

BOROUGH OF AVALON PLANNING/ZONING BOARD
Minutes of Work Session/Regular Meeting of September 10, 2019

Members Present: Tom McCullough
Jamie McDermott
Michele Petrucci
Dr. Brian Reynolds
Eric Schiela
Beth Tipping
Sam Wierman
John Morrison
Sam Beddia
Joe Stenger

Members Absent: James Fleischmann

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.

The Board then considered proposed minutes for the August 13, 2019 Work Session/Regular Meeting. Corrections or changes were noted. The motion was made to approve by member Tom McCullough and seconded by member Sam Wierman with all eligible members voting in the affirmative.

The Board then considered memorializing Resolution PZ #17-05B (2019) for application of Alan Klukowicz, owner, who have applied to the Borough of Avalon Planning/Zoning Board for an extension of time to file a previously approved minor subdivision, with one previous extension having been approved, which approval created two newly configured lots from two existing lots for the property located at Block 60.05, Lots 1.01 and 1.03 for the property located at 6088 Ocean Drive, Avalon, New Jersey. Corrections or changes were noted. The motion was made to approve the memorializing Resolution by member Michele Petrucci and seconded by Member

Beth Tipping with all eligible members voting in the affirmative.

Chair Jamie McDermott then called application PZ #19-13, appeal of Zoning Officer's decision determining that a business was being operated in the residential district at 274 54th Street, Avalon, New Jersey located at Block 54.04, Lots 34, 36, 81, 83, and 85. Specifically, Applicant appeals decision entered by Zoning Official and memorialized by letter dated June 12, 2019 from Zoning Official to Applicant. Applicant presented Keith Hontz, son to the owner of the property. Mr. Hontz testified before the Board that there is no business activity occurring at 274 54th Street, Avalon, but rather he parks three golf carts in his mother's driveway. Mr. Hontz testified that 7 Mile Free Ride offers an eco-friendly free transportation service and mobile advertising platform for local businesses and sponsors on 7 Mile Island. The business operates on the streets of Avalon and Stone Harbor and not at the residence. All vehicles are licensed, insured, and otherwise legal. Mr. Hontz testified there is absolutely no business activity taking place at the residence with the exception of official mail, storage of sponsor giveaways, inside, and overnight parking/charging of three licensed, registered, personally owned street legal electric golf cars on the property. He argued the parking of the vehicles was no different than a trade person who parked their truck in the driveway for the night and then took the truck to the work site the next day.

Mr. Hontz, as part of his testimony, presented a PowerPoint presentation which was accepted into evidence as A-1.

Amanda Seltzer, Zoning Official testified that she investigated this matter from a complaint from a neighbor. She reviewed what she understood was occurring at the property against home occupation limits to ensure that the property was in compliance. She observed three golf carts parked on the property. She requested code enforcement Officer Paul Short to take

pictures and to conduct an investigation. As a result of her own observations, complaints from the neighbors, evidence from the neighbors, and finally, evidence from the investigation of Paul Short, Ms. Seltzer determined business activity, not in conformance with the home occupation ordinance, was occurring at the location.

Five members from the public spoke in reference to the application. All members of the public spoke in opposition to the application. After Board discussion, a motion was made to affirm the decision of the Zoning Official by member Michele Petrucci and seconded by member Eric Schiela. All eligible members voted in the affirmative.

Chair Jamie McDermott then called application PZ #19-09, an application for minor subdivision with C1 variance hardship and C2 variance benefits as well as an appeal of Zoning Officer's decision by property owner Estate of Emma Conti for 175 38th Street, Avalon, Block 37.03, Lots 35.01, 35.02, 37.03, and 37.02. Applicant was represented by Keith Davis, Esquire who requested permission of the Board to bifurcate the hearing and proceed on the minor subdivision with variances first and if needed proceed with the appeal of the Zoning Official's determination. The Board granted the request. Mr. Davis then proceeded with the subdivision application.

Mr. Davis laid the foundation for the application by reviewing the history of the property and entering into evidence Exhibit A1, advertisement from the Philadelphia Inquirer for the timeframe of the early 1920s. After explaining the history of the property Mr. Gary Lee Thomas, of Thomas Amey & Shaw, was sworn and testified on behalf of the application. Mr. Thomas was accepted by the Board as a professional in land surveying and planning.

Mr. Thomas set forth before the Board the layout of the lots. Mr. Thomas advised the Board that the 20 foot lot which is 20' x 110' in depth contains one half of a duplex. The other half

of the duplex sits on an adjacent lot not part of the application and under separate ownership. Adjacent to the 20 foot lot and part of the subdivision was at one time a 40 foot lot which sits to the east of the 20 foot lot. Mr. Thomas testified as to A2 which is a series of eight photographs depicting the area.

Mr. Thomas submitted a series of deeds, A3 through A6, detailing the history of the parcels as earlier described to the Board by Mr. Davis. The plan of subdivision was reviewed by Mr. Thomas for the Board's edification. Mr. Thomas testified the purpose of the subdivision is to reestablish the 40 foot lot as a separate and distinct lot. He described the lot as meeting all of the bulk requirements for a conforming lot. The zone requires 5000 ft.² with 50 feet of frontage. The proposed lot has 40 feet of frontage and 4000 ft.² but meets all of the bulk requirements for the larger parcel. Mr. Thomas testified the only neighbor impacted by the variances sought for the undersized lot is the new proposed lot. Mr. Thomas testified as to the deficiencies of the 20 foot lot which would remain.

Mr. Thomas then testified as to the C1 variance criteria which he indicated to the Board were met by this application. Mr. Thomas opined the facts are extraordinary and exceptional and based upon the facts; no one could have anticipated the changes in the zoning ordinances occurring over a 70 year span. He further testified that in the Borough of Avalon, one structure on two lots is unique. Finally, he testified as to the peculiar and exceptional difficulties developing the 40 foot parcel if it was tied to the 20 foot parcel. Mr. Thomas testified that the merged lot would have five times the amount of side yard required.

Mr. Thomas then testified as to the C2 variance requirements. He went through to the Board testifying as to the various sections of the Municipal Land Use Law which in his opinion were positively affected by the application.

Finally, Mr. Thomas addressed what is called the negative criteria by testifying to the Board that no detrimental impact on the Zone Plan would be seen by the granting of the variance and the public good would remain undisturbed with only the new lot affected by the side yard variance sought on the existing parcel. Mr. Thomas testified as to the subdivision criteria and the meeting of the criteria by this application.

Applicant then called Lauren Manning, Administratrix of the Estate of Emma Conti. She testified that her family has owned the parcel for approximately ninety years with her and her siblings coming here summers growing up.

Applicant ended its case and the Board heard from the Board professionals. Board Engineer Joseph Maffei testified consistent with his Review Memorandum #1 dated September 4, 2019 and presented same to the Board. All comments of the Board Engineer were accepted by the Applicant as conditions of approval. One condition, #10, was deferred with consent of the Board Engineer.

The Borough Fire Chief and Subcode Official R. Edward Dean testified that he would prefer a 5000 ft.² lot as it helps with firefighting. He further testified that Applicant, by maintaining the side yard setbacks required for 5000 ft.² lot, was helpful.

The matter was then open to the public. Seven members of the public spoke all in opposition to the project. Some members of the public bringing their own photographs which were marked and admitted into evidence before the Board.

After a brief response by Keith Davis, Esquire on behalf of the Applicant, the Board entertained Board discussion and comment. After Board discussion and comment, a motion was made by member Eric Schiela and seconded by member John Morrison to approve the minor subdivision and grant the variance relief sought by the Applicant. Three members voted in favor of

the application. Five members voted against the motion. One member abstained. Accordingly, the motion failed to pass and the subdivision and variances were denied by the Board.

Upon request of the Applicant, the zoning appeal portion of the application, due to the time of the evening, was adjourned to the October 8, 2019 meeting. The adjournment was announced to the public and no further notice required.

Chair Jamie McDermott then called application PZ #19-11, an application for rear yard setback variance under both the C1 hardship criteria and C2 benefits criteria where 25' is required and 8'6" is proposed to the structure and 8'1" to the second floor deck by property owner 6128 ODD, LLC for 6128 Ocean Drive, Block 61.05, Lots 2.04 and 2.06. The Applicant was represented by Cory Gilman, Esquire, of Josephson Wilkinson & Gilman, who provided the Board with a summary of the application.

In the presentation of the Applicant's case, Applicant called Gary Thomas, of Thomas Amey & Shaw, who was sworn and testified. Mr. Thomas was accepted as an expert in the area of surveying and planning. Various exhibits were marked and presented to the Board during the course of the testimony of Mr. Thomas. Mr. Thomas described the earliest subdivision involving this parcel dated back to 1978 and noted as Exhibit A1. Mr. Thomas testified that this property is unique in that the lot is 100' x 60' and sandwiched between two flag lots with the polls of the flag lot running on either side of the parcel. The parcel is also unique, as Mr. Thomas testified, as that the 100' or long side of the lot runs along Ocean Drive which is not common at all in Avalon.

Mr. Thomas testified as to the existing conditions on the site referring to Exhibit A2 as he did so. Mr. Thomas contrasted the difference between the existing structure and lot against the Applicant's proposed structure on the same lot. Mr. Thomas testified that the side yard does not meet ordinance requirements on the existing structure but will on the new. Flood elevation is met

for FEMA standards but not for the 3 foot freeboard on the old but will be fully compliant on the new. Mr. Thomas testified the existing parcel does not meet parking requirements, but the new structure will. Finally, Mr. Thomas testified that the roof top deck on the existing structure is completely nonconforming and will be eliminated under the proposed structure. Although neither property meets the rear yard setback, this will be a condition that carries forward with the new proposal.

Mr. Thomas testified that each pole on either side of the parcel is 12 1/2 feet wide and have to stay clear from any encroachment. A comparison was made to a corner lot for the Board's edification.

Applicant then called Rebecca Fellerman, Architect from Asher Slaunwhite Architects, LLC, who was sworn and testified. She was accepted by the Board as an expert in the area of architecture. She testified as to the rear property line and that the granting of the variance would have no negative impact on the neighbors or the neighborhood. She further testified the new structure presents less bulk and is conforming to height. Ms. Fellerman testified the new structure will provide an improved visual environment and provide landscaping benefits not presently on the site. Ms. Fellerman also testified that the new structure will have the benefit of lessening the rear yard encroachment.

Jeffrey Hesley, was sworn and testified on behalf of the application. Mr. Hesley was accepted by the Board as an expert in zoning. Mr. Hesley testified he is a certified Zoning Official and the previous Borough of Avalon Zoning Official for twenty years. He also reviewed the subdivision history of the property for the Board's edification. Mr. Hesley testified the depth of the lot being only 65 feet made the lot a unique lot in the Borough. Essentially this was caused by zoning changes in Avalon unrelated to the owners of the parcel.

Mr. Hesley testified if the 25 foot setback requirement in the rear was met then the structure would be approximately 20 feet wide. He further testified that a 20 foot wide residence was insufficient for the needs of a residence and the minimum would seem to be about 25 feet in structural width. Unfortunately, due to ordinance changes the Applicant cannot rebuild the structure that is there presently. These zoning changes severely affect the viability of the lot which produces a much smaller home with no variance relief.

Mr. Hesley further testified as to the criteria of the C2 zoning request. He testified that the application meets several purposes of the Municipal Land Use Law including but not limited to lessening of the virtual mass of the existing structure. The new structure, he testified, is less mass and replaces the 25 foot exterior wall with a nuanced wall. The new structure will be completely flood compliant which is a benefit to the public. The new structure will be visually pleasing in design and will eliminate and/or reduce existing nonconformities.

Mr. Hesley testified in his opinion the benefits outweigh the detriment with no substantial detriment to the Avalon Zoning Plan or Ordinance.

Applicant ended its case and the Board heard comment from Board professionals.

Joseph Maffei, Board Engineer was sworn and testified before the Board. He presented his Review Memorandum dated September 3, 2019 and dealt with the parcel as an oversized lot and not a corner lot. Mr. Maffei testified that the Applicant meets the requirements of an oversized lot. Applicant accepted as a condition of approval all comments from the Board Engineer.

Avalon Fire Chief and Subcode Official R. Edward Dean was then sworn and testified before the Board, testifying that the lot shape itself is an issue and he recognizes same. He testified that he had a number of fire matrix concerns. He was particularly concerned in reference to the rear setback of 8 feet. He testified that that was an issue. He further testified that he could not view the

property as a corner lot and that neither easement meets fire access requirements as they are too narrow. He testified he wanted to see at least a 10 foot rear yard setback. He further testified that the materials on the structure should be noncombustible due to the proximity of the structure to the rear yard and to the pole portions of the flag lots. Finally, he testified as to his concern of a garage in the rear on the adjacent lot being so close to the lot line. Mr. Dean testified the existing structure is mostly deck adjacent or encroaching into the rear yard and the proposed encroachment is enclosed meaning more structure which is a greater fire risk closer to the property line.

The Board heard from John Amenhouser, Esquire, of Monzo Catanese Hillegass, P.C., who represents three objectors present at the hearing. Mr. Amenhouser presented the view of the objectors opposing the variance on the rear yard setback. He testified that an 8 foot or 9 foot rear yard setback is nowhere near the 25 feet required. He further argued the lot is not a corner lot and should not be viewed as a corner lot. The lot is an interior lot with all of the restrictions that come with being an interior lot. He further pointed out to the Board that the proposed development will increase the building area by 200 ft.². He argued there was no undue hardship to the Applicant as the Applicant recently purchased the parcel and was aware of the constraints of the parcel. He argued that the benefits have not been demonstrated by the Applicant and will have a substantial impact on the Avalon Planning Zone, particularly in the area of this parcel.

Two members of the public spoke in opposition to the project, both testifying against approval of the project.

A motion was made to grant the rear yard setback variance under either or both the C1 hardship criteria and/or the C2 benefits criteria where rear yard requirement is 25 feet and Applicant proposes to accept a 9 foot rear yard setback by member Dr. Brian Reynolds and seconded by member Michele Petrucci. One member voted in the affirmative and eight members

voted negative on the motion. Accordingly, the motion failed to pass and the variance application was denied.

No other new or old business was presented to the Board.

The meeting was open to the public. There was no public comment.

No further business was undertaken. The motion was made to adjourn the meeting by member Sam Beddia and seconded by member Sam Wierman with all eligible members voting in the affirmative. The meeting was closed at 12:04 a.m. on September 11, 2019.

Respectfully submitted,

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