

Borough of Avalon Planning/Zoning Board
Minutes of Work Session/Regular Meeting of January 11, 2022

Members Present: James Fleischmann
 Jay Gebauer
 Chet Johnson
 Tom McCullough
 Michele Petrucci
 Brian Reynolds
 Eric Schiela
 Sam Wierman
 Joe Stenger
 Greg Kizeik
 Chuck O'Hara

Members Absent: Beth Tipping

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

The Board then considered minutes of the December 14, 2021 Work Session/Regular Meeting. Corrections or changes were made. A motion was made to approve by member Michelle Petrucci and seconded by member James Fleischmann with all eligible members voting in the affirmative.

The Board then considered Minutes of the December 14, 2021 Closed Session Meeting. The purpose of the Closed Session meeting was to discuss personnel and whether to continue with the existing personnel working on behalf of the Board. Corrections or changes were made. A motion was made to approve by member Sam Wierman and seconded by member Brian Reynolds with all eligible members voting in the affirmative.

The Board then considered memorializing Resolution PZ#19-16A, Andrew Buchanan Memorializing Resolution for the proposed settlement and hearing regarding the proposed settlement involving the matter captioned Andrew F. Buchanan v. Avalon Planning/Zoning

Board, et al, Docket Number CPM-C-8-21 filed in the Superior Court of New Jersey, Cape May County. The Board having considered and held a Whispering Woods Hearing to determine whether to accept the settlement proposal in the above-noted litigation pursuant to Whispering Woods at Bamm Hollow, Inc. v. Middletown Twp. Plan. Bd., 220 N.J. Super. 161 (Law. Div. 1987). Corrections or changes were made. A motion was made to approve by member Sam Wierman and seconded by member Michelle Petrucci with all eligible members voting in the affirmative.

The Board then considered application PZ#21-09, application of Carol Nelson Sheppard with address at 55 W. 34th Street located in Block 33.02, Lot 11 seeking bulk variances and D-4 variance. Applicant was represented by Thomas Hilligass, Esquire and is the owner of the property. Carol Sheppard owner was sworn and testified. She testified the constructed residence which was finished in approximately 2004 is not being changed by the application but rather the application is to legalize a swimming pool which was inadvertently located in the wrong site on the property. She explained to the Board the nature of the error and how it came about. She testified that her understanding was that the floor area ratio was consistent with the Zoning Ordinance and no variance was required. She hired the professionals to install the pool without any variance relief needed. She hired architect Pam Fine to design the pool cabana which she testified was between 52 to 57 ft.². She testified that the pool was placed in the wrong location principally due to COVID and the limitations of the ability of the owner to obtain a survey confirming the location prior to installation of the pool and the closing of Borough Offices. A-1, a side view of the cabana and A-2, pool side view of the cabana were entered before the Board and accepted into evidence after authentication by Ms. Fine.

Ralph Johnson was sworn and testified. He testified he is the building contractor and was accepted as an expert in construction. He testified that he was hired to construct the pool and ran

into an issue since there were no pins on the adjacent properties to the east or west which made it difficult to locate the pool in the proper location. He testified he obtained all permits necessary to install the pool and intended to install the pool in a location that would not require variance relief.

Gary Thomas was sworn and testified. He was accepted as an expert in his field. He testified the cabana needs a variance for location of the accessory structure in proximity to the main residence and is too close by approximately one inch. He testified the cabana side yard variance is required as the cabana sits approximately four inches too close to the side yard. Finally, he testified a pool equipment variance would be required since the pool equipment is located 5.5 feet from the property line when 9 feet is required. He testified the bulk variances sought do not impact the neighbors in any meaningful way and are in the rear yard out of sight from the street. He testified the purpose of providing for a desirable visual environment are present in the present case. He testified the benefits of the variance substantially outweigh any detriment. Finally, Mr. Thomas addressed the negative criteria.

Joseph Maffei, Board Engineer, was sworn and testified. He testified consistent with his Review Memorandum of September 7, 2021. The Applicant accepted as a condition of approval to meet all of the conditions and comments of the Board Engineer Report.

The Applicant then engaged in a discussion through the Applicant's attorney as to whether the D-4 variance for floor area ratio (FAR) was required. The Applicant submitted A-3, a certificate of occupancy issued for the property in 2002 and A-4, an as built survey dated May 24, 2004. These documents are represented to be accurate by the attorney and accepted into evidence by the Board. Mr. Thomas was recalled and testified that no FAR issue existed since the house was properly permitted in 2002 and has only a third of a floor on the third floor and no full third-floor reducing the overall far calculation.

The matter was open to the public for public comment. None came forward.

The Applicant then requested a postponement of the application to allow for the Applicant to review the matter further and provide to the Board an accurate floor area ratio calculation for the property. The matter was postponed with consent of the Applicant and the Applicant waiving any timeframe for action by the Board to the February 8, 2022 meeting. An announcement of the next meeting was made and no further notice is required.

The Board then considered Application PZ#21-17, application of 5499 Dune Drive, LLC located at 5499 Dune Drive, Block 54.03, Lots 1-9 (odd), 21-33 (odd), 66-78 (even) for the review and approval by the Board seeking the approval to demolish the existing single-family structure and pool and constructing a new single-family structure and new inground pool principally in the same footprint. Applicant was represented by Keith Davis, Esquire who presented the nature of the application to the Board. The Applicant is the owner of the property.

Mark Asher was sworn and testified and accepted as an expert in architecture. He testified that the application is in the R-1AA Zone and is located in the high dunes. He took the Board through the existing structure and the proposed structure. He presented PB-2 which was attached to the application showing a side-by-side view of the existing structure and the proposed structure. The Applicant accepted as a condition of approval to comply with the Avalon Dune Vegetation Management Plan, correct any errors on the plan, and comply with all conditions of the Board Engineer Report of January 4, 2022.

The Applicant then called Thomas Ganard, licensed engineer. He was accepted as an expert, was sworn, and testified. He described the drainage system proposed testifying that in his opinion there was no negative impact on the drainage and the site would be fully enclosed by fencing during renovation. Gregory Hill was sworn and testified. He testified that sand would be removed from the site, stored, and returned to the site at completion of construction.

Michael Lucy was sworn and testified. He testified that he submitted the CAFRA permit and obtained appropriate approval from CAFRA. He testified that the construction of the residence will not impact the dune system and there is no direct access from the residence to the ocean.

Joseph Maffei was sworn and testified. He testified consistent with his report of January 4, 2022. Applicant accepted as a condition of approval that the Applicant will contact the Board Engineer prior to demolition and construction for site inspection by the Board Engineer and such inspections as required by the Board Engineer as construction proceeds.

The matter was open for public comment. There was no public comment. The matter was returned to the Board for discussion and findings of fact. A motion was made to approve the development by member Eric Schiela and seconded by member Michelle Petrucci. The Board voted unanimously to approve the proposed development.

The Board then considered old business of which there was none.

The Board then considered new business and received a report from the Hotel Rezone Committee as well as a general discussion of methods and ways to retain restaurants in the commercial zone in the Borough. The Board Engineer and Board Solicitor were charged with the duty to discuss the matter and present back to the Board at the next meeting some options on how the Board could proceed to move forward with the desire to incentivize restaurant use in the Borough.

The meeting was open to public comment on any topic. There was no public comment. There being no further business to conduct the meeting was closed at 8:27 PM.

Submitted,

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