

BOROUGH OF AVALON PLANNING/ZONING BOARD

Minutes of Work Session/Regular Meeting of October 13, 2015

Members Present: Sam Beddia
William Burns
Neil Hensel
David Knoche
James Lutz
Thomas McCullough
Michele Petrucci
Susan Rhoads
Beth Tipping

Members Absent: Sharon Cooper
James Fleischmann
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 September 8, 2015 meeting. There were no amendments. A motion was made to approve by Mr. Lutz, seconded by Mr. Beddia, with all eligible members voting in the affirmative.

The Board then considered Resolution PZ #15-04, regarding the application of Mary Wynne, Trustee of Frances M. Hudome Revocable Trust, requesting variances for side yard setback, total side yard setback and minimum first floor elevation to raise and renovate an existing single family dwelling at 5249 Ocean Drive, Avalon, New Jersey. A motion was made to approve by Chairman Hensel, seconded by Mr. Burns, with all eligible members voting in the affirmative.

Chairman Hensel then called Application PZ #15-06, a Notice of Appeal filed by Donald Pohlig asserting that the zoning official had improperly issued a zoning permit for the construction of a single family dwelling on property located at Block 708, Lots 151 and 152 on the Municipal Tax Map of the Borough of Avalon, commonly known as 652 7th Street, Avalon, New Jersey. This was a continuation of the application that had begun at the September 8, 2015

meeting. Solicitor Marcolongo refreshed the Board's memory and advised the public of the procedural history of this application to date.

William R. Serber, Esquire of the law office of Serber Konschak, LLP, appeared on behalf of 562 7th Street LLC, the owner of the subject property. Mr. Serber first called Gary Lee Thomas, a professional planner and professional land surveyor of Thomas Amey Shaw, Inc., to testify on behalf of the property owners. Mr. Thomas discussed his understanding of the zoning ordinance of the Borough of Avalon and particularly a definition and intent of rear yard setbacks. Mr. Thomas testified that Zoning Ordinance Section 27-7.3(s) states that for properties where the distance from the street line to the bulkhead line is greater than 110 ft, the rear setback line is measured 25 ft from the closest point between the bulkhead line and the street line. Mr. Thomas also testified as to the subdivision hearing that took place before the Planning Board in 2006 where this subdivision was granted.

Mr. Serber marked as Exhibit R-4 (intentionally out of order), Mr. Thomas' subdivision plan dated December 12, 2005, and last revised September 22, 2006, which was filed with the County of Cape May on December 11, 2006. Mr. Thomas testified as to the setback lines that had been included on this plan which was eventually executed by the Planning Board Chairman, Planning Board Secretary and Board Engineer prior to the filing of same with the County. He noted that the setback line was established from the actual bulkhead line rather than the property line at 25 ft with 15 ft side yard setbacks. He noted that his zoning schedule had not changed between the original plans and the revised plans that were filed with the County.

Mr. Serber marked as Exhibit R-2 the original plan that had been presented to the Board at the June 6, 2006 Planning Board hearing. Mr. Thomas noted that the setback line was penciled in on this drawing which eventually resulted in the revised plans that were filed with the County.

Mr. Thomas testified that there are many irregular lot lines that have been created in the Borough of Avalon. He noted that at the time of the original subdivision, the owner, Diane Hammell, created the irregular lot lines so that the entire bulkhead was contained within the property lines of Lots 151 and 152 so that she could be responsible for the maintenance of same. He further testified that the Borough of Avalon has always used the rear bulkhead as the starting point to determine the rear yard setback.

Mr. Serber marked as Exhibit R-1, Board Engineer, Joseph Maffei's review memorandum dated June 2, 2006. Testifying from same, Mr. Thomas noted that he had revised the final subdivision plan pursuant to Mr. Maffei's comments and he believes that his revised plan met all of those comments which resulted in the final execution of the plat which was filed with the County. Mr. Thomas further testified that the zoning ordinance has not changed since 2006 regarding rear yard setbacks.

Mr. Serber marked as Exhibit R-3, Planning Board Resolution PZ #06-06 whereby the Planning Board granted the prior owner minor subdivision approval on June 6, 2006. Mr. Thomas testified that he believes that the final subdivision plan which was filed with the County complies with all of the terms and conditions of that Resolution. Mr. Thomas noted that the subdivision plan consolidated six lots into three lots, all of which would have 150 ft of street frontage. Upon questioning from Mr. Serber, Mr. Thomas testified that development on the property has commenced with the foundation fully completed and surveyed. He testified that the house in question had been laid out to comply with the building setback set forth on the subdivision plan.

Mr. Serber marked as Exhibit R-10, a survey of the subject property completed by Thomas Amey Shaw, Inc. consisting of one sheet dated September 8, 2015. This survey is considered a "foundation survey". Mr. Thomas testified that there is approximately 60.41 ft from the bulkhead to the face of the building but it is anticipated that additional decks will be added to the rear of same. He noted that on the easterly side of the property there is 20.03 ft from the property line to the house and 15.28 ft from the bulkhead to the house. He noted that the proposed structure meets all of the front yard and side yard setbacks and more than conforms to the zoning ordinance and the subdivision plan.

Upon questioning from Mr. Serber, Mr. Thomas testified as to his opinion of Kevin Dixon's testimony from the prior hearing. Mr. Thomas testified that if you accept Mr. Dixon's interpretation of the zoning ordinance, approximately two-thirds of this lot would be unbuildable. He noted that if no bulkhead existed to the south, the rear lot line would, in actuality, be under water. He again noted that the side yard setbacks are bigger than required by the zoning ordinance. Mr. Thomas further testified that the side yards are slightly bigger than required under the zoning ordinance to comply with CAFRA requirements.

Jack Plackter, Esquire of the law office of Fox Rothschild, LLP represented Applicant, Donald Pohlig. Mr. Plackter cross-examined Mr. Thomas. Mr. Thomas acknowledged that the subdivision plan which was presented at the June 6, 2006 meeting did not have the setback lines contained on same and that they were later added at the request of the Board Engineer. He also acknowledged that the rear portion of the lot could be used for accessory structures. Mr. Plackter further questioned Mr. Thomas regarding statements in the last Master Plan regarding its intent to maintain consistent building setbacks to protect views of neighboring property owners. Similar cross-examination occurred regarding the intent of Section 2 of the zoning ordinance and the preamble of Section 27-7.3(s).

Mr. Serber again questioned Mr. Thomas this time regarding the current Master Plan which noted that there could be inconsistent rear yard setbacks due to inconsistent land mass within the Borough.

Mr. Serber then called Mark Asher of Asher Architects Associates who is an architect with twenty years experience in Avalon to testify for the property owner. Mr. Asher advised that he had designed the plans for the home that is being constructed on the lot noting that it is an unusual shaped lot and that he and the owner's professionals had exercised due diligence in reviewing the zoning ordinance and the prior approval before designing the building. Mr. Serber marked as Exhibit R-5, an e-mail and survey from his offices to the zoning officer during the design of the building to ensure their understanding of the rear yard setback. Mr. Serber marked as Exhibit R-6, an additional e-mail and survey between the Asher offices and the zoning officer regarding the rear yard setbacks. Specifically, this survey showed the rear yard setback on the plan. Mr. Asher testified that the building was designed to fit in conformance with the plan and approximately 550 hours were spent in the preparation of the building plans.

At the request of Mr. Serber, the construction plans for the house were in the hearing room during the meeting. These plans consisted of twenty-nine large sheets and were available to Mr. Asher during his testimony. Mr. Asher noted that he designed the building to ensure that no variances would be required including exceeding the side yard setbacks, rear yard setbacks and having the building well short of building and impervious coverage. He testified that he could have built a larger home but the property owners chose not to do so. He further noted that all permits had been obtained. Mr. Serber then marked as Exhibit R-8, two sheets containing the zoning permit dated June 17, 2015 and the construction permit dated June 16, 2015.

After marking the zoning and construction permits into evidence, Mr. Asher testified as to the construction work that had been completed on the property prior to the issuance of a stop work order by the zoning officer.

Mr. Plackter then cross-examined Mr. Asher regarding the front and side yard setbacks and the zoning ordinance. Mr. Asher testified that he believes that the setback lines are established from the rear bulkhead line and that the building is in compliance with the zoning ordinance and the prior Resolution.

After a recess the matter was open to the public for public comment. The following members of the public appeared:

1. Martha Wright of 7th Street, Avalon spoke regarding the intent and purpose of the zoning ordinance and believed that the zoning official has misinterpreted the zoning ordinance in the issuance of the zoning permit. She noted that she objected to the subdivision in 2006 and stated that she did not believe that the rear yard setback was discussed during that hearing.
2. Don Campbell of 7th Street, Avalon testified that he is three homes east of the subject property and that the building constructed on same will diminish his views and constitutes a danger to boaters and children.
3. Douglas McCauley of 22nd Street, Avalon testified in support of the Notice of Appeal urging the Board to fix the mistake made by the zoning official.
4. Wayne Withrow of 13th Street, Avalon testified in support of the Notice of Appeal urging the Board to strictly construe the zoning ordinance and maintain the quality of life in Avalon.
5. Frank McLaughlin of Avalon appeared and testified that the interpretation taken by the zoning officer violates the zoning ordinance and intent of both the zoning ordinance and the Master Plan and he urged the Board to vote in favor of the Notice of Appeal.
6. Elaine Scattergood of 30th Street, Avalon appeared and testified in support of the Notice of Appeal and urged the board to fix the error made by the zoning officer and noted that the stop work order was issued late.

7. Janet Kass of Ocean Drive, Avalon appeared and testified in support of the Notice of Appeal noting that the house in question would block views of neighboring property owners.

8. Sallie Davis of 42nd Street, Avalon appeared and spoke in favor of the Notice of Appeal.

9. Vince Tague, Jr. of Pelican Drive, Avalon appeared and spoke in support of the Notice of Appeal urging the Board to fix a mistake that was first made in 2006 and now memorialized by the zoning officer's decision.

10. Mark Stanish of 37th Street, Avalon spoke in favor of the Notice of Appeal noting that the construction of the house shocks the conscience.

Solicitor Marcolongo then summarized the application to the Board asking them to articulate the rationale for their decision on the record. In addition, Board Engineer, Joseph Maffei spoke regarding his understanding of the results of the 2006 hearing and his understanding of the intent of the Board in its decision in 2006.

Thereafter, the Board, individually, set forth their findings of facts and conclusions of law on the record. A majority of the Board found that the issuance of the zoning permit violated the intent and purpose of the zoning ordinance which was intended to maintain views in a consistent manner along the bay front. By a vote of 5-2, the Board granted the Notice of Appeal.

After a short recess, Chairman Hensel then called Application PZ #15-05, the application of Accardi Family Partnership, LLP for amended preliminary and final site plan approval with variances for front yard setback and several design waivers to renovate an existing hotel and restaurant at property located at Blocks 78.04, Lot 1, et al, also known as 7888 Dune Drive, Avalon, New Jersey. This facility is known as the Desert Sands Hotel Resort and the Fuze Restaurant. Dorothy Garrabrant, Esquire of the law office of Marcus H. Karavan, P.C. appeared on behalf of the applicant and explained the nature of the application to the Board. Ms. Garrabrant called Gary Lee Thomas, a professional planner and professional land surveyor, to testify on behalf of the application. Mr. Thomas testified as to the existing site plan and facilities. He noted that there will be no change in the parking except to add a new handicap parking space near the elevator. Mr. Thomas testified as to the interior changes that would occur including the consolidation of some rooms and modifications of others. Mr. Thomas testified that a new stairwell would be added adjacent to Dune Drive which necessitates a front yard

setback variance. He also testified as to the renovated elevator in the middle of the building and the new entry to the Fuze Restaurant to the west.

Mr. Thomas further testified that the applicant is proposing a large bay window fronting on Ocean Drive which necessitates an additional front yard setback variance. He testified that there will be no change to the rear of the building and no change to front yard setbacks adjacent to 79th Street. He noted that new canopies would be developed over the entrance on 79th street but that no variances are needed for same. Mr. Thomas further testified as to the renovations that will occur to the indoor pool area.

Mr. Thomas testified as to the variance relief requested noting that the property is of a unique size and shape justifying the granting of the variances. He believes that the variance relief can be granted under both the C1 and C2 criteria specifically noting that additional stairways provide for greater public safety and the renovations proposed will provide for a more desirable visual environment.

Ms. Garrabrant marked as Exhibit A-1, a packet containing four photographs of the subject property and Mr. Thomas testified that there will be no change in the lighting scheme for the property. Mr. Thomas stated that there will be 69 rooms located on the property and that 69 parking spaces are required. All additional parking spaces will be used for the restaurant as one space for every 600 sq ft of restaurant area.

Blane Steinman, R.A. of Blane Steinman Architect, L.L.C. appeared, was sworn and testified in support of the application. Mr. Steinman testified that the proposed modifications constitute a facelift and cosmetic improvement to the existing facility. He testified that a new stairwell will be developed adjacent to Dune Drive as evidenced on the plans, that a new roof will be developed over the easterly deck so that the deck is partially covered with the roof consistent with the third floor roof line. Mr. Steinman testified as to the bay window bump out adjacent to Ocean Drive and the new entrance to the Fuze Restaurant which will include an additional 239 sq ft of indoor area which will be used for storage. Finally, he testified as to the renovated elevator in the middle of the building. In all, Mr. Steinman opined that these changes will improve the look of the building providing for a more desirable visual environment.

Upon questioning from Ms. Garrabrant, Mr. Steinman testified that the number of rooms will be reduced from 88 to 69 rooms and that occupancy will be reduced from 303 persons to 236 persons. He noted that two rooms are undersized but are existing non-conforming

conditions that are not being changed by the proposed development. Finally he noted that the applicant is requesting design waivers for existing and proposed contours providing a drainage area map, storm water management calculations, elevations at the building corners and an environmental impact statement.

The Board questioned Mr. Steinman regarding a stairwell to the northwest portion of the building and their concern for safety in that area. It was agreed that the applicant would present its plans to the Avalon Fire Chief for his review and recommendations.

Frank Accardi of Trenton Avenue, Wildwood Crest, New Jersey appeared and testified on behalf of the application. He noted that the Desert Sands Hotel Resort had been built in 1968 and has been operated by three generations of Accardis. He noted that current public demand desires larger buildings with two bedroom suites and they are attempting to accommodate their guest's desires. He noted that he has requested a change in the elevator to accommodate a rescue litter for the safety of his guests. The new stairwell to the east has also been designed to improve fire safety for both the public and emergency rescue personnel. He agreed that the building was in need of a facelift and he hopes that the new modifications will provide for a desirable visual environment.

Joseph Maffei, Board Engineer, testified from his review memorandum dated September 30, 2015 advising that there are several existing non-conforming conditions that are not being exacerbated by the proposed development and noted that he believes that there is sufficient parking for all business operations. He further stated that he concurred that the waivers could be granted by the Board.

The matter was open to the public at which time no member of the public came forward to testify.

After a summary of the application by the Board Solicitor, the Board set forth its findings of facts and conclusions of law on the record. The Board found that the applicant has satisfied its burden of proof under both the C1 and C2 criteria, specifically, noting that the proposed modifications improve public safety on the site and provide for a more desirable and visual environment. The proposed development will enhance the community, provide for less density and is an asset to the community. The Board unanimously voted to grant the application for amended site plan approval together with variances and design waivers as proposed with the

condition that the applicant submit a deed of consolidation, comply with the Board Engineer's report and present their proposal to the Borough of Avalon Fire Chief for his consideration.

Given the lateness of the evening, Chairman Hensel dispensed with the remainder of the agenda although he did note that each Board Member received a draft copy of the new goals and objectives for the Master Plan Reexamination from Mr. Maffei. He asked that the Board Members review same in preparation for the November meeting.

The matter was open to the public for public comment. There was no public comment.

A motion was made to adjourn at 11:07 p.m.

Respectfully submitted,

/s/Dean R. Marcolongo

Dean R. Marcolongo, Esquire