

OCTOBER 10, 2023 MINUTES
OAKLAND BOARD OF ADJUSTMENT
COUNCIL CHAMBERS - 7:00 P.M.
PUBLIC HEARING

Pursuant to Chapter 231, Public Law 1975 Open Public Meetings Act, adequate notice of this meeting has been provided by:

- *Adoption of an annual schedule of meetings.
- *Posting a copy of same at Borough Hall.
- *Forwarding a copy of same to the Record.
- *Mailing a copy to any person requesting same.

FLAG SALUTE, MEETING OPENED AT 8:04 P.M.

Roll Call: Present: Messrs. Kolluri, Eilert, Zingone, Arredondo, Pereira, and Chairman Smid.
Absent: Messrs. Rose and Bremer.

Also in attendance were Ms. Sophy Sedarat, Board Attorney, and John Yakimik, Boswell Engineering.

EXCUSE ABSENCES:

Motioned by Mr. Arredondo and seconded by Mr. Pereira, to excuse the absences was voted unanimously by the Board.

PROFESSIONALS SWORN:

Mr. Yakimik Boswell Engineering was sworn in.

ESCROW REVIEW:

All escrow is current for all matters on the agenda.

PUBLIC MEETING:

1. Borsellino – 5 Kiowa Terrace, Block 5004, Lot 41. Public hearing for a right and left side yard setback.

A site inspection was conducted by Chairman Smid and Mr. Arredondo on October 7th. Also conducting a site inspection was Messrs. Eilert and Zingone. Mr. Arredondo reported that the subject property is located in the RA-3 Residential zone and the applicant is seeking a left side yard

setback for the addition of a deck. Mr. Arredondo informed the Board that there may be issues with runoff onto the driveway and the sidewalk.

The applicant seeks a variance for the left side yard setback of 11-feet where 15-feet is required.

Mr. Andrew and Mrs. Jeneanne Borsellino and Steven Lazarus, architect, were sworn in.

Mr. Lazarus informed the Board that the property is a preexisting nonconforming lot. The lot area is 12,642, where 15,000 is required, lot depth is 125-feet where 140-feet is required.

The applicant testified that they are proposing to add an addition for a second level which will go over the existing footprint and a deck in place of existing pavers. This will require a variance for the left side yard setback of 11-feet where 15-feet is required. A discussion ensued concerning drainage in the rear yard and incorrect impervious surface and building coverage. Ms. Sedarat informed the applicant that building coverage and impervious coverage will need to be updated and compliant with Borough Code requirements.

It was discussed that the air conditioning units shall be located in the rear yard or underneath the deck. Mr. Yakimik referenced height and drainage in his October 4th report. He informed the applicant that building height cannot exceed 35-feet and calculations would need to meet and satisfy the Borough Code requirements. The applicant offered to install seepage pits to solve the drainage issue. Mr. Yakimik informed the applicant that seepage pits may not be necessary, but any proposed drainage system would need to be reviewed and approved by the Board engineer.

No further testimony. Chairman Smid entertained a motion to open the meeting to the public.

Motioned by Mr. Arredondo and seconded by Mr. Zingone, to open the meeting to the public with regards to the Borsellino application was voted unanimously by the Board.

Mr. Robert Caporoso, 9 Kiowa Terrace, welcomed his new neighbors. He questioned the location of the steps to the deck, the number of windows being proposed on his side and drainage. The applicant responded that 3 windows will face his property and the steps accessing the deck will be on the side with no variance required. Ms. Sedarat also responded that the applicant will not exacerbating the footprint of the home and only increase impervious surface by a small amount which should not increase runoff. The applicant has already agreed to add a drainage system improving the drainage on the property.

Ms. Sedarat confirmed with the applicant that the reason for seeking the variance is due to the exceptional narrowness and shallowness of their property.

Motioned by Mr. Arredondo and seconded by Mr. Eilert, to approve the application subject to no adverse drainage directed onto adjacent properties, a drainage management plan approved by the Board engineer, height of the dwelling not to exceed 35-feet and air conditioning equipment located in the rear yard or underneath the deck.

Roll Call Vote: Ayes: Messrs. Zingone, Arredondo, Eilert and Chairman Smid
 Nays: None
 Abstain: Mr. Periera
 Absent: Messrs., Rose, and Bremer.

MEMORIALIZATION OF RESOLUTIONS:

1. Puff & Stuff – 400 Ramapo Valley Road, Block 3901, Lot 1. Approval for a use variance.

Eligible voters: Messrs. Eilert, Zingone, Arredondo, Bremer, and Chairman Smid.

Motioned by Mr. Arredondo and seconded by Mr. Zingone, to memorialize the above resolution of approval.

Roll Call Vote: Ayes: Messrs. Zingone, Arredondo, Eilert and Chairman Smid.
 Nays: None
 Abstain: None
 Absent: Mr. Bremer.

2. Amend Board Engineer's contract.

Eligible voters: Messrs. Eilert, Zingone, Arredondo, Bremer, and Chairman Smid.

Roll Call Vote: Ayes: Messrs. Zingone, Arredondo, Eilert and Chairman Smid.
 Nays: None
 Abstain: None
 Absent: Mr. Bremer.

PAYMENT OF BILLS:

Motioned by Mr. Pereira and seconded by Mr. Zingone, to approve payment of bills subject to availability of funds was voted unanimously by the Board.

APPROVAL OF MINUTES:

Motioned by Mr. Arredondo and seconded by Mr. Zingone, to approve the September 12, 2023 minutes was voted unanimously by the Board.

NEW BUSINESS DISCUSSION:

1. Kroog Settlement Agreement.

Ms. Sedarat updated the Board on the Kroog application. She explained that the application was for an expansion of a non-conforming use where the applicant came before the Board with an architect but without an attorney or a planner. The architect was unaware of the statutory requirements which lead to a clumsy application on the applicant's part. The Board suggested that the application be carried and the applicant return the following month with a planner or able to give testimony clarifying the positive and negative criteria of the application.

The following month the applicant returned and testified again. At that meeting there were 5 members present and in order to receive approval, the applicant would require 5 votes in the affirmative which meant all 5 members present would need to vote in favor of the application.

After the closing statement from the applicant's architect, Ms. Sedarat informed both applicant and architect that they would need a unanimous vote from the 5 Board members. She explained that the applicant has the option to carry to the next meeting in the hopes that more members would be present and eligible to vote. Instead, the architect insisted that the application move forward to a vote that evening. A vote was taken, 4 in favor and 1 not of the application, resulting in a denial.

Later that week the applicant reached out to the planning office inquiring what the next step was. Ms. Sedarat reached out to the applicant and explained his options which were to appeal the decision within the 45 days, appeal to the governing body within 45 days, or prior to the resolution of final action, request a reconsideration of the application.

The applicant decided to move forward with the request for reconsideration and present his objections and hired Mr. Whitaker as his attorney. Mr. Whitaker reached out to the Board right after that and indicated that a request for reconsideration was forthcoming and requested to be placed on the May agenda. Needing more time, the applicant's attorney reached out to the Board and as a courtesy, the Board extended the reconsideration to June. At the June meeting, there was no word from Mr. Whitaker, so a letter was sent out to him the next day inquiring about his letter for reconsideration. He responded that the Board would receive his letter of reconsideration in a week or two. By the July meeting, there was still no request for reconsideration. A decision was made by the Board that if there is still no response by the August meeting, the resolution of denial will need to be adopted. They reached out to Mr. Whitaker again informing him that if they do not receive his letter of reconsideration before the August meeting the resolution of denial will be adopted. No response. The resolution was adopted at the August meeting and 25 days later Whitaker filed a suit with superior court appealing the Board's decision.

Due to the expense of a trial and some reasonable tweaks the applicant could make to move forward favorably with the application, Ms. Sedarat approached the opposing counsel to see if a settlement negotiation was possible. She got Whitaker removed from the case because of a conflict of interest and a new attorney was assigned. She sat down with the applicant and new counsel with the plans and worked out a similar plan. Since the biggest issue was a three-car garage in a front yard setback they worked to find a solution. This is not your typical residential district since it is among some commercial properties. She questioned if the applicant would be

amendable to adding adequate screening around the garage so that it is not visible from the front yard and spoke with the chairman to see if this was a acceptable solution for the settlement. He agreed and therefore she got the settlement agreement that was sent via email.

The Chairman will sign the settlement agreement which will permit him to do what he wants to do but will have to adhere to certain aspects of the Boswell engineering letter and planting a row of evergreen in the front yard to screen the garage. Once the agreement is signed, she will file a consent order that the parties agree this matter has been settled. Then the judge orders a remand to send it back to the Board for a public hearing known as a Whispering Woods Hearing. Ms. Sedarat explained the case law. All the information will be placed on the record.

Since the Board is entirely different, the applicant's attorney has agreed to offer the proofs so that the whole Board can understand the background. Ms. Sedarat did add stipulations to the settlement agreement which are, buffer, complying to the engineer's letter, tree removal subject to Shade Tree Commission approval and paying outstanding escrow.

After the order of remand, we need to schedule the applicant for a public hearing. The applicant will be required to re-notice and present their application. At that point, the Board can impose additional conditions, like Mr. Lydon wanted it stated that the use of the garage will be pertinent to the principal dwelling which is a reasonable condition. If the application is approved, it will be memorialized at the next meeting and if the application is denied, so will the settlement agreement and it could end up back in court. Through the settlement agreement, the applicant is getting what they want, and he will present exactly what was presented prior but with conditions.

As a result of the litigation, Ms. Sedarat will need to amend her contract. She has requested this by letter to the Borough Administrator and the Board will need to agree to the amendment.

2. Amend Board Attorney's contract due to litigation.

Motioned by Mr. Perreira, and seconded by Mr. Arredondo, agreeing to amend the Board attorney's contract due to recent litigation.

Roll Call Vote: Ayes: Messrs. Kolluri, Eilert, Zingone, Arredondo, Perreira and Chairman Smid.
 Nays: None
 Abstain: None
 Absent: Messrs. Rose and Bremer.

3. Pokoj – 1 Mohawk Avenue

Ms. Sedarat brought up another item concerning 1 Mohawk Avenue. She explained that the owner of the property is Darius Pokoj who is the Borough's subcode official and there was questioned whether his application could be a conflict of interest. Ms. Sedarat researched the matter and explained that there is no conflict of interest. However, he will not be able to handle

his own application when it comes to review or permitting, he will need to recuse himself and someone else in that office will need to take his place.

Also, there is no conflict of interest with Mr. Yakimik reviewing the application since he has a working relationship with the subcode official in two towns. Ms. Sedarat requested that it be put on the record that there is no objection from the Board and having Mr. Yakimik review the application. Mr. Yakimik stated for the record that he would be fair and impartial.

Chairman Smid polled the Board members, and the consensus was that no issue will be taken with hearing the subcode official's application and having Mr. Yakimik review the application. This decision gives the Board engineer the authority to review the application.

Mr. Pereira informed the Board that an application heard a few months ago on 14 Hickory Drive received approval. However, there was a condition in the resolution that no windows were to be installed facing the neighbor's home on 16 Hickory Drive. He explained that the property owner installed the windows anyway. A discussion ensued concerning a document by the neighbor waiving her objection to the windows facing her home. Ms. Sedarat explained that the change will need to be approved by the Board and that the matter will need to come back before the Board. Ms. Sedarat and Mr. Yakimik will investigate the matter and report back.

OLD BUSINESS DISCUSSION:

None

MEETING ADJOURNED:

Motioned by Mr. Arredondo and seconded by Mr. Zingone, to adjourn the meeting at 8:16 p.m. was voted unanimously by the Board.

Respectfully submitted by,

Kathlyn Gurney, Board Secretary

*Next meeting is November 14, 2023.