

**BOROUGH OF AVALON PLANNING/ZONING BOARD**  
**Minutes of Special Meeting of July 11, 2019**

Members Present: James Fleischmann  
Tom McCullough  
Jamie McDermott  
Eric Schiela  
Beth Tipping  
Sam Wierman  
John Morrison  
Sam Beddia  
Joe Stenger

Members Absent: Michelle Petrucci  
Dr. Brian Reynolds

Chair Jamie McDermott called the meeting to order at 7 o'clock and led the Board in the Pledge of Allegiance. A roll call of the members present was taken. Chair Jamie McDermott then recited the Open Public Meetings Act Statement.

Chair Jamie McDermott then called application PZ #19-03 and PZ #19-03A, first being an appeal of Zoning Officer's decision and the second being request for variance relief, respectively, an application by Gregory and Lisa Brown, located at 259 23rd Street, Block 22.04, Lot 61.01 on the Tax Map of the Borough of Avalon, New Jersey. This being a recall of the application which was postponed from the July 9, 2019 meeting.

Applicant was represented in the hearing by Andrew D. Catanese, Esquire of the Law Offices of Monzo Catanese Hillegass, P.C. located at 211 Bayberry Drive, Suite 2A, Cape May Court House, New Jersey 08210. Mr. Catanese explained the nature of the application to the Board describing the application as an appeal of the February 26, 2019 letter of Zoning Officer revoking zoning permit #20180653.000 as all construction has been completed in conformance with approved plans. He advised the Board the Applicant would also seek front yard setback variance

approval by way of alternate relief relying upon N.J.S.A. 40:55D–70 C1 and 2 under the Municipal Land Use Law. The original application having been submitted as appeal of Zoning Officer's decision and amended to add the variance relief requests. The amended application having been received on May 31, 2019.

A summary of Mr. Catanese's comments to the Board are that the plans submitted for review were in error which error carried through the entire process. The plans showed an 18 foot front yard setback to the building and 10 feet to the deck. Applicant contends this was in the original plans and carried forward through construction. However, there was a notation in the original plans which indicated front yard setback at 18 feet. The Applicant contends the error was made on the part of the Architect for the project and missed during the review process by the Borough. The error was relied upon by the Applicant in good faith. Although the plans were revised to address other variances and other issues as the Applicant proceeded to construction drawings the original error on the setback carried through to construction.

Finally, Mr. Catanese advised the Board that although the original Board Engineer Memorandum of June 4, 2019 noted additional variances required beyond the front yard setback variance sought by the Applicant, the Applicant has revised the plans to address all other issues regarding variances and eliminate all variances except for the front yard setback variance. It was agreed between the Applicant's attorney and the Board's attorney that the Applicant could present one case addressing all issues at one time and any objectors would be given the opportunity to address all issues at one time as they testified to streamline the hearing.

Applicant submitted fifteen exhibits which are detailed in the memorializing Resolution in addition to the application and revised plans submitted to the Board.

Greg Brown of 1351 Stonegate Drive, Downingtown, PA, owner of the subject parcel, was

sworn and testified before the Board. He detailed the history of the property, the progress of review of the plans as the matter moved forward and the fact that he did not recognize the 15 foot requirement for the front yard being invaded by the deck. He testified that he relied upon the Engineer for compliance with Borough requirements.

David Markowski, Architect, of 157 Wesley Avenue, Cherry Hill, New Jersey licensed Architect since 2004 was sworn and testified before the Board. Mr. Markowski reviewed his resume to the Board and the Board accepted Mr. Markowski as an expert in architecture. Mr. Markowski testified that he prepared the plans that were reviewed and relied upon for construction in the project. When he was preparing the plans, he contemplated no variances as being required for the construction of the project. He took the Board through various exhibits setting forth plan revisions, zoning permit, foundation permit, through final plans and construction. He accepted that the error was his from the very beginning and testified that all plans contained the front deck encroachment into the front yard at all times. He further testified that he did not know the plans were going to require a variance at the time they were submitted to the Zoning Official and his client since they contained an error that he did not recognize. Mr. Markowski in his testimony did note that the actual structure sits 3 feet farther back than the required front yard setback, providing neighbors on either side more open air and space than if the structure were built at the setback line.

Mr. Markowski testified as to the options available to his client. The front porch could be cut back to 3 feet which would create a balcony instead of a porch and an undesirable effect on the property. The house could be picked up and moved further into the rear yard. He testified there was sufficient room to move the structure backward into the rear yard without creating encroachment issues for the property. He testified this would be an expensive and difficult undertaking. Mr. Markowski offered alternatives to relocation or cutting the deck back such as providing for glass

railings and removal of pent roof.

Joseph Glazier, General Contractor, of 2249 Route 9, Cape May Court House, New Jersey 08210, was sworn and testified before the Board. Mr. Glazier testified that he is the General Contractor on the project and no plans that he saw showed a larger than 10 foot setback to the deck. By the time the error was discovered the decks were finished, walls up, roof on, and getting ready to insulate the walls. He also testified as to the options available to the Applicant which essentially mirrored the testimony of Mr. Markowski. He testified the foundation was on site when he arrived and he did not notice the setback issue at that time.

John Helvig, Professional Planner, of 67 Bay Drive, Somers Point, New Jersey was sworn and testified before the Board. Mr. Helvig testified he is a Professional Planner and generally reviewed his resume for the Board. The Board accepted Mr. Helvig as an expert in the area of planning. Mr. Helvig testified as to the steps taken to ensure that all other variances required were no longer required based upon the review of the Board Engineer original report. The only remaining variance was for front yard setback because of the deck. He testified as to the C-1 criteria, hardship, specifically noting the exceptional circumstance being the error which carried through both on behalf of the Borough and the Architect. He testified as to the balancing the burden on the Applicant versus the impact on the neighborhood. He further testified he saw no substantial detriment to the public good nor any real impact on the neighborhood. He testified that the open decks versus solid wall for the three feet additional setback for the building was important in his thought process. He further testified the glass options will go a long way to reducing the impact on the neighbors. He saw no impact on the view from across the street. He weighed out the costs of moving the structure versus the impact on the neighborhood and came to the conclusion that the impact on the neighborhood was less than the impact on the Applicant.

The Applicant rested its case at the conclusion of Mr. Helvig's testimony. The Board then entertained reports and comment from the Board Professionals. First was the Fire Official who testified consistent with his report dated July 11, 2019 after being sworn that the setback issue either way was not a fire related issue and he had no comment.

Joseph Maffei, Board Engineer, was sworn and testified presenting two Memorandums to the Board the first dated June 4, 2019 and the second dated July 2, 2019. After reviewing the Memorandums with the Board, he concluded that the Applicant had satisfactorily addressed all issues for the other variances that his original letter called for and the Board was left to deal with the variance for front yard setback as the only variance required for this application. He reviewed the remaining conditions found in his July 2, 2019 Memorandum. The Applicant agreed to meet all of the remaining outstanding conditions, many of which were met previously or agreed to be shown on the plan as requested.

Jeffrey Hesley, retired Zoning Official, was sworn and testified that the plans that he reviewed are no longer available. The plans he reviewed and provided an approval dated August 13, 2018 were given back to the Applicant because of some other unrelated incomplete issues and are now gone. The money for the Zoning Certificate was paid October 23, 2018 and the zoning permit was issued utilizing his electronic signature. He testified that he did not review the revised sets of plans. He further testified he does not recall whether the error on the front yard setback was in the original plans or not. He believes since he approved the plans in his opinion they were not there but he does not know. Mr. Hesley testified the Avalon Borough Zoning Ordinance specifically provides set times during the construction process when either updated surveys or information is required to be provided to the Construction Office and the Zoning Official so that compliance can be ensured during construction. He testified the Applicant failed to meet these

requirements. Mr. Hesley testified to approximately 5 or 6 opportunities for the Applicant to have submitted information to the appropriate Avalon Official and such would have given the opportunity to catch the mistake earlier than just before completion of the structure. Mr. Hesley testified that after his review in August 2018 the next time he saw the property was after a complaint from a resident.

The hearing was open to the public and testimony from each member from the public was taken. Ten members of the public came forward and testified, some with exhibits some without exhibits. All were sworn and testified in opposition to the relief sought by the Applicant.

After public comment, the Board entertained discussion from Board Members on the subject application. During Board discussion Applicant advised the Board that as conditions of approval he would accept using a clear material for the banister or railings on the deck, remove the pent roof, amend the encroachment variance to a 2 foot variance, eliminating 3 feet of the requested variance and agreed to meet all of the Board Engineer comments from the June 4, 2019 and July 2, 2019 Memorandums. Upon completion of Board discussion, the Board entertained a motion to affirm the appeal of the Zoning Official's revocation of zoning permit 20180653.000. The motion to affirm was made by member Sam Beddia and seconded by member James Fleischman. All eligible members voted against the motion and the appeal was denied.

The Board next entertained a motion to approve in reference to the C1-hardship variance. The motion was made by member Tom McCullough and seconded by member Sam Wierman with all eligible members voting against the motion and the variance relief was denied.

The Board next entertained a motion to approve the variance under the C-2 criteria, benefits criteria, which motion was made by member James Fleischman and seconded by member Sam Wierman. All eligible members voted against the motion and the variance relief requested

was denied.

The Board took a short break at the conclusion of the hearing. The Board recommenced the meeting at 9:54 PM with roll call being taken for members present. All of the same members were present as noted first herein.

No new or old business was advanced at the meeting.

The meeting was open to public comment on any topic with one member from the public commenting. Denice Ohman of the 200 block of 23<sup>rd</sup> Street, Avalon, New Jersey came forward, thanked the Board. No further public comment.

No further business was undertaken. The motion was made to adjourn the meeting with all eligible members voting in the affirmative. The meeting was closed at 10:26 p.m.

Respectfully submitted,

*/s/ Paul J. Baldini*  
Paul J. Baldini, Esquire