PLANNING BOARD MEETING – FEBRUARY 18, 2015

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 Borough Hall. The meeting will start at 7:30 PM and adjourn at 11:00 PM.

The Pledge of Allegiance was recited by all present.

Chairwoman Vierheilig read the FIRE SAFETY ANNOUNCEMENT. She read the PREAMBLE.

ROLL CALL

PRESENT Mr. Kahwaty, Mr. Lauber, Mr. Pullaro, Mrs. Vierheilig, Mr. Linz, Mr. Sheppard

ABSENT Mayor Bivona, Mr. Gostkowski, Mr. Lazerowitz

Eileen Boland, Boswell Engineering
John A. Spizziri, Sr., Esq., Board Attorney

BOARD DISCUSSION

Approval of the minutes of the October 15th, 2014, December 10th, 2014, December 17th, 2014, January 7th, 2015, and January 13, 2015, January 21st, 2015, and February 4, 2015 were carried to the next meeting of the Planning Board.

PUBLIC HEARING

SLFLK-2599 KAYAL, VARIANCES, 1044 DOGWOOD TRAIL, BLOCK 1209, LOT 7, CONTINUATION OF COMPLETENESS DETERMINATION FROM 10-1-14 TO 1-7-15, DEEMED CONDITIONALLY COMPLETE ON 10-1-14 CONTINUATION OF COMPLETENESS DETERMINATION 1-7-15, 1ST HEARING 2-18-15

Patrick DeMarco, Esq., attorney for the Applicant, and Mark Palus, P.E., engineer for the Applicant, were present at this meeting.

Mr. DeMarco explained that last time they were here the Board requested additional information which was provided to the Board Engineer and he would like to start by briefly going through the Engineer's letter with Mr. Palus with respect to what has been done.

Mr. Spizziri swore in Mr. Palus.

Mr. Spizziri marked Exhibit A-1 a plan prepared by Mark Palus dated September 12th, 2014 and revised through January 22nd, 2015.

Mr. Palus explained that one of the Board members had a made a comment regarding the retaining walls and the question was were these walls constructed with the lower elevation of existing grade or were grade changes made to make them 4 foot max, so what he provided was topography before anything was built. What that demonstrated was that on the lower end of these retaining walls the grades in these areas did not change. The grades that are there now are the grades that were there 4

years ago when this project started.

Mr. Palus further explained that the landscaper on their own had planted landscaping between the generator plan and the property to the east so he had those shown on the plan that these features are covered by landscape buffering. They were individually survey located. There is a fairly extensive and solid landscape buffer between pool pad and generator pad and property line to the east which is where we have a deficiency form a side yard setback standpoint. He added that they provided additional top and bottom wall elevations for the walls constructed and it does document that all walls are 4 feet and under. He can state the walls are no more than 4 feet.

Mr. DeMarco said he does have an email dated February 3rd from Mr. Hasbrouck indicating that he has made an inspection and replacement trees have in fact been planted, and there is a question about depth that will have to be checked when the weather changes. If they need to be changed the applicant will have that done.

Mr. DeMarco then referred to numbers 15 and 16 of Boswell's letter and asked Mr. Palus to explain.

Mr. Palus said Item 15 talks about applicant requesting permission to install fence along northwest property line, where there is a drainage easement. There is a 20 foot wide drainage easement, half on their property half on neighbor that is adjacent. Applicant requesting a fence to run down the property line there and there have been previous discussions that applicant understands that if the Borough needs to access this easement for maintenance it would be at the applicant's expense. Understand the easement is maybe not ideal, but the applicant is represented that they are willing to bear the brunt of that expense.

Mr. Spizziri asked him to define "expense".

Mr. Palus said if the Borough has to come in and dig up the fence to access that easement and do work, when the work is done the applicant would be responsible for removing the fence and putting the fence back up. Jumping ahead to #16 there are some evergreens planted within that easement and it would be the same situation as it would be for the fence. They understand there is potential liability there but they are willing to take that chance or incur that expense, bottom line is it wouldn't be at additional expense to the Borough.

Mr. Spizziri asked Ms. Boland about Paragraph 15 which indicates that installing the fence in the easement could compromise the pipe.

Ms. Boland said during installation of the fence itself, there is a question where the stakes of the fence could go into the pipe or damage the pipe.

Mr. Spizziri asked if the applicant would be able to find out the depth of the pipe.

Mr. Palus stated the invert of the pipe is at 444.5, so that's roughly 2 ½ feet, plus the thickness of the pipe would bring it to 447.4.

Mr. Spizziri asked if there is an exact depth for the fence post to be placed.

Mr. Palus said the grade where the top of the pipe is at 447.4 the grade in that area is approximately 450 so they have about 2 ½ feet. Any fence installation would have to be less than 2 ½ feet, and the usual fence is set in about 12 inches of concrete.

Mr. Spizziri said in the past where the Board reviewed hold harmless agreements for different situations there has always been, where there was a drainage easement and a structure placed on top of the drainage easement, that the HHA, which would be a recorded document, provides that any work that needed to be done in the drainage easement would be done by the Borough. That the Borough shall not and will not ever be liable for taking away a fence or a wall and is not under any obligation to replace or repair the same; it would be the obligation of the land owner. That would be a covenant signed by the property owners and would be bound upon them and subsequent owners of the property.

Mr. DeMarco said he would even provide something to put more teeth into that which could include a certain amount of time in which repair would have to be done within that period of time.

Mr. DeMarco resumed his review of Ms. Boland's letter and addressed the wetlands issue with Mr. Palus.

Mr. Palus stated there is an area of wetlands on the property, there is a 50 foot buffer that comes off that wetlands and what they are proposing is that fencing to extend into the wetlands buffer but not into the wetlands itself with the caveat that any fence in the wetlands buffer wouldn't have a concrete foundation. He said he forwarded a portion of the wetlands codes to Ms. Boland a day or two ago, NJAC 7:7A-2.6 subsection B, subsection ii., section 3. That indicates a fence without a foundation or a structure may be installed in the wetlands transition area. It does specifically say that chain link fences are not considered temporary structures. They are not proposing a chain link fence.

Mr. Lauber asked Ms. Boland if she had a chance to look at the DEP ordinance.

Ms. Boland said yes "the erection of one or more temporary structures covering a combined total of 150 square feet or less of the transition area. For the purposes of this paragraph a temporary structure means a shed or a fence without a permanent foundation or a structure that remains in the area for less than 6 months…"

Mr. DeMarco asked Mr. Palus to state the nature of the variances and the need for them.

Mr. Palus said there is a pool equipment pad located at 20.5 feet where 25 feet is required; a generator pad located 22.8 feet to the eastern property line where 25 feet is required so that's a deficiency of 2.2 feet. These are areas where they have gone through substantial supplemental landscaping to shield these from the adjacent property, and the applicant actually owns the adjacent property, but may not own it forever, and if that property would ever be sold it would be sold with the generator pad and pool equipment preexisting. He acknowledges that those things should be a few feet over and it was a construction error, but they think it's a minimal deficiency considering the applicant owns the adjacent property. The third variance talks about lot coverage. Right now it is at 25.98% where 25% is permitted

by ordinance. It would be over by 1,300 sq. feet.

Chairwoman Vierheilig asked what the reasoning was for the variance for the additional square footage.

Mr. Palus said they are over with the shed and the barbecue. The original plan was approved somewhere at 23%. During construction there was additional driveway installed to provide additional vehicular circulation towards the north side that resolute in additional square footage and how they ended up over. The hope was to ameliorate that with the subdivision process but the result is they are left with an overage.

Mr. Spizziri asked for the coverage without the barbecue and shed.

Mr. Palus said the percent is 25.98%, which would be an excess of 1,020 square feet.

Mr. Sheppard said he thinks the wall in the front was supposed to be 2 feet, and it is also tiered because the road slants down to the right.

Mr. Palus said the wall he is talking about is a 2 foot opaque wall and on top of it is a two foot wrought iron fence so the height is 4 feet. So the height meets the ordinance requirement and setback from road also meets the ordinance requirements.

Ms. Boland said this was the interpretation of the code by the zoning official.

Mr. Palus said it was inspected but he doesn't have a specific permit on that wall.

Ms. Boland said when it first came in she felt the same way and that it was a variance, but the zoning official had explained to her why he thought it wasn't.

Mrs. Vierheilig said her concern is that it is on a lake and they did discover groundwater problems so the house had to be raised, and now that there is more impervious coverage, so she has a problem with that. It is a property next to a lake so she thinks the applicant should be more environmentally sensitive about this property.

Mr. Lauber said there is also one of the air conditioners too far in front of the buildings. One of those pads shouldn't be in the front

Ms. Boland said they did adhere to side yard setbacks, however, Mr. Lauber is correct about them not being allowed in the front yard.

Mr. Lauber said they are going to need a variance.

Mr. Palus said based on the 2 feet that it is over that it would be appropriate to add that to the list.

Ms. Boland said she would want stability caps for the tiered walls. It is not an additional variance but

she does want those to have been designed because it is the equivalent of one way because they're not separated by twice the bottom wall.

Mr. DeMarco said if it would make the application more pleasing to the Board, the applicant would concede and forego the barbecue and the shed.

Mr. Palus said that would bring them back down to 25.98%.

Ms. Boland said if the Board chooses to grant the fence in the easement, she would like to have a detail showing the elevation of clearance, the actual post, to make sure it would work during construction and not damage the pipe. If approved she would like extensive detail of what is actually out there.

Mrs. Vierheilig asked Mr. Spizziri if the Board has complete jurisdiction over whether the fence is in this.

Mr. Spizziri said this Board does not sign a hold harmless agreement, the Board would make it a condition of approval to be signed by the Mayor and Council.

Mr. Linz asked if the Board can vote on the fence separately.

Mrs. Vierheilig said she agreed the Board should vote on the fence separately.

Mr. Pullaro made a motion to approve the variance for the side yard for the pool equipment pad and generator pad and air conditioning unit. He said his reason is that in this case the applicant has shown that by subdividing Lot 8 they could make this variance go away.

Mr. Linz seconds Mr. Pullaro's motion.

Roll Call:

Yes Mr. Kahwaty, Mr. Lauber, Mr. Pullaro, Mrs. Vierheilig, Mr. Linz

No Mr. Sheppard

Mr. Pullaro made a motion to approve the coverage variance, again the reason being that the applicant has demonstrated that they could subdivide Lot 8 and get more square footage on this lot and make that variance go away, but to the detriment of the other lot.

Mr. Kahwaty seconds Mr. Pullaro's motion.

Roll Call:

Yes Mr. Kahwaty, Mr. Lauber, Mr. Pullaro, Mrs. Vierheilig, Mr. Linz, Mr. Sheppard

Mr. Pullaro made a motion to deny the fence in the easement.

Mr. Spizziri clarified that the motion is to deny construction of the fence within the drainage easement due to the possibility of safety concerns or damage to the pipe. A yes vote is to deny, a no vote would be to approve it.

Roll Call:

Yes Mr. Pullaro, Mrs. Vierheilig, Mr. Linz

No Mr. Kahwaty, Mr. Lauber, Mr. Sheppard

Mr. Spizziri said the motion fails adversely. If the motion fails then it is approved.

PUBLIC HEARING

FLK-2821 MOKRAY SOLAR APPLICATION, ROOF TOP PANELS, 718 HIGH MOUNTAIN ROAD, BLOCK 2203, LOT 1.05, GROUND ARRAYS WITH VARIANCES, CONTINUATION OF COMPLETENESS DETERMINATION FROM 10-1-14, DEEMED COMPLETE 12-17-14, ON AGENDA 1-7-15 WAS TO GO TO ZONING BOARD NOW 1ST PUBLIC HEARING 2-18-15

A motion to open the public hearing was made by Mr. Sheppard and seconded by Mr. Kahwaty. All those in favor (aye).

Randall Steketee, Esq., attorney for the applicant, was present at this meeting.

Mr. Steketee stated that he had originally appeared before the Board in connection with a ground mounted solar array. After the meeting and talking with some of the community that was also here we decided, as well as considering we would be requesting a variance in order to do so, we have revised plans and to just do a roof mounted solar array which I think the planning board actually suggested. We are here in connection with that application tonight. Have Mika Gold-Markel who is a solar installer, and he is going to address the portion of the letter to the Board from Ms. Boland dated February 10th, 2015, specifically he will address through testimony the portion of Ms. Boland's letter on page 2 beginning at #5 which outlines the Borough ordinance chapter pertaining to solar installation.

Mr. Spizziri swore in Mika Gold-Markel, Group Solar USA, NABCEP certified.

Mr. Gold went through the Borough's solar ordinance starting with 408 5A, and stated that the solar height shall not extend over 8 inches from roof. They have standoffs that are about an inch, a rail itself that is about an inch, and the device is about an inch so they are looking at a 5-6 inch mount. It will not increase the height of the building as they are 3 feet below ridge line. Section 405A2 does not apply to this application. 408-5B will not happen. Regarding Section 4085-C they do not propose any tree removal in our plan. We may need to prune some trees slightly however the pruning is probably necessary for the better of the house anyway. Section 4085D: as you can see in the plans we are using a SunEdison 250 watt module, it is all black, that is the best we can hope for in terms of blending into

the roof, believe it is a composite shingle roof. It has probably changed color over the years, somewhat grayish-red, but there are only really 2 options in color, one is sort of a zebra striped blue which is for a poly crystalline type module, we are using a mono-crystalline module which typically come in all black. Section 408-6A: recently sent in their engineering plan to Ms. Boland that state the roof rafters are 2 by 16's and roof is capable of sustaining the array. They are in compliance with section regarding being on rear of roof. External disconnect switch is provided. That is a requirement with every solar install he has ever worked on. We will provide a switch and label it as such. We will conform to the signage required in the Code. Section 408-6F: might just make a suggestion you make an update to solar "array" instead of 'Panel" and will absolutely comply with this. 408-6H refers to residential and doesn't apply. 408-6j: they have received interconnection permission from the utility and will provide that to the planning Board. Section 408-6k: will comply. Section 408-6l: have letter from centurion certifying this is the case. 408-7b does not apply, 408-7c does not apply; 408-7d: obviously we have to have solar disconnect on exterior of building, the main piece you are referring to is string inverter, and believe in this array believe we are using micro-inverters so there will not be any larger inverters, and they sit under the solar panels. Will have an AC load center and will put that inside the house, that's where we combine branch circuits that come down from the roof. Section 408-8 refers to abandonment: the board should be aware that a solar array is made of highly recyclable material, so when it is at the end of its useful life it is fairly easy to recycle and the homeowner would be responsible for that. That said the life of solar panels is warranteed for 25 years, and there is no reason to believe they wont work for 50 years; they are extremely durable and should last a very long time.

Mr. Linz said he doesn't have any concerns. He reviewed the plans and thinks it doe meet the Board requirements.

Mr. Pullaro asked if the panels are covering the entire roof in the back.

Mr. Gold said no, ther are significant setbacks from ridge line and east and west.

Mr. Spizziri asked if they generate any heat unto themselves.

Mr. Gold said no.

Mr. Pullaro asked if it could cause any problems getting snow or ice underneath it.

Mr. Gold said they are packed together pretty tightly so the only way would be for it to build up underneath and stay there, and that's a difficult proposition.

A motion to close the public hearing was made by Mr. Kahwaty and seconded by Mr. Sheppard. All those in favor (aye).

A motion to approve the application for FLK-2821 Mokray was moved by Mr. Kahwaty and seconded by Mr. Sheppard.

Roll Call:

Yes Mr. Kahwaty, Mr. Lauber, Mr. Pullaro, Mrs. Vierheilig, Mr. Linz, Mr. Sheppard

A motion to approve the vouchers was moved by Mr. Kahwaty and seconded by Mr. Sheppard.

Roll Call:

Yes Mr. Kahwaty, Mr. Lauber, Mr. Pullaro, Mrs. Vierheilig, Mr. Linz, Mr. Sheppard

A motion to adjourn was moved by Mr. Kahwaty and seconded by Mr. Lauber. All those in favor (aye).

The meeting was adjourned at 9:30 p.m. by Chairwoman Vierheilig.

The next regular meeting of the Planning Board of the Borough of Franklin Lakes will be on March 4, 2015 at 7:30 p.m.

Minutes submitted by: Caitlin Bauer – Recording Secretary.