

BOROUGH OF AVALON PLANNING/ZONING BOARD

Minutes of Work Session/Regular Meeting of March 14, 2017

Members Present:

Sharon Cooper
Michael Coskey
James Deever
James Fleischmann
Neil Hensel
David Knoche
Michele Petrucci
Brian Reynolds
Beth Tipping
Sam Wierman

Members Absent:

Sam Beddia
Thomas McCullough
John Morrison

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 February 14, 2017 meeting. Multiple minor amendments were requested. A motion was made to approve the minutes as amended by Dr. Reynolds, seconded by Ms. Tipping, with all eligible members voting in the affirmative.

The Board then considered proposed Resolution PZ #16-10, the application of Brian Greenstein, requesting minor subdivision approval to realign lot lines and create three 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 known as 2768 Ocean Drive, Avalon, New Jersey. The application was approved by the Board with conditions. A motion was made to approve the Resolution as amended by Mr. Deever, seconded by Dr. Reynolds, with all eligible members voting in the affirmative.

The Board then considered proposed Resolution 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 was a permitted use in the R-M Zone and variances for a number of parking spaces, number of awnings and awning signage for property located at Block 78.03, Lot 1, also known as 7889 Dune Drive, Avalon, New Jersey. That application had been approved with conditions. A motion was made to approve by Mr. Fleischmann, seconded by Mrs. Cooper with all eligible members voting in the affirmative.

Chairman Hensel then requested that the Board consider Special Resolution PZ #17-C, a Resolution supporting a public display of official signs proclaiming Cape May County as a “Coast Guard Community” in prominent places within the Borough. Chairman Hensel discussed the importance of the United States Coast Guard Base to the Cape May County Community. A minor amendment to the Resolution was requested. A motion was made to approve the Resolution by Ms. Petrucci, seconded by Mrs. Cooper, with all members voting in the affirmative.

Chairman Hensel then called application PZ #16-08, an application filed by Patrick and Helen Burns, requesting a Notice of an Appeal of an administrative officer’s decision to issue a stop work order for property located at 122 Pelican Drive, Avalon, New Jersey, also known as Block 86, Lot 52. The application further requested an interpretation of the Borough of Avalon’s zoning ordinance regarding stormwater management and in the alternative, a variance for maximum slope/grading of the subject property. Since this application and the only other application on the agenda required the Board to act as a Zoning Board, Ms. Petrucci and Mr. Deever, the Class I and Class III members of the Board, recused themselves from participation in the applications and excused themselves from the meeting.

John Scott Abbott, Esquire, of Margate, New Jersey, appeared on behalf of the applicant and explained the nature of the application to the Board. He advised that the applicant is the owner of the subject property which is located in the Borough’s R-1B Zone. The applicant had generally completed the development of a single family dwelling on the property when a stop work order was issued alleging that the grading on the property is in violation of the zoning ordinance and that the pool and spa may also violate portions of the zoning ordinance. He advised that the first issue to be determined would be the Notice of Appeal and interpretation.

Mr. Abbott marked as Exhibit A-1 a PowerPoint presentation containing numerous documents, many of which had been presented to the Board with the application. Mr. Abbott noted that a construction permit had been issued for the property in December of 2015 and a

Certificate of Occupancy had been issued on September 21, 2016 just prior to the issuance of the stop work order.

Anthony Varallo, the owner's contractor, appeared, was sworn and testified on behalf of the application. He testified that he has completed numerous projects for the Burns including shopping centers, golf courses and other large projects. He noted that he had constructed a home for Mr. Burns in Avalon in 2010 and the grade on that property had also been raised.

Mr. Varallo testified that he had obtained a foundation permit at the commencement of the project and obtained an as-built survey of the foundation upon completion. He noted that in April 2016 he obtained a construction permit to begin the construction of the home, including the pool to the rear of the property adjacent to the Bay. He noted that a site plan had been attached to the permit application. He further noted that the site plan showed a slope of 3% to 3.5% to the street and a rear elevation of 11.6.

Mr. Varallo testified that the pool has now been completed with a finished elevation of approximately 11.6. He noted that the retaining walls had been installed in early May 2016 together with the pool pilings which were installed on May 9, 2016. The pool had been inspected for plumbing and electric.

Mr. Varallo testified that the grading was completed in June 2016. At that time they received a complaint from neighbors regarding the aesthetics of the wall. Thereafter, he met with the Zoning Officer, and with the consent of the neighbor, a veneer was attached to the wall.

Mr. Varallo testified that all inspections had been completed by September 2016 with a Certificate of Occupancy issued for the house. He noted that on October 17, 2016 a stop work order was issued by the Zoning Officer and no work on the pool and rear of the property had been done since that time. He stated, however, with the oral consent of the Zoning Officer, landscaping, which had previously been purchased, was permitted to be installed. Upon questioning from Mr. Abbott, Mr. Varallo testified that the pool is mostly completed except for the plastering of same.

Stanley Szambelak, the applicant's site supervisor, appeared, was sworn and testified as to the application. He testified that he had obtained all necessary permits and approvals to begin and complete construction including obtaining a zoning permit from Jeff Hesley and, thereafter, a construction permit from John Tracy. He testified that construction had been completed in accordance with the plans that had been submitted to the Borough.

Mr. Szambelak testified similar to Mr. Varallo regarding the construction of the retaining walls, the complaints by Mr. and Mrs. Nolan and an agreement to add veneer to the wall for aesthetic purposes. He noted that he had met with Jeff Hesley, the Zoning Officer, in the summer of 2016 and the height of the wall appeared to be in accordance with the zoning ordinance.

Mr. Szambelak testified from Exhibit O of the Power Point presentation which consisted of 14 photographs of the subject property including the retaining wall, landscaping, patio, fire pit and outdoor kitchen area. He noted that the retaining walls had been constructed first and, thereafter, the property had been back filled with soil. This was completed in May 2016. As to the retaining wall, he testified that the wall “steps down” towards the street.

Upon questioning from the Board, Mr. Abbott stated that the applicant had received a CAFRA permit. He also noted that the zoning ordinance required that the property be filled to a certain extent since the rear of the property was lower than the elevation at the street.

Dante Guzzi, a licensed engineer, appeared, was sworn and testified on behalf of the application. He testified that he had completed an as-built survey on September 21, 2016 so that the applicant could receive their Certificate of Occupancy. He noted that the grading on the lot was completed in conformance with the approvals received from the Borough based upon the plans submitted. Mr. Guzzi testified that the slope on the property exceeds that which is permitted by the zoning ordinance. He testified, however, that maintaining a 1% slope results in drainage difficulties and the engineering standard is a minimum of 2% within the industry to avoid ponding. Upon questioning from the Board, Mr. Guzzi noted that the property has been graded at a 3.89% slope.

Joseph Maffei, Board Engineer, appeared, was sworn and testified as to the application. Mr. Maffei testified that he believes that the stormwater management section of the zoning ordinance is clear and unambiguous and only simple math is necessary to determine whether the slope meets the zoning ordinance requirements. He testified that the zoning ordinance does not discuss tiering or average slope over portions of the lot; he agreed that the existing slope significantly exceeds the 1% permitted by the zoning ordinance. Upon questioning from the Board, he testified that the rear of the property is supposed to be 1.4 ft. above the front of the lot and in this circumstance the rear of the lot is 6 ft. higher than the front of the lot.

Patrick Burns, the applicant, appeared, was sworn and testified as to the application. He testified that this lot had been graded the same as another house that he built in 2011. He testified that he acted in good faith and relied upon the permits issued by the Borough. He stated that

there are numerous homes that have been constructed within the Borough that have grades that appear to be in violation of the zoning ordinance.

Jack Plackter, Esquire, of Atlantic City, New Jersey, appeared on behalf of the neighboring property owners Kathleen and Timothy Nolan. Mr. Plackter argued that the applicant's reliance on the permits does not grant the applicants any rights and they are responsible to build in accordance with the zoning ordinance. Mr. Plackter argued that the retaining wall affects his clients light, air and open space. He further argued that the retaining wall itself and the area behind same are a "structure" as defined by the Borough of Avalon's zoning ordinance and require setback relief. He argued that the burden is upon the applicant to evidence that the construction has been done in accordance with the zoning ordinance.

Mr. Plackter cross-examined Mr. Varallo who testified that he did not confirm that the plans met the zoning ordinance requirements. Mr. Plackter cross-examined Mr. Guzzi who acknowledged that the slope exceeds the limitations of the zoning ordinance.

Mr. Plackter called Kathleen Nolan, the neighboring property owner, who testified that she noticed the retaining wall in late May 2016 and immediately spoke to Mr. Hesley and Mr. Tracy. She noted that the retaining wall was built first and the lot graded thereafter. Mr. Plackter marked as Exhibit N-1 and N-2 photographs of the retaining wall and rear of the applicant's property. Mr. Nolan testified that she spoke to Mr. Burns in early July about the wall and Mr. Burns stated that he would need variance relief. Ms. Nolan told him that she would object to that variance relief.

Mr. Plackter called Timothy Nolan, the owner of the adjacent property, who was sworn and testified as to the application. He stated that immediately after he saw the retaining wall, which impedes his view, he contacted Jeff Hesley who advised that Mr. Burns had been notified that he was proceeding with construction at his own peril. Mr. Nolan testified from Exhibit N-3, a photograph taken October 7, 2016, showing the backyard of the two properties. He stated that he contacted Mr. Burns and asked that construction materials be removed from his own backyard. He testified that he informed Mr. Burns that he was satisfied with the river jack stones which were placed in his own backyard to remediate damage that had been done, but that his statement that the stones were "ok" did not relate to the veneer stone placed on the retaining wall.

At this portion of the meeting, Chairman Hensel called for a five minute recess. Frank Corrado, Esquire, attorney for Icona Golden Inn, LLC addressed the Chairman and asked that his

application, which was the second application for the evening be tabled until the Board's April 11, 2017 meeting. That request was granted by the Chairman. Mr. Corrado noted that the applicant waives the tolling of the time for the Board to act and requests that no further notices be required.

After the recess, Mr. Plackter called Kevin Dixon, a licensed engineer and professional planner from Galloway, New Jersey to testify as to the application. He testified that there is a 5 ft. elevation difference between the backyards of the Nolan's and the Burns and that the maximum height of the retaining wall is at elevation 11.18. Mr. Plackter marked as Exhibit N-4 one sheet containing Mr. Guzzi's survey of September 21, 2016 and four photographs of the subject property. The photographs evidenced Mrs. Nolan standing next to the retaining wall and construction workers in the back yard of the Burns property. Mr. Dixon testified that the maximum height of the rear of the Burns property should be elevation 7.09 and, in his opinion, the rear of the property is more than 4 ft. higher than it is permitted under the zoning ordinance.

Mr. Dixon testified that the Nolan property is at elevation 5.81 at the rear of the lot. He testified that he believes that the grading of the Burns property is in violation of the zoning ordinance and opined that the retaining wall and land behind it is a structure, under the Borough's zoning ordinance and that the applicant requires variance relief for side yard setbacks. He further testified that he believes that the zoning ordinance is unambiguous as to the permitted grade.

Mr. Dixon was cross-examined by Mr. Abbott regarding the grades on both the Nolan and Burns properties. Mr. Dixon acknowledged that the applicant is permitted to have a fence and if the Nolan's rebuilt their house they would be required to fill in the rear portion of their lot.

Mr. Abbott asked for the opportunity to question Jeff Hesley, the Zoning Officer. Mr. Hesley testified as to discussions that he had with the Nolan's regarding the retaining wall/fence. Mr. Hesley testified that the applicant is permitted to have a 2 ft. high retaining wall with a 4 ft. fence on top of that. He further acknowledged that this lot did slope severely towards the bulk head and it was necessary to fill a portion of the property.

Mr. Hesley testified that he believed that the rear of the property had been filled too high in the summer of 2016. He notified both Mr. Abbott and Mr. Varallo of his concerns and he specifically told Mr. Abbott that the applicant was proceeding with further construction at his peril. Once Mr. Hesley received the September 21, 2016 Guzzi survey he spoke to the Board Solicitor and issued the stop work order.

Mr. Hesley further testified that a review of the site plan shows a notation “TOB”. He interpreted that to be the top of the bulkhead not the final grade; he noted that the zoning ordinance does not control the bulk head height. He further acknowledged that the stop work order was issued after the Certificate of Occupancy, which was only for the house. He believes that the house has been constructed in compliance with the zoning ordinance but the stop work order involved the pool and grading.

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

- A. Frederick Edelstein of 110 Pelican Drive, Avalon, New Jersey, testified that he believed that the property was out of character for the neighborhood.
- B. Michael Schlitt of 6 Heron Drive, Avalon, New Jersey, testified in opposition to the application stating that it will ruin neighboring properties views and the bay front.
- C. Timothy Hughes of 106 Pelican Drive, Avalon, New Jersey, testified in opposition to the application testifying that the problems are more noticeable from the water.
- D. John Schmader of 90 Pelican Drive, Avalon, New Jersey, stated that the property owners should work together to come to some compromise.
- E. Kenneth Schuster of 70 Pelican Drive, Avalon, New Jersey, testified that there are numerous examples of height variations within the Borough and maybe the zoning ordinance should be redrafted.
- F. Martha Wright of 632 7th Street, Avalon, New Jersey, testified in opposition to the application noting the applicant has no right to rely upon approved plans which are not in conformance with the zoning ordinance. She testified that this will have a significant negative impact on the neighborhood and creates safety difficulties for firefighters. She noted that the real issue is the amount of fill that was added to the property.
- G. John O’Dea of 236 19th Street, Avalon, New Jersey, asked the Board to remember that the applicant had obtained all permits.
- H. Rennie Rodriguez of 744 21st Street, Avalon, New Jersey, testified that she understands all parties’ positions but that the applicant acted in good faith.

- I. Elaine Scattergood of 75 30th Street, Avalon, New Jersey, testified in opposition of the application advising, that in her opinion, the applicant has acted with disregard to the neighbor and the neighbors' views.

At the conclusion of the application, Chairman Hensel called on all Board members to make findings of facts and conclusions of law. The Board found that clearly the lot is not graded in conformance with the zoning ordinance and the stop work order was appropriately issued. The Board found that the applicant was aware, early on, that the development may be in violation of the zoning ordinance and continued construction at his own peril. A motion to grant the applicants Notice of Appeal and find that the stop work order was erroneously issued was denied unanimously by the Board.

The next order of business on the agenda was the Master Plan Reexamination. Mr. Maffei distributed his final draft of the Master Plan Reexamination. He noted that he had received numerous comments from Committeeman Covington. Chairman Hensel advised that he will distribute the final draft to Borough Council and all department heads for their final review and asked Kimberley Mastriana to list this matter for a final public hearing on the Master Plan Reexamination for April 11, 2017.

Martha Wright asked several questions regarding the procedures to adopt the Master Plan Reexamination. A motion was made to adjourn at 11:11 p.m.

Respectfully submitted,

/s/Dean R. Marcolongo

Dean R. Marcolongo, Esquire

DRM:jr