

City of Cape May Zoning Board of Adjustment Meeting Minutes
April 26, 2012

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
	Mr. Williams, Vice Chairperson	Present
	Mrs. Hutchinson	Present
	Mr. Iurato	Present
	Mr. Schmidtchen	Present
	Mr. Todd	Present
	Mr. Meier	Present
	Mrs. Inderwies, Alt 1	Present
	Mr. Lagos, Alt 2	Absent - excused

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:

March 22, 2012

Motion made by Mrs. Hutchinson to accept the minutes dated March 22, 2012. Seconded by Mr. Meier and **carried 6-0**. Those in favor: Mr. Iurato, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Meier, Mrs. Inderwies and Mr. White. Those Opposed: None. Those Abstaining: Mr. Todd and Mr. Williams.

Resolutions:

Pasternak, 657 Hughes Street, Block 1058 Lot 17

Motion made by Mrs. Hutchinson for approval of Resolution #04-26-2012. Seconded by Mr. Meier and **carried 6-0**. Those in favor: Mr. Iurato, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Meier, Mrs. Inderwies and Mr. White. Those Opposed: None. Those Abstaining: Mr. Todd and Mr. Williams.

Chairman White announced that correspondence was received regarding the Ternove application requesting it be rescheduled to May 24, 2012 due to the anticipated longevity of the Cappelletti application.

Applications:

CMQH LLC, 601 Columbia Avenue, Block 1057 Lot 24 Use/Hardship/Substantial Benefit Variance

Craig Hurless clarified his credentials for the record.

Member Diane Hutchinson recused herself from the application.

Louis C. Dwyer, Jr. Esquire representing Doug and Anna McMain who were present along with their professional Joseph Ross, Architect all were sworn in by George Neidig. Mr. Dwyer explained the structure is a 9 room guesthouse with two retail stores know as Cheeks at the Beach and Cheeks II. The applicant proposes to eliminate store and add a guest room with a bathroom with a total of 10 sleeping rooms with 1 retail unit. The stores are non-conforming use, while the guesthouse is a permitted use. He contends that eliminating one store and replacing it with a permitted use-guest room it actually lessens the non-conformity and creates less demand for parking (off street parking for two (2) cars exists). Joseph Ross testimony clarified the applicants seeking a use variance for the change in a non-conforming use and variances with a site plan waiver. Using his plans dated January 16, 2012 went through the existing conditions of the first, second, third floor plans, location sketch, Key Map, proposed Guest Room and sketch site plan. He indicated the positives out way any detriments and the variances requested are not out of scale with the needs of the immediate neighborhood. Granting the variances will not adversely affect the existing use or usability or the adjacent or nearby properties and will maintain the integrity and character of the existing neighborhood.

Board Engineer, Craig Hurless then reviewed his report of January 25, 2012 clarifying the description of the Dwelling for the membership. He detailed the proposal and clarified, NJSA 40:55D-70d 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 through 4 for the General Requirements for all applications #10, C & D Variances & Conditional Use Approval items, #5, #13(condition), #17, #19, #20, #21, #23, #24, #25, #26, #27, #28, #30, #31, #32, #33 and details required for Preliminary Site Plan approval. He addressed the Zoning table on page 3 for the R-S District "Tourist Guest House" and sited ordinance §525-19 table 3. He clarified the standard, required, existing, proposed and status. He continued with the variances sought as §525-19A Use Variance (change of Non-conforming use), §525-49C Required Parking and §525-71 Expansion of Non-Conforming Use. His General Review comments on pages 6 through 7, items #1 (remaining signage must be noted on plan), #2, #3, #4, #5, #6, #7 #8 and #10 last sentence.

The meeting was opened to the Public at 6:45PM, Diane Hutchinson, 115 Ocean Street; was positive and supportive on the application stating the applicants maintain their property and are an asset to the neighborhood. **The public portion of the meeting was then closed at 6:46pm.**

Members were positive on the application and directed questions to the Architect and Board Engineer regarding parking and signage.

Motion made by Mrs. Inderwies to approve the completeness waivers as noted on Mr. Hurless completeness review report dated January 25, 2012 pages 2 and 4 from sections, #10, #5, #13(condition), #17, #19, #20, #21, #23, #24, #25, #26, #27, #28, #30, #31, #32, #33. Seconded by Mr. Meier and carried 7-0. Those in favor: Mr. Iurato, Mr. Schmidtchen, Mr. Todd, Mr. Meier, Mrs. Inderwies, Mr. Williams and Mr. White. Those Opposed: None. Those Abstaining: None.

Motion made by Mr. Schmidtchen that the Use Variance §525-19A and §525-71 Expansion of Non-Conforming Use be granted. Seconded by Mr. Meier and carried 7-0. Those in favor: Mr. Iurato, Mr. Schmidtchen, Mr. Todd, Mr. Meier, Mrs. Inderwies, Mr. Williams and Mr. White. Those Opposed: None. Those Abstaining: None.

Motion made by Mr. Meier that the Parking Variance §525-71 be granted. Seconded by Mrs. Inderwies and carried 7-0. Those in favor: Mr. Iurato, Mr. Schmidtchen, Mr. Todd, Mr. Meier, Mrs. Inderwies, Mr. Williams and Mr. White. Those Opposed: None. Those Abstaining: None.

Motion made by Mr. Williams to grant the Site Plan Waiver. Seconded by Mr. Meier and carried 7-0. Those in favor: Mr. Iurato, Mr. Schmidtchen, Mr. Todd, Mr. Meier, Mrs. Inderwies, Mr. Williams and Mr. White. Those Opposed: None. Those Abstaining: None.

Motion made by Mrs. Inderwies to impose the following conditions: Craig Hurless report dated January 25, 2012 The General requirements for all applications #10, General Review Comment's pages 6 & 7 - #1, #2, #3, #4, #5 and #10. Seconded by Mr. Schmidtchen and carried 7-0. Those in favor: Mr. Iurato, Mr. Schmidtchen, Mr. Todd, Mr. Meier, Mrs. Inderwies, Mr. Williams and Mr. White. Those Opposed: None. Those Abstaining: None.

**Cappelletti – Cappy's Corner, 458-460 W. Perry Street, Block 1031 Lot 1
Use/Hardship/Substantial Benefit Variances/Preliminary & Final Site Plan**

Mr. Hurless clarified his credentials for the record. Member Todd recused himself from the application the reasons he stated that being the application it is a continuance, which he was not in attendance at the January 26, 2012 meeting and did not listen to the recording of the meeting.

Ronald Stagliano, Esquire appearing for Daniel Cappelletti, principal owner along with Professional Joseph A. Courter, AIA who were sworn in by Mr. Neidig. Mr. Stagliano who gave a brief synopsis of the previous meeting and proceeded to explain that the applicant has returned with revisions from the January 26, 2012 meeting that was granted a continuance and took under advisement the suggestions at that meeting. The applicant proposes to renovate the existing non-conforming cement block structure currently (7, 310 SF) to be used

after the proposed renovations as a restaurant called “Cappy’s Corner” (pizzeria). He stated the applicant is seeking several variances along with preliminary and site plan review.

Mr. Stagliano presentation included testimony along with constant participation of Joseph Courter with an enlarged colorized photo boards of the Architectural Plan dated November 9, 2011 with revision dates of December 27, 2011 and January 14, 2012 and February 7, 2012 for the public and members perusal. He reviewed the plans in detail on display that were marked at the January 26th meeting as **A-1** depicting the Front, Side, Rear elevations and signage. **S-1** depicting Existing & proposed site and floor plans denoting the reduction in seats from 120 to 60 with 40 seats interior and 20 outdoor picnic tables (5 tables with 4 persons each). Mr. Stagliano indicated a significant amount of the reduction was in the outdoor seating and lot coverage reduction from 70% to 68% . & **S-2** Landscaping denoting planting schedule, pavers and reconfiguration of the air handlers (HVAC) units from the rear of the structure the residential side (West Perry Street) and Lighting Plans (exterior). Mr. Neidig suggested they be marked (**A7 & A8**) with Mr. Stagliano stating they were submitted as part of the application. Mr. Courter moved forward with sheet **S-3** denoting the expanded Grading and Drainage Plan indicating it was more than sufficient marked by Mr. Neidig (**A9**). Photographs of the existing property and surrounding structures were displayed they are the same as **Exhibit (A-2)** from the January 26th meeting. Mr. Courter stated the existing property is underutilized and is being renovated to become an asset to the community that fits the character of Cape May that will encourage the walking traffic. His testimony contends it is a small year round commercial hub. Mr. Courter reiterated this application received the Historic Preservation Commission conceptual approval and compliments from all members who value retaining the streetscape. Mr. Stagliano mentioned West Cape May’s on-going improvements to the area roads to improve traffic flow that would affect the whole area and testimony by Mr. Courter stating he was at West Cape May City Hall and verified the reconfiguration is in the preliminary stages.

Members were allotted time for questions to the applicant and their professionals. Concerns were as follows; regarding the proposed restaurant not in a commercial area in Cape May, R2 Zoning standards recited and should adhered to, Impact on Zoning on what could be built regardless of what exists, Zones are not an abstract concept and the R2 Zone threshold is higher, existing traffic congestion at the intersection that will only be exacerbated, pedestrian/traffic safety concerns, drainage issues, hours of operation and HPC conceptual approval details were discussed with Mr. Stagliano and Mr. Courter responding to all questions put forth.

Board Engineer, Craig Hurless then reviewed his report of April 16, 2012 clarifying the description for the membership indicating it is in the R-2 Low Medium Density Residential District. He noted for the record of the discrepancies in the of the amount of seating is due to the fact that picnic tables usually fit 6 persons and his calculation came to 70. He stated the members should rely on the applicant’s testimony of 60 seats. Mr. Hurless refers to his completeness review on pages 2 through 4 for the details required for Preliminary Site Plan #3 (f), (o), (v) NJDEP letters to be reviewed and verified, (w) Traffic impact report (testimony only), (z) COAH, (aa) CD-ROM. He addressed the Zoning table on page 4 for

the R-2 District and cited ordinance §525-15 “All Uses” clarifying the standard, required, existing, proposed and status. He continued (pages 4 through 6) with the Ten (10) variances sought as, §525-15A Use Variance (not a permitted use), §525-19B(1) Lot Size, §525-19B (1) Table 1 Building Setback, §525-19B (1) Table 1 Rear Yard, §525-19B (1) Side Yard Setback, §525-19B (2) Lot Coverage, §525-49C (2) & (11) Parking – Number of Spaces, §525-48G Signage, §525-49B Parking Area Buffer and §525-59E(7) Parking in the Setbacks. He reviewed the three (3) Waivers (pages 6 & 7) §525-50 Loading Area – Size, §525-59O Street Trees and §525-59D Paving & Curbing of Parking Areas item # 1, 2 & 3 Paved Driveway & Curbing was explained in detail due to Member inquiries. His General Review comments on pages 6 and 7, items #1, #2, #3, #4, #5, #6, #7, #8, #9 HPC Final approval and #10.

Chairman White opened the meeting for public comments at 8:10pm explaining the applicant has revised the application and comments should be based on the revision, with all being sworn in by Mr. Neidig. Francis Recchuiti, Esquire, spouse of Carol Wilkerson Ricchuiti, 206 Park Boulevard, against the application: requested to question Mr. Courter regarding the stone area with the retention basin under the parking lot and whether there is another retention basin in the area, commercial hub reference of the residential sections of the area in question (examples Perry and Congress Streets) in Cape May that does not exist, professional retained services, another design recommendation to the applicant and ventilation issues. Mr. Courter responded in detail. **Anita Novino, 351 Congress Street**, opposed the application not the owner of the proposed building, stated the proposed building is lovely but should be utilized as something else or transported somewhere else. The applicant is requesting too many variances, noise and odor concerns (exhaust), parking issues, disagrees with the HPC approval and stated the structure will have a negative impact to the area, **Leo Nardone, 450 W. Perry Street**, negative of the application, distributed photographs taken by himself dated 12/05 through 06/06 that were marked O-1 through O-9 for the record of the site of the application along with 2 pages marked O-10 & O-11 Excavation drawings of the front and rear property, O-12 Survey of the Nardone property indicating the proximity of the proposed restaurant site, shared his concerns regarding the oil tank removal past problems, NJDEP no further action correspondence and Craig Hurless report dated April 16, 2012 with Mr. Hurless clarifying the correspondence in his report addressing Mr. Nardone’s concerns regarding any contamination. Mr. Nardone stated the County has not approved the application elaborated on his verbal exchange with the County Planning Board Office regarding the Site Plan with Mr. Hurless responding addressing his concerns. He then repeated his objections from the past meeting opposes the application citing the kitchen exhaust fumes will be overpowering, the height the building is towering, parking and safety concerns, lot coverage, noise pollution with an added feature of air conditioning units facing his side, recycling and trash visible on his side.

During Public Comment Chairman White called for a five (5) minute recess at 8:40 PM. The meeting resumed at 8:45pm continuing the Open Public portion of those within 200 feet. Chairman White reminded the entire of the 10:00pm cut off time with Mr. Neidig clarifying the reasons.

Eric Vikingstad, 448 Perry Street, negative on the application with concerns of the restaurant not blending or improving their residential neighborhood, indicated the quiet street will be disturb with noise pollution, concerned of it becoming a BYOB place with loitering and parking issues. **Ann Trier, 405 Congress Street**, positive on the application stating the restaurant blends with the streetscape (compared to other commercial entities located in the surrounding area) and stated parking in Cape May has always been an issue and is not relevant. **Bert Novino, 351 Congress Street** should not allow a restaurant in a residentially zoned area. **Carol Wilkinson Recchuiti, 206 Park Boulevard** negative on the application, residential zoning concerns if the pizzeria is permitted. She stated it would affect her light, air quality and will have additional noise level. **Helen Currier, 398 Congress Street**, negative on application stating it is requesting several variances, located in Historic District as well as a Residential district; signage is too large, noise issues and safety concerns. **Bill Mortimer, 446 West Perry Street**, negative on the application with no personal atomicity towards the applicant, concerns of trash area, parking, public safety and noise. **Rosemary Graham, 440 West Perry Street**, negative on the application with questions directed toward Member Schmidtchen regarding clarity of zoning ordinances with Mr. Hurlless responding that the applicant is seeking a use variance and all variances are addressed in his report to the Board Members. She is requesting that if this application is approved there should be a compromise of times of operation for the applicant and parking questions. **Francis Mason, 442 West Perry Street**, negative on application with same concerns of others. He also stated the buildings across from the applicant are commercial but have never altered their structures. Does not agree with the applicant's professional of the use or terminology of a Commercial Hub. **Public beyond 200 Feet approached. Robert Rosenfeld, 1430 Texas Avenue**, Positive on the application stating the structure will add character to the area. **Diane Salfi, 118 Emerald Avenue**, positive on application, she stated this project encourages foot traffic, aesthetically pleasing structure, other businesses on the west side do not have parking and what is proposed will eliminate the flea market traffic parking that currently exists and has no order. **Sam Parker, 251 Windsor Avenue**, Negative on the application, stating several variances are being requested, stated the Planning Board should have entered the structure into the Master Plan as commercial but it remains in the Residential district. Cape May has ongoing parking concerns pertaining to the area. **James Ridgeway, 901 Weekslanding Road**, positive on application, stated other commercial business located in the residential district, the applicant will be making the building aesthetically pleasing and agrees with the Historic Preservation Commission approval. **Mark Lare, 498 West Perry Street**, positive on the application, commending the applicant on his businesses in the area and how he employees local residents. **Gail Wilsey Morrison, 501 Lafayette Street**, positive on application. Read her statement into the record promoting the use of building as a restaurant and acknowledged the Board Members efforts. She reminded the members of her project of renovating a building in Cape May. She believes the application is a positive contribution to the City of Cape May that will be an asset towards our economy, aesthetics, mindful of the streetscape and Historic Preservation Commission's designs standards. **Susan Mullins, 329 Congress Street**, Complimentary of Mr. Cappelletti and his other businesses to which she frequents. Negative on the application reiterating other neighbors concerns with regards to R2 Zoning district with a restaurant not being an appropriate use and numerous variances that are being requested the application should be denied. **Harry Sundstrom, Jr., 1008 Lafayette Street**, resident of 46 years giving a brief history of business/residential

uses and how they co exists. He was positive on the application and stated West Perry Street is a main artery of Cape May and the changes to this building will be an enhancement to the area. **Ray Hober, 694 Socks Lane**, stated he was the previous owner of the building. He explained the mixed uses in the area and was positive on the plan that is presented before the Board. **The public portion was closed at 9:25pm.**

Members put forth questions regarding sheet A-4 a photograph of the plans, will there be delivery truck on site, delivery and the number of full time employees. Mr. Courter responded it the photograph was the public parking lot, Mr. Cappelletti responded that they will not have a delivery truck but a scooter, reiterated he was gearing this restaurant for the walk up traffic and the number of employees will be between three (3) and six (6). Questions regarding the traffic patterns were discussed at length with the applicant responding that a professional traffic pattern was not conducted. Excerpts from the Master Plan were read into the record regarding Residential Use and parking being provided for all new development.

Mr. Stagliano closing remarks encompassed the parking deficiencies and how all shore communities have the same issue. He acknowledges that Cape May has an extended season but stated on numerous occasions he has parked and walked to the location. The application will be a year round operation being proposed on a site that has always been a commercial (hub). His client is offering an aesthetically pleasing structure that will be owner maintained and operated who has other businesses that are well maintained in the area. The structure has been revised as instructed by Board Members and Neighbors. He stated Mr. Cappelletti is willing to make other concessions to make this project work. Mr. Stagliano indicated he believes they put forth enough evidence to support granting the variances requested of the peculiar undersized shaped property.

Mr. Neidig clarified the voting procedures in detail for the Board Members regarding NJSA 40:55D-70d Use Variance.

Motion made by Mr. Meier to grant the Use Variance. Seconded by Mr. Iurato, **was denied 7-0.** Those in favor: None. Those opposed: Mr. Iurato, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Meier, Mrs. Inderwies, Mr. Williams and Mr. White. Those Abstaining: None.

Members voiced their reasons for the record.

The other aspects of the application will not be considered do to the denial of the use variance motion. Chairman White thanked all who attended. Mr. Iurato requested clarification on procedures regarding applications that have to go before the HPC and Zoning Board.

Discussion:

Member Schmidtchen inquired the status of the Celio case. Mr. Neidig responded the Zoning Board decision was upheld and will forward a copy of the determination to be distributed to the members for their perusal.

Motion made by Mr. Meier to adjourn @ 10:08pm. Seconded by Mrs. Hutchinson 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.