

**Borough of Avalon Planning/Zoning Board
Minutes of Work Session/Regular Meeting of November 9, 2021**

Members Present: James Fleischmann
 Jay Gebauer
 Chet Johnson
 Tom McCullough
 Michele Petrucci
 Brian Reynolds
 Eric Schiela
 Beth Tipping
 Sam Wierman
 Joe Stenger

Members Absent: John Morrison
 Greg Kizeik
 Chuck O'Hara

Chairman 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 the Minutes of October 12, 2021 Work Session/Regular Meeting. Corrections or changes were made. A motion was made to approve by member Tom McCullough and seconded by member Brian Reynolds with all eligible members voting in the affirmative.

The Board then considered memorializing Resolution PZ#21-13, 2465 and 2475 Ocean Drive by Galdi. Corrections or changes were made. A motion was made to approve by member Brian Reynolds and seconded by member Eric Sheila with all eligible members voting in the affirmative.

The Board then considered memorializing Resolution PZ#21-14, 2481 Ocean Drive, Galdi. Corrections or changes were made. A motion was made to approve by member Tom McCullough and seconded by member Eric Sheila with all eligible members voting in the

affirmative.

The Board then adjourned into closed session to discuss litigation – Buchanan PZ#19–16. At the conclusion of the closed session, the Board returned to open session to continue the meeting. A separate set of Minutes will be prepared relative to the closed session.

The Board then considered application PZ#21–16, appeal of Carol Walsh, appealing Zoning Officer's decision regarding property located at 335 6th Street, Avalon, New Jersey in Block 5.05, Lot 75. The Appellant was represented by Anthony Monzo, Esquire who appeared on behalf of the Appellant and presented the appeal.

Appellant appealed the issuance of Zoning Permit #20210528.000 and the subsequent construction Permit Control #27535 for the construction of a pool at 335 6th Street, Block 5.05, Lot 75, based on the fact that the permits were issued for a pool in the front yard without variance relief.

Mr. Monzo presented to the Board Exhibits A-1 through A-7 which were accepted by the Board into evidence based upon Mr. Monzo's representation that each of the specific exhibits represented that which was purported to be represented by the exhibit. Mr. Monzo then made the argument to the Board that the property at issue had two front yards, one on 6th Street and one on what is identified on the tax map as "Utility Driveway". Mr. Monzo made the argument that the Utility Driveway was actually a street or alley which required the Zoning Official to mandate a front yard setback thus requiring variance relief for the pool to be placed in the front yard setback area. At the conclusion of Mr. Monzo's argument and recitation of taking the Board through each of the various exhibits in making his points, the Board heard from Board Engineer Joseph Maffei. The Board also was provided Exhibit B-1 which is a blowup of the Tax Map showing the Utility Driveway and its relationship to the lot at issue on the Appeal. B-1 consisted

of two pages, Tax Map, Sheet 33 and a blowup of Tax Map, Sheet 33 in the section of the subject parcel.

Joseph Maffei was sworn and testified consistent with his Memorandum of November 2, 2021. Mr. Maffei identified the issue as whether the Utility Driveway should be considered a street, thereby the property would have two front yards and require variance application to be heard by the Board. He identified at least two other "alleys" similar in nature to the one at issue. Mr. Maffei testified that the Borough has made an interpretation that these "alleys" are not streets. He testified that a pool may be approved as long as it adheres to all of the other bulk requirements of the zone including landscape buffer, lot coverage, setbacks, parking, etc.

The Board then heard from Paul Short who was sworn and testified. He testified that he is the Code Enforcement Officer of the Borough and has performed an on-site inspection. He testified the status of the pool is that the pool has been shot and gunited. He estimated about 70% of the pool was completed. He testified that the pool was not smoothed out nor landscaped

Amanda Selzer, Zoning Officer was sworn and testified. She testified that she agrees with both Mr. Maffei's testimony and Mr. Short's testimony. She testified as to additional areas with similar "alleys" where her interpretation has been consistent that these are not streets and have no front yard requirements. She testified that she does not see the Utility Driveway as a street. Mr. Maffei further testified that Zoning Officers make these kinds of decisions each day for zoning purposes.

The matter was then open to the public with one member of the public being heard. Martha Wright was sworn and testified that the history of the area at issue predates any zoning ordinance and to a large extent was controlled by 5th Street through 1st Street being washed away over the years. No further comment from the public was heard. Appellant was provided an

opportunity to summarize their case.

The Board entered into Board discussion and after Board discussion a motion was made to affirm the decision of the Zoning Officer and deny the Appeal. Five members voted in favor of affirming the Zoning Official's decision and two voted against affirmation.

The Board then considered application PZ#21-15, application of Thomas M. Hutchinson for the property located at 599 Sunrise Drive, Block 20.07, Lot 5 seeking variance relief for renovations to allow newly constructed decks to remain in the front yard setback of Sunrise Drive for the existing single-family structure. Applicant was represented by Jeffrey Barnes, Esquire who presented the application. At the request of the Applicant, Board Engineer Joseph Maffei was sworn and testified first. He testified consistent with Review Memorandum Number One dated November 2, 2021. He testified that second and third-floor decks were added to the property situated within the yard setback for Sunrise Drive which were not there in 1999 based upon a survey. He further testified the decks were removed and replaced with railing/Juliet barriers which extend into the yard by an additional 12 inches from the existing structure. He testified that he identified planters at the base of the area where the decks were anchored to the ground also within the yard setback for Sunrise Drive. He identified the planters as being converted from the foundation pillars into planters. He testified that although the ordinance allows some encroachment into the side yard for eaves, etc., the barrier such as proposed by the Applicant was a 12-inch intrusion into the yard which was not permitted by the ordinance.

Mr. Maffei identified a series of variances required for the property. A number of the variances sought by the Applicant were required by the Applicant raising the structure by more than three feet as permitted by the ordinance without the need for additional variance relief. Stated otherwise, Mr. Maffei testified they are essentially conditions of the subject parcel. The

last variance that being for minimum front yard setback from Sunrise Drive for the Juliet barriers required a variance as well.

Thomas Hutchinson was sworn and testified. He testified he purchased the property in 1999. He wanted a property that fronted the bay. He believes it is a rancher built in 1963. After providing a history of the property and his version of how the parties got to where they are which was based upon a mistake or misunderstanding as to his thought that the decks were permitted based upon his discussions with Borough Officials.

Blaine Steinman was sworn and testified. He testified as the project architect. He testified he designed the renovations and was at meetings with Borough Officials regarding the decks and the original plans. He testified the Romeo and Juliet balconies provided decorative element and are not really a deck at all but safety barriers in light of there being installed sliders. He placed into evidence A-1 through A-5. A-2, 3 and 4 are photographs which were authenticated by Mr. Steinman. He testified as to proposed changes to close off the one doorway and provide a planter on ground level as shown in the photographs. He testified that the Juliet barriers make the most sense to allow the doors to remain and to allow open air and space into the structure.

John Halbruner was sworn and testified. He testified he is a licensed engineer and planner. He was hired to do the as built survey. He testified that in his opinion the Juliet barriers do not require variance relief and are merely architectural adornments and are permitted under the ordinance. In either event, Mr. Halbruner then proceeded to present variance testimony under the benefits or C2 criteria. He testified that in his opinion, the streetscape is enhanced by the Juliet barriers which also break up a long solid wall running along the property line. He testified in his opinion the planter does not require a variance and can remain. Four members of the public spoke in opposition to the planter being left in the yard for Sunrise Drive but generally did not

oppose the allowance of the Juliet barriers to remain as an encroachment into the side yard. After public testimony the Applicant withdrew the request to leave the planter in place and have agreed to remove the planter. Applicant accepted as a condition of approval to remove the planter and comply with all of Mr. Maffei's comments on his Review Memorandum of November 2, 2021. The Borough agreed to provide a temporary certificate of occupancy to the Applicant.

At the conclusion of the matter, the case was returned for Board review and findings of fact. After findings of fact and review, a motion was made to grant the hardship variance for the pre-existing nonconformities by member James Fleischmann and seconded by Member Brian Reynolds with all eligible members voting in favor of approving the existing nonconformities at the subject parcel.

A second motion was made to approve variance relief for Juliet railings which was made by member Brian Reynolds and seconded by member Beth Tipping with all eligible members voting in favor of granting variance relief for the Juliet barriers.

The Board then undertook either old or new business of which there was none. The Board then opened the meeting to public comment on any topic not related to a specific application and there was none.

There being no further business to conduct the meeting was closed at 10:19 PM.

Submitted,

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