

City of Cape May Zoning Board of Adjustment Meeting Minutes
June 18, 2009

Opening: In compliance with the Open Public Meetings Act, adequate notice of the meeting was provided. Chairperson Pitman called the meeting to order at 7:00 P.M.

Roll Call:	Mr. Pitman, Chairperson	Present
	Mr. Williams, Vice Chairperson	Present
	Mrs. Hutchinson	Present
	Mr. Iurato	Present
	Mr. Murray	Present
	Mr. Schmidtchen	Present
	Mr. Todd	Present
	Mr. White, Alt 1	Present
	Mrs. Johnson, Alt 2	Absent

Absent was George Neidig, Esquire and Board Solicitor

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

Minutes: Motion made by Mr. Iurato to approve the minutes of May 21, 2009. Seconded by Mr. Schmidtchen, carried 7-0. Those in favor: Mr. Iurato, Mr. Murray, Mr. Williams, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Todd and Mr. Pitman. Those opposed: None. Those abstaining: None.

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

Applications: **Hendricks, 106 Trenton Avenue, Block 1131 Lot 17 & 18**
Appeal from Decision of the Historic Preservation Commission

Mr. Schmidtchen recused himself from this application.

Louis C. Dwyer, Esquire appearing for the applicants Charles and Patricia Hendricks who were present. He explained the reason for this meeting is to allow his clients the use of Andersen Woodwright windows to replace sixty (60) vinyl windows on the main structure and five (5) windows in the approved addition and he will prove that the Historic Preservation Commission approval for wood windows due to their Design Standards was an indecisive action. He elaborated on the Zoning and Land Use Administration procedures and contends the Historic Preservation Commission relies on their recommendations after review of an application presentation. Mr. Dwyer referred to the transcript of the HPC meeting of April 13, 2009, a sample of a Anderson Woodwright window for the Boards perusal, all documentation including minutes the minutes of April 13, 2008 that reflected the vote of three (3) to three (3), proofs that the HPC on numerous

occasions approved Andersen Woodwright windows in the Historic District on the following applications; Sea Mist (contributing structure), Wilson Jeremiah (contributing structure), Lang (contributing structure), Knipper (contributing structure) and numerous HPC approvals of Woodwright windows in non rated structures in the Historic District that was enclosed with the application; Dutton 916 Stockton Avenue, Preet Properties LLC 232-234 Windsor Avenue, Surf Motel, Hynes 105 Queen Street, Adis Inc 1317 Beach Avenue, Palace Hotel 1101 Beach Avenue, Umosella 1025 Beach Avenue stating it is difficult to understand how the HPC can determine that in one case it is appropriate to replace all existing vinyl windows with Andersen Woodwright windows and in similar case it is not. He contends that given the testimony and evidence presented to the HPC its decision was contrary to the credible proofs before its own history of decisions and as a result was arbitrary, unreasonable and capricious. Mr. Dwyer then revisited the vote that was tied 3 to 3 noting the three (3) members in favor of the replacement of the 65 windows primarily because they considered the Woodwright windows to be a substantial improvement in making the structure more historically appropriate. He stated the three (3) members that opposed the Woodwright windows were because they did not want to deviate from their guideline (Design Standards). He referred to the minutes of April 13, 2009 stating the need for compromise and to revisit the Design Standards to add other products. He contends that there was an error in the decision and places an undo burden on the applicant.

Robert Fineberg, Esquire Attorney for the Historic Preservation Commission clarified for the record the Historic Preservation Commissions reasons for appearing tonight and stated it was not to determine if Andersen Woodwright windows are to be placed in the contributing structure but to determine whether the HPC made an error and whether there was enough evidence to support the decision referring to 525-7 sub section 5 (Appeals) & NJSA 40:55-11 (Determination). He then described the type of Historic Preservation Commission the City of Cape May has and it is a strong commission governed by the same City of Cape May Code Book (Zoning Ordinance) as the other Boards. He then cited section 525-37 dealing with the issuing of the Certificate of Appropriateness as well as section "C" paragraph "3" that states it's (HPC findings) **report not a recommendation** is then forwarded to the Administrative Office (Construction Office). Mr. Fineberg stated that the Historic Preservation Commission did not make an error are as follows; 1). HPC is mandated by its Design Standards (adopted in 2003 into the Zoning Ordinance 525-39A) and referred to page 59 of the Standards, which is clear of the use of wood on a contributing structure. 2). Following the mandate to preserve Historic integrity of the properties in the Historic District. 3). No prior decisions made that bounds them, no setting of precedence stating every case does stand alone. He compared this decision as to the same of all the Boards stating no precedence setting. Mr. Fineberg stated that only one representative of Andersen came for the presentation stating various reasons for the Woodwright product but none for the wood window product (Pella or Coradco) that have been approved in the Historic district. He contends that the Commission did not make an error but followed the Design Standard adopted by the Zoning Ordinance.

Mr. Neidig after conferring with the Attorney's and the majority of members, it was determined that the public comment section of the meeting should not apply citing the Appellate process makes a decision based upon the record, testimony from legal counsel and exhibits introduced. Mr. Dwyer differed stating his client was directed to notice within 200 feet. Members felt testimony or comment is not proper for this proceeding.

A motion was made by Mr. Murray to not take any testimony from the public with respect to this appeal. Seconded by Mr. Iurato, **carried 5-1.** Those in favor: Mr. Iurato, Mr. Murray, Mr. Williams, Mrs. Hutchinson, Mr. White and Mr. Pitman. Those opposed: Mr. Todd. Those abstaining: None.

Mr. Neidig then informed the Board of the procedures for the review of Historic Preservation decision and summarized both Attorney presentations. Mr. Hurless briefly summarized his report dated May 8, 2009.

Chairman Pitman called for a five (5) minute recess so the members could view the Andersen Woodwright window presented this evening.

The majority of members concurred that a split vote does present inconsistency amongst the HPC Commission. Members were afforded time to question both counsel's in depth regarding documentation, procedures of the Commission, quotation verification of the Design Standards, procedures of the appeal and comments regarding the use of the woodwright window versus wood.

A motion was made by Mr. Murray to grant the appeal. Seconded by Mr. White, **carried 6-1.** Those in favor: Mr. Murray, Mr. Williams, Mrs. Hutchinson, Mr. Todd Mr. White and Mr. Pitman. Those opposed: Mr. Iurato. Those abstaining: None.

Chairman Pitman call for a Five (5) minute break at 8:50pm. The meeting resumed at 8:55pm. Mr. Schmidtchen returned to the meeting at 8:50pm.

**Hector, 213 Broadway, Block 1023 Lot 1
Hardship Variance**

Mr. Louis Dwyer, Esquire, Attorney for the applicant, introduced owner Bruce Hector. Professionals for the applicant Stephen Fenwick of SJ Fenwick Associates, Architect & Planners and Mr. Matthew Hender, Professional Planner from Engineering Design Associates, were sworn in. Mr. Dwyer described the proposed subject property as being in the R-2 Zoning District on the corner of Broadway and Windsor Avenue and was once and duplex that was converted to a single – family residence by Resolution #6-11-97:6. He stated the application proposes some minor renovations and slight expansion for handicap accessibility. He produced a Report from William Sweeney, Surveyor and marked A-1 that depicted adjacent property front yard set backs and stated the setback are considerably closer to the property line compare to what they are proposing.

Mr. Fenwick testimony followed by describing the structural changes using a color rendering of the Schematic Design Plan dated January 20, 2009 with a revision date of May 15, 2009 of the first floor plan, second floor plans with the rear and side elevations. The minor renovations are to the rear of the building by removing masonry wall, concrete patio deck with stairs that currently protrudes into the rear yard further than what is being proposed (7.67 to 8.67). The renovation will consist of rebuilding the rear of the property to allow for handicap ramp that will create a barrier free access and entrance to a mud - room that will contain an elevator that will be ADA compliant. He clarified that the encroachment will not come out any further than what exists. The application received HPC approval on April 13, 2009 by Resolution #2009-15.

During testimony from the applicant's Engineer, Matthew Hender, he referred to his site plans dated February 9, 2009 with revisions dated May 22, 2009 describing the two (2) bedroom single-family dwelling. He detailed the anticipated improvements on an item-by-item basis. He documented the variances requested for lot size, lot width, lot frontage, building setback, rear yard, lot coverage, non conforming structures on non conforming lots, zoning review and established reasons for the variances requested. He stated it would improve the pre-existing non-conformity with no detriment to zoning given the minor nature of the relief.

Board Engineer, Craig Hurless then reviewed his report of June 5, 2009 clarifying the description for the membership. He detailed the proposal and verified the variances as follows, 525-15B Table 1 Lot Size, 525-15B Table 1 Building Setback, Lot Width, Lot frontage, Rear Yard Setback, Lot coverage, 525-72D, Non-conforming Structures on Nonconforming Lots and 525-72E Zoning Review. Mr. Hurless refers to his completeness review on pages 2 and 3 for the C & D Variances items #20, #21, #23, #24, #25, #26, #27, #29, #30, #31, #32 & #3. He addressed the Zoning table on page 4 for the R2 District and sited ordinance #525-15 and he continued with his General Review comments on pages 6 #1, #2, #3, #4 and #5, #6, #7, #8, #9, #10 indicates the request does not create additional COAH obligation to the applicant.

Meeting opened to the Public with no one coming forward the public portion was closed.

The membership was positive on the application with minimal questions regarding the project. They complimented the applicant on the improvements proposed stating it would add balance to the property.

Motion made by Mr. White to grant all variances; Lot Size, Building Setback, Lot Width, Lot Frontage, Rear Yard Setback, Lot Coverage, Non-conforming Structures on Nonconforming Lots and Zoning Review. Seconded by Mr. Schmidtchen, **carried 7-0**. Those in favor: Mr. Iurato, Mr. Murray, 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 Completeness Waivers as per Mr. Hurless

report dated June 5, 2009 #20, #21, #23, #24, #25, #26, #27, #29, #30, #31. #32, #33 for the detail required for “C” & “D” Variances and Conditional Use approval. Seconded by Mr. Murray, **carried 7-0.** Those in favor: Mr. Iurato, Mr. Murray, Mr. Williams, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Todd and Mr. Pitman. Those opposed: None. Those abstaining: None.

Adjournment: **Moved by Mr. Schmidtchen at 9:25 PM, with all in favor**

Respectfully submitted: Edie Kopsitz, Recording Secretary.