PLANNING BOARD MEETING – MAY 20, 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.

Acting Chairman Lauber read the FIRE SAFETY ANNOUNCEMENT. He read the PREAMBLE.

ROLL CALL

PRESENT Mayor Bivona, Mr. Kahwaty, Mr. Gostkowski, Mr. Lauber, Mr. Pullaro, Mr. Linz, Mr. Sheppard, Mr. Ochs

ABSENT Mrs. Vierheilig, Mr. Lazerowitz

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

BOARD DISCUSSION

Approval of the minutes of the previous Planning Board meetings will be carried to the June 3rd meeting.

PUBLIC HEARING

SLFLK-2771 FRANKLIN LAKES REALTY, AMENDED SITE PLAN, 556 COLONIAL ROAD, BLOCK 1411, LOT 2, COMPLETENESS DETERMINATION (4-15-15), 1ST HEARING 5-20-15

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

Mr. Whitaker explained that this is an application as a modification to original approved plan, to include the addition of a fitness center

The amended plans were marked as A-1.

Mr. Spizziri swore in Richard Moralle, P.E.

Mr. Moralle testified as to A-1, the fitness center is located right at the crux of the L of Building 1. They have modified the accessible route from the first floor of the building onto the plaza deck and maintained a sidewalk now leading to the garage level, which also provides access. The access for fire access has been maintained, and is in fact enhanced in that they no longer have a wall between fire lane and patio plaza area. They have modified storm water calculations to demonstrate that this approximates the same amount of impervious coverage.

Mr. Whitaker said Mr. Moralle had the opportunity to review Boswell McClave report of April 19th, one comment he hadn't touched upon yet is testifying that the spot grade elevation just below the garage amenity area.

Mr. Moralle said he had revised that on the plan and submitted it to Boswell's office

Mr. Spizziri swore in Robert Waldron, RA.

Mr. Waldron said this is a copy of what was presented the first time for Buildings 1 and 2. The first sheet is the cover sheet last dated 3-15-15 with an addition of 1,618 square feet. On Sheet 1-A, same revision date, highlights the revision of 1,618 square feet, shows fitness center as 60x25. Small vestibule connects it to elevator lobby. They preserved fire access exactly how Mr. Linz wanted it from original application. They eliminated the retaining wall; this lower access is now level with the fire access. It is now accessible according to NJ Barrier Free. Sheet A-2, biggest change from roof terrace; this is now passive and there are no cooking areas. It does have barrier free ramp and steps going down. Sheet A-3, only thing is doesn't show is roof that was sitting on top of patio that was previously approved. Sheet A-5 is the same thing, it just doesn't show the roof. Sheet A-6 and A-7 are the elevation sheets, and will show the Board a blowup. They reflect where it goes in relation to the rest of the building. The one question that came up on Boswell's letter was fall protection. Sheet A-9 shows the fitness center.

Mayor Bivona asked about the use of the roof terrace and if there is a limitation on number of people.

Mr. Waldron stated the roof terrace was a reflection of Mr. Linz worrying about a wood roof over an outdoor bar and kitchen, so the idea is that that area is a place to go out and read a book. The water feature was eliminated and the cooking element was eliminated.

Mayor Bivona said if there was gathering up there how many people could safely go up there.

Mr. Waldron said it's 1,500 square feet; the code says every 5 square feet you could have person. The reality is when you put normal tables and chairs there you could probably get 50-100 people up there.

Ms. Boland said everything in their letter had been addressed, with the exception of the drainage, which was submitted, and they testified as to working with their hydrologists.

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

A motion was moved to approve the alteration to the original plan as designed, and soil movement modification, and seconded by Mr. Kahwaty.

Roll Call:

Yes Mayor Bivona, Mr. Kahwaty, Mr. Gostkowski, Mr. Lauber, Mr. Pullaro, Mr. Linz, Mr. Sheppard, Mr. Ochs

Ms. Berardi, the Planning Board Clerk, asked the Board if they could hear Mr. Hoyer, who was present at the meeting.

Mr. Hoyer asked about an escrow account that remains as a result of his application, and he would like those funds to be released as they have another application being prepared. He asked if releasing those funds in any way jeopardizes the previous approval.

Mr. Spizziri said no, they have approval on what was originally approved on that application. However, once they receive approval on the second application he could stand to lose approval on the first. The funds on deposit have nothing to do with approval or disapproval of the application. He suggested Mr. Hoyer speak with Ms. Berardi.

Ms. Berardi said that usually once an application is concluded the funds are released, but since nothing ever happened on this property she's not sure how to proceed.

Ms. Boland said she would have no issue releasing them.

Ms. Berardi told Mr. Hoyer to write a letter requesting the release of the Accutrack monies.

FLK-2820 SMITH, MAJOR SUBDIVISION WITH CUL-DE-SAC, 713 CINNAMON LANE, BLOCK 2310, LOT 1.08, CONTINUATION OF COMPLETENESS DETERMINATION FROM 10-1-14 TO 3-4-15, DEEMED COMPLETE 3-4-15, 1ST HEARING 4-1-15

Ben Cascio, Esq., attorney for the applicant, and George Paul James, P.E., engineer for the Applicant were present at this meeting.

Mark Madaio, Esq. was present at this meeting representing Rose Festa, the immediately adjoining property owner. He explained he was here objecting in 2007 when the subdivision was presented and denied by this Board.

Mr. Cascio explained that his si an application for major subdivision for the properties at 713 Cinnamon Lane, Block 2310, Lot 1.08. As the Board may recall from the prior meetings held on this matter, this is an application to subdivide two lots without any variances.

Mr. Madaio explained that through the course of 9 public hearings in 2007 this Board heard a very similar application. That application required two minor variances. One has been eliminated by now extending the cul de sac, so an arc variance previously required is no longer required. The other variance was related to the house, which in this plan is not shown; it is just shown as a conceptual building. What he would request is that the Board require that a house be shown, not just a subdivision. The reason for that is one of the reasons which the Board denied the application was the fact that there's approximately 5,300 yards of unaccounted for fill on that site. There's a 2007 letter from Boswell that did borings and samples at the Board's request and they surmised that that is something in the order of hundreds of truckloads of unaccounted for fill that wound up on this site. You might recall that this site is nearly unbuildable, except for a doughnut shaped hole that is somehow up above the wetlands. Between 2007 and today there's another several hundred yards of unaccounted for fill on this site which is wetlands.

Mr. Spizziri asked Mr. Cascio the difference between this application and the previous application.

Mr. Cascio said it is very simple—no variances.

Mr. Cascio also stated that the plan shows a footprint of a house.

Mr. Spizziri swore in George Paul James P.E.

Mr. James said he had a long history with this property, and explained that he was first going to present basic concept of subdivision and then going to review the approvals that were obtained by various people, starting with Urban Farms in 1982. They did studies on the property and did the original plot plan for Mr. Smith. Urban Farms received approval to fill this lot and the lot behind it, on Clove Road. He said he had a letter from the engineer, Mr. Raimundi, and a Resolution from the Mayor and Council.

Mr. James testified to Exhibit 2, existing conditions. This is the Lot 713 Cinnamon lane, at end of Cinnamon Lane cul de sac. The house is the structure on the property and this lot is approximately 3.4 acres. Exhibit 1 is the set of plans. Exhibit 3 is Sheet 3 of 8 in the Board's set, except it's color rendered. It shows the proposed subdivision. Mr. Smith's house would be put on a lot of approximately .94 acres, which would be conforming in A-40 zone, and then 21/100ths of an acre would be given to extend the cul de sac. Necessary to have lot have its proper width. This subdivision is different from previous one in that the previous one did not propose extension of the cul de sac. This does not require any variances ot make this a conforming lot. This is 2.26 acres, and the right of way dedicated is .21 acres. Exhibit 4 shows an alternate, where the right of way for the cul de sac would be dedicated. The merits of that are that if this cul de sac was to be built it would be necessary to vacate a remove a portion of existing cul de sac. No real purpose because this would be a fully conforming lot anyway. This construction impact would be unnecessary and wouldn't benefit municipality to have another cul e sac to maintain. The plan before the Board right now is a conforming extended cul de sac.

Mr. James said Exhibit 5, which is sheet 5 of 8, is what old subdivision was. It did not have cul de sac extended, did not have additional right of way dedicated, and did not have enough width. Exhibit 6 is a supplemental sheet, 1 of 2, shows the area where soil has been placed since the 5,320 yards were placed. We were asked to show any additional soil that may have been placed after the previous plan. The area shaded in the pink color is another 782 yards of soil, which wasn't on the previous plan.

Mr. James said this portion is not very deep, only a foot in one area, some encroachment on wetlands, however that is the back, and Mr. Smith has a permit to relocate; a DEP permit. These would all be issues to discuss with DEP. There has been a pre-application meeting with DEP. It was left that the applicant would come back with a more detailed analysis of the flood hazard area and elevation and then there would be some discussion on any remediation work. Another meeting with the DEP has to take place to determine what to do. Although many DEP permits were issued for this they will have to go back for additional ones and modification. What will also be needed before going back to DEP is to know whether the Board wants the cul de sac to be built because they will need more storm water calculations.

Mr. Lauber asked if he is saying 782 yards were placed there under DEP permit.

Mr. James said no, he is not saying that.

Mr. Pullaro asked if he is saying the 5,320 yards has a DEP permit.

Mr. James said no, he is not saying that. The wetlands delineation, and resource value of delineation, stream encroachment permit, flood hazard area, driveway permit, permit to extend water main and relocate water main, but no permit to put the 5,320 yards.

Mayor Bivona asked if Mr. James is saying all the soil that was brought to the site was done without permit.

Mr. James said he is not saying that but he is going to get to that. He said that when there was the court case there wasn't a violations notice regarding the fill; that was left unresolved.

Mayor Bivona said there was fill brought to the site without permit, and asked Mr. Spizziri if that is a violation, and wouldn't they have to come to this Board to get a permit. He asked what would have been the process being something is amiss here.

Mr. Spizziri said what normally would be done is an applicant would come forward with a site plan in which the applicant presents a need for fill or cut. This is a little more complicated because we don't know what fill was approved for removal by the Borough, and he doesn't believe that this Planning Board gave any permission or approval for importation of fill. He doesn't have an answer because those question were not resolved. He said he had calculated about 6,000+ cubic yards on this lot one way or another.

Mayor Bivona asked if he was going to tell the Board when the fill was brought in, what the fill is, and why permits were not issued.

Mr. Spizziri said the other question is that when the lot was filled did it impinge upon any wetlands to create more of a buildable area. That's a major question too.

Mr. Madaio said the Board is going to get a history of fill on the site but the operative question is, is that how the 5,320 get there in this explanation, or did the 5,320 get there outside of that. Does this explanation explain how the 5,320 got there, and even after that is that still going to be a question.

Mr. Spizziri said he thinks upon cross examination Mr. Madaio may want to ask those questions of the witness.

Mr. James said for the first filling of the lot, plans were reviewed by Raimundi Associates who was the Borough Engineer; he has those plans and Mr. Raimundi's letter. This was the plan, Exhibit 7 prepared by Fred Herman, Chief Engineer, last revised September 19th 1982, for Urban Farms, Developers. That plan was approved by Louis Raimundi, in his letter of September 20th, 1982. The soil movement permit was issued on November 12th, 1982 by Mayor and Council.

Mr. Linz asked what the amounts were.

Mr. James said the Mayor and Council didn't call out amounts, they called out this plan. The easterly portion of the lot was to be filled and the plan was to fill this lot and also 719 Clove Lane. As the exhibits indicate the soil was to be taken from Walder Farms and be used to create a building area on this lot, 713 Cinnamon Lane, and 719 Clove Lane.

Mr. James said the next step after filling the lot by Urban Farms, was an application by Mr. Smith for approval of a plot plan, Exhibit 10, and it was dated September 1986 last revised to October 20th, 1987. That was reviewed and approved by this Board. That resulted in a soil movement permit being issued, Exhibit 11, for an additional 1,506 cubic yards.

Mr. Lauber asked that was applicable to which lot.

Mr. James said Block 2310, Lot 1.08. What this also shows is that they put in a drain, which drained two ways, and that lowered groundwater table low enough for Board to be satisfied. Exhibit 10, plan prepared for Mr. William Smith Jr., prepared by Urban Planning, soil movement permit was May 11th, 1989. Renewed on November 2nd, 1990, still had same soil quantity. That is what this Board approved.

Mr. James explained Exhibit 13 is a DEP obligation for exemption from, dated April 17th, 1991 which basically says that Mr. Smith does not need any DEP approvals to change this from having the house where this Board approved it, to off of Cinnamon Lane. He also at that time had the stream encroachment line changed. Exhibit 14, dated August 1995, to put the house off of Cinnamon Lane instead of where it was originally approved in easterly portion of the site. The house was actually built there.

Mr. James testified that Exhibit 15 was a Wetlands Restoration Plan. Had to move fill from area shaded in the back of the house and that resulted in a 5 year inspection period in which Boswell and DEP inspected and at the end of the 5 years DEP signed off as this being a suitable restoration plan. Exhibit 16 prepared by Weissman dated January 5th, 2004, and last revised November 11th, 2005 showed not only Mr. Smith's house, but the subdivision, and another house. At this particular point Boswell engineering pointed out a discrepancy in the soil quantities between the Canger plan, which resulted in the 5,320 yards of material that was placed adjacent to the material previously placed. This was the plan that ultimately went to Court and was not approved. There wasn't any action taken at the time to say that it was a violation or to say it had to be removed. The application for subdivision and building of the house was denied.

Mr. Pullaro asked of the 5,320 yards how much of it is in the wetlands.

Mr. James said almost none of it but he will get an exact number to the Board.

Mr. Pullaro asked of the 782 yards how much of that is in the wetlands.

Mr. James said just the edges of it, and said he would get the Board the number on that. It is more in the flood hazard area than the wetlands.

Mr. Sheppard said they do not know the composition of the fill.

Mr. James said they do; Boswell did reports on that. The extra fill he thinks probably came from building the house and septic system. Mr. Smith is also a contractor so there's the possibility it came from other sites.

Mr. Cascio asked Mr. James to point out for the Baord where the house is to be located and the footprint and size.

Mr. James said the concept plan on sheet 6 of 8 shows a proposed dwelling. The footprint for the dwelling is 2,625 square feet, which means if it was 2 stories it would be 5,250 square feet.

Mr. Spizziri asked for the footprint of the buildable area of the lot.

Mr. James said he would have to get back to the Board on that.

Ms. Boland said their main concern anytime of soil movement without permit, would be any fill in the environmentally restricted area effecting the wetlands, wetland buffer, and flood hazard area. So at a minimum she needs to hear from the State and address the 6,000 cubic yards of fill, however they address it, by removing it, or violations or fining, the Board has to hear from the State that they are aware of it and what they will require.

Mr. Spizziri asked if the Applicant would accept a restriction, if the Board chose to approve this lot, that the proposed dwelling dimensions on that lot do not exceed a certain parameter.

Mr. James said his client would accept a restriction of the square footage of the house.

Mr. Spizziri asked if he would accept that the house would have to be variance free.

Mr. James said yes, his client would.

Mr. Madaio asked if Mr. James' background testimony does anything to explain the 5,320 yards on this site.

Mr. James said no, nothing he said.

Mr. Madaio said he just wanted to be clear that none of Mr. James' testimony had anything to do with the 5,320 yards of "miraculous fill".

Mr. James said he did say that some of it could have been from when Mr. Smith excavated to build the house and septic system.

Mr. Madaio asked Mr. James if he had to do the math, how many truckloads would have had to go onto this land for 5,320 cubic yards of fill.

Mr. James said 360.

Mr. Madaio said it is his suggestion that the Board take no action on this application not until the environmental gets cleared up, but until this soil issue has been resolved.

Mr. Pullaro asked if the Board can hear this application on a lot that has a violation on it or should be be instructed to clean it up and then come back.

Mayor Bivona said that was his initial summons and he does not know why the Borough didn't issue a summons when they were notified at the time.

Mr. Spizziri said he would need an opportunity to review that. His sense at the time, notwithstanding the fact that there are violations, is that the applicant could proceed and whatever violation there may be would have to be cleared up and disposed of before any approvals are granted, or be a condition of approval.

Ms. Boland said any time an application comes to them with environmental constrictions on the property we refer to DEP, who can dictate that.

Mr. Spizziri said basically the MLUL sets up parameters to outside agencies, so the Board may not require outside agency approvals but make them "subject to" outside agency approvals.

A motion to carry this public hearing to the June 17th meeting was moved by Mayor Bivona and seconded by Mr. Kahwaty. All those in favor (aye).

A motion to approve the vouchers as presented was moved by Mr. Kahwaty and seconded by Mayor Bivona

Roll Call:

Yes Mayor Bivona, Mr. Kahwaty, Mr. Gostkowski, Mr. Lauber, Mr. Pullaro, Mr. Linz, Mr. Sheppard, Mr. Ochs

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

The meeting was adjourned at 10:15 p.m. by Acting Chairman Lauber.

The next regular meeting of the Planning Board of the Borough of Franklin Lakes will be on June 2, 2015 at 7:30 p.m.

Minutes submitted by: Caitlin Bauer – Recording Secretary.