

North Wildwood Planning Board
Regular Meeting: November 10, 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.

D) ROLL CALL

Chairman Robert Davis	Present	Mayor Patrick Rosenello'	Absent
Vice Chair Jodie DiEduardo	Present	Mayor's Designee Valerie DeJoseph	Absent
Chief John Stevenson	Present	Mr. William Green	Present
Mr. John Harkins	Present	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. David Stefankiewicz (Board Solicitor)	Present
Mr. Ralph Petrella (Board Engineer)	Present
Eric Gundrum, (Board Secretary)	Present

Mr. Stefankiewicz filled in for Mr. Belasco as Board Solicitor due to absence.

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.

Chairman Davis moved the next Development Application from New Business – due to a Board member quorum question:

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

(adjourned from last month's meeting)

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
- Minor subdivision approval

Due to inadequate quorum of eligible voting Board members present at the meeting, the Applicant's attorney, Jeff Barnes, Esq., 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 prior approval, well as inadequate number of eligible Board members able to vote on the application.

The Board Solicitor announced adjournment of the above referenced application by request of the Applicant's attorney/agent. 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 November 10, 2021 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.: Z-21-8-1 1411 New York Ave, LLC

1411 New York Avenue

Block 175, Lot 1

R-2 Zoning District

Minor Subdivision approval

Conditional Use siteplan approval with Conditional Use Variance – new duplexes on 50x100 lots

The Board heard & considered the application of 1411 New York Ave, LLC (Applicant), the owner of the property located at 1411 New York Avenue, a/k/a Block 175, Lot 1 (Property), seeking minor subdivision approval, Conditional Use approval to construct a single-family semi-detached dwelling on proposed Lot 28, & a D(3) Conditional Use Variance/Use Variance to construct a single-family semi-detached dwelling on proposed Lot 1 as same does not meet the required minimum frontyard setback (10ft. is required whereas 4.6ft. is proposed), in order to create two (2) 50ft. x 100ft. lots suitable for the construction of single family semi-detached (duplex) dwellings in the City's 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 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 memorialization was approved by the Board. Mr. Greenland & Ms. Haas abstained from the vote on the memorialization.

Application No.: Z-21-6-2 Star Property Group, LLC

721-723 Spruce Avenue

Block 28, Lots 7.01 & 7.02

R-2 Zoning District

Minor Subdivision approval

Conditional Use siteplan approval with Conditional Use Variance – new duplexes on 50x100 lots

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 (Property), seeking minor subdivision approval, a D(3) Conditional Use variance/Use Variance for proposed Lot A in connection with minimum lot area (5,000SF is required whereas 4,866SF is proposed) & minimum lot depth (100ft. is required whereas 97.12ft. is proposed), and a design waiver associated with a proposed curb cut (a maximum curb cut of 20ft. is permitted whereas 28.5ft. is proposed), in order to create three (3) lots measuring 50ft. x 97.12ft, 40ft. x 100ft. & 60ft. x 104.43ft. suitable for the construction of two (2) duplexes & one (1) single-family dwelling;

The Board Solicitor called for a motion to approve the memorialization of the Resolution as discussed. Motioned by Mr. O’Connell & 2nd by Vice Chair DiEduardo. 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. Mr. O’Connell abstained from the vote on the memorialization.

H) **NEW BUSINESS:**

The following Board member was excused from the vote or participating in the application due to residing nearby; Board Member Mr. Green.

Application No.: P-21-9-4 Scott Peter

1301 Atlantic Avenue

Block 269, Lot 3

R-1 Zoning District

Minor Subdivision approval

The Board heard & considered the application of Scott Peter (Applicant), the owner of the property located at 1301 Atlantic Avenue, a/k/a Block 269, Lot 3 (Property), seeking minor subdivision approval in order to subdivide an existing 100ft. x 100ft. lot to create two (2) conforming 50ft. x 100ft. lots.

The Applicant, Scott Peter, was self-represented in connection with this application. Mr. Peter was placed under oath & he was sworn in to testify before the Board. He outlined the nature of the application & the relief sought in connection with same. Mr. Peter advised the Board that he is seeking approval to subdivide an existing 100ft. x 100ft. lot located in the R-1 Zoning District. Mr. Peter indicated that he is proposing to subdivide the property to create two (2) 50ft. x 100ft. lots. Mr. Peter reviewed the area & bulk requirements of the R-1 Zoning District for the benefit of the Board, and he confirmed that the proposed lots will conform with same. Mr. Peter testified that the proposed minor subdivision is a by-right subdivision in light of the fact that the proposed lots are fully conforming. Mr. Peter further testified that the proposed subdivision will have no impact on the City’s Master Plan or the R-1 Zoning District as no variance relief is required in connection with this Application.

The Board was in receipt of a review memorandum prepared by Board Engineer Mr. Petrella, dated November 1, 2021, which was received by the Board & which is incorporated herein as fact. Mr. Petrella reviewed & confirmed the relief sought by the Applicant for the benefit of the Board. Mr. Petrella confirmed that the Applicant's proposal is in fact a by-right subdivision as the proposed lots conform to all applicable regulations within the R-1 Zoning District. Mr. Petrella advised the Board that the Applicant must comply with the New Jersey Map Filing Law. He recommended that the existing structure located on site be demolished prior to recording the plan of minor subdivision with the Cape May County Clerk's Office. As a condition of approval, the Applicant must comply with the New Jersey Map Filing Law, and the plan of subdivision will not be recorded until the existing structures located on site are demolished.

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 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 subdivision approval. The Board found Mr. Peter testimony to be credible & persuasive. With respect to the Application for subdivision approval, the Board finds that the application meets the standards of the Ordinance & the Applicant is entitled to 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 approval 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 Resolution 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 memorialization was approved by the Board.

At the conclusion of the application, Mr. Green returned to the Board meeting as a voting member.

Application No.: P-21-9-3 Carl Maier

710 Ocean Avenue

Block 306, Lot 13

R-1.5 Zoning District

Variance siteplan request – minimum 8-foot separation for accessory structures – swimming pool

The Board heard & considered the application of Carl & Maryanne Maier (Applicant), owners of the property located at 710 Ocean Avenue, a/k/a Block 306, Lot 13 (Property), seeking 'c' variance relief in relation to the minimum distance between a pool & a structure (eight (8) feet is required whereas six (6) feet is proposed), in order to install an in-ground swimming pool on site.

Jeffrey Barnes, Esq., of the Barnes Law Group, LLC appeared on behalf of the Applicant & he outlined the nature of the application & the relief sought in connection with same. Mr. Barnes informed the Board that the Property is a corner lot which measures 50ft. x 100ft. (5,000SF) & it is located within the City's R-1.5 Zoning District. Mr. Barnes advised the Board that the property is being developed with a single-family dwelling which is currently under construction. The Applicant obtained construction permits to construct the single-family dwelling from the Construction Office as no variances were required in connection with the original plans. Mr. Barnes indicated that during construction the Applicant elected to redesign a proposed rearyard deck to better serve the needs of the family. He stated that the originally proposed deck is not functional due to its size & the location of a door & its proximity to stairs providing access to the backyard. Mr. Barnes stated that the Applicant is proposing to expand rearyard deck from three (3) feet to six (6) feet which will result in the deck being located within eight (8) feet of a pool which necessitates variance relief.

Carl Maier, the owner of the Property, appeared & he was placed under oath & sworn in to testify before the Board. Mr. Maier testified that he purchased the Property in December of 2020. He advised the Board that he hired an architect to design a single-family dwelling to be constructed on site. Mr. Maier advised the Board that the backyard was designed to include a deck & a pool. Mr. Maier testified that during construction a problem was identified in connection with the width of the deck & the location of the rear door & stairs providing access to the backyard. Mr. Maier further testified that, as designed, the deck is approximately 3ft. wide & the proposed back door is approximately 2.5ft. wide when opened. He indicated that the stairs providing access to the rearyard are located directly across from this back door. Mr. Maier testified that in order to open the door to gain access to the home, an individual would need to step back onto the stairs which is not functional or, frankly, safe. Mr. Maier advised the Board that he is proposing to increase the width of the deck from 3ft. to 6ft. & the pool would be relocated to an area equidistant from the expanded deck & a rearyard garage. Mr. Maier advised the Board that he & his wife intend to occupy the structure as their principal residence. He indicated that he has no children who would be using the pool & he confirmed that he has no intentions to utilize the pool in an unsafe manner. Mr. Maier testified that railings will be erected around the deck for safety purposes & to prevent individuals from accessing the pool from the deck itself.

In response to a question posed by the Board, Mr. Maier confirmed that the existing deck/landing is unsafe in its current configuration given the limited space to safely open the back door. In response to an additional question posed by the Board, Mr. Maier testified the relocated pool will be located approximately 6.5ft. from the garage, 6.5ft. from the expanded deck, and 6ft. from the deck stairs. In response to a question posed by the Board, Mr. Maier testified that the pool equipment will be located within the proposed garage. He also confirmed that the proposed fence will comply with the requirements of the City's Ordinance.

Mr. Petrella advised the Board that the City's Ordinance requires a minimum distance of eight (8) feet between a pool & a structure necessitating a variance in order to permit minimum distance of six (6) feet between the pool & structure.

Matthew Hender, P.P. of Engineering Design Associates, P.A. appeared on behalf of the Applicant & he was recognized as an expert in the field of land planning. Mr. Hender was placed under oath & he testified from the proposed siteplan, dated May 5, 2021, revised May 10, 2021, May 21, 2021, August 5, 2021, August 17, 2021, & October 18, 2021, which was received by the Board & which is incorporated herein as fact. Mr. Hender reviewed the proposed siteplan for the benefit of the Board. He testified that no variance relief is required in connection with the Applicant's proposal besides the variance associated with the minimum distance between the pool & structure. Mr. Hender further testified that the site & proposed development is significantly under on lot & building coverage. Mr. Hender reiterated that the distance from the pool to the proposed stairs measures 6ft. & the distance from the deck & garage to the pool measures 6.5ft. He confirmed that a minimum

distance of 8ft. is required. In response to a question posed by the Board, Mr. Hender testified that the proposed pool measures 9ft. x 12ft.

Mr. Hender further opined that application can be granted as there are no substantial detriments to the public good & the application does not impair the intent or purpose of the Zoning Map & Land development Ordinance as the proposed development complies with the area & bulk requirements of the R-1.5 Zoning District & the single-family dwelling is much smaller than what could be constructed on site. Mr. Hender opined that the relief sought by the Applicant can be granted by the Board as the proposed development advances several of the purposes of zoning as set forth within N.J.S.A. 40:55D-2, as it:

- b. Secures safety from fire, flood, panic & other natural & man-made disasters; and
- c. Provides adequate light, air & open space;

The Board was in receipt of a review memorandum prepared by Board Engineer Mr. Petrella, dated November 1, 2021, which was received by the Board & which is incorporated herein as fact. Mr. Petrella reviewed & confirmed the relief sought by the Applicant for the benefit of the Board.

The Board members then discussed & summarized the variance application as presented. The Board then discussed the finding of facts on the variance 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-1.5. The Applicant is the owner of the property & has standing to come before the Board to request variance siteplan approval. The Board found Mr. Hender & Mr. Maier testimony to be credible & persuasive. With respect to the application for variance siteplan approval, the Board finds that the application meets the standards of the Ordinance & the Applicant is entitled to 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 approval 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.

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 Solicitor called for a motion to approve the Resolution as discussed. Motioned by Mr. Harkins & 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 memorialization was approved by the Board.

Application No.: P-21-9-2 Lance Bachman/Island Pools & Spas

450 E. 23rd Avenue

Block 290, Lot 56.01

B/R-1 Zoning District

Variance siteplan request – minimum 8-foot separation for accessory structures – bar & pergola

The Board heard & considered the application of Lance Bachmann (Applicant), owner of the property located at 450 E. 23rd Avenue, a/k/a Block 290, Lot 56.01 (Subject Property), seeking ‘c’ variance relief in relation to the minimum distance of an accessory structure to other buildings (8ft. is required whereas 4.3ft. is existing & proposed), in order to maintain an existing accessory rearyard structure which is located within 8ft. of the principal structure.

Joseph Gray, P.E. of CME Associates, Inc. appeared on behalf of the Applicant. Mr. Gray was placed under oath & he testified from the Variance Plan prepared by Dante Guzzi Engineering Associates, dated May 10, 2021 & revised September 8, 2021, which was received by the Board & which is incorporated herein as fact. Mr. Gray advised the Board that the Property is a 50ft. x 100ft. lot that is currently developed with a single-family dwelling & it is located in the City’s Boardwalk (B) Zoning District. Mr. Gray testified that the site received a Use Variance in 2017, as memorialized in Resolution Z-17-2-2, to permit the construction of a single-family zone within the Boardwalk Zoning utilizing the R-1 zoning standards. Mr. Gray testified that a rearyard accessory structure which serves as bar with a pergola roof was constructed in the rearyard. He indicated that this rearyard accessory structure is located 4.33ft. from the principal structure, specifically the rearyard deck, whereas a minimum distance of 8ft. is required. Mr. Gray informed the Board that the need for variance relief was identified by the City during final inspections associated with the issuance of a Certificate of Occupancy (C/O). Mr. Gray advised the Board that the surrounding neighborhood is developed with large multi-family dwellings, duplexes & single-family dwellings which appear to have been designed in order to maximize building footprints. He indicated that the Property is significantly under on lot & building coverage compared to what could be constructed on site. Mr. Gray further opined that application can be granted as there are no substantial detriments to the public good & the application does not impair the intent or purpose of the Ordinance & Zoning Map. Mr. Gray opined that the relief sought by the Applicant can be granted by the Board as the proposed development advances one of the purposes of zoning set forth within N.J.S.A. 40:55D-2, as it:

- a. Provides adequate light, air & open space in light of the fact that the site is well below permitted lot & building coverage;

In response to a question posed by the Board, Mr. Gray testified that the accessory structure is a bar which is covered by a pergola roof. He agreed that the entire structure requires a variance in order to maintain same in its current location. A discussion ensued amongst the Board & its professional in relation to the definition of a bar & a “tiki bar.” The Board agreed that defining a bar versus a tiki bar was not important as the structure can be viewed simply as an accessory structure.

Keith Yatsk, the owner of Island Pools & Spas, appeared & he was placed under oath to testify before the Board. Mr. Yatsk installed the bar/outdoor kitchen area without permits. Mr. Yatsk testified that the accessory structure essentially functions as a bar/outdoor kitchen area which is intended to be used exclusively by the owner of the property. Mr. Yatsk advised the Board that accessory structure is an open-air structure with a pergola roof which is not enclosed. As a condition of approval, the Applicant shall not enclose the sides or roof of the rearyard accessory structure. In response to a question posed by the Board, Mr. Yatsk testified that the pergola roof is an aluminum structure which can be opened or closed to protect occupants from the elements. Mr. Yatsk further testified that construction of the site was completed in May of 2021, and the need for a variance to maintain the rearyard accessory structure was discovered during final inspections for the issuance of a C/O. In response to a question raised by the Board, Mr. Yatsk advised the Board that the original plans depicted an accessory structure; however, the design of the structure was modified during construction. Mr. Gray testified that the accessory structure is compliant with the required rear & sideyard setbacks.

The Board was in receipt of a review memorandum prepared by Board Engineer Mr. Petrella, dated November 1, 2021, which was received by the Board & which is incorporated herein as fact. Mr. Petrella reviewed & confirmed the relief sought by the Applicant for the benefit of the Board.

The Board members then discussed & summarized the variance application as presented. The Board then discussed the finding of facts on the variance 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 Boardwalk currently, but approved thru a Use Variance application under the requirements of R-1 Zoning District. The Applicant is the owner of the property & has standing to come before the Board to request variance siteplan approval. The Board found Mr. Grey & Mr. Yatsk testimony to be credible & persuasive. With respect to the application for variance siteplan approval, the Board finds that the application meets the standards of the Ordinance & the Applicant is entitled to 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 approval 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.

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 Solicitor called for a motion to approve 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.

The following Board member(s) was excused from the vote or participating in the application due to identified conflict with the application; Board Member(s) Mr. Greenland & Ms. Haas. Ms. Haas was excused for the rest of the meeting.

Application No.: P-21-8-2 408 Virginia, LLC

408 Virginia Avenue

Block 74, Lot 9

R-2 Zoning District

Minor subdivision approval, with “c” Lot Depth variance

The Board heard & considered the application of 408 Virginia, LLC (Applicant), owner of the property located at 408 Virginia Avenue, a/k/a Block 74, Lot 9 (Property), seeking minor subdivision approval to subdivide an existing 100ft. x 85ft. lot to create a 52ft. x 85ft. lot (proposed lot 9.01) & a 48ft. x 85ft. (proposed lot 9.02), & ‘c’ variance relief in relation to minimum lot depth for proposed lots 9.01 & 9.02 (100ft. is required whereas 85ft. is proposed), in order to construct a single-family dwelling on each newly proposed lot. The application was heard over the course of two (2) Board meetings, for which the Board did request architectural renderings for the proposed homes to be built on the proposed lots.

Anthony Monzo, Esq., of the Law Offices of Monzo, Catanese & Hillegass, P.C. appeared on behalf of the Applicant & he reviewed the nature of the Application & the relief sought in connection with same for the benefit of the Board. Mr. Monzo stated that the subject property is an existing oversized lot measuring 100ft. x 85ft. located at the corner of Virginia and Pine Avenues in the City's R-2 Zoning District. Mr. Monzo indicated that the Property is currently developed with a single-family dwelling that is oriented towards Virginia Avenue which the Applicant intends to demolish. Mr. Monzo advised the Board that the Applicant is seeking approval to subdivide the existing parcel to create a 52ft. x 85ft. lot (proposed lot 9.01) & a 48ft. x 85ft. (proposed lot 9.02), suitable for the development of single-family dwellings. Both of the proposed single-family dwellings will be oriented towards Virginia Avenue. In light of the proposed orientation of the lots, a lot depth variance is required.

Benjamin Hall, a member of 408 Virginia, LLC, & the owner of the Property, appeared & he was placed under oath to testify before the Board. Mr. Hall acknowledged that the proposed subdivision would create lots which are deficient in relation to required lot depth. Mr. Hall testified that orienting the proposed lots towards Virginia Avenue is supported by the zoning regulations & is a better alternative for the site & the surrounding neighborhood. Mr. Hall opined that sighting the homes on Virginia Avenue would allow the structures take advantage of views down Virginia Avenue & would be a better arrangement for future homeowners, the surrounding neighborhood & the City. Mr. Hall testified that the Property could be subdivided so that the proposed lots would be oriented towards Pine Avenue requiring no variance relief; however, he argued that such a proposal would result in extremely narrow homes & would negatively impact Virginia Avenue given the fact that the side of the structure located on the corner lot would face Virginia Avenue.

In response to a question posed by the Board, Mr. Hall testified that, with the exception of lot depth, the proposed single-family dwellings will conform to all of the area & bulk requirements of the R-2 Zoning District.

William A. Haryslak, R.A. of Architecture by Haryslak, LLC appeared before the Board on behalf of the Applicant. Mr. Haryslak was accepted by the Board as an expert in the field of architecture & he was placed under oath & testified from the proposed plan of subdivision prepared by William Sweeney, P.L.S., dated August 10, 2021, and from architectural plans depicting proposed building elevations, dated October 28, 2021, which were received by the Board & which are incorporated herein as fact. Mr. Haryslak reviewed the plan of minor subdivision & he confirmed that a lot depth variance is required in connection with each of the newly proposed lots. He noted that the Zoning District requires a minimum lot depth of 100ft. whereas 85ft. is proposed in connection with each lot. Mr. Haryslak testified that existing homes in the surrounding neighborhood along Virginia Avenue are all oriented towards Virginia Avenue. He opined that orienting the lots towards Virginia Avenue allows for the development of wider, more functional homes which are consistent with the surrounding neighborhood. Mr. Haryslak testified that the buildable length of each proposed single-family dwelling would be similar & the Applicant's proposal would promote light, air & open space in light of the compliant sideyard setbacks & the proposed distance between each single-family dwelling. Mr. Haryslak opined that the relief sought by the Applicant can be granted by the Board as the proposed development advances several of the purposes of zoning set forth within N.J.S.A. 40:55D-2, 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;
- c. Secures safety from fire, flood, panic & other natural & man-made disasters;
- d. Provides adequate light, air & open space;
- 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;

- i. Promotes a desirable visual environment through creative development techniques, good civic design & arrangement.

Mr. Haryslak 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 or purpose of the Zoning Map & Ordinance as the proposed development is consistent with the surrounding neighborhood & single-family dwellings are permitted within the R-2 Zoning District. Mr. Haryslak reiterated that the site & proposed structures are compliant with all of the area & bulk requirements of the R-2 Zoning District with the exception of lot depth.

Board members expressed concerns about the lack of a rendering or architectural elevations depicting the appearance of the proposed dwellings at the October Board meeting. The Applicant requested that the meeting be carried to November 10, 2021 in order to present proposed elevations depicting the single-family dwellings to be developed & present those renderings to the Board.

During the October 13th meeting, the Board had many questions regard design of the future single-family homes. Due to the brevity of questions, Mr. Monzo conferred with his client/Applicant. Based on the testimony, Mr. Monzo requested adjournment of the application until the next Board meeting (November 10th meeting) in order to provide architectural detail of the single-family home proposed on the lots. Based on the myriad of issues & substantial changes that are expected to the application as discussed with the Board, Applicant & attorney of the Applicant, that all parties decided that more time is necessary to properly submit the requested/required documentation & plans. Mr. Monzo requested adjournment at the October meeting for 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 anticipated review of the application.

Mr. Haryslak testified that a by-right subdivision could have been proposed with the structures oriented towards Pine Avenue; however, the structures would be extremely narrow & the proposed structure on the corner lot would result in an 80ft. long wall along Virginia Avenue. Mr. Haryslak advised the Board that the proposed structures will contain 65ft. of buildable length, with decks are proposed along the front of the structures along Virginia Avenue & decks are also proposed along the rear. Mr. Haryslak testified that the aesthetic appearance of the homes is extremely important & while the Applicant intends to orient the structures towards Virginia Avenue, a desirable visual environment will be incorporated along Pine Avenue. Mr. Haryslak advised the Board that landscaping is proposed along Virginia & Pine Avenues, and he noted that there are no curb cuts proposed along Pine Avenue which will increase available on-street parking. He confirmed that the proposed single-family dwellings will comply with the Residential Site Improvement Standards (RSIS) & will provide compliant parking. Mr. Haryslak reviewed the proposed building elevations for the benefit of the Board. Mr. Haryslak testified that the plan depicts the proposed building elevations along Virginia & Pine Avenues. He confirmed that the proposed structures will not exceed permitted building height. Mr. Haryslak reviewed the design of the structure & the exterior materials which will be utilized. He pointed to the fenestration & dormers incorporated in the design of the structures which will create a desirable visual environment.

The Board was in receipt of a review memorandum prepared by Board Engineer Mr. Petrella, dated October 5, 2021, which was received by the Board & which is incorporated herein as fact. 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. Four (4) individuals addressed the Board in connection with this application, namely:

- a. John McDermond, owner of the property located at 506 West Pine Avenue, appeared & he was placed under oath to testify before the Board. Mr. McDermond expressed concerns about recent development within the neighborhood. He advised the Board that there is limited on-street parking available in the neighborhood & he believes that this project will exacerbate these issues. Mr. McDermond requested that a six (6) foot fence be erected along the rearyard. As a condition of approval, the Applicant will construct a six (6) foot fence along the rearyard of the proposed lots.
- b. Kathleen Harkins-Gallagher, owner of the property located at 500 Virginia Avenue, appeared & she was placed under oath to testify before the Board. Ms. Harkins-Gallagher advised the Board that she was opposed to curb cuts along Virginia Avenue which would exacerbate traffic & parking issues in the neighborhood. She expressed concerns about flooding in the neighborhood & the impact that this project would have on surrounding properties.
- c. Robert Gallagher, owner of the property located at 500 Virginia Avenue, appeared & he was placed under oath to testify before the Board. Mr. Gallagher shared the concerns raised by his wife & he indicated that he was concerned about the height of the proposed single-family dwellings.
- d. John Turner, owner of the property located at 430 West Pine Avenue appeared, he was placed under oath to testify before the Board. He advised the Board that he was in favor of the Applicant's proposal. He acknowledged that parking issues exist in the neighborhood, but he recognized that the proposed development would improve the aesthetics of the neighborhood.

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 minor subdivision & variance application as presented. The Board then discussed the finding of facts on the minor subdivision & variance 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-2 Zoning District. The Applicant is the owner of the property & has standing to come before the Board to request minor subdivision & variance approval. The Board found Mr. Hall & Mr. Haryslak testimony to be credible & persuasive. With respect to the application for minor subdivision & variance approval, the Board finds that the application meets the standards of the Ordinance & the Applicant is entitled to 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 approval 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 Resolution as discussed. Motioned by Mr. Harkins & 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 memorialization was approved by the Board.

At the conclusion of the application, Mr. Greenland returned to the Board meeting as a voting member.

Application No.: Z-21-9-1 Harry Murray

139 West 1st Avenue

Block 189.02, Lot 1

R-2 Zoning District

Variance siteplan request – D(6) Use/Building Height & ‘C’ variance relief

The Board heard & considered the application of Harry Murray (Applicant), owner of the property located at 139 West 1st Avenue, a/k/a Block 189.02, Lot 1 (Property), seeking a D(6) Use Variance for maximum building height (24ft. is permitted whereas 27.78ft. is proposed) & ‘c’ variance relief in relation to the minimum frontyard setback – 1st Avenue (10ft. is required whereas 2.7ft. is proposed), & the minimum frontyard setback – New York Avenue (10ft. is required whereas 4.7ft. is proposed), in order to elevate the existing structure above base flood elevation (BFE) & to expand existing decks located in the frontyards.

Harry Murray, the Applicant, was self-represented in connection with this Application. Mr. Murray was placed under oath to testify before the Board & he outlined the nature of the application & the relief sought in connection with same.

Andrew Schaeffer, P.E. of Schaeffer, Nassar & Scheidegg Consulting Engineers, LLC appeared on behalf of the Applicant & he was recognized as an expert in the field of engineering. Mr. Schaeffer was placed under oath & he testified from a proposed Variance Plan, dated August 25, 2021, & revised October 12, 2021, and a proposed Building Elevation Plan, dated October 12, 2021, which were received by the Board & which are incorporated herein as fact. Mr. Schaeffer advised the Board that the Applicant is proposing a typical home elevation in order to conform to the minimum required BFE & to incorporate off-street parking under the elevated home. Mr. Schaeffer advised the Board that the Applicant is also proposing to expand an existing deck located in the frontyards located along 1st Avenue & to eliminate a ramp along New York Avenue which will be replaced by stairs. Mr. Schaeffer noted that the Property is an undersized lot which is permitted to utilize a maximum building height 24ft. whereas a building height of 27.78ft. is proposed. In light of the fact that the Applicant is exceeding permitted building height by more than 10% of the maximum permitted building height, a D(6) Use/Height variance is required. Mr. Schaeffer 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 & Ordinance as the proposed development is consistent with the surrounding neighborhood. Mr. Schaeffer opined that the requested D(6) Use/Height variance can be granted because the proposed development advances one of the purposes of zoning 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 by way of the incorporation of off-street parking and by elevating the structure to meeting the minimum base flood elevation.

Mr. Schaeffer noted that one (1) off-street parking space will be lost in connection with the incorporation of a curb cut; however, he noted that three (3) off-street parking spaces will be gained which is a net benefit to the surrounding neighborhood. Mr. Schaeffer testified that two (2) additional ‘c’ variances are also requested in connection with this Application. More specifically, variances in connection with the minimum frontyard setback – 1st Avenue (10ft. is required whereas 2.7ft. is proposed), and minimum frontyard setback – New York Avenue (10ft. is required whereas 4.7ft. is proposed). He noted that the previously identified purpose of zoning supports the granting of the ‘c’ variance relief. Mr. Schaeffer testified that these ‘c’ variances are sought in connection with the expansion of an existing deck along 1st Avenue & the elimination of a ramp along New York Avenue which will be replaced with stairs. Mr. Schaeffer advised the Board that the Applicant will reduce an existing encroachment along New York Avenue; however, in order to

meet minimum stair width standards, the encroachment cannot be completely eliminated. Mr. Schaeffer indicated that the encroachment will be reduced from 3.8ft. to 3.6ft. The encroachment is an existing condition which is being improved, and the Applicant will not increase same.

In response to a question posed by the Board, Mr. Murray testified that an existing shed located in the rearyard will be eliminated. A discussion ensued about potentially moving the structure back on the property during the elevation in order to comply with the required frontyard setback. The Board agreed that the Applicant would be given the option to move the structure back on the property if the costs were reasonable; however, as a condition of approval, if the foundation needs to be replaced in connection with the home elevation, the Applicant will relocate the structure to comply with the frontyard setback along 1st Avenue.

The Board was in receipt of a review memorandum prepared by Board Engineer Mr. Petrella, dated November 1, 2021, which was received by the Board & which is incorporated herein as fact. 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 Solicitor called for a motion to approve the memorialization of the Resolution as discussed. Motioned by Mr. Green & 2nd by Vice Chair DiEduardo. 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.

The following Board member(s) was excused from the vote or participating in the application due to identified conflict with the application; Board Member(s) Mr. Greenland & Chief Stevenson. Both members were excused for the rest of the meeting.

The Board Solicitor read into the record that Board members reviewed the transcripts of the prior Board meetings in order to participate in tonight's meeting for the following application; Mr. Green, Ms. Haas (excused, left the meeting earlier tonight), Mr. Peters & Mr. Connell. The Board Solicitor declared that a quorum of seven (7) voting Board members were present.

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

(adjourned from last month's meeting)

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
- Minor subdivision approval

At the August meeting & based on the myriad of issues & substantial changes that are expected to the siteplan as discussed with the Board, Applicant & attorney of the Applicant, that all parties decided that more time is necessary to properly submit the requested/required documentation & plans. Mr. Barnes 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 prior

approval. Mr. Barnes requested time until the October meeting to submit revised documentation, which was granted by the Board

At the October meeting, due to inadequate quorum of eligible voting Board members present at the meeting, the Applicant's attorney, Jeff Barnes, Esq., 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 prior approval, well as inadequate number of eligible Board members able to vote on the application.

Jeff Barnes, Esq., of the Barnes Law Group appeared on behalf of the Applicant & he reviewed the nature of the Application & the relief sought in connection with same for the benefit of the Board. Mr. Barnes provided a synopsis of the prior meetings that discussed about this application. The Applicant had to re-notice for the D(1) Use Variance & minor subdivision approval. The Dairy Queen & Don Martin Real Estate office has operated on the site without a full C/O being issued by the City 's Construction Official. Testimony tonight will allow the public to comment on the application for the D(1) Use Variance & minor subdivision approval. A deed of consolidation of the two (2) current lots will be produced to rescind the minor subdivision approval that was previously granted by the Board. Combining the two lots will provide a safer operation of the property. The Board set a deadline of Memorial Day 2022 to have all items that have been discussed by the Board/Applicant to resolve the case/application. All items will be completed by Memorial Day 2022, as agreed by the Applicant. Chairman Davis reiterated that the fence & parking light illumination need to be a priority "fix." If not completed, the Applicant will have to come back to the Board.

Mr. Donald Martin, Applicant/Sole Proprietor for 421 W. Spruce Avenue, LLC & DWM RE Holdings, LLC, appeared on behalf of the application. Mr. Martin was placed under oath & he testified from a proposed Siteplan.

Mr. Barnes went thru the discussion of solutions to the "noted" problems of the property;

Joseph Grey, P.E. of Consulting Municipal Engineers (CME), LLC appeared on behalf of the Applicant & he was recognized as an expert in the field of engineering. Mr. Grey was placed under oath & he testified from a proposed Siteplan as referenced herein, dated August 25, 2021, & revised October 12, 2021, and a proposed Building Elevation Plan, dated October 12, 2021, which were received by the Board & which are incorporated herein as fact. Mr. Grey advised the Board that the Applicant is proposing several corrections as described in the list from Mr. Barnes as well as the referenced siteplan.

Applicant is seeking a revised site plan approval for the following:

- a. Relief for the conditions pertaining to the sidewalk as the slope of same may or may not be in compliance required standards;
- b. Relief for the built ramp descending to the Dairy Queen patio area which may or may not be in compliance with ADA standards;
- c. Relief for the stormwater drainage system which was not constructed in accordance with the approved plans;
- d. Relief for the single driveway that was constructed instead of dual or separate driveways in accordance with the approved plans and recorded subdivision;
- e. Relief for the crosswalk & handi-cap parking markings within the parking lot which was not installed in accordance with the approved plans;
- f. Relief for the parking area, layout, number of spaces, painting, striping, and traffic arrows, lighting, and handicap parking spaces which were not installed in accordance with the approved plans;

- g. Relief for the trash enclosures not built-in accordance with the approved plans;
- h. Relief for the rear lot line fence height which is not in accordance with the approved plans;
- i. Relief for the rear lot line retaining wall which was not installed in accordance with the approved plans;
- j. Relief for the bollards which were not installed along the rear lot line or the Dairy Queen open patio in accordance with the approved plans and for the masonry wall constructed in-lieu of the cabled fence/bollards in accordance with the approved plans;
- k. Relief for the fencing surrounding the site as the material of the fence is not in accordance with the approved plans;
- l. Relief for the landscaping which was not installed in accordance with the approved plans;
- m. Relief for the Base Flood Elevation (BFE) which does not meet the minimum requirements for the Don Martin Realty Building; and
- n. Relief for the bike rack which was not installed on the Dairy Queen property in accordance with the approved plans.

Regarding the sidewalk grade at the frontage of the property, the sidewalk grade in front of the Don Martin Realty building does not comply with the ADA standards. The sidewalk grade in front of the Dairy Queen building may not comply with ADA standards. According to the Applicant there is no way to conform to the 2% grade without raising the curb to exceed the 8" curb requirements and creating trip hazards. When the sidewalk was replaced, the Applicant simply maintained the grade that the State created when redoing NJSH Route 147. Mr. Martin is disputed the proposed plan as shown on the referenced siteplan.

As the Board discussed "various items on the list," Mr. Martin questioned the "fix" proposed on the referenced siteplan. Almost every item was questioned or clarified from an engineering perspective, between Mr. Grey, Mr. Petrella & Mr. Martin. Board Solicitor Stefankiewicz stated that a plan has to be developed that will provide a certification by a private engineer that meets all certifications as necessary & discussed by the Board. Mr. Petrella will review & Mr. Martin as the Applicant, will have to have a private engineer to certify the plan. A restrictive deed for the Dairy Queen property will be prepared and recorded with the County Clerk's office restricting that no cooking requiring an Ansul system shall be allowed. Regarding the bike rack, the Applicant is relieved of the requirement for placing a bike rack on the site.

Regarding the BFE, the Don Martin Real Estate Building was constructed at elevations in accordance with the approved plan. At the time the plans were drawn & approved, neither the architect nor the building inspector was aware that on a mixed-use building, BFE is rated on the lowest enclosed grade, which is in this case the garage floor. This differs from residential structures which BFE is on the lowest habitable floor. The Don Martin Real Estate Building was constructed & considered as a "residential building." Mr. Dan Spiegel, Construction Official/Zoning Officer, suggested that the garage be floodproof to the BFE + 2 elevation. The Board & Applicant's experts debated the "solution" to meeting the BFE requirements. The Applicant must explore all options to secure meeting the minimal BFE requirements before the Board would entertain a variance to the BFE requirements.

Mr. Barnes requested a moment to confer with his client in order to debate how to proceed with the application. The Board remained in session during this time. Two (2) different plans depending on the how the Applicant will proceed. Two (2) issues remain; BFE requirements & consolidation of the existing two (2) lots.

Mr. Barnes will contact the Board Secretary on the status of the application's progress on the two (2) remaining issues. Mr. Martin will proceed on the corrections to the site in the meanwhile.

Chairman Davis then opened the application for general public comment. One (1) individual addressed the Board in connection with this application, namely:

- a. John Turner, owner of the property located at 430 West Pine Avenue appeared, he was placed under oath to testify before the Board. Mr. Turner was concerned regarding the fencing surrounding the property. He was concerned that fencing is now shorten only to the rearyard. Mr. Turner stated that neighboring property owners also requested fencing along the sides of the property. He advised the Board that he was in favor of the Applicant's proposal. Clarity to the deed restriction to cooking facilities to the Dairy Queen was provided. Bollards are necessary & will be relocated along the rear wall & fence. Impervious coverage has been increased & not been provided an additional variance. Board Engineer stated landscaping "structures" can be located in the street right-of-way. He acknowledged that parking issues exist in the neighborhood, but he recognized that the proposed development would improve the aesthetics of the neighborhood.

The Board members then discussed & summarized the minor subdivision & variance application as presented. The Board then discussed the finding of facts on the minor subdivision & variance application. Each Board member gave reasoning for their view of the facts & the application as it relates to the application. Vice Chair DiEduardo "volunteered" for the finding of facts. Vice Chairman DiEduardo reiterated to the address and Block & Lot of the property as stated in the application. The Zoning District is R-2 Zoning District. Lot coverage must meet the City's requirements. Board Engineer stated that a variance will be needed for lot coverage exceedance.

Jeff Barnes, Esq., 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 prior approval.

The Board Solicitor announced adjournment of the above referenced application by request of the Applicant's attorney/agent. 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 December 8, 2021 meeting & no further public notice will be or is required to be provided. With that being said, the application was adjourned.

I) ZONING OFFICER REPORT:

Dan Speigel, 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 October 13, 2021 Regular Meeting minutes. The Board Solicitor called for any discussion or corrections to the minutes. The Board Secretary corrected typos meeting end time at last month's meeting. No further discussion to the minutes. Motioned as proposed by Mr. Green & 2nd by Mr. Harkins. 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: None presented.

L) COMMUNICATION(S): None presented.

The Board Secretary brought the following “informational” items to the Board attention. No formal Board action was required;

- NJ NJDEP CAFRA Notification letter
Seaport Pier – 2201 Boardwalk (Beach area of interest), Block 317.03, Lot 1, Beach Bar proposal at end of pier
- NJ NJDEP Flood Damage Prevention Ordinance - Notification letter
- Cape May County Comprehensive Plan – draft comments via internet
[2021-Cape-May-County-Comprehensive-Plan-Watermarked \(capemaycountynj.gov\)](http://2021-Cape-May-County-Comprehensive-Plan-Watermarked (capemaycountynj.gov))
- Board member interaction of potential Development applications

The Board requested an update on Marina Bay Towers & whether the Houseboats will remain in the future. Several Board members questioned the legality of the Houseboat docked at the marina in the summertime. Discussion will continue on this matter as the Marina Bay Towers project progresses. The Zoning Officer will research this question. Chairman Davis specified that Code Enforcement must notified the existing houseboats of the existing City Ordinance prohibiting same.

M) REPORTS: None presented.

N) MEETING ADJOURNED:

Meeting was adjourned at 10:32pm, on motioned by Vice Chair DiEduardo & 2nd Mr. Auty. Based on the affirmative roll-call vote of the Board members, the motion to adjourn was approved.

APPROVED: _____
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.