

**BOROUGH OF AVALON PLANNING/ZONING BOARD**

**Minutes of Work Session/Regular Meeting of April 11, 2017**

Members Present:

Sharon Cooper  
Michael Coskey  
James Deever  
James Fleischmann  
Neil Hensel  
David Knoche  
Thomas McCullough  
John Morrison  
Brian Reynolds  
Beth Tipping  
Sam Wierman

Members Absent:

Sam Beddia  
Michele Petrucci

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.

The Board first considered the proposed minutes of the March 14, 2017 meeting. A motion was made to approve the minutes by Mr. Fleischmann, seconded by Dr. Reynolds with all eligible members voting in the affirmative.

The Board then considered proposed Resolution PZ#16-08, the application of Patrick and Helen Burns having filed a Notice of Appeal of an Administrative Officer's Decision and an interpretation with regard to property located at 122 Pelican Drive, Avalon, New Jersey. That application was denied. With a minor modification, a motion was made to approve by Mrs. Cooper, seconded by Mr. Coskey with all eligible members voting in the affirmative.

The next agenda item was an application of Icona Golden Inn, LLC under application PZ#16-09(A) requesting amended preliminary and final site plan approval and a D-1 use variance for a use not permitted in a zone to create an outdoor dining area adjacent to 79<sup>th</sup> Street for the property located at 7889 Dune Drive, Avalon, New Jersey, which is located in an R-M

Zone. Frank Corrado, Esquire, of Wildwood, New Jersey, appeared on behalf of the applicant and explained the nature of the application to the Board.

Mr. Corrado reminded the Board that the applicant had appeared before the Board in February 2017 requesting an interpretation as to whether a brew pub was a permitted accessory use on the subject property. The Board has found that it was, in fact, an accessory use and also granted amended preliminary and final site plan approval and several variances for an expanded footprint on the property. Mr. Corrado advised that the applicant is now requesting amended preliminary and final site plan approval and a D-1 use variance to permit outdoor dining on the sidewalk adjacent to 79<sup>th</sup> Street. Mr. Corrado marked as Exhibit A-1 a PowerPoint presentation from which his witnesses would testify.

Eustace Mita, of Chester, Pennsylvania, the owner and the applicant, appeared, was sworn and testified on behalf of the application. Mr. Mita advised that he desires to create a five-star facility in what he considers to be a five-star town. He testified as to improvements that he had made along 79<sup>th</sup> Street to beautify the property. He testified that they now desire to develop an outdoor dining area along 79<sup>th</sup> Street and create a European outdoor dining experience.

Aloysius Gryga, RLA of CMC Engineering, of Conshohocken, Pennsylvania, appeared, was sworn and testified on behalf of the application. Mr. Gryga testified that the applicant is proposing to use 165 sq. ft. of sidewalk adjacent to 79<sup>th</sup> Street, in two separate areas, to create an outdoor dining experience with a total of 126 seats.

Steve Cozzi, the Executive Chef of the Icona Golden Inn, LLC, appeared, was sworn and testified on behalf of the application. Mr. Cozzi testified that the applicant is proposing a family alfresco dining experience adjacent to 79<sup>th</sup> Street. He testified that the menu would be typical brew pub fare and would be enhanced by low level ambient music. He stated that the hours of operation would be from 11:00 a.m. until 10:00 p.m.

Aloysius Gryga, again, testified as to the use variance requested. He noted that the proposed outdoor dining area is at the end of a dead end street and that there is a desire to create a destination dining experience. He believes that the proposed site was particularly suited to outdoor dining and that the outdoor dining area together with the beautification of 79<sup>th</sup> Street by the applicant promotes a desirable visual environment. He further stated that he believes that special reasons exist for the granting of the use variance in that the proposed development provides for a variety of uses in a variety of locations.

Mr. Gryga testified that the applicant needs a variance to use the outdoor dining area along the sidewalk. He noted that the outdoor dining section contained in Chapter 26 required that there be at least a 6 ft. wide unobstructed sidewalk area. In response to same the applicant is proposing to create a 6 ft. wide walkway within the right of way of 79<sup>th</sup> Street. This walkway will be colored blue and extend the entire length of 79<sup>th</sup> Street. The applicant agreed as a condition of approval that they would maintain the walkway area and would obtain a licensing agreement or easement from the Borough. Mr. Gryga felt that this walking area promotes public safety opining that it would be safer than walking on the sidewalk at this location.

Mr. Gryga testified that the applicant is also requesting a variance to permit low level ambient music in the outdoor dining area. He stated that the applicant would comply with the Borough's noise ordinance and felt that the variance relief could be granted since the benefits of the variance relief outweigh any detriment.

Mr. Gryga testified that the applicant is also requesting a variance to permit a 23.8 ft. x 32.1ft. awning adjacent to the brew pub to shield one portion of the outdoor dining area. He noted that this awning would extend 9 ft. into the right of way and would be 23.8 ft. beyond the building requiring a variance relief. Mr. Gryga testified that he believes that this relief could be granted since the awning would provide for a desirable visual environment. As to all of the variance relief, Mr. Gryga opined that the benefits of the variance relief outweigh any detriment and that 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. He stated that allowing this use would be an alternate to people driving to the B-1 Zoning District for outdoor dining. In addition, the subject property is located in an R-M Zone which permits hotels and restaurants are permitted as accessory uses to the hotels.

Eustace Mita, upon questioning from the Board, stated that there will be no awning over the easterly outdoor dining area near the beach but fishing line shield would be developed over this area to prevent seagulls from approaching the customers.

Upon questioning from the Board, Mr. Gryga testified that the resort currently has 165 outdoor dining seats, 75 near the conference area and 90 at the beach bar. He stated that the applicant was proposing no new outdoor lighting. Finally, upon questioning from the Board, he noted that 79<sup>th</sup> Street is a 40 ft. wide cart way and if the 6 ft. wide walking area was developed, a 34 ft. wide cart way would still remain when only 25 ft. is required.

Responding from questions from the Board, Mr. Mita testified that the trash enclosures had been moved toward Dune Drive to provide easier access to trash trucks. He did acknowledge, however, that the Windrift trash enclosures were near the proposed outdoor dining areas. He further testified as to the location of speakers providing the outdoor dining ambient low level music and his security policies.

Paul Dietrich, substitute Board Engineer, appeared, was sworn and testified from his review memorandum of February 13, 2017. He agreed that the applicant required the D-1 use variance and three C variances for the proposed development. He reminded the Board that in February they had granted variance relief for number of parking spaces with 210 spaces approved. Mr. Dietrich testified that the outdoor dining ordinance under Chapter 26 does not require additional parking spaces for outdoor dining. However, under the normal parking requirements, with the applicant proposing an additional 126 seats, an additional 25 parking spaces should be provided.

Upon questioning from the Board, Mr. Dietrich noted that given the parking along the 79<sup>th</sup> Street side of the building, the 79<sup>th</sup> Street sidewalk is nonfunctioning at this time and most people walk to and from the beach in the street.

Eugene Mita testified that the existing restaurants on-site have fewer seats than the prior restaurant for the Golden Inn and his 130 employees are permitted to park on-site during the off season but must park off-site during the summer. He noted that the use of the Jitney and Uber systems reduce the need for parking on-site.

The matter was open to the public at which time the following members of the public spoke:

- A. Tony Haden of 20<sup>th</sup> Street, Avalon, New Jersey, testified in favor of the application noting that he will go to the facility by Uber.
- B. Randy Mayer of North Wales, Pennsylvania, appeared, was sworn and testified that he is a property owner at the Beachcomber Condotel. He testified in favor of the application stating that he was satisfied with the relocation of the trash enclosure and the proposed walkway on 79<sup>th</sup> Street.
- C. Douglas Hullett, testified in opposition to the application noting that the proposed development will increase noise in a noisy area, the street is already congested and the existing vertical parking is dangerous.

At this time Chairman Hensel polled the Board for their findings of facts and conclusions of law. Four members of the Board found the applicant had sustained their burden of proof with regard to the D-1 and C variances and that the proposed development would be beneficial to the community. Three members of the Board expressed opposition to the proposed development noting that 79<sup>th</sup> Street is already a congested and noisy area which will be made more dangerous by the proposed development. They stated that the zoning ordinance permits outdoor dining in the B-1 Zone intentionally and that the application had failed to sustain its burden of proof on both the positive and negative criteria. The application was denied by a 4-3 vote with the applicant failing to obtain 5 affirmative votes.

Chairman Hensel then called application PZ#16-08(A) the application of Patrick and Helen Burns for variances for total side yard setback, length of bay windows, maximum lot slope and width of curb cut to construct a single family dwelling with a pool adjacent to a bay at property located at 122 Pelican Drive, Avalon, New Jersey. John Scott Abbott, Esquire, appeared on behalf of the applicant and explained the nature of the application to the Board.

Mr. Abbott advised that the applicant is in the process of constructing a single family dwelling on the property. While they have obtained a certificate of occupancy a stop work order has been issued by the Zoning Officer. The Board had previously denied their Notice of Appeal and interpretation regarding the stop work order. Since that time the applicant, desiring to comply with the zoning ordinance and complete the home, has removed the rear patio, pool, fire pit and landscaping; however, they still need four variances.

Dante Guzzi, PE of Dante Guzzi Engineering Associates, appeared and testified from his variance plan labeled C-1 consisting of one sheet dated February 1, 2017 and last revised March 28, 2017. Mr. Guzzi advised that the applicant has revised its plans and only four variances are necessary. Mr. Guzzi stated that the applicant has created a revised grading plan whereby the front of the property remains as it is currently constructed and the rear portion of the lot is graded at a ½% This has resulted in a 3 ft. reduction in the rear portion of the property, however, the applicant still needs a variance for lot grading with 1.96% proposed where 1% is permitted. The applicant also requires

variances for the existing curb cut, an installed bay window and a kitchen counter on the rear portion of the building.

As to the slope, Mr. Guzzi testified that if the rear of the lot is graded to elevation 7.08 which has been suggested by the neighbor, the lot would slope down towards the bay which is not consistent with the intent of the zoning ordinance. He noted that the highest portion of the lot is in middle and if the lot is graded as proposed by the neighbor, ponding would occur in the rear of the property and the applicant would need to develop a stormwater management system.

Mr. Guzzi testified that the wall along the rear of the property line has been removed; however, the side walls are proposed to remain the same. Mr. Guzzi further testified that the applicant has applied for all permits necessary for this project.

Joseph Maffei, Board Engineer, testified that the side retaining walls are the same as a fence and meet the requirements of the zoning ordinance. Mr. Maffei testified from his review memorandum of April 4, 2017 and as to the four variances which are required.

The matter was opened to the public at which time Jack Plackter, Esquire, of Atlantic City, New Jersey, appeared on behalf of the neighboring property owners, Timothy and Kathleen Nolan. Mr. Plackter advised that the parties had attempted to come to a compromise solution regarding their differences but they were unable to do so. He opined that the applicants could comply with the zoning ordinance and they would only need to add a simple drainage system to the property.

Kathleen Nolan appeared and testified as to her discussions with Mr. Burns and the fact that they could not come to an agreement. She further testified that while the applicant has made certain changes to the property, she is still facing a 6 ft. high wall on her side of the property line.

Timothy Nolan appeared and testified in opposition to the application noting that his views of the bay have been destroyed. He testified as to his negotiations with Mr. Burns and suggested that Mr. Burns is not acting in good faith.

Jack Plackter, Esquire, called Kevin Dixon, a licensed professional planner and engineer, to testify as to the application. Mr. Dixon testified as to the Burns proposed slope noting that the rear of the property will be elevation 8.40 when it is supposed to be at 7.13. Mr. Dixon was of the opinion that the applicant could comply with the zoning ordinance by regrading the lot and adding a stormwater drainage system.

Exhibit P-1 was entered into evidence which depicted the required and proposed fences by the applicant. Mr. Dixon discussed the definition of retaining walls and opined that the proposed wall still exceeded the zoning ordinance.

Mr. Dixon testified that in his opinion, the applicant has not provided sufficient justification to satisfy either the positive or negative criteria for their variance. He further testified that the proposed variances provide no benefit to the public and continue to have a significant detriment to the Nolan's. Mr. Dixon further testified that he has concerns that the wall is only 30 in. above grade on the Burns side of the property and that visitors to the property could fall over the wall and injure themselves on the Nolan property.

After a lengthy recess at which time the Burns and the Nolans discussed the project, Mr. Abbott advised that the Burns have agreed to revise their plans. They have agreed to lower their rear yard to an elevation of 7.13 and to remove the top portion of the stone wall to elevation 8. Above that, to the permitted height under the zoning ordinance, the applicant will install plexiglass. This wall revision will occur on both sides of the lot. He further advised that the Nolans have no objection to the three remaining variances applied for by the Burns. He acknowledged that the grading is not in strict conformance with the zoning ordinance but the rear of the property will be graded down to elevation 7.3. He noted that proposed drainage on the lot will be done in consultation with the Board's Engineer.

The matter was opened to the public at which time three members of the public testified in opposition to the variance relief requested, as revised, stating that the applicants had not sustained their burden of proof as to the positive and negative criteria.

Chairman Hensel polled the Board to obtain their findings of facts and conclusions of law. Solicitor Marcolongo bifurcated the vote with the Board first voting on the variance relief for grading, width of curb cut and length of the bay window. By a vote of 8-1 the motion to grant these variances was granted. The second motion was a motion to approve the variance for total side yard setback to permit the rear outdoor kitchen area to remain in its current location. That motion was approved by a vote of 5-4.

Chairman Hensel asked the Board address the final draft of the Master Plan Reexamination. Chairman Hensel advised that he obtained numerous comments from department heads and Borough Council regarding the draft some of which had been incorporated into the final draft of the document. Minor clerical changes were made to

the final draft of the Master Plan Reexamination. Chairman Hensel asked if any member of the public had comments regarding the final draft. No member of the public came forward. Solicitor Marcolongo then asked for a motion to approve Special Resolution PZ#17-D whereby the Planning Board would adopt the 2017 Master Plan Reexamination. A motion was made to approve by Dr. Reynolds, seconded by Mrs. Tipping with all members voting in the affirmative.

During the public portion of the meeting, Martha Wright of 7<sup>th</sup> Street, Avalon, New Jersey, advised the Chairman that she would like to be on any committees that the Planning Board may create regarding modifications to the zoning ordinance regarding pools, landscaping and lighting.

A motion was made to adjourn at 11:10 p.m.

Respectfully submitted,

*/s/Dean R. Marcolongo*

Dean R. Marcolongo, Esquire

DRM:jr