

**City of Cape May Planning Board Meeting Minutes
June 16, 2010**

Opening: The meeting of the City of Cape May Planning Board was called to order by Vice Chairman Shuler, at 7:00 PM. In compliance with the Open Public Meetings Act, adequate notice was provided.

Roll Call:	Mr. Bezaire,	Chairperson	Absent
	Mr. Shuler,	Vice Chairperson	Present
	Mayor Dr. Mahaney		Present
	Mr. Elwell		Present
	Mrs. Nelson		Absent
	Mr. Jones		Present
	Ms. Weeks		Present
	Mrs. Steenrod		Present
	Mr. Winkworth		Absent
	Mr. France, 1 st Alternate		Present
	Mr. Briant, 2 nd Alternate		Present

Also Present: George Neidig, Esquire – Board Solicitor
Craig Hurless, PE, PP, CME Associate - Polistina & Associates
Edie Kopsitz, Recording Secretary
Mary L. Rothwell, Board Assistant/Zoning Officer

Minutes: April 27, 2010

Motion made by Mr. Elwell for approval of the Minutes of April 27, 2010. Seconded by Ms. Weeks and **carried 8-0.** Those in favor: Mr. Elwell, Ms. Weeks, Mrs. Steenrod, Dr. Mahaney, Mr. Jones, Mr. France, Mr. Briant and Mr. Shuler. Those opposed: None. Those abstaining: None.

Resolutions:

Kramer, 325 Washington Street, Block 1037 Lot 2

Motion made by Mrs. Steenrod for approval of the Resolution #6-16-2010:1. Seconded by Mr. Elwell and **carried 8-0.** Those in favor: Mr. Elwell, Ms. Weeks, Mrs. Steenrod, Dr. Mahaney, Mr. Jones, Mr. France, Mr. Briant and Mr. Shuler. Those opposed: None. Those abstaining: None.

Chew, 1400 Texas Avenue, Block 1160 Lots 54

Motion made by Mr. Jones for approval of the Resolution #6-16-2010:2. Seconded by Mrs. Steenrod and **carried 8-0.** Those in favor: Mr. Elwell, Ms. Weeks, Mrs. Steenrod,

Dr. Mahaney, Mr. Jones, Mr. France, Mr. Briant and Mr. Shuler. Those opposed: None. Those abstaining: None.

Bantry Bay, 901 Stockton Avenue, Block 1082 Lots 21

Motion made by Mrs. Steenrod for approval of the Resolution #6-16-2010:3. Seconded by Mr. Elwell and **carried 8-0.** Those in favor: Mr. Elwell, Ms. Weeks, Mrs. Steenrod, Dr. Mahaney, Mr. Jones, Mr. France, Mr. Briant and Mr. Shuler. Those opposed: None. Those abstaining: None.

Applications:

**Cape Jetty LLC, Preliminary Site Plan/Minor Subdivison/Variances
Beach/Second/Third Avenues
12 Second Avenue, Block 1012 Lot 9
6 Second Avenue, Block 1012 Lots 10,11 & 12
11 Third Avenue, Block 1012 Lots 15 & 16**

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

Mr. Neidig announced the procedures that will be followed for the Cape Jetty LLC application. Louis Dwyer, Esquire was present for the applicant Cape Jetty LLC, Emmanuel DeMutis, owner along with professionals Vincent Orlando - Engineering Design Associates, Louis Connelly, Engineer of Van Note Harvey Associates, Stephen Fenwick – project Architect of Fenwick Architects were sworn in by Mr. Neidig.

Mr. Neidig stated for the record that Mrs. Steenrod and Mr. Jones who were not present for the May 25, 2010 hearing have presented notarized certifications that they both listen to the tape of the session and can hear the matter. He also informed the members that present were Mary Maudsley, Esquire of April & Maudsley for Ted and Deborah Hooven residents who oppose the application and Edward Johnston, Esquire for the Cove Restaurant.

Mr. Dwyer apprised the members with a brief history of the Cape Jetty, LLC describing the Motel as a product of the 1950's and the rooms do not provide what modern travelers are seeking. He clarified the few attempts for approval to no avail and explained the new application that was briefly reviewed by the members and described the 33 unit hotel worthy of 1st class accommodations in the C-3 District on lot 15.01 with 68 bedrooms, with a pool & parking area. The Minor Subdivision sought is for approval of lot 15.02 located in the R-2 district with an accessory pool that will meet all of the bulk zoning requirements and is permissible in both zones and meet the criteria. He reviewed the brief testimony presented at the last hearing (May 25, 2010) by Stephen Fenwick, Architect as to the Architectural Plans in conjunction with Site Plan review for the proposed 33 Vincent Orlando as to the minor subdivision, variance application and hotel site and plan revisions as instructed by the Fire Official. The Fire Official constructed a

new letter dated June 9, 2010 (**marked A-6**), which was read for the record by Mr. Orlando after a meeting with Mr. Hurless and Mr. Orlando reviewing the revised plan.

For the Minor Sub-Division Mr. Orlando testimony encompassed a revised site plan dated June 2, 2010 which includes a enlarged access easement to twenty-five (25) feet in width with a paved area of twenty (20) feet in width stating the changes would eliminate any gray areas concerning code requirements applicable to this application. Testimony regarding Mr. Matinelli revised sub division plan dated June 3, 2010 to match the EDA subdivision plan with the correct easement width and Mr. Fenwick who revised his plans dated June 2, 2010. Testimony by Mr. Orlando continued regarding the variance request fro NJSA 40:55D-35 and reffered to NJSA 40-55D-36 of the Municipal Land Use Law describing building on a lot not abutting a public street. He also referred to documentation in a bounded form (**marked A-5**) of variance approved subdivision and variance that have been granted pertaining to drive isle widths substantially less than 25 feet and as low as 10 feet. Submitted and marked (**A-7**) was correspondence from Robert Smith, City of Cape May Public Works Superintendent stating the parking design was an improvement and will remove the hazard of backing onto the city owned streets and is compliance with the City's Stormwater Management Plan. Mr. Orlando concurred with Mr. Smith correspondence stating this application is eliminating the back out spaces on Beach Avenue, one point of ingress and egress encouraging the traffic circulation and will create additional street parking. He also stated all parts of this application are subject to all State, County and local approvals including the permit process.

Mary Maudsley, Esquire proceeded with her lengthy cross-examination referring Single Family dwelling to NJSA 40:55D-35 & 40:55D-36 stating the positive criteria indicates there is to be a hardship and feels a hardship criteria was purposely omitted. Mr. Orlando responded he did not agree with her interpretation. She debated the issue concerning the distance of the Single Family to the dune area, she referred to a letter from the Department of Environmental Protection dated November 7, 2007 that had been commented on by the Board Engineer. Mr. Dwyer objected stating this letter was for a past application and does not pertain to the current application. Mr. Neidig responded stating his legal opinion, Mr. Hurless making his professional opinion regarding his comments and the Board Members all concurred the Planning Board does not have jurisdiction over DEP. Ms. Maudsley continued by addressing numerous concerns and they were enumerated; Asbestos material removal on the front of the building referring to a Phase I Environmental Impact Statement submitted on a previous application. Mr. Dwyer responded that all hazardous material would be professionally removed. Dune encroachment pertaining to the proposed hotel (closeness to ridge), Historic Preservation Commission approval, shared driveway easements, trash removal, product delivery, compared other properties in the neighborhood, flag lots and addressing of the negative criteria impertinent to the neighborhood.

Mr. Dwyer and Mr. Orlando responded to all questions but elaborated on the flag lots testifying that the access easement would be a permanent easement that did not cause a variance (lot coverage) and referred to an aerial map mark (**A-8**) denoting a lot with a flag lot and stated it was a land lock lot.

Edward Johnston, Esquire representing the Cove Restaurant questioned Mr. Orlando regarding a traffic impact study and why it was not conducted for this plan. Mr. Orlando responded that it was not necessary and stated his reasons. Mr. Johnston questioned the inside ramp requesting clarification on the size and wanted to know if it was included in the lot coverage. Mr. Orlando responded to the question that it was included.

Craig Hurless, Board Engineer updated the membership summarizing his report dated June 9, 2010. He reiterated the applicant's proposal in his description for Preliminary Site Plan and Minor Subdivision Review. He clarified the number of units at 33 with 68 total bedrooms. He clarified the Completeness review on page 3 detailing general requirements for Preliminary Site Plan approval as outlined in §417-5C of the City of Cape May Code addressing (v), (w) & (aa), page 4 the details required for Minor Subdivision approval as outlined in §445-17 & §445-18 map details of the City of Cape May code addressing L & S. He addressed his pages 5 & 6 containing the Zoning Charts as C-3 §525-24 Hotel Motel District (Existing and New Hotel), Off Street Parking Standards §525-49 with question that Mr. DeMutis responded and clarified, R-2 District §525-15 for block 1012, 15 & 16 and the proposed lot 15.02 reviewed the requirements of the existing and proposed. He clarified the Variances sought NJSA 40:55D-35 – Permit to Build on a lot not abutting a street and §525-24B (1) Table 2 Side Yard Set Back with his review comments #1 and #2 a technical variance for an existing hotel. Mr. Hurless continued with his General Review comments on page 7 through 11 itemizing Zoning #1, #2, #3, #4, Landscaping #5, #6, #7, #8, Parking, Circulation & Traffic #9 (with Mr. Orlando responding), #10 (Mr. DeMutis responded to the number of four (4) employees), #11, Design Standards #12 was addressed, Grading & Stormwater Management #13 was addressed, Utilities #14, #15, #16, Environmental Impact #17, #18 addressed, Map Filing Law Review – Minor Subdivision #19, Council on Affordable Housing #20, General Comments & Other Jurisdictional Approvals #21, #22, #23, #24 and #25. Mr. Dwyer agreed to all conditions set forth in Mr. Hurless's report.

Meeting was opened for Public comments at 8:35pm. Dr. Michael O'Conner of 21 Second Avenue opposes the application and has presented a photograph marked **(O-O#1)** showing the residential lot. He contends the property is small, narrow, environmental issues, stated the applicant never addressed evidence for a hardship variance and insists this new construction would be additional burden to a highly traffic area. **Deborah Hooven 14 Second Avenue** opposed the application and felt very strongly to an Environmental Impact Statement due to the fact she has a terminal disease and the removal of the asbestos on the current building would be airborne affecting not just her but others who are ill in the area. She would have to relocate during demolition. **Dr. Scott Maslow, 18 Second Avenue** opposed the application, had questions for Mr. Orlando regarding flag lots, street and driveways and referred to Exhibit A-5. Mr. Orlando responded in detail. Mr. Maslow read a lengthy letter into the record stating his reason for opposing citing the project is too massive for the neighborhood, safety concerns, parking & additional traffic impact to the area, environmental concerns, hardship variance was not addressed and submitted 13 pages marked **(O-M2)** of

photographs depicting the streetscape and a statement from the application file marked **(O-M 3)** which was debated at length on the authenticity of the document.

Mayor Dr. Mahaney requested an announcement be made advising the public present that the Business/Discussion section on the Agenda concerning the Proposed Zoning Change to Texas Avenue will not be heard do to the lateness and complexity of the Application being heard this evening. Mary Rothwell confirmed that she would notice the public (verifying the list with the Clerk) and the date for the hearing of the Proposed Zoning change to Texas Avenue will be Tuesday, July 27, 2010 at 7:00pm.

Vice Chairman Shuler announced a ten (10) minute recess at 9:15pm. The public's comment resumed at 9:25pm. Theodore Hooven, 14 Second Avenue opposes the application due to trash containment issues, traffic congestion along with pedestrian safety, density safety factors, commercial vehicles deliveries, flag lot, the uniqueness of the dunes, wildlife disturbance (gave example of the Monarch Butterflies). Mr. Hooven presented into evidence several photographs that were marked into evidence and perused by the members; # **O-H4, #O-H5, #O-H6, #O-H7, #O-H8** Standing water dated June 16,2010, #**O-H9, #O-H10, #O-H11, #O-H12, #O-H13 and #O-14. John Morgan, 14 Second Avenue,** strongly opposed application citing trash concerns regarding the dumpster, lack of services for a state of the art building (one elevator), traffic congestion, stated the seaboard walk can not be sustained and submitted into evidence marked #**O-M15 & #O-M16** and was perused by the membership photographs addressing his opposition. **Chris Johnston, 405 Beach Avenue,** opposes the application stating the structure massive in height and volume, several traffic concerns (additional congestion), safety issues, and CAFRA issues and feels the lot is not buildable. **Edward Johnston, 405 Beach Avenue,** submitted into evidence and the memberships perusal photographs marked #**O-J17** aerial (dated 1994) and #**O-J18** and western view from his restaurant and parking area. He states that the hotel will have several windows that will face onto his parking area and contends this will become an issue and feels it is poor planning. **The public portion was closed at 10:35pm.**

Motion made by Mr. France to table the application until June 22, 2010 at 7:00pm. Seconded by Ms. Weeks **and carried 8-0.** Those in favor: Mr. Elwell, Ms. Weeks, Mrs. Steenrod, Dr. Mahaney, Mr. Jones, Mr. France, Mr. Briant and Mr. Shuler. Those opposed: None. Those abstaining: None.

Mr. Neidig announced for the record that no further notice would be given for the Cape Jetty, LLC application.

Adjournment: Motion made by Mrs. Steenrod, Seconded by Mr. Jones to adjourn at 10:40 PM with all in favor.

Respectfully submitted: Edie Kopsitz, Recording Secretary

Adoption date: 7/27/2010