

BOROUGH OF AVALON PLANNING/ZONING BOARD

Minutes of Work Session/Regular Meeting of November 12, 2013

Members Present: Sam Beddia
Sharon Cooper
David Ellenberg
Neil Hensel
David Knoche
James Lutz
Thomas McCullough
Michele Petrucci
Brian Reynolds
Beth Tipping

Members Absent: James Fleischmann
Susan Rhoads

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 amended minutes of the August 13, 2013 meeting. There were no additions, corrections or comments. A motion was made to approve the amended minutes by Dr. Reynolds, seconded by Mr. McCullough, with all eligible members voted in the affirmative.

The Board then considered the proposed minutes of the October 8, 2013 meeting. There were no additions, corrections or comments to same. A motion was made to approve by Mr. Ellenberg, seconded by Dr. Reynolds, all eligible members voted in the affirmative.

Chairman Hensel then called Application PZ#13-03, a continuation hearing by the applicants, Albert and Lucille Giagnacova regarding Block 39.05, Lot 90.01, also known as 390 39th Street, Unit A, Avalon, New Jersey. This continuation hearing involved the applicants' request for a variance for front yard setback and building coverage based upon the applicants' enclosure of a porch into living space. This application was commenced on August 13, 2013 and was continued until November 12, 2013 to permit testimony from Zoning Official, Jeff Hesley.

Prior to the commencement of testimony, Solicitor Marcolongo marked as Exhibits A-9, a plan of Gary Lee Thomas consisting of two sheets evidencing the existing first and second floor plan of Unit A. Exhibit A-10 was an undated sketch of the original first and second floor plan supplied by the applicant. These documents were created and submitted to the Board at the request of the Board. Joseph Maffei, Board Engineer and Jeff Hesley, Zoning Officer were sworn in anticipation of their testimony.

Upon questioning from the Board Chairman, Mr. Hesley testified that he had reviewed the minutes of the August 13, 2013 meeting in anticipation of his testimony that evening. He had further reviewed his file with regard to the applicants' property. Mr. Hesley testified that a zoning permit was issued for the construction of a sunroom or a sun porch which he considered to be an enclosed unfinished area as opposed to living area. Rather than build a sunroom or sun porch, he believed that the applicants' developed a new bedroom and extended their living room. He further testified that his file did not evidence that an electric permit was issued.

Mr. Hesley further testified that he had, in fact, inspected the property and had informed the applicant that the building was non-conforming. He noted that the maximum building coverage was previously thirty percent and this was later changed to twenty-seven percent plus exterior decks and porches.

Upon questioning from Cory J. Gilman, Esquire, attorney for the applicant, Mr. Hesley testified that a certificate of occupancy was not issued by the construction office although it was inspected by John Tracy. He reiterated his testimony that the permits were to enclose a deck, not to develop a new indoor living space.

The matter was opened to the public for further comment based upon the testimony of Mr. Hesley alone. John Kontra of 390 39th Street, Unit B, Avalon, questioned Mr. Hesley who testified that the application clearly states that this was a renovation with an anticipated cost of \$2,000.00 and that there were no permits issued for electrical, plumbing or HVAC. Thereafter, the public portion of the meeting was closed.

Chairman Hensel polled the Board as to their opinion of the application and whether the applicants had sustained their burden of proof. A majority of the Board found that the proposed construction by the applicants was beyond the approval granted by the permit. The Board found no hardship for the granting of the variances for front yard setback and building coverage and found that the applicant had not sustained its burden of proof with regard to the negative criteria.

The development has a negative impact on the neighborhood in terms of requiring additional parking and safety concerns given the additional weight above the original foundation. By a vote of 7-1, the Board denied the application for variance relief.

Chairman Hensel then called Application PZ#13-04, a Notice of Appeal filed by John and Patricia Short, Donald and Mary Ann Saleski, John and Courtney Lavin and James and Rosemary Garrity appealing a decision of the zoning officer to grant a zoning permit to construct a single family dwelling on Block 83, Lot 11, also known as 4046 4th Avenue, Avalon, New Jersey. The applicants were represented by Robert Fineberg, Esquire. Prior to the commencement of the hearing, Solicitor Marcolongo explained the nature of a Notice of Appeal and the criteria to be used by the Board Members in making their determination.

Robert Fineberg, Esquire initially marked as Exhibit M, a portion of the Borough of Avalon tax map evidencing the subject property and surrounding properties. He noted that the subject property is a 40 ft. x 140 ft. lot located in an R1-B Zone. Mr. Fineberg had four general arguments why the decision to issue the zoning permit by Mr. Hesley was erroneous and should be overturned by the Board.

Mr. Fineberg's first argument was that the zoning permit was invalid since it was not properly checked, incomplete and not dated. He argued that Mr. Hesley should not have relied upon the application submitted by the owner, John Adams, and that Mr. Hesley had a duty to investigate the appropriateness of the issuance of the zoning permit.

Mr. Fineberg then argued that the subject property is an undersized lot and needs variances since it is not grandfathered. His third argument was that the property does not meet the definition of an undersized lot under the grandfathered clause set forth in Zoning Ordinance Section 27-7.3(a). Mr. Fineberg argued that Mr. Adams did previously own a contiguous lot (Lot 1.15) and evidenced same by marking Exhibit H which was a deed to Mr. Adams on May 3, 1985. He stated that Mr. Adams had purchased the subject lot in 1989 and in 2000 sold Lot 1.15 to Mr. Short. The deed from Adams to Short was marked as Exhibit I. Therefore, the development of the undersized lot was self-created. Mr. Fineberg argued that the intent of this portion of the zoning ordinance was to require owners to attempt to purchase additional land to try to make their lot conform but that this applicant had done the opposite.

Mr. Fineberg further argued that the grandfather clause requires the applicants' property to have 40 ft. of frontage on an improved street. Access to this property will be by way of an

easement, not a street and, as such, the criteria of lot frontage does not exist. Finally he argued that this property was not in existence and did not appear on the Official Tax Map of the Borough of Avalon prior to December 15, 1959.

Mr. Fineberg marked as Exhibit J, a full title work of the subject property completed by the Title Company of Jersey. He noted that the first deed regarding this property was issued in 1930. The next deed was created in 1966 which created a 40 ft. x 110 ft. lot. In 1970 the Borough of Avalon vacated a portion of 40th Street which provided this lot with an additional 30 ft. Accordingly, the final form of this lot came into existence in 1970, well past the 1959 date required by the zoning ordinance. Mr. Fineberg also marked as Exhibit K, a subdivision of Alvin Herman dated August 13, 1980 which he argued was the first mention of Lot 11 in its current form.

Finally, Mr. Fineberg argued that in 2002, Mr. Hesley had required the applicants to apply to the Board for variances for lot area, a lot not fronting on an improved street and side yard setbacks. Mr. Adams had made that application but withdrew the application prior to the hearing. Mr. Fineberg argued that Mr. Hesley's determination in 2002 was correct and should have retained his opinion. Mr. Fineberg marked as Exhibit L, a package containing seven sheets of tax records showing the value of the subject property at \$212,000.00. Adjacent properties, of similar size, were valued at over \$600,000.00 evidencing the tax assessor's opinion, in Mr. Fineberg's mind, that the lot was not buildable.

Mr. Ellenberg noted that while access to the property is proposed along an easement, the easement requires that Mr. Adams fully improve the easement area to the Borough Engineer's satisfaction.

Jeff Hesley was sworn and testified that the reason that Lot 11 is assessed lower is because that assessment had been done prior to the easement being fully executed by the parties. Now that access to the lot is available, the next reassessment will raise the value of that lot.

Mr. Hesley testified that he did do an investigation of the property prior to the issuance of the zoning permit. He noted that this lot has existed since 1930 but was labeled as Lots 96C, 93D, 94D and F-40. The Borough has subsequently changed the numbering of the tax maps. Mr. Hesley agreed that as a result of the vacation of 40th Street, this lot increased in size, however, he still believes that this lot has existed since 1930.

Mr. Hesley discussed Mr. Fineberg's argument regarding the validity of the zoning permit. The new zoning permit issued July 10, 2013 was marked as Exhibit B-1. Mr. Hesley acknowledged that the electronic zoning permit was the work in progress at the time and that the electronic signature was later added. He acknowledged that he failed to check one of the boxes on the zoning permit but believed that did not invalidate same.

Mr. Hesley testified and acknowledged that his opinion as to the necessity of variance relief in order to build had changed. The reason his opinion changed, however, was as a result of a change in facts. He testified that once the easement was obtained, with a condition that Mr. Adams improves the easement area, the variance relief for not fronting on a street was no longer applicable. The lot now fit the criteria for an undersized lot, and the applicants had amended the plans to avoid the necessity of a need for a side yard setback.

Mr. Hesley further noted that the applicants had requested that the Borough sell him additional land, however, that request had been denied by the Borough.

Dr. Reynolds questioned Mr. Hesley about the need for a CAFRA Permit to build on Lot 11. Mr. Hesley testified that the applicant had obtained a DEP General Permit on April 17, 2013 and said permit was marked as Exhibit B-2.

Upon cross examination by Mr. Fineberg, Mr. Hesley testified that, in his opinion, the southerly property line of the subject property is its lot frontage. He further testified that there are certain wetlands on the subject property.

Vincent Lamanna, Jr., Esquire appeared on behalf of John Adams, the owner of the subject property. Mr. Lamanna advised that he has been in contact with Mr. Hesley since as early as January 2012 with regard to construction on the subject property and Mr. Hesley has demanded significant information including building elevations, proof that buy/sell letters were sent to adjacent property owners and proof that Mr. Adams had physical access to the subject property. Mr. Lamanna noted that the easement with the Borough was executed in August 2013 and requires that the applicant fully improve the easement area to provide access to the lot. He also acknowledged that there were minor areas of wetlands on the subject property but that a CAFRA Permit had been obtained.

Mr. Lamanna argued that the subject property has existed since, at least 1930, as a 110 ft. x 40 ft. lot and acknowledged that it obtained an additional lot area in 1970. The increase in the square footage of the lot, however, did not change the identity of the lot and it qualifies under the

undersized lot grandfathering clause. He further argued that the merger doctrine proposed by Mr. Fineberg is not applicable to the lot in question.

During the public portion of the meeting, four members of the public testified:

- (1) John Short of 4th Avenue, testified that the subject property was formed by three old lots plus a vacated area of 40th Street and only came into existence in 1970, disqualifying same under the undersized lot provision.
- (2) Peter Zams of 4th Avenue, testified that access to the property is by an easement, not a street, thus requiring variance relief.
- (3) Michael Hallowell of 4th Avenue, expressed his concerns that there are wetlands on the property and that development will harm the environment.
- (4) Sharon Coyne of 4th Avenue, testified as to her concerns that the development will harm aesthetics in the area.

The public portion of the meeting was concluded.

Chairman Hensel then polled the Board on the issue of whether Mr. Hesley's determination to issue a zoning permit was erroneous as suggested by Mr. Fineberg. A majority of the Board found that the lot itself met the requirements of Section 27-7.3(a) and that Mr. Hesley was correct in his enforcement of the zoning ordinance. By a vote of 5-4, the Board denied the Notice of Appeal filed by Mr. Fineberg on behalf of his clients.

Chairman Hensel then asked Solicitor Marcolongo and Zoning Officer, Jeff Hesley to discuss the most recent changes to Chapter 19 (Flood Damage Prevention Ordinance) and Chapter 27 (Zoning Ordinance) which are to be introduced by Borough Council tomorrow night. Mr. Marcolongo and Mr. Hesley stated that the Borough's professionals had come to a consensus on the appropriate definition of base flood elevation and freeboard which would be incorporated into both Chapters 27 and 19. Mr. Hensel commented on the modifications and the consensus that had been reached by the Borough's professionals over the last month. A motion was made to approve Resolution PZ#13-J which recommended that the Borough Council adopt Ordinances 688-2013 and 689-2013 after full public hearings. All members voted in the affirmative.

Chairman Hensel advised that the agenda item regarding the Residential Site Improvement Standards would be tabled until next month. Similarly, discussions regarding amendments to Chapter 20, 26 and 27 would be tabled to next month's meeting.

The Board then considered Special Resolution PZ #13-K appointing the following persons to positions to serve the Board during 2014:

Jennifer M. Dowe – Board Secretary

Joe Maffei – Board Engineer & Planner

Kendra Lelie – Professional Planner on COAH issues

Dean Marcolongo – Board Solicitor.

A motion was made to approve by Ms. Petrucci, seconded by Mr. Ellenberg, with all members voting in the affirmative.

Special Resolution PZ#13-L appointing Chairperson and Vice Chairperson will be tabled to another meeting.

A motion was made to adjourn at 10:25 p.m.

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