

**City of Cape May Zoning Board of Adjustment Meeting Minutes
January 27, 2011**

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

Chairman Pitman announced that the Clemens application of 400 Trenton Avenue, Block 1134, Lot 15 would be postponed until March 24, 2011 at 6:30pm with no further public notice required by the applicant.

Minutes: November 10, 2010

Motion made by Mr. Iurato to approve the minutes of November 10, 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.

Resolutions:

Davis, Block 1116 Lots 15 & 16

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

Fennerty, Block 1095 Lot 16

Motion made by Mr. Todd to approve the Fennerty Resolution with noted corrections and additions on page 6 Section I. Seconded by Mr. White, **carried 6-0.** Those in favor: Mr. Iurato, Mr. White, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Todd and Mr. Pitman. Those opposed: None. Those abstain: Mr. Williams.

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 Stephen Filiphone, Engineer of Engineering Design Associates and George Thomas, Architectural Historian and were sworn in by George Neidig.

Chairman Pitman clarified the procedures that will be followed and the time limit for comments are to be five (5) minutes. He stated comments/statements are not to be repetitive and only pertain to City of Cape May Code § 525-40 Demolitions and Relocations Criteria. He stated that it is a de nova hearing and question why the Historic Preservation Commission is present. Chairman Pitman announced that a break in the meeting will be approximately at 8:00 to 8:30pm and the meeting will end at 10:00pm.

Stephen Nehmad, Attorney for Nehmad, Perillo and Davis representing Franks Investments Incorporated who gave an overview of the previous meetings and stated he continues to strenuously object to the presence and participation of the Council of the Historic Preservation Commission.

Mr. Neidig called Michele Donato; Attorney for the Beach Theater Foundation to come forward and cross-examined George Thomas Architectural Historian. She questioned Mr. Thomas regarding his professional status at the University of Pennsylvania, she requested clarification from his book Queen of the Seaside Resort page 42 last sentence regarding demolitions and its considerations to be a concern for the entire neighborhood, referred to and requested his knowledge of a cooling off period along with property owner and public considerations, requested his knowledge of the consequences of the Zoning Board decision whether in favor or against, asked the approximate times he has been to the Beach Theater, questioned his opinion on the theater and structure conditions through present day, requested his knowledge of Ordinance #127-2007 listing the Historic Building Survey Designation and they debated at length the historical significance of the ratings, requested his terminology of several sections of the City of Cape May Code - §525-34, 525-36, 525-37 Certificate of Appropriateness, questioned his statements and knowledge of William C. Hunt, founder/developer, she produced a 1952 Motion Picture Almanac that confirmed Mr. Hunt reputation in Cape May County and requested Mr. Thomas response. Ms. Donato requested additional clarification on the e-mail he responded to Ms. Skinner marked at previous meeting as HPC-1.

Mr. Thomas responded to all the questions put forth. He informed Ms. Donato that he is Architectural Historian and does not reside in Cape May but has been to Beach Theater several times in his youth when he did live there 40 years ago. He acknowledged he has driven by to take photographs approximately 5 times over the past year. Mr. Thomas elucidated on the periods of significance, described the National Register, and explained the Architectural Character defined in Cape May as well as the preservation of building since 1970 when the Historic District created. He gave his terminology on the requested sections of

the City of Cape May codes and elaborated on his knowledge of William C. Hunt, as well as the structure as a whole. He responded at length to all aspects of the e-mail marked HPC-1.

Chairman Pitman called for a five (5) minute break at 7:50 pm so that Board Attorney could speak with the applicants and opposing Attorneys. Meeting resumed at 8:00pm.

Stephen Filiphone of Engineering Design Associates clarified his credentials for the record. Verified he did the preparation of the Site Plan that was approved by the Planning Board. His testimony clarified his knowledge of the property and stated it is not in compliance with current date design standards due to the floor elevation being 8.3 feet. He referred to data used by FEMA/Flood Elevation Maps National Geomatic Vertical Datum (NGVD) 1929 & New Jersey Department of Environmental Protection NJDEP, stating there are sections of the structure (due to the sloping sections of the theater) that are between 1.7 to 5.4 feet and are below 100 year flood plain elevation. He referred to the Survey that was conducted by Stephen C Martinelli, Land Surveyor marked Exhibit A-9 with notation depicting the datum used from the NGVD 1929 Flood Elevation Map. Mr. Filiphone introduced and described four (4) photographs depicting hydrostatic pressure that creates the erosion, mold, vertical cracks, moisture barriers of the ground floor, the theaters carpeted & seating areas and walls of the structure and were marked **Exhibit A-26** for everyone's view. He testified with visual evidence regarding the grading pulling away from the building due to water coming from the floor and not roof leaks. Mr. Filiphone addressed several of his concerns and reiterated the negative aspects of renovation if floors were raised (ceiling height issues) versus partial demolition of the structure. His testimony regarding the cost factor to bring this structure to compliance at elevation 10feet @ \$100 a square foot would be estimated at 1.5 million, the renovation would have to meet BOCA codes and stated it would be a monumental task over the 50% threshold and cast doubt on whether the renovation could be accomplished.

Chairperson Pitman called for a 5 (5) minute break at 8:40pm. The meeting resumed at 8:50pm.

Mr. Fineberg, Attorney for the HPC cross-examined Mr. Filiphone with regards to the partial demolition of the structure for the theater section only. He requested verification of the foundation being concrete and in existence for 50 years, implicated the failure to maintain due the building not being occupied, questioned if it was the intent to raise the whole structure, referred to pg. 70 of the transcript of the HPC meeting of January 20, 2010 regarding Mr. Filiphone statement of flood proofing building, referred to the cost factor and its exemptions when pertaining to a historic building. Mr. Filiphone responded to cross-examination by referring to his testimony regarding flood elevation, the site plan, cost factor with regard flood regulations, exceptions to Historic Structures would have to be undertaken to see if it applies and indicated BOCA code are stringent.

Ms. Donato cross-examined Mr. Filiphone requesting he verify the percentages of his engineer profession as municipal engineer, as well as for various Planning and Zoning Boards and general public applications, She sought clarification of the flood elevation pertaining to the whole structure, retail section calculation regarding flood elevation, questioned his site plan as presented, clarification of the partial demolition request, flood

proofing pursuant to the FEMA regulations, his past participation in flood proofing in Cape May, common findings with regards to concrete buildings, visual sun pump location, questioned FEMA & DEP approvals of historic structures, financial worth of whole structure and land, stadium seating incorporation, use without stadium seating, questioned his inspection dates as the building has been vacant, striped & with out heat and evidence of repair done by the Beach Theater Foundation. Mr. Filiphone responded to all questions put forth and explained his interpatation of the application at length. He gave a percentage breakdown of his firm's source, clarified sun pumps are not recommended for removal of ground water, stated the all aspects of the application have to be considered (floor, walls, ceiling, mechanicals & units), in-depth interpretation regarding the site plan and an explanation of flood proofing a building (in Cape May) he participated in but had only a 1(one) inch flood elevation issue. He also stated he was not aware of any other structures with the seating capacity the size of Beach Theater in Cape May below the flood elevation.

Ms. Donato called fact witness **Paul Andrus, 285 Windsor Avenue** and was sworn in by Mr. Neidig. He testified he worked for Beach Theater from 1960 to 1986 when it was sold. He was the Manager from 1970 to 1986. Ms. Donato then question Mr. Andrus as to the condition of the Theater, if there was water damage visible, if Mr. William C. Hunt was an active principal regarding construction of the theater and day to day operations. Mr. Andrus responded to all questions and informed everyone that William Hunt along with his two sons Budd and Guy were Management, William Guy, Secretary/Treasurer, Bud Drye, Office Manager giving a lengthy history that included the purchase of the land, building of the theater, the creations of the TV rooms and the art exhibits on display. He stated William C. Hunt was very active in the operations of the Theater until his death. Mr. Andrus disagrees with the George Thomas the Architectural Historian statement that the Beach Theater is not historically significant.

Mr. Nehmad cross-examined Mr. Andrus as his position when Mr. Hunt was involved clarifying that he was not on the Board of Directors, Management or in the decision-making. Mr. Nehmad wanted noted for the record that Mr. Andrus testimony is not factual. Ms. Donato conceded that Mr. Andrus is not an Architectural Historian but was present and a viable part of the Hunt Beach Theater operation and knew Mr. Hunt personally.

Member questions to Mr. Andrus encompassed his employment if it was a seasonal or year round operation and if William C. Hunt was active in Cape May civic affairs. Mr. Andrus responded it was a year round but only weekends fall and winter and recollects Mr. Hunt being active as a businessman, homeowner and involved with civic affairs in Cape May.

Mr. Pitman announced the date for the next Zoning Board Meeting will be March 24, 2009 @ 6:30pm for other application awaiting to be heard, he stated pertaining to the continuation for Franks Investments (Beach Theater) it will be heard Thursday, March 31, 2011 @ 6:30pm.

Adjournment was made by Mr. White, Seconded by Mr. Meier at 10:00 PM, with all in favor.

Respectfully submitted: Edie Kopsitz, Recording Secretary.