

Borough of Avalon Planning/Zoning Board
Minutes of Work Sessions/Regular Meeting of September 14, 2021

Members Present: James Fleischmann
Jay Gebauer
Chet Johnson
Tom McCullough
Brian Reynolds
Eric Schiela
Sam Wierman
John Morrison
Chuck O'Hara

Members Absent: Michele Petrucci
Beth Tipping
Joe Stenger
Greg Kizeik

Chairman Gregory "Chet" Johnson called the meeting to order at 6:00 PM and led the Board in the Pledge of Allegiance. Rollcall of members present was made. Chairman Johnson then recited the Open Public Meetings Act Statement.

The Board then considered Minutes of the August 10, 2021 Work Sessions/Regular Meeting. Corrections or changes were made. A motion was made to approve by member Sam Wierman and seconded by member John Morrison with all eligible members voting in the affirmative.

The Board then considered memorializing Resolution PZ#21-05, 2205 Harbor LLC. Corrections or changes were made. A motion was made to approve by member Brian Reynolds and seconded by member Sam Wierman with all eligible members voting in the affirmative.

The Board then considered memorializing Resolution PZ#21-12, Selgrath Enterprises, Inc. Corrections or changes were made. A motion was made to approve by member Sam Wierman and seconded by member Chuck O'Hara with all eligible members voting in the affirmative.

The Board then considered memorializing Resolution PZ#21-06, Eric and Kathleen Sermarini. Corrections or changes were made. A motion was made to approve by member Brian Reynolds and seconded by member John Morrison with all eligible members voting in the affirmative.

The Board then called application PZ#21-09, Carol Nelson Sheppard, which application was postponed at the request of the Applicant to October 12, 2021.

The Board then considered application PZ#21-10, application of Avalon Beach House, LLC seeking variance for pool water feature located at 2389 Avalon Avenue, Block 23.01, Lots 1.01, and 2.01 in Avalon. Applicant sought variance relief for minimum rear yard setback for pool feature where 9 feet is required and 3.8 feet is existing and proposed. Applicant further sought variance relief for maximum height for pool feature where 1.5 feet is permitted and 2.6 feet is proposed and existing. Applicant recognized certain existing nonconformities on the property which were not affected by the application including minimum front yard setback, minimum rear yard setback to pool, minimum landscaped buffer, and minimum side yard setback to pool equipment.

The Applicant was represented by Cory Gilman, Esquire who presented the application on behalf of the Applicant. George Swensen, a licensed land surveyor from The Martinelli Group, LLC was sworn and testified. He was accepted as an expert in the area of surveying by the Board. He testified that his firm prepared the plans submitted with the application and described the existing features on the lot and the water feature at issue. Photograph A was admitted into evidence after authentication by Mr. Swensen depicting a picture of the water feature at issue before the Board. Mr. Swensen then described the dimensions of the water feature which circulated pool water up into the water feature and back down into the pool as a

waterfall. Mr. Swensen testified there would be no sound emanating from the water feature and it would not be a nuisance to the neighbors.

Photograph B1 was introduced into evidence after authentication which depicted the rear of the Applicant's property from the side street. Mr. Swensen testified in his opinion the trees shown in the photograph obscure the water feature from the street from which it was not visible. Photograph B2 was admitted into evidence after authentication. Mr. Swensen testified the photograph depicts a garage on the neighbor's property which blocks the pool from being seen from the neighbor's property and blocks the water feature. Mr. Swensen testified in his opinion the height of the water feature is not a detriment to public safety nor is its location since there remains sufficient space to walk behind the water feature and move around the pool. Mr. Swensen testified that in his opinion there is no substantial detriment to the public good and no detriment to the Avalon Zone Plan or Zone Code. He further testified that the benefits of the deviation from the Zone Plan outweigh any detriment.

Mr. Swensen acknowledged that the water feature was placed in the wrong location without proper permits. However, he testified that to move the water fixture at this point in time due to its integration with the pools circulating system will create a hardship on the Applicant costing considerable money to correct.

Rick Harmon was sworn and testified. He testified that he is the attorney representing the property owner on the reconstruction of the pool and that the property owner had a contract with the pool contractor for the pool water feature and all aspects of the pool remodel to be in compliance with Borough of Avalon codes and have proper permitting. He testified that the owner found out the pool was not properly permitted for the water feature after the water feature was created. Mr. Harmon testified that all other work in the rear yard was completed in

compliance with all codes and that the contractor by accident or mistake did not put the water feature in a place where it was permitted.

The Board then heard from Board Engineer Joseph Maffei who was sworn and testified. He testified consistent with his Review Memorandum of September 7, 2021. Applicant agreed to comply with all of the recommendations of the September 7, 2021 letter as a condition of approval.

Fire Chief Dean and Fire Sub Code Official Dean sent an email dated July 22, 2021 to the Board which was admitted by consent of the Applicant. He informed the Board that from a fire safety perspective he had no comment on the application.

At the conclusion of the Applicant's case the matter was open to the public. No one from the public was heard. The matter was then returned to the Board for Board discussion and findings of fact.

After careful review, the Board found that the unique circumstance testified to by the Applicant's witnesses and the minimal impact of the incursion into the rear yard in height was sufficient to create a hardship under N.J.S.A. 40:55D-70 C1 and accordingly the application should be granted. The Board further found under the benefits criteria that it was appropriate to find that the water feature due to its minimalist nature provides adequate light, air, and open space. The Board found that the water feature did promote a desirable visual environment through creative development techniques and good civic design, even though it was located in the wrong location.

The Board found that the benefits of this deviation from the Avalon Zone Plan substantially outweigh any detriment to the plan. Further, the Board found that relief can be granted without substantial detriment to the public good and without substantially impairing the

intent and purpose of the Zone Plan and Zoning Ordinance principally because of the minimalist intrusion into the yard's height setbacks coupled with the inability to see the water feature beyond the Applicant's property.

At the conclusion of Board discussions and findings of fact, the motion was made to approve the requested variance relief under N.J.S.A. 40:55D-70 C1 with conditions by member Eric Schiela and seconded by member James Fleischmann with four out of seven members voting in the affirmative.

The Board then considered a motion to approve under N.J.S.A. 40:55D-70 C2, which motion was made with conditions by member James Fleischmann and seconded by Jay Gebauer with four of the seven eligible members voting in the affirmative to approve the variances.

The Chair then opened the meeting to old business. Vice Chair Eric Schiela provided a committee report from the committee reviewing the B-1 Zone and the feasibility of a potential layover zone for Boutique Hotel. He advised that the committee looked to the Reeds out of Stone Harbor as a conceptual. The committee did find certain areas in the B-1 Zone where the concept would fit, but was struggling with where to place in the B-1 Zone and its impact on neighbors in the area particularly involving parking. The Board encouraged the committee to continue its work until a recommendation was produced for review by the Board.

The Board then opened the meeting to new business of which there was none. The Chair then opened the meeting to members of the public for comment on any topic. No member of the public came forward to be heard.

There being no further business to conduct the meeting was closed at 7:51 PM.

Submitted,

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