

These minutes have not been approved and are subject to change by the public at its next meeting

The regular meeting of the Park Ridge Zoning Board of Adjustment has been called for Tuesday, February 21, 2012, at 8:00 pm in the Council Chambers of the Municipal Building.

PLEDGE OF ALLEGIANCE TO THE FLAG:

ROLL CALL: Mr. Brennan, Mr. Capilli, Mr. Galdi, Mr. Raman, Mr. Sandler, Dr. von der Lieth, Mr. Walker

Absent: Mr. Flaherty, Mr. Hoskins

Also Present: William Rupp, Board Attorney
Robert Ludwig, Zoning Officer
Lyn Beer, Secretary to the Zoning Board

COMPLIANCE STATEMENT:

The Notice for this meeting required by Section 3(d) of the Open Public Meetings Act has been provided by the adoption of a resolution by the Park Ridge Zoning Board of Adjustment of January 17, 2012, setting forth a schedule of regular meetings by mailing of said schedule to The Ridgewood News and The Record on January 18, 2012, and by the posting of said schedule on the Municipal Bulletin Board and the continuous maintenance thereof and by filing the said schedule in the office of the Borough Clerk.

VON DER LIETH: If there was anyone here tonight regarding Case: 11-17, regarding the Park Ridge Board of Education, that has been pushed off until next meeting. So, if anyone is here in regard to that case, it will be heard next month, March 20th. So, now let us get to our next case.

CASE: 12-01 Block; 1911 Lot: 1	Application of <u>Kevin Guarderas</u> , 134 Morningside Avenue for Floor Area Ratio variance and soil moving in an R-10 residential zone to demolish existing house and construct a new one.
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Attorney for the applicant speaking but not near a microphone. Entire testimony is not picked up on recording.

VON DER LIETH: Mr. Rupp is everything okay with that?

RUPP: We will need from you and authorization to extend the time period and the Board has to act. I think we have a standardized form for that.

VON DER LIETH: Okay sir.

BEER: That will be March 20th.

VON DER LIETH: Okay we will see you then.

BEER: This is not being picked up on the record.

RUPP: M. Chairman, the applicant for all practical purposes actually controls the scheduling of the hearing, in terms of making requests for adjournment. I think part of the issue that came up, was that there was some, to the best of my knowledge, some oral requests for an adjournment. I had not seen anything in writing. Nothing was presented to the applicant in writing by any person requesting an adjournment. It was difficult to respond to that in light of the absence of any formal request.

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The actual adjournment of any hearing really is dependent upon the applicant. Since the applicant has some statutory time periods and therefore the applicant needs to consent to an adjournment.

VON DER LIETH: I was going to say that I apologize to anyone in the audience that was here for tonight to hear this case specifically. As the Board got up here, this is the first that we have heard of it also. We came to this meeting tonight fully prepared to take this case on. So, we had no idea of it either.

HELINSKY: Part of the reason for the adjournment is, look, there is a Zoning issue that we have obtained a Planner. I believe there may be a difference of opinion with your Planner. I think that is based on information and therefore we had escrowed money for your Planner to objectively review this and with their opinion as ... (moved away from microphone again). We are very comfortable with your Planner giving the Use.

The fact of the matter is this Zoning issue came up lastly this week. I wouldn't have the Planner reply (Attorney does not speak into the microphone). I will remark that we were ready to go tonight. I was going to be here with all of my experts.

VON DER LIETH: That is okay sir, just keep going please.

HELINSKY: (identification of Attorney was not picked up) If somebody had notified my office in writing, look, we notified everyone that we are the lawyers. It would be very easy for them to contact us.....the fact of the matter is when we did hear that there were.....I don't know if these are all of the technicals. We verified that we came last week. I am not trying to be unfair. I am certainly not trying cut anyone off from being an objector. He came back. I didn't know he came back. I thought as a courtesy, the main reason was to get the Zoning analysis from thethe fact of the matter is I would gladly, if someone had contacted me, acquiesce and say okay, we will go forward. We just can't adjourn every single time, but I thought especially since we weren't ready in January, we asked for an adjournment and the Board graciously gave it. I didn't think that it was out of a sense of fair spirit, I thought it was the right decision to wait until the Board to have their expert testify for this.

VON DER LIETH: Okay, well I just want to make sure, I want the people in the audience to know that are here for this case, that we will strive to have this meeting, have everything heard on a night where everybody, both pro and con can be here to voice their opinions either way.

I am not saying, I know that it is not your underlying motive in order to adjourn it, to hopefully get people here, not here or I am not saying that at all, but we really want the people in the audience to know that we are going to do this, so everyone can be heard from both sides.

Ms. Beer, is there a, what is the protocol for that?. If there is an adjournment, and we know, when to we have to get the notice by in order to post it for people to see outside on the public notice.

BEER: When I heard from Mr. Herlinski that he was going to come and request it, it is up to the Board to decide how they are going to handle it. I did put it on the website at about 3:30 pm. That is when I think that I received the call from Mr. Herlinski.

RUPP: If I can shed some light on this as well. I had received a phone call last week, actually from the Borough Attorney. Apparently, the Borough Administrator was contacted. The Borough Attorney then contacted me to indicate that some undisclosed people, and again, I didn't have any names, had indicated that they wished an adjournment. I had commented to the Borough Attorney that what is necessary in connection with a request for an adjournment is to contact the applicant to see whether they would consent.

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One of the questions that was raised, was do we have any actual formal request for an adjournment and I had not received any nor had the Borough Attorney. So, I had not to give. One of the added problems, of course, was that the Land Use Administrator was on vacation last week, and there was a person filling in, and the mechanics didn't work very well.

So, I should tell you that Mr. Herlinski's office had indicated to me, that if there was a formal request they would certainly entertain it because they were trying to work with the neighbors. The difficulty is given the vacation schedule, given the holiday, yesterday, it was very difficult to schedule all of this until essentially what is the last minute.

I think good faith was intended by everyone, but it was just difficult to finalize, was there actually a request for an adjournment by a resident and how could that have been memorialized last week? And it turned out that it really couldn't be memorialized last week.

VON DER LIETH: Okay, thank you Mr. Rupp. Can I ask you a question sir if you have a question, please...

AUDIENCE: Is it possible to hear what the issue is?

RUPP: If I could paraphrase the purpose for the adjournment. The purpose for the adjournment is that there are certain planning considerations that are entailed in this and the request was made to have the Board's Planner comment upon those issues. Again, we have a Floor Area Ratio issue. We have a maximum Floor Area Provision. We have certain driveway issues. All of which are entailed in this application.

The applicant has requested to have the Board's Planner review these items. The Board Planner has not yet had an opportunity to review these items. That is, I think, the technical reason for the adjournment in order to give the Board the opportunity to have the input of its Planner relative to those issues.

AUDIENCE: When the Board Planner issues a report, will it be available to the public?

BEER: No, it goes to the Board to see how they feel about it first, Bill, so no, not until it is entered into record is it public document.

WALKER: After it is, it is available to the public?

BEER: After it is entered into the record it is public.

WALKER: After the Planner introduces her report, and it is put into the public record, then it is available.

VON DER LIETH: It would be after.

BEER: They can't argue the Planner, Bill.

WALKER: The Planner will testify as to what is in her report at that meeting. During the next meeting, that report will be entered into evidence.

HELINSKY: If anyone wants to contact my office, in fact, I will offer them to come into the office and discuss this I would be more than happy to discuss this issue with anyone or have them review whatever plans that we have. At that time, if I have any of the Planner's analysis I would be happy to discuss that with you. In addition to that, obviously, they always have the option to come and review them.

RUPP: If I just, Mr. Chairman, if I just might make a couple of legal comments here. The Municipal Land Use Act contains a provision that any and all plans on file with the Board are, in fact, available for examination by the public. In addition, under the

Open Public Records Act, you have the right to request copies of those documents too. There is a small fee for that. The plans, quite frankly, the reproduction of those plans, creates some additional problems. There would be an additional cost for that, because those are not readily copy able, if you know what I mean.

AUDIENCE: As long as the town is paying for an expert to review these. We are lay people.

BEER: The town is not paying.

AUDIENCE: The town is not paying?

RUPP: It would be paid out of an escrow account by the applicant. It is the town's Planner, however. Now, I verified with Mrs. Beer, that in the event that the Board receives that Planning report, a copy will be given to the applicant. As soon as that is done, that is available to the public, but, again you can view it. If you want copies, the procedure is to go through the Open Public Records Act. Now when that is going to occur, I can't tell you. That is up to the Planner when she will complete her review.

During the hearing, the policy on admitting or not admitting a statement from the Planner and other Borough Officials, cause, keep in mind, on most applications we hear from a variety of people, Fire Department, Police Department, etc., where those issues are involved. Having said that, those documents generally are public documents. They can be made available. Some of those are occasionally marked into evidence.

BEER: They all are.

RUPP: So, all of that are matters that are available to the public. Again, the timing becomes a little bit of an issue, because when we receive them, for example. In terms of the order of the hearing, I know some of you have requested that you want to be heard, the order of the hearing means the application generally, the applicant is heard first. Members of the public have the right to question their witnesses, upon the conclusion of that testimony and any questions that the Board might have, then the matter is opened up to objectors or any other member of the public in support of the application, who then would be heard on the application. Really, we need the application presented by the applicant first before we open it up to the public for that type of a discussion.

Think of it as a court proceeding, right. The plaintiff, in this case, the applicant goes first.

BEER: Bill, what we have done with the reports is once Brigitte or Eve testify, and someone out there says I want a copy of that report, the Board has always said to the applicant we are going to carry this matter over for the residents to get their own professional to review it. They don't come in fighting with Brigitte before the Board has a chance to review.

****AT THIS POINT, the applicant's attorney went into the audience with many audience members shouting questions all at the same time. Applicant's attorney did not have microphone with him and his back was to the recording microphone. No effort made to regain recordability of all questions or answers. Testimony continued for next 10 minutes without any record of what was being said.****

VON DER LIETH: There are revised plans for this, I don't know how revised they are because we could not enter them into record tonight, because it has been postponed until next meeting. So, that is for you to take up.....

RUPP: I will just note that I have 2 sets of plans. One that was given to me by a cover letter dated January 17, 2012, and another one that has been given to me by a...December 28th, and February 8th, those are the two dates. December 28th, 2011 and another one other one February 8th, 2012. I don't know whether these are changed or not.

WALKER: Are the February 8th available?

BEER: It is in the file. In is in there since February.

WALKER: The only notation that is on the February 8th plan, is that the application is revised to show 2 driveway variances being requested. It is a minor... It probably isn't even a change to the actual plan. It is a request for the variances. It is on file.

BRENNAN: Just so your are aware in the audience, a case, depending on the complexity, can go beyond the one meeting. I know that next month we have the Board of Education which will be heard first. So, depending on how much testimony, and it is very likely that this will go on for the following meeting as well. So in terms of scheduling, I would definitely keep looking at it, because this could take possibly 2 meetings. It all depends on what kind of conversations, what the Planner finds, what questions we have, so it probably will not be just one quick meeting where you will get up to say. I highly recommend if there is any issues, to attend every meeting that you can, that this case is being heard.

VON DER LIETH: Thank you Mr. Brennan. Mr. Herlinski, just before we end for this, I want to confirm the date that we are pushing this to, Mrs. Beer.

BEER: March 20th. It will be the second one on the agenda.

VON DER LIETH: It will be the second application called for the agenda on March 20th. The March 20th meeting, okay? I am sorry about that guys. You know as we know, so we will get it done. Thank you.

CORRESPONDENCE:

N. J. Planner re: December 2011 - distributed

APPROVAL OF MINUTES:

The Chairman entertained a motion that the November 15, 2011 minutes be approved as submitted. So moved by Mr. Walker and seconded by Mr. Capilli.

ROLL CALL:

Ayes: Mr. Sandler, Mr. Raman, Mr. Capilli, Mr. Walker, Dr. von der Lieth

Abstain: Mr. Brennan, Mr. Sigillito

The Chairman entertained a motion that the December 20, 2011 minutes be approved as submitted. So moved by Mr. Capilli and seconded by Mr. Walker.

ROLL CALL:

Ayes: Mr. Brennan, Mr. Raman, Mr. Capilli, Mr. Walker, Dr. von der Lieth

Abstain: Mr. Sandler, Mr. Sigillito

APPROVAL OF VOUCHERS:

None

DISCUSSION OF APPLICATIONS:

There were no applications to be discussed.

VON DER LIETH: Mr. Rupp, is there anything that you would like to say before we adjourn?

RUPP: I wanted to alert you to the fact that the Zoning Officer has received some plans relative to that Montvale Fitness Center, for his review, to determine what variances may or may not be required. A preliminary review, I think, indicates that a Use variance would be required, so it will come to this Board.

BRENNAN: Could you explain that to me, because we have a major concern.

LUDWIG: It is at the end of Brae Boulevard. There is a piece of property that extends all the way from Sony all the way to the turn. It is a road that becomes Sony, BMW, and Van Riper Drive. It is kind of a winding road. Right at the end of Brae Boulevard, if you went straight, you would go into the property.

The town line between Montvale and Park Ridge, runs diagonally, kind of through that intersection and it heads out towards the Parkway, and it misses the existing building and approximately 10,000 square feet of that property is in Park Ridge.

The owner of that property is being investigated. It may be the Borough, and it may not be the Borough. It has now been assigned a lot and block number. It formerly did not have a lot and block number.

WALKER: Do you know why.

BEER: We didn't know it was in Park Ridge.

RAMAN: Did we know that the town line was there.

LUDWIG: It is kind of a strange line and it doesn't follow the street and that kind of the issue now.

BEER: A title search company, when they were hired by Price, Meese, for the fitness center, called and said part of this property is not in Montvale. It is in Park Ridge.

BRENNAN: Am I correct, that the fitness center plan was to be over by BMW, and away from our piece?

LUDWIG: It is a huge development. It will involve...

BEER: The hotel is over by your side. This is BMW.

LUDWIG: We are concerned about the zoning ordinance that was passed with no findings and frankly without any consideration to the fact that there is a residential, there is an impact on the residential zone in Park Ridge, and what they said at the meeting, was that there was no residential impact and they didn't consider Park Ridge residents.

BEER: Because it is in another town.

LUDWIG: Our plan is to deny their application and send it to the Zoning Board for a Use variance, which would also involve site plan approval. It will be most likely before this Board within the next few months.

RAMAN: Who do they pay the taxes to?

BEER: They never paid taxes to Park Ridge, because we never knew it was our property. Now that the attorney, the former Borough Attorney and the Attorney for the fitness center came to an agreement once the Borough Engineer had her surveyor look at all the material that was given to her by the fitness center, a title search company and their engineer, they determined that this triangular piece was in Park Ridge, and they asked the Tax Assessor to assign it a Lot and Block number. They agreed that they would not go back. The Borough would not go back and ask for back taxes for the past 30 or 40 years.

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WALKER: Is that piece that belongs to Park Ridge, going to be developed or is it just going to be grass?

BEER: No, it is going to have a.....

LUDWIG: It is going to have approximately 20 parking spaces, plus the entrance to the whole complex will be right at the light, and that entrance will actually be in Park Ridge.

RAMAN: Which light is this?

LUDWIG: At the end of Brae Boulevard.

BEER: Where the hotel is.

LUDWIG: One end of Brae Boulevard and we have 3 streets that back up onto the existing corporate park and allowing the hotel and additional parking possible a fitness center, it will increase the height of the buildings, it will increase the light. It will increase the noise and

BEER: They are proposing a parking deck.

LUDWIG: A parking deck is a serious issue for us. It is a big project. It is a huge project.

WALKER: You will have to recuse yourself.

BEER: It is a Use variance because if it is our property, it is in the office and research zone.

ADJOURN:

There being no further business to come before the Board, by motion of Mr. Capilli and a second for Mr. Walker, the meeting was adjourned at 8:25 pm.

Respectfully Submitted,

Margot Hamlin,
Transcriber