

North Wildwood Planning Board  
Regular Meeting: July 14, 2021  
6:30 p.m.

The regular meeting of the North Wildwood Planning Board (Board) was held on the above date & time. Adequate notice of this regular meeting was submitted to the official newspaper of the City of North Wildwood (AC Press) & local newspapers. An Agenda was posted on the main bulletin board at City Hall, well in advance of the meeting date & on the City web site.

A) CALL TO ORDER

Chairman Davis called the meeting to order.

B) OPEN PUBLIC MEETING STATEMENT

Chairman Davis read the Open Public Meeting Act statement.

C) PLEDGE OF ALLEGIANCE

Chairman Davis led the audience in reciting the Pledge of Allegiance to the Flag.

The Board acknowledged & welcomed new Board member Chief Stevenson, who replaced former chief Gallagher, who retired from the City,

D) ROLL CALL

Chairman Robert Davis	Present	Mayor Patrick Rosenello'	Absent
Vice Chair Jodie DiEduardo	Present	Mayor's Designee Valerie DeJoseph	Present
Chief John Stevenson	Present	Mr. William Green	Present
Mr. John Harkins	Absent	Councilman David Del Conte	Absent
Mr. George Greenland	Present	Mr. James M. Flynn	Absent
Mr. Bill Auty (Alt. 1)	Present	Mr. Bill O'Connell (Alt. 2)	Present
Mr. Ron Peters (Alt.3)	Present	Ms. Haas (Alt. 4)	Present

Mr. Robert L. Belasco (Board Solicitor)	Present
Mr. Ralph Petrella (Board Engineer)	Present
Eric Gundrum, (Board Secretary)	Present

The Board Solicitor announced that the Board quorum has been established.

E) SWEARING IN OF PROFESSIONALS:

The Board Solicitor did conduct the truth swearing of the Board's professionals as it was necessary for tonight's meeting.

F) MOTIONS FOR ADJOURNMENTS: None presented.

**Application No: Z-2021-1-1 Sunshine Shore Properties, LLC**

511 East 11th Avenue

Block 416, Lot 6

OS Zoning District

D(1) Use Variance, a D(5) Density Variance siteplan approval, w/ "c" variances

Final siteplan approval

The Board Secretary & the Board Solicitor announced adjournment of the above referenced application) by written request of the Applicant's attorney/agent. Notice requesting adjournment was received in a timely manner before the Board hearing. The request for adjournment also provided for time limit wavier under the NJ Municipal Land Use Law {NJ-MLUL} (NJSA 40:55D-1 et. seq.) & the Ordinance (Chap. 276-1 et. seq.). The Board Solicitor announced to the public that this application will be adjourned to the August 11h meeting & no further public notice will be or is required to be provided. With that being said, the application was adjourned.

G) **MEMORIALIZATIONS:**

**Application No.: P-2021-3-1 Christopher O'Shaughnessy**

305 East 7<sup>th</sup> Avenue

Block 276, Lot 16

R-1 Zoning District

"c" Variance – sideyard setback variance

The Board heard & considered the application of Christopher and Donna O'Shaughnessy (Applicant), owners of the property located at 305 East 7<sup>th</sup> Avenue, a/k/a Block 276, Lot 16 (Property), seeking 'C' variance relief in relation to minimum sideyard setback (eight (8) feet is required whereas four (4) feet is proposed), in order to construct exterior stairs providing access to an existing 2<sup>nd</sup> floor deck.

The Board Solicitor called for a motion to approve the memorialization of the Resolution as discussed. Motioned by: Mr. O'Connell & 2nd by Mr. Greenland. The Board Solicitor called for any discussion or corrections to the motion. The Board proposed no corrections, additions or comments to the motion. Based on the majority roll-call vote being affirmative, the memorialization was approved by the Board. Chief Stevenson, Mr. Green & Mr. Harkins abstained on the vote.

**Application No.: P-21-5-2 City of North Wildwood**

117 West 5<sup>th</sup> Avenue

Block 185, Lot 14

R-2 Zoning District

Conditional Use siteplan approval/minor subdivision approval

The Board heard & considered the application of the City of North Wildwood (Applicant), a municipal corporation of the State of New Jersey with offices located at City Hall, 901 Atlantic Avenue, North Wildwood, NJ, owner of the property located at 117 West 5<sup>th</sup> Avenue, a/k/a Block 185, Lot 14 (Property), seeking minor subdivision approval to subdivide an existing 100ft. x 100ft. lot to create two (2) 50ft. x 100ft. lots, and Conditional Use approval in order to construct a single family semi-detached (duplex) dwelling on a 50ft. x 100ft. lot within the R-2 Zoning District.

The Board Solicitor called for a motion to approve the memorialization of the Resolution as discussed. Motioned by: Mr. Greenland & 2nd by Ms. Haas. The Board Solicitor called for any discussion or corrections

to the motion. The Board proposed no corrections, additions or comments to the motion. Based on the majority roll-call vote being affirmative, the memorialization was approved by the Board. Chief Stevenson, Mr. Green, Mr. Harkins & Ms. DeJoseph abstained on the vote.

**Application No.: P-2021-2-1 Jersey Development, LLC**

132 West 3<sup>rd</sup> Avenue  
Block 186, Lot 3  
R-2 Zoning District  
Conditional Use siteplan approval

The Board heard & considered the application of Jersey Development, LLC, owner of the property located at 132 West 3<sup>rd</sup> Avenue, a/k/a Block 186, Lot 3, seeking Conditional Use approval in order to construct a single family semi-detached (duplex) dwelling on a 50ft. x 100ft. lot within the R-2 Zoning District.

The Board Solicitor called for a motion to approve the memorialization of the Resolution as discussed. Motioned by: Mr. O’Connell & 2nd by Ms. Haas. The Board Solicitor called for any discussion or corrections to the motion. The Board proposed no corrections, additions or comments to the motion. Based on the majority roll-call vote being affirmative, the memorialization was approved by the Board. Chief Stevenson, Mr. Green, Mr. Harkins & Ms. DeJoseph abstained on the vote.

**Application No: Z-21-3-2 Lisa Dinon**

103 East 19th Avenue  
Block 202, Lot 1  
CBD Zoning District  
Use Variance Approval

The Board heard & considered the application of Lisa Dinon (Applicant), owner of the property located at 103 East 19<sup>th</sup> Avenue, a/k/a Block 202, Lot 1 (Property), seeking a D(2) Use variance for the expansion of a non-conforming use, in order to renovate the existing single-family dwelling to raise the structure comply with FEMA flood requirements, construct an attached garage with additional living space, and to install a new deck in the rearyard. The Property is located in the Central Business District (CBD) Zoning District.

The Board Solicitor called for a motion to approve the memorialization of the Resolution as discussed. Motioned by: Mr. O’Connell & 2nd by Mr. Greenland. The Board Solicitor called for any discussion or corrections to the motion. The Board proposed no corrections, additions or comments to the motion. Based on the majority roll-call vote being affirmative, the memorialization was approved by the Board. Chief Stevenson, Mr. Green, Mr. Harkins & Ms. DeJoseph abstained on the vote.

**Application No.: Z-2021-1-3 Gregory Schubert**

1410 Central Avenue  
Block 206, Lot 13  
R-1 Zoning District  
Multiple “c” variance siteplan approval (*Zoning Enforcement case*)

The Board heard & considered the application of Gregory Schubert (Applicant), owner of the property located at 1410 Central Avenue, a/k/a Block 206, Lot 13 (Property), seeking a D(2) Use Variance for the expansion of a non-conforming use, and ‘C’ variance relief in relation to minimum frontyard setback – Central Avenue (10ft. is required whereas 2.3ft. is proposed) & minimum frontyard setback – 15<sup>th</sup> Avenue (10ft. is



required whereas 0.25ft. is proposed), in order to maintain existing decks located along Central & 15<sup>th</sup> Avenues which were constructed without Construction Permit approvals. The Property is located in the R-1 Zoning District.

The Board Solicitor called for a motion to approve the memorialization of the Resolution as discussed. Motioned by: Mr. O'Connell & 2nd by Ms. Haas. The Board Solicitor called for any discussion or corrections to the motion. The Board proposed no corrections, additions or comments to the motion. Based on the majority roll-call vote being affirmative, the memorialization was approved by the Board. Chief Stevenson, Mr. Green, Mr. Harkins & Ms. DeJoseph abstained on the vote.

H) NEW BUSINESS:

Board member Mr. Peters identified that he had a conflict (resides within 200 feet of the Property) with the next application. Mr. Peters excused himself from the board & took a seat in the public seating area.

**Application No.: P-21-5-1 Michael Cavanaugh**

307 E. 2<sup>nd</sup> Avenue

Block 281, Lot 19

R-1 Zoning District

“c” Variance approval – swimming pool setback

The Board heard & considered the application of Michael & Karen Cavanaugh (Applicant), owners of the property located at 307 East 2<sup>nd</sup> Avenue, a/k/a Block 281, Lot 19 (Property), seeking ‘C’ variance relief in relation to minimum distance between a pool & structure (eight (8)ft. is required whereas four (4)ft. is proposed) and maximum lot coverage (80% is permitted whereas 88.66% is existing & proposed), in order to install an inground swimming pool in the rearyard of the existing single-family dwelling.

Jeffrey Barnes, Esq., of the Barnes Law Group, LLC located in North Wildwood, NJ appeared on behalf of the Applicant & outlined the nature of the application & the relief sought in connection with same. Mr. Barnes informed the Board that the Property measures 50ft. x 100ft. (5,000SF) & is located within the City’s R-1 Zoning District. Mr. Barnes advised the Board that the Property is currently developed with a single-family dwelling. Mr. Barnes indicated that the Applicant is proposing to install an inground swimming pool in the rearyard which necessitates ‘C’ variance relief in relation to the location of the proposed pool & its proximity to the existing single-family dwelling. Mr. Barnes advised the Board that the proposed pool will be located 14ft. from the face of the existing structure; however, it is located four (4) feet from existing 2<sup>nd</sup> & 3rd floor decks. Mr. Barnes further advised the Board that lot coverage currently measures 88.66% whereas a maximum lot coverage of 80% is permitted. He indicated that the Applicant installed porous pavers around the location of the proposed pool in order to mitigate existing coverage. Mr. Barnes stated that the pavers allow for the percolation of water, and, in the event the Board recognizes said pavers as a permitted material, lot coverage would amount to 79.99%. He indicated that the site previously contained a significant number of concrete & bricks, and the porous pavers were installed in order to mitigate lot coverage.

A discussion ensued between the Applicant’s professionals & the Board in relation to the section of the City’s Ordinance which addresses lot coverage & materials that can be utilized to mitigate lot coverage; it should be noted that porous pavers aren’t specifically included. The Board recognized the use of porous pavers as a means to mitigate lot coverage on site; however, it was determined that a variance would be required as porous pavers are not specifically addressed in the Ordinance.



Michael Cavanaugh, an owner of the Property, appeared & he was placed under oath & sworn in to testify before the Board. Mr. Cavanaugh reviewed the history of his ownership of the Property. Mr. Cavanaugh testified that concrete & brick was originally installed on site in an effort to reduce the amount of maintenance necessary to upkeep the exterior of the Property. Mr. Cavanaugh further testified that the property contained very limited landscaping when it was originally constructed in 2008. In response to a question posed by the Board, Mr. Cavanaugh testified that he learned that lot coverage exceeded that which was permitted at the time he applied for a permit to install the proposed inground pool. In an effort to mitigate this issue he installed porous pavers around the location of the proposed pool. Board Member Green expressed a concern in relation to the lack of landscaping located on site. A discussion ensued in regards to lot coverage & what the 20% coverage set aside was intended to accomplish, i.e., proper drainage or the inclusion of landscaping

Vincent Orlando, P.E., P.P., L.L.A., C.M.E. with Engineering Design Associates, P.A. appeared before the Board on behalf of the Applicant. Mr. Orlando was accepted by the Board as an expert in the field of engineering & he was placed under oath & testified from the proposed Plan of Survey/Pool Plan prepared by DL Howell, consisting of one (1) sheet, dated October 21, 2020, which was received by the Board & which is incorporated herein as fact. Mr. Orlando reviewed the existing & proposed site conditions & the variance relief sought for the benefit of the Board. With respect to lot coverage, Mr. Orlando testified that in his professional opinion the lot coverage requirement was not enacted to require the incorporation of landscaping on site. He indicated that lot coverage is utilized in order to ensure appropriate drainage. Mr. Orlando testified that the Applicant's landscaper at some point installed brick & concrete onsite which caused lot coverage to exceed 80%. He indicated that this was discovered when the Applicant applied for a permit to install the proposed pool. Mr. Orlando testified that he proposed that the Applicant utilize "Hydro Pavers" in order to mitigate run-off & allow water to percolate onsite. Mr. Orlando further testified that the incorporation of porous pavers would reduce lot coverage from 88.66% to 79.99% which would comply with maximum lot coverage. Mr. Orlando indicated that the current lot coverage is a pre-existing non-conforming condition which the Applicant is proposing to improve through the use of porous pavers which will improve run-off & drainage on site.

Mr. Orlando testified that a variance is required in relation to the location of the proposed pool & its proximity to the existing single-family dwelling, specifically the 2<sup>nd</sup> & 3<sup>rd</sup> floor decks. Mr. Orlando advised the Board that the distance from the deck to the proposed pool is 4ft. whereas 8ft. is required. He indicated that due to the location of the existing structure, the area in which a pool can be installed is limited. As a condition of approval, the Applicant will not install a pool slide from either the 2<sup>nd</sup> & 3<sup>rd</sup> floor decks. Mr. Orlando noted that the Property is significantly under the building coverage as 65% is permitted whereas 32.5% exists. He argued that the site itself is not overbuilt & can accommodate a pool. Mr. Orlando opined that the relief sought by the Applicant can be granted by the Board as the proposed development advances several of the special purposes of zoning as set forth within N.J.S.A. 40:55D-2, as it

- a. Encourages municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare; and
- g. Provides sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens.

Mr. Orlando further opined that application can be granted as there are no substantial detriments to the public good & the application does not substantially impair the intent & purpose of the Zoning Map & The Land Development Ordinance.

The Board was in receipt of a review memorandum prepared by Board Engineer Mr. Petrella, dated July 6, 2021 which was received by the Board & which is incorporated herein as fact. Mr. Petrella reviewed &

confirmed the variance relief sought in connection with this Application, and he provided comments related to lot coverage & the incorporation of landscaping versus the need to address & provide adequate drainage.

Chairman Davis then opened the application for general public comment. No further public members wished to speak on behalf of the application or to the Board at this time. No comment was offered. Chairman Davis closed the public portion of the application.

The Board members then discussed & summarized the application as presented. The Board then discussed the finding of facts on the application. Each Board member gave reasoning for their view of the facts & the application as it relates to the application. Ms. Haas “volunteered” for the finding of facts. Ms. Haas reiterated to the address and Block & Lot of the property as stated in the application. The Zoning District is R-1. The Applicant is the owner of the property & has standing to come before the Board to request preliminary & final siteplan approval requesting Variance approval. The Board found Mr. Cavanaugh & Mr. Orlando testimony to be credible & persuasive. With respect to the Application for preliminary & final siteplan approval, the Board finds that the application meets the standards of the Ordinance & the Applicant is entitled to preliminary & final siteplan approval for the proposed development. The purposes of zoning law would be advanced by the proposed development in approval of the application. The Board further finds that the proposal is compatible with the surrounding neighborhood & that the requested relief can be granted without substantial detriment to the public good & without substantially impairing the intent & purpose of the Ordinance & Zoning Map. Furthermore, the Board finds that the purposes of the NJ-MLUL will be advanced by the application & the benefits of granting same substantially outweigh any potential detriments. No additions or correction to the finding of facts. No discussion on the facts. The Board accepted the findings of fact.

The Board Solicitor called for a motion to approve the memorialization of the Resolution as discussed. Motioned by: Mr. Greenland & 2nd by Mr. O’Connell. The Board Solicitor called for any discussion or corrections to the motion. The Board proposed no corrections, additions or comments to the motion. Based on the majority roll-call vote being affirmative, the application was approved by the Board.

Board member Mr. Peters returned to the Board dais at the conclusion of the application.

**Application No.: Z-14-8-1(A) 421 W. Spruce Avenue, LLC & DWM RE Holdings, LLC**

421 & 429 West Spruce Avenue

Block 102, Lots 19.01 & 19.02

R-2 Zoning District

Preliminary & Final siteplan approval to address unapproved modification/construction

- For prior issued of D(1) Use Variance & w/ “c” variances siteplan approval

Jeffrey Barnes, Esq., of the Barnes Law Group, LLC located in North Wildwood, NJ appeared on behalf of the Applicant & outlined the nature of the application & the relief sought in connection with same. Mr. Barnes requested adjournment of the application due to the fact the Applicant was not prepared to appear tonight at the scheduled Board hearing.

The Board Solicitor announced adjournment of the above referenced application by request of the Applicant’s attorney/agent. Notice requesting adjournment was received after the Board meeting had started. The request for adjournment also provided for time limit wavier under the NJ Municipal Land Use Law {NJ-MLUL} (NJSA 40:55D-1 et. seq.) & the Ordinance (Chap. 276-1 et. seq.) as announced by the Board Solicitor. The Board Solicitor announced to the public that this application will be adjourned to the August 11h meeting



& no further public notice will be or is required to be provided. With that being said, the application was adjourned.

The Board Solicitor called for a motion to approve the adjournment of the application as discussed. Motioned by: Vice Chair DiEduardo & 2nd by Ms. Haas. The Board Solicitor called for any discussion or corrections to the motion. The Board proposed no corrections, additions or comments to the motion. Based on the majority roll-call vote being affirmative, the adjournment was approved by the Board. Chief Stevenson abstained on the vote.

**Application No.: P-21-4-1 O'Halloran**

314 Central Avenue

Block 217, Lot 9

R-1 Zoning District

Minor Subdivision approval, w "c" variance for Lot Area & Depth

The Board Solicitor announced adjournment of the above referenced application) by written email request of the Applicant's attorney/agent. Notice requesting adjournment was received after the Board meeting had started. The request for adjournment also provided for time limit wavier under the NJ Municipal Land Use Law {NJ-MLUL} (NJSA 40:55D-1 et. seq.) & the Ordinance (Chap. 276-1 et. seq.) as announced by the Board Solicitor. The Board Solicitor announced to the public that this application will be adjourned to the August 11h meeting & no further public notice will be or is required to be provided. With that being said, the application was adjourned.

**Application No.: Z-2006-8-4(C) Spruce & Old New Jersey, LLC (aka Champagne Island Motel)**

106 West Spruce Avenue

Block 191, Lots 2 & 4

D&E Zoning District

Preliminary & Final siteplan approval, "c" variance approval for parking and/or Interpretation/

Change of Use/Use Variance approval for converting motel to apartments/condominiums

The Board heard & considered the application of Spruce & Old New Jersey, LLC, owner of the properties located at 300 North New Jersey Avenue, 102 West Spruce Avenue, 104 West Spruce Avenue, 106 West Spruce Avenue & 120 West Spruce Avenue, a/k/a Block 191, Lots 2 & 4 (Property), seeking an interpretation of the word "transient use" as set forth within prior approvals in relation to provisions of the City Ordinance in effect in 2006, a D(1) Use Variance in the event the Board provides an unfavorable interpretation, and amended preliminary & final siteplan approval.

Keith A. Davis, Esquire of Nehmad, Perillo & Davis, P.C. appeared on behalf of the Applicant. Mr. Davis explained the nature of the application & reviewed the relief sought in connection with same for the benefit of the Board. Mr. Davis informed the Board that the Applicant is the owner of the Property which contains the Champagne Island Resort, Flip-Flops Bar & Grill & commercial retail space.

Mr. Davis advised the Board that the Applicant is seeking an interpretation of prior approvals in relation to the City Ordinance that existed in 2006 governing hotel/motel uses & the definition of the word transient, specifically how long a guest is permitted to stay within a unit. Mr. Davis indicated that the Applicant had advertised individual units for sale under the condominium form of ownership which caused the City concern in light of the potential change of use from a motel to residential units as neither use is permitted in the Dining & Entertainment (D&E) Zoning District. Mr. Davis indicated that the prior approvals granted the Applicant a Use

Variance to operate a 24-unit motel. The prior approval Resolutions refer to transient occupancy; however, transient was not defined in the Resolution or the City Ordinance 2006, and, accordingly, the Applicant is seeking an interpretation to ensure consistency with the operation of the site in relation to the original 2006 approvals & to define the maximum length of stay. Mr. Davis advised the Board that the Applicant is seeking a favorable interpretation to determine the length of time that residents, i.e., owners of units and/or individuals who are reserving rooms within the motel, can stay within the motel complex. Mr. Davis stated that the Applicant intends to modify the form of ownership to create a condominium association to allow for 24 individual unit owners; however, the structure will continue to be operated as motel.

A Master Deed and By-laws governing the existing condominium association were recorded which provides that the site is to be operated as a motel. As a condition of approval, the Applicant will amend these documents to require that all units continue to be used as motel units & shall maintain all elements defined within the City Ordinance required in connection with the operation of a motel. The Applicant also agreed as a condition of approval, the amend the Master Deed to provide that outdoor storage on site is prohibited. In 2006, the City Ordinance did not specifically contain a limitation on the number of days that an individual could reside within a motel unit. Mr. Davis argued that the definition within the City Ordinance at the time contained a reference to the New Jersey Hotel & Multiple Dwelling Act (Act). He acknowledged that subsequent to the 2006 approval, the City has revised its Ordinance to limit lengths of stay to no more than 30 days. Mr. Davis advised the Board that the aforementioned Act defines transiency as an occupancy of no more than 90 days. He indicated that the Applicant is requesting that the Board interpret the original 2006 approvals & the Ordinance in effect at that time to permit the length of stay within a motel unit at the Property to be no more than 90 days. Mr. Davis stated that the Applicant would revise the Master Deed to ensure that the 90-day requirement is imposed upon all future unit owners. He indicated that in the event the Board did not grant the interpretation sought, a Use Variance is requested to permit a length of stay of no more than 90 days.

Mr. Davis advised the Board that the Applicant is also before the Board for amended preliminary & final siteplan approval in connection with the removal/relocation of an existing trash enclosure & the restriping of a parking lot.

Joseph Mahoney, the Applicant & owner of the Property, appeared & he was placed under oath to testify before the Board. Mr. Mahoney testified that approvals were received in 2006 to operate a 24-unit motel for transient guests only. He indicated that full-time, year-round occupancy is not permitted on site. Mr. Mahoney testified that the motel has a reservation portal, housekeeping services, a front desk, designated parking spaces for the motel guests & an on-site restaurant. Mr. Mahoney advised the Board that he recently advertised the sale of individual units; however, no units have been sold at this time. Mr. Mahoney testified that he is before the Board requesting clarification in relation to the length of stay in order to ensure that the continued motel operation is consistent with prior approvals. He confirmed that the Master Deed would be revised in order to clearly provide those guests and/or owners would be restricted to a length of stay of no more than 90 days in the event the Board provides a favorable interpretation. In response to a question posed by the Board, Mr. Mahoney testified that the existing on-site parking lot is utilized exclusively for motel guests.

Vincent Orlando, P.E., P.P., L.L.A., C.M.E. with Engineering Design Associates, P.A. appeared before the Board on behalf of the Applicant. Mr. Orlando was accepted by the Board as an expert in the field of engineering & land planning & he was placed under oath & testified from the proposed site plan, consisting of two (2) sheets, dated April 12, 2021, which was received by the Board & which is incorporated herein as fact. Mr. Orlando testified that he reviewed the 2006 Ordinance & prior Resolutions in advance of tonight's hearing & he indicated that no prior approval imposes any specific limitation on the length of stay for a motel unit. Mr. Orlando further testified that the 2006 Ordinance references the word transient, but it does not contain a specific



time limitation or define same. Mr. Orlando advised the Board that the 2006 Resolution & a required deed restriction reference the Act which contains a length of stay limitation & defines the word transient to mean 90 days. Mr. Orlando opined that, based upon the 2006 approvals & the laws at that time, the appropriate interpretation of the word transient & the maximum length of stay should be no more than 90 days.

A discussion ensued between Board Members & the Applicant and their professionals in relation to the definition of the word 'transient.' Board Members agreed that the definition of the word transient refers to a short period of time. Mr. Orlando confirmed that the prior approvals granted to the Applicant do in fact refer to transient occupancy but they do not include a specific length of time. Vice Chair DiEduardo stated that the Applicant obtained a Use Variance back in 2006 to operate a 24-unit motel & the discussion that ensued in 2006 took into consideration the transient nature of the motel industry. She indicated that the Board was under the impression that site would be operated as a motel with short-term stays not as residential condominium units. Vice Chair DiEduardo indicated that the request for an interpretation that permits a length of stay of 90 days is contrary to the intent of the Board when it granted the Use Variance to the Applicant to operate a motel in the D&E Zoning District. A significant discussion ensued in regards to the condominium form of ownership & the use of the property. Mr. Davis indicated that, regardless of the form of ownership, the Property would continue to operate as a motel. He indicated that a change in the form of ownership does not change the use. Board members agreed that the definition of transient would equate to a length of stay of no more than 30 days. Mr. Davis reiterated that the Ordinance in effect at the time of the prior approvals did not specifically define the word transient & the Act in question does define transient to mean no more than 90 days.

Board Solicitor Robert Belasco reviewed the definition of hotels/motels currently in effect & the definition in effect back in 2006, and advised the Board of their obligation in connection with a request for an interpretation in relation to the issue before the Board. Board Members expressed concerns that an interpretation allowing a length of stay of no more than 90 days would result in individual unit owners simply residing in the property during the entirety of the summer months, and that the motel use would be effectively eliminated. Mr. Davis indicated that owners of units would be required to pay fees associated with the motel, & he indicated that a Master Deed would be revised to ensure that every unit owner was fully aware of the operation/use that they were buying into. Board Members expressed concerns about whether or not the length of time would result in a consecutive or non-consecutive length of stay as same would likely have a significant impact on ensuring compliance with the provisions of the Master Deed. Mr. Davis stated that the Applicant would request that the interpretation permit a maximum length of stay of 90 days annually. Board members expressed concerns in regards to the impact that a unit owner would have on the surrounding neighborhood & the likelihood that an owner of the unit would reside in the unit which would result in additional parking impacts on the site & the surrounding community. Mr. Mahoney testified that in 12 years no one has stayed at the motel for more than 30 days as there is no storage on site. He indicated that individual owners would not be permitted to reside within their unit unless they rented the unit through the motel rental unit service & they would be responsible for paying motel occupancy fees to the association. Mr. Davis stated that the Applicant is seeking this interpretation to resolve a dispute with the City & to have same memorialized in the form of a resolution so that the question settled once & for all.

Board Solicitor Belasco advised the Board that the interpretation is essentially a two-fold question, did the 2006 resolution & Ordinances in effect at the time define transient as a length of stay of no more than 90 days, or, in the event it did not, what did transient mean back in 2006, specifically what was the maximum length of stay permitted at a motel in 2006. Chairman Davis indicated that transient in the context of a shore community amounts to a stay of a week or two (2) weeks at most with a turnover of guests. He indicated that allowing owners to occupy their units in his view amounted to a de facto change of the use of the property regardless of whether it's classified as a motel.

After a short recess, the Applicant indicated that they would request that the Board interpret the prior approvals & the definition of the word “transient” to mean a total length of stay of up to 90 days per year with no more than 30 days utilized during the months of June, July & August.

Chairman Davis then opened the meeting for public comment on the interpretation issue. One (1) member of the public addressed the Board in connection with this issue, namely:

- a. Michael Donohue, Esq., Solicitor to the City of North Wildwood, appeared before the Board & he was placed under oath to testify before the Board. Mr. Donohue reviewed the history of the City’s discussions with the Applicant in regards to the Use of the Property & the desire to allow owners to occupy individual motel units which lead the Applicant to apply to the Board. Mr. Donohue discussed the NJ Hotel & Multiple Dwelling Act & the purported definition of transient, and he noted that the actual definition comes from the administrative code in relation to the maintenance of a motel. He argued that the City’s 2006 Ordinance which incorporates that law does not incorporate the administrative code which is not binding on the Board. Mr. Donohue noted that the International Building Code (IBC) defines transiency as no more than 30 days. He indicated that these codes are essentially persuasive authority which the Board can take into consideration when rendering its interpretation; however, he noted that they are not binding upon the Board. Mr. Donohue reviewed the dictionary definition of “transient” & noted that it includes a reference to a brief stay. He pointed to provisions of the Resolutions which discussed the deed restriction which repeatedly referred to rental of units & transient occupancy to the public-at-large. He argued that the site was designed to be used as a motel rather than a seasonal unit.

No further public members wished to speak on behalf of the interpretation question or to the Board at this time. No further comment was offered. Chairman Davis closed the public portion of the interpretation question.

Mr. Davis summarized his arguments & the testimony provided by Mr. Mahoney & Mr. Orlando & requested that the Board grant a favorable interpretation defining transient to mean a total length of stay of up to 90 days per year with no more than 30 days utilized during the months of June, July & August.

The Board Solicitor called for a motion to approve favorable interpretation defining transient as discussed. Motioned by: Vice Chair DiEduardo & 2nd by Ms. Haas. The Board Solicitor called for any discussion or corrections to the motion. The Board proposed no corrections, additions or comments to the motion. The majority of the Board voted down the requested interpretation to define transient to mean a total length of stay of up to 90 days per year with no more than 30 days utilized during the months of June, July & August. Mr. Harkins & Mr. Greenland voted yes on the interpretation question. Chief Stevenson & Ms. DeJoseph abstained on the vote.

Thereafter, the Board voted & determined that the definition of transient within the prior Resolutions & the 2006 City Ordinance meant a length of stay of no more than 30 days. The Board Solicitor called for a motion to approve favorable interpretation defining transient as discussed. Motioned by: Mr. O’Connell & 2nd by Mr. Green. The Board Solicitor called for any discussion or corrections to the motion. The Board proposed no corrections, additions or comments to the motion. Based on the majority roll-call vote being affirmative, the interpretation was approved by the Board. Chief Stevenson & Ms. DeJoseph abstained on the vote.

Following the decision on the Board’s interpretation, Mr. Davis advised the Board that the Applicant was formally withdrawing the request for a D(1) Use Variance to permit a length of stay of no more than 90 days. Mr. Davis indicated that the Applicant was operating under an approved siteplan from 2008 which



depicts the location of an approved trash enclosure & parking lot. A photograph of the 2008 siteplan which was distributed, received by the Board & marked as Exhibit A-1.

Mr. Orlando testified that the approved 2008 siteplan depicted a 30-space off-street parking lot which contained a trash enclosure. He indicated that a parking variance was obtained back in 2008 when the siteplan was originally approved. Mr. Orlando advised the Board that the trash enclosure has been relocated to the west side of the site behind the restaurant & the parking lot was restriped in order to improve functionality & accessibility. He noted that the trash cans are not visible from New Jersey Avenue. Mr. Orlando testified that the restriping of the parking lot eliminated a significant number of stacked parking spaces. He indicated that 24 parking spaces are now easily accessible & four (4) parking spaces, specifically space 25, 26, 27 & 28, remain stacked & will be designated for use by employees. He indicated that two (2) additional parking spaces have been added in the area where the trash enclosure has been relocated. In response to a question posed by the Board, Mr. Orlando testified that a four (4) foot chain link fence will be installed in the vicinity of the trash enclosure in order to demarcate same. He indicated that no additional cans have been added & what exists meets the needs of the operation. Mr. Orlando advised the Board that no variances are required in connection with the revised siteplan. He indicated that an 18'x18' area in the parking lot will be landscaped so as to not increase existing lot coverage. As a condition of approval, the Applicant will submit revised plans depicting the incorporation of the 18'x18' landscaping area within the parking lot & the incorporation of a proposed fence to demarcate the trash enclosure area.

Mr. Mahoney testified that trash is not put out after 10pm, & he indicated that the trash is collected by a private company which generally comes between 6am & 7am. In response to a question posed by the Board, Mr. Mahoney testified that the hotel trash is put out along Spruce Avenue whereas the restaurant trash is wheeled out on trash days to New Jersey Avenue. Mr. Mahoney further testified that the two (2) parking spaces located in the vicinity of the trash enclosure are utilized exclusively by he & his wife.

The Board was in receipt of a review memorandum prepared by Board Engineer Mr. Petrella dated July 6, 2021 which was received by the Board & which is incorporated herein as fact. Mr. Petrella reviewed the existing & proposed site conditions for the benefit of the Board & he confirmed that no variances are required in light of the revisions proposed by the Applicant.

Chairman Davis then opened the application for general public comment. Three members of the public addressed the Board in connection with this issue, namely:

- a. Thomas Torpey, owner of the property located at 113 West Walnut Avenue, appeared & he was placed under oath to testify before the Board. Mr. Torpey asked to see the location of the relocated trash enclosure & indicated he had no objection to its location.
- b. Nancy Lennox, owner of the property located at 1401 Surf Avenue, appeared & she was placed under oath to testify before the Board. Ms. Lennox expressed concerns in relation to the location of the trash enclosure & odors that emanate from same. She indicated that the Applicant dumps bottles late at night which disturbs the surrounding neighborhood.
- c. John McGuire, owner of the property located at 101 West Walnut Avenue, appeared & he was placed under oath to testify before the Board. Mr. McGuire advised the Board that he was concerned with the location of the trash enclosure. He asked that a fence be installed between his property & the trash enclosure to ensure separation & to prevent individuals from accessing the area.

No further public members wished to speak on behalf of the application or to the Board at this time. No comment was offered. Chairman Davis closed the public portion of the application.

The Board members then discussed & summarized the application as presented. The Board then discussed the finding of facts on the application. Each Board member gave reasoning for their view of the facts & the application as it relates to the application. Mr. Greenland “volunteered” for the finding of facts. Mr. Greenland reiterated to the address and Block & Lot of the property as stated in the application. The Zoning District is D&E. The Applicant is the owner of the property & has standing to come before the Board to request amended preliminary & final siteplan approval requesting Variance approval. The Board found Mr. Mahoney & Mr. Orlando testimony to be credible & persuasive. The Applicant is before the Board requesting an interpretation of the 2006 approvals & City Ordinance in effect at that time to define transient to mean a total length of stay of up to 90 days per year with no more than 30 consecutive days utilized during the months of June, July & August.

The Board voted down the requested interpretation to define transient to mean a total length of stay of up to 90 days per year with no more than 30 days utilized during the months of June, July & August. Thereafter, the Board voted & determined that the definition of transient should mean a length of stay of no more than 30 days. Following the Board’s decision on the interpretation, the Applicant formally withdrew the request for a D(1) Use Variance. The Applicant agreed to the following condition of approval:

- a. The Applicant will amend these documents to require that all units continue to be used as motel units & shall maintain all elements defined within the City Ordinance required in connection with the operation of a motel.
- b. The Applicant will amend the Master Deed to provide that outdoor storage on site is prohibited.
- c. The Applicant will submit revised plans depicting the incorporation of the 18’x18’ landscaping area & the incorporation of a proposed fence to demarcate the trash enclosure area.

The Applicant is also requesting amended preliminary & final siteplan approval & a D(1) Use Variance in the event the Board does not agree with the Applicant’s proposed interpretation of the prior approvals & prior City Ordinance. Four (4) members of the public addressed the Board in connection with this Application. With respect to the Application for preliminary & final siteplan approval, the Board finds that the application meets the standards of the Ordinance & the Applicant is entitled to preliminary & final siteplan approval for the proposed development. The purposes of zoning law would be advanced by the proposed development in approval of the application. The Board further finds that the proposal is compatible with the surrounding neighborhood & that the requested relief can be granted without substantial detriment to the public good & without substantially impairing the intent & purpose of the Ordinance & Zoning Map. Furthermore, the Board finds that the purposes of the NJ-MLUL will be advanced by the application & the benefits of granting same substantially outweigh any potential detriments. No additions or correction to the finding of facts. No discussion on the facts. The Board accepted the findings of fact.

The Board Solicitor called for a motion to approve the memorialization of the Resolution as discussed. Motioned by: Mr. O’Connell & 2nd by Mr. Greenland. The Board Solicitor called for any discussion or corrections to the motion. The Board proposed no corrections, additions or comments to the motion. Based on the majority roll-call vote being affirmative, the memorialization was approved by the Board. Chief Stevenson abstained on the vote.

D) ZONING OFFICER REPORT:

Dan Spiegel, Zoning Officer/Construction Official, did not have any items to report to the Board.



J) PUBLIC PORTION:

Chairman Davis then opened the meeting for general public comment. No further public members wished to speak on behalf of the meeting or to the Board at this time. No comment was offered. Chairman Davis closed the public portion of the meeting.

J) APPROVAL OF MINUTES:

The Board Solicitor presented to the Board the approval of July 14, 2021 Meeting minutes. The Board Solicitor called for any discussion or corrections to the minutes. No further discussion to the minutes. Motioned as proposed by Ms. Haas & 2<sup>nd</sup> by Mr. Greenland. Based on the affirmative majority roll-call vote of the Board members to memorialize the Meeting Minutes, the Meeting Minutes were approved.

K) UNFINISHED BUSINESS:

Motion against Pileggi v. Zoning Brd of Adjustment, North Wildwood  
Filed by Anthony Harvatt, Esq. on city resident  
Correspondence from Board Solicitor R. Belasco to Judge Julio Mendez, AJSC  
*Correspondence only, No formal Board action*

The Board Solicitor gave an update on the above court motion. No Board formal action was required.

L) COMMUNICATION(S):

The Board Secretary presented the following newspaper articles to the Board members:  
*The following items are for Board information only, and do not require any Board formal action*

Newspaper article – US Supreme Court sides with PennEast in NJ pipeline court case  
Newspaper article – NJ approves 2,700 MW offshore wind farm, nation’s largest off Atlantic City  
Newspaper article – Ocean City set to take on Trenton on new wind power rule/law.  
Newspaper article – Wildwood City to reduce Planning & Zoning application fees.

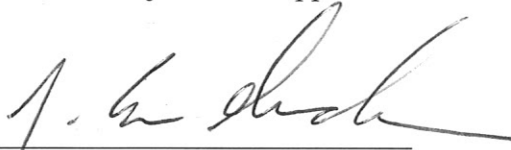
M) REPORTS: None presented.

N) MEETING ADJOURNED:

Meeting was adjourned at 10:20pm, on motioned by Vice Chair DiEduardo & 2<sup>nd</sup> by Ms. Haas. Based on the affirmative roll-call vote of the Board members, the motion to adjourn was approved.

APPROVED: \_\_\_\_\_

8/12/21  
Date

  
\_\_\_\_\_  
J. Eric Gundrum  
Board Secretary

*This is an interpretation of the action taken at the meeting by the Secretary, and not a verbatim transcript.*

