

Minutes of the Avon planning Board –March 12, 2009

The meeting was opened at 7:05 PM by Chairperson Richard Maloney.

Attendance:

Present-Ernst, Kenny, McLaughlin, Ryan, Talmage, Maloney, Placitella,

Absent-Davey, Egan, Mahon, McGovern, O'Malley

Also Present- PB Attorney Michael Rubino, PB Engineer Charles Rooney, and PB Sec. Cliff Brautigam.

Board member Placitella will not be participating in the first hearing, Hertler/Quirk/Avon Board of Adjustment as she was noticed.

The first hearing was for Mr. & Ms. Carl Hertler. They are appealing a decision of the Zoning officer for approving a plan to allow Mr. Jeff Quirk to build a front porch on his residence at 227 Roosevelt Ave. The proposed porch will be located on the river side of the residence. This is the south side of the property.

Mr. and Ms. Hertler are represented by Attorney R. S. Gasiorowski, Esq.
Mr. Quirks represented himself.

Attorney Gasiorowski Introduced the following exhibits:

O-1 The Bldg. Sub Code Permits of 12/11/08 and 12/30/08

O-2- Survey dated 6/30/94

O-3 Letter from C. Rooney dated March 10, 2009

O-4 Photograph of the Quirk house.

O-5 Survey of the Quirk property dated 9/20/07

O-6 Photo of front of Quirk house facing the river (Referred to by Attorney Gasiorowski, as a picture of Mr. Quirk's second floor)

A-1 A survey of the Quirk property dated 6/30/94

A-2

A-3 Letter from C. Rooney dated March 10, 2009

A-4 Plans for the proposed porch

PB-1 Letter from C. Rooney dated March 10, 2009

In his opening presentation Attorney Gasiorowski stated, the porch being built by Mr. Quirk is a second floor porch, and as such it should be considered a deck.

Mr. Quirk interrupted and at this point, and was sworn in by board attorney Mike Rubino. Mr. Quirk replied this porch is to my first floor. It is not a deck. The entrance to the house from the river side is through this door and leads to my first floor dining room.

Mr. Quirk then indicated the plan presented by Attorney Gasiorowski are not what I had intended to propose. This is the plan I intended be proposed.

Mr. Quirk stated the plan I am talking about is shown on a site plan dated 6/30/94 with a drawing of the porch that is not dated. Somehow the plans submitted by the Construction office are not the plans I had intended to submit. Mr. Brautigam indicated he had seen the plans Mr. Quirk is referring to but has not formally approved them.

After a discussion it was determined that different plans had been submitted to the Zoning Office by Mr. Quirk and approved in October 2007, October 2008, and December 3, 2008, all with a site plan dated 6/30/94. Mr. Brautigan stated none of these plans were ever formally acted on by Mr. Quirk as he never applied for a building permit.

Further discussion centered on the question of Engineer Rooney's report, and the plan his report was based on. It would appear his report was based on approved signed plans of 10/17/08 with a site plan dated 6/30/94, and submitted to the Construction Office sometime about Dec 13.2008.

It was then decided to carry this hearing to the April 2, 2009 meeting.

Mr. Brautigan agreed to meet with Mr. Quirk tomorrow morning at 9 AM and review the plan that have not been approved and pass it on to the Planning Board Engineer.

Motion by Ryan. Second by McLaughlin, that the hearing for Hertler v. Avon by the sea Board of Adjustment be carried to April 2, 2009. No new notices will be required.

Vote on the motion.

Yes- Ernst, Kenny, McLaughlin, Ryan, Talmage, Maloney.

No- None

Placitella not voting as she was noticed.

The second hearing was an appeal of a decision made by the Zoning Officer on August 26, 2008

Attorney Tim Middleton was the attorney on behalf of Frank Gorman and Kevin McGorry
Who are the objectors?

Gregg Vella was the attorney for Mr. Roy Ray & Ms. Elizabeth Ray.

Mr. Vella started by stating we have one issue that the board must deal with. Who is the complainant?

Attorney Middleton responded that Mr. Gorman sent a letter on Feb3, 2009 while Mr. McGorry sent the notices out on Feb.25, 2009. Appeals may be taken by any administrative officer

O1- Letter filed by Mr. Gorman

O-2 Application by Mr. McGorry

Attorney Vella stated that for the record I have to know who is the applicant? This case should be dismissed. Gorman writes a letter but does not notice, while McGorry Notices and pays the fees I still want to know who is the applicant?

Attorney Middleton responded that my clients are the applicants, Frank Gorman of 501 Sylvania Ave., Avon, and Kevin McGorry of 507 Sylvania Ave, Avon.

Vella-For the record, the board is allowing Mr. Gorman to testify when he did not pay any fees.

Attorney Rubino asked the question of Atty. Middleton, is the letter sent to Mr. Gorman to be considered an appeal? Atty. Middleton replies that the law deals with this.

The following are put in as exhibits by Atty. Middleton

PB-1 Letter of Feb 13, 2009 to Mr. Gorman from the PB/Zoning Office was placed in to evidence.

PB-2 Plans with no revision date for Ray approved on 8/26/08 consisting of 5 pages.

PB-3 Plans revised and dated 11/10/08.for Ray approved on 8/26/08 consisting of 5 pages.

In response to a question on the dates they were signed Atty. Middleton responds by saying, this is no different then reviewing a contract where only one sentence on one page is to be changed. You look to see if the change was made.

Mr. Frank Gorman is called as a witness by Atty. Middleton

Atty. Middleton and Atty. Vella have an exchange of opinions about Mr. Gorman being allowed to appear as a witness in this case. Atty. Vilia states his concern about Mr. Gorman appearing as a witness in this case. And indicates he is opposed to Mr. Gorman appearing as a witness.

Atty. Middleton-Question- Mr. Gorman state your full name and address

Ans. -Frank Gorman, 501 Sylvania Ave., Avon, NJ.

Atty. Middleton says let me first give an analysis of our position.

Atty Middleton- Sometime this fall the owner of 509 Marine Place submitted plans to Cliff Brautigan for an addition to a two story family house. located in the single family residential zone. Now when you ask for an addition to a two family home in this district a variance is Required.

No where do the plans of 11/10/08 submitted and approved show it as a 2 family house.

No where in the plans does it refer to it as a two family house.

Mr. Brautigan went on the basis that it was a one-family house.

Late in Jan Mr. Gorman notices the roof removed and new one built on.

The applicant was represented by an architect . The Architect who prepared the plans and signed them never indicated it was two family residence. When the plans were reviewed there was no identification of it as a 2 family residence so Mr. Brautigan approved the plans.to remove the roof and change the roof line to allow for the addition under the new roof.

You will hear testimony from Mr. Gorman that in late January while walking his dog he noticed the roof of the house had been removed and a new addition had been constructed.

There are two concepts I want to discuss briefly-

Board Atty. Rubino –lets stop for a moment at this time. There is a letter of Feb. 13, 2009 where Mr. Brautigan as Zoning Officer indicates there is a fee to be paid.

Atty. Middleton- It is unfair to the neighbors to burden the homeowners who have been injured by he oversight of the Zoning Officer and the Architect to have to pay \$900

Atty. Rubino asked a question of Mr. Brautigan- What is the fee?

Mr. Brautigan- The fee is a \$200 application fee and a \$700 in escrow fee.

Atty. Middleton- I represent both Mr. Gorman and Mr. McGorry. The fees have been paid. The law is you can file an appeal ..Another issue is the question of Estoppel. Atty. Middleton reviews some current cases Estoppel ...

Exhibts are marked in to evidence.

PB 2- Plans approved for the Ray Residence dated 21-07-08 and signed 8/26/08. They consist of 5 pages numbered A-1 to A-5

PB 3- Plans approved for the Ray Residence dated 21-07-08 revised on 11-10-08 and signed 8/26/08 They consist of 5 pages numbered A-1 to A-5 and marked FILE COPY

Q-Rubino-Q-What are the plans on 8/26/08, were they amendments to the original plans?

Brautigan-No, that is the date the plans were approved , 8/26/08

Q-Rubino-Q-The plans you have in your hand are dated November 10?

Brautigan-Ans- Correct

Q-C. RooneyDid you see the revised plans? Were these revised plans submitted to your office?

A-Brautigan- No, they were submitted through the Construction Office. I did see them on or about November 10 using the same date as the original plan since this revised plan had only one change. That was the deck on the top floor had to be removed from the plan.

Q-C. Rooney-You signedthe revised plan The revised plan was the same as the original minus the roof deck so I did sign it using the original date of 8/26/08.

Q-C. Rooney-On the revised plan of November 10 page A-2 shows details on the ground floor showing a bed room, family room and kitchen that the original plan did not show?

Brautigan-Correct

Rooney- So the second set of plans does indicate a residential use on the ground floor where the original plans do nopt.

Brautigan- that is correct.

Q Rubino- the revised plans in November were signed with the August date.

Brautigan-Yes, because when the Architect came .In with the revcised plan-Iasked if they were the same plans, did you take the balcony out. She replied yes and there are no other changes. So I used the original date of first set of plans.

Middleton says he will ask Mr. Brautigan a few questions.

(C. ROONEY TAKES NOTES AT THIS POINT)

Q-Middleton –How long have you been the zoning officer.

CB-1 1.1/2 to 2 years

Q- Middleton-The plans came in sometime in Aug

Brautigan-Yes

Q- Middleton- Do you have a procedure you follow?

CB-Yes-I examine the plans and usually will issue a denial form.

TM- In this case I called the Architect and said the plans are fine except I have to deny the plans they have go for a variance. The third floor deck is not allowed. She wanted to come in and go over the plans with me so I agreed to meet with her When we met I showed her the Ord, and she said I will take the deck out.She put an X on the plan and I wrote on that part of the plan no third floor deck allowed,

Q- Middleton At that point were you aware it was a two family house?

CB- no the plan she had given tome and we reviewed did not show an apartment on the first floor.

Q- Middleton If you were aware it was a two family house what would you have done.

CB-I would have sent her for a variance.

Q-

CB- I will sign this plan and you have to submit field copies to the construction office.

Q-Then they have to submitted to the Construction Office for a building permit

CB-Yes

Q- Middleton- How does the construction Office no there are no variances.

CB-When the other plans are submitted to the construction office the clerk in the office would ask me if I reviwed them. When the field copies come in then I am asked to sign off on them.

Q-At some point you were asked to sign the field copies?

CB-yes

Q- Middleton Yes, I visit the site to compare it to the plans submitted. The tax record I looked at in the office does not indicate a two family house.

Q-About when did you realized it was a two family residence.-

CB When I received a letter from Mr. Gorman

Attorney Middleton has no further questions.

Q-Vella-Do you ever look to see what CO's have been issued

CB- no, not normally

(CO's are in the Fire Inspectors Office and not normmally available)

PO-1 A CO issued by Boro April 21,2004 by Tony Vecchio- Fire Inspctor

Vella- When somone comes in for a CO for two family home in a zone that only permits one . Do you get involved in determing if it is one or two famil home?A re you involved in that?

Brautigan-No, not normally

Vella- Mr, Brautigan are you involved in a CO for two family home in a single family district?

Brautigan- No

Villa-When viewing this CO issued on April 21. 2004 how many families does the Borough say are there?

Brautigan -It says type of structure, two family..

Vella- Then would you say that this house is a legal two family?

Brautigan-I would not say it is a legal two family., but it is allowed as preexisting condition.

Villa -You have testified that you have reviewed the utility records of the Borough of Avon and they do not reflect that the house is a two family, is that correct?

Brautigan-I did not say that?.

Villa-What did you say?

Brautigan-That when I visted the house I saw no water meter.

Villa-Do you remember testifying about the utility records for the Borough of Avon?

Brautigan-I did not testify to the Utility records of the Borough of Avon.

Villa-n Do you think it would be of assistance to determine what is at the property to review the tax records.

Brautigan-On all applications, no.

Villa- I am going to show you what is marked as PO-2, which is a copy of the tax records for this property. Do you see where it says water and it says two units. Is that correct?

Brautigan-Correct

Villa- and under water and sewer it also says two units is that correct?

Brautigan-Correct

Villa- Now when you went to the site did you see two electric meter?

Brautigan- I saw two meters, one electric and one gas but no water meter.

Villa- How many entrances did you see?

Brautigan-Two, one in the rear and one in the front which was obviously the front door. One in the rear that was the entrance from the rear yard..

Villa- Did you see two mail boxes?

Brautigan-No, I did not.

Villa-You testified that you received a revised plan and signed them,is that correct?

Brautigan-Yes

Villa- In those revised plans does the first floor show a kitchen, bath, and a bed room?

Brautigan-Yes

Villa – When you reviewed that did you see that?

Brautigan-No, I did not. I went to the part of the plans the architect was suppose to revise. I looked at the pages that included the third floor deck since that was what I asked her to revise. She was suppose to submit new plans based on that. When the plans came in I looked at the sections that included the third floor, she had taken out the third floor deck, and that is what I asked her to revise.

Villa-Did you look at the rest of the plans?

Brautigan-I looked at the second and third floors. as that is what I asked her to revise.

Villa-You looked at the second and third floors of the plans. Is that correct.

Brautigan- Yes I looked at the page with the elevations and I put an X since it was not allowed.

Villa- So what your pointing to is page A-3.

Barautigan-Yes

Villa- So you looked at page three and you skipped page two, Is that fair to say?

Brautigan-Page two in my discussions with the architect did not apply as she was going to change the deck.and nothing else.

Villa- refers to the construction permit (PO-3) . When was that issued?

Brautigan- The construct permit was issued on December 2, 2008

Villa-A letter from the Building Dept. dated November 19, 2008. (PO-4) # 5 says needs Zoning review Who does the Zoning review?

Brautigan-I do

Villa-So on November 19, 2008 the Building Dept. said they know it is a two family home and it needs further review. Is that fair to say?

Brautigan-Yes it need a

Villa- Cointinues referring to my file

Brautigan- Interrups at this point and states that the files you are referring to are not from my file.

Villa- When you say not from your file do you mean they are not from the Borough of Avon file or are they from some other file?

Brautigan-I am saaying they are not from the Zoning Office file. You are showing items from the Construction Office files.

Villa-When there is a question regarding zoning would'nt the construction Office come to you.

Brautigan-Obivously they did not. Since I never received it or saw it saw it.

Villa-Your testimony is that you never reviewed or received this letter or received anything from the Construction Dept. that Construction Dept. knew it was a two family home.

Brautigan-First of all I do not issue building permits. I never saw these before.

Villa-No one from the construction Dept. ever contacted you.

Brautigan- I never saw these before and no one from the Construction Dept, contacted me.

Villa- Do you find it unusual that when there is a question of zoning you are not being contacted.

Brautigan- I was never contacted and I do not know if that is unusual or not.

Villa- Is it fair to say that your testimony is that if you now knew it was a two family home you would have denied it.

Brautigan-Denied it and sent them for a variance.

Middleton-Who is the Build Inspector/

Brautigan-Gimbell

Have you had any conversations with them about this ?

Brautigan-No. They come in about 6:30AM to 8AM. I come in at so 8:30 to 9AM so I re rarely see them. If I have a problem or need to talk with them I leave a note with Shiels to have thewm contact me. So, it is not unusual as we work different times of the day.

Middleton-As an objection. On PO-5 do you know who wrote the notation?

Villa- No, but it is the original handwriting on the original letter

Middleton-Mr. Brautigan, do you know who wrote that notation.

Brautigan- I would have no idea.

Q- Middleton- Do you have a procedure you follow?

CB-Yes-I examine the plans and usually will issue a denial form.

TM- In this case I called the Architect and said the plans are fine except T have to deny the plans they have go for a variance. The third floor deck is not allowed. She wanted to come in and go over the plans with me so I agreed to meet with her When we met I showed her the Ord, and she said I will take the deck out.She put an X on the plan and I wrote on that part of the plan no third floor deck allowed,

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Q-About when did you realized it was a two family residence.-

CB When I received a letter from Mr. German

Attorney Middleton has no further questions.

Q-Vella-Do you ever look to see what CO's have been issued

CB- no, not normally

(CO's are in the Fire Inspectors Office and not nominally available)

Atty. Middleton calls Mr. Gorman.

The board attorney swears in Mr. Gorman

Atty. Middleton questions Mr. Gorman.

Q-Where do you reside?

Gorman-Ans. - 501 Sylvania Ave., Avon.

Q-How long have you lived at this address?

Ans.-I purchased my house in Sept. 1992

Q-Where is your house located in relation to the Ray residence?

Ans.-About 75 feet north east of the Ray residence.

Q—When did you first notice construction at 509 Marine Place?

Ans-In late January, January 31 on a Saturday morning about 8:30 as I was walking the dog I noticed Construction at 509 marine Place.

Q- You took photographs of the work that was going on.

Ans-On Feb. 1, Sunday morning I took photographs.

Q-Are these the photographs you took of 509 Marine Place.

Ans- Yes

Middleton marks exhibits into evidence. All Photos are of the construction at 509 Marine Place

O-3 Photo taken from the rear patio of 501 Sylvania Ave.

O-4 Zoom photo taken from the patio of 501 Sylvania Ave.

O-5 Photo taken from 5th Ave and Sylvania Lane. looking West

O-6 Shows the construction at 509 Marine Place

O-7 Shows the construction at 509 Marine Place of the dormer being constructed

O-8 Shows a different view of construction at 509 Marine Place showing height from the East.

O-9 Shows construction from Marine Place looking north

O-10 Shows construction from Marine Place looking north a different view

O-11 Shows the roof rafters from the South East .

Q- You testified you first noticed construction on Sunday Feb 1. Why that day compared to other days.?

Ans.- Because I leave for work before sunrise and arrive home when it is dark. Also, on the week-ends I have been on guard duty.

Q- You were walking the dog and saw construction workers hanging rafters, and tar paper. There was also a tarp on the west side covering the third floor with the windows covered with plywood.. That had to be one of he first days you were in the back yard on a week-end

Ans. Yes

Q- What did you do after you noticed construction.

Ans- I knew it was a two family house and a variance should be required to expand it.

Q. Then you ultimately filed an appeal, is that correct.

Ans-Yes

Vella-For the record ,are you an elected official in the Borough of Avon.

Ans. Yes

Vella- How long have you held that position?

Ans-I was elected in May of 2007

Vella-As an elected official have you ever appointed members to this board.

Ans- Yes, two

Vella- Did you file a w-9 as part of this application?

Ans- No, and the reason was that as of this appeal he knew Mr. McGorry was also filing an appeal and suggested that we join together since only one person had to file the appeal. So Mr. McGorry agreed to do that part.

Vella- Did you not receive the documents from Mr., Brautigan.

Ans. Yes- and I can provide the cancelled checks to show I paid half of the cost
Vella-

Ans-Yes I have because my legal council is here and previous to that