

BOROUGH OF AVALON PLANNING/ZONING BOARD
Minutes of Work Session/Regular Meeting of January 12, 2021

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

Members Absent: Michele Petrucci
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 for the December 1, 2020 Work Session/Special Meeting. Corrections or changes were made. A motion was made to approve by member Chet Johnson and seconded by member Sam Wierman with all eligible members voting in the affirmative.

The Board then considered the proposed minutes of the December 8, 2020 Work Session/Regular Meeting. Corrections or changes were made. A motion was made to approved by member Tom McCullough and seconded by member Sam Wierman with all eligible members voting in the affirmative.

The Board then considered the memorializing Resolution for PZ#15-09B (2020), application of the Marina at Avalon, LLC/Avalon Anchorage Marina Condominium Association, Inc. seeking amended/modified major site plan approval which approval was granted pursuant to Resolution PZ#15-09A (2018), wherein the approved major site plan included portable

restrooms and showers on the ground floor of the marina unit and the Applicant proposes to relocate the portable restrooms and showers to the adjacent Lot 1, which is the site of a new marina referred to as the 21st Street Marina. Corrections or changes were made. 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 memorializing Resolution PZ#20–04, application of 21st Street Marina, LLC applying for preliminary final site plan approval to construct a marina with a multiple dwelling mixed-use building; the proposed marina to consist of 19 boat slips, mixed-use building with public restrooms, marina storage, marina office, marina commercial store, and a one-bedroom residential apartment attached to a duplex containing two 6 bedroom residential units. Corrections or changes were made. The motion was made to approved by member Chet Johnson and seconded by member Tom McCullough with all eligible members voting in the affirmative.

The Board then considered memorializing Resolution for PZ#20–10, application of the Avalon Yacht Club seeking preliminary and final site plan approval with waivers from site plan checklist to construct additions to the existing Avalon Yacht Club facility. Corrections or changes were made. The motion was made to approved by member Tom McCullough and seconded by member Joe Stenger with all eligible members voting in the affirmative.

The Board then considered request for adjournment by application PZ#20–07 seeking variance for swimming pool from Applicant RJL, LP whose address is 7792 Sunset Drive, Avalon, NJ in Block 76.06, Lot 9 which application for adjournment was granted to March 9, 2021. Announcement having been made to the public as to the new date and time and location of the public hearing with no further notice to be provided.

The Board then considered application PZ#20-03, application of TK 12 Holdings, LLC which was continued from December 1, 2020 where an Applicant sought preliminary and final site plan, use variance, and various bulk variances for the property located at 2800 Boardwalk, Block 28.01, Lots 11.03, 13.01-.04, 15.01-.03, 17.01-.03, and 18.

Applicant was represented by Cory J. Gilman, Esquire who presented an update to the Board from the last hearing wherein he advised that he and his client met with three members from the public to see if some issues could be resolved but was unsuccessful. However, the Applicant did advise the Board that the Applicant was prepared to address some issues before the Board and had revised plans to address some issues raised by the Board and the public. Accordingly, the Board allowed for additional testimony to be presented even though the hearing had closed at the last meeting. Three attorneys were present to object to the application representing different clients and all were advised by the Board that they would be provided an opportunity to respond and call witnesses.

Applicant then called Jerry Blackman who was sworn and testified and is the project engineer. He testified the primary change was to the southwest corner of the property that corner being closest to Surfside Park. He testified that the Applicant reduced the building footprint in that area by increasing windows facing the Boardwalk, using a pitched roof, less brick, and more siding. He testified the Applicant also added planters in the area just described and added planters on the first and 2nd floor decking to add some green space. Mr. Blackman testified 46.5% of the property is open space on the site. Mr. Blackman then addressed the issue of the business signs and lighting. He was cross-examined confirming the height of the structure was 30 feet as proposed and presently sits at 19 feet. He confirmed the proposed lighting for the structure and confirmed that he did not know the present lighting on the building. He confirmed

that some signage is permitted in the Zone.

During cross-examination Mr. Blackmun testified that the only uses permitted in the Zone are passive recreation uses and this property does not comply with that use. He proposed a 313 seat restaurant on behalf of the Applicant plus employees. He testified the Code would allow 933 people. Mr. Blackman testified that he was not familiar with the Dune Protection Ordinance and could not testify as to how it impacted the proposed project. However, he did confirm that the project is a pre-existing nonconforming use and as such is permitted to continue. In further cross-examination he confirmed that the Master Plan excludes the Zone the project sits in from developable land.

Mr. Gilman then readdressed Mr. Blackman wherein Mr. Blackman testified the property sits on the Boardwalk, but not a street and that the Boardwalk is a right-of-way and access is provided through that right-of-way. Mr. Blackman testified majority of the height increase is in the corner of the building and not the entire building.

The Applicant then recalled Gary Thomas who was sworn and testified and continued to be accepted as an expert in his area. He testified that the new planters proposed will provide additional green space and that the property actually sits within the dunes. He testified the project eliminates a walkway which was cantilevered over the Borough property and in that respect is an improvement. He testified that the project will not expand its current footprint in the dune. During cross-examination Mr. Thomas testified as to the off-site loading zone proposed providing the dimensions of the proposed site and specific location.

He testified a 40 foot long loading zone would be compatible for the intended use. He testified in his opinion the use proposed is appropriate since the site has been this way for many years. The adjacent site public parking has approximately 270 parking spaces. Upon cross-

examination Mr. Thomas testified that in his opinion people come from all over town to use the facility that presently exists and if there was a wedding in a new proposed facility, people would likely drive to the location. He further testified in cross-examination that the proposed plan would require 10 additional spaces.

Garrett Kerr was sworn and testified. He testified that he is one of the owners of the property and in his opinion the meeting with the neighbors went well. He testified that the project anticipates seating of 310 to 316 seats and that the Applicant agrees to limit that to 250 seats plus employees in an attempt to address concerns raised by the neighbors. Mr. Kerr testified that the hours of operation would be limited with a 7:00 AM opening, 10:00 PM last reservation, 12:00 PM doors close, and 1:00 AM all people out of the facility for events. Applicant agreed to various other conditions of approval all of which are detailed in the Resolution.

During cross-examination Mr. Kerr testified that in his opinion the events that occurred at that location for public events will not interfere with his intended use as they offset each other at different hours. He testified the existing pizzeria has 85 seats. At the conclusion of the Applicant's case, the Board Engineer was offered an additional opportunity and chose not to testify. The matter was then opened for public testimony. 49 members of the public were heard and testified. 44 members of the public opposed the project and 5 members of the public favored the project. Generally, the opposition to the project was based upon the size and intensity of the use proposed v. the size and intensity of the use existing at the facility. Objectors also raised concerns over the height, trash, noise, parking, access for deliveries, and safety issues over use of a public parking lot adjacent to a park which encourages many children to the area.

Those that spoke in favor of the application testified that the project was a good project

for the community as a whole, the structure is aging and needs to be replaced, a nice restaurant with oceanfront dining is an asset to the community.

At the end of public testimony all attorneys were afforded an opportunity for closing arguments and such were made to the Board. Upon the conclusion of closing arguments the Board entered into Board discussions and findings of fact. During Board findings of fact the Board found that the proposed expansion of a nonconforming use did not meet the special reasons criteria set forth in the Statute. The scope of the project was out of character for the neighborhood and inconsistent with the Master Plan. Accordingly, the Board denied the motion for a use/expansion of use variance. The Applicant then withdrew the remainder of the application. The Board then called for any old business of which there was none. The Board then opened the meeting to public comment. No person spoke during the public comment portion.

There being no further business to conduct the meeting was closed at 12:06 AM on January 13, 2021.

Respectfully submitted,

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