

**City of Cape May Zoning Board of Adjustment Meeting Minutes
December 15, 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 6:30 P.M.

Roll Call:	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
	Mrs. Inderwies, Alt 2	Present

Also Present: Edie Kopsitz, Recording Secretary
George Neidig, Board Solicitor
Craig Hurless, P.E., P.P., Board Engineer

Absent: Mary L. Rothwell, Zoning Officer

Minutes: August 26, 2010

Motion made by Mr. Iurato to approve the minutes of August 26, 2010. 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.

Minutes: September 30, 2010

Motion made by Mr. Iurato to approve the minutes of September 30, 2010. Seconded by Mr. White, **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 Lot 7

Member Mr. Schmidtchen wrote an amendment to the resolution that members perused and Mr. Neidig concurred and will amend the Resolution.

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

Applications:

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

Davis, 1127 New Jersey Avenue, Block 1116 Lot 15 & 16 Hardship Variances

Louis C. Dwyer, Esquire appearing for the applicant Catherine Davis who was present. Ms. Davis's professional Alan Blauth, Architect and Joseph Maffei of Engineering Design Associates were also present and all were sworn in. Mr. Dwyer gave a brief history on the property and informed the members that the applicant proposes to demolish an existing single-family dwelling and construct a new three story single family home with an accessory detached garage with off street parking for (3) three vehicles. With photographs marked A-1 (project site from New Jersey & Reading Avenues) & A-2 (view of property from the intersection and the rear of New Jersey & Reading Avenues), he informed the members that the structure was not historic and clarified the variances requested.

Mr. Maffei testified using a color rendering marked A-3 from his Variance and Landscape Plan dated August 18, 2010 with revisions to December 7, 2010. He indicated that the property has two (2) front yards and that the foundation will be back 1-½ feet from current location with the garage on Reading Avenue site to maintain the line of site with other buildings on the street. He testified the new layout was a better use of the property, giving a better use of the backyard and conforming to the Reading & New Jersey Avenues streetscape with it being set back further than the majority of the properties. He stated there is no detriment to the Zoning due to the property is on the corner and the setback are generally greater than the set backs of the properties (Reading & New Jersey Avenues). He commented in considering the "balance test" required by zoning the proposed will provide better open space by minimizing the driveway and placing the structure back.

Board Engineer, Craig Hurless then reviewed his report of December 9, 2010 clarifying the description for the membership. He detailed the proposal and verified the variances as follows; §525-14B Table 1 Building setback and §525-54A(3) (f) and Garage in building Setback. Mr. Hurless refers to his completeness review on pages 2 for the C & D Variances items, #20, #21, #24, #26 & #27. He addressed the Zoning table on page 3 for the R2 District and sited ordinance #525-15 and reiterated that Multi family dwellings are not a permitted use in this zone. His General Review comments on pages 4, 5 & 6, #1, #2, #3, #4, #5, #6, #7, #8 HPC approval required and #9 indicates the request does not create additional COAH obligation to the applicant.

Members were positive on the application and commended the applicant and their professionals. Questions from members were directed to the Board Engineer for clarification regarding set back requirements for a corner property, site triangle concerning an existing pine tree and vehicular traffic flow. Mr. Hurless responded to the questions in detail referring to AASHTO.

Meeting opened to the Public at 7:10 pm, with no one coming forward the public portion was closed.

Motion made by Mr. Williams to approve the checklist waivers as noted on Mr. Hurless completeness review report dated December 9, 2010 pages two (2) of 5, # 20, #21, #24, #26 & #27. Seconded by Mr. Schmidtchen and carried 7-0. Those in favor: Mr. Iurato, Mr. White, Mr. Williams, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Todd and Mr. Pitman. Those Opposed: None. Those Abstaining: None.

Motion made by Mr. White to grant the two (2) Variances for both the house and garage as stated - §525-15B (1) Table 1 for Building Setback and §525-54A(3)(f) Garage in Building Setback. Seconded by Mr. Schmidtchen, carried 6-1. Those in favor: Mr. White, Mr. Williams, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Todd and Mr. Pitman. Those Opposed: Mr. Iurato (who voiced his vote). Those Abstaining: None.

Motion made by Mr. White for approval of the Conditions noted on pages four (4) through six (6) of Mr. Hurless report dated December 9, 2010 items #1, #4, #5, #7, #8 and #9 the last sentence regarding COAH. Seconded by Mr. Schmidtchen, carried 7-0. Those in favor: Mr. Iurato, Mr. White, Mr. Williams, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Todd and Mr. Pitman. Those Opposed: None. Those Abstaining: None.

Chairman Pitman called for a five (5) minute recess at 7:15pm. Meeting resumed at 7:20pm.

**Fennerty, 1001 Beach Avenue, Block 1095 Lot 16
Appeal of the Administrative Officer/HPC - Variance**

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

Mr. Williams recused himself from the application. Mr. Fineberg representing the Historic Preservation Commission requested that Member Stephen Todd to step down from the application due to Member Todd and his wife having a recent application (July and September of 2010) before the HPC similar to the one being heard this evening that was initially denied and later granted with an amended application that included a material change. Mr. Fineberg felt Mr. Todd would not be objective. Mr. Dwyer, Attorney for the applicant felt due to this being a de nova hearing it was presumptuous of Mr. Fineberg to make such a statement citing this does not fall in the conflicts enumerated by William Cox or Ross as well as the Zoning Land Use Administration and believes Mr. Todd does not have a conflict or exhibits any prejudice. Mr. Todd denied any bias towards the HPC and refused to step down. Mr. Neidig shared his interpretation of both Cox and Ross and does not believe it is an overt conflict. Chairperson Pitman asked the Members if any had reservations about Mr. Todd partaking in this hearing, all were canvassed and they felt it was not necessary for Mr. Todd to recuse himself.

Louis Dwyer, Esquire was present representing Lawrence Fennerty owner and professionals Ed Bramble and Dave Adams of Dave Adams Roofing were sworn in by Mr. Neidig. Mr.

Fennerty gave testimony that this property has been in his family since 1937 and confirmed his property is a certified historic structure and the roofing material on the structure is cedar shake in deplorable condition (several leaks) in dire need of replacement. Mr. Fennerty testified to replace with a cedar shake is expensive and the new cedar roofs would have half the lifespan of a synthetic roof. Mr. Dwyer submitted into evidence **A-1** which included a list of 96 Key Buildings in the Historic District and their roofing material (tin, asphalt, asbestos, cedar shake, tin & wood mix, red tile and slate). Color & Black and white photographs denoting Key structures with various roofing material (cedar shake, slate and the majority are asphalt) including the applicants and written documentation were passed around and examined by every member and marked into evidences as follows: **A-2** 1117 New Jersey Ave, **A-3** 22 Gurney Street, **A-4** 1001 Beach Avenue (the applicants cedar shake with plastic for leaks), **A-5** 819 Beach Avenue side view, **A-6** HPC Resolution #2010-31, **A-7** HPC Resolution 2007-48, **A-8** 819 Beach (front view) **and A-9** Historic Building Survey, **A-10** Streetscape form Jefferson Street toward Beach Avenue, **A-11** 1000Beach Avenue left side of street, **A-12** Beach Avenue to Jefferson Street right side of street, **A-13** House on corner of Beach Avenue & Jefferson (Roman Catholic Priest structure that received a HPC Award with an asphalt roof), **A-14** Queen Street to Beach Avenue, **A-15** 1001Beach Avenue street view the applicants the only one with cedar shake in a two block radius, **A-16** close up of 1001 Beach Avenue denoting the tarps, **A-17** 1117 New Jersey Avenue, **A-18** The Baronet 819 Beach, **A-19** 22 Gurney Street and 7 houses with asphalt roofs, **A-20** Beach Avenue and Howard Street mix (Hotel & houses) side view, **A-21** Beach Avenue and Howard Street (front view), **A-22** Beach Avenue & Howard (Stockton Inn), **A-23** The Baronet on Beach Avenue (Key w/asphalt), **A-24** Beach Avenue & Jefferson Street full view 2 blocks with asphalt roofs, **A-25** Queen Street 2 block view of roof w/asphalt, **A-26** Mr. Fennerty next door neighbor asphalt roof (Not sure of status he stated Key) and **A-27** Beach Avenue towards Coast Guard 3 houses (only 1 wood cedar shake) (**note: black and white photographs are A-10 through A-27**).

Dave Adams testified his professional experience in the Cape May Area and elucidated the useful life of cedar roof in a seashore environment is approximately 20 years (stating only 15 to 18 years) and the cost for this applicants roof in over \$100,000. He then showed and submitted a sample board (with 8 color & styles) of the proposed dimensional asphalt (mixed with fiberglass) roof (that would resemble a cedar shake roof, it would cost less than ½ of the cedar shake with the estimated life of approximately 45 to 50 years and will sustain up to 110-mile hour winds. He then stated that the cedar of today is not the quality or depth of the past and is not as durable. Members questioned the asphalt resembling a cedar shake roof and Mr. Adams addressed their concerns describing the application.

Members questioned the Mr. Adams at length regarding the shingles dimensions, quality of the asphalt to resemblance to cedar shake, the expense of cedar shake versus asphalt, durability of present day cedar siding durability, UV breakdown on the asphalt shake, comparisons to the applications/installation for each product (monetary & labor), warranty on cedar shake and the wind sustaining on the cedar compared to asphalt. Mr. Adams responded to each member at length.

Mr. Fineberg cross examined Mr. Adams with questions regarding the amount of layers of cedar shake currently on the structure, difference in written estimate compared to the presentation, current status on different type cedar and the applications they require. Mr. Adams responded in detail.

Lou Dwyer called Edward Bramble (locally known) who clarified in detail his credentials and presented a detailed resume that was marked as exhibit **A-28** and was read into the record. He testified that the roof on Mr. Fennerty structure is secondary to the design, bulk and presence of the house. He elaborated in detail his reasons stating the house was designed as a Cotswold cottage (detailed history which included the original owners, design with the prominence on the brick walls, clapper siding, gables and not the roof) with the roof simply keeping the wind out with the roofing material being secondary to the other criteria of the structure. He then testified that the quality of present day cedar is poor in comparison to what is on the structure and that the proposed material will not affect the presence of the house. He reiterated that the house is not a shingle style house but unique in design and should not be required to have an expensive Cedar Shake roof.

Members questioned Mr. Bramble at length with regards to his knowledge of the Historic Preservation Commission Design Standard pertaining to the "Roofs" section page 54 & 55 highlighting excerpts from the policy summary, definition pertaining to Key/Contributing Buildings and the verbiage, as it should replicate to which he confirmed his knowledge and responded at length his opinion. He stated again that his expertise dictates that a roof is secondary and to place a financial hardship. Mr. Fineberg cross examined Mr. Bramble regarding his knowledge of the Design Standards page 54 regarding Roof on Key Contributing with Mr. Fineberg reiterating the positive verbiage concerning the materials used. Mr. Bramble responded the word should not shall is being used and again stated Mr. Fennerty house is not a shingled structure.

Chairman Pitman called for a five (5) minute recess at 8:35pm. Meeting resumed at 8:45pm.

Mr. Dwyer entered into evidence **A-29** HPC minutes for 651 Hughes Street (Todd) and Resolution #2010-34 and referenced this stating what his applicant Mr. Fennerty is requesting is not a unique and stated concessions by the HPC have been made on other Key/Contributing structures.

Mr. Finberg cross-examined Mr. Fennerty referring to the streetscape photographs and asked him when the roofs that have asphalt were placed and again stated the HPC Design Standards were adopted in 2003. Mr. Fennerty responded he did not know when the roofs or what material they were prior but stated the asphalt roofs are there now.

Meeting was opened to the Public at 8:55 pm, coming forward were: Joanne Heal, 16 Queen Street, is in favor of the asphalt roof. **Georgette Koehler, 1005 Beach Avenue** is the applicants next door neighbor, concurs that Cedar Shake of the present does not meet it past in durability and in favor of a asphalt roof. **Warren Coupland, 737 Washington Street,** stated he a member of the Historic Preservation Commission, clarified the HPC Design

Standards governed by the NJ State Department of Interiors were followed and a wooden cedar shake roof is appropriate for this Key structure, he apprised the Zoning Board Members of the City of Cape May being on the Watch List and what it entails. * Mr. Dwyer objected to Mr. Coupland's mention of the Watch List stating it sounds threatening and unfair to his client. Mr. Fineberg's objects stating the public or members of the HPC have a right to be heard because this is an appeal to their unanimous decision. Mr. Neidig advised to only use what is relevant to the appeal.* Mr. Coupland was permitted to continue, he stated there are companies that are offering 30 to 50 years on a cedar shake products and proper installation is a priority. He gave the members several web sites to view to verify. Mr. Coupland stated the members of the HPC gave a unanimous decision for this Key structure twice (2007 & 2010). He cited the Design Standards page 54 regarding Roof. §6. Zoning Board Member Mr. Schmidtchen stated this section regarding roofs is the only section, which mentions cost-effective/cost of materials if no longer available. Mr. Coupland disagreed with Mr. Schmidtchen's interpretation of the section. **With no further comments the public portion closed at 9:20pm.**

Mr. Fineberg's closing remarks entailed reiterating that the property has a Key rating the highest level of Historic integrity. He cited the definition of a Key Structure from page 7 of the Design Standards. He referred to exhibits A-6 the HPC Resolution #2010-31 & A-7 HPC Resolution #2007-48 stating it was a unanimous decision of the HPC with justification. He affirmed statements from Mr. Brambles report and noted for the record using the photographs submitted the prominence of the roof from all angles. He told the members the HPC is charged with preserving the Historic Structures not replicate Historic Structures.

Mr. Dwyer's reiterated the prohibitive cost of the roof; he is not saying it is a financial hardship to his client. He stated he believes the Historic Preservation Commission in this case was wrong and that the Zoning Board can overturn it and if the Board concurs with the HPC they have noticed for hardship. He told the members that a \$100,000 for a roof that will only last 10 to 15 years is unreasonable. Mr. White, Zoning Board member asked Mr. Fennerty if the roof could be done in sections. Mr. Fennerty responded the leaks are in every section and the whole roof must be replaced.

Chairperson Pitman called for a 5 (five) minute recess at 9:50pm. Meeting resumed at 9:55pm.

Mr. Neidig explained the procedure of a de nova hearing and clarified the motion should indicate if the applicant made the case to have an asphalt roof instead of a cedar roof and members can consider any hardship, it could be done separately or in a combination motion. **Chairperson Pitman then requested a show of hands for a combination motion with all hands showing it was unanimous for a combination motion.**

Motion made by Mr. Iurato that the Zoning Board Attorney draw up a Resolution in the affirmative to overturn the Historic Preservation Commission decision on the use of Cedar Shakes and to apply all members reasons in the Resolution. Seconded by Mr. Meier, **carried 7-0.** Those in favor: Mr. Iurato, Mr. White, Mrs. Hutchinson, Mr.

Schmidtchen, Mr. Todd, Mr. Meier and Mr. Pitman. Those Opposed: None. Those Abstaining: None.

All members voiced the reason for their vote in detail for the record.

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

Respectfully submitted: Edie Kopsitz, Recording Secretary.

Adoption date:
