether the applicant is able to retain their vinyl fence or replace it with a wood fence that was previously approved. He indicated that the Members received one (1) transcript dated June 11, 2012 of the Historic Preservation Commission Meeting but not the meeting of March 28, 2011. He indicated a HPC Resolution #2011-07 of the March 28, 2011 was distributed for perusal to Board Members.

Louis C. Dwyer, Jr. Esquire representing the applicant Nick Nezaj, Owner of the Ocean Club Hotel whom was present and sworn in by George Neidig. Mr. Dwyer explained that the applicant undertook substantial renovations of the formally known Atlas Hotel (re named Ocean Club) and as part of the approval process the Planning Board (March 8, 2011) had addressed concerns of the neighbors along New Jersey Avenue that required the applicant to reconfigure the parking lot, install a curb & sidewalk and erect a white vinyl fence as well as landscape the area between the fence and sidewalks. The Historic Preservation Commission requested a wood fence and Mr. Nezaj who was in dire need for the 3.7 million dollar project to move forward agreed to the fence. Mr. Dwyer explained that fence change was inadvertently not conveyed to the applicants Engineer and the final plans submitted for construction reflected the vinyl fence and it was constructed. He clarified that this was not intentional, the Planning Board and surrounding neighbors (Beach to New Jersey Avenues) requested the vinyl fence and strenuously indicated the surrounding buildings along with the streetscape is not historic. Mr. Dwyer and Mr. Nezaj apologized for the oversight throughout the presentation and specified that it was not a lengthy topic of discussion at the Historic Preservation Commission meeting of March 28, 2011 and the Commission commended with high compliments to Mr. Nezaj for undertaken this much needed renovation. Mr. Dwyer informed the Board that the HPC refused to allow the vinyl fencing to remain, stating that it would create a bad precedent. Mr. Dwyer submitted for the members review photographs and was marked into evidence as **A-1** – the fence in question, **A-2, A-3, A-4, A-5, A-6, and A-7 & A-8** of other vinyl fences within the City of Cape May. He informed the members that other hotels and motels along New Jersey Avenue all have vinyl fences. He stated the HPC did approve a vinyl fence enclosure for the trash enclosure for Ocean Club Hotel. He

contends that the requirement for wood fencing at this location goes beyond the Historic Preservation Commission Guidelines and the condition was wrongful and discriminatory to the applicant.

Robert Fineberg, Esquire Solicitor for the Historic Preservation Commission clarified the reason for the hearing is to state whether the Historic Preservation Commission made an error in judgment. He indicated that if the Board has to make this determination it should have the transcript of the 1st HPC meeting of March 28, 2011 when the applicant was granted approval with the condition that the fence be wood and would see the full extent of the discussion of the wood fence. Mr. Fineberg referred to the Planning Board Resolution #6-28-2011 referring to the meeting that took place March 8, 2011 indicating the need for the fence along with conditions and a continuation of the Planning Board meeting on March 22, 2011 with the revised set of plans denoting the 4 foot wooden fence and other conditions. He stressed at that time the application had not been in front of the HPC. He referred the minutes of the HPC meeting was held on March 28, 2011 and read for the record a portion *“Members were positive on the application commending the applicant on the much-needed renovations. The use of vinyl in the Historic District doesn’t abide by the Design Standards and recommended the use of a wooden fence or one member suggested Azek (composite). Mr. Nezaj agreed to the use of a cedar wood fence. Mr. Fineberg advised Mr. Dwyer to contact the Solicitor of the Planning Board to input the revision of material to the fence”*. Mr. Hurless clarified the 4 foot high fence approved by the Planning Board was on the westerly side (Capri Motel because it had an existing wood fence) and 4 foot high vinyl fence along New Jersey Avenue was approved by the Planning Board. Mr. Fineberg informed the Members that the Historic Preservation Design Standards are part of the Zoning Ordinance Cape May City Code and should not be referred to as Guidelines (indicating how Mr. Dwyer constantly refers to the HPC Design Standards). He then referred to the section of the standards page 68 regarding fences, reading excerpts for the record. He indicated that if the Zoning Board reverses the HPC decision it will be precedent setting and encourages the Board to affirm the HPC decision.

Chairman White called for a 5 minute recess at 8:10pm. The meeting resumed at 8:15pm.

The meeting was opened to the Public at 8:16pm, Warren Coupland, resident of Cape May and the Historic Preservation Commission Chairman; he expressed his concern of allowing the vinyl fence, the procedures that the HPC did undertake upon making the decision all in agreement with the applicant, shared his concern of the City of Cape May Historic Landmark status and explained in detail the watch list status (Mr. Dwyer’s objection of the Watch List Status was noted for the record and Chairman White reiterating to only consider the case before them this evening), indicated that all seven (7) HPC voted in unison for a wood fence and encouraged the Zoning Board to please affirm the HPC decision as it not an error but adhering to the Design Standards that are part of the City of Cape May Code. **The public portion of the meeting was then closed at 8:20pm.**

Members were afforded time to question the applicant as well as the direct questioning to Mr. Nezaj, Mr. Fineberg and Mr. Coupland. Various concerns that were addressed are as follows;

Terminology of legal terms used by Mr. Dwyer, details regarding the Planning Board Meeting of March 8, 2011 and the details regarding the streetscape and neighbor concerns, public portion of the Planning Board that requested the fence, HPC Design Standards, deliberations of the HPC, tourism concerns by restricted development, arbitrary because of material, lengthy discussion regarding not having the 1st transcript of the March 28, 2011 HPC meeting, general goals of HPC, procedures of final plan approvals, professionals observance of plans and approvals, comments regarding the neighbors of allowing the fence to remain. Member Schmitchen intensively expressed that the Zoning Board does not have be concerned with precedent setting and that each application is done on case by case basis.

Mr. Neidig clarified his view of a de nova hearing and indicated that Mr. Fineberg disagrees with the process for this hearing. Chairman White stated all Members voting must clarify for the record their reason.

Motion made by Mr. Meier to allow the vinyl fence to remain. Seconded by Mrs. Hutchinson **and carried 4-3.** Those in favor: Mr. Schmidtchen, Mr. Atwell, Mrs. Hutchinson and Mr. White. Those Opposed: Mr. Meier, Mr. Iurato, and Mrs. Inderwies. Those Abstaining: None.

All members voiced their vote reason in detail for the record.

Chairman White announced the next meeting of the Zoning Board will be February 28, 2013 @ 6:30pm.

Motion made by Mr. Meier to adjourn @ 8:55pm. Seconded by Mrs. Inderwies **and carried with all in favor.**

A verbatim recording of said meeting is on file at the Construction/Zoning Office.

Respectfully submitted: Edie Kopsitz, Recording Secretary.