

**City of Cape May Zoning Board of Adjustment Meeting Minutes  
Special Meeting - November 10, 2010**

**Opening:** In compliance with the Open Public Meetings Act, adequate notice of the meeting was provided. Chairperson Pitman called the meeting to order at 6:40 P.M.

<b>Roll Call:</b>	Mr. Pitman, Chairperson	Present
	Mr. Williams, Vice Chairperson	Present
	Mrs. Hutchinson	Present
	Mr. Iurato	Present
	Mr. White	Present
	Mr. Schmidtchen	Present
	Mr. Todd	Present
	Mr. Meier, Alt 1	Present ( excused arrived 8:15 pm)
	Mrs. Inderwies, Alt 2	Present

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

**Minutes: September 23, 2010**

**Motion made by Mr. White to approve the minutes of September 23, 2010.** Seconded by Mr. Iurato, **carried 7-0.** Those in favor: Mr. Iurato, Mr. White, Mr. Williams, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Todd and Mr. Pitman.

**Resolutions:**

**Celio, 120 Decatur Street, Block 1041 Lots 7**

Mr. Pitman advised the membership of correspondence received October 8, 2010 by Louis Dwyer, Attorney for the applicant pertaining to testimony given by Maryann Gaffney, Chairperson of the HPC and it having direct influence to the Boards decision on the Celio application. He then requested that each member's state whether his or her decision rendered on September 30, 2010 was influenced by Mrs. Gaffney's testimony.

**Mr. Pitman clarified that a No vote will indicate Mrs. Gaffney's testimony did not effect their decision. Roll call of members: Mr. Schmidtchen – NO but wanted it noted for the record the Celio Resolution Item #6 will need to be revised, Mrs. Hutchison – NO, Mr. Williams – NO, Mr. White – NO, Mr. Iurato – NO and Mr. Pitman – NO.**

Mr. Neidig suggested the Celio Resolution be tabled until next meeting to allow time for the revisions as discussed.

**Venuto, 1013 Michigan Avenue, Block 1110 Lot 123**

**Motion made by Mr. Iurato to approve the Resolution as published.** Seconded by Mr. Williams, **carried 7-0.** Those in favor: Mr. Iurato, Mr. White, Mr. Williams, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Todd and Mr. Pitman.

Mr. Pitman announced the two (2) proposed dates in December to conduct a Zoning Board Meeting. Wednesday, December 1<sup>st</sup> or Wednesday, December 15, 2010. Members were in agreement the December meeting will be conducted on the Wednesday, December 15<sup>th</sup>, 2010 at 6:30pm. Mary Rothwell, Board Assistant/Zoning Officer clarified the date for the Special Meeting in January will be Monday, January 31, 2010 and stated the regular meeting will commence on Thursday, January 27, 2010 at 6:30pm.

**Applications:**

**Frank's Investment's LLC, 711 Beach Avenue, Block 1062 Lot 6 & 7  
Appeal from Administrative Decision**

Mr. Hurless clarified his credentials for the record and was sworn in.

Present professionals for the applicant were Steven Fenwick, Architect of Fenwick Architects, Stephen Filiphone, Engineer of Engineering Design Associates and George Thomas, Architectural Historian and were sworn in by George Neidig.

Mr. Pitman clarified the procedures that will be followed. He then dispersed copies of City of Cape May Code § 525-40 Demolitions and Relocations Criteria (addressing the 9 Points) to the audience.

George Neidig, Board Attorney reported on the walk through that was conducted by the members of the Zoning Board, Zoning Officer/Board Assistant and recording Secretary of the Beach Theater on October 29, 2010 at 9:00am. He clarified for the record that no discussion or comments were conducted in regards to the condition of the structure with regards to the application.

Stephen Nehmad, Attorney for Nehmad, Perillo and Davis representing Franks Investments Incorporated gave an opening statement that he and his client take no objection to the viewing of the structure by the members but requested that anyone from the opposing counsel state their objection.

Mr. Neidig called Michele DiNato, Attorney for the Beach Theater Foundation to come forward and make statement. Ms. DiNato then questioned whether notice was published under the Open Public Meetings Act to which Mr. Neidig responded notice was given and clarified once again for the record members that were present. She had no objections but requested all members disclose their findings of the structure on record as per case law pertaining to site inspections and she will bring the exact case law at the next meeting. Mr. Nehmad responded that decision of the Board is noted in the memorialized resolution, cited

Scully Bozart decision with regard to members voting reasons and stated members adhere to the fundamental Land Use Jurisdiction of the State of New Jersey. Mr. Fineberg, Counsel for the Historic Preservation Commission came forward and stated no objection to the walk through conducted but reserves the right on the relevancy of the conditions founded. Chairman Pitman asked Mr. Fineberg who authorized his appearance this evening (City Counsel or City Manager) and Mr. Fineberg stated the Historic Preservation Commission authorized his appearance. Mr. Nehmad continues to voice his objection to Mr. Fineberg's participation as an adversary in this proceeding and he believes this will constitute reversible error. He also clarified for the record Mr. Fineberg's objection response letter dated November 3, 2010 to his letter to Ms. Mary Rothwell, Board Assistant of October 29, 2010 regarding his clients suffering undue hardship if it is not permitted to partially demolish the Beach Theater and implement its plan for redevelopment of the site and it is part and parcel of their appeal under pp A of 55D-70.2 Land Use Act and an error of the Administrative office of the Construction Official by denial of the demolition permit and City of Cape May Code §525-40 A 7 which pertains to the economic feasibility. Mr. Neidig acknowledges receipt of the letters and rendered an opinion that hardship aspect of the application should be allowed without notice. Mr. Fineberg reiterated the Historic Preservations Commission stance stating they are not advisory and under the form of Government of the City of Cape May as a strong board.

Steven Fenwick, Architect gave testimony to his numerous works through out the years (starting in 1981) on several projects through out the City of Cape May. He clarified his knowledge of the design acceptance in accordance with the Design Standards of the Historic Preservation Commission. Mr. Nehmad questioned Mr. Fenwick with regards to the design for the redevelopment of the Beach Theater located in the C2 Zoning District, he confirmed the partial demolition meeting the criteria of §525-40 in 2007, Historic Preservation Commission conceptual approval of the design in 2007, the site plan by EDA dated May 3, 2007 and the Planning Board Approval in December 2008. Mr. Fenwick testimony continue using the enlarged aerial photograph of the site marked A-12 he described in detail the view of Beach Drive, Stockton Place, Gurney Street and the structure (Beach Theater) that delineates the section for partial demolition, noting the current condition of the property as present day and was passed around for the public perusal. He elaborated on the description of the redevelopment of the structure that was approved by the HPC and the Planning Board. Chairman Pitman intervened stating the Zoning Board jurisdiction is not for the design of a new building, to which Mr. Nehmad responded he is addressing #2 of the Criteria set forth in §525-40 and was permitted to move forward with the Mr. Fenwick's testimony. Mr. Fenwick referring to exhibit A-14 a enlarged Architectural drawings described the proposed building: Ground floor facing Avenue to remain with minor modifications, retaining the historical element to retail store fronts with brick façade, the lobby façade will be retained and parking (along Stockton) will be in the footprint with improvements, the demolished structure (theatre) with admittance in the side and rear. The upper level plans marked A-15 above the shops will be six (6) apartments' (condo's) that will face the beach. Description of apartments was 4 units will be two level and 2 units will be corner one level apartments. The roofline chosen was mansard to follow/enhance the curve of the building. He reviewed Exhibit A-13 of the present surrounding buildings, A-16 depicting the elevations on Gurney and Stockton Place including the parking facility. He explained A-17 Architectural

rendering depicting the view from Beach Avenue that was conceptually approved by the HPC in 2007. Mr. Fenwick referred to A-18 Material list that was approved by the HPC in 2007. He addressed criteria #7 of §525-40 confirmed the present conditions of the building and concluded that the structure could not economically be restored or retained as a Theater (due to current flood regulations) that is now a vacant structural shell. Hand-outs of the current Flood regulations were passed out.

Mr. Fineberg, Solicitor for the Historic Preservation Commission cross-examined Mr. Fenwick with regards to the façade of the proposed structure to which Mr. Fenwick responded. Mr. Fineberg asked Mr. Fenwick if he was aware of the current rating (survey designation by the Historic Preservation Commission) of the Beach Theater to which Mr. Nehmad strenuously objected by stating the rating could only be changed by ordinance, specified Ordinance #127-2007 is the only current adopted ordinance and Mr. Neidig requested Mr. Fineberg rephrase the question. Mr. Fineberg then asked if Mr. Fenwick reviewed the report done by Jean Kolva of McCabe Associates.

Michele DiNato, Attorney for the Beach Theater Foundation cross-examined Mr. Fenwick regarding the regarding an updated theater design to which Mr. Fenwick stated that it was not fees able (due to parking issues, current flood requirement etc.) and they pursued another direction that was presented. She questioned him regarding the property maintenance and questioned him regarding the terminology demolition by neglect pertaining to a historic structure and referred to the City of Cape May Master Plan that addresses these concerns. She also questioned him regarding the economic fees ability of rehabilitating a structure. Mr. Fenwick responded that it was not economically fees able. Mr. Nehmad interjected and stated the line of questioning to the Architect was irrelevant. Mr. Neidig felt the line of questioning was relevant due to the demolition criteria. She continued to question Mr. Fenwick if he was aware that the theater was at times being operated without heat and air conditioning and Mr. Fenwick responded he was not and would not be aware of the operational aspects of this project. Chairman Pitman asked Ms. DiNato to name the members of the Beach Theater Foundation that she is representing. Ms. DiNato will forward a list of the Trustees along with their addresses by the next meeting. Mr. Nehmad requested a list of Trustees as well. Ms. DiNato also stated at the time of the Historic Preservation Commissions Meeting the Beach Theater Foundation was under a gag order not to comment during proceeding and Mr. Nehmad stated that was incorrect that the Foundation was under a contractual lease agreement undertaken and voluntarily signed by the members of the Beach Theater Foundation and resents Ms. DiNato implications.

**Chairman Pitman called for a five (5) minute break at 8:10pm. Meeting resumed at 8:20pm. Mr. Meier, Board Member arrived for the remainder of the meeting and Mr. Neidig informed him he must listen to the part of the hearing he missed and it must be certified. Mr. Meier stated he understood and would comply.**

George Thomas, Architectural Historian clarified his credentials for the record. All members concurred that he was an expert witness and Mr. Pitman questioned if he was the same George Thomas that was mentioned in the Historic Preservation Commission Design Standards and he replied that he was. Mr. Nehmad questioned Mr. Thomas regarding his

report dated May 10, 2010 already marked into evidence. He elaborated on his involvement with the 1975 study of a publication Queen of the Seaside Resorts and produced a copy that was marked into evidence as A-23. Mr. Nehmad questioned Mr. Thomas as to his knowledge of the building, the architectural style of the structure, number times he was recently in the building, year it was built, the ordinance 525-40 HPC Demolition Criteria that applies with Mr. Thomas responding in detail to the questions and elaborated on why he felt this structure is not identified as Key or Contributing structure by the Ordinance #127-2007 with Mr. Nehmad producing a copy that was marked into evidence as A-24 so that members could review as Mr. Thomas responded to relevant questioning pertaining to that submission. He elaborated to his understanding of the Key, Contributing, Non-Contributing and no designation assigned of structures in the Historic District of Cape May for the membership as it pertains to the historic architectural significance. He elaborated on the chronological boundaries of the period of significance up to World War II and cultural frame of the buildings. Mr. Nehmad asked Mr. Thomas to classify the Beach Theater class of Architecture to which Mr. Thomas stated it does not fit into any style listed in period of significance. He considers the Beach Theater Highway Architecture move into the City of Cape May and was built at a time that the City of Cape May did not value its Architecture (1950's). Mr. Thomas believes that the structure does not have historic significance along with buildings surrounding it that also do not have documented listed significance. Mr. Thomas commented on the proposed structure in the positive. Ms. DiNato objected to that line of questioning and Mr. Nehmad stated it was part of the Criteria in 525-40.

**Mr. Pitman called for a two (2) minute break at 9:25pm. The meeting resumed at 9:30pm.**

Mr. Fineberg cross-examined Mr. Thomas with regards to his report dated May 10, 2010 titled Analysis of the significance and integrity of the Beach Theater and its relation to the City of Cape May's historic district. Mr. Fineberg wanted it to be known this report was prepared for the applicant and not for academic notoriety or publication. Mr. Thomas responded he prepared the report for Franks Investment but it was based on the works he performed for many years. Mr. Fineberg questioned Mr. Thomas regarding structures periods of significant with regards to the pre and post dates. Mr. Fineberg wanted Mr. Thomas to acknowledge the current survey by Jean Kolva of McCabe and Associates on the Beach Theater. Mr. Thomas stated it was not an appropriate survey and completely irrelevant and to which Mr. Fineberg disagreed. Mr. Fineberg then referred to HPC Resolution #2009-20 dated May 11, 2009 to which the City of Cape May recommended as part of the designation process to the Planning Board that this property should be designated as Key property. Mr. Thomas also disagrees with that written designation and Mr. Nehmad wanted noted for the record that his client was not informed or copied on this designation process of their own property. Mr. Fineberg stated that notice was conducted by ordinance procedure to which Mr. Nehmad disagreed and was adamant that his client should have been noticed of this undertaking because it pertained to their property. Mr. Thomas stated this history that was conducted on the property was that could be obtained on the Internet and not if this structure was part of the historic district. Mr. Fineberg then submitted and marked as an exhibit HPC-1 E-mail from Mr. Thomas dated December 15, 2008 to Barbara Skinner of Cape May with regard to Beach Theater and reviewed its contents concerning the Beach Theater structure

which included research on William Hunt of Hunts Theaters. Mr. Nehmad again strenuously objects to the participation of the HPC solicitor. Mr. Thomas (get@civics.com) acknowledges the e-mail but stated he was given Ms. Skinner advice regarding the structure as it pertains to obtaining the National Historic Landmark and not the realm of the City of Cape May Historic District.

Mr. Pitman then announced dates for the next Zoning Board Meeting on December 15, 2010 for two (2) applications that must be heard due to time line issues. Dates for the continuation of the Franks Investments (Beach Theater) are Thursday, January 27, 2011 @ 6:30pm and January 31, 2011 @ 6:30pm.

**Adjournment was made by Mr. White, Seconded by Mr. Schmidtchen at 10:25 PM, with all in favor.**

**Respectfully submitted: Edie Kopsitz, Recording Secretary.**

**Adoption date:**

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