

AVON PLANNING BOARD MEETING APRIL 11, 2013

Chairperson Richard Maloney opens the meeting at 7pm reads opening statement and leads flag salute.

Attendance:

Davey, Egan, Ernst, Kenny, Mahon, Maloney, F. McGovern, R. McGovern, Ryan, Talmage, Board Charlie Engineer Rooney, Attorney Mark Kitrick

Absent: McLaughlin, O'Malley

Recuse: Placitella

First on the agenda is the approval of the March 14, 2013 meeting minutes as written.

Motion to approve by Chairperson Maloney, seconded by Davey.

The vote:

Aye: Davey, Egan, Ernst, Kenny, Mahon, Maloney, F. McGovern, Ryan, Talmage

No: 0

Abstain: R. McGovern

Absent: McLaughlin, O'Malley

Motion approved

Second on the agenda is the approval of the resolution granting Bulk Variances for Monty & Michele Forrest (237 Norwood Avenue) .

Motion to approve by Maloney, seconded by Ernst.

The vote:

Aye: Davey, Egan, Ernst, Kenny, Maloney, F. McGovern, Ryan, Talmage

No: 0

Absent: McLaughlin, O'Malley

Motion to approve is passed

Third on the agenda is the approval of the resolution granting a Bulk & Use variances for Thomas Nappo/ Denise Defilippis (113 Lakeside).

Motion to approve by Chairperson Maloney, seconded by Egan.

The vote:

Aye: Davey, Egan, Ernst, Maloney, F.McGovern, Ryan,

No: 0

Abstain: Kenny, R. McGovern, Talmage

Absent: McLaughlin, O'Malley

Motion to approve is passed

Fourth on the agenda is a new application for a Subdivision Approval of the property located at 301 Washington Avenue , Block 48.01 Lot 14.02 owners being Michael & Marilyn Placitella.

Attorney Kitrick states that board members Egan, Kenny, Mahon & R. McGovern will be recusing themselves from this hearing. There are six eligible voters for this hearing.

Attorney Michael Rubino, Mr. & Mrs. Placitella, Architect Tom Peterson and Engineer Charlie Rooney are sworn in. Mr. Rubino marks into evidence A1 (subdivision revised plans), A2 (revised survey dated 1/29/2013), A3 (Photoboard of house and surrounding area) and A4 (subdivision plan).

Mr. Rubino states that as Mrs. Placitella is a planning board member. Mr. Placitella & Mr. Peterson will be doing most of the testifying. The application is for a subdivision of 301 Washington Avenue. Mr. Rubino gives the lot characteristics existing and proposed for each lot. Both proposed lots are deficient in lot area where 7000' is required. Both proposed lots are deficient in depth. The current house at the site comes within 5' of the rear yard of the property and substantially impinges on the neighbor to the rear. No front yard, side yard or rear yard variance required as proposed houses are laid out. Mr. Rubino states that by subdividing the property and relocating the setback of the houses they are removing the rear yard setback violation, with the two proposed houses fitting in generally with the houses in the area.

Mr. Placitella testifies that he and his wife have lived in Avon 27 years, 19 at this property. He and his wife had planned to spend the rest of their lives in Avon. The storm event "SANDY" significantly damaged the house. The costs to repair the house is not affordable for them. Subdividing the property and selling off one lot would make rebuilding affordable. A letter of "SUBSTANTIAL DAMAGE DETERMINATION" issued by the Borough of Avon is entered as exhibit A5. He and his wife wholeheartedly believe that the proposal would be an improvement to the area. No questions from the board of Mr. Placitella.

Mr. Rubino introduces Mr. Peterson to give testimony on the proposed houses and site plan. Mr. Peterson describes current lot as nearly a double lot. Gives dimensions of the lot and reiterates the violation of the 5' rear yard setback as significant. The proposed houses would be in keeping with the typical size of homes currently being built in town. Mr. Peterson states that keeping the oversized lot there is strong potential for a very large house to be built there, quite possibly one of the largest in town. He believes this would not be in keeping with the area. Mr. Peterson introduces exhibit A6 (FEMA ADVISORY FLOOD ELEVATION), A7 (copy of tax map page of area showing surrounding lot sizes) and A8 (generic house drawing). Mr. Peterson describes the proposed lot sizes as being in compliance with what you see around the neighborhood. Mr. Rubino asks Mr. Peterson if it is his opinion that if the board approves the application would it negatively affect surrounding properties? Mr. Peterson states that there would be no negative affect.

Mr. Rubino addresses Engineer Rooney's review letter.

Discussion between Chairperson Maloney and Mr. Peterson regarding Mr. Peterson's testimony to the size of the surrounding lots in the neighborhood as being justification for board approval. Chairperson Maloney states that the proposed subdivision will set precedent and is a great concern. Chairperson Maloney refers to the Land Development Ordinance and the minimum size lot requirement being 7,000 sq ft. Mr. Peterson states that in this area there are many undersized and it is the way the lots are developed that will make them indistinguishable from surrounding properties.

No questions from board on Mr. Peterson's testimony.

Chairperson Maloney asks for Questions from the public.

Pat McHugh of 314 Lincoln Avenue.

Mr. McHugh asks Mr. Peterson if he knows if the under sized lots mentioned in the area were created prior to the current zoning requirements? Mr. Peterson believes the referred to lots were created prior to the current zoning requirements.

Linda Henderson of 108 Second Avenue asks Mr. Peterson if he had an elevation certification for proposed properties? Mr. Peterson did not.

Pat O'Reilly of 230 Washington Avenue and asks Mr. Peterson about the proposed front yard set backs for the homes. Mr. Peterson responds that

the properties will have to meet the setback requirements which are the average of the block. Mr. O'Reilly asks about the proposed height of the houses. Mr. Peterson responds 35'.

Lind Henderson asks Mr. Placitella if they had flood insurance? Mr. Placitella answers yes.

Pat McHugh asks Mr. Placitella how they can be sure that the proceeds of the one lot sale be enough to subsidize the building of their family home?

Mr. Rubino interjects that the question is not relevant. Mr. McHugh presses the point that they are asking the board to approve a plan that creates two undersized lots, how does that benefit the community?

Anita Dugan of 127 Garfield Avenue asks Mr. Rubino what guarantee can they give that if the subdivision is approved that the Placitellas will not sell the lots. Mr. Rubino answers that is correct there is no guarantee.

Chris Merkler of 408 Washington Avenue asks if height of proposed houses will be conforming. Mr. Peterson answers yes.

Maggie Merkler of 408 Washington Avenue asks what can the height be for these two houses on undersized lots? Mr. Peterson explains that the ordinance for height is based on the width if the property not the length.

Michael Caringi 38 Garfield Avenue asks Mr. Placitella if he were on this board how would he vote? Mr. Kitrick tells Mr. Caringi that the question is not relevant.

Chairperson Maloney brings the discussion back to the board.

Mr. Ryan comments on the fact that he happens to live on an undersized lot on Washington Avenue and is sure a lot of the surrounding houses are conforming lots.

No questions from the board. Chairperson Maloney opens the floor to the public for comments.

Joe Ventimiglia of 111 Garfield Avenue is sworn in by Mr. Kitrick speaks in favor of the application.

Peggy Scalise of 106 Washington Avenue is sworn in by Mr. Kitrick. Mrs. Scalise speaks in support of the application.

Noel Winberry 412 Woodland Avenue is sworn in by Mr. Kitrick. Mr. Winberry does not want to see a very large house on the property and would prefer a subdivision.

Michael Caringi 38 Garfield is sworn in by Mr. Kitrick. Mr. Caringi is concerned that by approving the application the board would be setting a precedent. He strongly disagrees with an approval.

Linda Henderson 108 Second Avenue is sworn in by Mr. Kitrick. Ms. Henderson states her concerns that by allowing this the board is setting the stage for future variances.

Anita Dugan 127 Garfield Avenue is sworn in by Mr. Kitrick. Mrs. Dugan speaks against the application as it would set a precedent.

Maggie Merkler 408 Washington is sworn in by Mr. Kitrick. Mrs. Merkler is advised by Mr. Kitrick to reserve her comments to those that are relevant to this hearing. She does not see how this approval would be fair to anyone in town.

Lou Amato 103 Third Avenue is sworn in by Mr. Kitrick. Mr. Amato states that he is the property owner referred to in Mr. Rubino's testimony as the neighbor the Placitella's property impinges on in the rear yard. Mr. Amato states that he is very much in favor of the application.

Kevin Dugan 127 Garfield Avenue is sworn in by Mr. Kitrick. Mr. Dugan comments that approval of this application would open the flood gates for further applications to create undersized lots and strongly opposes the approval.

Pat McHugh 314 Lincoln Avenue is sworn in by Mr. Kitrick. Mr. McHugh states that he does not see the benefit to the community if the application is approved. He feels that there are other available solutions.

Joseph Scalise 106 Washington Avenue is sworn in by Mr. Kitrick. Mr. Placitella speaks highly of the Placitella's character and feels strongly in support of the approval.

Chris Merkler 408 Washington Avenue is sworn in by Mr. Kitrick. Mr. Merkler states that a precedent will be set by granting the approval to a board member, with a history of voting against like proposal, to subdivide and make undersized lots. We could be setting the town up for future law suits. Mr. Rubino interjects and addresses Mr. Kitrick that he objects to Mr. Merkler's remarks regarding Mrs. Placitella's seat on the board. Mr. Rubino states that any board member has the right to appear before the board with an application without being put in a better or worse spot. They have the right to be treated as any other applicant.

Kiernan Dugan 709 Ocean Avenue is sworn in by Mr. Kitrick. Mr. Dugan states that he does not think that hurricane "Sandy" should not be used as a hardship.

No more comments from the public.

Mr. Rubino comments that they have tried not to make this a case about personalities. If subdivision not granted one extremely large house can be built. The subdivision would be a positive alternative. The relief of the 5'

rear yard violation being substantial. Mr. Rubino states that the people living closest to the property commented in favor to the proposal while those opposed do not live in the neighborhood. Mr. Rubino believes there is substantial evidence that the proposal would not have a negative impact on the area.

Mr. Kitrick addresses Mr. Rubino's statements regarding Mrs. Placitellas being a member of the planning board and agrees that it should have no relevance to the board's decision making process. He concurs with Mr. Rubino that the applicants do not gain or lose additional rights if they are a member of the board. The board should also weigh the evidence from the audience while applying the law to the facts. Mr. Kitrick asks that the board members give a reason for their vote either way.

Chairperson Maloney agrees with Mr. Kitrick's request for individual reasons behind the votes. Mr. Maloney is sympathetic to the Placitella's situation. Mr. Maloney believes that the overall application if approved would set a precedent.

Board member Ryan agrees with Chairperson Maloney in regards to keeping with the Master Plan and setting a precedent. He is not in favor of approval.

Board member Talmage shares concerns about setting a precedent and is not in favor of this application.

Board member Frank McGovern feels approval would open a door they will be sorry for later. He is not in favor of application.

Board member Ernst states that there are a lot of large pieces of property existing that are also in keeping with the character of the town. Does not feel oversized lots should be broken up. He is not in favor of the application.

Board member Davey not in favor of the application because of the precedent setting factor.

Chairperson Maloney states that it is a negative motion therefore a YES vote would be to deny the application.

Chairperson Maloney makes a motion that the application be denied seconded by Talmage.

The vote:

Aye: Davey, Ernst, Maloney, F. McGovern, Ryan, Talmage

No: 0

Recuse: Egan, Kenny, Mahon, R. McGovern

Absent: McLaughlin, O'Malley

Motion for denial of subdivision is passed.

Motion to adjourn by Ryan second by F. McGovern.

Aye: All

Minutes approved at the May 9, 2013 meeting.

Motion to approve by Chairperson Maloney second by Ryan.

The vote:

Aye: Davey, Ernst, Kenny, Maloney, F. McGovern, Ryan, Talmage

Absent: Egan, McLaughlin, O'Malley

No:

Abstain: Placitella

Sheila Sullivan/ Board Secretary