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 8:02 P.M.

Roll Call: Present: Ms. Campanelli, Messrs. Pereira, Kurz, Rose, Bremer, and Chairman Smid.
Absents: None

Also in attendance were Ms. Sophy Sedarat, Board Attorney, via video conference, Steve Lydon, Burgis Associates, and John Yakimik, Boswell Engineering.

EXCUSE ABSENCES:

No absences.

PROFESSIONALS SWORN:

Mr. John Yakimik from Boswell Engineering was sworn in.

It was announced that Mr. Hetherington and Mr. Elston have resigned from the Board.

PUBLIC MEETING:

1. Grosso – 37 Shadow Ridge Run, block 2901, Lot 3. Public hearing for a steep slope variance for the construction of a single-family residence has been carried to the June 13th public hearing with no further notice.


Ms. Campanelli reported that the site is located in a RA-Cluster Single Family Residential zone which is light in traffic and on a secondary road with no outlet. It is an existing non-conforming lot, and a site inspection was conducted by Chairman Smid and Ms. Campanelli on May 5th. Messrs. Rose and Bremer also conducted a site inspection. Chairman Smid reviewed the comments from the various departments.
Ms. Sedarat informed the Board that on the application, the incorrect setbacks were added. She confirmed that the setbacks listed in Mr. Yakimik’s report are the correct and she read them into the record. The applicant is seeking a front yard setback of 30.7-feet where 100-feet is required, a rear yard setback of 36.2-feet where 50-feet, a left-side yard setback of 27.3-feet, and right-side yard setback of 38.0-feet where 50-feet is required.

She explained that this improvement does not exacerbate the existing setbacks except for a small portion in the rear approximately 1.5-feet.

Mr. Robert Passaro and Elisa Bevilacqua were sworn in and testified that they are requesting to extend their 12’ by 12’ deck to 37’ by 16’ to allow for a bigger table and couch. It will not extend beyond the width of the house. No further discussion or questions. Chairman Smid entertained a motion to open the meeting to the public.

Motioned by Ms. Campanelli and seconded by Mr. Bremer, to open the meeting to the public regarding matters concerning the Passaro application was voted unanimously by the Board.

No comments.

Motioned by Ms. Campanelli and seconded by Mr. Rose, to close the meeting to the public regarding matters concerning the Passaro application was voted unanimously by the Board.

Mr. Yakimik advised the applicant that there will be a condition that no drainage will be directed towards any adjacent properties.

Ms. Sedarat explained that this is a lawfully existing structure which is supported under the MLUL as a hardship variance. It has pre-existing non-conformities and only one of the non-conformities will be exacerbated. Chairman Smid entertained a motion.

Motioned by Mr. Rose and seconded by Mr. Bremer, to approve the Passaro application subject to no adverse drainage to adjacent properties.

Roll Call Vote:  
Ayes: Ms. Campanelli, Messrs. Periera, Kurz, Rose, Bremer, and Chairman Smid.
Nays: None
Abstain: None
Absent: None

MEMORIALIZATION OF RESOLUTIONS:


Eligible voters: Ms. Campanelli, Messrs. Rose, and Chairman Smid.

Motioned by Mr. Kurz and seconded by Mr. Rose, to memorialize the above resolution of approval concerning the Pallarino application.
Roll Call Vote:    Ayes:  Ms. Campanelli, Mr. Rose, and Chairman Smid.
                 Nays:  None
                 Abstain:  None
                 Absent:  None

2.  Acevedo – 43 Powder Mill Lane, Block 4501, Lot 10. Approval for two side yards and a
    front yard setback.

Eligible voters:  Ms. Campanelli, Messrs. Rose, and Chairman Smid.

Motioned by Mr. Periera and seconded by Mr. Rose, to memorialize the above resolution of approval
concerning the Acevedo application.

Roll Call Vote:    Ayes:  Ms. Campanelli, Mr. Rose, and Chairman Smid.
                 Nays:  None
                 Abstain:  None
                 Absent:  None

PAYMENT OF BILLS:

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

APPROVAL OF MINUTES:

Approval of the April 11, 2023 will be carried to the June 13, 2023 meeting.

NEW BUSINESS DISCUSSION:

• Kroog-19 Ramapo Valley Road, Block 2517, Lot 5. Request for Reconsideration of a decision.

  Ms. Sedarat explained that this application was denied at the last meeting and the applicant has
  retained counsel. Their attorney has submitted a preliminary request for reconsideration of a
decision. However, a formal request will need to be submitted which includes a legal argument as
to why the attorney believes there was a mistake and present his argument and justification to
determine whether the reconsideration is applicable.

  Ms. Sedarat explained that this type of request is supported under case law and a formal request
for reconsideration of a decision needs to be filed prior to the adoption of the resolution. If a
request for reconsideration is filed prior to the 45 days or adoption of the resolution, the board
can vote to reconsider it or not. All Board members have received a copy of the letter sent by the
applicant’s attorney.

  Therefore, there is a freeze on adopting the resolution and between now and next month, the
applicant’s attorney will be submitting a formal request for consideration with the appropriate case
law and legal arguments. She reminded the Board that the only testimony given for the use variance was by an architect, so the attorney will need to listen to the recording to make a case.

Next month, the Board should receive the formal request for reconsideration and the applicant will not be required to notice for that. All the Board members will need to do is either vote to agree or disagree to reconsider the application. If the majority of the Board votes and agrees to hearing the request for reconsideration, the applicant will then need to serve notice for the following month (July) and the applicant’s attorney will present arguments on the record limited to the items that are up for reconsideration. Ms. Sedarat gave an example of case law concerning this matter. You will not hear substantive material unless you agree to reconsider.

Ms. Sedarat recommended that Board members who were not present or new members, should listen to the audio and certified that they listened, and they will be eligible to vote. If there are less than 5 members, the applicant would need to carry because they will need at least 5 votes in the affirmative or the Board of Adjustment can pull members from the Planning Board to meet the minimum requirement. A discussion ensued concerning that any additional questions or concerns can be directed to the applicant at the time of the hearing of the reconsideration.

- Review Board Meeting Time

Ms. Sedarat explained that this topic has come up a few times in the last couple of years. Currently, the meetings begin at 8:00 p.m. which worked for a few of the members who were involved in a certain club and have since left the Board, so there was a hesitation to move the meeting time up. However, she has been approached by a couple of Board members concerning the late start to the meeting and questioned why the meeting time could not be moved up. She informed the Board that the Planning Board meetings begin at 7:00 p.m. and most boards meet between 7:00 p.m. or 7:30 p.m. Due to the amount of action this Board gets, the question is whether or not the Board would be amendable to moving the meeting time up to match the Planning Board meeting time at 7:00 p.m. Ultimately, this is the Board’s decision, and they can discuss this and make a decision. A discussion ensued and it was suggested that the Board’s By-Laws be adjusted to reflect the time change and add in that “no new testimony will be taken after 10:00 p.m.” Ms. Sedarat expressed that this will be a good idea keeping both boards at the same starting time. Chairman Smid entertained a motion.

Motioned by Mr. Rose and seconded by Mr. Kurz, to move the meeting time up to 7:00 p.m. no further testimony after 9:30 going forward.

Roll Call Vote: Ayes: Ms. Campanelli, Messrs. Pereira, Kurz, Rose, Bremer, and Chairman Smid
Nays: None
Abstain: None
Absent: None

- Deliberations & Bylaws.

Ms. Sedarat explained that she has seen this in a number of municipalities and wanted to run it by them. As you know the resolution has to be supported by law and the facts presented on the record has to support the determination by the Board. In order to clean that up so nothing gets lost, she suggested that when the applicant is done with testimony and the Board is done with
questioning, an interim section be included on the agenda, prior to the actual vote, to have open the meeting deliberation/discussion period amongst the Board members. During this time, it gives only the Board members the right with no interruptions from the public, applicant or applicant’s professionals, to discuss their thoughts on the application amongst themselves. Once the Board concludes with deliberations, a motion is made to close deliberations and then a motion can be made to vote yes or no.

Ms. Sedarat expressed that this is good for many reasons. One reason being to clean up the record and protect the Board. This is just a suggestion to add a deliberation section right before your ultimate vote. The Board discussed that it minimizes shock going directly to the vote or if someone votes a way that no one expected them to. Chairman Smid responded that he is not for this 100 percent. He explained if the Board deliberates about concerns with the application, the public will then know our concerns and we only want our concerns to be directed to the applicant until we make our final vote. His opinion is that they do not deliberate in front of the public in the audience or have a closed session.

A discussion ensued concerning deliberations being a good practice and the Board should not be ashamed of their vote. Ms. Sedarat clarified that absolutely no close sessions since that is a violation of Open Public Meetings Act (OPMA). Secondly, you cannot conceal information from the public, this too is a violation of the OPMA. She expressed that meetings are open to the public and people are noticed for a reason. This is to inform the public how a decision has been rendered by the municipal board. Boards are required to let them know why they voted the way you did. If reasoning is not stated on the record, the vote could be considered “arbitrary and capricious” and subject to an appeal. This means that the board’s decision was not supported by sufficient reasoning on the record.

Ms. Sedarat explained that deliberations give the Board members the opportunity to explain any discomfort or feeling they are having with testimony given before it goes to a vote. If an application was denied, deliberating what the denial was based on will help with preparing a resolution to protect the Board. It is important that the record is whole and that is the purpose of the deliberations. Deliberations also give Board members an opportunity to refer to the professionals who can offer guidance and making sure statutory requirements are met. Mr. Yakimik informed that Board that the Planning Board deliberate with discussion or a statement before a vote. A discussion ensued and the Board decided to table the discussion to the next meeting, so they have an opportunity to think through it.

Motioned by Mr. Bremer and seconded by Mr. Rose, to table discussions concerning deliberations and carry to the June 13th meeting was voted unanimously by the Board.

OLD BUSINESS DISCUSSION:

None

MEETING ADJOURNED:

Motioned by Mr. Rose and seconded by Mr. Kurz, to adjourn the meeting at 9:10 p.m. was voted unanimously by the Board.
Respectfully submitted by,

Kathlyn Gurney, Board Secretary
*Next meeting is June 13, 2023.