

**Minutes of the Avon Planning Board—June 10, 2010**

Chairman Richard Maloney opened the meeting at 7 PM.

Attendance-

Present-Davey, Egan, Ernst, Kenny, McGovern, McLaughlin, O'Malley, Placitella, Talmage,  
Maloney

Absent- Mahon, Ryan

Also Present- Mike Rubino Esq., (Board Attorney), Charles Rooney (Board Engineer) and  
Cliff Brautigan (Planning Board Sec.)

The first hearing scheduled for this meeting was for Mr. & Ms. Al & Elaine DeVita of  
208 Roosevelt Ave. They were represented by Attorney Dennis Barrett.

Attorney Rubino swore in both Mr. & Mrs. DeVita.

Mr. & Ms. DeVita are requesting permission to allow a deck previously installed in the rear yard  
(by Ordinance the front yard) of their residence at 208 Roosevelt Ave. The house is located on  
Shark River and by the Avon Ordinance has two fronts, one on Roosevelt Ave and one is on the  
river.

Attorney Barrett made an opening statement and provided 22 photographs (Marked Exhibits A-  
1 to A-22. In his opening statement Attorney Barrett stated this construction was not completed in  
bad faith, but was completed in what the applicant felt was the proper way to proceed. He  
explained that 2½ years ago the DeVita's purchased the property from the estate of Mickey  
Langdon. The first thing they discovered was the previous owners started but did not complete the  
process of obtaining a CAFRA permit. The floating dock and the bulkhead previously installed  
by the Langdon's were oversized and no CAFRA permit had been obtained. Therefore, CAFRA  
became involved. As a result of CAFRA, they were required to reduce the dock and bulkhead by  
40%.

He continued, if you examine the way of life in this area along the river you will find that people  
live in what they think of as their back yards. They live in their back yards during the summer. It is  
a way of life in this area.

Mrs. DeVita is called as a witness and is sworn in by Attorney Rubino. When questioned by  
Attorney Barrett she explained that we purchased this property in January of 2008. It is not the

first residence we had purchased in Avon. About twenty-six years ago, we purchased a condominium at 521 Ocean Ave. Then we bought the Hennesy House on Sylvania Ave. and ran a B & B. for about ten years. After a period of time, we wanted to sell it and no longer be in the B & B business. So we did sell it. As we looked for a house to rent we ended up renting one on Roosevelt Ave.

We found Roosevelt Ave. a different block, from any of the other blocks in Avon that we had lived on. We rented on Roosevelt Ave. for 8 years and fell in love with the area. When a house became available on Roosevelt Ave. we decided to purchase it and live on the river. We live in the rear yard, facing the river and never thought of it as a front yard.

Attorney Barrett then called Mr. DeVita to appear as a witness, and he was sworn in by Attorney Rubino.

Mr. DeVita testified that when the owner of this house died we purchased the property, and at this time a CAFRA permit was pending. We agreed to close for the house, and deal with the permit issue over due course after CAFRA made its final ruling. CAFRA then informed us the dock and deck extending into the river were both illegal and the size had to be reduced to 11 feet in length by 8 feet wide. One of the main reasons we purchased the property was because of the waterfront location and we were now faced with a situation where our use would be limited. We did not want to agree with this arrangement, but eventually agreed providing we could increase the size of the adjoining boardwalk /deck that extended back into the yard. The seller checked with the town and was told that this was a CAFRA issue and no Avon permit was required. To confirm this we also went to the town office ourselves and explained that we were having the dock replaced and needed to expand the boardwalk / deck into the yard. We were also told that no Avon permit was required since it was a CAFRA project. Based on this information we agreed to terms with the contractor to take out the dock and deck, and at the same time to replace it with a deck in the rear yard. Unfortunately, we had no knowledge that coverage limits applied since we were told that no permit was required, and we had no knowledge of two front yards.

We did get all the necessary permits from CAFRA. The seller paid for the dock reduction and boardwalk, but we paid for the extension of the boardwalk that was a substantial investment on our part. We would not have agreed to this settlement if we knew of these restrictions.

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Meanwhile we hired a contractor who had to bring in a barge in to take up a good part of the deck and dock extending into the river. At the same time, he agreed to construct a deck in the rear yard.

Attorney Barrett showed Photos 12 to 17, and explained that seven homes on Roosevelt Ave. have docks and decks. Photo 11 supposedly showed a house on Poole Ave where the entire back yard is taken up by the deck and dock. In answer to a question Mr., DeVita stated some of the decks were old and some appeared to be relatively new. Picture 22 shows the DeVita dock as it now exist.

Mr. DeVita stated, I believe a neighbor told us you cannot build a deck in your front yard and you have two front yards. This was the first we had heard of having two front yards. We returned to the Borough Office and met with Pat McMahon. He showed us the Ordinance that you have two front yards, and also the size deck allowed. You either have to remove it or go to the Planning Board to keep it.

Unfortunately we found out to late that we have two front yards. An honest misunderstanding on the part of ourselves and the town regarding our original inquiry. We did not intentionally mean to break any rules. If we had known of this before construction, we would have chosen a very different settlement path with the sellers to finalize the sale.

We would like to be able to enjoy our property as originally intended and would have preferred not to reduce the size of the dock. The deck is visually pleasant from the ground as well as from the river. It is unobtrusive and not in any way distasteful or obstructive. It does not block the view of any neighbors.

Engineer Rooney reviewed his report of May 26, 2010.

In answer to a question from board member Talmage, concerning the square feet removed and the size of the current deck, Mr. DeVita agreed the size of the current deck in the yard exceeds what had been removed at the request of CAFRA.

Board member Placitella asked about your use of the residence as a two family house. Mrs. DeVita responded that we use it only for family and friends who visit. My sister uses it in August, and we have other family and friends who use it in June and July. We rented it once to someone we did not know and would not do it a second time. It did not work out well.

Attorney Barrett- Since January 2008 it has not been rented.

Board Member Maloney- How do you know it is a legal two family?

Answer- When we purchased it we were told it was a two family by the real estate agent who was Jersey Shore Agency in Neptune. The owner also told us it was a two family since he was paying two water bills.

When the meeting was opened to the public Pat Mc Govern of 7 Washington Ave. asked to speak. She spoke in favor of the application being approved.

Board Member Maloney asked about the impervious coverage. After some discussion it was determined that because of Roosevelt Ave. it is 50% plus or minus.

A number of board members spoke about the deck being oversized for the property.

Motion by Maloney, second by Ernst, that the application be approved as submitted with the following stipulations.

1. The residence will become a one family residence and the applicant will take the legal steps to make it a one family residence. They will file the deed indicating this in Freehold. Failure to do this will void this resolution.
2. A variance for the requested deck is allowed.
3. A variance will be allowed for the existing East side yard set back of 3 feet, and the lot area being undersized at 6659 Sq. feet.
4. A variance will be allowed for the combined side yard set backs, at 9.8 feet that exist where 12.5 is required.
4. A variance will be allowed for the existing second floor porch.
- 5 An easement will be allowed by the applicant for the storm pipe drainage to the rear of the property as required by the Borough of Avon.

Vote on the motion-

Yes- Davey, Ernst, Maloney

No- Egan, Kenny, McGovern, O'Malley, Placitella, Talmage,

The motion was not approved.

McGovern asked if a second motion be made changing the original motion.

Motion by O'Malley, second by Egan, that the application be approved with the following stipulations.

1. The residence will become a one family residence and the applicant will take the legal steps to make it a one family residence. They will file the deed indicating this in Freehold. Failure to do this will void this resolution.
2. A variance for a deck of no more then 500 feet be allowed not including the dock and the bulkhead.
3. A variance will be allowed for the existing east side yard set back of 3 feet, and the lot area being undersized at 6659 Sq. feet.

4. A variance will be allowed for the combined side yard set backs of 12.5 feet as 9.8 feet exist
5. A variance will be allowed for the existing second floor porch.
6. An easement will be allowed by the applicant for the storm pipe drainage to the rear of the property as required by the Borough of Avon
7. The applicant will provide a plan to Engineer Rooney as to how and what part of the deck is to be removed.

✱ Vote on the Motion

Yes- Davey, Egan, Ernst, Kenny, McGovern, O'Malley, Placitella, Maloney

No- Talmage

The motion was approved

The second application was from Frank & Emily Cannone of 29 East End Ave.

Mr. Cannone stated that in December we purchased a home that is in need of many repairs, as the elderly owner did not do much to keep the house up to current standards. This small addition will allow us to utilize this residence as a permanent home.

Tom Petersen, the Architect made a presentation of what the applicant wants to do and the variances required. This includes the lot size that the house is on, a 50 by 75 foot lot. It is more of a summer home than a residence that can be used all year. Exhibit A-1 was an aerial photo showing the house and surrounding properties. It is a two story home and the additions will not change any of the set backs in the front, side, or rear of the home. The lot coverage will increase from 38.5% to 40.3%. The impervious coverage will be decreased from 57.8% to 52.3%.

All of the variances requested are existing except the increase in building lot coverage. Most of the addition will be to the second floor.

Engineer Rooney gave his report dated April 5, 2010.

When the application was opened to the public Joe Simone of 24 Norwood Ave. spoke in favor of the application being approved, as it will be an improvement to the area. Kathy Lojic spoke in favor of this being approved, as it would be a wonderful improvement to the neighborhood.

Motion by Ernst , second by Egan, that the plans be approved as submitted with the following stipulations.

1. The following pre-existing variances are allowed:
  - A. A lot area of 3,725 square feet will be allowed, as 7,000 square feet is required.
  - B A lot depth of 75 feet will be allowed where 100 feet is required.
  - C. A side yard setback of 3.3 feet will be allowed where 5 feet is required.
  - D. A rear yard set back of 21 feet will be allowed where 25 feet is required.
  - E. A side yard setback for the garage of 1.46 feet will be allowed where 5 feet is required.
  - F. A rear yard setback for the garage of 0.8 will be allowed where 6 feet is required.
2. A building lot coverage of 40.3% will be allowed where 35% is required.
3. An impervious lot coverage 52.3% will be allowed where 50% is required.
4. The distance between the residence and the garage will be at 9.5 feet as 25 feet is required.
5. A side yard set back for the driveway of 2 feet will be allowed as 3 feet is required
6. The existing paved patio will be removed to reduce the impervious coverage

Vote on the motion

Yes- Davey, Egan, Ernst, Kenny, McLaughlin, O'Malley, Placitella, Talmage, Maloney

No- None

The motion is approved