

**Borough of Ho-Ho-Kus
Bergen County, New Jersey
Zoning Board Minutes
November 7, 2013**

Call to Order: Open Public Meetings Act Statement – In compliance with the Open Public Meetings Act of the State of New Jersey, notification of this meeting has been sent to the Ridgewood News, our official newspaper in the Borough of Ho-Ho-Kus and notice has been posted on the bulletin board at Town Hall.

Roll Call: Messrs. Tarantino, Cox, Forst, Ms. Metzger, Messrs. Ianelli, Pappas (Absent), Rodger, Chairman Barto (Absent)

New Business:

St. Luke's Church: 260-302 North Franklin Turnpike, Block 103, Lots 7 & 8: proposed cemetery with headstones and car turn-around.

Mr. Leonard Tarantino: stated that Mr. David Hals, Borough Engineer, has submitted a report to the applicant's attorney and the application is going to be carried until the December 5, 2013 meeting. Mr. Tarantino asked Mr. Rutherford to provide further information.

Mr. David Rutherford, Board Attorney: stated that normally there would be a completeness review this evening, but this is a fairly complex matter; Mr. Hals has prepared a memo outlining a few issues which he believes should be included in the plan; there are no significant deficiencies with the application; the matter will be placed on the December 5, 2013 agenda; application is certainly in the proper position to be heard by the Board.

Mr. Tarantino: asked if revised plans would be submitted.

Mr. Rutherford: stated he believed they would be.

Mr. Tarantino: instructed the Board Secretary to send the revised plans to the Board once received. In addition, Mr. Tarantino stated there were two resolutions to be voted on this evening.

Ongoing Business:

Resolution: Mr. & Mrs. Melone, 9 Boiling Springs Road, Block 403, Lot 21: approval of application for a side and rear yard setback for an accessory structure.

Mr. Rutherford: stated he was absent for the October meeting and his associate attended in his place; Mr. Rutherford has reviewed his associate's notes on the Melone matter.

Mr. Christopher G. Weigl: introduced himself to the Board; is in attendance on behalf of the applicants.

Mr. Rutherford: stated he had prepared a resolution which called for a setback for a solar array of 10 feet in the north and west; Mr. Rutherford received an email from a Board member stating that their recollection of the setback on the west side was to be 13 ft.; as a gesture of professional courtesy a copy of the resolution was provided to Mr. Weigl who advised him that as far as his client was concerned the application was approved at 10 ft. setbacks; as an accommodation to the application, a preliminary resolution was adopted in October because there were timing issues as to a grant and the Board's inability to hear the application due to possible lack of a quorum; the resolution which was adopted in October was a plain "vanilla" resolution approving the matter; in response to the concern from the Board member, Mr. Rutherford consulted with Mr. Weigl regarding this issue; normally Mr. Rutherford's position is the adoption of a resolution is a Board matter not an applicant matter; since Mr. Rutherford was not in attendance, Mr. Weigl indicated he would like to appear tonight to be heard; Mr. Rutherford also listened to the tape of the October hearing this same day; the Board is the finder of fact; does not know what the Board anticipated in regards to setback; there was a reference in the proceedings from the applicant's expert witness regarding the 13 ft. setback; Mr. Rutherford and Mr. Weigl did listen to the tape together but they were not able to find the specific discussion regarding the 13 ft. setback; the Board needs to determine if, when it approved the application, there was to be 10 ft. setbacks on both sides or 10 ft. and 13 ft.; Mr. Rutherford stated that the 13 ft. was mentioned twice and not again; it was not mentioned during the Board's deliberation and decision making; bulk of the decision making related to the landscaping and screening which is required by ordinance; resolution prepared is consistent with this ordinance; issue before the Board is if the Board approved the application with the expectation that the application was being approved as presented.

Mr. Weigl: stated Mr. Rutherford's assessment is correct; there was a discussion in regards to the variance and how to minimize it; eliminate or move the slide; changes did not come to fruition; in response to the Chairman at the meeting, there was a discussion regarding moving 3 ft. east and that is what Mr. Rutherford is referring to; at the time the motion was made on the application, the only issue cited by the Chairman was the screening element and there was no reference made to the amendment of the setback from 10 ft. to 13 ft.; predicated upon that

and the months between then and now and the grant application deadline upon them, they proceeded to have engineering plans finalized based on the 10 ft. side yard setback; site prepared by landscapers; submitted to the Borough for permits; approval was for 10 ft. not 13 ft. side setbacks.

Mr. Tarantino: asked if the client volunteered to have a setback of 13 ft.

Mr. Weigl: stated it is his understanding that his client did not.

Ms. Abigail Metzger: stated she remembered that there was a lot of conversation at the October meeting; if in fact the Chairperson, who is very specific, wanted it pushed in and if the expert is on the tape as saying that was a viable option, it would be Ms. Metzger's inclination to believe that the Chairperson, in putting forth the resolution, assumed that was indeed what was expected.

Mr. Tarantino: stated Chairman Barto would have relied upon it, not expect it and that he agreed with Mrs. Metzger's statement.

Ms. Metzger: stated that it is probably more related to Mr. Rutherford than to Mr. Barto as to the specificity of the resolution; stated there were many reasons so many different ideas could not be done; if in fact the expert witness gave a possibility of moving it, it is Ms. Metzger's inclination that that is what was expected; the fact that it was not stipulated and there were serious deadlines with state grant applications, Ms. Metzger believes the Board is in a bit of a quandary.

Mr. Tarantino: stated he has been a member of the Zoning Board for 20-25 years and Mr. Barto has been on the Board many years as well, and agrees with Ms. Metzger that Chairman Barto is very detailed oriented; Mr. Tarantino asked Mr. Weigl if a new submission would be a problem for his client.

Mr. Weigl: stated the deadline upon his clients would be a problem; there was reliance by the Chairman as to what was said by the witness; Mr. Rutherford was kind in giving a preliminary resolution; the resolution was not detailed and it did not state what the setbacks were.

Ms. Wetzger: asked if the preliminary resolution mentioned landscaping.

Mr. Weigl: stated it did not, but it was understood that it was part of the approval.

Mr. Rutherford: stated the October resolution could not have addressed the detailed findings of fact because it was prepared before the hearing

took place and was done solely for the accommodation to the applicant; the understanding was the Board would adopt its normal resolution with findings of fact at a later time.

Mr. Tarantino: asked who was eligible to vote.

Mr. Rutherford: stated those eligible to vote were Ms. Metzger, Mr. Forst and Mr. Ianelli.

Mr. Ianelli: asked if there would have been a request to amend the proposal for the Board to formulate the resolution.

Mr. Rutherford: stated no, if an application is amended the Board votes on the amended application; sometimes the application is not amended and the Board votes to approve or deny the application as presented.

Mr. Tarantino: asked how Chairman Barto worded the oral resolution on the tape.

Mr. Rutherford: stated Mr. Barto stated the application was to be approved and the condition was the landscaping and then the Board proceeded to adopt the resolution; there was no discussion of the setback.

Mr. Tarantino: asked if the applicant said they could move it to 13 ft. or was it they may move it to 13 ft.

Mr. Rutherford: stated there was a discussion of moving it to 13 ft.

Ms. Metzger: stated that if Chairman Barto stipulated the landscaping in the resolution, the setback should have been stated as well; Ms. Metzger believes this discrepancy falls on the Board; Ms. Metzger asked if only three people can vote on the resolution.

Mr. Rutherford: stated yes, it can be as few as one person; it is the majority of the people who voted on the application; if the Board's feeling is the same as Ms. Metzger's, Mr. Rutherford has distributed a resolution to the Board; what was paragraph A, which discussed the testimony of the applicant's witness will be deleted and the solar array will be 10 ft. north and 10 ft. west.

Mr. Tarantino: asked if Mr. Forst believes the setbacks are 10 ft.

Mr. George Forst: stated he cannot remember the details, but everything considered and the Chairman's attention to detail, and the fact it wasn't placed in the resolution, then the setbacks are 10 ft.

Motion to Approve the Resolution as Revised: Iannelli, Metzger
Roll Call Taken:

Ayes: Iannelli, Metzger, Forst

Resolution: Mr. & Mrs. James Mathews, 100 Gilbert Road, Block 210, Lot 1: approval of application for a variance for the installation of a generator in the side yard.

Mr. Rutherford: gave a review of the Mathews application; chosen location was the best site; north side of home; shielded by vegetation; front yard setback.

Motion to Approve Resolution:

Roll Call Taken: Forst, Iannelli

Ayes: Forst, Iannelli, Metzger

Kristin Gildea Fox and Ryan Fox, 21 Duncan Road, Block 106, Lot 6: applicant seeks approval to widen the bottom of their driveway; entire driveway will be 18' wide from house to street.

Mr. Tarantino: stated he is recusing himself from this application due to the fact he is a neighbor of the applicant.

Please note: Mr. Franklin Cox is the acting Chairperson for this application.

Mr. Ryan Fox and Mrs. Kristin Gildea Fox: sworn in by Mr. Rutherford.

Mr. & Mrs. Ryan Fox: introduced themselves to the Board.

Mr. Rutherford: gave a review of the Fox application; includes Zoning Official denial dated August 16, 2013 indicating the proposed widening of an existing driveway is not in compliance with the ordinance requiring a 10 ft. setback from a side property line; applicants filed a survey dated July 15, 2013 showing existing driveway and proposed widening.

Mr. Fox: stated his driveway tapers from 18 ft. to 14 ft at the street; wants to widen the driveway so the distance is equal at all parts; most of the houses in the neighborhood have two garage doors facing the street and those driveways are of the same width the length of the driveways; curb cut required; already inside the 10 ft. side setback; tight property lines.

Mr. Rutherford: stated the setback is 8 ft. 3 inches at this time and the proposed widening will change to 5 ft. 10 inches.

Mr. Cox: asked if the driveway is located by the neighbor to the north and is the neighbor's driveway on the other side of their property.

Ms. Fox: stated yes and proceeded to give copies of pictures to the Board of the driveway; stated she has spoken to her neighbors and they do not have an issue with the project proposed.

Mr. Cox: stated the building has a 10 ft. setback to the corner of the garage; the existing driveway, where it begins, is somewhat greater than 10 ft.

Mr. Fox: stated it is approximately 10 ft. plus 18 inches.

Mr. Cox: stated that it is the property line which comes in.

Mr. Fox: stated the driveway starts to taper.

Mr. Cox: stated it is the angle of the property line that cuts the footage; asked if shrubs and bushes would need to be removed.

Mrs. Cox: stated a hedge had been removed in anticipation of widening the driveway.

Mr. Ianelli: asked if the neighbors had any objections to the project.

Mr. Fox: stated there are no problems with the neighbors.

Mr. Cox: asked if both sides of the driveway were being widened.

Mr. Fox: stated one side of the driveway would be widened by 2.5 ft. at the bottom and 19 inches the other side so it equals the same distance at the top of the driveway.

Mr. David Rodger: asked if it could be slanted the other way.

Mr. Fox: stated it wouldn't be practical and it wouldn't be a straight line from the garage to the street.

Mr. Cox: stated he does not have a problem with this application.

Mr. Rutherford: stated the application is being approved as presented; described application and variance required.

Roll Call Taken:

Ayes: Cox, Forst, Metzger, Ianelli, Rodger
Recusal: Tarantino

Mr. Cox: asked about attendance for the December 5, 2013 meeting in regards to the St. Luke's application.

Mr. Rutherford: stated after member recusals and member travel plans, four members would be available; Mr. Rutherford will double check the Land Use law to see if this number is sufficient.

Mr. Ianelli: stated he would try to be available for the meeting if the Board was in need of another member present.

Motion to Adjourn: Forst, Rodger

All Board Members present approve Motion to Adjourn.

Respectfully submitted by:

JoAnn Carroll
Zoning Board Secretary
November 14, 2013