AVON-BY-THE-SEA PLANNING BOARD MEETING MINUTES JULY 14, 2016

A REGULAR MEETING OF THE AVON-BY-THE-SEA PLANNING BOARD was held on the above date at the Avon Elementary School, Fifth Avenue, Avon, NJ

Chair R. Maloney opens the meeting in compliance with Open Public Meeting Law. Mr. Maloney reads the Resolution memorialized at the May 12, 2016 meeting that has established Board Meeting Procedures. Mr. Maloney leads the Pledge of Allegiance to The Flag.

PRESENT: Davey, Egan, Ernst, Kenny, Maloney, Mazouat, McGovern, McLaughlin, Oldakowski, Ryan, Talmage, Engineer Rooney, Board Attorney Kitrick

ABSENT: Mayor J. Magrini, Commissioner R. Mahon

First on the agenda is the approval of the June 9, 2016 meeting minutes.

MOTION by Egan second by Ryan to approve minutes as written.

The vote:

Aye: Davey, Egan, Ernst, Kenny, Maloney, Mazouat, McGovern, Oldakowski, Ryan

Abstain: McLaughlin, Talmage

No: 0

Next on the agenda is the Resolution for Borough of Avon subdivision of the property at 435 Sylvania Avenue.

MOTION by Maloney second by Kenny to memorialize Resolution.

The vote:

Aye: Davey, Egan, Ernst, Kenny, Maloney, McGovern, Mazouat, Maloney, Ryan

Abstain: McLaughlin, Talmage, Oldakowski

No: 0

Motion is passed

Next on the agenda is the Resolution for Kerry Boyle 434 Jefferson Avenue.

MOTION by Ryan second by Egan that resolution be memorialized.

The vote:

Aye: Davey, Egan, Ernst, Kenny, Maloney, Mazouat, McGovern, Oldakowski, Ryan,

Abstain: McLaughlin, Talmage

Motion passed.

Next on the agenda is the Resolution for Kathleen & Brian Fitzpatrick 419 Norwood Avenue.

MOTION by Maloney second by McGovern to memorialize resolution.

The vote:

Aye: Davey, Egan, Ernst, Kenny, Maloney, Mazouat, McGovern, Oldakowski, Ryan

Abstain: McLaughlin, Talmage

No: 0

Motion is passed.

Next on the agenda is a new application by Maryanne and Gerald Freda seeking Variance Relief "C" (Bulk) and Variance Relief "D" (Use) for property located at 428 Garfield Avenue, Block 26 Lot 14.

Vice Chair Teresa Egan will sit as Chair for this application as Mr. Maloney has a conflict.

Seven member board needed for this application.

Board Attorney swears in Mr. Freda, attorney for the applicant Jeffrey Beekman Esq., architect Paul Moore and board engineer C. Rooney.

Entered into evidence are exhibits **A1**- Revised Plan color coded, dated 6/27/2016

A2- Aerial Photo of vicinity of property

Mr. Freda testifies to the board and describes the application and their proposal. There is an existing front home they plan on adding an addition to. They also propose to demolish the rear garage and separate cottage and build a 2 story garage apartment.

He and his wife plan on retiring in Avon.

Architect Paul Moore describes the revised plans dated 6/27/2016. He addresses the site layout, existing and proposed plans for the property. Proposed elevation for the garage apartment will be 23'. Egan asks if the height can be lowered. Moore says that it is possible. Setbacks will be significantly improved at the accessory structure. The building area will be reduced. There will now be 4 parking spots. The proposed plan brings down the impervious to

conforming. Mr. Rooney asks for a breakdown of existing and proposed impervious. Mr. Moore will add a table of break down on the revisions submitted if approved. Hard ship is the existing nonconformities.

Questions from the audience?

Comments?

Dorothy Reibrich 422 Garfield Avenue is sworn in. Questions the height of the garage apartment. States that she does not see the hardship.

At this point Mr. Kitrick states that he and Mr. Beekman had a discussion as to whether the new construction would be required to follow COAH restrictions. Mr. Beekman states that the clients would have no objections to following Borough's COAH ordinance.

Comment from the public.

William Hopkinson 424 Garfield Avenue is sworn in. In favor of the front addition as the proposed changes will make the house fit in with the surrounding homes. Mr. Hopkinson also states that the proposal for the rear property would eliminate fire hazards and significantly clean up the appearance of the property. He fully supports the project.

Back to board for discussion. Vice chair Egan believes that the proposal is a huge improvement for the lane, however she still has an issue with the 23' proposed height. Feels it could be built lower.

Ernst speaks in favor of project. Ryan is also approves of the proposal. Davey agrees as does Kenny.

MOTION by Ernst seconded by Kenny that application be approved with the conditions regarding COAH regulations and Mr. Rooney's suggestion that relief be given for the rear house exterior stairs and landing.

The vote:

Aye: Davey, Ernst, Kenny, McLaughlin, Ryan, Talmage

No: Egan (qualifies that she has a problem with the height)

Abstain: 0

Motion is passed.

Next on the agenda are Glen and Cathleen Greenlow in regards to property their property at 114 Sylvania Avenue Block 22 Lot 11.01. They are seeking a Variance Relief "C" (Bulk). The property has a detached rear apartment. The proposal is an expansion of a non- conformity.

Chair Richard Maloney sits for this application.

Attorney Michael J. Vitiello Esq. represents the applicants. He is sworn in with Robert Yuro Planner & Engineer and Mr. Greenlow.

Mr. Vitiello enters into evidence **A1-** Plans dated 8/20/2014 and Revised Plans Dated 2/28/2016.

Mr. Yuro addresses the board. He describes the property and the proposal to remove the paver patio at the rear of main dwelling and replace with an inground 12' x 20' pool. Total impervious coverage on property will remain the same at 56.6%. They intend to put in a 4x4 pad for pool equipment. They are not adding any walkways.

Questions from the board.

Mr. Rooney questions the plans being signed by Brian M. Leff. Mr. Yuro testifies that he is familiar with the plans.

Board Member McLaughlin questions if there are A/C pads in the rear apartment. Mr. Yuro states that there are wall units.

Board member Kenny questions the amount of parking spaces (4 are required). Mr. Yuro states that the applicants purchased the house with the existing parking conditions.

Mr. Vitiello states that pool fence regulations will be complied with.

Board Engineer Rooney goes over his review letter.

Questions from the board? No

Comments from the board? No

Questions from the public? No

Comments from the public? No

Mr. Vitiello sums up. States that the positive out way any negatives to the surrounding area and requests the board approve this application.

Chair Maloney believes that the applicants have made a good effort to swap out the patio for the pool. He is in favor of the application.

Egan states that she is also in favor.

MOTION by Maloney seconded by Ryan that the application be approved as proposed.

The Vote:

Aye: Davey, Egan, Ernst, Kenny, Maloney, McLaughlin, Ryan.

No: 0

Motion passed.

Next on the agenda is an Amended Application by Paul Amato to construct a single family residence on Lot 11 Block 54.

Board members T. Egan & M. Davey recuse themselves for conflict of interest.

There will be nine eligible voters.

Attorney Tim Middleton representing Mr. Amato. Addresses the board that he has been informed that there are several other attorney's involved representing neighbors. He will give a brief overview this evening. It is his understanding that tonight the attorney's will give legal arguments and will proceed to give factual arguments at the next meeting.

Attorney Craig Gianetti introduces himself on behalf of Mr. Howard Hardie, 15 Washington Avenue.

Attorney Gary Hall on behalf of Corrine & Robert McGovern, 60 First Avenue.

Attorney Nicholas Falcone on behalf of Mary Pat & Christopher Roenbeck 80 First Avenue.

Mr. Middleton gives an over view of the Block 54 Lot 11 located on the Shark River. He notes the nonconforming 10' of frontage on First Avenue, driveway location in existence in 1955 is currently nonconforming, garage on property. He also notes that the garage received no damage from the Super Storm "SANDY". When Lot 11 was created in 1951 it was fully conforming in all respects. Will establish that Lot 11 is Grandfathered. This is a straight forward single family residence application. Mr. Middleton offers that Mr. Amato had requested and received a letter of approval by the state to allow entrance to Lot 11 from state property.

Attorney Craig Gianetti refers to his letter dated May 11, 2016 to the board concerning the deficiency in the Notice. In particular in a letter dated April 11, 2016 signed by Rich Bornazian of the DEP Natural & Historical Resources never gave Owners Consent. Mr. Gianetti States that the letter also incorrectly states that Mr. Amato owns Lot 11, where CMM Construction is the owner. The letter refers to a home on Lot 11 where in fact there is none. Mr. Gianetti believes the board cannot hear the application until they get correct state letter.

Mr. Gianetti addresses the issue of Res Judicata . He gives the definition and offers the reasoning as to why it applies to Mr. Amato's application. Mr. Gianetti states that Mr. Amato's inference that the board's denial of the application triggers Inverse Condemnation. The statute of limitations on the Inverse Condemnation is 6 years. The denial of the application by Resolution in 2002 is the same application presented tonight.

Entered into evidence by Mr. Gianetti **OH1-** Letter from the State DPE dated November 8, 2001 addresssed to Mr. Amato. The letter did not support the request to use state land for planned emergency access. When Mr. Amato purchased the lots he did not have permission to develop on lot 11. Application falls in line with the standard of Res Judicata. Mr. Gianetti asks that the board deny the application.

Attorney Gary Hall representing Corrine & Robert McGovern. He refers to a letter he sent dated May 4, 2016 presenting the same arguments as Mr. Gianetti. States that there were four hearings on the Block 54 Lot 11. The board has denied previous applications. He refers to the Resolution of April 18, 2002. The ten foot wide driveway is not sufficient to serve a large single family home and the amount of traffic The letter from the state is not an agreement or easement, it for emergency access only. Res Judicata again nothing has changed in the application. Reason being that no one is entitled to two bites of the apple. The neighbors have to come out every time there is an application and pay their professionals as well on an application that he believes was adjudicated in 2002. The neighbors are entitled to a decision.

Atttorney Nicholas Falcone on behalf of the Roenbecks. He and his clients are just jumping in now. He will not get into the arguments this evening.

Mr. Middleton again defines Res Judicata. He believes that Res Judicata can be liberally used. He states that this application clearly does not have the same circumstances as the 2001 application. Mr. Middleton believes that the State letter dated April 11, 2016 if presented in 2001 the application could have been approved. Mr. Middleton references some portions of the Resolution of denial memorialized April 18, 2002.

Mr. Gianetti addresses the board, references Mr. Middleton's remarks as to the letter from the State letter dated April 11, 2016. The letter holds no water. Believes that the board should deny on Res Judicata.

Attorney Kitrick states it is his recommendation that the board let the case go forward. The issue of "OWNERS CONSENT" he would like to see more support on this. The applicant will return at the next meeting. Applicants should be ready to present their case.

The application will be continued to the August 11, 2016 meeting being last on the agenda.

Motion by Maloney that application be continued to the August 11, 2016 meeting seconded by Ryan.

The vote:

Aye: Ernst, Kenny, Maloney, McLaughlin, Ryan

No: 0

Motion passed.

MOTION by Maloney to adjourn.

Aye: All

Motion is passed.

Minutes approved at the August 11, 2016 meeting.

MOTION to approve Minutes as written by McGovern second by McLaughlin

The vote;

Aye: Ernst, Kenny, Maloney, Mazouat, McGovern, McLaughlin, Oladakowski, Ryan, Talmage

No: 0

Sheila Sullivan / Planning Board Secretary