

**Borough of Ho-Ho-Kus
Bergen County, New Jersey
Zoning Board Minutes
February 4, 2016
Regular Meeting**

Meeting Called to Order at 8:00PM by Chairman Barto

Open Public Meetings Statement: Read into the record by the Board Secretary.

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

Also in attendance: David L. Rutherford, Esq., Board Attorney; Mr. Mark Berninger, Zoning Official; JoAnn Carroll, Board Secretary.

Approval of By Laws: Rodger, Tarantino

Ayes: Tarantino, Cox, Forst, Deegan, Pappas, Rodger, Chairman Barto

Approval of Annual Report: Rodger, Cox

Ayes: Tarantino, Cox, Forst, Deegan, Pappas, Rodger, Chairman Barto

Completeness Review

Sean and Agnieszka Tynan, 52 Fairlawn Street, Block 218, Lot, 1:

applicants seek variances to construct three additions to their house which is located on a corner lot; non-compliance with Section 85-11 (F)1 front street yard depth and Section 85-11 (J) projections into front yard.

Mr. Rutherford: stated the applicant was before the Board for a Completeness Review only; no testimony would be taken; a form of notice was not submitted with the application so Mr. Rutherford had prepared one; copy given to the Board Secretary who will take care of publishing the notice; instructed the applicant to contact the Board Secretary to review the notice procedure; asked that the Affidavit of Service and white receipts be submitted to the Board office by the Monday before the public hearing date.

Chairman Barto: requested the applicant to contact his architect and ask him to cross-hatch the new area so the Board can see how it lays exactly on the property; asked for this information to be submitted to the Board office at least 10 days in advance of the public hearing date.

Application deemed complete; public hearing scheduled for March 3, 2016.

New Business

David and Lisa Massaro, 146 Ardmore, Block 206, Lot 16: applicants seek a variance for light stanchions which have been erected in the Borough right-of-way and are in violation of the zoning ordinance which does not permit light stanchions as accessory structures; in addition, applicants seek variances for rear yard setback, building coverage and improved lot coverage for a proposed addition connecting the principal structure and the detached garage.

James Delia, Esq., Wells, Jaworski & Liebman, applicant's attorney: stated his applicant is present this evening seeking relief on two separate matters; the first matter deals with a proposed addition which would connect the garage and the home; this new area will function as a laundry and mud room; variances, calculations and measurements reviewed; the addition is small in nature; it will stay within the existing setbacks; the addition is not too tall; other issue to be discussed are the light stanchions which were placed on Borough property; the Massaro's purchased their home in 2015; hired a paver for their driveway; contractor suggested installing stanchions; the homeowner did not know a permit was needed for any of the work being done on his property; the homeowner did not know the work was being done on Borough property; Mr. Bole's letter is part of the presentation this evening; the area by the Massaro's house is dark and is a busy area; any approval for the stanchions would include a hold harmless agreement with the Borough; there would be no liability to the Borough.

Mr. Mark Braithwaite, applicant's architect: sworn in by Mr. Rutherford.

Chairman Barto: asked if there had been any mark against Mr. Braithwaite's license since the last time he had been qualified by this Board.

Mr. Braithwaite: stated no.

Chairman Barto: stated Mr. Braithwaite was deemed qualified.

Mr. Braithwaite/Mr. Delia: Mr. Braithwaite was hired by the Massaro's for their addition; he produced the plans which were given to the Board along with photographs from different perspectives; described the area where the addition would be built; the house is a center hall colonial; 10 ft. separating principal residence with the detached garage; proposal is to attach the garage; existing conditions shown; very natural solution to the issue facing the homeowners; discussed building coverage; decrease in impervious coverage; location of structure shown and its setbacks; architecture is designed to meet the aesthetics of the home; keeping the seam/corners of the garage.

Mr. Tarantino: asked for the current width of the garage.

Mr. Braithwaite: stated about 22 ft.

Mr. Tarantino: asked what the average width of a 2 car garage was.

Mr. Braithwaite: stated 22 ft.

Mr. Tarantino: asked if there would be a new side door to the garage.

Mr. Braithwaite: stated there would be just one door into the house.

Mr. Tarantino: asked if there was currently a side door where the new addition would be.

Mr. Braithwaite: stated no.

Mr. Tarantino: asked if the plan was to open up that wall, put in a door and a ledge and then stairs going down.

Mr. Braithwaite: stated yes.

Mr. Tarantino: asked if the garage could comfortably fit two cars.

Mr. Braithwaite: stated it is not ideal, but two cars would be able to fit.

Mr. Tarantino: asked what the depth is from the door to the floor level of the garage.

Mr. Braithwaite: stated it is 3 steps and 4 risers.

Mr. Tarantino: asked for clarification regarding the breezeway, Mr. Braithwaite stated in his testimony it was the southernmost wall where the steps are and the steps were even with the house.

Mr. Braithwaite: stated the landing is even with the house.

Chairman Barto: stated reference is made to impervious coverage and he is not sure why because in Ho-Ho-Kus coverage is coverage whether it is impervious or pervious; stated there is a macadam driveway at 738.1 sq. ft.; asked if that included the Belgian blocks that make up the balance of the driveway; stated it looks like it is more than 730 sq. ft.

Mr. Rutherford: stated the confusion is the driveway appears to be pavers.

Mr. Massaro: stated it is now.

Mr. Rutherford: stated that is part of the confusion; the survey and the lot coverage calculations show a macadam driveway; asked if it was accurate to say that what was previously macadam are now pavers.

Mr. Massaro: yes.

Chairman Barto: asked if the entirety of the driveway is 738 sq. ft.

Mr. Braithwaite: stated that was correct.

Mr. Tarantino: asked if these were the measurements Mr. Braithwaite calculated.

Mr. Braithwaite: stated these were done when the homeowners closed on the house; he used those numbers in his calculations; used the survey from the closing.

Mr. Tarantino: confirmed the house was purchased in June of 2015 and asked when the pavers were installed.

Mr. Massaro: stated in September 2015.

Mr. David Massaro, 146 Ardmore Road sworn in by Mr. Rutherford.

Mr. Tarantino: stated the plan indicates 738 sq. ft. for the macadam driveway; the applicant has testified that September, 2015 he installed new pavers and the contractor who installed the pavers installed the stanchions.

Mr. Massaro: stated yes.

Mr. Tarantino: asked if the footprint was expanded.

Mr. Massaro: stated a permit was received for the driveway after the driveway had been redone; the driveway was widened at the apron; Ms. Phillips did issue the permit; the size of the driveway was not increased.

Mr. Rodger: asked if the driveway would have to be torn up for water supply and drainage to the mudroom.

Mr. Massaro: stated not to his knowledge.

Mr. Braithwaite: stated they should be able to tap into the existing line.

Mr. Delia: stated the impervious number can be verified but the impervious number is lower and the building coverage is higher; even if the numbers are not right it is still less than it is today.

Chairman Barto: stated maybe yes, maybe no; it depends on the square footage of the driveway; questioning that it is 738 sq. ft.

Mr. Delia: stated the driveway was replaced in kind; only at the apron was it widened.

Mr. Tarantino: stated what troubles him is that the architect has specifically mentioned impervious coverage and whoever did this calculation didn't consider there is no distinction in Ho-Ho-Kus; requested that Mr. Braithwaite reinvestigate and report his findings to the Board Secretary; there is a lot of paver shown based on the pictures submitted.

Mr. Delia: stated the dwelling, chimney, eaves, garage, steps, walkways and patios are all listed; all the numbers seem to comply; will take a look at how the 738 number is derived; asked Mr. Braithwaite what the impact of the addition was to the surrounding properties.

Mr. Braithwaite: stated he believed the addition benefits the character of the neighborhood, as well as benefits the homeowner.

Ms. Amy Langevin, 251 Sheridan: asked a question of the architect regarding the aesthetics of the addition.

Ms. Anne O'Neill, 34 Sutton Drive: sworn in by Mr. Rutherford; asked a question of the architect regarding the location of the garbage cans and the shallowness of the backyard which has an extensive back patio; Ms. O'Neill stated she was not in favor of this application.

Chairman Barto: asked when the slate patio was installed and where would the garbage cans be located when and if the addition was approved.

Mr. Massaro: stated it was in place when he purchased the house; most of the improvements of the house were done in 2011/2012; has no exact information; the garbage cans would be located on the other side of the garage; they would not be visible to the front street.

Mr. Delia: stated he was done with the part of the application which deals with the addition; he asked Mr. Massaro to address the Board regarding the stanchions.

Mr. Massaro: stated he had his driveway replaced; part of the existing fence in the front of the home is a gate; it was out of shape; it was removed when the driveway was replaced; was going to have it replaced when the contractor suggested light stanchions; it was a last minute decision; in a few days the project was complete; he never checked his survey or thought to obtain a permit.

Exhibit A1: Survey prepared by Bernard Criscenzo, dated 5/20/15; A2: Letter from David Bole, Esq. dated 10/28/15; A3: picture of home, snow

and stanchions at 146 Ardmore; A4: picture of snow and stanchions at 146 Ardmore.

Mr. Delia: asked how the town became aware of the driveway and stanchions.

Mr. Massaro: stated Ms. Lisa Phillips, the prior Zoning Officer, visited his home; someone from the town had called stating there was work being done without a permit; Ms. Phillips stated Mr. Massaro would need to appear before the Mayor and Council for permission to have the light stanchions on borough property.

Mr. Delia: asked if Mr. Massaro made a presentation to the Mayor and Council and if he had received a letter from Mr. Bole.

Mr. Massaro: stated yes, he had made a presentation and did receive a letter from Mr. Bole; further stated the light stanchions help with safety as there are no street lights in the vicinity; Sheridan is busy; there are no sidewalks.

Mr. Tarantino: stated the letter from Mr. Bole mentions other safety issues considered; asked why those issues should outweigh the issues that were presented this evening.

Mr. Massaro: stated the Mayor and Council did not mention safety issues and that he was not privy to the Mayor and Council's discussion.

Mr. Tarantino: stated Mr. Bole's letter refers to the safety issue; end of the 2nd full paragraph.

Mr. Massaro: stated the Mayor and Council were concerned about snow plows hitting the stanchions; could have a hold harmless agreement; photos taken after the plow went through after the current storm.

Mr. Tarantino: stated the applicant has two light stanchions that don't exist anywhere else in that section of town; he put them in with a driveway with no permit and then on top of that the light stanchions are in the right of way; feels the applicant is asking for a lot of relief.

Mr. Massaro: stated there are light stanchions in his neighborhood; they are offset and not as close to the pavement or the street.

Mr. Delia: stated the indication from Ms. Phillips is that light stanchions are not allowed; he looked at the code and could not find where light stanchions are prohibited; believes the issue is location.

Mr. Tarantino: stated he didn't know what type of variance the Board could grant since the stanchions have been placed on the Borough's property.

Mr. Delia: stated they followed the Mayor and Council's direction; they either could remove the stanchions or apply to the Board for a variance.

Mr. Tarantino: stated he would like to hear from Mr. Berninger, the Zoning Official.

Mr. Mark Berninger, Zoning Official: sworn in by Mr. Rutherford; stated he is the new Zoning Official for the borough; he has been the Construction Official for the borough for two years; has been a Zoning Official in other towns for 25 years; has reviewed all the documents to get up to speed; did find out a letter from the Zoning Official was sent to the Mayor and Council but there was a mix-up and it was never delivered to them; stanchions are not permitted in the front yard; he considers them accessory structures; even if they were on Mr. Massaro's property, they would not be permitted; furthermore, he is tough when it comes to enforcement; if the applicant had applied to him for the fence, driveway and stanchions, he would have denied them; unfortunately all the work was done without any permission or permit; at that point, he would have sent a letter to Mr. Massaro stating he had 10 days to remove the stanchions and fence and to submit a permit application for the driveway; in addition, he would have sent a violation with a penalty for the installation of the stanchions and the electrical work done without permits; if Mr. Massaro did not comply, he would go to court and ask the judge to have them removed at the expense of the homeowner; Mr. Berninger did speak with Ms. Phillips who stated she never would have approved the application if one had been submitted to her; in summary, he would have denied the application; they are not on the homeowner's property.

Mr. Delia: stated he has spoken with his client and he would like to amend his application to move the stanchions onto his property; 3 ft. setback off his property line; hopefully this will help the Board; the variance would be for a setback.

Mr. Rutherford: stated we have had this issue before when a property owner does something without a permit; just like we don't reward the applicant who waits, the Board doesn't punish the applicant who proceeds ahead improvidently; there are issues of enforcement; Mr. Berninger is clearly on top of the matter; he is experienced; Mr. Berninger and the Borough will take whatever action they deem appropriate; the Board can't give anyone approval to construct something on someone else's property; the Borough's letter of October 28, 2015 was an implicit consent for the applicant to come to the Board and to seek a variance and if the Board were to see fit to grant the variance, it would be explicitly subject to the execution of an encroachment and hold harmless agreement between the applicant and the Borough; that is if the Board were to decide to grant the variance at all; if the Board denies the variance obviously an encroachment is irrelevant; if the Board grants the variance it would be subject to the applicant reaching an agreement with the Borough; Mr. Rutherford agrees with Mr. Berninger; the ordinance does not

permit stanchions; it would be a variance to construct them anywhere because they are unregulated and therefore the presumption is since they are not permitted they are prohibited; there is a variance needed no matter where the stanchions are to be placed; if they are to be removed within the property lines of the applicant that is a variance also; it is a bit unusual because they are not permitted so there are no bulk standards; would characterize it as a variance to grant the stanchions at all; in this case we would define where they are, how big they are, refer to the photo, etc.; if relief were to be granted, the understanding would be the identical stanchions that presently exist would be removed and placed onto the applicant's property 3 ft. back from the property line; believes the Board has the jurisdiction to deal with it, it then becomes the merits of the application and the Board needs to analyze it just like any other variance application; believes he heard a c2 argument this evening from Mr. Delia that the stanchions perform an important safety function for the applicants and persons traversing Ardmore Road.

Mr. Delia: stated he would like to officially amend the application to have the light stanchions at a 3 ft. setback; exactly as they are there today; the exact same structures moved back as shown in the pictures; can provide whatever dimensions are necessary in advance to Mr. Berninger before they are taken down, assuming they are approved.

Chairman Barto: stated the Board would need to see a plan showing the location of the stanchions; make sure they are not on the right of way again so we don't to deal with that; will see the applicant at next month's meeting.

Mr. Delia: asked if it were possible to take a vote on the addition only.

Mr. Tarantino: asked if the application was officially being broken out.

Chairman Barto: stated yes; they are two naturally different applications.

Mr. Tarantino: stated his first feeling is these stanchions have to go; the balance of the application he feels is de minimus as far as coverage; has no problem with the application as presented; believes the issue with the stairs that the neighbor brought up infringing upon the current setback, the current garage already does that; everything else is non-conforming; has a major problem with the stanchions.

Chairman Barto: stated the application has been withdrawn for the variance for the approval of the stanchions subject to amending it next month; the stanchions are off the table.

Mr. Rutherford: stated the application would be bifurcated; the Board will now deliberate and vote on the mud room and then we will carry the stanchions to the meeting of March 3, 2016 with the understanding that ten days in advance of the meeting the applicant will file a revised plan that will show the details of

the stanchions, height, dimensions, materials, etc. and then a plot plan were they are proposing to be placed.

Chairman Barto: stated to bear in mind, if the applicant decides they do not want the stanchions in the middle of their yard, they can be removed without coming back to the Board.

Mr. Cox: stated, if the applicant were to come back to the Board regarding the stanchions, he would like the safety issues addressed that he alluded to earlier; and if he somehow could, he would like to see pictures in the evening hours when it is dark; those circumstances could sway his opinion.

Mr. Berninger: asked if the fence was replaced in kind.

Mr. Delia: stated the fence is exactly the way it had been; same fence.

Mr. Rodger: asked if the garbage cans being kept in some type of enclosure could be a condition of the resolution.

Mr. Massaro: stated yes.

Chairman Barto: agreed to make it a condition of the resolution.

Motion to approve application for the mudroom/addition only; with the following conditions: garbage cans to be kept in some type of an enclosure and the second is the architect with certify the square footage of the driveway: Cox, Rodger

Ayes: Tarantino, Cox, Forst, Deegan, Papas, Rodger, Chairman Barto

Mr. Rutherford: stated, for the record, the applicant would appear again before the Board on March 3, 2016, at 8PM, in the Council Chambers of Borough Hall; no further notice is required.

Chairman Barto: stated the architect has to send a certification as to the square footage ten days before the March 3, 2016 meeting and if it is not 730 or so feet, then the applicant should be prepared to discuss it.

Mr. Rutherford: stated part of the confusion was the use of terms that are not used in the Borough's ordinance.

Resolution

Approved: Ho-Ho-Kus Crossing, Jonathan L. Mechanic, 619 N. Maple Avenue, 217 First Street, 239 First Street, Block 1016, Lots 3, 5 & 11: mixed use project consisting of new residential units and retail.

Mr. Rutherford: reviewed the application and resolution; comments received from the applicant regarding minor changes to be made; they will be made and

they are as follows: page 3 “Dean” to “Dolan”, page 4 changed 105 to 112, page 4 corrected 124 to 123; paragraph numbering corrected.

Motion to approve resolution with changes to be applied, after the fact, by

Mr. Rutherford: Chairman Barto, Tarantino

Ayes: Tarantino, Cox, Forst, Deegan, Chairman Barto

Absent: Metzger

Approval of Minutes

Motion to approve the following minutes: Chairman Barto, Tarantino

Ayes: Tarantino, Cox, Forst, Deegan, Pappas, Rodger, Chairman Barto

January 7, 2016 Reorganization Meeting

January 7, 2016 Regular Meeting

October 1, 2015

June 7, 2012

September 6, 2012

October 4, 2012

December 6, 2012

Motion to approve the following minutes: Chairman Barto, Rodger

December 3, 2015

Ayes: Forst, Deegan, Rodger, Chairman Barto

Motion to adjourn: Chairman Barto, Rodger

All in Favor

Meeting adjourned at 9:00PM.

Respectfully submitted by:

JoAnn Carroll

Zoning Board Secretary

February 11, 2016