

**City of Cape May Zoning Board of Adjustment Meeting Minutes**  
**August 22, 2013**

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

<b>Roll Call:</b>	Mr. White, Chairperson	Present
	Mrs. Hutchinson	<b>Absent - excused</b>
	Mr. Iurato	Present
	Mr. Schmidtchen	Present
	Mr. Meier	Present
	Mrs. Inderwies	Present
	Mr. Atwell	Present
	Mrs. Pharo, Alt 1	Resigned
	Mrs. McAlinden, 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

**Minutes:** May 30, 2013  
June 27, 2013

**Mrs. Inderwies moved to approve the May 23, 2013 minutes as presented.** Seconded by Mr. Schmidtchen and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Meier, Mr. Schmidtchen, Mr. Atwell, Mrs. McAlinden and Mr. White. Those Opposed: None. Those Abstaining: None.

**Mr. Meier moved to approve the June 27, 2013 minutes as presented.** Seconded by Mrs. Inderwies and **carried 6-0.** Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Meier, Mr. Schmidtchen, Mr. Atwell and Mrs. McAlinden. Those Opposed: None. Those Abstaining: Mr. White.

**Resolutions:**

**Sucher & Lyons, Block 1049 Lot 7 - Resolution #7-25-2013**

**Mrs. Iurato moved to approve the Sucher & Lyons Resolution as presented.** Seconded by Mr. Schmidtchen and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Meier, Mr. Schmidtchen, Mr. Atwell, Mrs. McAlinden and Mr. White. Those Opposed: None. Those Abstaining: None.

**Applications:**

**Graham & Mortimer, 355 Congress Street & 444 W. Perry Street**

**Block 1031 Lot 5, 86 & 87**  
**Use, Hardship, Substantial Benefit Variance and Site Plan**

Craig Hurless clarified his credentials for the record.

Louis Dwyer, Esquire representing Daniel and Rosemary Graham, William and Maryann Mortimer joint owners of lots 86 & 87 who were present along with their professional Matthew Hender, Engineering Design Associates. Mr. Dwyer explained the applicants jointly purchased lots 86 & 87 which contain a non-conforming commercial use a masonry commercial building (built 1892) and was their intent to enlarge Lot 5 and to create one new single family residence to replace the commercial structure. Lot 5 while non-conforming will increase in lot size from 2,846 square feet to 9,831 square feet, lot 86 while slightly undersized will be in keeping with the neighborhood scheme. He stated it will advance the purposes of zoning by eliminating a non conforming use with no negative effect.

Matthew Hender described in detail the proposed sub division that is currently three (3) lots #86 (masonry commercial building 6,385 square feet) to be demolished, less than lot area is substantially larger than adjacent lot, #87 on Congress Street to be consolidated with Lot #5 444 W. Perry Street (currently vacant with some accessory structures). Using the Minor Sub Division Plan dated May 2, 2013 by Stephen C. Martinelli Land Surveying LLC (enlarged on display) his testimony stated that eliminating a non conforming use on a commercial use in a residential zone will advance the purpose in zoning. He clarified that special reasons support the variances which include §40:55D-2 (b), (c), (d), (e), (i) for all lots meeting the setback front yard and rear yard, the creation of parking on a residential property where none exists (advance the purpose of zoning) and the elimination of an unattractive building will improve the aesthetics of the site in the neighborhood. His testimony inferred no detriments to the public good should the variances be granted under these unusual circumstances.

Members were afforded time for questions to the applicants and their professionals. Concerns addressed where the current use of lot 5 that is used for parking and questioned the presentation of creating new parking. Mr. Mortimer responded parking has only been recent do to the purchase of the lot. Mary Rothwell, Zoning Officer for clarification of the record requested Mr. Dwyer to indicate how many parking spaces is on the lot and the landscaping proposed that may be part of the conditions if approved. Mr. Dwyer responded that the parking will be for 444 & 446 West Perry Street and will be indicated on the new lot #86.

Board Engineer, Craig Hurless then reviewed his report of June 27, 2013 clarifying the description for the membership indicating that the report should indicated Sub Division not Site Plan. He detailed the proposal and clarified the location in the R2 Zone Low Medium Density District, NJSA 40:55D-70d (1) Use Variance, 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, #20, #21, #22, #24, #26, #28, #29, #33 and detail required for Minor Sub Division Approval §445-18 Map details item (M), (Q) & (S). He addressed the Zoning table on page 3 for the R-2 District and sited ordinance §525-15 "All other uses" and clarified the standard, required, existing, proposed and status. He continued with the variances sought on page 4, §525-15A

Use Variance (Create New Lot for Existing Non conforming use), §525-15B (1) Table 1 Lot Size and §525-15B (1) Table 1 Lot Frontage. He clarified his General Review comments on pages 5 & 6, items #1 (condition), #2 (condition), #3 (condition), #4 (condition), #5 (FAR proposed dwelling), #6 (condition RSIS), #7(addressed), #8 (condition), #9 (condition Storm Water) Member Meier requested a detailed example, Mrs. Rothwell, Zoning Officer requested clarification that it would pertain to both lots #5 & #86, #10 (condition- planting of two 2 Shade Trees), #11 (condition), #12 (condition), #13 (condition), #14 (condition), #15 (condition), #16 (condition), #17 (condition) #18 (condition) #19 (condition) and #20 (COAH last sentence). Member Iurato wanted clarification relating to the material on the area for parking on the proposed lot (asphalt, concrete, stone or shells). Mr. Dwyer responded he must confer with his clients.

**Chairman White announced a two (2) minute break at 7:16pm do to Mr. Dwyer's request to confer with his clients regarding the materials used for the parking area. The meeting resume at 7:20pm.** Mr. Dwyer responded that the material agreed to was stone with landscaping and a plan will be submitted.

**The meeting was opened to the Public at 7:21PM for those within 200 feet and beyond, coming forward were; Jack Currier, 398 Congress Street;** opposes the application giving a brief history of his ownership, was complimentary to Mr. & Mrs. Mortimer referring often to them as wonderful neighbors but voiced his objection of the lot size of 7,500 square feet and the enormity of the proposed house. He presented into evidence and was marked **O-1** of 2 pages of the tax maps encompassing lots on blocks 1026, 1027 & 1032 along with an Excel spreadsheet of calculation inputted by him denoting formulations of square footage totals. Mr. Dwyer questioned the validity of the spreadsheet indicating the majority of the lots highlighted were undersized (giving his calculations) explaining to Mr. Currier of the benefits out weighing any detriments and justified the variance relief. Mr. Currier contends parking is a tremendous problem in the area. **Terry Werner, 311 Claghorn Place,** she complimented the Mortimer's as wonderful neighbors, she explained in detail the size of her lots and requested the Members look at all the lots with a single structure and consider the majority are undersized. She opposes the application stating that it is not a hardship and the applicants have the required lot space and the choice was made to make the proposal non conforming. She is requesting should it be granted a deed restriction be attached. **Francis Mason, 442 West Perry Street,** supports the application explaining that the old rusty building has been an eye sore in the area for years. He stated the proposed application will be aesthetically pleasing to the area and will be beneficial to the streetscape. **Kelly Carter Currier, 398 Congress Street,** opposes the application stating the owner (Graham) purchased a property with plenty of land to build a conforming house on and stated there is no hardship. She then read the definition of a hardship according to Zoning laws and feels that this application is for financial and personal gain. **Al Novino, 351 Congress Street,** opposes the application stating he is against the building on an undersized lot expressing his concern due to the new FEMA regulation (raising the building heights). He gave an example of a neighbor's house @ 355 Congress Street that is now out of character of the neighborhood because of damage done to the property during Hurricane Sandy and the cottage style house had to raised an additional 10 feet. He presented photographs marked into evidence as **O-2** that depicted the closeness of the building proposed to be demolished and expressed his concerns of the demolition of the

concrete building and what damage it could do to his historic property during the process. He voiced concerns regarding parking and number of spaces requested. Mr. Dwyer responded to his concerns. **Anita Novino, 351 Congress Street**, opposes the application and stated the zoning ordinances are put in place to protect. She clarified that R2 Zone is low to medium density explaining her house is on an undersized lot with a farm house that was built in 1862 and has complied with the Historic Preservation Commission on the maintenance of this Historic Structure. She has issue with the parking proposed and wants to know if an easement from Congress Street to Perry Street is proposed. Mr. Hurless responded that the only parking being discussed is for lot #87 for 444 & 446 W. Perry Street and Mr. Dwyer indicating that no cross parking is proposed. She expressed concern of the demolition process and how it will affect her property. Mr. Dwyer responded by explaining the demolition procedures as far as noticing and compliance in order for a permit to be issued. **William Alexander, 394 Congress Street** opposes the application. He shared his fondness/memories giving a brief history of the old building on the property and indicated that it has been empty with no noise. He stated that a new development will be raised according to the current FEMA regulations will change his view from his small house and indicated it will lead to water problems on his property. **Ruth Leo, 237 Capehart Lane**, she expressed her love for Cape May and indicated the amount of renters compared to year round residents. She has concerns of new developments in the area and opposes the application because of the flooding and parking issues in the area. She expressed that we should be following the Master Plan and indicated the lot purchased is large enough to build a conforming house on. **The public portion of the meeting was then closed at 8:05pm.**

Mr. Dwyer gave a summation of proposed application highlighting that it is not out of character to the area along with the creation of parking will be an asset to the neighborhood.

**Mr. Schmidtchen moved for approval of the Minor Sub Division.** Seconded by Mrs. Inderwies and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Meier, Mr. Schmidtchen, Mr. Atwell, Mrs. McAlinden and Mr. White. Those Opposed: None. Those Abstaining: None.

Member's voice their approval reason in detail for the record.

**Motion made by Mr. Atwell to approve the Use Variance for Lot 5 with the address number 444 West Perry Street.** Seconded by Mr. Schmidtchen and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Meier, Mr. Schmidtchen, Mr. Atwell, Mrs. McAlinden and Mr. White. Those Opposed: None. Those Abstaining: None.

Chairman White and Member Schmidtchen voiced their reasons in detail for the record.

**Motion made by Mr. Iurato to approve the Lot Size Variance for proposed Lot 86 at 6,374 square feet.** Seconded by Mr. Schmidtchen and **carried 6-0.** Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Schmidtchen, Mr. Atwell, Mrs. McAlinden and Mr. White. Those Opposed: Mr. Meier. Those Abstaining: None.

Member Meier voiced his reason for the record.

**Motion made by Mr. Iurato to approve the Lot Frontage Variance for proposed Lot 5.** Seconded by Mr. Atwell and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Meier, Mr. Schmidtchen, Mr. Atwell, Mrs. McAlinden and Mr. White. Those Opposed: None. Those Abstaining: None.

**Motion made by Mrs. Inderwies to grant the Completeness Waivers as noted in Mr. Hurless's report dated June 27, 2013 page 2 of 6 - #20, #21, #22, #24, #26, #28, #29 and #33.** Seconded by Mr. Schmidtchen and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Schmidtchen, Mr. Meier, Mr. Atwell, Mrs. McAlinden and Mr. White. Those Opposed: None. Those Abstaining: None.

**Motion made by Mr. Iurato to grant the Three (3) Map Detail Waivers as noted in Mr. Hurless's report dated June 27, 2013 page 3 of 6 - M, Q and S.** Seconded by Mr. Atwell and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Meier, Mr. Schmidtchen, Mr. Atwell, Mrs. McAlinden and Mr. White. Those Opposed: None. Those Abstaining: None.

**Motion made by Mr. Meier for approval with the following Conditions noted in Mr. Hurless six (6) page report dated June 27, 2013: page 2 - #22, #28, #29 & #33, page 3 – M, Q & S, curb cuts on Congress Street to be denoted on the final plan, Parking will be for up to 5 spaces on 444 & 446 West Perry on Lots 5 & 86 and should be delineated with potential signage for the use of those two properties and legalities in writing pertaining to rights of spaces, landscaping & stone surfacing for parking, Final Plan will show side yard from 5ft. to 10ft., pages 5 & 6 - #1, #2, #3, #4, #5, #6, #8, #9, #10, #11, #12, #13, #14, #15, #16, #17, #18, #19 & #20.** Seconded by Mr. Schmidtchen and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Inderwies, Mr. Meier, Mr. Schmidtchen, Mr. Atwell, Mrs. McAlinden and Mr. White. Those Opposed: None. Those Abstaining: None.

Chairman White announced the next Zoning Board of Adjustment Meeting will be September 26, 2013 @ 6:30pm.

**Motion made by Mr. Meier to adjourn @ 8:40pm.** Seconded by Mrs. McAlinden 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.**