

North Wildwood Planning Board
Regular Meeting: August 10, 2022
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.

D) ROLL CALL

Chairman Robert Davis	Present	Mayor Patrick Rosenello'	Absent
Vice Chair Jodie Di Eduardo	Present	Mayor's Designee Mr. Doug Miller	Present
Chief John Stevenson	Present	Mr. William Green	Present
Mr. John Harkins	Present	Councilman David Del Conte	Absent
Mr. George Greenland	Present	Mr. Bill O'Connell	Present
Mr. Bill Auty (Alt. 1)	Present	Ms. Valeria DeJoseph (Alt. 3)	Absent
Mr. Ron Peters (Alt.2)	Present	Vacant (Alt. 4)	
		Mr. Robert 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.

G) MEMORIALIZATIONS:

Application No. Z-22-5-1 Joseph J. Cunningham, Jr., Tara Cunningham & Andrea Fortune

125 E. 14th Avenue

Block 207; Lot 14 Kiosk & Snack Bar

R-1.5 Zoning District

d(1) Use & d(3) Height/Use & 'c' variance siteplan approval

The Board heard & considered the application of Joseph J. Cunningham, Jr., Tara Cunningham & Andrea Fortune (Applicant), owners of the property located at 125 East 14th Avenue, a/k/a Block 207, Lot 14 (Property), seeking a D(1) Use variance to permit two (2) principal structures on one site, a D(6) maximum building height Use variance (24ft. is permitted whereas 26.5ft. is proposed) & 'C' variance relief in relation to minimum frontyard setback (10ft. is required whereas 6.5ft. is proposed), minimum distance from property line to garage (20ft. is required whereas 18ft. is proposed), minimum lot area (4,000SF is required whereas 3,000SF is existing and proposed), minimum lot frontage (40ft. is required whereas 30ft. is existing & proposed), minimum lot width (40ft. is required whereas 30ft. is existing & proposed), minimum rear yard setback (10ft. is required whereas 2ft. is existing & proposed), minimum side yard setback (4ft. is required whereas 2.2ft. and 2.65ft. are existing & proposed), and a design waiver for continuous raised curb (15ft. is required whereas 5ft. is proposed), in order to renovate the existing rear yard dwelling & to demolish & reconstruct the existing front yard dwelling which will reduce the number of units located on site from four (4) to two (2) units.

The Board Solicitor called for a motion to approve the memorialization of the Resolution as discussed. Motioned by Vice Chair DiEduardo & 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. Board members Chief Stevenson, Mr. Green, Mr. Miller & Auty abstained from the vote.

H) NEW BUSINESS:

Application No. P-22-6-1 Joseph Pace

224 W. 10th Avenue

Block 148; Lot 5

R-2 Zoning District

"c" Hardship/siteplan – Shed & swimming pool in front yard

The Board heard & considered the application of Joseph Pace (Applicant), owner of the property located at 224 West 10th Avenue, a/k/a Block 148, Lot 5 (Property), seeking 'c' variance relief in relation to minimum front yard setback – 10th Avenue (10ft. is required whereas 4.6ft. is proposed), minimum rear yard setback (10ft. is required whereas 1.7ft. is existing & proposed), minimum side yard setback (6ft. is required whereas 3ft. is existing & proposed), to permit an accessory shed in a front yard, and to permit an accessory swimming pool to be located within the front yard of Delaware Avenue, in order to maintain an existing shed & pool which were relocated to the front yard of Delaware Avenue without required permits/approvals.

John Amenhauser, Esq., appeared on behalf of the Applicant & outlined the nature of the application & the relief sought in connection with same. Mr. Amenhauser advised the Board that the Property is developed with a 2-story single-family dwelling which fronts onto 10th Avenue & an accessory cottage. Mr. Amenhauser indicated that the Property is irregularly 'L-shaped' lot which contains frontage along both Delaware & 10th Avenues. Mr. Amenhauser informed the Board that the Applicant relocated an existing shed & swimming pool that were previously located on site to the front yard of Delaware Avenue. The shed & the swimming pool were

relocated without required permits/approvals, and same are not permitted to be located within a frontyard pursuant to the City's Land Use Ordinance (Ordinance), necessitating variance relief.

Ryan Morson, R.A., a registered architect, with Ryan Morson Architecture, LLC, appeared before the Board on behalf of the Applicant. Mr. Morson was accepted by the Board as an expert in the field of architecture & he was placed under oath & he testified from the proposed site plan, dated April 27, 2021, which was received by the Board & which is incorporated herein as fact. Mr. Morson reviewed the existing & proposed site conditions for the benefit of the Board. Mr. Morson confirmed that the Property is an irregularly L-shaped lot which contains frontage along both Delaware & 10th Avenues. Mr. Morson confirmed the variance relief sought in connection with this application. He indicated that the requested relief is tied to the fact that the existing shed & swimming pool are located in the Delaware Avenue frontyard of the Property. Mr. Morson advised the Board the both the shed & the pool comply with required setbacks & the site itself is well below on lot & building coverages. Mr. Morson opined that the Applicant is also experiencing a hardship due to the irregular shape of the subject property and due to the fact that the subject property contains two (2) front yards. Mr. Morson further opined that the application can be granted as there is no substantial detriment to the public good & the application does not substantially impair the intent or purpose of the Zoning Map & Land Development Ordinance. Mr. Morson opined that several of the purposes of zoning, outlined within N.J.S.A. 40:55D-2, are advanced in connection with this application & support the relief sought by the Applicant as it:

- a. Provides adequate light, air & open space;
- i. Promotes a desirable visual environment through creative development techniques & good civic design & arrangement.

In response to a question posed by the Board, Mr. Morson testified that the existing deck located along 10th Avenue was replaced, but same was not expanded any further into the frontyard setback along 10th Avenue. He acknowledged that the deck itself was expanded; however, the frontyard setback associated with the portion of the deck that was expanded is consistent with the frontyard setback that was previously provided on site & not exceeded.

Mr. Joseph Pace, the owner of the Property, appeared & he was placed under oath to testify before the Board. Mr. Pace testified that the swimming pool was located in the rearyard of the Property & the accessory shed was located in the location of the pool when he initially purchased the Property. Mr. Pace testified that he relocated the pool to the Delaware Avenue frontyard because his family primarily utilizes this area for outdoor activities. He further indicated that he was unaware that he needed a permit or approvals in order to move the pool & shed to their present locations. Mr. Pace acknowledged that he also expanded the deck located along 10th Avenue without obtaining required approvals or permits. He attempted to justify this situation by indicating that he maintained the frontyard setback. In response to a question posed by the Board, Mr. Pace testified that the swimming pool was previously located in the rearyard right on the property line. The pool itself is approximately 15ft. in diameter & same encompassed the entirety of the rearyard. An accessory cottage also exists in the rearyard. Mr. Pace informed the Board that he moved the accessory shed closer to Delaware Avenue in order to make room for the swimming pool.

Board Members expressed concerns in relation to the fact that the Applicant relocated the shed & swimming pool without required approvals/permits. Board Members took issue with the fact that accessory structures & swimming pools are prohibited within frontyards throughout the City. Board Members inquired if the Applicant could relocate the shed to provide a larger frontyard setback, or relocate same to remove the shed from the frontyard entirely. As a condition of approval, the Applicant will relocate the shed to 10ft. off of the Delaware Avenue property line & four (4) feet off of the sideyard property line, and same shall be reflected on revised plans to be reviewed & approved by the Board Engineer.

The Board was in receipt of a review memorandum prepared by Board Engineer Mr. Petrella, dated July 29, 2022 which was received by the Board & which is incorporated for reference. Mr. Petrella reviewed & confirmed the relief sought by the Applicant for the benefit of the Board. The application required no variances or waivers.

Chairman Davis then opened the application 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.

The Board members then discussed & summarized the application as presented. The Board then discussed the finding of facts on the variance/siteplan approval. Each Board member gave reasoning for their view of the facts & the application as it relates to the application. Mr. O'Connell "volunteered" for the finding of facts. Mr. O'Connell reiterated to the address and Block & Lot of the property as stated in the application. The property is located in the R-2 Zoning District & it is currently developed with a single-family dwelling & an accessory cottage. The Property is an irr-regular sized lot with two (2) frontyards. The Applicant is the owner of the Property, as such, has standing to appear before the Board requesting variance/siteplan approval. Mr. Amenhauser & Mr. Morson reviewed the nature of the application; he identified the location of the proposed swimming pool & shed with building setbacks. They provided testimony in relation to the need for variance relief. Mr. Moron & Mr. Pace's testimony was deemed credible by the Board. The Property is unique in that it contains frontage along two (2) public rights-of-way, Delaware & West 10th Avenue, and contains two (2) front, one side, and one rearyard. The Applicant is proposing the installation of a swimming pool & shed in a frontyard adjacent to Delaware Avenue. The Board received no public comment to the variance relief sought by the Applicant. With respect to the "c" variance relief sought by the Applicant, the Board finds that the Applicant has presented sufficient justification to grant the variance relief associated with this application. The Board acknowledged that the property is an irr-regular sized lot with two (2) frontyards; however, the Board determined that the Applicant's proposal presented limited substantial detriments to the public good & would not impair the intent & purpose of the Zoning Map & Ordinance. The Board found that the Applicant did establish that granting the requested variance relief would advance the purposes of Zoning, to the public good, to the City's municipal Land Use Ordinances & to the City's Zoning Map. The Board finds that the Applicant has satisfied the requirements for variance/siteplan approval. No additions or correction to the finding of facts. No discussion on the facts.

The Board Solicitor called for a motion to approve the of the Resolution as discussed. Motioned by Mr. Greenland & 2nd by Mr. Harkins. 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 roll-call vote being in a tie, the Board Alternate, Mr. Peters vote is disregarded. As such, the majority vote was in the affirmative, the Resolution was approved by the Board.

Application No. Z-21-6-2(A) Star Property Group, LLC

721-723 Spruce Avenue

Block 28, Lots 7.01 & 7.02

R-2 Zoning District

Amended subdivision & siteplan approval – NJDOT driveway change modification

The Board heard & considered the application of Star Property Group, LLC (Applicant), the owner of the property located at 721-723 Spruce Avenue, a/k/a Block 28, Lots 7.01, 7.02, & 7.03 (Property), seeking amended minor subdivision approval & a design waiver associated with a proposed curbcut (a maximum curbcut of 20ft. is permitted whereas 30ft. is existing & proposed), in order to revise the proposed plan providing

access to three (3) lots measuring 50ft. x 97.12ft, 40ft. x 100ft. & 60ft. x 104.43ft. which were previously approved for the construction of two (2) duplexes & one (1) single-family dwelling.

Mr. Jeffrey Barnes, Esq., of the Barnes Law Group, LLC appeared on behalf of the Applicant & outlined the nature of the application & the relief sought in connection with same. Mr. Barnes reviewed the history of the Property, noting that this is the 6th application associated with same Property that has been filed over the years. Mr. Barnes indicated that most recently the Property, which has a total lot area of 15,136SF, was subdivided into three (3) lots suitable for the development of two (2) duplexes & one (1) single-family dwelling. That approval was memorialized in Resolution Z-2021-6-2. Mr. Barnes advised the Board that the proposed three (3) lot subdivision incorporated three (3) individual curb cuts to provide access to each individual lot. He indicated that the County approved the proposed plan of subdivision; however, the New Jersey Department of Transportation (NJDOT) did not. Mr. Barnes indicated that after long drawn-out process, the NJDOT indicated that it would only approve one (1) curb cut to provide access to all three (3) lots. Mr. Barnes stated that the project was redesigned to utilize one (1) curb cut & a common drive aisle for access to all three (3) lots.

Board Members expressed concerns about the potential that vehicles could block the drive aisle & access to the lots in question. Mr. Barnes noted that the NJDOT required the Applicant to record a restrictive deed providing notice to property owners that the common drive aisle could not be obstructed or blocked.

Mr. Brian Newswanger, RA of Atlantes Architects appeared on behalf of the Applicant & he was recognized as an expert in the field of architecture. Mr. Newswanger was placed under oath & he testified from the proposed site & architectural plans, dated February 2021, & last revised July 19, 2022, which were received by the Board & which are incorporated herein as fact. Mr. Newswanger testified that the design approved by the Board utilized three (3) curb cuts, one (1) for each proposed lot. Mr. Newswanger further testified that, after the NJDOT denied the plan using three (3) curb cuts, the Applicant attempted to utilize the two (2) existing curb cuts to provide modified access to the site; however, the NJDOT denied this proposal as well. Mr. Newswanger indicated that the NJDOT made it clear that only one (1) curb cut could be utilized. The use of one (1) curb cut necessitated a redesign of the site & proposed structures. Mr. Newswanger testified that the structures were reduced in size in order to accommodate a larger frontyard setback which would facilitate access & maneuverability on site. He noted that lot coverage increased slightly; however, no additional variances were created in connection with the redesign of the site.

Mr. Joseph Gray, P.E., a professional engineer, appeared before the Board on behalf of the Applicant. Mr. Gray was accepted by the Board as an expert in the field of engineering, & he was placed under oath & was sworn in to testify. Mr. Gray confirmed the permitting process & denial of applications submitted to the NJDOT. He advised the Board that he was retained in order to redesign the site to utilize one (1) common curb cut to provide access to the three (3) lots in question. Mr. Gray testified that access to all three (3) lots will now be provided using a common curb cut located at Lot 7.01. A shared drive aisle will be utilized to access lots 7.02 & 7.03. Mr. Gray testified that there is sufficient space for a vehicle to turn around & exit the site from any of the lots using the same curb cut. Mr. Gray confirmed that all of the proposed turning radius are sufficient & the Applicant consulted with a traffic engineer who confirmed that the proposed ingress & egress is adequate & safe. Mr. Gray advised the Board that the only access to the site is provided off of West Spruce Avenue. He confirmed that there is adequate space for an individual to enter the drive aisle & determine which structure they are going to without blocking the drive aisle for other vehicles. Mr. Gray noted that the NJDOT imposed several conditions on the Applicant in connection with the plan that was ultimately approved. More specifically:

- a. The Applicant will need to stripe the entrance & exit point to the site;
- b. A 24-inch stop bar needs to be incorporated on site;

- c. A stop sign needs to be installed for people exiting the site; and
- d. A One-way sign needs to be installed to ensure people do not exit the site & travel the wrong way down West Spruce Avenue (NJSH Rt. 147).

In response to a question posed by the Board, Mr. Gray testified that there is sufficient space for vehicles to back out of proposed parking spaces to exit the site. Mr. Gray advised the Board that the NJDOT's primary concern was related to the number of curb cuts & that concerns about the safety of vehicles backing out on to West Spruce Avenue (NJSH Rt. 147) were secondary. Board Members expressed concerns about the fact that the NJDOT approved several other permits along West Spruce Avenue (NJSH Rt. 147) which allowed more curb cuts & larger curb cuts than what's proposed by the Applicant. The Board Members & the Board Engineer expressed concerns in relation to the functionality & safety of the one (1) curb cut, shared drive aisle proposal. In response to a question posed by the Board, Mr. Gray testified that individual unit owners will place their trash & recycling at the curb to be collected on collection days. He indicated that the trash collection will be temporary & limited to a specific day & time. Board Members recognized that the Applicant's options, and the Board's options for that matter, are limited by the approvals granted by the NJDOT.

The Board was in receipt of a review memorandum prepared by Board Engineer Mr. Petrella, dated August 1, 2022 which was received by the Board & which is incorporated for reference. Mr. Petrella reviewed & confirmed the relief sought by the Applicant for the benefit of the Board. The application required no variances or waivers. Mr. Petrella advised the Board that he recommends that the Applicant utilize two or even three curb cuts; however, he recognized the limitation imposed by the NJDOT. He advised the Board that any approval of the revised plan to provide access to the site using one (1) curb cut would be tied to fact that the NJDOT will not approve any other configuration using more than one (1) curb cut.

Chairman Davis then opened the application 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.

The Board members then discussed & summarized the application as presented. The Board then discussed the finding of facts on the variance/siteplan approval. Each Board member gave reasoning for their view of the facts & the application as it relates to the application. Mr. O'Connell "volunteered" for the finding of facts. Mr. O'Connell reiterated to the address and Block & Lot of the property as stated in the application. The property is located in the R-2 Zoning District & it is currently under construction with a duplex dwelling. The Property has frontage on West Spruce Avenue (NJSH Rt. 147), to be developed with 2-duplex & 1-single-family dwelling(s). The Applicant is the owner of the Property, as such, has standing to appear before the Board requesting amended minor subdivision approval & a design waiver associated with a proposed curbcut (a maximum curb cut of 20ft. is permitted whereas 30ft. is existing & proposed). The single-family dwelling & the permitted duplex conform to all area & bulk requirements governing the development of same. The proposed conditional use duplex obtained a D(3) Conditional Use Variance as duplexes are permitted on 50ft. x 100ft. lots in the R-2 Zoning District. The prior approvals granted by the Board are memorialized within Resolution Z-2021-6-2. The Applicant is before the Board seeking amended minor subdivision approval due to a required redesign of the proposed access to the lots in question. The NJDOT approved a plan utilizing one (1) curb cut & shared drive aisle to provide access to the lots in question. The NJDOT will not consider or approve any variation of the plan utilizing more than one (1) curbcut. Mr. Gray & Mr. Newswanger reviewed the nature of the application; & were deemed credible to the Board. The Board found that the Applicant did establish that granting the amended subdivision approval & design waiver would advance the purposes of Zoning, to the public good, to the City's municipal Land Use Ordinances & to the City's Zoning Map. The Board finds that

the Applicant has satisfied the approval. No additions or correction to the finding of facts. No discussion on the facts.

The Board Solicitor called for a motion to approve the of the Resolution as discussed. Motioned by Mr. O'Connell & 2nd by Mr. Miller. 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 Resolution was approved by the Board.

Due to the nature of the next two (2) applications requesting a Use variance & the regional Board format, Mr. Miller as Mayor's designee, Mr. Auty & Mr. Peters as Alternate(s) stepped down for the next application(s) & took a seat in the public seating area.

Application No. Z-22-5-2 101 East Walnut Avenue Real Estate Ventures

100 East Walnut Avenue

Block 221; Lot 4

D & E Zoning District

D(1) Use & D(3) Height/Use & 'C' variance siteplan approval

The Board heard & considered the concept review application of 101 East Walnut Avenue Real Estate Ventures for an informal review at July meeting. The Board & Applicant exchange ideas & understanding of the Applicant's proposal to which the formal application was to be heard tonight. As a concept/informal review application, no formal action or vote did occur on the last month's concept application.

The Board heard & considered the application of 101 E. Walnut Avenue Real Estate Ventures, LLC (Applicant), owner of the property located at 100 East Walnut Avenue, a/k/a Block 221, Lot 4, seeking preliminary & final siteplan approval, a D(1) Use variance, a D(6) maximum building height variance (36ft. is permitted whereas 41.5ft. is proposed), and 'C' variance relief in relation to maximum lot coverage (80% is permitted whereas 93.3% is proposed), maximum building coverage (65% is permitted whereas 71% is proposed), and number of stories (three{3} stories are permitted whereas four {4} stories are proposed), in order to construct a mixed-use building consisting of a commercial unit on the ground floor, and two (2) residential units on the 2nd floor, and a residential unit on both the 3rd & 4th floors.;

John Amenhauser, Esq., appeared on behalf of the Applicant & outlined the nature of the application & the relief sought in connection with same. Mr. Amenhauser advised the Board that the Property is a vacant parcel of land located in the City's D&E district. He reminded the Board that the Applicant appeared before the Board in July for an informal concept review which the Board favorably received. Mr. Amenhauser indicated that the Applicant is proposing to develop a mixed-use building consisting of a commercial use on the ground floor with four (4) residential units above. In light of the fact that residential units are no longer permitted in the D&E district by recently enacted City Ordinance, Use variance is requested.

William Swiderski, P.E., P.P. with Swiderski Associates, appeared before the Board on behalf of the Applicant. Mr. Swiderski was accepted by the Board as an expert in the fields of engineering & land planning, and he was placed under oath & testified from the site plan, dated May 11, 2022 & last revised July 18, 2022, which was received by the Board and which is incorporated herein as fact. Mr. Swiderski distributed a color rendering of the proposed development which was received by the Board & which was marked as Exhibit A-1. Mr. Swiderski reviewed the existing & proposed site conditions for the benefit of the Board. The Property is a vacant parcel of land located at the corner of Walnut & Olde New Jersey Avenue(s). Mr. Swiderski testified that the Applicant is proposing to develop a mixed-use building consisting of a commercial use on the ground

floor with four (4) residential units above. Mr. Swiderski noted that the proposed development was previously a permitted use in the D&E district; however, the City enacted an Ordinance in March of 2022 which made residential uses prohibited uses in the Zoning District. Accordingly, a D(1) Use Variance is required. In addition to the D(1) Use Variance, Mr. Swiderski reviewed the variance relief sought in connection with this Application. More specifically, the Applicant requires following variances:

- a. A D(6) maximum building height variance (36ft. is permitted whereas 41.5ft. is proposed);
- b. Maximum lot coverage (80% is permitted whereas 93.3% is proposed);
- c. Maximum building coverage (65% is permitted whereas 71% is proposed); and
- d. Number of stories (3 stories are permitted whereas 4 stories are proposed).

With respect to off-street parking, Mr. Swiderski testified that a total of 11 off-street parking spaces are required. A total of eight (8) off-street parking spaces are proposed on site underneath the structure itself & three (3) additional on-street parking spaces can be counted towards the off-street parking requirement. Mr. Swiderski further testified that the commercial space requires one (1) parking space for every 10 seats, and the residential units require a total of eight (8) off-street parking spaces. Mr. Swiderski advised the Board that based upon the fact that no more than 30 seats will exist in the commercial space, the Applicant provides compliant parking on site. As condition of approval, the Applicant agreed to further limit seating within the commercial space to no more than 20 seats to ensure additional parking is provided. Mr. Swiderski further noted, that one of the on-street parking spaces on Walnut Avenue will be utilized as a dis-abled parking space. As a condition of approval, the Applicant must obtain approval from City Council in order to utilize an on-street parking space for dis-abled parking.

Board Members recognized that compliant parking is provided & they also recognized that ample public parking exists in the surrounding neighborhood.

Mr. Swiderski testified that the Property is particularly suited to accommodate the proposed use given its location in the D&E district & the fact the residential uses will primarily be maintained & utilized by the Applicant in conjunction with the operation of a neighboring business, the Inlet Restaurant. He indicated that the Property is located in a transitional zone between commercial & residential zones, and he identified three (3) other mixed-use developments which exist in the surrounding neighborhood. Mr. Swiderski further opined that the application can be granted as there are no substantial detriments to the public good & the application does not substantially impair the intent or purpose of the Zoning Map & and Ordinance. Mr. Swiderski opined that several of the purposes of Zoning, outlined within N.J.S.A. 40:55D-2, are advanced in connection with this application & support the relief sought by the Applicant as it:

- b. 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 & general welfare;
- e. Promotes the establishment of appropriate population densities & concentrations that will contribute to the well-being of persons, neighborhoods, communities & regions & preservation of the environment;
- g. Provides sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial, industrial uses & open space, both public & private, according to their respective environmental requirements in order to meet the needs of all NJ citizens; and
- i. Promotes a desirable visual environment through creative development techniques & good civic design & arrangement.

Board Members expressed concerns in regards to the fact that the Ordinance governing the D&E Zoning District was just modified to eliminate mixed-use development & residential uses. Additional concerns were

raised in relation to the number of proposed units in comparison to the size of the Property, and about the fact that residential properties are proposed to be located in a commercial zone.

Puri L. Garzone, III, a member of 101 East Walnut Avenue Real Estate Ventures, LLC, was present at the meeting & he was placed under oath & was sworn in to testify before the Board. Mr. Garzone testified that the Applicant purchased the Property in June of 2021 with plans to utilize the property for commercial & residential purposes. He indicated that at the time the property was purchased the proposed development was permitted in the D&E district. Mr. Garzone testified that the Inlet Restaurant & the volume of business that same does has grown significantly over the years. He advised the Board that the Inlet hosts weddings, reunions, special events & private events in addition to operating a bar/ restaurant. Mr. Garzone further testified that many of these events occur during the shoulder season or off-season when rental accommodations are limited. Mr. Garzone advised the Board that the owners of the Inlet recognized that developing & maintaining residential rental units was vital to the continued growth of the business. He indicated that providing a bride/groom & their family members or guests with a rental in connection with their wedding will improve the venue ability to attract potential patrons. Mr. Garzone testified that he intends to retain the commercial unit, & the residential units located on the 2nd & 3rd floors for use exclusively by the inlet. He indicated that the 4th unit would be sold in order to offset the financial cost associated with developing the Property.

Board Members expressed concerns about residential units in a commercial zone & the number of anticipated noise complaints & issues that typically arise. As a condition of approval, the Applicant offered to file a deed restriction limiting the 2nd & 3rd floor units to be used exclusively by the Inlet for transient occupancy purposes only, to be reviewed & approved by the Board Solicitor prior to recording same with the Cape May County Clerk's Office. Board Members reiterated their concerns with the Applicant's plan to sell off the 4th floor unit.

Mr. Garzone testified that selling the 4th-floor unit comes down to nothing more than offsetting the costs of development. In an effort to address the concerns raised by the Board in relation to a residential unit being located in a commercial zone, the Applicant agreed to the following condition of approval, a disclaimer will be incorporated in the MLS listing & any Agreement of Sale indicating that the residential unit in question was permitted in relation to a variance obtained from the Board, & the Property is located in a commercial bar district that generally operates until 3am in the morning. Mr. Garzone testified that the Inlet has lost out on booking weddings & private events due to the fact that there are no rental units available on site or available in the area during the off-season months. With respect to the commercial unit, Mr. Garzone testified that the commercial unit will allow the Inlet to expand its culinary program & subsidize its labor pool. Mr. Garzone testified that the commercial unit will house a coffee shop/deli which will operate from 7am until approximately 10pm at night.

David Shorten, R.A., a registered architect, appeared before the Board. Mr. Shorten was placed under oath & he testified from the proposed floor plans & building elevations, prepared by Joseph Garramone, R.A., dated May 20, 2022 & last revised July 19, 2022, which were received by the Board & which are incorporated herein as fact. Mr. Shorten was accepted by the Board as an expert in the field of architecture. Mr. Shorten reviewed the proposed floor plans & building elevations for the benefit of the Board. Mr. Shorten testified that the proposed structure will measure 41.5ft. whereas a maximum building height of 36ft. is permitted. Mr. Shorten testified that the increase in building height will accommodate an elevator & architectural features which will help create a desirable visual environment. Mr. Shorten advised the Board that the structure itself will be no taller than neighboring properties & same is consistent with the site line maintained in the neighborhood. Mr. Shorten testified that the Property has been vacant for years & the development of same is a positive for the district & the surrounding neighborhood. Mr. Shorten opined that the site can accommodate the

proposed building height & the site is particularly suited to accommodate the proposed use. He indicated that the proposed deed restriction essentially renders the use to be commercial in nature. Mr. Shorten testified that the commercial space will contain no more than 20 seats. He indicated that the residential units located on the 2nd floor will both contain two (2) bedrooms & 1-1/2 bathrooms. The residential units on 3rd & 4th floors will both contain a total of four (4) bedrooms & 2-1/2 bathrooms.

Board members questioned how trash & recycling would be handled on site. Mr. Shorten testified that a trash room is proposed to be located on site & the Applicant will hire a contractor to collect trash & recycling on a daily basis. As a condition of approval, the Applicant will contract with a sanitation company to ensure daily trash & recycling collection.

The Board was in receipt of a review memorandum prepared by Board Engineer Mr. Petrella, dated August 2, 2022 which was received by the Board & incorporated as fact. Mr. Petrella confirmed the required number of parking spaces associated with the enclosure of the patio.

Chairman Davis then opened the application for general public comment. Four (4) individuals addressed the Board in connection with this application, namely:

- a. Maryann Graw, owner of the property located at 117 East Chestnut Avenue, appeared & she was placed under oath to testify before the Board. Ms. Graw advised the Board that she was in favor of the Project & that she was happy to see the Property would finally be developed.
- b. Rebecca Baden, owner of the property located at 110 East Walnut Avenue, appeared & she was placed under oath to testify before the Board. Ms. Baden advised the Board that she lives next door to the Property & she supports the application.
- c. William Pace, owner of the property located at 112 East Spruce Avenue, appeared & he was placed under oath to testify before the Board. Mr. Pace advised the Board that it was in favor of the Project. He indicated that the Inlet Restaurant is an asset to the community & the Applicant's proposal will create much needed residential rental units.
- d. Thomas Neveil, owner of the property located at 117 East Walnut Avenue, appeared & he was placed under oath to testify before the Board. Mr. Neveil advised the Board that he is in favor of the application.

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.

The Board members then discussed & summarized the application as presented. The Board then discussed the finding of facts on the Use variance/siteplan approval. Each Board member gave reasoning for their view of the facts & the application as it relates to the application. Mr. O'Connell "volunteered" for the finding of facts. Mr. O'Connell reiterated to the address and Block & Lot of the property as stated in the application. The property is located in the D/E Zoning District & it is currently vacant parcel of land. In light of the fact residential use is not a permitted use in the D/E district, a D(1) Use variance, a D(6) maximum building height variance & various C variance relief is required in connection with this Application. The Applicant is proposing to construct a mixed-use building consisting of a commercial unit on the ground floor, and two (2) residential units on the 2nd floor, and a residential unit on both the 3rd & 4th floors. The Applicant is the owner of the Property, as such, has standing to appear before the Board requesting preliminary & final siteplan approval, variance approval in order to construct the project. Mr. Shorten, Mr. Garzone & Mr. Swiderski describe the nature of the application; & were deemed credible to the Board. With respect to the D(1) Use variance, a D(6) maximum building height variance & various C variance relief sought by the Applicant, the Board finds that the Applicant has presented special reasons which advance the purposes of

Zoning which justify the granting of the aforementioned variances. The Board found that the Applicant did establish that granting the preliminary & final siteplan approval, Use/Height variance approval would advance the purposes of Zoning, to the public good, to the City's municipal Land Use Ordinances & to the City's Zoning Map. The Board finds that the Applicant has satisfied the approval. No additions or correction to the finding of facts. No discussion on the facts.

The Board Solicitor called for a motion to approve the of the Resolution as discussed. Motioned by Mr. Greenland & 2nd by Mr. Harkins. 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 Resolution was approved by the Board, with Mr. Green voting no.

Application No. Z-22-3-1 HHN, Inc. (aka Owen's Pub)

119 East 17th Avenue

Block 204; Lot 13, 14, & 15

CBD Zoning District

Preliminary & final site plan approval & 'c' Variance to establish an outdoor seating/bar area

The application was originally heard at June meeting of the Board. After several discussions on the specific use of the shipping container for the outdoor bar by the Board members, the Applicant & his attorney, the Applicant requested tabling the application till the August meeting to work out detail regarding same. Board members were almost united that the shipping container was not the aesthetic building thought to be harmonic to the neighborhood. It was desirable to the most of the Board that a separate or attached building be utilized for the outdoor bar. The Applicant's attorney, Mr. Amenhauser discussed the myriad of issues & substantial changes that were expected to the siteplan as discussed with the Board & Applicant & Mr. Amenhauser, that all parties decided that more time is necessary to properly submit the requested/required documentation & plans. Mr. Amenhauser requested adjournment of the application due to the fact the Applicant was not prepared to continue with the application based on the myriad of issues concerning the construction of the site & how it relates to the Board's possible review & interpretation of the siteplan. Mr. Amenhauser requested time until the August meeting to submit revised documentation, which was granted.

The Board heard & considered the revised application of HHN, Inc. (Applicant), owner of the property located at 119 E. 17th Avenue, a/k/a Block 204, Lots 13, 14, & 15 (Property), seeking preliminary & final siteplan approval, a D(2) Use Variance approval for the expansion of a non-conforming use, and 'C' variance relief in relation to off-street parking (25 off-street parking spaces are required whereas 11 are proposed), minimum driveway width (24ft. is required whereas 21ft. is proposed), minimum landscape buffer (five {5} ft. is required whereas 0ft. is proposed), maximum lot coverage (80% is permitted whereas 98.04% is proposed), minimum sideyard setback (6ft. is required whereas 1.5ft. is existing & proposed), minimum sideyard setback for accessory structure (4ft. is required whereas 3.65ft. is existing & proposed), and minimum rearyard setback for accessory structure (4ft. is required whereas .047ft., 1.7ft., & 1.9ft. are existing & proposed), in order to construct an outdoor seating area containing a 10 seat bar & tables containing a total of 32 seats.

John Amenhauser, Esq., appeared on behalf of the Applicant & outlined the nature of the application & the relief sought in connection with same. Mr. Amenhauser advised the Board that the Property is developed with a bar/restaurant known as Owen's Pub. The existing bar/restaurant is a non-conforming use in the Central Business District (CBD) Zoning District as the service of alcohol is prohibited within the Zoning District. Mr. Amenhauser indicated that the Applicant revised the submitted application after receiving Board comments & concerns at a prior meeting.

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 & he testified from the proposed site plan, dated April 20, 2022 & last revised July 25, 2022, which were received by the Board & which are incorporated herein as fact. Mr. Orlando reviewed the existing & proposed site conditions for the benefit of the Board. Mr. Orlando testified that the Applicant is proposing to construct an addition to the existing structure in order to accommodate an outdoor seating area. He noted that the proposed outdoor seating area will be fully enclosed & will contain garage style doors which can be rolled to provide an open-air area. Mr. Orlando testified that a ten (10) seat bar & tables with a total of thirty-two (32) seats are proposed. Mr. Orlando indicated that off-street parking will be incorporated on-site as well. A total of nine (9) off-street parking spaces will be provided, and one of these parking spaces will be dis-abled accessible. Three (3) on-street parking spaces are provided. Mr. Orlando advised the Board that a trash enclosure is proposed on-site in the rear of the property. Access to the proposed outdoor seating area will be provided via a common entrance located in the front of the building. Patrons will be able to access the existing restaurant/bar area or the outdoor area through this location. Mr. Orlando reviewed the variance relief sought in connection with this application. He confirmed that the existing use is not permitted in the CBD district since the service of alcoholic beverages occurs on-site. Mr. Orlando testified that the proposed addition of the outdoor seating area necessitates a D(2) expansion of a non-conforming use variance. Mr. Orlando opined that the proposed outdoor seating area has been in operation on-site for the past three (3) years in connection with temporary approvals received from the City in response to the Covid-19 pandemic. Mr. Orlando further opined that the Property is particularly suited to accommodate the expansion of the non-conforming use given its location & the fact that the surrounding neighborhood consists primarily of commercial uses. Mr. Orlando further opined that the application can be granted as there are no substantial detriments to the public good & the application does not substantially impair the intent or purpose of the Zoning Map & Ordinance. Mr. Orlando opined that several of the purposes of zoning, outlined within N.J.S.A. 40:55D-2, are advanced in connection with this application & support the relief sought by the Applicant 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 & general welfare; and
- j. Promotes a desirable visual environment through creative development techniques, good civic design & arrangement.

Brian Newswanger, RA of Atlantes Architects appeared on behalf of the Applicant & he was recognized as an expert in the field of architecture. Mr. Newswanger was placed under oath & he testified from the proposed architectural plans, dated February 2021 & last revised July 19, 2022, which were received by the Board & which are incorporated herein as fact. Mr. Newswanger reviewed the existing & proposed floor plans for the benefit of the Board. Mr. Newswanger advised the Board that the Applicant originally planned to connect a shipping container bar to the structure & enclose the outdoor area with a temporary tent. He indicated that after hearing the concerns raised by the Board, the Applicant redesigned the proposal to consist of a permanent structure with a defined bar & outdoor seating area. Mr. Newswanger testified that the outdoor seating area will be fully enclosed; however, garage doors are proposed which can be rolled up to open the area up. Mr. Newswanger testified that awnings are proposed to provide shade & protection from the elements. Mr. Newswanger advised the Board that additional restrooms are also proposed within the outdoor seating area to accommodate the increased seating. He indicated that the proposing building materials are consistent with the existing structure.

In response to questions posed by the Board, Mr. Newswanger testified a garden fence will surround the outdoor seating area, planters & landscaping elements will be installed in the location of the garage doors in order to control the site & to prevent the public from leaving the area with alcoholic beverages.

Michael Haldeman, the owner of the Property, appeared & he was placed under oath to testify before the Board. In response to questions posed by the Board, Mr. Haldeman testified that outdoor music would be limited to acoustic music & same would be stopped no later than 10pm. As a condition of approval, no amplified DJ or live music will be permitted on the outside deck, no music will be permitted after 10pm & the doors to the outdoor seating area will also be closed by 10pm. Board Members questioned how trash collection would be handled on site. Mr. Haldeman testified that trash collection & deliveries occur off hours. As a condition of approval, the Applicant will ensure that trash collection occurs off-hours during times when the business is closed.

The Board was in receipt of a review memorandum prepared by Board Engineer Mr. Petrella, dated July 29, 2022 which was received by the Board & which is incorporated for reference. Mr. Petrella reviewed & confirmed the relief sought by the Applicant for the benefit of the Board.

Chairman Davis then opened the application 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.

The Board members then discussed & summarized the application as presented. The Board then discussed the finding of facts on the variance/siteplan approval. Each Board member gave reasoning for their view of the facts & the application as it relates to the application. Mr. O'Connell "volunteered" for the finding of facts. Mr. O'Connell reiterated to the address and Block & Lot of the property as stated in the application. The property is located in the CBD Zoning District & it is currently operated as Owen's Pub, a bar & restaurant. In light of the fact that restaurants/bars are not permitted to serve alcohol in the CBD district, a D(2) expansion of a non-conforming use variance is required in connection with this Application. The Applicant is proposing to construct an outdoor seating area containing a ten (10) seat bar & tables containing a total of thirty-two (32) seats. The Applicant is the owner of the Property, as such, has standing to appear before the Board requesting preliminary & final siteplan approval, a D(2) variance for the expansion of a non-conforming use, and 'C' variance relief. Mr. Orlando, Mr. Newswanger & Mr. Haldeman the nature of the application; & were deemed credible to the Board. With respect to the D(2) and C variance relief sought by the Applicant, the Board finds that the Applicant has presented special reasons which advance the purposes of Zoning which justify the granting of the aforementioned variances. The Board found that the Applicant did establish that granting the preliminary & final siteplan approval, a D(2) variance approval would advance the purposes of Zoning, to the public good, to the City's municipal Land Use Ordinances & to the City's Zoning Map. The Board finds that the Applicant has satisfied the approval. No additions or correction to the finding of facts. No discussion on the facts.

The Board Solicitor called for a motion to approve the 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 Resolution was approved by the Board.

After the application(s) was concluded, Mr. Miller, Mr. Auty & Mr. Peters returned to their seats on the Board's dais to partake in Board business.

I) ZONING OFFICER REPORT:

Dan Spiegel, Zoning Officer/Construction Official, had nothing to report for tonight's meeting.

Mr. Green questioned the status of "Marina Bay Towers bar" was allegedly closed by City action. Chairman Davis explained the change of the status & siteplan approval. Mr. Green was told the "bar" was shut-down.

Mr. Spiegel questioned the content of the June Meeting Minutes. Mr. Spiegel questioned the "message" of the meeting minutes. The meeting minutes contents were a concern of Mr. Spiegel. Chairman Davis explained that the comments & concern referenced in the minutes were to the procedure off siteplan approval rather than the action(s) of the Zoning/Construction Official. The Board Secretary authored the meeting minutes & took responsibility for the content of the meeting minutes. Chairman Davis explained that any issuance of Merchant License/Alcohol Transfer license traditionally came to the Planning Board for review & comment before the City took action on any application. Allegedly, Marina Bay Towers was issued a liquor license to "Coo-Coo's Bar" without comment by the Planning Board. The Board Solicitor re-affirmed the opinions of the Chairman Davis. The Planning Board reason that they should be part of the process. It was not direct to any employee of the City. Mr. Spiegel stressed his efforts are in the best interests of the City & due diligence was made. The application recently before the Board last month was approved by the Board.

Chairman Davis tried to explained that the Coo-Coo's Bar application had to come before the Board for approval & reason(s) for recent closure of same. Mr. Spiegel was adamant that he is making the best decisions for the City. In many cases, the City's Land Development Ordinance desperately needs revision & amendment to lessen the chance of interpretation & confusion. In no way or form, Chairman Davis & various Board members also stressed that the Meeting Minutes were directed at any person.

Mr. O'Connell mentioned that the City must act in a consistent manner in all aspects & applications.

Mr. Spiegel stressed that his enforcement action(s) have increased during his tenure prior to any other Zoning/Construction Official. Mr. Spiegel explained in a brief summary of the status of the Marina Bay Towers construction & any enforcement actions taken by the City as a whole.

Chairman Davis directed the Board Secretary to address the June Meeting minutes.

J) PUBLIC PORTION:

Chairman Davis then opened the meeting for general public comment. Mr. Bill Leiter, of 423 East 8th Avenue spoke to the Board regarding construction occurring at 421 East 8th Avenue which has issued Construction Permit for construction project which has been constructed. Application for Certificate of Occupancy (C/O) has been applied by the house construction contractor at the time of the meeting. Mr. Leiter has questioned several aspects of the construction, regarding; lighting, shielding of HVAC units, etc. Chairman Davis informed Mr. Leiter to seek appointment of the Zoning/Construction Office.

Mr. Leiter also mentioned the underground drainage system connected to the downspouts which overflows to the swimming pool. Chairman Davis requested that Mr. Spiegel address the aspects, to which Mr. Spiegel mentioned that NJ private licensed engineer had certified the drainage system to which the swimming pool is part of the plan. Mr. Leiter also mention the aspect of the pool company draining the pool in a haphazard way. Chairman Davis requested Mr. Spiegel to address Mr. Leiter concerns through a future appointment & determine if anything can be addressed. Mr. Leiter also questioned the fencing requirement surrounding the swimming pool. The Board Solicitor addressed Mr. Leiter that these items are enforcement items & the Board has no power to address them tonight. Chairman Davis also affirmed the enforcement issue with Mr. Leiter.

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

K) APPROVAL OF MINUTES:

The Board Solicitor presented to the Board the approval the August 10, 2022 Board regular Meeting Minutes. The Board Solicitor called for any discussion or corrections to the minutes. No discussion or corrections proposed. Motioned as proposed by Mr. Harkins & 2nd 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. Board members Mr. Green & Mr. Auty abstained from the vote on memorialization.

The Board Solicitor addressed the probable amendment to the Land Development Ordinance. Chapter 276-34(A)(2) does allow rebuilding of an existing structure if said structure is a pre-existing non-conforming structure under certain circumstances. Any expansion would need to go to the Board. Board Engineer Petrella addressed the historical aspect of the section involved & why the City enacted the section. Mr. Speigel mentioned that additions, bump-outs, canopies, etc. would need Planning Board approval if the amendment is to be considered. The question for the Board for the expansion of non-conforming structure would need Board approval. The question is how many applications of this nature would have to come to the Board. If several variances application caused by this probable amendment, could cause many applications to come to the Board. If the building footprint is not exasperated, the application(s) should not need Board approval. Several examples that maybe affected by the amendment were weighed by the Board members. Mr. O'Connell raised possible concerns. Possible future amendment to the Ordinance for review by the Board is further warranted & discussion for another meeting. The Board will review the Land Development Ordinance for any "loopholes" that need amendment.

(At this point several conversations of different Board members could be heard on the recording). The Board Solicitor mentioned the Ordinance could always be amended to make clearer & more understanding by the general public.

L) UNFINISHED BUSINESS: None presented.

M) COMMUNICATION(S):

Notice of Adoption – City Ordinance No. 1882 – Removing the Conditional Use standards for duplex residential use from the R-1.5 Zoning District. Effective July 27, 2022.


The Board Secretary introduced City Ordinance #1882 which removed the Conditional Use standard/requirements from the R-1.5 Zoning District. The ordinance was adopted by City Council & is in effect at the time of Board meeting. This was for informational only purposes for the Board.

N) REPORTS: None presented.

O) MEETING ADJOURNED:

Meeting was adjourned at 11:23pm, on motioned by Mr. Greenland & 2nd by Vice Chair DiEduardo. Based on the affirmative roll-call vote of the Board members, the motion to adjourn was approved.

APPROVED: 9/20/22
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.