

BOROUGH OF AVALON PLANNING/ZONING BOARD

Minutes of Work Session/Regular Meeting of August 13, 2013

Members Present: Sharon Cooper
David Ellenberg
Neil Hensel
Thomas McCullough
Michele Petrucci
Brian Reynolds
Susan Rhoads
Beth Tipping

Members Absent: Sam Beddia
David Knoche

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 for memorialization.

The Board first considered the Minutes of July 9, 2013 meeting. Dr. Reynolds suggested that the last sentence of the Minutes regarding his statement about resort houses in the dunes was inaccurate. He requested that the sentence be stricken. A motion was made to approve the Minutes as amended by Ms. Petrucci, seconded by Ms. Tipping, with all eligible members voting in the affirmative.

The Board then considered Application PZ #13-03, Albert and Lucille Giagnacova, requesting variance relief for front yard setback and building coverage to legalize a deck that had been enclosed to create additional living space on property located at Block 39.05, Lot 90.01 also known as 390 39th Street, Avalon. Cory J. Gilman, Esquire appeared on behalf of the applicant and explained the nature of the application to the Board. He advised that the applicants are the owners of the subject property which is located in an R-2B Zone and own half of this two family development. He advised that the applicants had received both a construction permit and a zoning permit in March 2011 to enclose a first floor deck to create additional living space. Later an inspection determined that the additional habitable living space now required a variance for building coverage and possibly front yard setback.

Gary Lee Thomas, a professional land surveyor and professional planner, appeared and

testified on behalf of the application from his variance plan consisting of one sheet dated March 13, 2013 and last revised July 23, 2013 which was received by the Board and incorporated as fact. Mr. Thomas testified that the subject property is located at the intersection of 4th Avenue and 39th Street and is an older duplex. The building was developed with each unit having decks facing the west to maximize their view of the bay. He testified that the applicants are the owners of the easterly unit known as Unit A.

Mr. Thomas testified that his review of the documentation evidenced that the applicants had obtained both a zoning permit and construction permit in March 2011 to enclose an area which was previously their first floor deck to create additional living space and renovate the second floor deck above same. While there was no increase in the footprint of the building, this construction did increase habitable space thus necessitating a building coverage variance. Mr. Thomas opined that the applicants have requested a front yard setback variance at the suggestion of the Board Engineer however; he does not believe that the front yard variance is needed since it does not exacerbate the existing front yard at 14.6 ft.

Mr. Gilman marked as Exhibit A-1, a package containing six sheets with the zoning permit application, the zoning permit, construction permit, 2 old surveys of the structure and a building sub-code application. Mr. Thomas opined that he believed that the construction completed by the applicants was in compliance with the permits to enclose a deck. Upon questioning from Mr. Gilman, Mr. Thomas testified that he believed that the relief requested could be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zoning plan and zoning ordinance. This was specifically since the footprint remained the same and no other person's views were impacted. He further testified that requiring the applicant to remove the enclosure at this time would constitute a hardship and it appears that the applicants constructed the area in good faith based upon the permits and that she was not told that she needed anything else.

Mr. Gilman commented that neither the Zoning Officer nor Construction Officer asked for a new survey of the property but accepted the old 1978 surveys. Mr. Thomas stated that new surveys are almost always required but this matter slipped through the cracks. I stated that he did not believe that the applicant intended to circumvent the zoning ordinance.

Lucille Giagnacova appeared, was sworn and testified on behalf of the application. She advised that her husband and she had purchased the property three years ago, both as a second

home and for occasional rental. She requested a construction and zoning permit in order to enclose the first floor porch and increase living space. Ms. Giagnacova testified that at the time she purchased the property the first floor deck was rotted and needed to be replaced. Accordingly, she applied to “enclose” the area where the first floor deck was and reconstruct the second floor deck.

Mr. Gilman marked as Exhibit A-2 through A-6, five photographs of the interior and exterior of the structure and Ms. Giagnacova explained each photo to the Board. Ms. Giagnacova testified that when she applied for the construction permit and zoning permit she asked if a new survey was necessary and she was told no. She also stated that she was specifically told that no variance was needed.

Ms. Giagnacova further testified that she acted in good faith based upon those permits and had no intention to violate the zoning ordinance. She testified that the removal of the enclosed area at this time would constitute a hardship to her and testified as to the negative criteria.

Upon questioning from the Board Members, Ms. Giagnacova testified that the original footings were used in the development of this area and that no additional plumbing or electric was necessary.

Upon questioning from the Board, Joe Maffei, Board Engineer, opined that prior to the enclosure of the first floor deck, it appeared that the development on the site was over the permitted 27% and was probably in the neighborhood of 30%. However, he stated that the zoning ordinance may have permitted more than 27% coverage in 1978 when the building was constructed.

Mr. Gilman marked as Exhibit A-7 and A-8, two photographs of Unit B of this development. Ms. Giagnacova testified as to images represented.

Joe Maffei, Board Engineer, who was previously sworn now testified from his report which was revised and last dated July 30, 2013. He stated that two variances were necessary for front yard setback and maximum building coverage. Upon questioning from the Board, Mr. Maffei testified that the newly enclosed area constituted approximately 226 sq. ft. and added an additional 3% of building coverage.

Upon questioning from the Board, Ms. Giagnacova testified that Jeff Hesley had informed her that previously, at the construction of this development, building coverage was

permitted at 33% but had been changed to 27% approximately seven years ago. She stated that she had taken both Jeff Hesley and John Tracy to her home and Mr. Hesley stated that the home had been built out of compliance originally. She further testified that her parking areas were made of a stone material.

The matter was open to the public at which time the following members of the public came forward to testify:

1. John Kontra, owner of Unit B of this development, appeared, was sworn and testified in opposition to the application. Mr. Kontra testified that he purchased Unit B in 1986 as a second home. He noted that originally this area consisted of many multi-family homes but has evolved into primarily a single family dwelling neighborhood. He testified that the building was constructed in 1978 when the condominium documents were executed with each unit having three bedrooms and two and a half baths. He further testified that the condominium documents say that there shall be no alterations of the building without the consent of the other unit owner. Mr. Kontra testified that the difficulties began after he saw what the applicants had done and he asked the zoning officer if he could do the same thing. He was informed that variance relief would be required. He further testified that Mr. Hesley stated that this development was supposed to be a sunporch and that the renovations were estimated at only \$2,000.00.
He noted that he believes that the applicants' unit now consists of five bedrooms and four baths and is rented a majority of the time to persons who are a nuisance to the neighborhood. He believes that the application should not be granted since the hardship was self-created and there is a negative impact upon the neighborhood, zoning plan and zoning ordinance. He believes that no hardship exists and cited court cases supporting his position. He further stated, upon questioning from the Board, that he was never asked for his consent for the enclosure of the deck.
2. Phoebe Novakovic of 393 39th Street appeared, was sworn and testified that the applicants should have consulted with Mr. Kontra based upon the condominium

- documents. She further testified that the applicants' use of the unit, specifically its rentals, creates significantly more traffic and parking problems in the neighborhood.
3. Joanne Pawley of 373 39th Street appeared, was sworn and testified that the enclosure of the deck would have required more than one wall to be constructed and concurred that the applicants' renting of the property creates additional traffic and parking problems in the neighborhood.
 4. Michael Novakovic of 393 39th Street appeared, was sworn and questioned what the owner did for a living. Albert Giagnacova appeared, was sworn and testified that he is a financial advisor. Michael Novakovic further testified that the applicants' unit has a significant number of renters which is a nuisance to the neighborhood.
 5. Kimberly Ricci-Leo, a local realtor, appeared, was sworn and testified that she often rents out the applicants' property. She stated that she sold the property to the applicants and now usually rents the properties to families and repeat tenants.

There being no further public comment, Chairman Hensel closed the public portion of the meeting. Chairman Hensel stated that he did not believe that he was prepared to vote on this application until he received testimony from the zoning officer and construction officer. Thereafter, the matter was tabled to the October 8, 2013 meeting with no further notice necessary. Chairman Hensel instructed the Board Secretary to notify the zoning official and construction official to appear at that meeting. Mr. Gilman was also asked to prepare a floor plan of Unit A both prior to the enclosure of the deck and as it currently exists. Mr. Gilman stated that he would do his best to obtain those floor plans and file them at least ten days prior to the meeting.

Chairman Hensel advised the Board that he did not intend to act on the possible amendments to Chapters 20, 26 and 27 at tonight's meeting. He did encourage the Board Members to continue to look for errors or necessary amendments to Chapter 27 and report them to the Board Secretary. Chairman Hensel also requested that Dr. Reynolds, in conjunction with the Environmental Commission, complete the acceptable plant material lists prior to next month's meeting.

Chairman Hensel advised that he recently attended a meeting and learned that a new electric facility was planned within the Borough of Avalon. This development would also include new power lines into and through the Borough. He is asking for the electric company to make a de novo presentation to the Planning Board.

During the public portion of the meeting, Michael Matt of the Avalon Home and Land Owners Association appeared and reminded the Board that, as a part of the Avalon Boulevard Beautification Initiative, there was an intention to plant additional vegetation along the Boulevard. He asked that the Environmental Commission, through Dr. Reynolds, create a report as to appropriate vegetation along the Boulevard in advance of future plantings. At the request of Chairman Hensel, Dr. Reynolds agreed to conduct this study.

Dr. Chodosh of 276 64th Street appeared and expressed his concerns regarding resort houses. Solicitor Marcolongo advised him that the Borough Council would be addressing this issue at its meeting of August 13, 2013. There was no further public comment and the public portion of the meeting was closed.

A motion was made to adjourn at 8:37 p.m.

Respectfully submitted,
/s/Dean R. Marcolongo
Dean R. Marcolongo, Esquire