

**BOROUGH OF AVALON PLANNING/ZONING BOARD**

**Minutes of Work Session/Regular Meeting of June 14, 2016**

Members Present: Sam Beddia  
William Burns  
Sharon Cooper  
Michael Coskey  
Neil Hensel  
David Knoche  
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.

The Board first considered the minutes of the April 12, 2016 meeting. A motion was made to approve the minutes by Mr. McCullough, seconded by Dr. Reynolds, with all eligible members voting in the affirmative.

There were no Resolutions to memorialize.

Chairman Hensel then called Agenda Item#7, a discussion of the proposed amendments to the Borough's Landscaping Ordinance. James Waldron, Assistant Business Administrator, appeared to assist in a discussion regarding the proposed amendments. All Board Members had been provided with a copy of the final draft of proposed amendments to the zoning ordinance, specifically, Chapter 27-7.3(t) last revised June 8, 2016. Chairman Hensel provided the Board and the public with an overview of the history of the development of this proposed amendment.

James Waldron advised that a subcommittee had been organized in October of 2014 to begin work on amendments to the Landscaping Ordinance. During the last year and a half, twenty-seven meetings of the subcommittee had occurred resulting in twenty-seven drafts of the proposed amendment. Mr. Waldron further advised that the Environmental Commission had provided significant input into the proposed amendments.

Mr. Waldron provided the Board and the public with a general outline of the proposed amendment. He noted that the subcommittee had worked diligently to remove any conflicts between Chapter 16 (Property Management Ordinance) and the zoning ordinance. He noted that there has been no change in the irrigation section of the ordinance. Overall, Mr. Waldron believes that the proposed amendment provides for a more streamlined, simplified and user-friendly Landscape Ordinance.

Dave Knoche, Chairperson of the Subcommittee, thanked all members of the subcommittee and other professionals for their hard work and input in the development of the proposed amendment. Neil Hensel thanked the subcommittee for their hard work and input in the development of the proposed amendment and their attempt to create a more enforceable document. The matter was open to the public at which time no member of the public came forward to testify. A motion was made to adopt a resolution (Special Resolution PZ #16-A) by Dr. Reynolds, and seconded by Ms. Tipping recommending that Borough Council adopt the amendment to the Landscaping Ordinance. All members voted in the affirmative.

Dr. Reynolds further advised the Board and the public that the Environmental Commission had created an updated acceptable plan and vegetation list which had previously been circulated to the Board. He noted that the new list sets forth acceptable plant materials, and nuisance and invasive plants.

The Board then considered Application PZ #16-05, the application of 642 7<sup>th</sup> Street, LLC and 652 7<sup>th</sup> Street, LLC for minor subdivision approval to realign lot lines between properties and for a rear yard setback variance. Prior to the commencement of the hearings, Solicitor Marcolongo provided the Board and the public with a brief history of the applications involving these properties which had been heard by the Board and the subsequent litigation resulting from same. This summary included the 2006 Minor Subdivision Approval, the 2015 Notice of Appeal filed by Donald Pohlig, a subsequent minor subdivision approval realigning lot lines between Lots 150 and 152 and a second Notice of Appeal filed by Donald Pohlig which is on the Board's agenda for this evening.

Mr. Marcolongo advised that all of these applications had spawned two prerogative writ litigations currently pending before Judge Mendez in the Superior Court. The two litigations had been consolidated by prior Order of the Court. He further advised the Board that the litigants have resolved their differences and have proposed a settlement agreement. The hearing this

evening will not only be a proposed minor subdivision with rear yard setback application but will also be a “Whispering Woods hearing” approving the proposed settlement. He noted that if the application is approved this evening, the current litigations will be dismissed.

Richard Hluchan, Esquire appeared on behalf of the applicant and explained the nature of the application to the Board. Mr. Hluchan confirmed the summary by Mr. Marcolongo and advised the Board that in the event that the application before the Board this evening is approved, the parties have already signed stipulations of settlement that would result in the dismissal of the litigations. He noted that the proposed application restores the lot line back to the 2006 approval and that, by agreement of the parties, the applicant proposes to move the building northward approximately 88 ft from the south bulkhead line in order to protect the views of the property owners to the east.

Mr. Hluchan called Gary Lee Thomas, a professional land surveyor with Thomas Amey Shaw, Inc. who testified from his proposed minor subdivision plan dated May 18, 2016 and last revised May 25, 2016 that was received by the Board and incorporated as fact. Mr. Thomas confirmed that the subdivision plan returns the easterly property line as to Lot 152 back to its 2006 position and that by way of compromise; the applicant has agreed to move the building northward to protect views to adjacent property owners. He noted that the building is now proposed at 87.98 ft from the southerly bulkhead line.

Mr. Thomas testified that the proposed location of the building is consistent with the neighborhood and Exhibit A-1 was marked evidencing an aerial view of the neighborhood showing the building envelope to confirm this fact.

Mr. Marcolongo advised the Board that based upon its decision in the fall of 2015 that he believes that variance relief is required for a rear yard setback even though the building has now been moved northward. Testifying as to variance relief, Mr. Thomas testified that the benefits of the variance relief outweigh any detriment and the purposes of zoning are advanced by preserving views. He further testified that in his opinion 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. He further testified that it is the applicant’s intention to remove the existing building prior to June 30, 2016.

Joseph Maffei, Board Engineer, appeared, was sworn and testified from his review memorandum of June 7, 2016. He noted that there are still non-conforming conditions on Lot 150; however, they are not exacerbated by the proposed application.

The matter was open to the public at which time Jack Plackter, attorney for adjacent property owner, Donald Pohlig and Donald Campbell appeared and advised the Board that his clients are in agreement with the proposed application which has been submitted based upon a compromise between the parties. He agreed that the proposed modification does preserve light, air and open space and he further confirmed that no portion of the building, including decks and porches, will be within 87.89 ft of the rear of the southerly bulkhead. In addition, Martha Wright of 7<sup>th</sup> Street, Avalon appeared, was sworn and stated that she has no objection to the proposed application but stated that she agrees with Mr. Marcolongo that variance relief is required.

There being no further public comment, the matter was returned to the Board for findings of facts and conclusions of law. The Board found that except for the variance relief requested, the subdivision meets the requirements of the Borough's ordinance. The Board also found that the applicant has sustained its burden of proof for a C2 variance for rear yard setback in that the proposed development advances the purposes of zoning by preserving light, air and open space to adjacent property owners and is better for navigation.

A motion was made to approve the application for minor subdivision approval together with a variance for rear yard setback with conditions by Mr. McCullough, seconded by Ms. Petrucci, with all eligible members voting in the affirmative.

The Board then considered Application PZ#16-01, Application of Brian Keyser and Jane Kogut Keyser, for a use variance for the expansion of a non-conforming use, preliminary and final site plan approval, an interpretation as to how side yard setbacks should be computed and a total side yard setback variance, if necessary, to demolish one of two principal structures on a lot and construct a new single family dwelling and reconfigure common elements on property located at 38 W. 21<sup>st</sup> Street, Avalon.

Solicitor Marcolongo informed the Board that the first issue to be addressed would be that of a request for an interpretation. He noted that this is a unique property in that it has two principal structures on the lot. The applicants propose to demolish the front structure and construct a new single family dwelling. The question to be addressed is how the Board interprets the zoning ordinance on how to calculate total side yard setback. Should the Board consider the

two side yard setbacks for the new building only or should the Board consider a side yard setback on the rear structure together with a side yard setback for the new structure? He advised that the applicants advocate calculated total side yard setback using only the setbacks for the new building.

William Serber of the law office of Serber Konschak, LLP, appeared on behalf of the applicants and explained the nature of the application to the Board. He noted that the lot was developed in 1959 with a single family dwelling and a garage. The garage was later converted into a single family dwelling in 1970. The front building, Unit A, has had no change since it was initially constructed. Unit B, the rear building, was renovated in 2004 but only after an application to the Board was denied and the matter was appealed.

Mr. Serber marked numerous documents into evidence including the decision of the Superior Court and Appellate Division which permitted the renovation of Unit B. Mr. Serber then presented his argument on the interpretation to the Board. Joseph Maffei, Board Engineer, appeared, was sworn and testified as to the application. Mr. Maffei stated that his interpretation is that the total side yard setback is calculated by using the entire lot and that one would need to use the smallest setback on either side of the lot which, in this case, would be one setback for the front building and one setback for the rear building. He agreed that the zoning ordinance does not contemplate two principal structures on a site. There was no public comment on the interpretation issue.

At this time, the Board conducted its findings of fact with the Board concurring with Mr. Maffei's interpretation that the applicants required a variance for total side yard setback. The Board found that total side yard setback must be calculated by adding the smallest side yard setback to either building on both sides and, therefore, variance relief was required.

Mr. Serber then began his affirmative presentation to the Board by calling Brian Keyser to testify. Mr. Keyser testified that he has been the owner of Unit A since May of 2014 and that his wife has owned Unit B since 1992. They have never rented either building. He noted that Unit A is an "old and ugly" one story building with a flat roof and T1-11 siding. The applicants propose to demolish this structure and build a single family dwelling on the front portion of the lot which is compatible aesthetically with the rear building. He also testified that the proposed lot is oversized and, in his opinion, can accommodate those difficulties associated with two principal structures.

Bradley Blumensheid, an architect with DKB Architects, appeared and testified on behalf of the application. He testified that he was the principal architect on the project and the goal was to demolish Unit A and construct a new single family dwelling which would be compatible aesthetically with Unit B. He notes that the proposed reconstruction of Unit A will modify numerous existing non-conforming conditions for that building which is a benefit to the zoning ordinance.

David Keyser, also an architect with DKB Architects, appeared and testified from a virtual presentation of the proposed development which was marked as Exhibit A-3. He testified as to existing conditions on site including non-conforming conditions and the proposed development. The virtual presentation included colored renderings of the building and a flyover of the proposed site. He noted that there would be an increase of parking as a result of the development, a wet fire suppression system, increased distance between buildings and the new structure will be constructed to current construction codes and would be developed above base flood elevation.

Randall Scheule, a professional planner, appeared and testified from his report dated February 26, 2016 which is marked as Exhibit A-7. Mr. Scheule testified that he believed that special reasons existed for the granting of the use variance including providing for the public health, safety and welfare by correcting seven non-conforming conditions, protecting the property from fire and flood, providing for adequate light, air and open space, a desirable visual environment and maintaining appropriate population densities on this oversized lot. He further testified that the variance relief can be granted under both the C1 and C2 criteria and 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.

Joseph Maffei, Board Engineer, appeared, was sworn and testified from his review memorandum of February 2, 2016 noting that he had suggested that the variance relief was necessary for side yard for the HVAC system, however, this was incorrect.

The matter was open to the public at which time two members of the public came forward to testify: Rean Hoffman of Downingtown, Pennsylvania and Fran Rosenberg of Wayne, Pennsylvania with both parties testifying in favor of the application.

After the public portion of the meeting was closed, the Board conducted its findings of facts and conclusions of law. The Board found that the applicants have sustained their burden of proof as to both the C and D variances with the Board finding 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. The Board found that the proposed development was architecturally pleasing and that the benefits of removing the existing non-conforming conditions and constructing a fully conforming front unit except for the variance relief were beneficial to the neighborhood. A motion was made by Ms. Cooper, and seconded by Ms. Tipping to grant the application with a condition that the applicants comply with Mr. Maffei's review memorandum and developed in accordance with the plans submitted. All eligible members voted in the affirmative.

The Board then considered Application PZ #16-04, Four Daughter's Designs, Inc., for variance relief for two side yard setbacks, total side yard setback to construct a new single family dwelling at property located at Block 70.05, Lot 2.04 also known as 330 70<sup>th</sup> Street, Avalon. The applicant was represented by William Serber, Esquire.

Mr. Serber advised the Board that the subject property is an oversized lot containing an older single family dwelling. The applicant proposes to demolish the existing single family dwelling and construct a new single family dwelling. Variance relief is necessary for side yard setback and total side yard setback.

Mr. Serber called Rean Hoffman, an architect with R.A. Hoffman Architects of Downingtown, Pennsylvania. He testified that the subject property is an oversized lot and initially he did not believe that the oversized lot requirement of the zoning ordinance was applicable. He later learned that the oversized lot requirements are applicable to this lot necessitating the variance relief. Mr. Hoffman noted that the single family dwelling was forty-seven years old and was not constructed to new FEMA requirements or in accordance with current construction code.

Mr. Hoffman testified that the applicant's proposal improves the side yards on both sides of the building and would comply with the regular side yard setbacks if the oversized lot requirements were not in effect. He further testified that the proposed development is a smaller footprint than the existing building by 11% and the development proposal will increase parking from one on-site parking space to four.

Joseph Maffei, Board Engineer, appeared, was sworn and testified from his review memorandum of June 6, 2016. Mr. Maffei noted that he had called out a variance for a setback to the shower, however, that is no longer an issue for the Board's consideration.

Dante Guzzi, a professional engineer with Dante Guzzi Engineering Associates of Cape May Court House, NJ appeared, was sworn and testified from his variance plan which was submitted to the Board and incorporated as fact. He testified that the applicant is proposing side yard setbacks of 10.3 ft and 9.8 ft necessitating variance relief. He testified that the lot to the south has driveways immediately adjacent to this structure which increases the buffer.

Mr. Guzzi testified that the variance relief can be granted under both the C1 and C2 criteria. As to the C1 criteria, he noted that this is an unusual lot which is affected by its location adjacent to the back bays. CAFRA requirements need to be considered in the development of the building. As to the C2 criteria, he believes that the benefits of the variance relief outweighs any detriment and that the purposes of zoning are advanced by constructing a building that is code compliant, above base flood elevation, aesthetically pleasing, promotes appropriate population densities and increases parking for the neighborhood. He 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 and that the proposed development is in compliance with the Borough's Master Plan.

The matter was open to the public at which time Martha Wright of 7<sup>th</sup> Street, Avalon testified in opposition to the proposed development. She does not believe that the applicant has sustained its burden of proof and, since this would eventually be a vacant lot, the applicant could develop a building that meets all of the zoning requirements.

After hearing the testimony in this matter, the Board conducted its findings of facts and conclusions of law. The Board found that the applicant has satisfied its burden of proof under both the C1 and C2 criteria with the Board finding that a hardship exists to the applicant as a result of the location of the property and that the purposes of zoning are advanced by improving existing side yards, raising the building above base flood elevation and providing for a desirable and visual environment. A motion was made to approve the variances with a requirement that the applicant comply with Mr. Maffei's review memorandum and that the air conditioning would be screened to the satisfaction of the Board Engineer with the Board approving the motion by a 6 to 3 vote.

At the conclusion of the meeting, Mr. McCullough expressed concerns regarding Atlantic City Electric development of the electrical substation within the Borough. He expressed concerns that the developer was causing damages to adjacent properties and not resolving these problems. Mr. Burns advised that he would investigate these matters.

During the public portion of the meeting, Martha Wright thanked the Board for passing the Landscaping Ordinance however, again, expressed concerns that the zoning ordinance regarding landscaping around pools was not being adequately addressed.

At the request of Solicitor Marcolongo, the Board agreed to convene a closed session meeting for the purposes of approving the minutes of a closed session meeting occurring on April 12, 2016. At the conclusion of that closed session, the Board did approve those minutes.

A motion was made to adjourn at 10:59 p.m.

Respectfully submitted,

*/s/Dean R. Marcolongo*

Dean R. Marcolongo, Esquire