

BOROUGH OF AVALON PLANNING/ZONING BOARD

Minutes of Special Meeting of November 1, 2017

Members Present: Sharon Cooper
Michael Coskey
Neil Hensel
David Knoche
Thomas McCullough
Brian Reynolds
Beth Tipping
Sam Wierman

Members Absent: Sam Beddia
James Deever
James Fleischmann
John Morrison
Michele Petrucci

Chairman Hensel called the meeting to order at 6:00 PM and led the Board in the Pledge of Allegiance. After a roll call of members, Chairman Hensel read the Open Public Meetings Act Statement.

Solicitor Dean R. Marcolongo, Esquire then summarized the proceedings to the Board members and to the public. He advised that this meeting was commonly known as a Whispering Woods hearing, which is a duly noticed public meeting as required by the Court in the case of *Whispering Woods at Bamm Hollow v. Middletown Planning Board* 220 N.J. supra 161 (1987), which requires a public hearing anytime a Planning or Zoning Board desires to settle litigation with a developer. Specifically, this Whispering Woods hearing would involve a settlement of litigation between The Marina at Avalon Anchorage, LLC, the Planning Board, Jeffrey Hesley, and Kimberly Mastriana. He noted that this settlement would also result in the resolution of litigation between The Marina at Avalon Anchorage, LLC and the Borough of Avalon.

Solicitor Marcolongo provided the Board and the public with a history of applications before the Board involving the subject property. He discussed the 2007 Planning Board approval for renovations to the Marina and the development of residential units on site by the Johnson family. Thereafter, the subject property was purchased by The Marina at Avalon Anchorage, LLC who then proposed a modified development plan before the Board.

Solicitor Marcolongo noted that the Borough of Avalon, who had vacated a portion of 21st Street to assist in the development of this property, had filed suit to nullify the Street Vacation Ordinance asserting that no public benefit had been provided. He recounted the history of that litigation to date. Solicitor Marcolongo detailed the history of the current application before the Board, which had been filed in December of 2015 and was eventually heard by the Board on December 13, 2016, resulting in a denial of the application. He further noted that The Marina at Avalon Anchorage, LLC then filed suit against the Planning Board and discussed the history of the litigation to date, including an order of Judge Mendez for the parties to enter mediation.

Solicitor Marcolongo advised that the mediation was successful and that The Marina at Avalon Anchorage, LLC, the Planning Board, the Borough of Avalon, and Mr. and Mrs. Marshall had come to a global resolution of the litigation which had been memorialized in a Consent Order and Stipulation of Settlement.

Solicitor Marcolongo then summarized the terms of the Settlement entered into between the parties with all Board members receiving a copy of the Settlement documents and the Settlement documents being available in the meeting room for members of the public.

Specifically, Solicitor Marcolongo noted that if the Settlement was approved by the Board, it would result in the applicant receiving preliminary site plan approval together with a D-1 use variance for the development of duplexes on site and a rear-yard setback variance based upon the plans submitted at the December 13, 2016 meeting except as modified herein. He noted that the plans of December 13, 2016 would be revised to address the concerns of the Fire Chief, to remove a 250-gallon fuel tank, to re-label attics in the duplexes as bedrooms, and to remove the pool from the top of the

marina flats building. He further noted that the applicant would be required to return to the Board for final site plan approval.

Robert Baranowski, Jr., an attorney with Hyland Levin, appeared on behalf of The Marina at Avalon Anchorage, LLC to briefly summarize the development plans submitted at the December 13, 2016 hearing. Mr. Baranowski called Gerald Blackman, the applicant's architect, who briefly summarized the development plans submitted at the December 13, 2016 meeting. His PowerPoint presentation was again marked as Exhibit A-1 with Mr. Blackman confirming that these plans were fully consistent with the presentation of December 13, 2016 except for the inclusion of details regarding a proposed gazebo, which had become part of the settlement terms entered into between the parties.

At the conclusion of Mr. Blackman's presentation, the matter was opened to the public, at which time the following members of the public came forward to testify:

- a. Ronald Penska of 21st Street Avalon, New Jersey appeared, was sworn, and asked several questions regarding the variance relief necessary by the applicant and expressed concerns regarding the maintenance of the gazebo and utility services at his property.
- b. Jeremy Johnson of 21st Street Avalon, New Jersey appeared, was sworn, and testified that he was generally satisfied with the project and had questions regarding the maintenance of the gazebo.
- c. Dean Bekas of 21st Street Avalon, New Jersey appeared, was sworn, and testified as to his concerns regarding the gazebo. He was of the opinion that the gazebo would result in additional pedestrian and foot traffic at the street end and that his quality of life could be affected by this development.
- d. Christina Hoyt of Sunset Drive Avalon, New Jersey appeared, was sworn, and testified in opposition to the development of the gazebo and also expressed concerns regarding the density of residential development and traffic/parking issues in this area.

At the completion of the public portion of the meeting, the Board set forth its findings and facts and conclusions of law on the record. While the Board members had some concerns regarding the development and would have preferred to have seen final

plans, they acknowledged that it was time to settle this litigation and felt that their concerns could still be addressed at final site plan approval.

A motion was made to approve the settlement of the litigation by Dr. Reynolds and was seconded by Mrs. Cooper with all eligible members voting in the affirmative.

The Board then considered Special Resolution PZ #17-L establishing the Board's meeting dates for 2018. A motion was made to approve the Special Resolution by Mrs. Cooper and was seconded by Dr. Reynolds with all members voting in the affirmative.

At the request of Chairman Hensel, the Board made a motion to convene a closed session meeting for discussion of personnel issues only. Mr. Hensel noted that no further action would be taken by the Board that evening.

A motion was made to adjourn by Dr. Reynolds and was seconded by Mrs. Cooper with all members voting in the affirmative.

Respectfully submitted,

/s/Dean R. Marcolongo

Dean R. Marcolongo, Esquire

DRM:jk