

**BOROUGH OF AVALON PLANNING/ZONING BOARD**

**Minutes of Work Session/Regular Meeting of February 14, 2017**

Members Present: Sharon Cooper  
Michael Coskey  
James Deever  
James Fleischmann  
Neil Hensel  
David Knoche  
John Morrison  
Brian Reynolds  
Susan Rhoads  
Beth Tipping  
Sam Wierman

Members Absent: Sam Beddia  
Thomas McCullough  
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 then considered the proposed minutes of the January 10, 2017 meeting. Several small amendments were requested to the minutes. A Motion was made to approve the minutes as amended by Dr. Reynolds, seconded by Mr. Fleischmann with all eligible members voting in the affirmative.

Chairman Hensel then called application PZ#16-10, the application of Brian Greenstein, requesting minor subdivision approval to realign lot lines to create three new lots from two existing lots together with variances for front yard setback, rear yard setback, side yard setback and total side yard setback for property located at Block 27.05, Lots 67, 68, and 69.01 also know as 2768 Ocean Drive, Avalon, New Jersey.

Cory Gilman, Esquire of the Law Offices of Josephson Wilkinson & Gilman, P.A., Avalon, New Jersey appeared on behalf of the applicant and explained that the applicant is the contract purchaser of the subject property which is located in R-2 Zone. The applicant is requesting minor subdivision approval to realign lot lines between two existing properties to

create three new lots. He advised that there currently exists structures on both lots with the building to the south and all the accessory structures to be demolished to make way for residential construction on site and the structure to the north will remain with no new construction.

Gary Lee Thomas, a professional land surveyor with Thomas Amey Shaw, Inc., appeared and testified on behalf of the application and from his proposed minor subdivision plan, consisting of one sheet dated November 2, 2016 and last revised December 8, 2016 which was received by the Board and incorporated as fact. Mr. Thomas testified as to the existing conditions including the two structures on the properties. He testified that the northern structure consists of a duplex with each unit containing four bedrooms; this building will remain as it is, although a portion of its lot will be consolidated with one of the two lots to the south. The two new lots to the south will both conform to the zoning ordinance.

Mr. Thomas testified that the northerly lot will be reduced in size and will require variance relief for side yard setback and total side yard setback together variances for existing nonconforming conditions for front yard setback and side yard setback which will not be changed. He further noted that all structures on the two southerly lots be demolished and removed. It is the intent that each of these two lots will be sold for residential development.

Upon questioning from the Board, Mr. Thomas acknowledged that the proposed Lot 69, which will contain the existing duplex, will only contain two parking spaces. He noted, however, that this is the existing condition on this site and there will be no changes to same. He further testified that the applicant has no plans, with regard to the northern lot, except to retain same in its existing condition.

Mr. Thomas testified that the applicants have already obtained County Planning Board approval and that the driveways for the two new lots will be designed so that no vehicles will back out onto Ocean Drive. He further testified that in all likelihood, there will be parking underneath the new structures.

Upon questioning from the Board, Mr. Thomas acknowledged that since this property is directly across the street from the Wawa it is a difficult traffic area. The Board members expressed concern regarding adding additional residential development in this area including proposed Lot 69 which will contain a duplex with limited parking.

Richard E. Dean, Sr. the Borough's Fire Chief/Fire Official, appeared was sworn and testified as to the application noting that new Lot 69 would have a small side yard setback to the south and that this setback contained stairs, a shower and storage area which limited access to the rear. The applicant agreed as a condition of approval to remove the shower and storage area from the south side of the building.

Mr. Gilman marked as Exhibit A-1, the Cape May County Planning Board approval dated November 22, 2016. Mr. Gilman also agreed to a condition of approval that development on proposed Lot 68 would have building set back lines of 9 ft. on each side in order to ensure additional space between structures on proposed Lot 68 and 69.

Mr. Thomas testified that he believes that the variance relief in this matter is de minimis and believes that the variance relief can be granted under the C-2 criteria noting that the proposed development provides for the health, safety and welfare of the Borough by providing two conforming lots, protects the public from flooding by creating new homes above base flood elevation, providing for adequate light, air and open space and providing for a desirable visual environment. He further stated that he believes 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.

Joe Maffei, Board Engineer, appeared, was sworn and testified as to the application and from his review memorandum of February 7, 2017 which was received by the Board and incorporated as fact. Mr. Maffei noted that there is an existing driveway on proposed Lot 69 and there would be no loss of parking. He did not believe that the proposed development required variance relief for number of parking spaces. Mr. Maffei further testified as to the variance relief that was required by the applicant. Upon questioning from the Board, Mr. Maffei testified that he believes that adequate parking can be developed on proposed Lot 67 and 68, although it will not be easy. Development would probably be limited to a three bedroom residential unit.

The matter was opened to the public at which time James Bartle, of 2808 Ocean Drive, Avalon, New Jersey appeared, was sworn and testified in favor of the application. He did testify, however, that he believes that there is parking on the south side of the existing duplex and that reducing the size of that lot would reduce the parking available for that duplex. He further noted that he believes that both of the two proposed lots to the south could be developed with duplexes

and that it would be difficult to design a parking turn-around to satisfy the County Planning Board.

After Chairman Hensel closed the public portion of the meeting, the Board set forth its findings of facts and conclusions of law. The Board found that the relief requested by the applicant could be granted under the C-2 criteria with several Board members noting that the variance requested is de minimis and existing conditions would not be substantially exacerbated by the proposed development. They further found that the proposed development would provide for adequate light, air and open space, protect development from flooding and that the negative criteria had been satisfied. A Motion was made to approve the application with conditions by Dr. Reynolds, seconded by Mrs. Tipping with all eligible members voting affirmative.

Chairman Hensel then called application PZ#16-09, the application of Icona Golden Inn, LLC for amended preliminary and final site plan approval, an interpretation as to whether a brew pub with associated manufacturing of beer is a permitted use in the R-M Zone, a D-1 use variance for beer manufacturing if necessary, a D-1 use variance for outdoor dining not in the B-1 Zone together with variances for number of parking spaces with number of awnings and multiple waivers to expand a conference center and add a brew pub and outdoor dining for property located at Block 78.03, Lot 1 on the Municipal Tax Map of the Borough of Avalon commonly known as 7889 Dune Drive, Avalon, New Jersey. Frank Corrado, Esquire appeared on behalf of the applicant. Paul Dietrich, a licensed engineer and professional planner, appeared as substitute engineer for the Board for this application.

Frank Corrado initially advised that he had spoken to Dean R. Marcolongo, Esquire about concerns that Mr. Marcolongo had as to the sufficiency of the applicants notice with regard to the use variance for outdoor dining which would be in a public right of way and off of the applicant's property. In order to avoid any claim that the notice was deficient and to allow the matter to proceed, Mr. Corrado advised that his applicant was not requesting the D-1 use variance to permit outdoor dining in the public right of way this evening and that the applicant would return to the Board with full notice if they chose to pursue that portion of the application.

Mr. Corrado and Mr. Marcolongo agreed that the first issue that should be determined would be the applicants request for an interpretation as to whether a manufacturing brew pub is a permitted accessory use in the R-M Zone. Mr. Marcolongo read from the zoning ordinances all permitted uses within the R-M Zone which included restaurants and cocktail lounges. He noted

that restaurants would certainly include facilities with the sale of alcoholic beverages. Mr. Marcolongo noted that this application, however, is for the manufacturing of beer and since this type of business operation could affect traffic, parking, deliveries, odors and sounds that the issue should be addressed by the Board. He also noted that this type of business operation, the manufacturing of beer, requires a different license from the New Jersey Alcoholic Beverage Control and that the Board should take this into consideration.

Mr. Corrado argued that he believes that brew pubs and that manufacturing of beer in the manner that the applicant proposed was simply not contemplated when the zoning ordinance was created. He noted that the ‘boiling’ of the beer will occur off site and the beer will then be transported to the subject for final fermentation. Mr. Corrado opined that he believes that this would be within the spirit of the ordinance.

Joshua McCowan, the President of Icona Golden Inn, LLC, appeared, was sworn and testified as to the application. He noted that only the last few stages of the brewing of the beer would occur on site. He noted that the beer is “cooked” off site and brought to the subject property for final refinement and fermentation; thereafter it will be sold to the public in draft beer form. He noted that there are no plans to sell the beer for offsite consumption. Upon questioning from the Board, he testified that the brew pub will have four barrels, each containing approximately 20 kegs worth of beer. He further noted that the fermentation process takes two to four weeks. He testified there will be no smells emanating from the site.

The matter was opened to the public at which time two members of the public spoke in favor of an interpretation that this type of use was a permitted use within this zone. A Christopher Hogan, Esquire appearing on behalf of a neighboring property owner appeared and opined that a use variance was necessary.

Chairman Hensel closed the public portion of the meeting on the issue of the interpretation only. Chairman Hensel polled the Board and a majority of the Board felt that this type of use would be an accessory use to a hotel resort with a restaurant given the fact that the brewing process takes place off site. A Motion was made to approve an interpretation that this type of manufacturing a brew pub is a permitted accessory use in the R-M Zone by Mr. Fleischmann, seconded by Mrs. Cooper with the Motion passing by a six to one vote.

Continuing on with the remaining portion of the application, Mr. Corrado called Eustace Mita, the owner of the applicant, who was sworn and testified on behalf of the application. Mr.

Corrado marked as Exhibit A-1 a power point presentation which was used to supplement all of the applicants' witnesses' testimony. It is noted that not all portions of the power point presentation were shown to the Board.

Mr. Mita testified that he is the owner of the Limited Liability Corporation which operates the Icona Golden Inn. He testified as to his vision of the multimillion dollar renovation to the Icona Golden Inn facility. He testified that he believes that a brew pub would be a valuable asset to the facility and they are proposing to install a high tech brewing system within the resort. He further testified as to the renovation work that he was proposing along 79<sup>th</sup> Street which he felt was in need of upgrades. He testified that the application is proposing to add 490 sq. ft. of interior floor space to increase the size of two of their restaurants. He testified that this was done basically for aesthetic purposes. He further testified as to the proposed awnings which are set forth on the plans.

Aloysius Gryga, a New Jersey licensed landscape architect with CMC Engineering, Conshohocken, Pennsylvania, appeared, was sworn and testified on behalf of the applicant. Mr. Gryga testified that the applicant proposes to expand two areas of the building to accommodate additional square footage within two existing restaurants within the facility. One expansion would be a mere 90 sq. ft. and the second extension would be 400 sq. ft. to simply square off two corners of the restaurants.

Mr. Gryga testified as to the proposed parking variance. He noted that with the additional square footage in the building the total number of parking spaces required under the zoning ordinance was 368. The applicant is proposing 210 parking spaces. He noted that the new expansions of the restaurant require only six additional parking spaces and that the last resolution involving the Golden Inn did not take into consideration outdoor dining areas in and around the pool and beach bar areas. He testified that the facility had been operating with 210 parking spaces for several years. He noted that many people appeared to walk to the facility. Based upon same he believes that the increased parking need is really only to six parking spaces associated with the expansion of the restaurants and that is a de minimis increase which is greatly outweighed by the benefits of improving the resort facility. He further testified 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.

Mr. Gryga further testified as to the five awnings proposed by the applicant. He noted that one of the awnings is near the pool and on the interior area of the building. One awning will be at the entrance to the brew pub and one near the conference center. He noted one of the proposed awnings would have covered outdoor dining adjacent to 79<sup>th</sup> Street and it was agreed that awning would be removed. They also noted that each of the exterior awnings would have a sign on same.

Mr. Mita testified that the Icona Golden Inn has an underground parking garage containing 27 parking spaces. For years this area has been used for storage rather than parking and he agreed to clear this area so that it could be used for parking.

Richard E. Dean, Sr. the Borough's Fire Official/Fire Chief, appeared, was sworn and testified on behalf of the application. He noted that several trees have been growing into the area where fire engines access the fire hydrants. This excessive growth has scratched the fire trucks and needs to be cleared. The applicant agreed to remedy this situation.

Chairman Hensel noted that the biggest obstacle to the Icona Golden Inn's success and the success of the new brew pub would be the lack of sufficient parking and that the applicant should obtain alternate parking at some location. Mr. Mita agreed but noted that he has more parking than any facility in Cape May County and that the new brew pub will have less seating than the old restaurant at that location.

Upon questioning from the Board, Mr. Mita testified that the Icona Golden Inn will have valet parking together with a parking security guard who will hang tags on vehicles associated with the hotel guests or restaurants guests. He further testified that he believes that the parking at the Icona Golden Inn complies with the ADA requirements.

Paul Dietrich, the Board Special Conflict Engineer for this application, appeared, was sworn and testified from his review memorandum of February 13, 2017 which was incorporated as fact. Mr. Dietrich noted that the zoning ordinance requires 368 parking spaces and the applicant's proposing only 210. He noted, however, that the expansion of the brew pub and additional restaurant appears to be de minimis and would have a limited affect on parking.

Richard E. Dean, Sr. the Borough's Fire Official/Fire Chief, again, testified on behalf of the application noting that there are several areas of the beach bar area that will require site plan changes; however, he will address those issues with the applicant.

The matter was open to the public at which time, Thomas Bugg of Glen Mills, Pennsylvania, appeared, was sworn and testified that he is a condominium owner at Oceanview Condominiums across the street from the Icona Golden Inn. He expressed concerns for amplified music along 79<sup>th</sup> Street and noted that he was informed that the outdoor dining portion of the application had been withdrawn. Christopher Hogan, Esquire appeared on behalf of Oceanview Condominium, LLC a property owner across the street from the Icona Golden Inn and again reiterates that his client objects to the parking variance since it is more than 100 spaces short of the zoning ordinance requirements.

Thereafter, Chairman Hensel polled the Board for its findings of facts and conclusions of law. All Board members were satisfied with the proposed modifications such that the application for preliminary and final site plan approval could be granted. With the interpretation that beer manufacturing was an accessory use within the R-M Zone, the use variance for the brew pub was no longer necessary. In addition the use variance request for outdoor dining had been withdrawn from consideration. Addressing the variances for number of parking spaces and number of awnings and awning signs, the Board found that the variance could be granted given the fact that the proposed development would have a de minimis affect upon existing parking. The Board further found that the benefits in the variance relief outweigh any detriment in that the proposed development provides for the public, health, safety and welfare and that 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.

A Motion was made to approve the application for amended for preliminary and final site plan approval together with variances for number of parking spaces, number of awnings and signs together with the conditions set forth in the Resolution requiring the full use of the underground garage before Memorial Day, removal of the awning over the proposed outdoor dining adjacent to 79<sup>th</sup> Street and to revise the site plan in conformance with the Fire Chief/Fire Official's requirements by Mr. Knoche, seconded by Mrs. Tipping with all eligible members voting in the affirmative.

The next agenda item was the adoption of the Historic Preservation Element. All Board members were in receipt of the final draft of the Historic Preservation Element to be included in the 2017 Master Plan Reexamination. There was no discussion among the Board members and no public comment regarding same. A Motion was made to approve the Special Resolution

finding the Historic Preservation Element satisfactory and directing its incorporation into the 2017 Master Plan Reexamination. Said Motion was made by Dr. Reynolds, seconded by Mrs. Tipping with all eligible members voting in the affirmative.

The next agenda item was the Master Plan Reexamination final draft. Joseph Maffei, Board Engineer, returned to the dais and submitted a copy of the final draft to the Board members for their consideration. He noted that the Historic Preservation Element had been incorporated into same. Dean R. Marcolongo, Esquire, Board Solicitor, provided the Board with memorandum regarding the procedures necessary for the adoption of a Master Plan Reexamination.

Chairman Hensel requested that all Board members review the final draft during the month of February and at the next Board meeting he anticipates setting a date for the public hearing regarding same and potential adoption. Chairman Hensel noted that he intended to circulate the final draft of the Master Plan Reexamination to Borough Council, the administration and to all department heads for their review and comment. Chairman Hensel complimented Mr. Maffei and the Board in the preparation of this document.

The matter was open to the public to address any other issues. No member of the public came forward to testify.

Prior to a Motion to adjourn, Solicitor Marcolongo requested to the Board, enter into a closed session simply for the adoption for the minutes of the closed session hearing which occurred on January 10, 2017.

Thereafter the Board would not return to open session. A Motion was made to adjourn the regular session at 10:05 p.m.

Respectfully submitted,

*/s/Dean R. Marcolongo*

Dean R. Marcolongo, Esquire

DRM:jr