

BOROUGH OF AVALON PLANNING/ZONING BOARD

Minutes of Work Session/Regular Meeting of December 13, 2016

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

Members Absent: William Burns
James Fleischmann
Michele Petrucci

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 addressed the proposed minutes of the November 8, 2016 meeting. A motion was made to approve the minutes by Dr. Reynolds, seconded by Ms. Tipping with all eligible members voting in the affirmative.

There were no resolutions for memorialization.

Chairman Hensel then called application PZ#15-09, the application of the Marina at Avalon Anchorage, LLC for preliminary site plan approval, a D-1 use variance for uses not permitted in a zone and variances for rear yard setback, to permit a deck above the highest habitable floor and variance for multiple pool regulations to conduct a major renovation of an existing marina and construct five buildings consisting of three standard side by side duplexes, one up and down duplex and a marina office for property located at 885 21st Street, formerly known as 863 21th Street, Avalon, New Jersey, which is located in a Marine Business Zone.

Richard Hluchan, Esquire, of the Law Offices of Hyland Levin, LLP appeared on behalf of the applicant and explained the nature of the application to the Board. Mr. Hluchan advised the Board of the current improvements on site and addressed the 2007 prior Planning Board

approval. Mr. Hluchan advised that the prior approval is still effective under the Permit Extension Act.

Gerald S. Blackman, Jr., a licensed architect with OSK Design Partners, PA, Collingwood, New Jersey, appeared on behalf of the applicant. Mr. Hluchan marked as Exhibit A-1 a power point presentation which set forth, in detail, the proposed development application. Mr. Blackman's testimony initially consisted of a description of the existing conditions on site and development in the neighborhood which he described as generally developed with single family dwellings and duplexes.

Mr. Blackman testified that the first of the five buildings would be what is described as the marina building. This is a three story building containing the marina's administrative facilities and sleeping quarters. This building would be linked by a pergola to the second building which is described as the "Marina Flats" building. This building would consist of two dwelling units, one above the other, with the upstairs unit also having additional facilities on the roof including a deck, sunroom and pool. Mr. Blackman noted that the roof facilities were for the exclusive use of the second floor unit.

Finally, Mr. Blackman testified that the applicant proposes to develop three typical side by side duplexes on the easterly side of the lot. Each duplex unit would have its own garage and would be a three story, five bedroom residential dwelling. Each duplex building will also have two areas on the first floor which have been designated as marina storage.

Mr. Blackman testified that the New Jersey Department of Environmental Protection (NJDEP) required a public access walkway around the entirety of the property. The marina use storage areas, which are located on the ground floor of each building, were also required by the NJDEP, and the marina owner will control the use of these units.

Testifying from slides 5 and 6 of the power point presentation, Mr. Blackman testified as to the differences between the 2007 approval for the subject property and the proposal now before the Board. The biggest difference between the two proposals is the 2007 approval had one large residential building to the east, whereas, the new proposal has divided the residential portion into three smaller buildings. Upon questioning from the Board, it was noted that there was the potential that the managers living quarters could be converted into a ninth residence. Mr. Hluchan agreed to deed restrict the property from that use. Mr. Blackman opined that the new

proposal would have less of an impact upon the neighborhood since it provides for less coverage and more light, air and open space.

Mr. Blackman testified as to the upper portions of the Marina Flats building. He believed that no variance relief was needed for the deck on this building since the sunroom was habitable space and, as such, the deck was at the same level. As to the roof top pool, he testified that the zoning ordinance did not contemplate a pool on a roof and he testified as to the possible variances needed. Significant discussion took place regarding the safety features of the pool at this level.

Addressing the site plan itself, he noted that the street ends in a cul-a-sac. Mr. Blackman acknowledged Fire Chief Dean's letter which stated that the turning radius into this development would need to be modified to accommodate fire equipment. Mr. Blackman noted that the plans would be revised prior to final site plan approval. Mr. Blackman further testified as to the trash and recycling for the development.

Gary Thomas, a professional land surveyor and professional planner with Thomas Amey Shaw, Inc. appeared, was sworn and testified as to the application. He also testified as to the differences between the 2007 approval and the 2016 proposal. He believed that the removal of the large monolithic building and the replacement of same with three duplexes provided for greater open space. He noted that the applicants NJDEP permit required a reduction in lot coverage, increased green space, improved views of the water and increased marina space. Specifically, he testified that lot coverage had been reduced, the height of the buildings had been reduced, front yard, side yard and rear yard setbacks had been increased and a better stormwater management plan had been developed. In addition, the total habitable space in the structures had been reduced.

Upon questioning from the Board, regarding the 2007 approval and the requirement to maintain a functioning marina, Mr. Hluchan marked as Exhibit A-2, a copy of Judge Mark Sandson's Order of June 20, 2016. Mr. Hluchan noted that Judge Sandson's Order did not require that the applicant provide any "public benefit" including but not limited to a boat ramp, public walkway or gasoline facilities.

Mr. Thomas testified that he believes that special reasons exist for the granting of the use variance including but not limited to providing adequate light, air and open space, providing for appropriate population densities and a variety of uses and providing for a desirable visual

environment. Mr. Thomas believes that the proposed development was consistent with the neighborhood and that 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.

Testifying as to the on-site parking Mr. Thomas acknowledged that three of the parking spaces were stacked, however, even if these three parking spaces were removed from consideration sufficient parking was provided. Joe Maffei, Board Engineer, appeared, was sworn and testified as to the application. He noted that the living quarters in the marina office would require one additional parking space, however, even with the removal of the stacked parking sufficient parking spaces were provided and that variance relief was not necessary.

Mr. Blackman commented to the professional reports that were submitted to the Board. He acknowledged that the habitable attic area did, in fact, constitute a fifth bedroom and his plans would be revised accordingly. He also testified as to the rear yard setback variance noting that even though this is an unusually shaped and narrow lot the rear yard setback had been improved and that the variance relief could be granted under both the C-1 and C-2 criteria.

Mr. Thomas testified that each of the residential unit owners would receive ownership of one of the boat slips on-site. The remaining boat slips would be available for lease. Chairman Hensel discussed the 2007 Planning Board approval and wondered whether the proposed development met the definition of a marina.

Joseph Maffei reviewed his report of August 24, 2016. He noted that his review memorandum was based upon his understanding that the pool area on the Marina Flats building would be available for more than one unit. Mr. Maffei review his report in detail to the Board, noting that the height of the buildings have remained basically the same. He also noted that he believes that the proposed site is now in an A-E Zone and would be required to be built in accordance with those requirements.

The matter was opened to the public, at which time Neil Yoskin, Esquire appeared before the Board, representing the Borough of Avalon. Mr. Yoskin advised the Board of the status of litigation between the applicant and the Borough regarding the street vacation ordinance which provided additional land to the applicant. Mr. Yoskin provided the Board with a history of that action, including the Borough's position regarding the need to maintain a marina at this site and

the associated marina facilities. He noted that project was not built and that the new project does not provide the amenities that the Borough desired.

Mr. Yoskin marked as Exhibit P-1 a copy of Borough Resolution 98-2010 whereby the Borough formalized the street vacation ordinance. He advised the Board that the Borough desires to maintain similar conditions regarding this project as were required by the Board's 2007 approval. Chairman Hensel commented that the current proposal does not meet the definition of a marina and is simply a housing project.

The following members of the public commented as to the proposed development application:

- A) James Lutz, of 2539 Ocean Drive, Avalon, New Jersey testified that he is a boater and he believes that this is a wonderful project and he is in favor of same. He noted that most marinas are now located on the mainland.
- B) Douglas Macauley, of 276 22nd Street, Avalon, New Jersey appeared was sworn and testified as to the development. He expressed concerns regarding the pool and lighting and noted that the proposed development provides difficult access to its docks.
- C) Ron Penska, of 870 21st Street, Avalon, New Jersey appeared was sworn and testified in favor of the application.
- D) John O'Dea, of 236 19th Street, Avalon, New Jersey, appeared was sworn and testified in favor of the application. He noted that the marina facilities that the Borough wants could be provided at other locations.
- E) Robert J. Scully, Jr. 3348 Ocean Drive, Avalon, New Jersey, appeared was sworn and testified in favor of the application. He noted that prior owners had ruined this marina and he is happy that the fuel facilities had been removed from the project.

After the completion of the applicants' presentation and after hearing from the public, Chairman Hensel called on each member to provide their findings and facts and conclusions of law. Each Board member set forth in detail their findings of facts and determination as to whether the applicant had sustained their burden of proof with regard to the proposed development. Solicitor Marcolongo requested a motion in the affirmative to approve the application. Numerous conditions of approval were set forth on the record as created during the

presentation of the application. A motion was made to approve by Mr. Knoche, seconded by Mr. McCullough with the application defeated by a five to two vote.

The next agenda item was Master Plan discussion. Chairman Hensel noted that he had recently attended the League of Municipalities meetings in Atlantic City and had received a significant amount of information regarding legal requirements necessary in the Master Plan Reexamination. Chairman Hensel advised that he would like to have Mr. Maffei and Mr. Marcolongo consider that information and incorporate same into the Master Plan Reexamination.

The Board then conducted its 2017 Reorganization Meeting. A motion was made to approve Special Resolution PZ#16-F appointing the Board's professionals for the year 2017. Those professionals included Kimberly Mastriana, Board Secretary, Joseph Maffei, Board Engineer and Professional Planner, Elizabeth McManus, Affordable Housing Planner, and Dean R. Marcolong, Esquire, Board Solicitor. This Resolution was approved unanimously.

The Board then considered Resolution PZ#16-E, establishing the Boards meetings for 2017. This Resolution was approved unanimously. Finally, the Board considered Resolution PZ #16-D the appointment of Chairperson and Vice Chairperson. Neil Hensel was unanimously re-elected Chairperson for 2017 with Sharon Cooper unanimously elected as Vice Chairperson.

Chairman Hensel advised the Board and the public that Board member Susan Rhoads was retiring from the Board at the end of 2016 as a result of an anticipated relocation. Chairman thanked Ms. Rhoads earnestly for her service to the Board with those thanks echoed by many other Board members.

The matter was opened to the public at which time Douglas McCauley asked Chairman Hensel whether there was any update on the Master Plan Reexamination. He again reiterated his opposition to motels in the B-1 Zone.

A motion was made to adjourn at 10:23 p.m.

Respectfully submitted,

/s/Dean R. Marcolongo

Dean R. Marcolongo, Esquire