

**CITY OF SOUTH AMBOY**  
**PLANNING BOARD**  
**REGULAR MEETING/MINUTES**  
**JUNE 22, 2011**

Members present: Michael Wilday, Joseph Connors, Mayor Henry, James Riehl, Thomas Kelly, Frank Milatta, Richard Moran, Bette Leibowitz

Members absent: Francis Mulvey, Peggy Scarillo

Also present: Angelo Valetutto, Planner; Andrew Brewer, Esq.

Meeting was called to order by Chairman Wilday followed by the salute to the Flag.

Chairman Wilday stated adequate notice of this meeting has been provided under “The Open Public Meeting Act of New Jersey” by advertisement.

Roll call was taken at this time.

Motion by James Riehl, seconded by Bette Leibowitz to accept the Minutes of the Special Meeting on June 8, 2011. Motion carried 7-0, 1 abstention.

Peron Development/South Amboy II LLC and Venetian Healthcare LLC

Mr. Richard Rybak from Wisniewski Associates appeared on behalf of Venetian Healthcare. Mr. Brewer stated he got the transcript of the hearing on Monday, he completed the draft resolution and sent it out. Mr. Brewer got comments back from the applicant. The Board has presently in front of them Mr. Brewer’s resolution marked up by the applicant’s attorney. Mr. Brewer reviewed the final changes for the record The Board will vote on the final draft of the resolution.

Mr. Rybak stated two weeks ago the motion to approve this application was as a Preliminary and Final Major Subdivision and Preliminary and Final Major Site Plan and respectfully request that the Board reconsider and grant them a Final Subdivision approval as was approved two weeks ago. Mr. Brewer stated Mr. Valetutto indicated that the application had still not submitted one document that would be needed in order to grant a Final Subdivision. Chairman Wilday noted Mr. Rybak’s comments.

Motion by James Riehl, seconded by Bette Leibowitz to approve the resolution with the changes as written. Motion carried 6-0, 2 abstentions.

Raritan Pointe LLC Application #318-11

Mr. Brewer stated today around 11 a.m. he received a call and email from Joseph Baumann, Esq. who is Counsel to South Amboy Redevelopment Agency "SARA". This property is in the Broadway/Main Street Redevelopment Area and only a designated redeveloper can submit an application to do any redevelopment in a redevelopment area. Mr. Brewer stated he received emails today stating that it is SARA's position that either there is not a completely executed agreement or that the applicant was in default of the agreement and requested that this Board not recognize them as the designated redeveloper and not proceed with this application. Mr. Brewer has received a copy of the Agreement which has been signed by the applicant and the SARA. It has not been signed by the City.

Mr. Paul Swanicke, Attorney representing Raritan Pointe, stated they filed an application some time ago and provided all the notices, etc. They received an email today saying that there was some issues with respect to payment of fees. Mr. Swanicke stated under the Redevelopment Agreement SARA has to give notice to the Redeveloper if he is in default. They never received a notice from SARA. Mr. Swanicke stated today is the first day they heard from SARA's Counsel with respect to this issue. It appears they are using this applicant to collect some fees and there may be a dispute about fees but it is not really a dispute with this applicant apparently this goes back sometime with some other people who were involved in this property. Mr. Swanicke stated we have a signed Redevelopment Agreement and SARA's Counsel have not provided any type of evidence that they are not the Redevelopers. Mr. Swanicke read the email into the record. Mr. Swanicke stated the email states they are in default of the Redevelopers Agreement, it acknowledges that there is a Redevelopment Agreement. Mr. Swanicke stated neither Mr. Baumann nor anyone from the SARA is here to testify in person before the Board.

Mr. Swanicke stated the Board should allow the application to be heard tonight and act on the application or if not willing to act on the application, at least let them put the application of record because everyone is here tonight and it would minimize the cost to everyone because it appears from the face of Mr. Baumann's letter that this is really an issue of the payment of fees as opposes to the applicant's right to proceed with the application.

Mr. Brewer stated the Board has 45 days to act from the day it was deemed complete. There is an existence of a dispute that he does not have a resolution for at this time.

Mr. Valetutto stated this is the third times this property and Jingoli are coming before the Board. It is an amended application and he doesn't believe Mr. Yaroni was part of the first two applications. Mr. Valetutto stated he agrees with Mr. Swanicke that there is a Redevelopers Agreement, it includes Mr. Jingoli, Mr. Jingoli is part of the application we are hearing and it appears to be something down to dollars and cents. Mr. Valetutto stated representation was that there are not funds owed by the current applicant but perhaps by Mr. Jingoli under the earlier Agreement. If it is just dollars and cents, it is something that has to be worked out and tonight is just the first step in terms of presenting the application before the Board. The Board still have to decide on it, and who knows where the presentation will take us, if there is sufficient information for the

Board to make a decision tonight. Even if the Board did make a decision, there is still a meeting next month to memorialize the resolution.

James Riehl questioned if the City signed off on the Agreement. Mr. Swanicke stated he received a letter some time ago from Mr. Lanza, City Attorney, stating the City doesn't need to be a part of the Redevelopers Agreement.

Mr. Brewer stated he doesn't have enough information to make a determination.

Chairman Wilday stated from the Board's point of view, there is some type of dispute here. We do not have enough information. Chairman Wilday stated we will carry the application until the next meeting.

Mr. Swanicke stated the City has a Sewer and Infrastructure Agreement with the applicant to extend the sewer line to the site. The sooner this is heard, the sooner the sewer line gets extended. Mr. Valetutto stated there is already an approval on this property. Chairman Wilday stated the application was approved some time ago. Mr. Valetutto stated it was sometime in 2007 or 2008 but they have been in discussions with Mr. Yaroni for the last year or year and a half. Chairman Wilday stated the Board has agreed on the application with good intent and why is it that it has not been until this date with no progress and now we have to act on it immediately with some vague language that attorneys are giving us advice not to act on. Mr. Swanicke stated he would have been happy to be here a couple of years ago however, this was a long process both the Development Agreement and also in negotiating the Sanitary Sewer Agreement with the town and it took a lot of effort on the part of his client and the town and Mr. Valetutto to do that. We finally have an agreement and the applicant had to take the time to make some modifications to the site based upon what was out there and the size of the sanitary sewer that was going to be extended to the site. Chairman Wilday questioned five or six years. Mr. Swanicke stated they started working with the current applicant since 2008.

Chairman Wilday stated until his Board is fully informed, he is only asking until the next meeting. He understands just because things are in place to do this tonight, does not mean they are well informed and prepared to make any kind of decision on the completeness or the application. He will yield to the advice of his counsel.

Joseph Connors asked if the Board was going to do that would we carry their notification. Mr. Brewer announced that the application will be heard for completeness and public hearing at the Board's July 27<sup>th</sup> meeting.

Chairman Wilday opened this particular application to the public. Motion by James Riehl, seconded by Bette Leibowitz to close to the public portion. Motion carried 8-0.

Mr. Valetutto stated that Board is looking for a letter from Mr. Baumann indicating that the SARA has no objection to this application proceeding.

Mr. Swanicke questioned the date the application was deemed complete. Mr. Brewer stated it has not been deemed complete. There was a submission as of June 7<sup>th</sup>, so as of June 7<sup>th</sup> everything is in. The forty-five days start from submission, you originally submitted and at that time the Board let you know that there were some missing things. If the forty-five days go without you being notified in writing that something was missing, then you are deemed complete by a matter of law.

Mr. Riehl asked that the letter from John Lanza stating the City does not have to sign off on the Redevelopers Agreement be submitted to the Board prior to the next meeting.

#### Waldemar Mroczkowski Application # 320-2011

Mr. Waldemar Mroczkowski, 309 South Pine Avenue, South Amboy, NJ was sworn in. Mayor Henry and Council President Connors will not vote on this application.

Mr. Valetutto was sworn in. Mr. Valetutto stated he wrote a report dated June 7, 2011 which indicates the applicant is looking to put a patio roof over the rear of an existing porch and because of the size of the roof, 18' x 26' and anything over 250sq. ft. gets added to your lot cover. The area that they are permitted to have for their house, porch and roof area is 25% of the total lot, they are proposing 29.87%. They require a bulk variance for lot coverage. Mr. Valetutto stated their house is only 1.79' off the property line and they are looking to extend the patio or roof of the patio along that same 1.79', the minimum requirement is 5'. Other variances that they have with regard to their property, none are affected by what they are looking to do with the roof.

Mr. Valetutto asked the applicant if there are any other properties in the area that is similar to what they are proposing with 30% of coverage or that have a cover of a patio like they are looking for.

Mr. Mark Nowak, cousin to the applicant, was sworn in. Mr. Nowak stated the applicant moved into the house six years ago. Mr. Nowak stated he doesn't know of any similar roofs in the area. Mr. Brewer questioned how much area is covered on the lot. Mr. Nowak stated their lot is only 32' wide. Most of the homes on the street have bigger lots.

Mr. Valetutto questioned why the applicant is requesting such a large roof. Mr. Nowak stated the applicant wants to spend time outside but there is no way because of the full day of sun and their daughter has been treated for skin disease. Mr. Nowak stated the roof is presently constructed because they did not realize they needed a variance.

Mr. Kelly stated his office received a complaint, a Notice of Violation was issued for constructing without any zoning permits being issued. It was an anonymous complaint that was verified by a member of the Construction Department's staff. It was a dual complaint; it was extremely close to the property line and rather a sizable pavilion. Mr. Nowak stated they followed the line of the house when constructing the patio and roof.

Mr. Valetutto stated it is pre-existing so the 1.79' is something the Board has to live with regarding the house. At 1.79', you would have to move it over 3'3" so instead of 18' for the roof and patio, it would be down to 14'9". If you do that, that would still give you a variance for lot coverage, however you would eliminate the second variance which is being closer to 5' to the property line. Mr. Nowak stated the applicant would agree to amend his application to reduce the patio and roof to have a 5' setback from the property line and reduce it down to 14.75' x 26'. The applicant agreed to the change.

Mr. Kelly questioned if the columns sit on the patio or are there footings in the soil. Mr. Nowak stated it sits on the concrete patio. Mr. Kelly stated when they obtain a construction permit, the building code is going to dictate that they need to have concrete footings that extend below the frost line. They are going to have to put footings in. It will be very difficult to do with the structure intact. Should the Board grant an approval, he does not see how he will be able to relocate it and provide code without removing and reconstructing. At this point, they could reconstruct it to a more acceptable dimension as Mr. Valetutto discussed. Mr. Mroczkowski agreed.

Chairman Wilday explained that the applicant is not exempt from previous violations. The work would need to be done in a timely matter.

Mr. Riehl questioned when was the patio installed? Mr. Nowak stated they purchased the home in 2005 and there was an old patio. The survey does not reflect the 18' x 26' patio. Mr. Kelly stated the applicant is going to have to saw cut the patio.

Mr. Kelly questioned an issue of potential run-off for the adjacent property. Mr. Valetutto stated the area immediately abutting where the proposal is to put the patio roof, the neighbor has concrete right up to it, then the strip of grass that we would be looking for would be 5' by virtue of the applicant agreeing to reduce the size of the roof. He does not feel that the run-off will be a particular issue. In fact, if there is an issue, we may be getting run-off from the adjoining property onto the applicant's because they have concrete right up to the property line. Mr. Valetutto believes that at one point the two homes shared the same owner and may have been subdivided.

Mr. Kelly questioned if the Board should grant an approval for the structure to be cut back to the 5' setback, would the concrete patio also follow suit.

Mr. Valetutto stated if the applicant is correct that the patio was larger than what's shown on the drawing or even what's there now, 18' x 26', the only violation they would have is that they didn't get a permit from the Zoning Officer or an inspection from Mr. Kelly's office. It does not create the variance that the roof does because they are under impervious coverage and there is no restriction of setback off a property line. They will be in violation of not have a zoning permit or a construction permit.

Ms. Leibowitz questioned how much they extended the existing patio. Mr. Nowak stated they extended five to seven feet. They covered over the old patio. Ms. Leibowitz questioned if the concrete would need to be removed to construct the roof properly. Mr.

Kelly stated the concrete would not have to be removed in its entirety. The concrete could be saw cut in such a manner because the footings only need to be a 12" diameter or square footing so they could saw cut the concrete, excavate the soil, pour the concrete to be flush with the existing slab and install the patio covering over that.

Mr. Valetutto stated he has no problem with the lot coverage variance, the applicant has agreed to correct the side yard setback variance.

Mr. Nowak stated the structure will not be enclosed and no utilities will be installed only lights on the patio. There is no property available to alleviate the variance. The roof will be wood with matching shingles.

Chairman Wilday opened the application to the public. There was no public wishing to speak. Motion by Richard Moran, seconded by Bette Leibowitz to close the public portion of this application. Motion carried 6-0.

Motion by James Riehl to approve the application provided the applicant agrees to and adheres to all recommendations put forth regarding this application regarding the setbacks, what has to be done with the permits, and abide by what has been testified to. Motion to accept the application provided all agreed to setbacks are covered along with agreed to construction. Mr. Nowak explained to Mr. Mroczkowski the motion and Mr. Mroczkowski does agree.

Mr. Valetutto stated as the Engineer and Planner he will get it down to more specifics, the size of the patio roof will be reduce to 14.75' or 14'9" by 26', it will have a side yard setback of 5' and subject to a building permit issued by the Construction Department for the construction of both the existing concrete patio and for the modifications to the roof over the patio and that the concrete will also be cut back to meet the 5' setback.

Chairman Wilday stated the applicant is still subject to a violation so the work should be done in a timely fashion.

Motion seconded by Richard Moran. Motion carried 6-0.

Chairman Wilday opened the meeting to the public. There was no public wishing to speak. Motion by Richard Moran, seconded by Bette Leibowitz to close the public portion. Motion carried 6-0.

Motion by James Riehl, seconded by Richard Moran to adjourn. All in favor.

Linda Garnett