

**City of Cape May Zoning Board of Adjustment Meeting Minutes
September 27, 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	Absent - excused
	Mr. Todd	Present
	Mr. Meier	Present
	Mrs. Inderweis, Alt 1	Present
	Mrs. Mullins, 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

Chairman White announced that the Ocean Club Hotel, C.M.LLC, 1035 Beach Avenue, application has been postponed until Monday, October 29, 2012 at 6:00pm.

Motion made by Mr. Williams that the Ocean Club Hotel application be postponed until Monday, October 29, 2012 at 6:00pm. Seconded by Mrs. Inderweis and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Hutchinson, Mr. Todd, Mr. Meier, Mrs. Inderweis, Mr. Williams and Mr. White. Those Opposed: None. Those Abstaining: None.

Minutes: July 26, 2012

Motion made by Mr. Meier to accept the minutes dated July 26, 2012 as presented. Seconded by Mrs. Inderweis and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Hutchinson, Mr. Todd, Mr. Meier, Mrs. Inderweis, Mr. Williams and Mr. White. Those Opposed: None. Those Abstaining: None.

**Resolutions: Victorian Harbor Condo Assoc., Block 1160 Lot 27 - #9-27-2012:1
Jacobson, Block 1061 Lot 12- #9-27-2012:2**

Motion made by Mr. Iurato to approve Resolution #9-27-2012:1 for Victorian Harbor Condo Association as presented. Seconded by Mr. Williams and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Hutchinson, Mr. Todd, Mr. Meier, Mrs. Inderweis, Mr. Williams and Mr. White. Those Opposed: None. Those Abstaining: None.

Motion made by Mr. Iurato to approve Resolution #9-27-2012:2 for Jacobson as presented. Seconded by Mr. Williams and **carried 7-0.** Those in favor: Mr. Iurato, Mrs.

Hutchinson, Mr. Todd, Mr. Meier, Mrs. Inderweis, Mr. Williams and Mr. White. Those Opposed: None. Those Abstaining: None.

Applications:

Arnone, 109 Mt. Vernon Avenue

Block 1019 Lot(s) 32

Hardship/Substantial Benefit Variance(s)

Craig Hurless clarified his credentials for the record.

Louis C. Dwyer, Jr. Esquire representing Victor and Mary Ellen Arnone who was present along with their professional Peter Weiss, Architect all were sworn in by George Neidig. Mr. Dwyer described the application as a demolition to an existing 3 story family dwelling and accessory shed with two parking spaces with the dimension of 130ft frontage & depth of 100ft and replace with a new single family detached residence with parking for 3 vehicles by a garage driveway combination. He explained the front yard setback relief is being sought adjacent to a “paper” street, which will never be improved as it intersects the former Cape Island Creek in the rear. The “Patterson” Avenue front yard for all practical purposes is a side yard. Mr. Dwyer stated allowing the home to be constructed in the proposed location will preserve existing trees, vegetation and have less impact on neighboring properties. An aerial photograph denoting the existing structure location and lot was presented, copies distributed to all members and marked into evidence as **A-1**. Mr. Dwyer believes the benefits out way any detriments in granting this relief. Testimony from the project Architect Mr. Weiss who referred to an enlarge photo board of plans dated July 3, 2012 sheets A-1 Site Plan with bulk requirements & plant schedule and A-2 of the front, left, right, rear elevations and 1st & 2nd Floor plans describing the new construction as a upside down house describing in detail for the membership.

Board Engineer, Craig Hurless then reviewed his report of August 20, 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 2nd review. Mr. Hurless refers to his completeness review on pages 2, C & D Variances & Conditional Use Approval items, #20, #21, #24, #25, #27 and #32. He addressed the Zoning table on page 3 for the R-2 District “All other uses” and sited ordinance §525-15. He clarified the standard, required, existing, proposed and status. He continued with the variance sought on page 3, §525-14B Building Setback. His General Review comments on pages 4 & 5, items #1 is to be omitted information was provided, #2, #3, #4, #5 has been addressed , #6, #7, #8 Shade Tree letter dated 8/29/2012, #9 and #10.

The meeting was opened to the Public at 6:55 PM and closed with no one coming forward.

Members were allotted time for questions to the applicant and their professionals. Member Iurato statement to the applicant was why they could not move the proposed structure over 20 feet to be in compliance and would not require a Building Setback variance. He also

requested that a condition be placed on the garage that plumbing is not permissible. Mr. Dwyer responded in detail. Member Inderwies had concerns regarding the water retention in the rear yard with Mr. Dwyer and the applicant responding. Several questions were put forth regarding the 2nd floor in the garage, verifying that it was for storage purposes. Mr. Hurless clarified the garage is attached to the structure and was included in Floor Area Ratio calculations. Mr. Dwyer responded in detail the reasons for their variance request.

Motion made by Mrs. Hutchinson to approve the checklist waivers as noted on Mr. Hurless completeness review report dated August 20, 2012 pages two (2) of 5, #20, #21, #24, #26, #27 and #32. Seconded by Mr. Meier and **carried 7-0.** Those in favor: Mr. Iurato, Mr. Todd, Mrs. Hutchinson, Mr. Meier, Mrs. Inderwies, Mr. Williams and Mr. White. Those Opposed: None. Those Abstaining: None.

Motion made by Mr. Meier to grant the Building Setback Variance §52514B(1). Seconded by Mrs. Inderwies and **carried 6-1.** Those in favor: Mrs. Hutchinson, Mr. Todd, Mr. Meier, Mrs. Inderwies, Mr. Williams and Mr. White. Those Opposed: Mr. Iurato. Those Abstaining: None.

Members Meier, Iurato and White voiced their reasons for the record.

Motion made by Mr. Meier to impose the following conditions: Craig Hurless report dated August 27, 2012 of the General Review Comment's pages 4 & 5 - #2, #3, #4, #5, #6, #7, #8, #9, #10 and no plumbing in the garage. Seconded by Mrs. Inderwies and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Hutchinson, Mr. Todd, Mr. Meier, Mrs. Inderwies, Mr. Williams and Mr. White. Those Opposed: None. Those Abstaining: None.

**Mentzel, 340 Congress Street
Block 1026 Lot 9
Hardship Variance**

Chairman White announced that Member Susan Mullins is recusing herself from the Mentzel application.

Craig Hurless clarified his credentials for the record.

Louis C. Dwyer, Jr. Esquire representing Michael and Maria Mentzel applicant whom were present along with their professionals Harold Noon, Surveyor, Joseph Ross, Architect and were sworn in by George Neidig. Mr. Dwyer explained they propose to construct a new two story single family residence on an isolated undersized lot and stated there are no contiguous lands available for purchase. The proposed home will meet all setbacks, coverage and FAR requirements designed to reasonably fit on the lot. There will be two on-site parking spaces. The hardship variance is for the construction of the dwelling on a lot that does not conform to the minimum lot size, lot width and lot frontage. The lot has always been a taxable buildable lot with a current assessment of \$487,700.00, with water and sewer lines placed by the City of Cape May. Mr. Dwyer stated the positive criteria are established by it being an isolated undersized lot and that the negative criteria are satisfied

in two (2) different ways; proposed structure meets all bulk requirements and contours with all the other lots/structures in the area. He then produced a copy of a tax map denoting the subject property in red with other surrounding non conforming structures noted in yellow and green Lots 10, 8, 7, 6.02, 12 & 13 and was marked into evidence as **A-1**. Mr. Dwyer indicated the owners of the property (vacant lot) are John and Nancy Bailey and the applicants the Mentzel are contract purchasers.

Mr. Ross testimony referred to his plans dated July 31, 2012, describing in detail the two story dwelling with sheet A-1 - 1st & 2nd floor sketch site plan and Landscaping plans and sheet A-2 of the front, rear, east and west elevations. He indicated they received Historic Preservation Commission conceptual approval on August 13, 2012 and submitted a copy of the minutes for the record that were marked **A-2**.

Board Engineer, Craig Hurless then reviewed his report of August 27, 2012 clarifying the description for the membership an undersized undeveloped lot. He detailed the proposal and clarified, NJSA 40:55D-70c (1) Hardship Variance. Mr. Hurless refers to his completeness review on page 2, C & D Variances & Conditional Use Approval items, #20, #21, #24, #26, #27 (recommends as a condition of approval), #28 (recommends as a condition of approval), #29, #30 and #32. He addressed the Zoning table on page 3 for the R-2 District "All other uses" and cited ordinance §525-15. He clarified the standard, required, existing, proposed and status. He continued with the variances sought on pages 3 & 4 §525-16B (1) Table 1 Lot Size and §525-15B (1) Table 1 Lot Width & Lot Frontage. His General Review comments on pages 4 & 5 items #1 Water table high, #2, #3, #4, #5, #6, #8, #9, #10 HPC Final and #11.

The meeting was opened to the Public at 7:30PM, those within 200 feet, Al Rubel, 336 Congress Street was negative on the application, Mr. Rubel emphasized he is adjacent to the property, expressed his concerns regarding the water issue in the area, undersized lot, he must use a sump pump year round and parking issues. He has concerns of construction debris. Mr. Dwyer question Mr. Rubel regarding the size of his lot, identical in size to applicants with a developed structure. **Bert Novino, 351 Congress Street**, negative on application because he feels the neighborhood would be overdeveloped. He tried to introduced photographs taken by another of the lot on the dates August 10th, 11th & 12th but could not be submitted as advised by Mr. Neidig. **Anita Novino, 351 Congress Street**, was negative on the application stating the reasons of aesthetic quality of the neighborhood would be affected, lack of air and open space and density control. **Terri Werner, 311 Claghorn Place**, was negative on the application stating several items standing water issues existing mosquito problems, over development on undersize lots will affect the aesthetics for the City of Cape May, tree rooting problems due to new construction, building on the lot will remove trees, vegetation and the City of Cape May poor paving issues causing draining problems in the entire area. **Phyllis Rubel, 336 Congress Street**, negative on the application, referred to the lot as the pond when it rains and presented photographs marked **O-1, O2 and O3** explaining each one in detail for the record and requested that the applicants observe the photos. **William Reinhart, 347 Congress Street**, **positive** on the application and indicated his lot is conforming and across the street from the proposed application. He referred to the parking stating there is none on that side of the

street so on street parking is not an option and shared that he has never had a water intrusion problem. He believes the applicant is going through the correct procedure to build on the lot, stated it was a modest development and is positive the professionals building the property will adhere to the noise ordinance. **John Adams, 339 Congress Street**, objected to the variance presented and discussed the Bradshaw subdivision case in 2003 at 347 Congress that was denied. He believes that the Zoning Ordinance should not be deviated from and granting this application will set precedence for other non-conforming lots. He referred of cherishing the light, air and open space of the neighborhood and was concerned of the removal of the cedar tree on the lot. **Helen Currier, 398 Congress Street**, negative on the application concurring with all other objectors. She did have a question regarding the flood elevation conveying her concerns, to which Craig Hurless, Board Engineer and Joseph Ross, Architect responded. **Those beyond 200 feet, Ruth Leo, 237 Capehart Lane**, her property is located around the corner from the lot and she agrees with all her neighbors regarding the flooding, building affecting his light, air and open space, parking concerns and referred to an article in the AC Press regarding sand replenishment and the affects new construction will add to this problem. **The public portion of the meeting was then closed at 8:15pm.**

Louis Dwyer closing remarks encompassed the variance relief sought for an undersized lot. He believes the evidence showed this lot is consistent in size of the neighborhood; the modest structure proposed will blend in with the streetscape, the application supplies on-site parking, addresses the drainage issue and will not impact surrounding neighboring lots but will be an asset. He stated if the relief is not granted the zoning of the lot will become a utility (no value) and explained in detail what that would mean for the City as well as the owner of the lot that has paid taxes for the past 30 years as a buildable lot.

Members questioned the applicant's professionals throughout the presentation at length. Member Hutchinson addressed the public regarding the owners having the lot for sale and asked if anyone inquired purchasing the lot to retain for open space. Member Meyer asked if the problem with the water ponding was all surrounding properties not having sufficient drainage and put forth various questions to Mr. Dwyer regarding the buildable lot scenario. Mr. Iurato directed a question to Mr. Neidig regarding a person's right to build on a property (taxable lot) in the State of New Jersey provided they adhere to the Land Use Law. Mr. Neidig responded yes to the question. Members Williams addressed the public regarding the building on an undersized lot, stating cases from the past. Chairman White requested every member to voice in detail their reasons in voting regarding the variance for the record.

Motion made by Mr. Iurato to grant Variance §525-15B(1) Table 1 - Lot Size pre existing. Seconded by Mrs. Inderwies and **carried 7-0.** Those in favor: Mr. Iurato, Mr. Todd, Mrs. Hutchinson, Mr. Meier, Mrs. Inderwies, Mr. Williams and Mr. White. Those Opposed: None. Those Abstaining: None.

All Members voiced their reason in detail for the record.

Motion made by Mr. Iurato to grant Variance §525-15B(1) Table 1 - Lot Width & Lot Frontage. Seconded by Mrs. Hutchinson and **carried 7-0.** Those in favor: Mr. Iurato, Mr. Todd, Mrs. Hutchinson, Mr. Meier, Mrs. Inderwies, Mr. Williams and Mr. White. Those Opposed: None. Those Abstaining: None.

Motion made by Mr. Iurato to approve the checklist waivers as noted on Mr. Hurless completeness review report dated August 27, 2012 pages two (2) of 5, #20, #21, #24, #26, #27, #28, #29, #30 and #32. Seconded by Mr. Meier and **carried 7-0.** Those in favor: Mr. Iurato, Mr. Todd, Mrs. Hutchinson, Mr. Meier, Mrs. Inderwies, Mr. Williams and Mr. White. Those Opposed: None. Those Abstaining: None.

Motion made by Mrs. Inderweis to impose the following conditions: Craig Hurless report dated August 27, 2012, 2012 of the Completeness Review page 2 #27 & #28 and the General Review Comment's pages 4 & 5, #1, #2, #3, #4, #5, #6, #7, #8, #9, #10 and #11. Seconded by Mrs. Hutchinson and **carried 7-0.** Those in favor: Mr. Iurato, Mr. Todd, Mrs. Hutchinson, Mr. Meier, Mrs. Inderwies, Mr. Williams and Mr. White. Those Opposed: None. Those Abstaining: None.

Member Mullins returned to the meeting.

Chairman White informed the Members that the November meeting was scheduled for November 22, 2012 is Thanksgiving Day and the meeting must be cancelled.

Motion made by Mr. Williams to cancel the Meeting of November 22, 2012. Seconded by Mrs. Inderwies and **carried 7-0.** Those in favor: Mr. Iurato, Mr. Todd, Mrs. Hutchinson, Mr. Meier, Mrs. Inderwies, Mr. Williams and Mr. White. Those Opposed: None. Those Abstaining: None.

Chairman White informed the Board that the October 25, 2012 meeting has been cancelled with a special meeting date for the Ocean Club appeal on Monday, October 29, 2012 @ 6:30pm. Mary Rothwell, Board Assistant/Zoning Officer informed the Members that they will be receiving confirmation on the League of Municipalities.

Motion made by Mr. Meier to adjourn @ 8:45pm. 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.