

**MINUTES OF REGULAR ZONING BOARD OF ADJUSTMENT
MEETING HELD ON TUESDAY, MAY 10, 2016**

Chairman Byrne called to order the regular meeting of the Board and announced the meeting was duly advertised in compliance with the Open Public Meetings Act by notice dated May 3rd, 2016 sent to the Daily Record, Suburban Trends and posted on the bulletin board and website at Borough hall.

PRESENT: BRACCHITTA, BYRNE, ERICKSON, KUBISKY, WOLFSON, ZAPF, DUBOWSKY (ALT. #1) AND ZALEWSKI (ALT. #2)

ALSO PRESENT: BOORADY, ENGINEER

ABSENT: FOREMAN

Chairman Byrne stated the first order of business is the approval of minutes from the January 12th, 2016 the reorganization meeting.

Ms. Ward stated members who can vote are Bracchitta, Erickson, Kubisky, Zapf, Dubowsky, Zalewski and Byrne too.

Mr. Zapf mentioned I have no corrections so I'll make a motion to approve the minutes.

Mr. Bracchitta seconds.

Roll call:

Yes: Zapf, Bracchitta, Erickson, Byrne, Kubisky, Dubowsky (Alt. #1) and Zalewski (Alt. #2)

No: None

Abstain: None

Ms. Ward mentioned they are approved.

The same members can vote for the regular meeting.

Chairman Byrne mentioned the January 12, 2016 regular meeting minutes.

Mr. Zapf mentioned I have nothing so I'll make the motion.

Mr. Bracchitta seconds.

Roll call:

Yes: Zapf, Bracchitta, Byrne, Erickson, Kubisky, Dubowsky (Alt. #1) and Zalewski (Alt. #2)

No: None

Abstain: None

Chairman Byrne stated okay. Next order of business is a time extension for 521 Pine Brook Realty, LLC (the new owner) regarding Preliminary & Final Major Site Plan Application #339 and Variance Application #2010-05 by Lincoln Park Renaissance Rehab & Nursing Center, Inc., F.E.M., L.L.C. and Lincoln Park Nursing Home (the second phase of the project), on property known as Block 136, Lots 20 and 20.03 also known as 499 Pine Brook Road and 521 Pine Brook Road. The original resolution was adopted on October 11th, 2011 and the Amended Resolution adopted on November 8th, 2011.

Steven Schepis, attorney, represented the present property owner 499 Pine Brook Realty, LLC.

Mr. Schepis mentioned this project was approved by way of a use variance and site plan approval

back in 2011. There was a resolution adopted in October 2011 and an amended resolution in November. At the time the facility was owned and operated by Mimi Feliciano and as part of the approval we got two phases approved; one was the addition at 521 Pine Brook Road which has since been built, and I'm sure you've seen it and it is rather magnificent; likewise there was a companion addition to the building at 499 Pine Brook Road towards the rear of the facility behind the parking lot, behind the building that presently exists up towards Pine Brook Road.

Mimi and her family sold the nursing home to an organization from New York that owns and operates many nursing homes. Locally they've established a company that owns the property 499 Pine Brook Realty, LLC so as the economy has improved they are desirous to move forward and build what is Phase II which the Board had approved.

The nature of the delay in the construction is simply the economic downturn, I mean this is a pretty large project like 6/7 million dollar construction project a 5/6 story building. If you remember back then, we had issues of architecture and fire safety and the list went on and on, and everybody was satisfied and it got approved.

In conjunction with the approval there was some permits from the DEP. There is a wetlands permit which we perfected, there was a conservation easement issued for the entire rear of the property, there was a modified transition area and a couple of other minor permits. The largest permit that we received was a flood hazard area activity permit which requires certain improvements in the flood hazard area, stormwater management basin and a couple of other things. Those permits are scheduled to expire at the end of the year like December 26th.

In essence if they don't start construction before that date, chances are they are going to have to start all over again. There is no extension process for the flood hazard area permits; whether or not the DEP would issue similar permits, same permits, modify the permits you never know.

So that all being said looking down the road it seems as though financing is now in order and they are moving forward full force, and as they approached the Borough to perfect the approval it was determined that based upon the Permit Extension Act which was a statute that was adopted a few years back all of these approval were extended but the end date now is June 30th, 2016.

This Board has the authority to grant a further extension based upon Section 52 of the Municipal Land Use Law. You can grant up to three one year extensions for final site plan approval. So when this thing was finally approved in November of 2011 the approval carried us through two years until November of 2013. You have the authority to grant three one year extensions to the point where you can get us through until November of 2016. Now you can grant those retroactively to the point where you can bring us forward, ultimately what it comes down to is a matter of discretion for the Board.

This isn't one of those extensions where we can say we were delayed because we couldn't get a DEP permit or a County permit, or something like that. This is one of those things where the Board takes a look at the project and if you think it is a good project and you want to see it go forward you can grant the extension and give them to whatever the anniversary is of the resolution, or something in November and then it will move forward. If you don't, I guess they'll have to start all over or abandoned the project, one or the other.

Ultimately what it comes down to is the time sensitivity of the project is primarily subject to the DEP and at the time there was a lot of motivating factors for the DEP. There was a conservation easement that was thrown in, there was substantial amount of fill that was removed from the flood hazard areas as part of the project, there also was restoration of wetlands and things like that, all activities that had occurred prior to the adoption of those statutes. There was a lot of environmental benefits and those benefits have already been exacted so there may be little if any incentive for the DEP to grant further approvals.

So that all being said primarily this project can go forward if you give us an extension. If you don't give us an extension, you know that is the way life goes and that's the way the cookie crumbles as they say. But that all being said you have the authority under Section 52-A of the Municipal Land Use Law to give us to the anniversary, I believe of the November approval (five year anniversary) and during that period of time we anticipate that we'll finalize the project. There is not an awful lot

left.

We have to modify some onsite easements, we have to get a building permit of course and enter into a developer's agreement with the Borough. All the other major items associated with the project like we had to grant the stormwater easement to the Borough that's been done, conservations restrictions have been done and a number of other housekeeping items were done so it seems to me that you know we are ready to go.

Soil conservation certification is required but that is more or less like a give me permit. So that all being said, you are really the safety valve if you let us go it will get built, if you don't want to see it get built it won't get built.

I would point this out to you it is a great project and it services a lot of people in the area. They are going to be a skilled nursing facility. They are going to take beds that are three people in a room and are going to be having one person rooms. I mean this was the whole angle that we worked and this is the whole motivating factor when the Board originally approved it that no new beds are being created. It is not like there are going to be new patients there it is simply a matter of being able to accommodate people in a more appropriate fashion rather than having multiple occupants in one room you'll have singles; likewise there will be a rehab facility associated with this project so that it will further supply a need.

For those of you who have known people that have hip or knee replacements, I have had a number of friends and family that have gone to this facility and have had glowing remarks about the service and the care that they provided, plus it is right here in our community so you don't have to go traveling to Northern Bergen County after you've had an operation or something like that. So I see nothing but benefits and if you look at what's there already, the architecture is similar so you are going to get the same kind of architectural edifice and in many ways it is a great ratable for the Borough. You know basically you have to provide few services and there is a lot of incentive.

Also I explained to the client that they are no longer subject to the COAH exemption so there is a fee that they are going to pay in support of affordable housing in the Borough. There was an exemption window and the window is closed so they will be paying the fee that represents 2½% of the increase in the equalized assessed value on this project. So if you look at the project as being a four million dollar project and it is probably more than that, so it is a hundred thousand dollars to the Borough's affordable housing fund so that is the way that one goes. When the window closes, it seldom opens again.

So that all being said I feel the benefits, I'm sure you people are more familiar with the facility driving by on a daily basis and look to me it makes a lot of sense. So we would ask that you give us the extension and carry us through to the 5th year anniversary of the amended approval of November 8th. If you can give us that, then the project will go forward otherwise here we sit. Any questions?

Mr. Zapf stated I think it was just Mary, Pat and myself who were on the Board at that time I don't think anybody else went through this. We went through a lot of details, a lot of questions, a lot of assurances and paperwork, details and things like that and I think in the spirit of where we were at that point and time we granted this project to be done in two pieces the 521 and the 499 for the reason of economics, and if they wanted to come back to us and say okay we are ready to go now, we agreed that this was a good project.

This particular piece of it has less impact on the neighbors because it is basically smack dab in the middle of the property, so I think it has less impact on the community than 521 did with a house right in the front and an easement for a gazebo and other things.

Mr. Schepis stated yeah, yeah.

Mr. Zapf stated in keeping with the spirit of what we granted in the first place I think we still think by consensus, I would let it go around the table, and it is a good project and ratables are always a good thing.

I only have two questions and you've answered one already. One I would have for Tom because

when the first building was completed regardless of whether the second building was ever done, there were a series of things that had to be completed anyway and I would ask Tom if he is satisfied that everything that was in the original resolution has been completed.

My second question you've already answered and that was the beds because there was a lot of contingencies with traffic on the road, parking and all kinds of other stuff, water use and whatnot were based on that premise so that was going to be my second question. Have any more beds been added in the meantime because it says if you have them, then you have to come back for a whole new application so that one is really important. Tom are you satisfied that everything they were supposed to do for the first half of this project has been done?

Mr. Boorady stated the first phase was done really in a cooperative timely manner. There is some paperwork that we still have to close out for Phase I but the work is done and satisfactory.

Mr. Zapf mentioned that was a big project.

Mr. Boorady stated there are a couple of small odds and ends but mainly a paperwork item and half to sign off on, a final as-built and say that the developer's agreement was satisfied and then that can be closed out.

Mr. Zapf stated okay. If you are satisfied with the working relationship and the progress you've made, I would be okay with that.

Mr. Boorady stated I have no engineering concerns if the Board chooses to grant the time extension.

Mr. Zapf stated okay.

Mr. Schepis mentioned that Dave Ulassin who is sitting here was the original builder that Mimi had engaged to build the addition and he also did the atrium with the healing gardens in the front of 499, so Dave built those and he's been engaged by the present property owner to build this other aspect. He is going to be using the architectural plans that were approved and prepared by Ben Horten, the site plans prepared by Mr. Miannecki and they are using the same builder and somehow I got swept up in the tide so I'm here as well, and I'm going to finish up the loose ends that are required.

Mr. Zapf stated we put a lot into it and I don't think we left a whole lot to chance that was a long series of hearings and a lot of details, a lot of back and forth on it and by the time it got to the resolution I think we were pretty happy with where it was going to go.

Chairman Byrne asked are you going to have it done by November 8th.

Mr. Schepis stated well the way I read the statute and the DEP permits is we have to get started in that time period. I don't see that there was anything that changed anywhere along the line that would otherwise prevent us from finishing the project it is just a matter of us proceeding once we get this extension then we can move forward. I would expect that by maybe mid-September they will have their building permit and start. They have to get started.

Chairman Byrne stated okay.

Mr. Schepis mentioned like I said there is no guarantees with the state.

Chairman Byrne asked Tom is there anything that would have changed that would have impacted this application as far as any laws or anything.

Mr. Boorady stated not that I am aware of no.

Chairman Byrne asked is there anyone from the public that would like to comment at this time on the extension for this application. Okay we will close it off to the public. Anyone on the Board want to make a comment or ask a question?

Ms. Ward mentioned the resolution when it is done it will have to be in the new owner's name.

Chairman Byrne stated right.

Ms. Ward mentioned the developer's agreement is going to have to go back to the Council to have the name changed.

Mr. Schepis stated the way it was broken up there were two separate developer's agreement so we'll have to get a developer's agreement from scratch.

Ms. Ward stated okay.

Mr. Boorady asked is the property owner the same because there are two tracts.

Mr. Schepis mentioned that's a good question I don't think they are in two separate names.

Mr. Boorady stated so 499 LLC is for this one.

Mr. Zapf mentioned the other one is 521 LLC.

Ms. Ward mentioned the tax program I thought it listed 521 for both properties.

Mr. Boorady asked for both properties.

Ms. Ward mentioned I thought so but we'll check.

Chairman Byrne asked anyone on the Board have any questions/comments. Seeing no one from the public has any questions I'll make a motion to extend it to November 8th, 2016.

Mr. Zapf mentioned we have to be clear that we are making a motion for the 3 one year extensions.

Mr. Schepis stated I think it would make sense to note that it is retroactive that you are extending them from what otherwise would have been the expiration date and bringing it forward to that date.

Mr. Zapf mentioned from 2013.

Mr. Byrne stated yeah.

Mr. Zapf seconds it.

Roll call:

Yes: Byrne, Zapf, Bracchitta, Erickson, Kubisky, Wolfson and Dubowsky (Alt. #1)

No: None

Abstain: None

Mr. Schepis thanked the Board.

Chairman Byrne thanked them too.

Mr. Schepis stated I don't think you'll regret this decision.

Chairman Byrne mentioned we kind of missed you around here Steve.

Mr. Zapf mentioned there was a lot put into it.

Mr. Schepis stated there is not much going on.

Ms. Ward mentioned Steve it will be on for the June 14th meeting the resolution.

Mr. Schepis stated terrific. They are going to get started right away. Thank you have a great

evening.

Mr. Ulassin thanked the Board.

Chairman Byrne stated we can't do Item 3.

Mr. Zapf stated no.

Ms. Ward mentioned we have one more item though. Mickens/Perara on 90 Pocahontas Path they came before the Board for a variance to build an extension on their home. I don't know if you remember it?

Mr. Zapf stated I remember it.

Ms. Ward mentioned they had a problem with their architect and they were running into financial difficulties so they scaled the project back and their time runs out May 12th, 2016. They have completed everything and are ready to get their building permits.

Chairman Byrne asked are these their plans to be signed.

Ms. Ward stated yes and they are ready now. Would you like to grant them a one year time extension?

Mr. Zapf asked we approved it before.

Ms. Ward mentioned yes.

Mr. Zapf stated it was the little house on a tiny piece of property.

Ms. Ward asked Tom you have no problem with it.

Mr. Boorady stated no.

Mr. Zapf made the motion for a one year time extension.

Ms. Ward mentioned I believe we can do the time extension by letter. We are doing this under any other business and I want them to get moving on the addition.

Mr. Zapf stated that is a tough piece of property.

Chairman Byrne asked does anyone want to second it.

Ms. Ward mentioned Tom you made the motion?

Mr. Zapf stated I made the motion.

Ms. Kubisky seconds.

Chairman Byrne asked that will be a year from the 12th.

Ms. Ward stated a year from the 12th. I'll send it by letter that they have been granted a one year time extension from the date they were approved.

Roll call:

Yes: Zapf, Kubisky, Bracchitta, Erickson, Wolfson, Zapf and Dubowsky (Alt. #1)

No: None

Abstain: None

Page 7 – April 12, 2016

Ms. Ward stated okay that's it.

Chairman Byrne asked does anyone have any business they want to bring up. Okay.

Mr. Zapf made the motion to adjourn.

Mr. Wolfson seconds.

Meeting adjourned 7:44 P.M.

Respectfully submitted:

Joan Ward, Secretary

Patrick Byrne, Chairman