

BOROUGH OF AVALON PLANNING/ZONING BOARD
Minutes of Work Session/Special Meeting of December 1, 2020

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

Members Absent: Dr. Brian Reynolds
Beth Tipping

Chairman Jamie McDermott called the meeting to order at 6:15 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.

Chairman McDermott then called application PZ #20-04, postponed from October 6, 2020 and a continuation from November 9, 2020 for application 21st Street Marina, LLC with property located at 817 21st Street, Block 19.11, Lot 1.

The Applicant is seeking preliminary and final site plan approval to construct a marina with a multiple dwelling mixed use building. Applicant further seeks a conditional use approval for a 3-unit building. Cory Gilman, Esquire represents the Applicant and explained the nature of the application to the Board at the November 9, 2020 meeting. The meeting was reconvened on December 1, 2020 with the Applicant reporting back to the Board on settlement discussions with certain Objectors, which discussions were not fruitful. Applicant then sought to update the Board on the status of the application and revisions to the plans as well as supplement the record. The Board agreed to allow the Applicant to proceed and to provide the Objectors an opportunity to supplement the record as well.

Mr. Thomas was sworn and testified updating the Board on the changes made to the plan resubmitted in time for the December 1, 2020 meeting. He took the Board through each of the changes as may have been requested by either the Board or the Board Engineer.

The Applicant agrees as a condition of approval to amend the Master Deed for Avalon Anchorage Marina, LLC and to provide for the 21st Street Marina, LLC to provide for cross easements to ensure the bathrooms are enforceable by unit owners, either condominium association, and/or ultimately the Borough. Applicant agreed as a condition of approval to place a note on the plan for both plans 21st Street Marina and Avalon Anchorage Marina confirming that the bathrooms are to be used for both 21st Street Marina and Avalon Anchorage Marina although physically located on the 21st Street Condominium.

Applicant agreed to separate easements, nonrevocable except with the written consent of the Borough confirming the intention of the parties to allow for the enforcement by the Borough of the privileges and cross easements pertaining to the use of the marina restrooms at 21st Street Marina, LLC by the patrons of the public boat slips at the Avalon Anchorage Marina, as set forth in the Master Deed of Avalon Anchorage Marina and the amended Master Deed of Avalon Anchorage Marina and as included in the Master Deed for the 21st Street Marina.

At the conclusion of the Applicant's presentation Joseph Maffei, Board Engineer, was sworn and testified. He reviewed his Memorandum of November 24, 2020, also identified as Memorandum number 3 in this case, confirming the changes made by the Applicant to the revised plan and proposing additional comments.

At the conclusion of Mr. Maffei's testimony Bridget Sykes, Esquire was afforded an opportunity to present additional opposition to the subject application. The opposition called Kevin Dixon, traffic engineer. He reviewed a packet of exhibits provided to the Board in advance

of the hearing date taking the Board through a series of photographs and renderings presenting the opposition traffic plan and opposition to the factual testimony previously provided by the Applicant. At the conclusion of the Objector presentation the matter was open to any public comment over the objection of the Applicant. At the conclusion of the opposition presentation two members of the public came forward to speak in opposition to the application.

In rebuttal to the opposition presentation the Applicant recalled their traffic engineer Andrew Feranda and recalled their planner, Gary Thomas, both of whom presented rebuttal testimony regarding the testimony of the opposition expert. At the conclusion of the Applicant's rebuttal testimony the matter was then closed and returned to the Board for findings of fact. The Board then continued its findings of fact which it had started at the November 9, 2020 meeting and continued until conclusion.

At the conclusion of the findings of fact and Board discussion there was a motion made to grant the preliminary and final site plan approval and conditional use approval, with design waiver from Section 26-7.3.a.3(a) to allow a curb opening to exceed 50 feet where a 230-foot-wide opening on 21st Street for access to 24 off street parking spaces and the trash enclosure was proposed sought by the Applicant subject to terms and conditions as set forth in the approving Resolution. The motion was seconded and adopted by the Board granting the relief.

The Board then considered application PZ #15-09B (2020) site plan amendment, continued from November 9, 2020 for the Applicant, The Marina at Anchorage/Avalon Anchorage Marina Condominium Association, Inc. whose address is 885 21st Street, Block 19.09, Lots 1-34.

The Applicant was represented by Cory Gilman, Esquire who provided the Board a summary of the application. The Applicant called Gary Thomas, license planner, who was sworn

and testified. Mr. Thomas testified the Applicant seeks to amend the site plan approval to relocate temporary bathrooms over to the 21st Street Marina with proper and sufficient guarantees for appropriate access to the bathroom facilities by the Applicant's public marina users.

Mr. Thomas testified the only change was removing the bathrooms from their location on the plan to the 21st Street location. The building which housed the bathrooms would then become storage. Mr. Thomas agreed to provide a note on the plan confirming the relocation of the bathrooms and appropriate access to the 21st Street Marina.

The Applicant agreed as a condition of approval to amend the Master Plan for the Applicants Master Deed for the Marina at Avalon Anchorage/Avalon Anchorage Marina Condominium Association, Inc. to provide for access at the 21st Street Marina. Applicant further agreed to arrange for the 21st Street Marina to provide in its Master Deed the same cross easements allowing for the use of the bathroom facilities by Avalon Marina users.

As a further condition of approval the Applicant agreed to independently recorded cross easements with language to be agreed upon between the attorneys and the engineers providing for sufficient protections for the Borough to have the right to enforce the privileges and cross easements pertaining to the use of the marina restrooms at 21st Street Marina by the patrons of the public boat slips/Marina at the Avalon Anchorage Marina as is to be set forth in the Master Deed of 21st Street Marina, LLC, Master Deed of Avalon Anchorage Marina, and amended Master Deed of Avalon Anchorage Marina. This includes Avalon Anchorage Marina Condominium Association, Inc. and any other condominium association to be formed are to provide the legal structure for the 21st Street Marina, LLC.

At the conclusion of the Applicant's case the Board Engineer, Joseph Maffei, was sworn and testified. He provided the Board with a review of his October 6, 2020 report rendered to the

Board. The Applicant agreed as a condition of approval to comply with all of the comments contained in the October 6, 2020 report of the Board Engineer.

At the conclusion of the Board Engineer testimony the matter was open to the public. No members of the public came forward to be heard.

The matter was then returned to the Board for findings of fact and comment. At the conclusion of findings of fact and comment by the Board a motion was made to grant the amendment/modification of final site plan approval as memorialized by Resolution 15-09A (2018) allowing the Applicant to relocate bathrooms from the marina unit located at the southwest portion of the property to a proposed adjacent marina located on Lot 1 referred to as the 21st Street Marina, LLC, subject to the conditions contained within the memorializing Resolution for this matter. The motion was second and adopted by the Board granting the application.

The Board then considered application PZ #20-03, preliminary and final major site plan, with use and bulk variances requested by Applicant TK 12 Holdings, LLC, postponed from the November 10, 2020 meeting for the property located at 2800 Boardwalk, Block 28.01, Lots 11.03, 13.01 through 13.04, 15.01 through 15.03, 17.01 through 17.03 and 18. The Applicant was represented by Cory Gilman, Esquire who presented the application on behalf of the Applicant and provided a summary of the application to the Board.

The Applicant called Jerry Blackman, a licensed architect and planner, who was sworn and testified. He was accepted as an expert by the Board. Mr. Blackman explained the nature of the application providing that the Applicant seeks to create a sit-down restaurant with second floor open outside seating where there existed a single-story structure containing commercial uses, which uses were explained to the Board. Mr. Blackman took the Board through the PowerPoint presentation previously submitted to the Board by the Applicant comprising photographs,

renderings by Mr. Blackman, and copies of the various submissions to the Board with the application by Mr. Thomas and Mr. Blackman.

Mr. Blackman confirmed that the Applicant seeks a two-story building which will comply with all FEMA height elevations. He described the uses intended on the first floor and the use intended on the second floor. Total seating for the facility is estimated at 315 seats. Mr. Blackman confirmed the 22 parking spaces are required when the facility is able to provide no parking spaces. The facility is located in the P3 Conservation Zone, has been there for many years, and is a prior nonconforming use as the structures and uses sit presently. Mr. Blackman testified that the new facility will be a benefit to the municipality by extending the shoulder season providing for banquet facilities and otherwise presenting a better plan and building than presently exists on the site. The present building is outdated and needs upgrading.

Applicant then called Gary Thomas, license planner, who testified that he prepared the site plan and other documents submitted with the application. He testified that the application will be completed within the same footprint that presently exists at the parcel and that there is CAFRA approval for the structure. The trash enclosure presently is situated in the municipal owned parking lot and has been there for many years. Applicant proposes to continue that use. Applicant proposes to provide a loading zone also in the municipal parking lot next to the boardwalk ramp which is presently used for that purpose although not marked. Mr. Thomas confirmed there is no on-site parking and that patrons presently use parking located in the municipal parking lot immediately west of the subject parcel. The subject parcel he testified is located on a wooden boardwalk owned by the Borough of Avalon.

Mr. Thomas agreed to accept as a condition of approval on behalf of the Applicant that the Applicant will provide decorative flowerpots along railings facing the boardwalk. The Applicant

will screen or provide a decorative enclosure for the dumpster located in the municipal parking lot and that the Applicant will adjust the top rail on the second floor to ensure that it is designed to discourage placement of items on that top rail. Applicant also agreed as a condition of approval to prove to comply with B-1 Standards to increase the window space for the physical structure as appropriate.

Applicant then called Garrett Kerr, who was sworn and testified that he resides at 2821 Dune Drive, Avalon, NJ. He testified he is the principal of the owner of the parcel. He testified as to the operations that presently exist on site, times, and uses etc. He testified that the facility is not looking to obtain a liquor license and does not have a liquor license. The restaurant is intended to be a nice, higher end food restaurant. He compared the concept to the Reeds in Stone Harbor. He did confirm the facility will be B.Y.O.B. (bring your own bottle).

As a condition of approval Applicant agreed to maintain hours at the facility no longer than the hours between 7 o'clock in the morning to 12 o'clock in the evening as a restaurant and for special events/banquets to close no later than 1 o'clock in the morning.

At the end of the Applicant's case the Board heard from Board Engineer, Joseph Maffei, who was sworn and testified as to the contents of his October 7, 2020 Review Memorandum. The Applicant accepted as a condition of approval to comply with all of the Board Engineer comments.

Applicant agrees as a condition of approval to ensure that all lights and signage at the facility are off within one hour after closing.

The matter was then opened to the public. Five members of the public spoke in reference to the application all five in opposition to the application. As a result of the public comment the Applicant recalled Garrett Kerr who again confirmed that the restaurant will be B.Y.O.B. only and there is no liquor license for the facility.

Applicant also agreed to accept additional conditions of approval. Applicant agrees as a condition of approval to provide additional landscaping similar to a living wall type of plantings in the front and around the building. Applicant agreed to limit deliveries to box truck type deliveries. Applicant agreed to provide staff to clear up trash that emanates from his facility but might meander onto the boardwalk and public parking lot immediately adjacent to the facility.

At the conclusion of public comment and rebuttal, the matter was closed and returned to the Board for Board comment and findings of fact. The consensus of the Board was to request that the Applicant meet with the neighbors and see if there were some changes to the plan that can be agreed upon to make the project more palatable to the neighbors. The matter was then postponed by consent and rescheduled for the January 12, 2021 meeting with the Applicant waiving any time constraints. A public announcement was made and the public was advised that no further notice would be forthcoming. Applicant waived any time constraints for the postponement.

The Board then entertained old and new business. No new or old business was brought forward.

The Board then opened the meeting to public comment. No one from the public spoke.

No further business was undertaken. The motion was made to adjourn the meeting. The meeting was closed at 10:50 PM.

Respectfully submitted,

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