

BOROUGH OF AVALON PLANNING/ZONING BOARD

Minutes of Work Session/Regular Meeting of July 12, 2016

Members Present: Sam Beddia
William Burns
Sharon Cooper
Michael Coskey
James Fleischmann
Neil Hensel
David Knoche
Thomas McCullough
Michele Petrucci
Susan Rhoads
Beth Tipping

Members Absent: Brian Reynolds

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 minutes of the June 14, 2016 meeting. Minor modifications were requested by the Board. A motion was made to approve by Ms. Tipping, seconded by Mr. Knoche, with all eligible members voting in the affirmative.

The Board then considered Resolution PZ#16-01, Application of Brian Keyser and Jane Kogut Keyser, for a D2 use variance, preliminary and final site plan approval and interpretation and variance, if necessary, to demolish an existing single family dwelling and construct a single family dwelling at 38 West 21st Street, Unit A, Avalon. A motion was made to memorialize the Resolution by Mr. McCullough, seconded by Mr. Knoche, with all eligible members voting in the affirmative.

The Board then considered Resolution PZ#16-04, Application of Four Daughters Designs, LLC, for two side yard setback variances to demolish an existing single family dwelling and construct a new single family dwelling at 330 70th Street, Avalon. A motion was made to memorialize the Resolution by Mr. Burns, seconded by Mr. Knoche, with all eligible members voting in the affirmative.

The Board then considered Resolution PZ#16-05, Application of 642 7th Street, LLC and 652 7th Street, LLC, for minor subdivision approval to realign lot lines together with a rear yard setback variance for property located at 652 7th Street, Avalon. A motion was made to memorialize the Resolution by Ms. Cooper, seconded by Mr. Coskey, with all eligible members voting in the affirmative.

Chairman Hensel then called Application PZ#15-09, Application of The Marina at Avalon Anchorage, LLC, requesting preliminary site plan approval together with a D3 variance and multiple bulk variances to complete substantial renovations to an existing marina located at 863 21st Street, Avalon. Richard Hluchan, Esquire of the law office of Hyland Levin, LLP, Marlton, New Jersey, appeared on behalf of the applicant.

Prior to the commencement of the applicant's affirmative presentation, Solicitor Dean R. Marcolongo addressed the Board regarding procedural issues that needed to be addressed prior to the Board hearing the matter. Solicitor Marcolongo advised that as he was preparing for the meeting, he noted that the applicant was requesting a conditional use permit/variance in this application relying upon the fact that the residential units were "multi-dwellings". However, as he reviewed the plans, he noted that the Thomas Amey Shaw plan and OSK Design plans both called the three residential units on the northeast side of the property duplexes. Duplexes are not permitted uses or conditional uses within the zone and would require D1 variances. Solicitor Marcolongo advised that he conducted a conference call with Joe Maffei and Jeff Hesley and they reviewed the zoning ordinance together. It is clear that the proposed residential units are duplexes and not multiple dwellings under the definition section of the zoning ordinance and would require a D1 use variance which was not noticed by the applicant. He also noted that the applicant will still need a D3 permit/variance to permit multiple dwelling units on this lot.

Solicitor Marcolongo advised that other issues/variances were also found during the conference call including the fact that the marina flats building has an outside deck above its highest habitable floor and that the proposed pool would need variance relief from Section 27-7.2(c).

Finally, he noted that the applicant is proposing to have residential units above commercial in the two buildings to the west. This type of mixed use building is permitted in the Borough's B-1 Zone but not permitted in the zone where this property is located. Therefore, an additional D1 variance is necessary for that proposed development. Solicitor Marcolongo opined

that in his opinion the applicant's notice was deficient since the two D1 variances were not noticed and, as such, the Board could not have jurisdiction to hear this application this evening.

Richard Hluchan, Esquire, on behalf of the applicant, argued that the notice requirements were satisfied, that the Board did have jurisdiction to hear this matter and that the Board could proceed. He noted that this application had been pending since January and should be heard. Solicitor Marcolongo noted that the applicant had failed to advertise for the D3 permit/variance prior to the first scheduled hearing divesting the Board of jurisdiction. He noted thereafter that the application had requested this matter be tabled on two separate occasions awaiting a Superior Court decision. Chairman Hensel requested that the Solicitor frame a motion on this issue and a motion was made to find that the notice published by the applicant and forwarded to property owners within 200 feet adequately put the public on notice of the sum and substance of the application and the variance relief requested and that the Board had jurisdiction to proceed with the application. A motion was made to approve that motion by Ms. Cooper, seconded by Mr. McCullough, however, the motion was defeated by a 6-1 vote. The application was then tabled for this evening. Solicitor Marcolongo further advised the Board that a second issue should be addressed at this point. He noted that a portion of the applicant's property was previously owned by the Borough. In 2007, the Borough vacated that street to facilitate the future development of this property. He noted that the Borough has recently asserted that conditions of that vacation had been violated and the Borough had filed a complaint to vacate the ordinance. He noted that on June 20, 2016, Judge Sandson dismissed the Borough's complaint finding the street vacation ordinance to be valid. Mr. Marcolongo advised however that on even date he learned that the Borough had appealed Judge Sandson's decision seeking a determination that the street vacation ordinance was null and void. He further noted that the Borough has forwarded a communication from Mr. Hluchan and he requesting that this matter be tabled until the Appellate Division rendered its decision.

Solicitor Marcolongo advised that the decision of the Appellate Division could seriously impact this development. If the applicant is not entitled to use all of the land that they currently control, this could significantly impact on their parking, driveways, coverage and available density. He noted that the Municipal Land Use Law defines a developer as the legal or beneficial owner of a lot to be included in a development proposal. The question is whether the applicant controls all of the lands that are the subject matter of this application. However, that

decision will be made by the courts and not this Board. He commented that Mr. Hluchan had twice requested that the application be tabled pending a determination from the Courts. He stated that Mr. Hluchan had written that it was in the best interest of all parties that the street vacation issue be resolved prior to a hearing before the Board. He agreed that complete resolution of this issue would be in the best interest of the parties since proceeding at this time could be a waste of both the Board's time and resources and the applicant's time and resources in the event that the Appellate Division overturns the Superior Court decision.

Mr. Hluchan argued that a final decision had been rendered by Judge Sandson and, as such, the Board was properly authorized to proceed. He argued that there is no rule or regulation prohibiting the Board from proceeding at this time and that no stay had been applied for by the Borough.

At the request of the Chairman, Solicitor Marcolongo asked for a motion in the affirmative to proceed with the hearing upon proper notice with the applicant accepting the risk and responsibility of proceeding with the application and development in the event that the Appellate Division overturns the Superior Court's decision. Said motion was made by Ms. Rhoads and seconded by Mr. Beddia. By a vote of 6-1, the Board decided not to proceed with the application until such time as the Appellate Division had rendered its decision.

The next agenda item was a continuing review of the Master Plan draft dated March, 2016 created by Mr. Maffei. Chairman Hensel noted that he would like to complete the Master Plan Reexamination during this calendar year and also noted that the document should focus on back bay flooding issues and policies to limit damage within the Borough.

Joseph Maffei, Board Engineer, noted that he had recently attended an Army Corps of Engineers seminar at Stockton University and that the Corps is completing a study of back bay matters along the Jersey Shore. The Corps is hoping to complete the plan sometime in 2018 and they are seeking input from all barrier island communities.

Chairman Hensel noted that it was important that barrier island communities incentivize programs which will encourage property owners to take steps to protect their property and, therefore, their community. The Board conducted a round table discussion on problems and solutions and asked Mr. Maffei to continue to supply information to the Army Corps. He noted that all of these solutions must be considered in light of DEP regulations. The Board focused on the March, 2016 draft with Mr. Maffei noting that he is still creating the document and has

recently included 2010 census data into the draft. He noted that another focus should be on buffers between properties and Chairman Hensel noted that Private Citizen Martha Wright is on a subcommittee examining this issue. Chairman Hensel hoped to have a final draft of the document at next month's meeting.

Michelle Petrucci advised the Board that a historic Master Plan document is being created by the Green Team and she hopes to present same to the Board in the near future. She noted that she will be asking Solicitor Marcolongo to review the document prior to its completion.

David Knoche advised the Board that the new Landscaping Ordinance which the Board had recommended counsel to adopt was going to be heard by Borough Council the next evening. Mr. Knoche advised that he would report back to the Board on the results of same at next month's meeting.

There was no public comment.

There was a motion to adjourn at 9:10 p.m.

Respectfully submitted,

/s/Dean R. Marcolongo

Dean R. Marcolongo, Esquire