

BOROUGH OF AVALON PLANNING/ZONING BOARD

Minutes of Work Session/Regular Meeting of January 14, 2014

Members Present: Sharon Cooper
David Ellenberg
James Fleischmann
Neil Hensel
David Knoche
James Lutz
Thomas McCullough
Brian Reynolds
Susan Rhoads
Beth Tipping

Members Absent: Sam Beddia
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 considered the Minutes of the December 10, 2013 meeting. A request was made to modify the Minutes. A motion was made to approve the Minutes as amended by Mr. McCullough, seconded by Ms. Tipping, with all eligible members voting in the affirmative.

The Board then considered Resolution PZ#13-06, Christian and Cindy Johnson, for variances for lot area, lot frontage, and rear yard setback to develop a new single family dwelling at 878 21st Street, Avalon. A request was made to make a minor modification to the Resolution. A motion was made to approve the Resolution as amended by Dr. Reynolds, seconded by Ms. Rhoads, with all eligible members voting in the affirmative.

The Board next considered Application PZ#13-07, 7700 Central West, LLC, for an interpretation as to whether the oversized lot requirements of Zoning Ordinance Section 27-7.3(r) were applicable to the particular lot and, in the alternative, for side yard setback variances to construct a single family dwelling at 340 72nd Street, Avalon. Cory J. Gilman, Esquire represented the applicant.

Prior to the commencement of the hearing, Solicitor Marcolongo advised the Board as to the nature of the application. Solicitor Marcolongo provided the Board with Section 27.7.3(r) which states that if a parcel of land's lot frontage exceeds the minimum lot frontage by more than 25%, then the side yard setbacks are increased proportionately. The Board was also given a copy of Resolution PZ#11-03 for review. Solicitor Marcolongo advised that the application now before the Board was similar to that application. Although there were factual differences, a review of the resolution may be helpful particularly as to a determination of which property lines are lot frontage, rear yards and side yards. Solicitor Marcolongo advised that if the Board's interpretation was that the oversized lot requirements are not applicable, then the portion of the application requesting variance relief would not be heard.

Cory Gilman, Esquire advised that the applicant is the owner of the subject property and desires to demolish an existing single family dwelling on this lot and construct a new single family dwelling. The subject property is located in the R-1B Zone and is at the far westerly end of 72nd Street. Mr. Gilman advised that the applicant is seeking an interpretation that the lot frontage of the subject property is less than 75 ft. and, as such, the oversized lot requirements are not applicable.

Gary Lee Thomas of Thomas Amey Shaw, Inc. appeared on behalf of the applicant and discussed the existing conditions on the subject property. He noted that the subject property is at the end of 72nd Street which dead ends at a bulkhead with a fire hydrant and bollards in front of it. The subject property is bisected by a bulkhead which divides the lot which measures 110 ft. by 160 ft. Mr. Thomas testified from a survey marked as Exhibit A-1 that the lot from its easterly property line to the westerly/bay side of the bulkhead is 74.75 ft. The remaining 85.25 ft. of the lot is under water. Mr. Thomas testified that, based upon the discussions with Zoning Officer, Jeff Hesley, he has created a building envelope for the new single family dwelling with a rear yard setback from the bulkhead of 25 ft., a front yard setback of 15 ft. from 72nd Street and a 10 ft. and 15 ft. side yard for the two remaining property lines.

Cory Gilman, Esquire argued that lot frontage should not extend beyond the bulkhead into the water. He directed the Board's attention to the definition of front lot lines, lot frontage and rear lot lines in the Zoning Ordinance definition section. He noted that the rear lot line definition also limits the depth of the property. Mr. Gilman stated that since the street ends prior

to the bulkhead, that lot frontage can be no farther than the bulkhead. He also noted that if the Board finds that the oversized lot requirements are applicable to this lot, that the increased side yard setbacks would create an impossibly small building envelope and the development of a structure that would not be compatible with the neighborhood. Upon questioning from the Board, Mr. Thomas testified that his survey was completed after the bulkhead on the lot had been reconstructed. Mr. Maffei, Board Engineer, testified from his review memorandum of January 6, 2014. Mr. Maffei opined that, given these particular circumstances, the oversized lot requirements are not applicable. Mr. Maffei further amended his review memorandum to note that the correct rear yard setback would be 25 ft. as shown on the plans.

The matter was open to the public with several members of the public voicing objections to the application:

A. Pat Broadwater, the neighboring property owner, said that she spoke to the zoning official and was informed that the oversized lot requirements did apply to this lot. She further stated that with the street ending prior to the bulkhead and with the location of the curb cut, it would be difficult to gain entrance to the lot by motor vehicles.

B. Steve Malyszka expressed concerns regarding the loss of light, air and open space with the limited side yard setbacks.

C. Frank McLaughlin stated that parking is a problem in this area already and, in his opinion, the oversized lot requirements were applicable to this lot.

Upon questioning from the Board, Mr. Welsh, the applicant, testified that the bulkhead had been replaced in August or September 2013 after damage from Hurricane Sandy. The new bulkhead was placed directly westward of the old bulkhead which actually made the lot larger.

Chairman Hensel polled all of the voting Board Members as to their opinion of the interpretation. Mr. Fleischmann stepped down from deliberation and voting on this matter. Four members of the Board found that the oversized lot requirements were applicable to this lot since the total lot extends 160 ft. which is more than 25% above the minimum lot frontage. They also expressed concern for development at the site which would compromise light, air and open space. A majority of the Board found that given the particular facts and circumstances surrounding the lot and the area around the lot, specifically, the fact that a usable portion of 72nd Street ends before the bulkhead and the street does not extend beyond the applicant's bulkhead that the oversized lot requirements were not applicable to this lot by definition. By a vote of 5-4,

the Board found that the oversized lot requirements of Section 27-7.3(r) were not applicable to this lot, the rear yard was the bulkhead side of the lot which requires a 25 ft. setback, the front yard was adjacent to 72nd Street and required a 15 ft. setback and the remaining two property lines were side yards.

The Board next considered PZ#13-08, Thomas Welsh Trust, for minor subdivision approval to realign lot lines at the intersection of 19th Street and Avalon Avenue. The applicant was represented by Cory J. Gilman, Esquire. Mr. Fleischmann stepped down from deliberation on this matter.

Mr. Gilman called Gary Lee Thomas, a professional planner and professional land surveyor, who had prepared the plan of minor subdivision which was received by the Board and incorporated as fact. Mr. Thomas testified that the subject properties measure 110 ft. x 110 ft. They currently front on Avalon Avenue. The applicant proposes to adjust the lot lines and create two fully conforming lots fronting on 19th Street. One lot would be 60 ft. x 110 ft. The remaining lot would be 50 ft. x 110 ft. He noted that no variance relief was required.

Joseph Maffei, Board Engineer, testified from his review memorandum of January 7, 2014. Mr. Maffei concurred that the subdivision relief is as of right since both lots meet all of the bulk requirements of the zone. He noted, however, that construction had already commenced on the lots without the applicant providing a lot grading, lot drainage or landscaping plan. The applicant agreed to provide those plans together with a foundation survey within one week.

The applicant, Thomas Welsh appeared, was sworn and testified regarding the construction that had already commenced at the site. Upon questioning from the Board Mr. Welsh testified that he had obtained a construction permit and zoning permit from the Borough prior to construction. Accordingly, he felt he acted in good faith. Mr. Welsh was admonished by the Board given his development experience and informed that he should not have commenced construction until subdivision approval was granted.

Dr. Reynolds noted that the plans evidenced street trees in between the sidewalk and the street. Dr. Reynolds requested that the plans be revised to move the street trees to the interior side of the sidewalk. The applicant agreed to comply with that request.

A motion was made to approve the application for minor subdivision approval to realign the lot lines with the condition that the applicant comply with Mr. Maffei's report, that the applicant provide Mr. Maffei with a lot grading, lot drainage, and lot landscaping plan together

with a foundation survey within one week. The applicant also revised its plans to evidence the proper location of the street trees. A motion was made to approve by Mr. McCullough, seconded by Ms. Rhoads, with all members voting in the affirmative.

Solicitor Marcolongo presented the Board with Special Resolution #14-A, a Resolution recommending that the Borough Council amend the Borough's parking requirements to require that any new single family or duplex with more than five bedrooms shall be required to provide one off-street parking space for every two additional bedrooms. This modification is in accordance with a letter of interpretation received from the Site Improvement Advisory Board in a response to an inquiry from the Board Solicitor. A motion was made to approve by Ms. Cooper, seconded by Dr. Reynolds, with all members voting in the affirmative. Dr. Reynolds noted that Footnote A of Table 4.4 from the Residential Site Improvement Standards rounds down for fractional parking requirements at one-half or less. He suggests that we change it to say that we round up if the fractional requirement is one-half or more. Solicitor Marcolongo suggested that we may want to modify our application to the Site Improvement Advisory Board for that change in our special area standards.

Solicitor Marcolongo then led the Board in a discussion of Special Resolution #14-B which addressed the Planning Board's prior recommendation regarding amendments to Chapter 20 (Uniform Commercial Code) and, specifically, bulkheads. Solicitor Marcolongo advised that John Tracy had concerns that the last two sentences of this paragraph, which currently exists, were unnecessary and were already regulated in Chapter 27. Solicitor Marcolongo advised that he had spoken to Jeff Hesley and Joe Maffei and they both concurred with this comment. Accordingly, this Resolution simply recommends that the last two sentences of Section 20:6-2 be stricken. A motion was made to approve by Dr. Reynolds, seconded by Ms. Tipping, with all members voting in the affirmative.

Chairman Hensel advised the Board that Borough Council has received conflicting recommendations regarding the Board's recommendation to increase bulkhead height to 8 ft. based upon NAVD-88 Datum. He noted that Borough Engineer, Tom Thornton is suggesting that the section read 7 ft. above NAVD-88 Datum. Chairman Hensel argued that the increased height is needed to help protect the Borough from flooding from the bay side of the island. Joe Maffei noted that the Board's recommendation results in an increased bulkhead height of 21.5 inches and he believes that this is the appropriate standard. The matter will be addressed by

Borough Council at a later date. Chairman Hensel asked Mr. Marcolongo to contact Cindy Randazzo at the NJ Department of Environmental Protection to determine the status of the Back Bay Protection Ordinance which had been forwarded to the DEP for comment months ago. Solicitor Marcolongo advised that he would do so directly.

A motion was made to adjourn at 8:39 p.m.

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