

**BOROUGH OF AVALON PLANNING/ZONING BOARD**

**Minutes of Work Session/Regular Meeting of July 10, 2012**

Members Present: Sam Beddia  
James Collins  
Sharon Cooper  
David Ellenberg  
Neil Hensel  
David Knoche  
Thomas McCullough  
Michele Petrucci  
Brian Reynolds  
Susan Rhoads  
Beth Tipping

Members Absent: None

Chairman Hensel called the meeting to order at 7:00 p.m. and led the Board in the Pledge of Allegiance. After a roll call of Members, Chairman Hensel recited the Open Public Meetings Act Statement.

There were no Resolutions to memorialize.

The Board then considered the Minutes of the June 12, 2012 meeting. After a small modification was made to same, a motion was made to approve the Minutes as amended by Dr. Reynolds, seconded by Mr. Collins, with all eligible members voting in the affirmative.

The Board next considered the Green Master Plan which had been advertised pursuant to the Municipal Land Use Law and a copy of the draft Green Master Plan had been on file with the Board Secretary for at least ten days prior to the meeting. Chairman Hensel briefly discussed the Master Plan and the goals associated with same. Mr. Collins commented on modifications to the Plan that had occurred during the course of the last month which resulted in the final draft which had been disseminated to the Board Members. Minor modifications were requested by several Board Members. After discussion by the Board Members, Chairman Hensel opened the matter to the public for comment. There was no public comment. After closing the public portion, a motion was made to adopt the Green Master Plan by Mr. Collins, seconded by Ms. Tipping, with all

eligible members in attendance voting in the affirmative. Solicitor Marcolongo had pre-drafted Resolution PZ#12-D adopting the Green Master Plan and requiring its submission to the Clerk of the Borough of Avalon, the clerks of adjacent municipalities and the Cape May County Planning Board.

The next agenda item was Application PZ#11-3, a continuation hearing of Applicant Shore Star Properties, LLC for bulk variances to construct a single family dwelling at Block 73.05, Lot 1.02, commonly known as 315 74<sup>th</sup> Street, Avalon, New Jersey. Since this application had originally requested an interpretation, the Board was acting as a Zoning Board and, accordingly, Ms. Petrucci and Mr. Ellenberg stepped down from deliberation and voting on said application. Prior to the Applicant's affirmative presentation, Solicitor Marcolongo provided the Board with a history of the application including the initial hearing occurring on October 11, 2011 and the subsequent appeal.

Louis C. Dwyer, Jr., Esquire appeared on behalf of the Applicant. The following witnesses were sworn in anticipation of their testimony: Board Engineer, Joseph Maffei, Professional Planner, Elizabeth Terenik, Registered Architect, Blaine Steinman and Robert Corrato, a principal of the Applicant.

Blaine Steinman testified as to the subject property, its location and existing structures located thereon. Testifying from Sheet SP-1, Mr. Steinman testified that the Applicant desired to demolish the single family dwelling currently existing on site and construct a new single family dwelling. He noted that this is an unusual property in that a portion of the lot is under water, a bulkhead bisects the property and the street front extends westward past the bulkhead. Mr. Steinman acknowledged that the subject property is an oversized lot and he explained his rationale for the development of the size of the proposed single family dwelling and the proposed setbacks. A colorized version of Sheet P-4 showing the 74<sup>th</sup> Street building elevation was marked as Exhibit A-1. Mr. Steinman testified that he had designed this structure to provide for adequate light, air and open space and with an intent of meeting the goals and principals of the Zoning Ordinance. He further noted that the floor area ratio is well within the Ordinance

requirements.

Elizabeth Terenik, a professional planner with Terenik Consulting, testified from Exhibit A-2, a color aerial photograph of the subject property and adjacent properties. Ms. Terenik opined that the oversized lot ordinance was created to provide for adequate air, light and open space but that, given the unusual shape of this lot, the oversized lot requirements inflict a hardship upon the Applicant. Ms. Terenik testified that most of the lots in the area had 8 ft. side yard setbacks with a 20 ft. total. This Applicant is proposing setbacks of 14 ft. and 16 ft. which, in her opinion, are imminently reasonable.

Ms. Terenik testified that the proposed development is compatible with the neighborhood and, therefore, the relief requested can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zoning Plan and Zoning Ordinance. She also testified that the proposed single family dwelling would provide for a desirable visual environment, it actually improves the existing setbacks and that the 15 ft. rear yard setback is consistent with CAFRA requirements.

Board Engineer, Joseph Maffei testified from his review memorandum dated July 10, 2012. Mr. Maffei addressed the issue of a reduced front yard interpretation at 124 ft. rather than the 160 ft. previously determined by the Board. He noted that if 124 ft. of frontage was used, the Applicant would still require variances but the variances would be smaller.

The matter was open to the public at which time Douglas Burke, Esquire of the law firm Stark & Stark appeared on behalf of neighboring property owners, Mr. and Mrs. Nicoletti. Mr. Burke argued that the variance relief required is as a result of the Applicant's desire to construct an extremely large structure on a lot with a small upland portion.

Mr. Burke cross-examined Mr. Steinman regarding the size of the lot, the upland portion of the lot and the size of the proposed structure. Mr. Burke cross-examined Ms. Terenik regarding the oversized lot ordinance and its applicability to the subject property.

Mr. Burke called Donald Zacker, a registered architect, to testify in opposition to the application. It was Mr. Zacker's opinion that, while this is a fairly large lot, a good

portion of the lot is underwater. Given the size of the upland portion of the property, he believes that the size of the building is excessive. He testified that the Applicant is proposing an 8,000 sq. ft. house which is too large for the upland portion of the lot and that a 5,500 sq. ft. building could be constructed without difficulty, variance relief and same would be compatible with the neighborhood. Mr. Burke marked as Exhibit P-2, two pages from the Avalon Master Plan evidencing the Borough's desire to provide for adequate light, air and open space.

Mr. Zacker testified that he had designed the home on the Nicoletti property and had designed it with many windows on the westward side to maximize their view of the bay. He testified that the Applicant's structure would significantly reduce the Nicolettis' views westwardly. Mr. Zacker believes that any hardship alleged by the Applicants is self-created, the benefits of the variance relief would not outweigh the detriment to the neighborhood and that the proposed development is not consistent with the neighborhood.

Upon cross-examination by Mr. Dwyer, Mr. Zacker testified that he believes that the Applicant's proposed setbacks are unreasonably small although he acknowledged that the Nicoletti structure has only an 8 ft. side yard setback and the existing house on the Applicant's property has only a 10.6 ft. setback.

Vincent L. Lamanna, Jr., Esquire, appeared on behalf of adjacent property owners, Mr. and Mrs. Class who are the property owners to the north. He advised that his clients are now satisfied with the proposed setbacks.

Jack Binder, a realtor from Avalon, New Jersey, appeared, was sworn and testified as to his history with the Applicants in terms of the purchase of the property and their understanding of the required setback at the time of purchase. He believes that it would be a hardship to require the Applicants to increase the setbacks beyond what is currently proposed.

After the public portion was closed, Mr. Dwyer summarized the application and the arguments in favor of the variances. Thereafter, Solicitor Marcolongo set forth the variance relief requested by the Applicant and reminded the Board of the Applicant's

burden of proof.

Chairman Hensel polled the Board regarding the proposed application. The Board found that the Applicant had not sustained its burden of proof with regard to either the C-1 or C-2 criteria and held that the proposed development was not compatible with the neighborhood and would be detrimental to both the neighborhood and the Zoning Plan and Zoning Ordinance. Solicitor Marcolongo requested a motion to approve the application for two side yard setbacks, a variance for total side yard setbacks and a rear yard setback variance. A motion to approve was made by the Board, however, the Board voted 6 to 1 against the application.

Chairman Hensel advised the Board that recent developments in the court system deemed that COAH is still alive and well. Avalon still has an affordable housing obligation and will continue to work with Kendra Lelie toward developing a plan to satisfy those requirements.

Chairman Hensel advised that he will be presenting the Resolution approving the Green Master Plan and recommending the zoning change regarding PODS to the Borough Council on July 23, 2012.

Mr. Collins advised the Board that the Borough has already received twenty-seven applications regarding modifications to existing irrigation systems to comply with the Borough Ordinance regarding smart irrigation systems. Mr. Collins showed the Board the plaque which will be presented to property owners who retrofit their irrigation systems and noted that rebates would be available to those property owners.

Mr. Collins also provided the Board with a handout which is being distributed to property owners to inform them of the new Borough regulations and the Green initiative.

The Board then considered the closed session Minutes of the June 12, 2012 meeting. A motion was made to approve those Minutes by Mr. Ellenberg, seconded by Ms. Rhodes, with all eligible members voting in the affirmative.

A motion was made to adjourn at 9:25 p.m.

Esquire

Respectfully submitted,  
/s/ Dean R. Marcolongo,

Dean R. Marcolongo, Esquire