

**City of Cape May
Planning Board Meeting
Minutes – Tuesday – October 22, 2013**

Opening: The meeting of the City of Cape May Planning Board was called to order by Chairman William Bezaire, at 7:00 PM. In compliance with the Open Public Meetings Act, adequate notice was provided.

Roll Call:	Mr. Bezaire,	Chairperson	Present
	Mr. Shuler,	Vice Chairperson	Present
	Mayor Dr. Mahaney		Present
	Mr. Elwell		Present
	Mrs. Nelson		Absent - excused
	Mr. Jones		Present
	Ms. Weeks		Absent - excused
	Mr. Murray		Absent - excused
	Mr. Winkworth		Absent - excused
	Dr. France, 1 st Alternate		Present
	Mr. VanDeVaarst, 2 nd Alternate		Present

Also Present: George Neidig, Esquire – Board Solicitor
Craig Hurless, PE, PP, CME Associate - Polistina & Associates
Mary L. Rothwell, Board Assistant/Zoning Officer
Edie Kopsitz, Recording Secretary

Minutes: September 10, 2013

Motion made by Mr. Jones to approve the minutes of September 10, 2013 as presented. Seconded by Mr. Elwell and **carried 7-0**. Those in favor: Mr. Elwell, Dr. Mahaney, Mr. Jones, Dr. France, Mr. VanDeVaarst, Mr. Shuler and Mr. Bezaire. Those opposed: None. Those abstaining: None.

Applications:

**Cape Motels Inc./Periwinkle Inn, 1039 Beach Avenue, Block 1101 Lot 5
Site Plan Waiver with Variances**

Craig Hurless, Board Engineer was sworn in and clarified his credentials for the record.

Mr. Neidig announced that William Kauffman, Esquire was present to represent Mr. & Mrs. Wilkinson of 1021 New Jersey Avenue.

Louis Dwyer, Esquire representing the applicants Jennifer Pagano and Claudio Gayko along with their professional Vincent Orlando, Engineer/Planner of Engineering Design Associates. Mr. Dwyer clarified they are requesting a Site Plan Waiver and three (3) bulk variances for

two (2) 360 SF accessory storage sheds that have been constructed on site. The application is seeking legalization of the accessory storage sheds. Mr. Orlando submitted three (3) photographs that were marked into evidence as A-1 of the sheds, Survey dated June 18, 1996 marked A-2 and a color rendition of the landscaping application submitted to address the neighbors' concerns that were shared prior to the previous meeting held September 10, 2013. Mr. Orlando's testimony using his plans dated May 5, 2013 with revision dates of August 19, 2013 confirmed the sheds are for seasonal items and there is no other location on site (50 ft to property line and 70 to the curb line). He described in detail the enhanced screen landscaping in front of the low profiled structures that will aid in screening the structures. He indicated its physical features meet the C1 criteria hardship. He stated it is a simplistic application that is for practical use only and informed that the lot is narrow and deep for commercial use (152ft wide by 350 deep).

Members were allotted time for question throughout the presentation. Concerns mentioned regarding if there was ability for storage in the basement of the hotel and lighting concerns in the parking area. Mayor Dr. Mahaney requested clarification of when the current storage facilities were erected and wanted to know if steps were taken to address the neighbor's concerns. Mr. Dwyer responded they received a temporary permit during the interior renovation phase within the last two (2) years and indicated they modified the plans substantially in hopes that they addressed the concerns but was not sure because Mr. Kauffman was present representing a neighbor.

Board Engineer, Craig Hurless then reviewed report dated August 21, 2013 clarifying the description for the membership. He reviewed the Completeness review on page 2 of 4, Details required for Preliminary Site Plan Approval #3 item 9aa). He addressed the Zoning Charts on page 2 addressing the C-3 District (§525-24) Hotel/Motels. He clarified the variances being sought on page 3 as §525-24B (1) Table 2 Rear Yard Setback, §525-24B (1) Table 2 – Side Yard and §525-24B (2) Lot Coverage. The general review comments on pages 3 and 4 items #1 (must comply §525-59G Mr. Hurless read into record and revised landscaping plans have not been submitted for the Members and his perusal), #2, #3, #4 (approval of the Construction/Zoning Official), #5, #6 and #7 (HPC approval).

Discussion ensued regarding the Planning Board Members not having the revised referred too landscaping plans. Mr. Dwyer suggested continuing the application until the next available meeting and informed the Members they will have a detailed revised Landscaping plan submission. He explained a copy was given to Mr. Kauffman for his clients and were awaiting feedback but to no avail to date.

Motion made by Dr. Mahaney to continue the application until December 10, 2013 without further notice. Seconded by Mr. Elwell and carried 7-0. Those in favor: Mr. Elwell, Dr. Mahaney, Mr. Jones, Dr. France, Mr. VanDeVaarst, Mr. Shuler and Mr. Bezaire. Those opposed: None. Those abstaining: None.

**Thomas DiDonato
1105 Pittsburg Avenue
Block 1172 Lot 4**

Major Subdivision, Preliminary & Final

Craig Hurless, Board Engineer was sworn in and clarified his credentials for the record.

George Neidig read into the record an email he submitted to all members dated today October 22, 2013 at 2:59pm that the application could be heard. He referred to inundations of correspondence from both Mr. Perillo and Mr. Dwyer that was forwarded to him and all members that led him to respond (his opinion) and distribute to the Board Members. All Members were in unison to respect Mr. Neidig's opinion. Mr. Perillo requested that his objection be heard came forward stating the applicant has no jurisdictional stance to be heard. Mr. Dwyer disagreed and shared in depth his stance. Mr. Neidig affirmed his opinion by stating the notices indicated all excerpts of the application to be presented and could move forward.

Motion made by Dr. Mahaney that the Planning Board hear the DiDonato application understanding the Board does have jurisdiction in this matter based on the opinion of the Legal Counsel. Seconded by Mr. VanDeVaarst and carried 7-0. Those in favor: Mr. Elwell, Dr. Mahaney, Mr. Jones, Dr. France, Mr. VanDeVaarst, Mr. Shuler and Mr. Bezaire. Those opposed: None. Those abstaining: None.

Louis Dwyer, Esquire representing the applicant Thomas DiDonato with his professionals Vincent Orlando, Engineering Design Associates and Peter Lomax, Lomax Consulting Group (Environmental Impact Statement) all were sworn in by Mr. Neidig. Mr. Dwyer before obtaining testimony from Mr. Orlando he indicated that he had to address cases cited Cox New Jersey Zoning & Use Administration §28-3.2. Mr. Dwyer moved forward with the presentation as it is a continuation from September 10, 2013 Meeting with the added revised subdivision plan and requested Mrs. Rothwell, Board Assistant turnover the original filed subdivision plans for Harbor Cove he discovered in the archives in the Cape May Construction Office. The plans dated July 27, 1994 were submitted into the record and marked **A-1** with today's date. He wanted the Members to review the plans paying close attention to the denoted Harbor Cove Street that is stated open to the public for access however privately maintained. He indicated the road is 38 feet and submitted the Resolution of 1993 marked **A-2** that refers to the street being known as Harbor Cove on the plan be open to the public at all times and the final plan contain a note to that effect. He submitted 20 Deeds marked **A-3** of Harbor Cove lots (conveyed) that have highlighted on each the legal descriptions "Beginning at a point in the northerly line of Harbor Cove 38 feet wide, said...." Fee simple parcels on the sub division map that is in essence dedicated to the public. Everything from day one was for public access and approved by the Planning Board requiring it be noted on the plan. Marked **A-4** into evidence was a tax map (Key Map No3), marked **A-5** was a letter dated May 17, 2006 directed to the City Solicitor Anthony Monzo, Esquire regarding Cape May Harbor Yacht Club and Village requesting when the project will be dedicated to the City, marked **A-6** correspondence dated December 8, 2006 from Anthony Monzo responding to the May 17, 2006 letter regarding the private street open to the public and request of obtaining a punch list not completed by the developer, marked **A-7** Resolution #115-05-2011 to approve agreement with the Harbor Cove Village & Yacht Club Homeowners Association, Inc accepting Right-of-Way Dedication, marked **A-8** Resolution

#1-11-2011 RE: Pittsburg Avenue between Missouri & Texas Avenue - Final approval of the major subdivision, acceptance of a proposed right of way dedication, variances for proposed lot size, lot width along with all waivers etc., re-introduced from (email from the 7-27-13 meeting marked A-3) now marked **A-9 10-22-13** dated February 14, 2013 from Matthew Trella, Esquire for the Board of Trustees of Harbor Cove regarding the dedication of the street using cancellation of the dedication as leverage in attempt to prohibit the proposed development. Mr. Neidig informed Mr. Dwyer this is borderline testimony and had him sworn in. Mr. Dwyer continue with the introduction of the Cape May Harbor Association Board Notice of an upcoming meeting dated August 31, 2011 that were marked exhibit **A-10** for the record.

Mr. Dwyer obtained testimony from Mr. Orlando who clarified provisions of the Municipal Land Use Law 40:55D – 35 & 36 to qualify for a street you have to meet one of the conditions to which he read into the record. He clarified the definition of a street that is acceptable via City Map, Tax Map or plan approved by the Planning Board and indicated it had been a subdivision approved by the Board in 1994 by filing of the plat denoting public access. He also concurred that the deeds submit into evidence (A-3) describe that right of way and indicated the right of way with did not meet the RSIS standard. He reviewed his plan referring to sheet 2 of 6 with a revision dated of September 25, 2013 that was marked **A-11** for the record of the proposed describing (Harbor Cove Street entering Pittsburg Avenue) in detail the 14 lots (8 on Missouri) meeting all the lot width, lot frontage etc., indicated that no garage doors will face any street, minimum of 3 parking spaces per site and curbs cuts on Harbor Cove 2 (two) to accommodate the parking spaces. His vision was to add more variety of character to the neighborhood he shared that all will comply with the stringent fire & safety protection code. The inclusionary Zoning meet the requirements and explained in detail the density of .40%, giving the breakdown of the ordinance that allows increase by providing affordable housing on site (two (2) Low to Moderate income). He then explained in detail definition of the affordable housing indicating it not subsidized by the government and the bonus increase Lot width, coverage and FAR. Mr. Orlando stated they were permitted 15 dwellings but is only incorporated 14 dwellings and under this plan they will not require any variance relief from any of bulk standard from the zone. Mr. Dwyer requested elaborated testimony from Mr. Orlando if the plan would have off site affordable dwellings. Mr. Orlando stated that doing Plan B will take away the benefit and would then have to comply with the Lot width, frontage and lot area but would meet all other bulk requirements. Mr. Dwyer informed that they have noticed for variances if it should be decided for the affordable houses are relocated off site. They believe that the plan for the development off site of the affordable housing is the most accepted (moving the lots use off site), they have the property on Lafayette Street more fitting for the general use and the developer is incurring all costs. He addressed the C2 criteria 40:55D Article I Purpose – General Provisions A, E, G for positive and negative criteria stating no detriment to the Zoning Plan. Mr. Dwyer then requested Mr. DiDonato verifies giving testimony that he is a contract purchaser with a corporation that is affiliated with the United States Navy and its primary business is to construct housing for the military or retired military. The United States Navy decided to sell the parcel utilizing the funds to build the housing elsewhere and specified should he not be approved (for a reasonable application) they (USN) would consider reverting back to creating military housing.

Chairman Bezaire requested clarification that should approval be granted for offsite affordable housing how would it affect the configuration and quantity of lots for the development. Mr. Orlando responded there would still be 14 conventional lots subject to the variances (lot width, frontage and area for lots 4.01 & 4.02).

Chairman Bezaire called for a ten (10) minute break @ 8:25pm. The meeting resumed @ 8:35pm.

Salvatore Perillo, Esquire representing himself and spouse who resides at 29 Harbor Cove who put forth questions to Mr. Dwyer concerning his representation of Harbor Cove Association regarding, discussion on gated community and the Resolution 6-30-1993 verbiage. Mr. Dwyer responded. Mr. Perillo submitted a Memorandum dated October 22, 2013(6 pages total) that responds to Mr. DiDonato application and was marked **O-1** distributed referring to it he questioned Mr. Dwyer and Mr. Orlando at length regarding Declarations of Covenants and Restrictions in terms of use of the property and expounded on Article VII of the Declaration No Alteration Common Property. Mr. Perillo also states the applicant must have consent of the Association and would have to make application to the Planning Board to modify the 1993 subdivision/site plan to reflect a reconfigured Harbor Cove. He continued with the Planning Board's decision in an 8-1 vote that the applicant (DiDonato) cannot precede because he is proposing "development" on property that he does not own and Harbor Cove is not a City "Public Street" within the meaning of the Municipal Land Use Law, the Cape May Zoning Ordinance or the Prior approvals of this Board. Stephen C. Martinelli, Land Surveying Inc (dated 3/23/12 revised 9/30/13) was submitted and marked as **O-2**, he questioned Mr. Orlando regarding all streets denoted on an official map and asked if Mr. Orlando was referring to the Tax Map and not an official map of Cape May City. Mr. Orlando responded he referred to the Tax Map which is an official map. Mr. Perillo then submitted the Agreement between the City of Cape May and Cape May Harbor Village & Yacht Club Homeowners Association marked **O-3** contained in the agreement refers to EDA Site plan dated June 18, 2010 "Harbor Cove Drive" and the Resolution 1-11-2011 (marked A-7) cross examining Mr. Orlando at length debating constantly regarding the his representation of Harbor Cove, current representation of DiDonato and that the final map has not been filed to date by the Association and discussed procedures after the filing making Harbor Cove a public street. Mr. Perillo testifies the applicant can't widen the Harbor Cove Street without the Association permission. A person from the audience stood up and inquired why Mr. Perillo who is only representing his wife and himself (not the Association) is permitted so much time questioning testimony and when will others have a chance to speak. Mayor Mahaney concurred and feels the way Mr. Perillo is approaching the applicant and their professionals is if they are in a court room and the public should have a chance to be heard. The Mayor also stated that after 3 hearings Mr. Perillo accomplishment is to move this project to a federal investigation and shared with all present that there are multiple agency looking into this application. Mr. Perillo debated with the Mayor regarding his comment and demanded it be withdrawn. Mayor Mahaney would not rescind his comment for the record.

Meeting opened for public comments at 9:20pm for those within 200 feet and beyond. Joseph Roberts, 45 Harbor Cove, was sworn in clarification on his knowledge of the

applicant and their professional. He gave a brief history of his purchase of his property in 1993 clarifying that they are a Marina Community and that the streets were made narrow serpentine designed to not allowing parking (encouraging biking and walking) and to be public accessed. He stated that has not been the case and parking remains on both sides and is dangerous. He indicated that upon his purchase he was told by the developer and real estate person that the streets would be dedicated once the lots were sold (dedicated to the City of Cape May and maintained by the City) including the lighting. He has consistently brought this up yearly at their Homeowner meetings. He informed all that Harbor Cove Association voted down the suggestion of a gated community. He state the Homeowners voted to have the street dedicated to the City in 2010 and that Mr. Trella who is on the Board decided not to turn over the deed to the City and did not inform the association or the owners. He also stated that Mrs. Perillo came to his house and indicated she does not want any development on the parcel, several letters and emails by Mr. Perillo on his legal letterhead expressing his concern and wanted on the record that Mr. Perillo does not represent him or the Association. He feels the street should be dedicated, not have parking and is in support of the DiDonato application as long as it is to code and believes this project will enhance the community. He wants the land developed to eliminate the eyesore that exists. Chairman Bezaire questioned Mr. Roberts regarding the parking situation. **Mary McKenney, 33 Harbor Cove**, she stated she was the point person representing Harbor Cove Association dedication of the road. She then referred to the parking clarifying she was also told it would be a dedicated public road in 2003. Ms. McKenney informed the Board she was part of the meeting held with Planning Board and the Mayor 2005 through 2011. She indicated that at several meetings concerns of the parking were discussed and does to the valuable homes wanted to provide safe on street parking and was positive on widening the road that was implemented and added to the plan. She differs on the widening of road vote as stated by Mr. Roberts, the road was never dedicated and she feels it is private. She was positive on the application (complimenting Mr. DiDonato on past developments in the area) encourages development but is suggesting homes that face Harbor Cove conforms to the style of the Cape May Harbor Village Association. Chairman Bezaire put forth questions to Ms. McKenney regarding larger size lots size on Harbor Cove and the duplex on Missouri (variances needed) and requested her opinion. She has made every effort to put forth her requests to Mr. Dwyer but to no avail. **Ralph Marano, 17 Harbor Cove** and clarified he owns two (2) lots. He gave a brief history regarding the street dedication and explained the money that was put on bond \$40,000. He knows something will be developed on the property but he has an issue with entering on Harbor Cove and stated whether the street is dedicated or not the Association will own the entrances and exists. It must be resolved because the street is not wide enough to take on more traffic or parking. Mayor Mahaney stated the dedication was submitted on the City of Cape May end with Mr. Marano agreeing acknowledging the Mayor dedication and thank him profusely for taking the time to speak with him. He did state that Mr. Perillo is speaking for himself but the majority of the owners feel the same way as Mr. Perillo. His concern is with the traffic in the summer and with additional development going to occur and a proper plan acceptable to all must be in place. Does not want low to medium income housing and feels it is a threat just to get a development put on the site in haste. Mayor Mahaney requested Mr. Marano input regarding the project his response was he knows something will be developed but he paid a lot of money for the seclusion he has and feels all are being infringed upon. **Mark Lomanno, 1450 Missouri Avenue** expressed that

he is conflicted and that the Board should not be catering to one group and ignoring the other. He does like the idea of the open space that is there now but acknowledges something at some point will be built. He does not care for a street going into the development through Missouri Avenue. He respects the Board and the task they have to perform. Mr. Dwyer asked if he saw the plan and explained to Mr. Brown in detail the design concerning the joint driveways. **Nelson Brown, 1430 Missouri** has problems with parking and states that more garages will only encourage more storage for the owners and they will park their cars on the street. He says rentals are a problem with parking and the road is not wide enough. Safety concerns if even more structures have driveways. He asked the Mayor if the City was interested in purchasing the land he had heard rumored. The Mayor said the City was interested and it would have been utilized for open space, however the Navy never responded. The Mayor wanted it made clear for the record that the City's interest in the property has no affect on his vote. **Mike Degman, 1005, Unit 4 Pittsburg Avenue** agrees with all the neighbors on Missouri and has concerns with parking. He resides year round and the summer time they have serious issues do to rental units. He was positive on the 1st plan presented but has reservations on the current because it did not take parking spaces off of Missouri. He indicated it would require more than curb cuts. **Mary Ellen Perillo, 29 Harbor Cove**, against the application the Zone is R1 and the parking is an issue and density it what is the major concern 14 units is too many. **Joseph Roberts, 45 Harbor Cove**, He responded to Mary McKenney and informed all of their Homeowners Fee being \$10,000.

Member VanDeVaarst made a suggestion for the applicant to reconsider and omit lots 4.14 and 4.02 and create an entrance way on Missouri and when they reached Pittsburg Avenue it would be a cul-de-sac. Lou Dwyer, Esquire and Mr. Orlando responded stating that it would make the lots smaller. Lou Dwyer, Esquire indicated they will not be joining the Harbor Cove Association as requested, it would be costly and but agree to make the 4 lots architecturally compatible with Harbor Cove development. Chairman Bezaire requested clarification of the Low and Moderate housing on Lafayette Street that would require variances. **Public portion closed at 10:10 pm.**

George Neidig informed all of the procedures that will be followed with the Mayor indicating we need direction.

Motion made by Dr. Mahaney to continue the application to December 10, 2013 without further notice required. Seconded by Mr. VanDeVaarst and **carried 7-0.** Those in favor: Mr. Elwell, Dr. Mahaney, Mr. Jones, Dr. France, Mr. VanDeVaarst, Mr. Shuler and Mr. Bezaire. Those opposed: None. Those abstaining: Mr. None.

Motion made by Dr. Mahaney, Seconded by Mr. Jones to adjourn the meeting at 10:15 PM with all in favor.

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

Respectfully submitted: Edie Kopsitz, Recording Secretary