

ZONING BOARD OF ADJUSTMENT

MINUTES OF THE MEETING

APRIL 4, 2013

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:** Mrs. Gerber, Mr. Badenhausen, Mr. Messaros, Mr. Bavagnoli, Mr. Toronto
Ms. Schoenberg, Board Attorney Davies, Board Engineer
- Absent:** Mr. DiFlora, Mr. Khoury, Mr. Frankel

Mr. Khoury was not present at this meeting so he was not sworn in by Mr. Davies.

Fire Safety Announcement was given by Mrs. Gerber who was Acting Chairperson for this meeting.

NEW BUSINESS

Cal.#2013-1 Application for Kayal, 1044 Dogwood Trail, Block 1209, Lot 7, Dimensional Variances, which are in violation of the following Sections of the Ordinance:

TYPE	REQUIRED	EXISTING	PROPOSED	VARIANCE	CODE
Side Yard Setback (Driveway)	15'		10.1'	4.9'	300-71.B.(4)(j)
Wall in No Disturbance Area	15'	16.1'	10'	5'	300-124.B.(1)

PREVIOUS APPLICATION TO THE BOARD FOR HEIGHT VARIANCE Cal.#2011-13

SLFLK-2599

DATE DEEMED COMPLETE: December 27, 2012 DETERMINATION DATE: 4-26-13
LANDSCAPE PLAN SUBMITTED

MR. PETE DI MARCO, THE ATTORNEY FOR THIS APPLICATION HAD ASKED TO HAVE THIS CARRIED TO THE 4-4-13 MEETING. HE WAIVED THE TIME CONSTRAINTS OF THE BOARD.

Testimony was given by Mark Palus, the engineer and Mr. Kayal, the applicant's brother, landscape designer and owner of Terrascapes Landscaping Company regarding this application. Mr. Davies marked as Exhibits A-1 Engineering Plans revised to 9-5-12 and A-2 Landscaping Plans dated 3-15-13. The Landscape Plan including 26 Norway Spruce trees and other landscape improvements was to be recorded into the Resolution and installed on site. Any wall/pier lighting was to be submitted to the Zoning Official for conformance.

Applicant's attorney Mr. Di Marco presented the applicant's case for approval to the Board. Reasons presented included the garage turn design for the first garage door, the garage's proximity to the elevated retaining wall and the necessity for a safer turn around area for SUV type vehicles were discussed. In addition, the neighbor adjoining the driveway side of the property is at a large distance from the cut stone retaining wall due to the existence of a wetlands area and pond between it and that neighbor's house. Very extensive landscaping and an agreement to modify the size and number of light fixtures on the driveway piers so as to comply fully with the Borough's lighting ordinances were presented by TerraCare. The Applicant's attorney agreed that any lighting plan modifications will be subject to review and approval by the Borough Engineer and will be in full compliance with applicable ordinances. The majority of Board Members agreed that the unique character of the property and extra wide buffer from neighboring properties warranted approval in light of the lighting and landscaping improvements proposed by the Applicant.

Mark Palus, the Engineer testified that a height variance has been granted previously and the home was under construction. The Applicant wishes to expand the driveway by 6 feet and the driveway will remain conforming at 16.6 feet setback from the side property line. During the Construction, the Applicant realized it would be difficult to use the garage and would be somewhat unsafe. Because the garage is fairly large and the driveway relatively narrow and difficult to maneuver, it would be possible that someone using the driveway may hit the retaining walls or even possibly go over the retaining wall and drop to the terrain below. In order to improve the safety of the driveway, and the convenience for using the driveway, the Applicant wishes to expand the driveway 6 feet wider than on the approved plans. Expanding the driveway will cause the retaining wall to have to be located further towards the property line in a nonconforming location 10.1 feet from the side property line where 15 feet is required.

The Applicant has been granted a tree removal permit for 2 trees which will be replaced in accordance with Borough standards per the Landscaping Plans. The house has a 4-car garage. The Applicant agrees to build fewer pillars than shown on the engineering plans, half as many, not more than 10 piers.

The light switch that will be installed on the piers will be on the house side of each pier (or pillar) with light fixtures fully conforming to Borough standards to the satisfaction of the Borough Engineer. Twenty-six Norway Spruces will be planted, 12 to 14 feet tall providing excellent screening.

The Applicant's Landscaper, Gary Kayal of TerraCare Landscaping testified. He testified that the Landscaping Plan would provide far more than adequate screening.

The Applicant's Engineer, Mr. Palus, then testified that the property located adjacent to the retaining wall and driveway consisted of wetlands and then a pond. The neighboring house is located on the far side of the wetlands and the pond, a distance of several hundred feet from the retaining wall, driveway and the Applicant's residence.

A motion to approve this application was made by Mr. Bavagnoli and seconded by Mr. Badenhausen.

ROLL CALL VOTE

Ayes: Mrs. Gerber, Mr. Badenhausen, Mr. Bavagnoli, Mr. Toronto, Ms. Schoenberg
 Nays: Mr. Messaros

IT WAS APPROVED.

Cal.#2013-4 Application for Admani, 949 Blue Hill Terrace, Block 2409.02, Lot 4, Dimensional variances, which are in violation of the following Sections of the Ordinance:

TYPE	REQUIRED	EXISTING	PROPOSED	VARIANCE	CODE
Rear Yard Setback	25'		17'	8'	300-102
Side Yard Setback	25'		20'	5'	300-102
Total Coverage	25%	26.95%	33.47%	8.47%	300-102
Pool Location	Behind any Rear Wall of House		Side Yard	Yes	300-121.E.(1)

SLFLK-2715

DATE DEEMED COMPLETE: February 26, 2013

DETERMINATION DATE: 5-26-13

Testimony was provided by Gregory Meese, the attorney, Mr. Admani and Mark Mantyla, the engineer. The extent of the lot coverage variance was discussed. The Board discussed overall reduction to the lot coverage.

As per Boswell's review letter dated February 14, 2013, the applicant is proposing a pool with spa and full patio surround, access steps, maximum 2 foot high retaining walls, a seepage pit for swale runoff collection, an extension of the existing chain link fence enclosing the pool area, removal of a portion of an existing walkway and a portion of the existing driveway.

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The Applicant's attorney, Gregory Meese, was advised of the findings of the Borough Engineer regarding the existence on this property of nonconforming lot coverage of 26.95% for this zone. Further, no prior variance for such excess coverage was located according to Boswell Engineering. In addition, the existing home and improvements on the property constitute a "fully developed" property at this time. It was discussed that the request to further exceed such lot coverage by a significant percentage, as well as construct a new pool, spa with patio and patio surround that are not located behind the house as required by ordinance throughout the Borough would result in an unprecedented advantage to the applicant as compared to other citizens within the neighborhood as well as the entire Borough. Applicant's attorney written statement citing cases with differing factual scenarios was not found to be persuasive since as noted by the Borough Engineer that this lot is fully conforming as to size and dimension and fully developed. It was noted by the Board that apparently the prior owner opted to enjoy a higher lot coverage in lieu of installing a pool at the time. Board Attorney Davies inquired about whether the applicant had built or expanded any improvements since he purchased the property. The testimony was that he did not. Mr. Admani testified that he purchased the home in its current configuration and was aware of the house setback and resulting lack of a large back yard prior to such purchase a few years ago. Discussions with the Board included an observation that an enormous variance was being sought by this applicant and included violation of no-disturbance and setback requirements that have not been granted previously by this Board. After his presentation of the proposed pool plan, Mr. Mantyle was questioned regarding his judgment: 1) the placement of the pool equipment in the side yard rather than closer to the home; 2) the placement of the spa feature with a patio in its location by the furthest rear portion of the pool, rather than being by the home side; and 3) the choice of what appeared to the Board to be a "standard pool package" design, in lieu of attempting to design a much smaller and better placed option.

After discussion with the Board and a brief recess requested by Mr. Meese, Mr. Meese requested that his client be permitted to withdraw the proposed plan before the Board and prepare a new site plan for a pool with modifications for the May meeting. Mr. Davies questioned if the Board was inclined to give the applicant such leeway or encourage the development of such a submission. No one on the Board stated that they were in favor of any specific new plan; however, it was agreed that the Applicant should be given the opportunity to resubmit another modified plan since the applicant wished to pursue another option at that point. Mr. Mantyle and Mr. Meese requested that they carry the application until the May meeting. They were advised to submit revisions within the time period required for the Borough Engineer and the Board review.

Mr. Davies marked the Exhibits as A-1 the Plans and A-2 the 1996 Survey of the property.

Mr. Meese, the attorney stated that the property had been constructed in 1997 and that the Applicant bought in 2010.

Dr. Irfan Admani testified that he and his wife bought the property in the summer of 2010. There have been no changes to the home or the driveway since he bought the property. When he bought the property, he was fully aware that the house was located relatively far back on the lot, making the back yard very narrow. He was aware that there were setback requirements in the Borough of Franklin Lakes and he was aware that he had a very small back yard.

Borough Engineer, Marisa Tiberi testified that the existing driveway is 40 feet wide at the widest point. Further, when the property was built, it was approved at 25% impervious coverage, which at that point was conforming for that zone. There is nothing in the town records indicating permission for the property to be developed as it currently is, with existing 26.95% impervious coverage, over the then maximum coverage.

The Applicant's Engineer, Mark Mantyla, P.E. testified that the proposed pool and spa were 714 square feet, and that the Applicant seeks an additional 1,000 square foot patio. Part of the pool, spa and patio would be built where a portion of the driveway now exists, somewhat reducing the increase in impervious coverage which is being sought. The Applicant is; however, seeking 33.47% total coverage.

Mr. Mantyla also testified that there is an existing three bay garage. The existing driveway does not have any edging stone and just has paver stone construction. A 30 foot wide minimum is needed for the driveway, in his opinion.

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This application was carried to the May 2, 2013 meeting.

Cal.#2013-5 Application for Vander Plaat – Vermeulen, Inc. (Funeral Home), 530 High Mountain Road, Block 3103.01, Lot 14, Use Variance and Dimensional Variances, which are in violation of the following Sections of the Ordinance:

<u>TYPE</u>	<u>REQUIRED</u>	<u>EXISTING</u>	<u>PROPOSED</u>	<u>VARIANCE</u>	<u>CODE</u>
Funeral Home Accessory Structures	Not Permitted	Nonconforming	Expansion	Yes	300-107.A.
Side Yard Setback (Garage)	25'	11.75'	11.75'	13.25'	300-121A(1)(a)
Front Yard Setback (Trellis)	50'		30'+/-	20'+/-	300-121.A.(1)
Setback from Principal Building	10'		9.58'	.42'	300-121.A.(1)(b)
Retaining Walls Not Tiered	Walls Tiered Over 4'		4'-6"	Yes	300-121.F.(3)
Total Coverage	22.5%	53.60%	55.33%	32.83%	300-102
Parking	52 spaces	39 spaces	35 spaces	17 spaces	300-71.A.
Permanent Signs Permitted – One Professional Name Plate Not to Exceed 180 inches per Professional Occupant. Shall not be Freestanding. Proposed – Two Freestanding Signs – 20 square feet.					
300-128.C.(2)(a)[2]					

THE APPLICANT’S ATTORNEY HAS CITED ADDITIONAL VARIANCES REQUESTED IN HIS NOTICE NOT INCLUDED IN THE ZONING OFFICER’S DENIAL APPLICANT HAS REQUESTED A WAIVER FROM SUBMITTING TO THE NJDEP GIVEN THAT THEY ARE NOT IN A WETLANDS.

SLFLK-2713

DATE DEEMED COMPLETE: March 13, 2013

DETERMINATION DATE: 7-11-13

Testimony began with Mr. Cytryn, the attorney and Mr. Nick Tsapatsaris, the engineer. A Lighting Analysis was requested by the Board.

As per Boswell’s review letter dated March 13, 2013, the Applicant is proposing the removal of an existing walkway and retaining walls within the front yard, relocation of existing HVAC units along the northern wall of the existing building, a new 1-1/2 story addition to the northern corner of the existing building, new front and side walkways, two new wood frame trellises and a new water fountain in the front yard, minor repaving of the parking area adjacent to the addition, restriping of the parking area, two new freestanding signs within the front yard, retaining walls at a maximum of 4 feet in height and landscape and lighting along the High Mountain Road front yard area.

After being advised by Board Attorney Davies of the need for 5 affirmative votes in order to receive use variance approval of their proposed application from the Board, the attorney for the applicant elected to proceed with the case. The Applicant's engineer/architect reviewed the site plan as well as the architectural drawings in detail with the Board. Plan highlights that resulted in discussion included: 1) the new parking lot striping proposal to improve parking and traffic flow; 2) the design/safety of steps leading from the proposed terrace down toward High Mountain Rd. which is a busy County road; 3) water drainage from the site which is on a slope into storm drains on High Mountain Rd. ; 4) lighting on site and improvements to existing lighting; and 5) the existence of a residential apartment on the second floor of the existing improvements which is occupied and proposed to remain.

Regarding parking, Applicant's attorney presented a copy of the License Agreement with Temple Emanuel on the adjoining property for review by the Board Attorney and the Board. Regarding the steps in front of the terrace, Mrs. Gerber stated that it was a safety concern particularly if smaller children run down toward the street from those steps that do not lead to any proposed improvement below. Regarding the water drainage situation, Ms. Tiberi pointed out to the Board that this would be an opportunity to propose the addition of dry wells to take care of water runoff from the drain pipes so as not to overburden the inadequate and clogged storm drains on street

level. Although it was not rejected, the engineer voiced a preference to not construct dry wells but rather to only clean out existing storm drains on the street. Regarding the lighting, the addition of 28 new lights by the terrace areas in front of the building was discussed. During the public portion of the meeting, neighbors voiced their concern regarding existing as well as the new proposed lighting. Adjoining neighbors stated that lights on poles on their property as well as across the street from the building are on at night and should be examined for ownership as well as compliance with current ordinances. They also were concerned about the effects additional lighting would have on their adjoining properties. It was agreed that an analysis of all lighting (current and proposed) is to be sent to the Borough Engineer for review and be presented at the May meeting. The Applicant's engineer indicated that a suitable timer system for all lighting and replacement of existing spotlights on the site was agreeable to the Applicant. Finally, during the course of review of the architectural drawings, the Applicant's engineer/architect confirmed the existence of an occupied residential apartment on the second floor of the existing building. That apartment was brought to the Borough Engineer's attention at the meeting for further review in light of Borough Ordinances regarding dual use on this site. It will be further discussed at the May meeting.

Mr. Davies marked the Exhibits as A-1 A Sketch done by the Landscape Architect, A-2 the Plan and A-3 the Licensing Agreement, licensing the use of the parking spaces with the adjoining property, the Temple Emanuel.

Testimony was given by the Applicant's Engineer, Nick Tsapatsaris, P.E., R.A. Mr. Tsapatsaris is both a licensed professional engineer and a registered architect. Mr. Tsapatsaris testified at length concerning the proposal, adding a two-story addition to the existing funeral home. The first floor would be used as an additional viewing room and the second floor would simply be storage. The exterior will match the existing materials. There is an apartment being lived in over the part of the existing funeral home. The proposed parking spaces are closer to what is required, reducing the nonconformity of the existing parking arrangement. The floodlights illuminating the funeral home are located partly on the Applicant's property but two of them, at least, are located on poles across the street, one on High Mountain Road and the other on Reservoir Drive. It was unclear whether the existing floodlights do or do not conform to the Borough Ordinance.

Marisa Tiberi believed that it was appropriate at this point to add additional runoff control, possibly seepage pits or other provisions.

This application was carried to the May 2, 2013 meeting.

RESOLUTIONS

THE LEARNING EXPERIENCE BLOCK 1512.01 LOT 16

REVISED PLANS NOT YET RECEIVED

WEBER BLOCK 2101.05 LOT 18

A motion to approve the resolution as amended was moved by Ms. Schoenberg and seconded by Mr. Bavagnoli.

ROLL CALL VOTE

Ayes: Mrs. Gerber, Mr. Messaros, Mr. Bavagnoli, Ms. Schoenberg
Nays: None

MANDELBAUM BLOCK 3301.01 LOT 1.05

A motion to approve the resolution as amended was moved by Mr. Bavagnoli and seconded by Ms. Schoenberg.

ROLL CALL VOTE

Ayes: Mrs. Gerber, Mr. Messaros, Mr. Bavagnoli, Ms. Schoenberg
Nays: None

MINUTES

The Minutes of March 7, 2013 were presented for approval.

Mr. Bavagnoli made a motion to approve the minutes as presented, seconded by Mrs. Schoenberg.

ROLL CALL VOTE

Ayes: Mrs. Gerber, Mr. Messaros, Mr. Bavagnoli, Ms. Schoenberg

Nays: None

VOUCHER

A motion to approve the Voucher for Robert Davies for his attendance at the 3-7-13 meeting was moved by Mr. Bavagnoli and seconded by Ms. Schoenberg.

ROLL CALL VOTE

Ayes: Mrs. Gerber, Mr. Messaros, Mr. Bavagnoli, Ms. Schoenberg

Nays: None

A motion to adjourn the meeting was moved by Ms. Schoenberg and seconded by Mr. Messaros. All in favor (aye).

The meeting was adjourned at 11:05 P.M.

There was no recording for this meeting. These minutes were prepared by Maria Berardi, the Zoning Board Clerk from the Zoning Board Voting List, comments from Marisa Tiberi, Mr. Davies and Mrs. Gerber.