

**BOROUGH OF AVALON PLANNING/ZONING BOARD**

**Minutes of Work Session/Special Meeting of March 13, 2012**

Members Present: Sharon Cooper  
David Ellenberg  
Neil Hensel  
David Knoche  
Michele Petrucci  
Brian Reynolds  
Beth Tipping

Members Absent: Sam Beddia  
James Collins  
Thomas McCullough  
Susan Rhoads

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 the Board Members, Chairman Hensel recited the Open Public Meetings Act Statement.

There were no Resolutions for memorialization.

The Board then reviewed the minutes of the February 14, 2012 meeting. Minor modifications were requested by the members of the Board. A motion was made to approve the amended minutes by Dr. Reynolds, seconded by Mr. Ellenberg, with all members voting in the affirmative.

Chairman Hensel then called Application PZ#12-01 (DiPeso Avalon Property, LLC) for a site plan waiver and variances for front yard setbacks and rear yard setbacks to construct two new decks and awnings on an existing restaurant located at 2401 Ocean Drive, Avalon, New Jersey. The Applicant was represented by Timothy D. Dwyer, Esquire who explained the application to the Board.

Mr. Dwyer reminded the Board that the Applicant is the owner of the Rocking Chair Restaurant. The Applicant had appeared two prior times in 2011 requesting variance relief to construct a deck covered by an awning adjacent to 24<sup>th</sup> Street to facilitate outdoor dining. Both of those applications were approved. The applicant now

desires to extend the deck and awning adjacent to 24<sup>th</sup> Street an additional 16 ft. eastwardly and construct a new deck and awning adjacent to Dune Drive.

The Board received testimony from Kevin C. Young, a registered architect, who had prepared the plans in question which had been submitted to the Board and incorporated as fact. Mr. Young testified as to the proposed development which included extending the deck adjacent to 24<sup>th</sup> Street eastwardly by approximately 16 ft. thus necessitating a front yard setback variance to 24<sup>th</sup> Street (0 ft. proposed where 1 ft. is required) and the rear yard setback variance (18 ft. proposed where 25 ft. is required). Mr. Young also testified that the applicant proposed to remove a bay window on the front of the restaurant near the intersection of 24<sup>th</sup> Street and Dune Drive and replace it with a small outdoor deck and awning. This deck would tie into the deck along 24<sup>th</sup> Street. In total, the development would result in twenty-four additional outdoor seats.

Ralph DiPeso, the owner of the subject property appeared, was sworn and testified that he intends to use the same speaker system as last year which will result in low outdoor music and low lighting. He also testified that no landscaping would be removed.

The Board received testimony from Joseph Maffei, Board Engineer, who testified from his review memorandum of February 27, 2012. The applicant agreed to comply with all terms and conditions of same. There was no public comment.

Thereafter, a motion was made to approve the application for site plan waiver for variances for two front yard setbacks and a rear yard setback with a condition that the applicant comply with the Outdoor Dining Ordinance and that the applicant comply with Mr. Maffei's report dated February 27, 2012. A motion was made by Ms. Tipping, seconded by Mr. Ellenberg, with all members voting in the affirmative.

The Chairman then called Application PZ#11-08 (Michael Sloane). Mr. Sloane is the owner of property located at 2858 Ocean Drive, Avalon, New Jersey.

Mr. Sloane was represented by Vincent L. Lamanna, Jr., Esquire who advised the Board that the Applicant desired to demolish the existing single family dwelling on the subject property which is located in an R-2A Zone and construct a new single family dwelling on site. The subject property is an undersized lot and the Applicant would

require variances for lot area, lot frontage and lot width. In addition, the proposed development would require variances for side yard setback, total side yard setback, side yard setback to a proposed outdoor shower and maximum fence height.

William Haryslak, a registered architect, appeared, was sworn and testified on behalf of the application. Mr. Haryslak discussed the existing structure and the proposed structure by the Applicant which includes a three-story, five bedroom, single family dwelling adjacent to the bay.

Mr. Haryslak discussed the variances for existing non-conforming conditions together with the variances resulting from the proposed development.

Based upon questioning from the Board Engineer, Board Solicitor and Board Members, Mr. Haryslak agreed to revise the plans to evidence that ground level decking to the bay side of the property will be no more than 18 in. high thus removing the variance request for rear yard setback to deck and maximum building coverage with deck.

After discussing the proposed development, Mr. Haryslak discussed the variance relief requested. He believed that variance relief could be granted under both the C-1 and C-2 criteria particularly given the fact that this is an undersized lot and the proposed development will be constructed substantially on the old building footprint and had similar setbacks.

Michael Sloane, owner of the subject property, appeared, was sworn and testified as to the variance relief for the height of the fence on the north side which is proposed to be 6 ft. high. Mr. Sloane testified that he desired to have a portion of the fence at 6 ft. high to shield his neighbor from a dog run which he intends to locate on that side of the property.

The Board received testimony from Gary Lee Thomas, a professional planner and land surveyor, who testified as to the grading on the property and the development of a retaining wall made out of vinyl bulkhead material similar to that used in the construction of the new bulkhead on the bay.

The Board received testimony from Joseph Maffei who testified from his review memorandum of February 29, 2012. He noted the moratorium on driveway openings on Ocean Drive and advised the Applicant that he may have difficulty with the Cape May

County Planning Board regarding the proposed parking plan since the Cape May County Planning Board discourages backing out onto Ocean Drive.

The matter was open to the public at which time a William Kenner of Sea Isle City appeared, was sworn and testified that he was a neighbor of the applicant in Sea Isle City and was in favor of the proposed development.

At the suggestion of the Board Solicitor at the end of the meeting and with the consent of the Applicant's attorney, the Board bifurcated the vote separating a vote on the variance for fence height.

As to the majority of the variances, the Board voted 6-0, with one extension, to approve the variance relief requested so long as the applicant complies with the terms and conditions of Mr. Maffei's report and that the plans be revised to evidence that the ground level decking to the bay side will be no more than 18 in. in height. The Board denied the request for the 6 ft. high fence on the northern side of the property by a vote of 6-1.

Prior to the conclusion of the meeting Chairman Hensel advised the Board that, based upon recent court decisions, COAH may not have seen its last day and that Avalon would, in all likelihood, still have some affordable housing obligations. This matter needs to remain on the Board's radar.

Chairman Hensel also, at the request of the Board Solicitor, appointed a subcommittee consisting of Ms. Tipping, Ms. Cooper and Mr. Marcolongo to address concerns as to whether changes in the zoning ordinance needs to occur regarding the issue of trees and hedgerows constituting fences and what regulations may be appropriate to enact.

A motion was made by the Board to enter into a closed session to discuss litigation matters at 8:40 p.m. with the Board returning to open session at 8:50 p.m. A motion was made to adjourn at 8:51 p.m.

Esquire

Respectfully submitted,

/s/ Dean R. Marcolongo,

Dean R. Marcolongo, Esquire