

BOROUGH OF AVALON PLANNING/ZONING BOARD
Minutes of Regular Meeting of July 14, 2020

Members Present: James Fleischmann
Chet Johnson
Tom McCullough
Michele Petrucci
Eric Schiela
Beth Tipping
Sam Wierman
Joe Stenger
Jamie McDermott

Members Absent:
Dr. Brian Reynolds
John Morrison

Chairman Jamie McDermott called the meeting to order at 6:00 PM and led the Board in the Pledge of Allegiance. A roll call of members present was made. Chairman McDermott then recited the Open Public Meetings Act Statement.

The Board then considered the proposed minutes of the March 10, 2020 Work Session/Regular Meeting, the motion was made to approve by member Michele Petrucci and seconded by member Sam Wierman with all eligible members voting in the affirmative. The Board then considered March 10, 2020 Closed Session, the motion was made to approve by member Chet Johnson and seconded by member James Fleischmann with all eligible members voting in the affirmative. The Board then considered the proposed minutes of the April 7, 2020 Work Session/Regular Meeting, the motion was made to approve by member Sam Wierman and seconded by member Michele Petrucci with all eligible members voting in the affirmative. With no Resolutions to memorialize from the past two meetings, the meeting continued.

Chairman McDermott then called Application PZ #19-14, an application seeking approval to construct an elevator shaft to the existing residential structure at 7792 Sunset Drive, Block

76.06, Lot 9. The property presently has six non-conformities, which were not previously approved by this board. Variances sought for the addition of the elevator shaft include: side yard setback where 8 feet is required, and 6.8 is proposed, maximum building coverage where 27% maximum is allowed, and 29% is proposed, and maximum deck/porch/building coverage where 38% is the maximum, and proposed is 45.3%. Applicant was represented by Jeffrey Barnes, Esquire, with offices located in North Wildwood and Egg Harbor Township. Applicant, Russell Lewis, was sworn and testified regarding the general nature of the property, and which work has been performed by him since the purchase of the property in 2008. Mr. Lewis testified that the primary reason for the addition of the elevator was to make the house more handicap accessible. Jonathon Helvig, of Dante Guzzi Engineering Associates was sworn and testified, accepted by the Board as an expert planner. He testified that he surveyed the land and identified the main variance of issue being the side yard to elevator setback. Mr. Helvig discussed the C2 Variance criteria and explained in depth the benefit that the addition of an elevator, and consequentially an additional egress for physically handicapped. Upon completion of the presentation by the Applicant, the Board heard from Planning Board Solicitor, Paul Baldini, who discussed the Planning Board Engineer's Report dated July 1, 2020. Fire Chief, Richard Edward Dean, Sr. was sworn and testified that he was concerned that the side yard setback would be less than 7 feet. This started a discussion amongst the Board and the Applicant, where they agreed that the Applicant would explore other elevator options – changing the shape from a square to a rectangle – which would cause less of an encroachment into the side yard. Upon conclusion of all testimony, the matter was open to the public. Ms. Wright expressed her concerns that the addition of an elevator did not increase overall safety of the building since elevators are not to be used in some emergencies. The motion to vote on the application was moved by Tom McCullough and seconded by James

Fleischman. The application passed unanimously (9-0).

The application was granted by the Board after Board discussion and findings of fact. The application was granted with the following conditions.

1. Applicant shall comply with all the terms and conditions of the engineering report of Joseph H. Maffei, Board Engineer, dated July 1, 2020.
2. Applicant shall revise plans to reflect necessary changes to the plans as a result of this hearing and conditions.
3. Applicant shall submit revised plan satisfactory to the Board Engineer.
4. Applicant shall face the elevator entrance door to the North.
5. Applicant shall review alternative elevator options, and if reasonable and possible, select elevator shaft that would allow the setback to remain at 7.9 feet rather than encroach at 6.8 feet.
6. Applicant must obtain any and all other necessary state, county, federal, municipal, and other governmental approvals, and comply with any and all such laws and regulations.
7. All setbacks contained in the plan submitted to the Board are not to be deemed as deed restrictions, but are only evidence of the current requirements of the Avalon Zoning Plan and Zoning Ordinance.
8. The approval hereby granted is specifically based upon the testimony, evidence and documentation submitted to the Board during the hearing. The Board reserves the right to modify, or deem this approval null or void if, in the future, the testimony, evidence, and documentation are determined to be inaccurate.

Chair McDermott then called application PZ#19-11A, an application seeking preliminary and final site approval for a residential structure at 6128 Ocean Drive, Block 61.05, Lots 2.04 and

2.06. This application involves the demolition of an existing, non-conforming single-family home for the development of a new home. Representing applicant, Michael Dion and “6128 ODD, LLC” was Jack Plackter, Esquire, of the firm Fox Rothschild LLP. To start, a res judicata issue was raised. The question was whether or not the application was different than the one previously filed by same applicant. Representing those opposed to the construction and in favor of a finding of res judicata was John Amenhauser, Esquire, of the firm Monzo, Catanese, Hillegass. Following arguments from both parties, there was an opportunity for Public Comment. The first to speak was Robert Bednar, of 6118 Ocean Drive, directly behind the property in question. Mr. Bednar addressed his concern for a lack of change in the plans, believing a fire issue with his property. Next to speak was Martha Wright, of 632 7th Street. Ms. Wright argued that she believed the new application was not substantially different because the difference between 5 and 10 feet is a 50% different, whereas 8 vs 10 feet is not substantial. The Board then heard from their attorney, James Birchmeier, of the firm Birchmeier and Powell, with offices in Woodbury and Tuckahoe. He advised the Board and made sure they understood that there is pending litigation regarding this application in which a court administered a consent order that mandated the Board to rehear this application. The Board voted 5-4 to allow the application to be heard, finding it substantially different from the last proposed by applicant.

The lot in question is a 60’ x 100’ lot, with the longer side being adjacent to the street, of which there is only one other in all of Avalon. Due to the unique size of the lot, the existing residential structure has 13 non-conformities. Rebecca Fellerman, was sworn and testified, a licensed architect for 12 years, with the firm Asher Slaun White Architects, was accepted by the board as an expert. Ms. Fellerman has visited the site and prepared the plans before the Board today. Ms. Fellerman began by outlining the existing site plan and encroachments on the property,

explaining that the current house has one parking spot, which does not meet Avalon code, and no turn-around in the driveway. The current house does not meet base flood elevation (9 ft) and is just above base flood, not meeting the design flood elevation (12 ft). There currently exists a deck above the third floor, which does not comply with Avalon code, and is removed from the proposed design. The new house has the front door facing the street, like other houses in the neighborhood, and therefore fits better with the character and aesthetics. Ms. Fellerman testified that if the house were to completely comply with the code, it would only be 20 feet wide – of which her firm has never built in Avalon. Ms. Fellerman testified that the new plans consisted of 5 bedrooms, instead of 6 as previously proposed, meets all new codes, eliminates 12 of the 13 existing nonconformities, is FEMA compliant, and promotes fire safety with its 1-hour rated fire-retardant siding. However, due to the unique shape of the lot, which has the longer side along the street, and is extremely short in depth, the owner of the lot is disadvantaged. Ms. Fellerman explained that the benefits outweigh the detriments, as the new construction would bring the lot closer to conforming with all Avalon ordinances than the currently existing, non-conforming structure. Ms. Fellerman explained that the house can comply with all conditions of Mr. Maffei's review letter. Ms. Fellerman was cross-examined by Mr. Amenhauser. In this line of questioning, Ms. Fellerman admitted that it is capable to build a house on the lot that completely conforms, but would not fit to the character of the neighborhood or the requests of the developer.

Gary Thomas, of the firm Thomas Amey Shaw, Inc. with an office in Avalon, NJ, was sworn and testified as a licensed land surveyor for 43 years, licensed planner for 33 years, and federal flood plain manager for 13 years was accepted by the Board as an expert in his fields. Mr. Thomas explained that the rear yard setback, which currently sits at 3.33 feet, would be at 10.25 feet with the newly constructed building. He further explained that this lot was subdivided in the

1970s, and there is only one other lot like the one in question in all of Avalon. Mr. Thomas emphasized the importance of considering how far each of the surrounding structures are from the proposed building, and that despite the rear yard encroachments, the closest structures (a detached garage and a shed) were many feet (20 feet and 49.60 feet) from the proposed structure, whereas the houses are extremely far apart. Mr Thomas spoke of the fire resistant materials that would be used for the rear of the house to help alleviate concerns from the neighbors.

Mr. Thomas explained that the shallowness of the lot is the biggest issue at hand, and despite the rear yard setback, the benefit the new house would bring to the neighborhood substantially outweighs any detriment. Not only does the house provide adequate, air, light and space, it also addresses all previously raised concerns by the Fire Chief. Fire Official, Richard Dean, testified that he viewed the rear yard as more of a side yard, given the layout of the lot, and explained that he felt a 10 foot setback was adequate. He further testified that all concerns raised at the September 2019 Board meeting have been addressed by the new plan.

John Amenhauser then brought Architect James Chadwick who has been a registered in New Jersey for about 25 years and has his own firm, who was accepted by the Board as an expert in his field. Mr. Chadwick was sworn and testified that the rear yard setback from edge of property to the building is at actually 13.75 feet, not 3.33 feet as represented by the architect. He further explained that the benefits do not substantially outweigh the detriments to the plan as there is no benefit to the community at large by allowing an oversized house on a lot that all of the neighbors are opposed to. Upon cross-examination by Mr. Plackter, Mr. Chadwick admitted that the proposed structure would be far more compliant than the existing structure, and if built according to the ordinance required setbacks, would be an extremely narrow home.

Robert Bednar, 6118 Ocean Drive, was the first to speak during public comment, after

being sworn, he expressed his concern that if he may want to someday rebuild on his own property, there may be issues regarding setbacks for him. Joseph Templin, a building contractor of 272 21st street was sworn and spoke next, supporting the application and construction of a new home, explaining that it would not make sense to build a 20 ft wide home. Martha Wright of 632 7th Street, was sworn and spoke next, expressing her concern that the current house must be replaced, but does not think that a hardship on the neighbors should be created. Further, she believes it is possible for a 3500 square foot house to be constructed on the property without needing any variances. Lastly, applicant Michael Dion of 94 E 22nd Street expressed that he knew he would need variance relief on property when purchasing, but does not believe the existing lot conforms with the goals of the neighborhood, and would like to construct a house that conforms with the ordinances and character of the area.

Mr. Plackter presented a summary of the case, emphasizing that the house was no longer a fire hazard and that all concerns raised by the board during the prior hearing had been addressed.

Following board comment, and the obvious concern of the members for the property's neighbors, Mr. Plackter asked for some time to speak with his clients. In the interim, New Business occurred.

New Business included a brief discussion regarding the creation of an overlay zone for Boutique Hotels within the B1 Business District. The Board agreed that to do so, the Master Plan will need to be revised, and Chairman McDermott identified three members of the Board that would work together as a subcommittee to analyze possible overlay zone – Eric Schiela, Sam Wierman, and Chet Johnson.

The Board then opened the meeting to public comment on any zoning/planning issue. Ms. Wright expressed disappointment in the Boutique Hotel zone project, explaining the impact it may

have on people that live close to the zone. Additionally, she spoke about the issue of artificial turf and the impact it has on the environment. Board Member Sam Weirman addressed her concerns, explaining that the turf issue was being addressed – and that it was simply put on hold due to the COVID-19 pandemic.

Following public comment, the Board returned to hear from Mr. Plackter. The applicant requested a continuance to August, so that they could get in touch with their neighbors and attempt to address any existing issues before constructing the house.

The motion was made to adjourn the meeting by member Eric Schiela with all eligible members voting in the affirmative. The meeting was closed at 10:23 p.m.

Respectfully submitted,

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