

BOARD OF ADJUSTMENT
MINUTES OF THE MEETING

MARCH 3, 2011

CALL TO ORDER: This is a regularly scheduled meeting of the Board of Adjustment of the Borough of Franklin Lakes. In compliance with the Open Public Meetings Law, Notification of this Meeting has been sent to our Official Newspapers and Notice has been posted on the bulletin board at the Borough Hall. I direct that this announcement be entered into the Minutes of the meeting.

ROLL CALL:

Present: Mr. DiFlora, Mrs. Gerber, Mr. Khoury, Mr. Messaros, Mr. Toronto,
Mr. Badenhausen, Mr. Frankel, Board Attorney Davies, Board Engineer Kevin Tichacek
Absent: Mr. Bavagnoli

NEW BUSINESS

Cal.#2011-6 Application For Burgio, 1031 Franklin Lake Road, Block 1208, Lot 4, Appeal,
Violation of the following Section of the Ordinance:

TYPE	REQUIRED	PROPOSED	EXISTING	VARIANCE	CODE
Regulations of general application	1-principal structure	2-principal structures	1	two structures during construction	300-104.F.

DATE DEEMED COMPLETE: February 9, 2011

DETERMINATION DATE: June 9, 2011

Joseph Spinello, attorney for Mr. and Mrs. Burgio, explained that this variance application would allow for the existence of two houses on one lot which is contrary to the Borough Code. Mr. Spinello said that the applicants are presently living in a structure at the front of the property and they intend to build a new home to the rear. This plan for the new construction meets all of the Franklin Lakes Zoning Codes and this application would allow both structures on the same lot during construction. Mr. Spinello said that he is not aware of any objections to this application. He noted that Mrs. Burgio recently had major surgery and moving at this time would be difficult. Mr. Spinello stated that the approximate size of the proposed structure is 3,900 sq. ft. and he expects construction to be complete within 12 to 18 months.

Kevin Tichacek, of Boswell Engineering, confirmed that the only violation of Borough Ordinance is that the applicant is proposing to retain the existing dwelling until the proposed dwelling is constructed which requires a variance from Section 300-104F. Mr. Davies, Board Attorney, recommended that the applicants post a bond to guaranty that construction is completed within a reasonable amount of time. Mr. Spinello asked that the Board be realistic in the time limit and the amount of the bond that is to be posted. Mr. Davies suggested that a bond in the amount of the estimated construction costs be required in order to guarantee that construction will be completed.

Michael Burgio and Sarah Burgio, 1031 Franklin Lake Road, were sworn by Mr. Davies. Mr. Burgio stated that he and his wife have resided in a small home at this address for the past seven months. They applied for a building permit from the Construction Department where they were informed that they would need a variance in order to have two principal buildings on one lot. Mr. Burgio said that, based on previous experience, he expects the cost of construction to be between \$400,000 and \$450,000 and to take about 17 months to complete. Mr. Spinello said that if construction exceeds 17 months the applicant could move to another location and demolish the small house. Mr. Burgio said that he has always wanted to live in Franklin Lakes and fully intends to complete the new house.

Mr. DiFlora suggested that the applicants be given 16 months to complete construction and demolish the small house on the property. If construction is not finished in 16 months, the applicants would have to move out and demolish the house, and return to the Board to explain why construction is taking longer than it should.

Mr. Spinello said that in some cases there is a condition that the original home has to be demolished within 30 days of the issuance of a Certificate of Occupancy which gives the homeowner some time to move into the new house. If the house isn't demolished within that time period, the Borough could demolish the house on the 31st day using the

proceeds of the bond. After a discussion, Board Members agreed that 16 months should be given to the applicants for completion of the new construction.

Mr. Messaros made a motion to open the public portion of the meeting, seconded by Mrs. Gerber, all ayes. No one from the public came forward and Mr. Messaros made a motion to close the public portion of the meeting, seconded by Mr. Badenhausen, all ayes.

Mr. Davies reviewed conditions of variance approval:

1. Sixteen months to complete construction of the second house from the date of the issuance of the building permit. The existing house must be demolished within 16 months of the date of the permit for the new house.
2. The existing house must be demolished within 30 days of the issuance of the Certificate of Occupancy for the new dwelling.
3. Bond amount of \$400,000 penalty amount.
4. Applicant's engineer will address the outstanding issues with Boswell Engineering prior to the resolution.

Mr. DiFlora made a motion to approve the variance application, with conditions, seconded by Mr. Messaros

Roll Call Vote

Ayes: Mr. DiFlora, Mrs. Gerber, Mr. Khoury, Mr. Badenhausen, Mr. Messaros, Mr. Toronto, Mr. Frankel

Nays: None

Cal.#2011-5 Application For Coleburn, 261 Heather Lane, Block 1201, Lot 4, Dimensional Variances, which are in violation of the following Section of the Ordinance:

TYPE	REQUIRED	PROPOSED	EXISTING	VARIANCE	CODE
Lot Width	200'	194.7'	194.7'	5.3'	300-102
Lot Coverage with Pool	25%	27.0%	25.16%	2%	300-102
			(w/o Pool)		

DATE DEEMED COMPLETE: February 9, 2011

DETERMINATION DATE: June 9, 2011

Harold Cook, introduced himself as the attorney for the applicants, who reside at 261 Heather Lane. The applicants are proposing a swimming pool that will result in excessive lot coverage. The property consists of a modest home built in the 1960s which contains a tennis court. If the tennis court were removed from the property there wouldn't be an issue of excessive lot coverage. Mr. Cook stated that a Planner would assess the tennis court as being beneficial to the property and from the point of view of a C-2 variance, the benefits of the tennis court would outweigh the detriments to the neighborhood. There is an existing nonconformity in connection with the minimum lot width which is 194.7 ft. where 200 ft. is required. The proposed pool is smaller than today's standards at just over 700 sq. ft. and Mr. Cook reiterated that the applicant feels that the tennis court is beneficial to the property and the neighborhood. He pointed out that the house predates the ordinance and added that the first coverage ordinance went into effect in the late 1980s or early 1990s which was followed by another revised ordinance that had existed for the past 6 years.

Michael McGowan, P.E., McGowan Engineering, 645 Westwood Avenue, Rivervale, N.J. was sworn by Mr. Davies and stated that he is a licensed engineer in the State of New Jersey. Mr. McGowan described the applicant's property and said that it does not offer many locations for the proposed pool and a variance for impervious coverage has been requested. The existing coverage is 25.16% with 27% proposed and the allowable coverage being 25%. The request is for an increase in lot coverage of 1.83% for the pool and patio which will be placed in an area where there was formerly a shed. Mr. McGowan said that a seepage pit is being proposed to collect runoff from the impervious coverage and an inlet will be installed to handle additional drainage that might occur along the wall. He indicated that the applicant will review the drainage calculations and make the modification as requested in the Boswell Engineering review letter. Mr. McGowan pointed out that the applicant's property abuts Oakland Industrial Park so there will be no impact to the rear of this property. He concluded that the only existing nonconformity is the lot width deficiency.

Mr. DiFlora noted that this property is over an acre in size in a one acre zone. He said that Boswell Engineering pointed out that the construction access should not be located on top of the existing septic disposal system. The

engineer remarked that he was aware of this. The applicant was cautioned regarding the height of the cabana. The proposed height does conform but with minimal leeway provided.

Cherise Coleburn, 261 Heather Lane, was sworn by Mr. Davies and testified that she and her husband purchased the house in 1995. She recalls seeing a survey of the property dated sometime in the mid 70s which showed the tennis court and she thinks that the house was built before the tennis court was added. Mrs. Coleburn said that Belgium Block is existing around the driveway.

Mr. Messaros made a motion to open the public portion of the meeting regarding the testimony of the engineer, seconded by Mr. Badenhausen, all ayes. No one came forward and Mr. Messaros made a motion to close the public portion of the meeting, seconded by Mr. Toronto, all ayes.

Mr. Davies recited the following conditions for approval:

1. The applicant will regrade to reduce the wall height to 4 ft. or less along the north area of exposed fence line
2. Applicant will comply with the other requirements stated in the Boswell Engineering letter dated Feb. 9, 2011.
3. The driveway has a paver border and it would be difficult to reduce the size of the driveway without a considerable amount of work and disruption. The tennis court predates the current imperious coverage restrictions.
4. The existing septic will be fenced prior to construction.

Mr. Badenhausen made a motion to approve the variance application, seconded by Mr. Toronto.

Roll Call Vote

Ayes: Mr. DiFlora, Mr. Khoury, Mr. Badenhausen, Mr. Messaros, Mr. Toronto,
Mr. Frankel

Nays: Mrs. Gerber

OLD BUSINESS

Cal.#2011-3 Application For Lukacs, 275 Indian Trail Drive, Block 2101.02, Lot 4, Appeal,
Interpretation and Dimensional Variances. CARRIED FROM 2-3-11 MEETING

DATE DEEMED COMPLETE: January 14, 2011

DETERMINATION DATE: May 14, 2011

David E. Rutherford, attorney for the applicant who is filing in for Ben Casco, introduced himself and stated that the Board spent a substantial amount of time on this application at the last meeting of February 3, 2011. He said that the applicant continues to seek an interpretation of the ordinance relating to the construction of an underground garage. There is also a revised plan which addresses many of the issues brought up by Board Members. The underground garage has been moved to the northwest in front of the existing courtyard. A vast majority of the existing driveway that comes across the property from the southwest to the northeast has been removed. This plan is less disruptive to the property with less soil movement. The plan will preserve more trees and is a much better zoning alternative. The key issues to be addressed are the number of spaces in the garage and the ordinance which notes that four spaces are allowed in an attached garage. Both the setback and the terracing of the wall leading to the underground parking must be addressed. Mr. Rutherford stated that they would also address building and lot coverage.

Tibor Latincsics, of Conklin Associates, 29 Church Street, Ramsey, N.J. was sworn by Mr. Davies. Mr. Latincsics referred to a plan entitled, "Sub-Surface Garage Addition, Plot Plan, Lot 4, Block 2101.02, Borough of Franklin Lakes, NJ", dated December 15, 2010, revised February 17, 2011". The plan was marked Exhibit A-13 and depicts the following major revisions: relocation of underground garage to the front courtyard; relocation of the driveway to the north; driveway continues to attached four car garage; outdoor pool is eliminated and replaced with an outdoor spa and the outdoor elevation is raised at the rear of the natatorium; grass pavers are eliminated and the outdoor elevation is raised. There is an attached ten car garage proposed.

Mr. Latincsics stated that the tiered walls have been eliminated and replaced by a single wall with a maximum height of 8 ft. 8 in. The wall is proposed to be constructed of engineered Rosetta stone which is a precast concrete block that mimics natural stone. Mr. Davies marked a 10 scale blow-up as Exhibit A-14. He showed the Board pictures of a similar wall recently built in Tuxedo Park, New York, which Mr. Davies marked as Exhibit A-15. A brochure describing the stone was marked as Exhibit A-16. This wall would transition from a height of 0 ft. at grade

to approximately 8 ft. 8 in. at the entry to the underground garage. Mr. Latinsics felt that this was a good solution for the entranceway with a 25 ft. radius curvature that is easy to navigate. Mr. Latinsics said that 25 ft. of the wall will extend within 23 ft. of the setback and the wall should be terraced where feasible. The septic field has been relocated to an area that doesn't require any tree removal whatsoever and Mr. Latinsics concluded that this is a much better design overall.

Mr. DiFlora asked the applicant's engineer how the underground garage will be built. Mr. Latinsics said that portions of the existing home will have to be underpinned which will also be necessary along the front of the building. The driveway will have to be moved to build the underground garage and then reconstructed. Regarding impervious coverage, Mr. Latinsics said that coverage of the home is 11.3% where 15% is permitted, and above grade coverage is 25.53%. Mr. Latinsics said that the portions below grade with landscaping above are not included in coverage figures. Mr. Khoury said that this should be included in the impervious coverage because it is linked to drainage. Mr. Latinsics said that soil tests have been conducted resulting in ideal soil conditions and a series of seepage pits will handle the drainage concerns and he saw no reason to include the underground garage in surface coverage. Drainage measures have been specified as well as a series of seepage pits some linked to sump pumps on the surface structure noting exceedingly good soil conditions to support the seepage pits. If the area below ground that is beyond the existing circle were included the impervious coverage, the percentage would increase to 28%. The total underground structure is 4,890 sq. ft. and the courtyard itself is 2,166 sq. ft. on a property consisting of 71,000 sq. ft.

At the last meeting, Mr. DiFlora had inquired as to how far beyond the edge of the other circle the underground garage would extend. Mr. Rutherford said that it extends 6 ft. beyond the paver driveway. Mr. Toronto said that the impervious coverage of this underground structure should be treated as a variance in order to avoid setting a precedent regarding underground structures.

Several Board Members had questions on the wall and Mr. DiFlora asked why the cut bluestone wall wasn't used to build a masonry wall instead of the keystone wall. Mr. Latinsics said that this has been debated by the design team. The Rosetta stone is the minimum standard and the blue stone veneer on reinforced concrete is an option that could be considered. Mr. DiFlora said that the latter option would make more sense.

Mr. Rutherford referred to the Boswell Engineering review letter of February 24th and said that most of these items have been addressed. Mr. Latinsics said that he will address the remaining outstanding issues and added that approximately 2,500 cubic yards of soil would be removed from the site. Regarding the need for an underground storage tank, Mr. Latinsics said that the floor drains would flow to the appropriate oil/water separator and that detail will be provided to the Construction Code Official. Mr. Latinsics said that the subsurface garage is intended for display purposes and there are no areas for repairs, lifts, etc. All pedestrian access is directed into mechanical rooms and Mr. DiFlora said that the design should include a tank that has to be pumped out.

The architect on the project, Michael Costantin, of J. Costantin Architecture, 60 Washington St., Suite 107, Morristown, N.J. 07960, was sworn by Mr. Davies. He referred to the design of the retaining wall and distributed "A detail of the driveway that leads down into the subsurface detached garage structure" which was marked as Exhibit A-18. Mr. Costantin said that a 9 in. wide planting strip has been provided along the side of the fieldstone wall which will be invisible to the residents and their neighbors. He also referred to a 4 ft. high wall, which is considered a structure that creeps in and out of the 25 ft. building setback.

Mr. DiFlora asked about the area where the circle transitions to the driveways on the outbound side. He said that there is a certain radius or curvature where it comes in but it is a different radius on the house side of the circle. He suggested that the curve be flattened slightly and Mr. Latinsics indicated that this could be done. Mr. DiFlora said that dimensions of the radii should match the two outbound radii and must be noted on the plan. Mr. Davies indicated that the Board finds that the radius of the driveway as it connects to the circular portion should be matched at all four locations as presently drafted. (See revised drawing Exhibit A-13).

Mr. Latinsics confirmed that if the below ground structures are included the coverage would be 28.89%. If only the underground part that extends beyond existing construction were not included the coverage would be 24.53%.

Mr. Toronto made a motion to open the public portion of the meeting regarding the testimony given tonight, seconded by Mr. Khoury, all ayes. No one came forward and Mr. DiFlora asked for comments from the public. The builder on the project, John Zall, 104 McGregor Avenue, Mt. Arlington, N.J., stated that the drainage for the underground garage flows down and hits a layer and is then immediately discharged out and around. The circle is tight now and he would hate to see it get smaller. Mr. Zall stated that he agreed with the Chairman in that it is easier to pick one method, such as concrete, for the entire length of the wall.

No one else from the public came forward and Mr. Badenhause made a motion to close the public portion of the meeting, seconded by Mr. Frankel.

Mr. Tichacek said that a variance for that portion of the wall that is 4.3 ft. high within the setback along with impervious coverage is necessary. Mr. Davies added that a variance is also needed for the lack of terracing on the wall.

Mr. Davies recited the following conditions of approval:

1. Applicant will install cut bluestone and masonry for all retaining walls including those leading to the underground garage.
2. Drains to the underground garage will be piped to a tank that must be pumped out and not connected to any sanitary, storm or septic system.
3. Radius of curvature of the driveway as connected to the north side of the circle as shown on Exhibit A-13 will be matched on the south edge of the driveway circle. Applicant will add these dimensions to drawings.
4. This underground facility is strictly for use as a hobby area.
5. Air conditioning unit - The Applicant will not construct air conditioning units more numerous or larger than shown on the approved plans.
6. Fence will be 4 ft. high and set back 4 ft. from the edge of the entry to the subsurface garage.
7. All mechanical equipment for the underground garage will be indoors.

The applicant was urged to coordinate with the municipality regarding all of the truck traffic in connection with this development due to the repaving of Indian Trail Drive.

Mr. Badenhause made a motion to approve the variance application, seconded by Mr. Toronto.

Roll Call Vote

Ayes: Mr. DiFlora, Mrs. Gerber, Mr. Badenhause, Mr. Messaros, Mr. Toronto,
Mr. Frankel

Nays: None

NEW BUSINESS

Cal.#2011-4 Application For T-Mobile, Urban Farms Shopping Center, 805-845 Franklin Lake Road, Block 2201.08, Lot 2, Use Variance, which is in violation of the following Section of the Ordinance:

<u>TYPE</u>	<u>REQUIRED</u>	<u>PROPOSED</u>	<u>EXISTING</u>	<u>VARIANCE</u>	<u>CODE</u>
Setback of Tower Facility to Residential Zone	300'	156.7'	-0-	143.3'	300-125.C.3.a.5

DATE DEEMED COMPLETE: February 4, 2011

DETERMINATION DATE: June 4, 2011

Gregory Meese, of Price, Meese, Schulman and D'Arminio, introduced himself and said that this is an application for a wireless communication facility at the Urban Farms Shopping Center. This area is a conditional use zone for this type of structure; however, a setback variance is needed due to the failure to meet the requirement for the tower to be located 300 ft. away from a residential zone or public recreation facility. The proposed setback of the tower is 156.7 ft. measured to the nearest residentially zoned property. A height variance is not necessary given the design of the facility. The State Historical Preservation Office has granted preliminary approval and the FCC requires that the oversized flag be removed from the pole. This email approval was marked as Exhibit A-1. Mr. Meese said that this is a single pole design and all apparatus is contained within the structure itself. The Bergen County Planning Board approved the plan on February 17th and this approval was marked as Exhibit A-2. Exhibit A-3 is an 1 page letter from the NJDEP Flood Hazard Department which stated that no permit is required. Mr. Meese said that there is also a letter dated March 1, 2011 from Metro PCS to T-Mobil confirming that Metro PCS is interested in co-locating at the proposed facility to address a gap in coverage. This letter was marked as Exhibit A-4.

Edward Yorke, radio frequency design engineer, for Teercon Solutions, was sworn by Mr. Davies. Mr. Yorke testified that T-Mobile currently operates facilities in and around Franklin Lakes and referred to a map of the

facilities and coverage areas which was marked as A-5. Mr. Yorke discussed these areas and explained that one of the primary issues in radio frequency engineering for this area is the nature of the terrain. The proposed site is in the lower half of Franklin Lakes which is referred to as below Route 208. There are no structures in this area that would be potential candidates for a communication structure between Ramapo High School and Oakland.

Mr. Davies marked Exhibit A-7 showing different threshold coverage provided by the T-Mobile network. He described this by noting the height of the T-Mobile equipment on the different poles. In general, the higher the equipment on the pole the better the coverage. Mr. Meese referred to the single provider rule (Exhibit A-5 **Federal Communications Commission Ruling WT Docket No. 08-165**) which existed until November 1999, and refers to the coverage of other carriers. He said that the FCC declared that the fact that another communications carrier may or may not provide coverage is irrelevant to a licensee's need for coverage and a municipality has to be able to provide a location for the facilities necessary for each of the carriers to provide coverage. In this case, the other carriers would be located below the T-Mobile canister which would be placed at the top of the pole.

Mr. Yorke said that the High Mountain Road and Franklin Lake Road corridor is a coverage gap area for T-Mobile. The length of this gap along High Mountain Road is 1.2 miles and 1 to 2 miles from east to west and is the most difficult to cover because it runs through a valley. Mr. Yorke pointed out that there is a 160 ft. drop at Ramapo High School which compromises coverage but it later improves past Bakers Pond where the terrain rises again resulting in improved reception. Mr. Yorke referred to Exhibit A-8 which shows that the terrain in the area of the proposed communication tower is very effective and carries well due to the flat area towards the Haledon Reservoir. This is a good location from a radio frequency perspective.

Mr. Meese was questioned about the size of the pole and he described it as a tapered design with the canisters for the carriers towards the top. It is about 5 ft. wide at the base and 3 ft. wide at the top. There is space available on the pole for two future carriers.

Mr. Yorke referred to Exhibit A-9 which is the map that corresponds to the three levels of coverage. Green represents in-building coverage level; yellow represents in-vehicle coverage area; and red represents below reliable signal area. Mr. Yorke distributed a map showing coverage areas of the other carriers that was marked as Exhibit A-10. T-Mobile and Sprint are 1900 megahertz carriers and the 850 megahertz carriers provide better coverage.

Mrs. Gerber made a motion to open the public portion of the meeting for questions of Mr. Yorke only. Mr. Khoury seconded the motion, all ayes. Robert Grady, 312 Feather Lane, said that the shopping center is a large area and High Mountain Road is at the far end of the shopping center where the Market Basket trucks are parked. He asked why the monopole couldn't be located at some other area of the shopping center. Mr. Meese said that this is a question for the site engineer; however, he explained that a different location was originally chosen but because the Market Basket had building permits to construct a cooler for the store the pole had to be relocated.

John Heffernan, 315 Feather Lane, said that Verizon is located on a pole at the McBride office and he wondered why T-Mobile couldn't locate there. He asked about storage of the wires and requested pictures to see what the pole would look like. Mr. DiFlora said that Mr. Heffernan's second and third questions would be answered by the engineer. Regarding the first question, Mr. Yorke said that the McBride site is 50 ft. in height and this location is 400 ft. above sea level. He referred to the map on Exhibit A-10 which shows that AT&T and Verizon have gaps along High Mountain Road particularly to the north that could be addressed by a higher site or more locations on small poles. Dense trees also affect both the coverage and the system and he surmised that AT&T could also be satisfied with the shorter pole because they are an 850 megahertz carrier with better coverage.

Brian Tall, 323 Feather Lane, asked if coverage would be possible by locating on the smaller pole on the McBride property. Mr. Yorke said that this site was ruled out because of the height, however, the landlord must also be willing to rent space. Mr. Meese said that increasing the size of the McBride pole was discussed but Mr. McBride was not interested in this.

Nancy Kidd, 804 Tequesta Drive, questioned the different heights of the towers in this area and Mr. Yorke said that he would address these different heights at the next meeting. She asked if he would recommend alternatives such as using the Market Basket building. Mr. Meese said that many locations have been studied and Mr. Yorke will demonstrate why this height is required. Mr. Meese remarked that both the School Board and the municipality were contacted regarding suitable sites that could be offered. MBS School was also contacted but this site was not found to be compatible.

Mr. DiFlora announced that this application will be carried to the meeting of April 7, 2011.

LIST OF EXHIBITS

- A-1 Email dated February 23, 2011 from towernotifyinfo@FCC.gov to Lorraine.witterlouis@e2pm.com, Subject: Section 106 Notification

- A-2 Letter dated February 7, 2011 from Bergen County Department of Planning to T-Mobile Northeast LLC, c/o Attorney Meese Re: #SP 7994 (C)

- A-3 Letter dated stamped February 24, 2011 from State of New Jersey Department of Environmental Protection to Michael Muller, E2 Project Management, LLC, Re: File No. 0220-11-0001.1 APD 110001

- A-4 Letter dated March 1, 2011 from Metro PCS to Ms. Tara Basley, Zoning Manager, T-Mobile USA, Re: Proposed T-Mobile Wireless Communications Facility to be located at 813 Franklin Lakes Road

- A-5 Federal Communications Commission Ruling WT Docket No. 08165

MINUTES

The Minutes of January 6, 2011, were presented for approval. The Minutes were approved, as revised.

Roll Call Vote

Ayes: Mr. DiFlora, Mrs. Gerber, Mr. Badenhausen, Mr. Messaros, Mr. Toronto, Mr. Frankel
Nays: None

The Minutes of February 3, 2011 were presented for approval. The Minutes were approved as presented. .

Roll Call Vote

Ayes: Mr. DiFlora, Mrs. Gerber, Mr. Badenhausen, Mr. Messaros, Mr. Toronto, Mr. Frankel
Nays: None

The meeting was adjourned at 11:25 P.M.