

**City of Cape May Zoning Board of Adjustment Special Meeting Minutes  
April 6, 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.

<b>Roll Call:</b>	Mr. Pitman, Chairperson	Present
	Mr. Williams, Vice Chairperson	Present
	Mrs. Hutchinson	Present
	Mr. Iurato	Present
	Mr. White	Absent <b>excused</b>
	Mr. Schmidtchen	Present
	Mr. Todd	Absent <b>excused</b>
	Mr. Meier, Alt 1	Present
	Mrs. Inderwies, Alt 2	Present

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

**Minutes:** January 27, 2011

**Motion made by Mr. Iurato to approve the minutes of January 27, 2011 as published.** Seconded by Mr. Schmidtchen and was **carried 7-0**. Those voting in favor were: Mr. Iurato, Mr. Williams, Mr. Schmidtchen, Ms. Hutchinson, Mr. Meier, Mrs. Inderwies, and Mr. Pitman with no one voting in the negative or abstaining.

**Application:**

**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.

Chairman Pitman clarified the procedures that will be followed and the time limit for comments are to be five (5) minutes. He announced that a break in the meeting will be approximately at 8:00pm and the meeting will end at 10:00pm. He verified the legal counsel by name Stephen Nehmad, Esquire (Franks Investment), Michelle Donato, Esquire (Beach Theater Foundation, Inc.) and Robert Fineberg, Esquire representing the City of Cape May Historic Preservation Commission.

Ms. Donato introduced Ms. Joan Berkey, a self employed Historic Preservationist, BA, who clarified her qualifications for the record. Ms. Donato presented a copy of Ms. Berkey's resume and was marked into evidence as **O-15**. Ms. Berkey gave a brief synopsis of her background, which included conducting historic site surveys for Cape May, West Cape May

and Hamilton New Jersey. Ms. Berkey indicated she reviewed the report of George Thomas and Professor Richard Longstreth, a master thesis written about William Lee the Architect and various sections of the Cape May City ordinance that apply to this evenings hearing. Ms. Donato requested Ms. Berkey clarify her knowledge of Ordinance #127-2007 marked (A-24) that identified Key, Contributing, Non- Contributing or Not Rated in the structures in the Historic District. Ms. Berkey stated that 378 were not rated with the Beach Theater being in that inclusion. She elucidated on her knowledge of the HPC, the designation process (expanding beyond the Victorian era that uses the National Registration criteria of the 50 year jurisdiction), The Beach Theater criteria for designation specifying the broad association culture patterns, countered Mr. Thomas referral of Mr. Hunt involvement with the Theater and gave detailed research on Mr. Lee the Architect and gave her understanding of the procedures should the Demolition Permit be denied (owners right to market at fair rate for two years). Ms. Berkey testimony stated that the Theater could be replicated due to the considerable amount of documentation and photographs obtained over the years. Ms. Donato stated this local ordinance stands alone on terms of designation. She clarified that the HPC but is guided by the National register criteria but not limited to the National register criteria.

Mr. Nehmad cross-examined Ms. Berkey requesting she verify who his client was and the date she was retained. He requested she acknowledge the resumes of both Professor Longstreth and George Thomas, were more advanced than her own. She concurred. He then questioned at length Ms. Berkey regarding her report dated March 6, 2007 on the Beach Theater regarding its historical and architectural significant for a resident Thomas Carroll, who was active in saving the theater and is also a member of the Historic Preservation Commission and was marked into evidences as Exhibit **A-28**. Mr. Nehmad instructed Ms. Berkey to view previous exhibits A11 & A12 (aerial photograph) to determine what section is to be demolished. He also asked who gave her admission to the property to inspect the site (she responded that in 2007 Mr. Carroll arranged the admission) and she stated her assessment was the interior was more comprised than the exterior but had enough elements to be restored as it was in 1950. She was asked to review §525-34 the definition of INTEGRITY as pertained to the interior characteristics & features of the Beach Theater. She discussed how she prepared her reports for a formal nomination to the State Preservation Office. **A-29** marked into evidence was a State Historic Preservation Office Form (OPRA request by Mr. Nehmad's office) to which Mrs. Berkey responded that the document was not familiar to her. **A-30** marked into evidence was an e-mail string dated December 15, 2008 through December 18, 2008 which included correspondence between Bob Craig, NJ State Historic Preservation Office (Architectural Historian), Meghan Baratta, of the NJSHPO and Joan Berkey regarding historical significance to determine if the building would be eligible for Tax Act Certification. Mr. Nehmad stated his client the owner were never notified/informed of any determination. **A-31** marked into evidence was an e-mail string dating from November 30, 2009 that included e-mail strings from January 13 & 14 between Andrea Tingey, State Historic Preservation, Pip Campbell, Resident Owner of the Blue Pig (Cape May) and Joan Berkey regarding Criterion's A, B & C for the Beach Theater. He questioned Ms. Berkey at length regarding her responses and inquiries to the email strings.

**Chairman Pitman called for a ten (10) minute break at 9:05 pm. Meeting resumed at 9:15 pm.**

Mr. Nehmad continued with his cross-examination requesting clarification on the verbiage used in A-30 concerning her learning the period of significance (Cape May HPC) being placed with an end date of 1940. Ms. Berkey responded that was correct at that time. He questioned her knowledge of Ordinance #127- 2007 (A-24) that identifies Key, Contributing or not rated/not identified. A-32 marked into evidence was a Supplemental Information report conducted by Joan Berkey dated January 6, 2009. Mr. Nehmad questioned her at length regarding the context noting the omission of City of Cape May Land Use Ordinance. He questioned her regarding her knowledge of §525-36 Designation of Historic sites and districts. He particularly requested her knowledge pertaining to the Criteria & procedures for designation and Designation of Cape May Historic District, §525-40 – Demolitions & relocations the 9 points. Ms. Berkey responded in detail her knowledge of the questions.

Ms. Donato and Mr. Nehmad continually debated throughout the evening. They had issues with questions being presented and phrased, exhibit clarification, numerable terminology verifications, Ordinances (local Land Use), HPC Definitions/clarifications, New Jersey State Historic Office personnel and period of historic significant determination.

Ms. Donato then commenced with her redirect of Mrs. Berkey pertaining to exhibit A-28 her report dated March 6, 2007, status to obtained Tax Act Certification, expressed her opinion regarding A-15 & A-20 Plans by Fenwick Architects that claims to retain it architecture, her knowledge on §525-34 definitions of Historic Site and Resource regarding time limitations, Permit and Restoration, §525-36 Designation of Historic Sites & Districts, stated §525-40 Demolition & Relocations pertains to partial demolitions as well as total demolitions. She questioned in detail the document marked (A-29) with regards to the handwriting on the document and inconsistency regarding the date the theater was built. Ms. Berkey believes the Beach Theater is a culture magnet that can be resurrected to be an asset to the community.

Member Schmidtchen questioned Ms. Berkey at length regarding the report by Professor Longstreth dated March 21, 2011 page 4 dealing with the City of Cape May §525-34 definition regarding interior of a building is not considered part of its integrity. Ms. Berkey concurred. He questioned her if the award that was given to the theater that was noted in the previous power point presentation by Steve Jackson marked 0-1; page 12 was the same she referred to. Ms. Berkey responded yes it was. He requested her interpretation of §525-36 Designation of historic sites & districts (B) Criteria for designation and (C) Procedures for designation. Ms. Berkey responded in detail her understanding of the section. Mr. Schmidtchen also expressed his concern of the noticing process particularly the omission of not noticing the owner. Member Meier requested a copy of the Watch List conducted by the National Park Service. Ms. Donato will supply a copy at the next meeting.

Mr. Neidig announced the date for the next Zoning Board Meeting pertaining to the continuation for Franks Investments (Beach Theater) will be Thursday, May 26, 2011 @

6:30pm. Chairman Pitman announced that the April 28, 2011 meeting would be for other applications.

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

**Respectfully submitted: Edie Kopsitz, Recording Secretary.**