

Minutes of the Avon Planning Board-August 12, 2010

The meeting was opened at 7 PM by Chairman Richard Maloney.

Attendance

Present-Davey, Egan, Ernst, McLaughlin, O'Malley, Placitella, Ryan, Maloney.

Also present- Mayor Mahon, Commissioner McGovern

Absent-Kenny, Talmage

The first hearing was for a sub-division of the property located at 26 Lincoln Ave. Block37, Lot11. The applicant was Mr. Charles Smith of 506C Ocean Ave., Bradley Beach, NJ.

Mr. Smith stated he is the potential contract buyer of this property. He wants to sub-divide the property in two conforming lots.

Dennis Barrett, Esq. is the attorney representing Mr. Smith

Attorney Barrett called Mr. Smith to testify as to what he intends to do with this property.

Mr. Smith stated his intention is to take down the house currently located on this property, and to build a house on each lot.

One lot, lot 11.01, will be 7,700 sq. feet. The dimensions of this lot will be 55 feet wide and 140 feet in length.

The second lot, 11.02, will be 9.800 sq. feet. The dimensions of this lot will 70 feet wide and 140 feet deep.

Attorney Rubino mentioned to Mr. Smith that you would have 190 days after the date the resolution is approved to complete this Sub-Division. If you have not completed this in the 190 days you can return to the board and request an additional 190 days.

When the meeting was opened to the public no one offered any comments.

It was suggested by Pat McMahon that the garage be allowed to remain so it could be used for storage by the contractors. Attorney Rubino said this could be allowed if the board agrees. The one stipulation Attorney Rubino added was that no CO would be issued for this property until the garage is removed from the property.

Motion by Ernst, second by Egan, that the sub-division is allowed with the stipulation that the garage may remain until the project is completed. No CO will be issued until the garage is completely removed.

Vote on the motion-

Yes- Davey, Egan, Ernst, McLaughlin, O'Malley, Placitella, Ryan, Maloney.

No- None

Abstain- None

The motion is approved.

The second hearing scheduled for this meeting was the continuation of the hearing for GNG Acquisitions of 526 Main Street, Block 14 Lot 7. The applicant was informed that only five members are present who can hear this application. Attorney Jackson spoke briefly with the applicant stated they would continue with the board members present.

After a discussion between Attorney Jackson, Attorney Rubino, and Chairman Maloney on what the applicant is requesting and what is a non-conforming use. It was decided we continue with the hearing. We will sort it out as we proceed with the hearing and see the proofs and the testimony.

In answer to a question, Mr. Gyftakis indicated there are two apartments on the upper level, two businesses on the lower level with an office behind them, and the warehouse in the rear. Five CO'S were issued and no CO was obtained for the rear garage area.

The following exhibits were put into evidence:

Photos marked A-1 to A-4,

A-5 (a five-page document stapled together and listed below as A-5-1 to A-5-5)

A-5-(1) to A-5-(4) Shows the building sections and various codes that apply to it.

A-5-1-(5) A document from Reality Appraisal Company showing the appraised value of the property dated 10/11/07

A-6 A CO (Certificate of Occupancy) For Studio LLC at 526 Main St-Rear, dated 1/28/10

A-7 A CO for a one bedroom apartment #2 for a Rosa Capiz (Occupancy permitted is two (2) and dated 12/05/08

A-8 A CO for a two bedroom apartment #1-for a Miquel Ramon (Occupancy permitted is four (4) and it is dated 9/1/04

A-9 (1) to A-9 (5) five applications for Business Licenses to the following

1. Passione Cuccine Inc, for a restaurant -dated Feb. 18, 2010
2. The Word Station for Business Services dated Feb 26, 2009
3. Passions, for a restaurant -dated March 3, 2009
4. Authentic Mediterranean Restaurant -dated Feb. 7, 2008
5. The Word Station - for Business Services- dated April 3, 2008

A-10 -1 to A-10-9 (nine pages stapled together) from Reality Appraisal Company, including property records and other documents from 1999 to 2007.

The applicant did speak of five (5) CO's being issued but copies of only three (3) CO's were provided.

During a discussion between Maloney and Attorney Jackson, it was indicated that other CO's might be at the property.

Maloney- "but if five CO's were issued none were ever issued for the rear garage area."

Attorney Jackson answered; there are two apartments on the upper floor with two businesses on the lower level, and two businesses that are commercial adjacent to the building.

Attorney Jackson stated, "This is what I received from the town."

Maloney suggested there are other ways of showing proof.

Attorney Jackson- "I have no other proof; this is what I received from the town." It was my hope that it would be sufficient to show the CO'S we had, and to show the property layout in the back of the building. The portion we are talking about is the garage area and if that is not sufficient, I guess I am lucky tonight because we only have five members who are here to vote."

Maloney responded, "there should be other proofs applying to this property. Do you have any other contracts applying to this property? It is a big piece of property

Mr. Gyftakis – "Other licenses could be at the business, and might be older. I do not have any way to go back further."

Attorney Rubino stated that we have the public to consider. We are being asked to make a decision, and we must have proof to support our decision. Evidence is your matter, not one for the board to provide for you. It is not up to this board to conduct an investigation into what happened in the past. It is your burden to provide the proof to the board so the board can make a decision.

You have uses and want to add a sixth use that is not allowed, and you do not have a CO for us to consider. You must show some type of proof that it was legal when you did it. You are asking us to make a decision that this was a pre-existing non conforming use. If you want to add another use to this property it is up to you to meet the burden of proof.

Mr. Gyftakis-In 1995 when my father bought the property there was a sixth tenant in the rear property. He was not a good tenant so we got rid of him. I do not have the ability to go back in any further in time

Attorney Rubino- That does not show or prove it was a legal non-conforming use at that time, or was being used for a legal purpose. You must provide evidence to the board so they feel comfortable in making a decision.

Attorney Jackson answered- It was my hope it would be sufficient to show the CO'S that we had, to show the property layout in the back of the building, and the portion we are talking about is that garage in the back of the building. If that is not sufficient, I guess I am lucky tonight because we only have five members who can vote.

Attorney Rubino explained that it is possible to supply other proofs then just records, and mentioned some examples of other types of proofs that could be presented. You could provide pictures, testimony from neighbors, testimony from previous owners, and testimony from previous tenants to prove what you are asking for.

After some dialogue between Attorney Rubino and Attorney Jackson the next witness was called to testify.

The next witness was Pat McMahon. Mr. McMahon indicated he has been the Zoning Officer in Avon for the past 7 years and the Zoning Officer in Belmar for the past 17 years. Mr. Mc Mahon stated that in the area behind the restaurant I noticed a section that had been turned into an apartment. I informed the applicant he would have to turn it back into an office. While I was there, I noticed a full bathroom with a shower, a toilet, and a sink in the back building. Since there were no permits issued for any of this, I notified the Building Department. I also informed Mr. Gyftakis he would have to correct the situation and turn it back into an office. The situation in the rear of the building I considered a non-conforming use. This area had no heat and without heat in this area the pipes would just freeze up. So I turned it over to the building Department. They issued a citation indicating a violation.

In response to a question from a board member, "is the bathroom still in the garage or is it gone?"
Answer – Mr. Gyftakis – "It is there."

Attorney Rubino- Do you have any determinations, or paper work for the renovations you have done, or for placing a bathroom in the other sections of the building. Anything that would allow you to do what you have done with out permission from the board.

Answer Mr. Gyftakis - Yes,

Attorney Jackson- The bathroom is not being used but the physical structures is still there. Under a provision of the Municipal Law that if you make an application it Stay's everything.

Question from a Board member- "Completely"

Attorney Jackson- "Complete"

Ryan- You mentioned that this office was being used as an apartment.

Answer Mr. Gyftakis - Yes, that is what I was told, but I did turn it back into an office.

Attorney Rubino- Would you have any problem with the current tenants using this other space in the rear as an adjunct for storage.

Mr. Gyftakis-No, for a few months as a courtesy. I would have to start charging for the space as it becomes a business.

Tony Vecchio was called as a witness. Mr. Vecchio is the Fire Inspector. He has also been the Code Enforcement Officer since 1995. I was asked to check on an office being used as an apartment. At that time, there were two apartments on the upper level of the front with a small business and a restaurant on the lower level. The restaurant had a door leading to the rear office space, and they used for storage. In about 1999-2000 that door disappeared. But there was also an outside door leading into this space. To the best of my knowledge this space was always used by the restaurant for storage. Then a CO was issued to what I would call an art and crafts type person. Then a CO was issued to the present owner. Up to this time, the rear area was used by what I would call a junk collector. It was packed to the ceiling with various items. He occupied this area for quite some time. I never saw him but he used it for storage. He vacated the building a couple of years ago. Then the building was vacant with nothing in it.

Sometime during this period, we got a complaint about someone living in the garage area. I notified the owner and this person moved out.

The office is another story. The office area was issued a CO to be used as office space. We received a complaint from the restaurant people about a large increase in the water bill. I went to see about this and what had been the called office space had some one living it. When I visited it, I walked in and found someone sleeping in a bed in this area. We notified the owner and he was moved out.

Egan-"Who put the bathroom in the garage?"

Mr. Vecchio- "I do not know."...

Mr. Gyftakis -"We did."

Egan- "You did because you had a tenant in the back using the property?"

Mr. Gyftakis - "I put the bathroom in prior to the tenant. I did not know it was being used for a living space."

Egan - I am a little confused, you had two different people living in each of these spaces.

Mr. Gyftakis "That's correct"

Egan- "Yu put the bathroom in how long ago?"

Mr. Gyftakis- "Right before that person."

Mr. Vecchio- About year and half ago.

Egan-"So, he was living there for 1 ½ years and you did not know he was living there?"
Mr. Gyftakis - "It was about 5 months."

At this time, the meeting was opened to the public.

Ms. Placitella of 301 Washington Ave. I was the real estate agent that sold this property to the Ventimelas in 2002. They never rented it out and did not use it for storage. At that time they obtained four (4) CO'S for the property. One for the restaurant, one for the Work Station, and one for each of the apartments. At that time no one rented the other properties, and there was no junk back there as no one was living in the rear buildings.

Ms. Shiela Sullivan of Sylvania Ave. - Why would you put a full bath in a building that is so dilapidated. A building that has never had CO for people to live in it. It is a building that is a fire hazard. You would put a full bathroom in an office, and in the other parts of the building, and you change the use. This allows you to have people living in it. How could you get a fire truck back there?

Attorney Jackson- You are objecting to the bathrooms back there. How long have you lived there?

Ms. Sullivan- I lived on Sylvania Ave for 2 years and in town for 25 years.

Attorney Jackson- Your objection is to the bathrooms.

Mrs. Sullivan-Yes, you put in a full bathroom in and you change the use.

Frank Belledva of 517 Fifth Ave. Is sworn in by Attorney Rubino.

I live very close to this property. The storage of some materials in the garage may cause a problem. This depends on what the applicant is allowed to store in the garage area. I am opposed to the use of a tradesman shop in this rear area, as the noise created will cause a problem for the residents located in the area. The air quality and the noise will affect the use of my property and the property value of the residents in this area. I am concerned that it could reduce the value of my property. The lot is being overused. A change in the use of the rear buildings may create more noise, and could create a fire hazard to the neighboring properties.

Attorney Jackson questions Mr. Belledva - When you first moved in did you notice what was happening on this property. Did you ever look at the property?

Mr. Belledva - No, but allowing a tradesman shop will change the use and affect the use of my property. I have no problem using it for storage.

Tony Vecchio- If you choose to use it as a warehouse the conditions and concerns of the Building Department must be met. All the buildings, including the warehouse, should be brought up to the Building and Fire Codes. A CO should be required for all the units being used, and in particular the warehouse in the rear.

Attorney Jackson in a closing statement stated- My client never abandoned the property, but what we have is a change in philosophy from the administration. It never required a CO. What my client is looking for now is that he be able to use it as an adjunct to the uses that are in the front building.

Discussion on what purpose the bathrooms serve to the other properties.

Motion by Maloney, with a second by McLaughlin, to approve the application with the following conditions and stipulations.

1. The original application will be withdrawn.
2. The applicant is applying for a D use variance.

3. The applicant will be able to use all five (5) units in the front of the lot after obtaining the CO'S required for each unit.
4. The building, located at the rear of the property (referred to as the garage, or warehouse) may only be used in conjunction with the tenants of the five (5) front units.
5. Nothing considered as a hazardous material may be stored in this rear building (referred to as the garage or warehouse).
6. Any of the tenants will not sublet their right to use the rear garage.
7. The buildings located on this lot will meet the requirements of the New Jersey Fire Code and the Avon Fire Official for obtaining all Certificates of Occupancy (CO'S).
8. The bathroom in the garage will be completely removed.
9. The shower will be removed from the bathroom located in the office area, and any other bathrooms located in the rear buildings will be removed.
10. The Avon Planning Board recognizes the following pre-existing non-conformities of the applicant's property as stated in the report of Engineer Charles Rooney, dated June 24, 2010.
 - a. One for Lot Area of 5,911 SF feet as 7,000 SF is required.
 - b. A rear yard set back of 1.4 feet as 15 feet is required.
 - c. A front yard set back of .05 feet as the average of the block is required.
 - d. Building coverage of 65% whereas 50% is permitted.
 - e. Impervious coverage of 92.9% where 85% is permitted.
 - f. Since a loading space is required and none is provided a variance is required for this
11. The applicant will provide six (6) copies of a signed and sealed survey of the property.

Vote on the Motion by Maloney with a second by McLaughlin.

Yes-Ernst, McLaughlin, O'Malley, Ryan, Maloney

Not Voting-Egan (Absent from first hearing)

Motion by Ernst, second by O'Malley to approve the Resolution. for Mr. & Ms. Mark Dolan of 339 Lincoln Ave. (Block 45 Lot 2), for a swimming pool after they meet and or complete all conditions listed in the Resolution dated August 12, 2010.

Yes- Ernst, McLaughlin, O'Malley

No- None

Motion by Egan, second by Ernst, to approve the Resolution. for Mr. & Ms. Frank Cannone of 29 East End Ave (Block 9 Lot 11), for an addition and repair to the house located on this lot after they meet or complete all conditions as listed in the Resolution dated August 12, 2010

Yes-Ernst, Egan, McLaughlin, O'Malley, Placitella, Maloney

No-None

Motion by Placitella, second by Egan to approve the Resolution. for Mr. & Ms. Aldo DeVita of 208 East End Ave. (Block 50 Lot 16).for a deck located on this lot after they meet and or complete all conditions as listed in the Resolution dated August 12, 2010

Yes- Ernst, Egan, McLaughlin, O'Malley, Placitella, Maloney

No-None