

BOROUGH OF AVALON PLANNING/ZONING BOARD
Minutes of Work Session /Regular Meeting of March 13, 2018

Members Present: Beth Tipping
Sharon Cooper (Vice Chairperson)
Dr. Brian Reynolds
Neil Hensel (Chairman)
Michael Coskey
Sam Wierman and I and
John Morrison

Members Absent: James Fleischmann
David Knoche
Michele Petrucci
James Deever
Thomas McCullough
Sam Beddia

Chairman Hensel called the meeting to order at 7:00 PM and lead the Board in the Pledge of Allegiance. After a roll call of members, Chairman Hensel recited the Open Public Meetings Act Statement.

The Board then considered the proposed minutes of the January 9, 2018 work sessions/regular meeting. Corrections or changes were noted. A motion was made to approve by member Beth Tipping and seconded by member Dr. Brian Reynolds with all eligible members voting in the affirmative.

The Board then considered the proposed minutes of the February 7, 2018 special meeting closed session dealing with pending litigation Icona Golden Inn, LLC v. Borough of Avalon Planning/Zoning Board, Cape May County Superior Court Docket Number CPM – L – 371 – 17. Corrections or changes were so noted. A motion was made to approve by member Dr. Brian Reynolds and seconded by member Sam Wierman with all eligible members voting in the affirmative.

The Board then considered Resolution PZ#17-05 of application by Alan Klukowicz. Said application was heard at a Board meeting on January 9, 2018 at which time said application was

passed by the majority of votes by the Board. A motion was made to approve the resolution approving the application by Dr. Brian Reynolds and seconded by member Beth Tipping with all eligible members voting in the affirmative.

Chairperson Hensel then called application PZ #15-09A, final site plan with variances, the application of The Marina at Avalon Anchorage, LLC, requesting final site plan approval to construct a marina/housing project and bulk variances for minimum rear yard setback and additional parking space, to provide one less parking space than required.

Board Member Michael Coskey recuses himself and stepped down from the dais.

Robert S. Baranowski, Jr. of the Law offices of Hyland Levin, LLP with offices at 6000 Sagemore, Drive, Suite 6301, Marlton, NJ 08053 appeared on behalf of the Applicant. Gary Thomas, PLS, PP of Thomas Amey and Shaw, Inc. with offices at 2900 Dune Drive, Suite 3, Avalon, NJ 08202 also appeared on behalf of the Applicant. Mr. Thomas was recognized by Chairman Hensel as an expert, sworn and testified. Gerald Blackman of OSK Design Partners with offices at 17 W. Knight Avenue, Suite 200, Collingswood, NJ 08108 also appeared on behalf of the Applicant. Mr. Blackman was recognized by Chairperson Hensel as an expert, sworn and testified.

Mr. Thomas and Mr. Blackman collectively testified the Applicant, The Marina at Avalon Anchorage, LLC, is the owner of property located at 885 21st Street, Avalon. The property is located in the M-B Marine Business Zoning District. The property is presently operated as a marina. Applicant filed an application for use variance, preliminary site plan and bulk variance approval to construct 5 buildings on the site. The first being a marina office building, a residential building called "marina flats" and three duplex buildings. All buildings contain storage for use by the marina on the ground floor. The marina office building, which Applicant agreed to call the "marina unit" contains portable restrooms and showers on the ground floor, office space on the first floor and manager's quarters on the first and second floors. The Marina Flats building has storage for both units and changing/shower rooms on the ground floor. Applicant has agreed that one of those showers/changing rooms shall become storage for refuse/trash. Unit number 7, a three bedroom residential unit, will be on the first floor and unit

number 8, also a three bedroom residential unit, will be on the second and third floors. The three duplex buildings will have storage and garages for each unit on the ground floor and three floors of residential uses above, units 1-6, each with five bedrooms.

Both collectively testified that the Applicant's initial application was denied by the Planning/Zoning Board Resolution PZ #15-09. After subsequent litigation and a settlement reached among the parties, the application was approved by Resolution PZ #17-M. That Resolution granted approval for the preliminary site plan, a D-1 use variance for duplexes in the M-B District, and a variance for a rear yard setback to a bulkhead for distance of 25 feet (27-7.3S.3.(b)).

In presenting the application Applicant agrees to:

1. Continue to be bound by the Stipulation of Settlement entered into by all of the parties in that litigation entitled The Marina at Avalon Anchorage, LLC v. Avalon Planning/Zoning Board, Jeffrey Hesley, and Kimberly Mastriana with the Borough of Avalon, Travis Marshall individually and Heather Marshall individually being joined as parties. The matter was filed in the Superior Court of New Jersey under Docket Number CPM – L – 81 – 17. The Stipulation of Settlement dated as of October 16, 2017 and having been duly recorded in the County Clerk's office.

2. Applicant further agrees to abide by all commitments made in Resolution PZ #17-M, preliminary site plan approval.

3. After Applicant presented its case the Board Engineer was sworn and testified as to the application in his letter to the Board dated March 6, 2018 – 4th review. The Board had an opportunity to ask questions of the Applicant's representatives. Applicant accepts all conditions required by the Board Engineer, except for conditions 3, 4, and 5 as addressed in Resolution PZ #15-09A (2018) and agrees to submit revised plans as may be necessary.

4. The Borough of Avalon Fire Chief, Richard E. Dean, Sr. was sworn and testified

based upon his review of the application and his letter to the Board dated March 12, 2018. Applicant agrees to meet all conditions required of the Borough of Avalon Fire Chief in his letter dated March 12, 2018 and testimony before the Board at the March 13, 2018 meeting.

5. Applicant's representative Mr. Blackman explained to the Board the marina office building ground floor bathrooms were changed from permanent bathrooms to portable toilet/shower rooms to comply with FEMA requirements. Mr. Blackman explained to the Board given the FEMA Zone the only uses permitted below base flood are storage and parking. Mr. Blackman further advised the walls will be breakaway in nature and as such would not be supportive of these type of facilities. The portable bathrooms on the other hand are compliant with FEMA regulations and can be removed if a storm is predicted or for the off season. He further explained the facilities would be serviced regularly and would comply with all fire and code requirements.

6. He further testified that unit 8 has an amenity of decking which is for the benefit of unit 8 only. The access to the deck on the roof will be controlled by an elevator key function.

7. Mr. Blackman testified Applicant agrees to redesignate on the plan "unit number 9" back to "marina unit" as a designation in order to remain in compliance with the settlement agreement.

8. Mr. Blackman clarified Applicant never intended for the lounge area to be meant to be open to the public. The area was not made fully accessible since it was never intended to be public accessed but rather to be part of the manager's quarters. It was always intended to be limited to the marina manager. The Applicant, through the Professionals, will provide to the Board Engineer a copy of the Code where the Applicant relies in determining the marina office building is exempt from vertical access requirements. The Board Engineer shall review said information upon receipt and determine whether or not vertical access is required, the Board Engineer's determination shall stand.

9. Mr. Thomas testified the variance for the rear yard setback which sits at 6.79 feet

when 9 feet are required for the duplex containing units 5 and 6 comes about in order to accommodate earlier request of the Board for greater distance between the buildings on the site. As the distance was increased between each of the buildings the last building in the line pushed into the rear yard setback.

10. Mr. Thomas testified that the Applicant accepts the need for a parking space variance as 40 are proposed and if the Board Engineer deems 41 are required, then Applicant either seeks a variance or will accept adding an additional parking space on the site as a grass paver stacked space in the same area originally proposed for stacked parking.

11. Applicant acknowledges a detailed landscaping plan is required and must be prepared and submitted as part of a final submission. Applicant agrees to use acceptable plantings per the Borough Ordinance and is not seeking any variance relief or waivers from same.

12. The Applicant's power point presentation to the Board was marked as Exhibit A-1 and submitted to the Board Secretary. Applicant has agreed to provide a note on the plan providing that all unit owners will be obligated to take their own trash out to 21st Street or arrange their own private trash collection.

13. Applicant agrees to extend the proposed boardwalk along the bulkhead from Applicant's site to meet and connect with the pavilion which Applicant will be building and turning over to the Borough as part of the litigation settlement.

The matter was open to the public for comment. Two members of the public came forward to testify on the application as follows:

a. One member of the public spoke in favor of the application.

1. Martha Wright of 632 7th Street, Avalon, NJ, appeared, was sworn and testified to the application noting she envisions portable bathrooms are a great idea. She is against permanent bathrooms. She is also against restrooms on the second floor of this project. She feels there are a number of public amenities

offered now from prior marina such as bathrooms, pavilion cleanup, hydration station etc. She testified that although she has never supported the project, does not like the project, but wants the project to be approved.

b. One member of the public spoke in opposition of the application.

1. Neil Yoskin, Esquire, special counsel to the Borough of Avalon with offices located at 229 Nassau Street, Princeton, NJ 08542. Mr. Yoskin spoke representing the Borough of Avalon on behalf of the Borough he raised concerns that the plan was not consistent with the settlement on approval and settlement agreement. Further, there remain concerns as to whether the final plan was close enough to the public expectation of a marina and the zoning code vis-à-vis conversion to residential housing. The Borough is concerned that should the marina unit be converted to residential use that would diminish the marina character of the project. He raised concerns of the portable bathrooms in addition to the labeling of the units and the changing of the lounge area to manager quarters. He acknowledged some of his concerns were addressed in the presentation and colloquy with the Board and the Applicant.

The public portion of the meeting was closed.

The Board had an opportunity to speak on the facts and findings of the application, ask questions and have a discussion on the pending application.

It was suggested by the Board Solicitor that approvals be taken on three separate votes since the denial of any one or both of the variances did not mean final site plan approval could not be given. Accordingly, three separate votes were held one each on the variances and one on the final site plan.

The first motion heard by the Board was the motion to grant the variance from minimum rear yard setback (27-7.3S.3.(a)(1)) for duplex containing units 5 and 6 from required 9 foot setback to the proposed 6.79 foot setback. The motion was made by member Sharon Cooper and seconded by member Beth Tipping with all members present voting in the affirmative.

The Board next undertook a motion regarding the minimum number of parking space requirement. A motion was made to grant variance relief for minimum number of parking spaces from the required 41 to the proposed 40 parking spaces. The motion was made by member Sharon Cooper and seconded by member Dr. Bryan Reynolds. All members present voted against the motion and the variance request failed.

Applicant agreed to provide the additional parking space as noted earlier, therefore, the Board moved on to entertain a motion to approve final site plan with conditions. The motion was made to grant the final site plan approval with the variance granted for minimum rear yard and the variance denied for parking spaces sought by the Applicant for site plan as revised and submitted to the Board as part of this application and to be consistent with the Stipulation of Settlement, as embodied in the Consent Order approving Stipulation of Settlement and authorizing intervention by additional parties recorded with the County Clerk's Office contained in the Superior Court of New Jersey, Law Division, Cape May County, Docket Number CPM – L – 81 – 17, complying with all of the conditions of the originally approved preliminary site plan as contained in Planning/Zoning Board Resolution PZ#17-M, all conditions as contained in the Board Engineer Memorandum dated March 6, 2018, in compliance with Fire Chief's comments as testified to and as contained in his letter of March 12, 2018 to the board professionals, revised plans to be submitted for review by Board Engineer, Applicant to add a note for trash pickup at 21st Street or to be obtained privately, Applicant to provide a note on the plans noting the bulkhead and utility poles to be placed underground, Applicant to provide detail and a note evidencing lighting under the pavilion roof, Applicant to show on the plans the boardwalk to extend from its present terminus on the plans to the pavilion and in front of the pavilion, Applicant to provide the extra grass paver parking space to be added to the grass area consistent with said testimony before the Board, detailed landscaping plan must be prepared and submitted, redesignate on the plan the "marina unit", a copy of Code Applicant relies in determining the marina office building is exempt from vertical access requirements for review and approval by the Board Engineer, and finally Applicant to obtain any other government agency or authority or governmental approvals as may be required. No zoning or construction permits to issue until a signed memorialized Resolution and approval from the Board Engineer is completed.

Upon completion of the hearing on application PZ #15-09A member Michael Coskey returns to the dais and sits as a member of the Board for the remainder of the meeting. The Chair considered old and new business discussing issues for the Board review in the future. He brought forward the business district changes, sea level rise, and revamping of Chapter 26.

The matter was open to public comment. One member from the public spoke. Martha Wright of 632 7th Avenue, Avalon, NJ, appeared and was heard by the Chair. Ms. Wright suggested there be more public bathrooms and made suggestions where to place same. She discussed her understanding of the stale climate in the business district and concepts on how to draw businesses to town.

No further comment was heard from the public and the public portion was closed. The Board then considered Special Resolution PZ #18-B authorizing a closed executive session for the purpose of discussing pending litigation, Icona Golden Inn, LLC v. Borough of Avalon Planning/Zoning Board, Cape May County Superior Court Docket Number CPM – L – 371 – 17. The motion was made by member Dr. Bryan Reynolds and second by member Beth Tipping with all eligible members voting in the affirmative. The Board entered into closed session at approximately 10:39 PM.

At approximately 11:17 PM the Board returned from closed session to public session with motion to return to public session made by member Dr. Bryan Reynolds and second by member Sam Wierman with all eligible members voting in the affirmative.

The only matter considered by the Board upon entering open session was the adoption of Special Resolution PZ#18-C authorizing/ratifying settlement of litigation Icona Golden Inn, LLC v. Borough of Avalon Planning/Zoning Board Cape May County Superior Court Docket Number CPM – L – 371 – 17. A motion was made to adjourn the meeting at approximately 11:19 PM by member Sam Wierman and second by member Dr. Brian Reynolds with all eligible members voting in the affirmative.

Respectfully submitted,

/s/ Paul J. Baldini

Paul J. Baldini, Esquire