

**City of Cape May Zoning Board of Adjustment Meeting Minutes
October 4, 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	Absent – excused

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

Application:

**Celio, 120 Decatur Street, Block 1041 Lot 7
Appeal**

Mr. Hurless clarified his credentials for the record.

George Neidig, Board Attorney addressed the public clarifying the reasons for the Board re hearing and the appeal process de nova of the HPC (§525-33 through §525-45) decision. The Brief that was submitted by attorney Louis Dwyer on behalf of the Celio's, that was to go before Judge Armstrong and explained to the members in detail of the procedures that must be followed by the Zoning Board regarding the hardship (NJSA 40:55D-70c (1 & 2)). He informed the members of Mr. Dwyer's applying for a variance for the application (should the Board concur with the Applicant) and it was noticed within the 200 feet procedures.

Louis C. Dwyer, Esquire representing the owners Lee and Kathleen Celio who were present. He preceded reviewing the application sought to allow the partial demolition of a section of a wrap around enclosed porch. The applicants also wanted to create a driveway allowing on-site parking with significant buffering with a gate, stating it would be significantly more conforming regarding side yard requirements and on-site parking requirements. He submitted a brief that was marked **A-1** containing the Brief to the Superior Court eluding briefing to its contents, reiterated the HPC omission of points of demolition as cited §525-40, inciting inconsistencies. He informed the Members of Chairperson Gaffney participation in the approval to 513 Hughes Street (approved in 2001) and approval of similar application 626 Hughes Street (7 months after the Celio application denial). He informed that he spent a

full day reviewing HPC Minutes and Resolutions from 1993 to current year and stated he did not find a hardship comparative to Celio, he eluded that the minutes and resolutions did not define a hardship to which the Zoning Board can approve. Mr. Dwyer referred to the Historic Commission Survey view on the structure was a mixture of both Colonial Revival and Queen Ann style, which created a sort of hybrid. The HPC Guidelines indicate that Colonial Revival has no porches and the Queen Ann style sometimes have porches that wrap around the side of the house proving inconsistencies of the Historic Preservation Commission. Mr. Dwyer is consistent in reiterating that it is an undue hardship to the applicant and should be permitted variance relief and the Zoning Board decision focal point was that the porch was an original element being altered upholding the HPC decision.

Meeting opened to the Public at 7:40pm. Chairman Pitman announced that the Historic Preservation Commission Legal Council was not permitted to testify before the Zoning Board of Adjustment for the Commission but Members of the Commission were permitted. Mr. Fineberg contends he is not present as an adversarial contact or to conduct any prosecution and informed the members that he was not notified by Council or City Solicitor, Zoning Board Legal Counsel regarding his presence this evening. He was instructed to appear along with the Chairman of the Historic Preservation Commission Warren Coupland. Mr. Dwyer strenuously objects to Mr. Fineberg participation on behalf of the Historic Preservation Commission for the record, reiterated the Land Use Act hear the application de nova that the bulk of this application was to regarding the hardship variance. George Neidig, Board clarified that the Land Use Act is not clear on the participation of the Historic Preservation Commission participation and the Chairman should make the decision as far as the HPC participation. Chairman Pitman permitted Mr. Fineberg's appearance and requested that the Chairperson Warren Coupland also participate. Mr. Dwyer again shared his objection of HPC participation indicating that it could affect the Board from making a fair de nova decision. **Robert Fineberg, Solicitor for the Historic Preservation Commission**, he explained again the Contributing Rating of 120 Decatur Street and the historic significance of property giving it protection from destruction. He then explained the HPC Resolution #2010-14 in a highlighted version including the wrap around porches significance and the lack of on-site parking. Mr. Dwyer requested his continuing objection of the HPC participation noted for the record. **Warren Coupland, 737 Washington Street**, resident as well as Chairman of the Historic Preservation Commission explained the significance of the porch to the structure and reiterated that the hardship of lack of parking was taken into consideration for their determination. He also indicated the hardship did not justify tearing down a partial the original porch to allow for a driveway and front yard parking. He then explained the process every application is undertaken. He feels requesting to change the HPC decision is not appropriate and validates upholding the Design Standards that are dictated by the New Jersey State Department of Interiors. He enlightens the Board on the Watch List Status of Cape May since 2002 explaining the reason of the status as Cape May having a number of unwarranted demolitions, traffic issues and inappropriate new construction.

Mr. Pitman called for a five (5) minute recess at 8:30pm. The meeting resumed at 8:38pm continuing the open public portion.

Jane Lyons 124 Decatur Street, owner since 1964 and stated she is opposed to the application. Reason were numerous for her disapproval; request of 2 car driveway will affect streetscape negatively, Historic Landmark Status, exceptional undue hardship per New Jersey Statue was not proven the benefit does not out way the detriment, Cited NJSA 4055:70D pg. 54 parking allocation section(c), produced an aerial photos that was marked into evidence **O-1**, referred to a Cape May Rental Web site depicting two properties on Decatur with off-site parking permits (Mr. Dwyer opposes requested these statement of the Web Site be withdraw), Traffic issues regarding safety of the two car driveway with concerns of backing out vehicles, removal of fire hydrant financial burden to City for relocation, shade tree issues regarding root damage and the west side of Carpenters Lane detriment to streetscape. **Mrs. Libby Goodman of 118 Decatur Street** opposed to application submitted into evidence marked as **O-2** she stated there are similarities depicted in her home and the Celio's (the peaked roofs, front windows, 3rd floor dormers and wrap around porches that hug the left side). Mrs. Goodman stated removal of the wrap-around porch would be a detriment to the building. She told the Board she is widowed and does rent her property in the summer. She continued her objection by describing in detail the Photographs in (O-2) #1, #4, #5,#6 noting that no buffer exists and the bump out on her building could not allow a proper opening of car door that measures 8ft. from her building to Celio's proposed narrow parking tube.#7, #8 cars indicating stacked parking & displayed the area between the houses where the proposed driveway and the view depicting narrowness between the properties , #9 street view from front fence 120 Decatur, pages 2 & 3 of packet gave Web Site advertising 120 Decatur as a rental indicating 2 or 3 families rental, page 11 rough sketch of Decatur, Hughes the 4 properties described the traffic flow. Mr. Dwyer questioned Mrs. Goodman regarding her parking area including number of vehicles permitted, traffic flow concerning backing out on her property and rental history for the past few years. **Public portion was closed at 9:20pm.**

Mr. Dwyer gave closing remarks reiterating the Historic Preservation Commission in this case was wrong and stated were inconsistency of HPC minutes and procedures. He clarified the enclosed front porch will be renovated to be re-opened and the proposed design is aesthetically pleasing. He reiterated that front yard parking was not requested and on-site parking beneficial to the City. Mr. Dwyer stated the Zoning Board can overturn the HPC Commission decision and if the Board concurs with the HPC they have noticed for hardship variance. He stated that creating on-site parking to meet the ordinance advances the purpose of Zoning and complies with the Master Plan need to create parking in this neighborhood.

Craig Hurlless, Board Engineer stated his report dated June 2, 2010 still applies. His additional comments as follows regarding; the landscaping screen, B type inlet, curb inlet modification that Engineer drawings must be provided, Landscaping plan must be detailed, site triangle issue, safety regarding backing out is a City situation dealt with daily, applicant introducing parking at the intersection promotes stop controlled situation, they meet the codes pertaining to single & 2 family dwellings and responded to all questions put forth from the members.

Members were allotted time for questions. Numerous requests for clarification regarding all exhibits and application of Mr. Dwyer, Mr. Fineberg regarding the HPC aspect with direction

from Mr. Neidig throughout the evening. One member had in depth question regarding the definitions and referred to the transcripts provided along with clarification pertaining to §525-36 Historical Structures. The majority of members indicated that no error was committed by the Historic Preservation Commission. Mary Rothwell, Board Assistant and Zoning Officer requested that the Zoning Table be included on all plans.

Chairman Pitman with the direction of George Neidig clarified how the motions should be presented. He indicated that they will require two motions. He requested every member state their reasons for their vote for the record.

Motion made by Mr. Iurato for the Board Attorney to draw up a Resolution to uphold the Historic Preservation decision. Seconded by Mr. White and **was carried 6 -1.** Those in favor: Mr. Iurato, Mr. White, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Williams and Mr. Pitman. Those opposed: Mr. Todd. Those abstaining: None. **All members voiced their vote in detail for the record.**

Motion made by Mr. White to grant the hardship variance. Seconded by Mr. Todd and **was denied 6 -1.** Those in favor: Mr. Todd. Those opposed: Mr. Iurato, Mr. White, Mrs. Hutchinson, Mr. Schmidtchen, Mr. Williams and Mr. Pitman. Those abstaining: None. **All members voiced their vote in detail for the record.**

Motion made by Mr. Iurato to adjourn @ 10:05pm. Seconded by Mrs. Hutchinson **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.

Adopted