

BOROUGH OF AVALON PLANNING/ZONING BOARD
Minutes of Work Session/Regular Meeting of May 14, 2019

Members Present: James Fleischmann
 Neil Hensel
 Tom McCullough
 Dr. Brian Reynolds
 Beth Tipping
 Sam Wierman
 John Morrison
 Eric Schiela
 Jamie McDermott

Members Absent: James Deever
 Michelle Petrucci
 Sam Beddia

Acting Chairperson Sam Wierman called the meeting to order at 7 o'clock and lead the Board in the Pledge of Allegiance. A roll call of the members present was taken. Acting Chairperson Sam Wierman then recited the Open Public Meetings Act Statement.

The Board then considered proposed Minutes for the April 9, 2019 Work Sessions/Regular Meeting. Corrections or changes were noted. The motion was made to approve by Member Tom McCullough and seconded by Member Dr. Brian Reynolds with all eligible members voting in the affirmative.

There were no memorializing resolutions for Board consideration.

Acting Chair Sam Wierman then called application PZ #16-09B, an application by Icona Golden Inn, LLC located at 7889 Dune Drive, Avalon, New Jersey for amended preliminary and final site plan approval, with no variances requested. Applicant seeks approval to install a temporary 58'6" by 9'6" canopy, which is different than the awning approved by Resolution 16-09 which is 13.5' x 21.70'.

Applicant was represented in the hearing by Frank Corrado, Esquire of the law firm of Barry, Corrado, Grassi & Gillin-Schwartz, P.C. Applicant relied upon application submitted to

the Board along with CMC Engineering proposed canopy plan identified as S-1 for the Icona Golden Inn, LLC submitted to the Board with the application.

Aloysius T. Gryga, RLA of CMC Engineering, 320 Fayette Street, Conshohocken, Pennsylvania 19428 was called as the sole witness on behalf of the Applicant. Mr. Gryga was sworn and testified regarding the approved canopy being 13.5' x 21.70'. He presented to the Board that the change sought to a canopy of 58'6" by 9'6" served a specific purpose for the facility and will be wholly contained within the interior structural portion of the facility. Stated otherwise, the awning will not be visible from the street. Mr. Gryga further testified the original awning served to shelter the lobby entrance to the main hotel of the facility. The new much larger canopy is intended to shelter the lobby entrance and access to the brew pub. This dual purpose necessitated a larger awning. Mr. Gryga testified the height of the awning will be the same as the awning it is replacing. Applicant then rested its case.

The Board Engineer, Joseph Maffei, was sworn and presented his memorandum dated May 6, 2019 to the Board for the Board's review. Mr. Maffei testified that the Applicant's factual rendition was consistent to the application and plan submitted by the Applicant. He confirmed no variances are required for the project.

Mr. Maffei submitted to the Board that the following conditions should be attached to any approval considered for the application.

- 1 – 6 copies of any revised plans shall be submitted for signature.
- 2 – Copies of any outside agency approval shall be provided.
- 3 – The Applicant shall post an inspection escrow with the Borough.

The Borough of Avalon Fire Sub Code Official submitted a letter to the Board confirming no interest in further reviewing the project by the Bureau of Fire Safety.

The matter was opened for public comment with no one testifying regarding the project.

Acting Chair Sam Wierman then opened the hearing up to Board discussion with all Board members commenting in the affirmative as to the need and utility of the expanded awning/canopy. The motion was made to approve by member Beth Tipping and seconded by member Dr. Brian Reynolds with all eligible members voting in the affirmative.

Acting Chair Sam Wierman then called application PZ #19-02, an application by Eagle Hawk Nest, LLP located at 157 69th Street, Avalon, New Jersey for relief from the maximum impervious coverage where 65% is required, 80.4% currently exists on site and Applicant proposes a lesser percentage of 77.6%; variance for pool rear yard and side yard setback where a 9 foot minimum is required, the current condition on site is 6.4 feet rear yard setback to the existing pool and where Applicant proposes a 7 foot pool extension for a hot tub which would be at 6.4 feet from the rear yard consistent with the existing pool; and for relief from the 4 foot planted landscape buffer requirement where Applicant proposes 3.5 foot planted landscape buffer in the rear yard and 3 feet on the side yard where no landscape buffer presently exists.

Keith Davis, Esquire represented the Applicant and presented the application on behalf of the Applicant. David O'Connor, principal of the owner was sworn and testified on behalf of the application. Mr. O'Connor generally reviewed the history of the property identifying it as a single-family residence with a pool existing on-site when he purchased the property in 2007. Since he has owned the property there has been no significant change in impervious surface area at the location. The property has 6 bedrooms and 4 parking spaces. He testified there would be no decrease in the side yards as a result of the pool extension sought. His family seeks to add a 7 foot extension to one of the ends to the currently existing pool in order to create room for a hot tub.

Gary Thomas was sworn and testified on behalf of the application as a professional and was accepted by the Board as same. He testified that he prepared the plan utilized and submitted with the application identified as Proposed Pool Variance Plan dated January 8, 2019 prepared by

Mr. Thomas and submitted with the application. Mr. Thomas testified the Applicant would rely upon the plan and the application submitted to the Board. Mr. Thomas testified the area of the pool is concreted from the rear of the pool to the property line and along the east side of the pool to the property line. He testified the pool is a basic rectangular pool which has a 6 foot to the rear yard setback compliance under the old Ordinance. The pool actually sits 6.4 feet off the rear property line. Mr. Thomas indicated that the plan calls for adding approximately 7 feet to the existing pool in length so as to accommodate the hot tub. The pool would move no closer to the rear yard than the existing pool.

Mr. Thomas acknowledged that the Ordinance calls for 4 feet of landscaping buffer for the pool. He testified that the plan calls for 3.5 feet from the north or rear yard and 3 feet to the east or side yard. Although still less than required by the Ordinance, since there is zero buffering at the present time this substantially increases the amount of buffering. The reason for the noncompliance, Mr. Thomas testified, was to allow a sufficient walk around adjacent to the pool.

Mr. Thomas further testified the addition of the hot tub will not add to the impervious surface area since the pool is already concrete. Mr. Thomas testified that the extension on the pool on either end will be self-contained within the side yard setbacks and will not have an impact on the rear or side yard neighbors.

Mr. Thomas testified that the maximum impervious coverage area permitted under the ordinance of 65% with the present circumstances on-site being 80.4%. The proposed reduction in impervious coverage area to 77.6% is an improvement from what presently exists on-site.

Mr. Thomas testified the purposes of the Municipal Land Use Law are advanced by the granting of the variances requested by the Applicant. He pointed to very specific Municipal Land Use Law purposes under N.J.S.A. 40:55D –2 subsections A, B, C, and G as being advanced by the granting of the variances sought by the Applicant. Mr. Thomas testified that the benefits of

deviation occasioned by the granting of the variances substantially outweigh any detriment caused by the granting of the variances in this particular case.

Mr. Thomas further testified the relief sought by the Applicant can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance.

Mr. Thomas testified that, in his opinion, it was appropriate to grant relief from the requested requirement of the Board Engineer for the calculation of floor area ratio to be submitted on the plan. He testified that he did investigate the matter to obtain the original plans for the property so that the floor area ratio could be calculated but was unsuccessful in obtaining those plans. Mr. Thomas testified that the property is surrounded by a 4 foot high white vinyl fence.

Mr. Thomas testified that he will add and show the number of bedrooms and parking spaces to the plan as requested by the Board Engineer.

Upon completion of the Applicant's case, the Board Engineer presented his report of May 1, 2019 to the Board. The Board Engineer, Joseph Maffei, was sworn and testified as to a number of existing nonconformities at the property. Such existing nonconformities will be listed in the Resolution. The Board Engineer testified that he was satisfied with the explanation but still wanted to see the floor area ratio listed on the plan. Mr. Maffei also testified that the Applicant should make provisions to meet the impervious lot coverage requirement and show same on the plan. Applicant objected to these two conditions contained in the April 1, 2019 Board Engineer Memorandum.

The Applicant accepted the following conditions from the April 1, 2019 Review Memorandum of the Board Engineer. The Applicant accepted as a condition of approval that the plan will be revised to provide the number of parking spaces and number of bedrooms. The Applicant accepted that the plan would be revised to indicate the proposed landscape buffer

including the types of vegetation proposed. The Applicant accepted as a condition to show on the plan the height and material of the existing fence. The Applicant agreed as a condition of approval that all revision from any approval shall be completed. Applicant agreed to submit 6 copies of the final revised plans for approval and signature. The Applicant agreed as a condition of approval to post an inspection fee with the Borough as appropriate.

The Board accepted the Avalon Borough Fire Chief letter of May 3, 2019 advising the Board that the Fire Chief and Fire Protection Sub Code Official have no comments regarding the plan.

The matter was open to the public with one person speaking of concerns regarding the project. Martha Wright 632 7th Street, Avalon, New Jersey was sworn and testified with a question as to how the equipment was to be housed. Thomas Braun of 3100 Dune Drive was sworn and testified to answer Ms. Wright's question. He testified that he is a principal of USA Pools and will be rebuilding and constructing the pool. Mr. Braun testified that he will build the spa and work on the existing pool. Any equipment is to remain in the same location it presently exists.

Ms. Wright testified that she has concerns of the amount of impervious coverage still remaining at the parcel.

Mr. Braun further testified the existing pool is staying and that he will work with the existing pool and it will not be removed. Only one wall of the existing pool will be removed when the pool is extended to accommodate the 7 additional feet. Mr. Braun further testified that in his opinion there is no issue with the integrity of the existing pool and that it is standard practice to marry old gunite to new gunite in the normal course of working on a pool. He testified as to numerous jobs in the past which he has done this procedure.

No one else in the public spoke.

Applicant clarified that the relief sought is under N.J.S.A. 40:55D-70c(2), benefits criteria.

Applicant withdrew the request for a variance under N.J.S.A. 40:55D-70c(1).

The Board engaged in Board discussion and fact finding for the application with various comments of Board members in reference to the project.

Separate votes were taken on the requested relief of the Applicant. The first relief addressed by the Board was whether the Board Engineer's condition that the plan shall be revised to provide the floor area ratio should be imposed upon the Applicant. The motion was made whether the application can be approved without requiring the floor area ratio to be identified on the approved plan. A yes vote meaning the plan could be approved without the floor area ratio identified on the plan and a no vote being that the plan must identify the floor area ratio. The motion was made to approve by member, Tom McCullough and seconded by member Beth Tipping with all eligible members voting in the affirmative. The motion carried and there was no requirement to identify the floor area ratio on the final approved plan.

The Board then considered the first variance to be addressed by the Board that being whether a variance should be granted from the maximum impervious coverage where 65% is required, 80.4% currently exists on site and 77.6% is proposed by the Applicant. This motion also included Applicant's request for relief from the Board Engineer's condition that the plan shall make provisions to meet the impervious lot coverage requirement. The motion was made to approve by member Jamie McDermott and seconded by member James Fleischmann. The motion carried by 7 affirmative votes and 2 negative votes. Member Dr. Brian Reynolds and member Sam Wierman voted negative.

The Board then took up for consideration the variance sought by the Applicant for relief from the pool set back rear yard where 9 feet minimum is required, the current condition at the property is 6.4 feet rear yard setback for the existing pool and where Applicant seeks to extend by 7 feet, for the hot tub, maintaining the 6.4 feet through the 7 foot extension. The motion was made

to approve by member Tom McCullough and seconded by member Beth Tipping with all eligible members voting in the affirmative.

The final variance was taken up for review by the Board. The Board considered the Applicant's request for a variance from the planted landscape buffer of 4 feet as required by local ordinance to 3.5 planted landscape buffer proposed for the rear yard and 3 feet planted landscape buffer proposed for the side yard. The motion was made to approve by member John Morrison and seconded by member James Fleischmann. The motion carried by eight affirmative votes to 1 negative vote. Member Neil Hensel voted negative.

Acting Chair Sam Wierman then called application PZ #19-04, an application by Charles M. Cacciutti seeking permission to install a pool which requires variance relief from section 27-7.2.C.2(f) for minimum side yard setback to pool equipment where 6 feet is provided and 9 feet is required and for minimum pool rear yard setback to bulkhead where 6 feet is provided and 9 feet is required for the property located at 568 22nd Street, Avalon, NJ.

Applicant is represented by Cory J. Gilman, Esquire who presented the application on behalf of the Applicant. Gary Thomas was sworn and testified on behalf of the application. Mr. Thomas was recognized as a professional expert in his area by the Board. Mr. Thomas described overall project noting two concerns about the unique shape of the parcel. First, the property is 40 feet wide and second that the property consists of 130 feet of length but is less than 100 feet above the water line. The pool is located in the rear yard and is situated closer than 15 feet off the bulkhead as required by the Ordinance. This is the case even though the parcel extends considerably farther from the bulkhead to the water. Applicant is looking to place the pool 6 feet from the bulkhead rather than the required 15. Mr. Thomas presented Exhibit A, January 9, 2019 RD Green Engineering confirming that the placement of the proposed pool 6 feet from the face of the existing bulkhead does not prevent the future reconstruction of the existing bulkhead in place.

Mr. Thomas further presented Exhibit B, CAFRA permit, for the swimming pool approved April 29, 2019.

Mr. Thomas committed the Applicant to moving the pool equipment from ground level as originally shown on the plan to placing the equipment on the first floor deck which deck will be above flood. Applicant will note this change on the plan.

Mr. Thomas testified the Applicant will accept a spiral staircase from the top floor deck down to the first floor deck in order to meet the Fire Chief's concerns of access to the top deck in the event of fire. Mr. Thomas testified the landscape buffer is in compliance with the Ordinance as well as the side yard setbacks.

Mr. Thomas confirmed the Applicant is seeking relief under N.J.S.A. 40:55D –70c(2), Benefits application. Mr. Thomas testified, in his professional opinion, certain purposes of the Municipal Land Use Law are advanced by the granting of the variance. Mr. Thomas specifically identified municipal land use purposes under N.J.S.A. 40:55D–2, A, C, G, and I as being specifically applicable to this project. Mr. Thomas further testified the benefits of any deviation from the zoning plan substantially outweigh any detriment.

Mr. Thomas further testified that the relief 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. Mr. Thomas agreed on behalf of the Applicant to maintain landscaping at or below the fence line along the side and rear of the property.

Finally, Mr. Thomas testified there are proposed drainage beds on either side of the pool to supplement control of the runoff from the impervious surface area. The stone trenches are designed to allow the water to percolate on-site.

Mr. Charles Cacciutti was sworn and testified regarding the project. Mr. Cacciutti testified he has owned the property in excess of 10 years. The property has 6 bedrooms and 4 parking

spaces which will not change. The property is a single family property, is not rented, and is utilized by his family. Mr. Cacciutti testified the size of the pool is the minimum necessary for the pool to be a useful pool given the size of the lot.

Mr. Cacciutti testified that he has a special needs child who is on the autism spectrum. He testified that in part the pool is sought so that therapy will be available to the child. Sitting in the water has a calming effect upon his child and is part of his therapeutic program. Mr. Cacciutti testified to that pool is a part of his therapeutic regimen at his school and is effective in calming the child. Mr. Cacciutti testified at times they have driven to Avalon only to see the child have an episode, be unable to calm him, and have to leave the area. The use of the pool is an important aspect to this family for that reason.

Mr. Cacciutti acknowledged that this is a new house and that the pool should have been designed into the redevelopment of the property. Mr. Cacciutti testified the developer repeatedly assured him and his family that the pool would fit, but in the end it did not fit.

At the conclusion of the Applicant's case the Board Engineer was sworn and testified regarding his May 6, 2019 Review Memorandum to the Board. The Applicant accepted all of the conditions of the Board Engineer's review memorandum as conditions of approval for the application.

Fire Chief Dean testified based upon his Review Memorandum of April 2, 2019. Chief Dean expressed concerns for access to the top floor deck for rescue purposes. He testified that he was satisfied the spiral staircase from the top deck to the second deck below was sufficient. He further testified the placement of the pool equipment on the first floor deck was sufficient to address the flood issues raised in his memorandum. Applicant accepted as a condition of approval the installation of the spiral staircase as testified from the top level deck to the lower deck.

The matter was open for public comment at the conclusion of the Applicant's case. Elaine

Scattergood of 75 30th Street, Avalon, NJ, was sworn and testified that she would like to see a saltwater pool in the rear yard rather than a chlorine pool. She also testified she had concerns regarding the amount of impervious surface area.

Martha Wright of 632 7th Street, Avalon, NJ was sworn and testified regarding her concerns about the lack of landscaping along the side yards for the property.

At the conclusion of the hearing the matter was open for Board findings of fact and discussion. Board member, Tom McCullough spoke that he had concerns that the project had not designed the pool into the property when it was being rebuilt. Dr. Reynolds spoke as to his concerns of the ability to get people from the upper floor to the lower deck and was satisfied that a spiral staircase would meet those needs. Other Board members joined in as long as the Fire Chief was satisfied. During Board discussion the Applicant accepted as a condition of approval the screening of the pool equipment on the east side of the equipment on the first floor deck.

At the conclusion of the Board discussion and findings of fact the Board considered the two requested variances. The Board first took up the pool setback variance wherein Applicant sought a variance from the rear yard setback from bulkhead requirement of 15 feet minimum to 6 feet proposed by Applicant. The motion was made approve by member Dr. Brian Reynolds and seconded by member Jamie McDermott. The motion carried by 7 affirmative votes to 2 negative votes. Member Neil Hensel and member Tom McCullough voted negative.

The Board then took up for consideration the second requested variance that being the Applicant's request for variance from the pool equipment platform setback from the side yard where 9 feet minimum is required and 6 feet is proposed. The motion was made to approve by member Beth Tipping and seconded by member James Fleischmann. The motion carried by 7 members voting in the affirmative and 2 voting negative. Member Neil Hensel and member Tom McCullough voted negative.

No new or old business was advanced at the meeting.

The meeting was open to the public comment on any topic with one member of the public speaking. Elaine Scattergood, of 75 39th Street, Avalon New Jersey, spoke expressing a concern about water runoff and the sinking of the island.

No further business was undertaken, a motion was made to adjourn the meeting with all eligible members voting in the affirmative. The meeting was closed at 9:34 PM.

Respectfully submitted,

/s/ Paul J. Baldini
Paul J. Baldini, Esq.