

**City of Cape May Zoning Board of Adjustment Meeting Minutes
January 26, 2012**

Opening: In compliance with the Open Public Meetings Act, adequate notice of the meeting was provided. Vice Chairperson Williams called the meeting to order at 6:30 P.M.

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| Roll Call: | Vacant, Chairperson | Present |
| | Mr. Williams, Vice Chairperson | Present |
| | Mrs. Hutchinson | Present |
| | Mr. Iurato | Present |
| | Mr. White | Present |
| | Mr. Schmidtchen | Present |
| | Mr. Todd | Absent - excused |
| | Mr. Meier | Present |
| | Mrs. Inderwies, Alt 1 | Present |
| | Mr. Lagos, Alt 2 | Absent - excused |

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

Absent: Mary Rothwell, Board Assistant/Zoning Officer

Reorganization:

Oath of Office: Peter Iurato, Diane Hutchinson, Shaine Meier, Lydia Inderwies and Charles Lagos (absent). George Neidig, Board witnessed their signature.

Chairperson:

Mrs. Hutchinson nominated Mr. White for Chairperson. With a motion that nominations be closed by Mr. Iurato and Mr. Schmidtchen seconded that motion. Those in favor for Tom White as Chairperson.: Mr. Iurato, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Meier, Mrs. Inderwies and Mr. Williams and **carried 6-0**. Those Opposed: None. Those Abstaining: Mr. White.

Vice Chairperson:

Mr. Schmidtchen nominated Mr. Williams for Vice Chairperson. Seconded by Mrs. Inderwies and **carried 6-0**. Those in favor: Mr. Iurato, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Meier, Mrs. Inderwies and Mr. White. Those Opposed: None. Those Abstaining: Mr. Williams.

Board Attorney:

Mrs. Hutchinson moved to appoint George B. Neidig, Esquire as Board Attorney. Seconded by Mr. Meier **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Williams, Mr. Meier, Mrs. Inderwies and Mr. White. Those Opposed: None. Those Abstaining: None.

Board Engineer:

Mr. Meier moved to appoint Craig Hurless, PE of Polistina & Associates as Board Engineer. Seconded by Mrs. Inderwies and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Meier, Mrs. Inderwies, Mr. Williams and Mr. White. Those Opposed: None. Those Abstaining: None.

Meeting Dates 2012:

Mrs. Hutchinson moved to approve the 2012 Meeting dates as presented. Seconded by Mr. Meier and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Meier, Mrs. Inderwies, Mr. Williams and Mr. White. Those Opposed: None. Those Abstaining: None.

Official Newspaper:

Mr. Meier moved to recognize the Star & Wave as the Zoning Board's primary newspaper and the Press of Atlantic City as the secondary. Seconded by Mrs. Inderwies and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Meier, Mrs. Inderwies, Mr. Williams and Mr. White. Those Opposed: None. Those Abstaining: None.

Minutes:

October 27, 2011

Motion made by Mr. Iurato to accept the minutes dated October 27, 2011 as published. Seconded by Mrs. Hutchinson and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Meier, Mrs. Inderwies, Mr. Williams and Mr. White. Those Opposed: None. Those Abstaining: None.

November 10, 2011

Motion made by Mr. Iurato to accept the minutes dated November 10, 2011 as published. Seconded by Mr. Schmidtchen and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Meier, Mrs. Inderwies, Mr. Williams and Mr. White. Those Opposed: None. Those Abstaining: None.

Resolutions:

Cordea, 1038 Ohio Avenue, Block 1106 Lot 11

Motion made by Mr. Iurato to approve the Corda Resolution #01-26-2012:1 as presented. Seconded by Mr. Meier and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Meier, Mrs. Inderwies, Mr. Williams and Mr. White. Those Opposed: None. Those Abstaining: None.

Koehler, 1095 Beach Avenue, Block 1095 Lot 15

Motion made by Mr. Iurato to approve the Koehler Resolution #01-26-2012:2 as amended with noted correction on page one. Seconded by Mr. Schmidtchen and **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Meier, Mrs. Inderwies, Mr. Williams and Mr. White. Those Opposed: None. Those Abstaining: None.

Application:

**Schu, 29 Gurney Street, Block 1063 Lot 10
Use/ Hardship/Substantial Benefit Variance(s)**

Mr. Hurlless clarified his credentials for the record.

Louis Dwyer, Esquire appearing for George and Theresa Schu who were present along with their professional Stephen Fenwick, Architect and were sworn in by Mr. Neidig. Mr. Dwyer stated the applicants are seeking to add a 136 square foot addition for a master bathroom and closet with an open deck above overtop of an existing first floor which are following the same side and rear setbacks as exists for the first floor. He emphasized the addition is modest with no impact or detriment in allowing this addition. The lot coverage does not change sleeping capacity. He elaborated on meeting of the Historic Preservation Commission January 23, 2012, which gave conceptual approval of the project. He submitted into evidence a copy of the HPC application with attached schematic designs and marked as **Exhibit A-1.**

Steve Fenwick, Architect referred to his plans dated November 28, 2011, with revision dates December 14 & 28, 2011 Sheet A-101 clarifying in detail the floor plan and elevations on all sides. He stated the negative criteria are satisfied indicating the addition is modest.

Board Engineer, Craig Hurlless then reviewed his report of January 4, 2012 clarifying the description for the membership. He detailed the proposal and clarified the variance for positive and negative criteria requirements per NJSA 40:55D-70d(4) Use-Far, NJSA 40:55c(1) Hardship and NJSA 40:55Dc(2) Substantial Benefit. Mr. Hurlless refers to his completeness review on pages 2 for the C & D Variances items, #20, #21, #23, #24, #25, #26, #27, #28, #31, #32 and #33. He addressed the Zoning table on page 3 for the RS District and sited ordinance §525-19 Single Family detached clarifying the standard, required, existing, proposed and status. He continued with the Five (5) variances sought as §525-19B (1) Lot Size, §525-19B (1) Table 1 Lot Width & Lot Frontage, §525-19B (1) Table 1 Rear Yard, §525-19B (1) Side Yard Setback and §525-52 Floor Area Ratio (FAR) – (d) (4) “Use variance. His General Review comments on pages 5 through 6, items #1, #2, #3, #4, #5 and #6.

Chairman White opened the meeting for public comment at 7:00pm to those 200 feet and beyond. Lance Pontin, 30 Gurney Street, testified he was favor of the proposed project and was complimentary towards the Schu's. William Furey, 31 Gurney Street, Positive on application and emphasized he lived next door. With no further comments this portion closed @ 7:05pm.

Members were allotted time for questions and commended the applicant on the renovations. Members also voiced the positive testimony from the public, which were close proximity and concurred with Craig Hurlless comments.

Motion made by Mr. Schmidtchen to approve the completeness waivers as noted on Mr. Hurlless completeness review report dated January 11, 2012 pages 2 and 3 of 6 from sections, #20, #21, #23, #24, #25, #26, #27, #28, #31, #32 and #33. Seconded by Mrs. Hutchison, **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Meier, Mrs. Inderwies, Mr. Williams and Mr. White. Those Opposed: None. Those Abstaining: None.

Motion made by Mr. Meier that the variances for the Lot Size, Lot Width and Lot Frontage §525-19B (1) Table 1 be granted. Seconded by Mrs. Inderwies, **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Meier, Mrs. Inderwies, Mr. Williams and Mr. White. Those Opposed: None. Those Abstaining: None.

Motion made by Mr. Meier that the variances for the Side Yard and Rear Yard §525-19B (1) Table 1 be granted. Seconded by Mrs. Inderwies, **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Meier, Mrs. Inderwies, Mr. Williams and Mr. White. Those Opposed: None. Those Abstaining: None.

Motion made by Mr. Meier that the Floor Area Ratio (FAR) and connected "Use Variance" §525-52 be granted. Seconded by Mr. Schmidtchen, **carried 7-0.** Those in favor: Mrs. Hutchinson, Mr. Schmidtchen, Mr. Meier, Mrs. Inderwies, Mr. Williams and Mr. White. Those Opposed: Mr. Iurato. Those Abstaining: None.

Members voiced their reason for the record.

**Cappelletti, 458-460 West Perry Street, Block 1031 Lot 1
Use/ Hardship/Substantial Benefit Variance(s)**

Mr. Hurlless clarified his credentials for the record. Mr. Hurlless informed the membership of a clerical error that was found on the previous report dated January 16, 2012 and has been replaced with the January 17, 2017 report.

Ronald Stagliano, Esquire appearing for Daniel Cappelletti, principal owner along with Professional Joseph A. Courter, AIA who were sworn in by Mr. Neidig. Mr. Stagliano proceeded to explain that the applicant proposes to renovate the existing non-conforming

cement block structure with additions to be used as a restaurant called “Cappy’s Corner”. Mr. Stagliano presentation included testimony along with constant participation of Joseph Courter with an enlarged colorized photo boards of the Architectural Plan dated November 9, 2011 with revision dates of December 27, 2011 and January 14, 2012 for the public and members perusal. Mr. Courter described the 20ft. x 50ft. addition to an existing 20ft. x 50ft. concrete block commercial building (currently named Carli’s). The renovations entail moving the building forward to allow parking (5 cars) in the rear creating a safer entrance along with the inclusion of bicycle racks, raising the floor above flood level, add hip roof and porches, landscaping, pavers, picnic tables, dining area, a kitchen and bathrooms. He reviewed the plans in detail that were marked **A-1** depicting the Front Elevation, **A-2** - Left & Right and Rear elevations and **A-3** - S-1 depicting Existing & proposed site and floor plans & S-2 Landscaping and Lighting Plans for a Pizza & Burger restaurant and **A-4** – 6 (six) photos depicting the streetscape. Mr. Courter stated the property is underutilized and this commercial building will be renovated to become an asset to the community a property to be proud of as he feels it gives it fits the character of Cape May giving a example of a County Store with added Cape May Features. He clarified the uses and elaborated on proposed the Lot size of 7,310 sq.ft., Building Setback of 10.74ft.(West Perry Side) & 6 ft.(Park Blvd), Rear Yard 21.76 ft., Lot Coverage of 90.5% and explained the plans received conceptual approval by the Historic Preservation Commission on November 28, 2011 and had submitted a copy of the minutes to the Board Secretary for the file. Mr. Cappelletti testimony implied he is relying on the constant foot traffic in the area, along with public parking approximately 200 feet (or a block from the proposed site). He also informed everyone of his history in the area and stated it would benefit the neighborhood.

Members were allotted time for questions to the applicant and their professionals. Concerns of the past of the property, which was an oil company with a large tank in the rear of the property that was removed several years ago. Mr. Stagliano addressed the issue by stating they had correspondence from the New Jersey Department of Environmental Protection called no further action letters dated June 27, 2007 marked **A-5** and October 7, 2007 marked **A-6** and were submitted for the record with a copy for the Board Engineer for his review and instructions to the members. Lot coverage issues due to fact it is 40% for the area and they are requesting over 2 times the amount to which Mr. Cappelletti responded it would not be economically feasible as the building is currently and wanted to enhance the area with a quality eatery.

Board Engineer, Craig Hurless then reviewed his report of January 17, 2012 clarifying the description for the membership indicating it is in the R-2 Low Medium Density Residential District. He detailed the proposal and clarified the variances for positive and negative criteria requirements per NJSA 40:55D-70d (4) Use-Far, NJSA 40:55c (1) Hardship and NJSA 40:55Dc (2) Substantial Benefit and Preliminary & Final Site Plan. Mr. Hurless refers to his completeness review on pages 2 through 4 for the C & D Variances items, #26, #27 and #28, the details required for Preliminary Site Plan #3 (f), (o), (v) now with NJDEP letters to be reviewed, (w) Traffic impact report should be addressed, (y) Storm Water, (z), (aa) CD-ROM. He addressed the Zoning table on page 4 for the R-2 District and sited ordinance §525-15 “All Uses” clarifying the standard, required, existing, proposed and status. He continued (pages 4 through 6) with the Ten (10) variances sought as, §525-15A

Use Variance (not a permitted use), §525-19B(1) Lot Size, §525-19B (1) Table 1 Building Setback, §525-19B (1) Table 1 Rear Yard, §525-19B (1) Side Yard Setback, §525-19B (2) Lot Coverage, §525-49C (2) & (11) Parking – Number of Spaces, §525-48G Signage, §525-49B Parking Area Buffer and §525-59E(7) Parking in the Setbacks. He reviewed the three (3) Waivers (pages 6 & 7) §525-50 Loading Area – Size, §525-59O Street Trees and §525-59D Paving & Curbing of Parking Areas. His General Review comments on pages 7 and 8, items #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11 and #12.

Chairman White called for a five (5) minute recess at 8:05 PM. The meeting resumed at 8:15pm. Mr. White informed the membership and public that the applicant requesting a continuance to the next meeting.

Meeting opened for public comments at 8:15pm, with all being sworn in by Mr. Neidig. **Anne Novino, 351 Congress Street**, opposed the application for numerous reasons: building is larger than all structures in the area stating most are residential, applicant is requesting too many variances, noise and odor concerns (exhaust), parking issues, disagrees with the HPC approval and will have a negative impact to the area. **Leo Nardone, 450 W. Perry Street**, opposes the application citing the kitchen exhaust fumes will be overpowering, the height the building is towering, parking and safety concerns, lot coverage, noise pollution with an added feature of air conditioning units facing his side, recycling and trash visible on his side, concerns with the contamination on that lot and what will occur if construction disturbs the grounds. He gave a lengthy history on past problems of the oil tank removal, phone call he initiated, indicating various site monstrosities and told the members that he was never noticed or received correspondences by the NJDEP regarding the site. He also requested to be informed of the continuation date because his main residence is 2 ½ hours away. **William Mortimere, 444-446 W. Perry Street**, opposed the application. He clarified that the Dentist Office located in the area was a residential house that was always commercially used but blend in with the streetscape. He has traffic and safety issues that will come with an establishment of this nature, numerous parking issues/concerns and stated the parking is not sufficient with the municipal parking area the applicant referred to as considerable longer distance than portrayed. **Francis Mason, 442 W. Perry Street**, opposes the application he has parking concerns with the inclusion of employees from various establishment that already park in front of his home, noise issues, signage issues, disappointed with HPC decision, number of seats requested (120) are numerous and the parking offered for this in minimal and does not feel this eatery will blend in with the streetscape. **Ed Tessier, 436 West Perry Street**, opposes the application because of parking and traffic issues that currently exists, pedestrian safety and the noise pollution that will be added to the area. **Francis Recchuiti, Esquire, spouse of Carol Wilkerson Ricchuiti who is speaking for her, 206 Park Boulevard**, requested procedures at length regarding the application to which **Mr. Neidig responded in detail**. They oppose the application for numerous reasons, stated it is a Zoning Change request rather than variance waivers, and cited at length several disadvantages to the neighbor of the application, questioned Mr. Cappelletti on his knowledge of the property and what he could do with it prior to purchasing it and if he went to the neighbors to inform them of his intentions, if approved could the restaurant eventually be sold to a chain restaurant with a drive thru (Burger King, Taco Bell - Mr. Neidig informed that chain drive thru restaurants are not a permitted use with Mr. Hurless clarifying further in

detail), concerns regarding the ventilation/exhaust odor, storm water runoff, issue with footings increasing 100%, foundations, Phase II Study (Mr. Hurless clarified), noise issues (requesting Mr. Courter respond and acknowledge that he is not an expert in noise), parking, safety, landscaping, fencing and he stated he will return at the next meeting with additional issues. **Gary McGinley, 434 West Perry Street** opposes the application submitted into evidence a photo marked **O-1 for the record** of the immediate block (streetscape) that will be impacted, viewing homes with porches over 100 years old, disappointed in the HPC decision, stated the other commercial establishments across the street are located in West Cape May side and are in 1 story structure that blends in with the community. He addressed his concerns regarding the noise level that will affect the neighborhood and will put a hardship on the neighbors. **For this evenings purpose the public portioned was closed at 9:15 p.m.**

Mr. Stagliano requested to table the application to revise the plans, address the concerns the neighbors have expressed as well as the Board Engineer. They are requesting it be postponed to the March 22, 2012 meeting. Mr. Neidig informed the applicant that it will have to re-notice and re-advertised the application. He also advised the public to call the Construction/Zoning Office for confirmation of the date.

Motion made by Mrs. Inderwies to table the application until March 22, 2012. Seconded by Mrs. Hutchison, **carried 7-0.** Those in favor: Mr. Iurato, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Meier, Mrs. Inderwies, Mr. Williams (who stated he would not be in attendance on March 22, 2012) and Mr. White. Those Opposed: None. Those Abstaining: None.

Motion made by Mr. Iurato to adjourn @ 9:15pm. Seconded by Mr. Schmidtchen **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.