

**MINUTES OF REGULAR ZONING BOARD OF ADJUSTMENT  
MEETING HELD ON TUESDAY, JANUARY 9, 2018**

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 January 2<sup>nd</sup>, 2018 sent to the Daily Record, Suburban Trends and posted on the bulletin board and website at Borough hall.

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

**ALSO PRESENT: BOORADY, ENGINEER AND ALEXANDER, COUNSEL**

**ABSENT: \*BRACCHITTA**

Chairman Byrne stated the first order of business is the approval of minutes from the November 14<sup>th</sup>, 2017 meeting.

Ms. Ward mentioned the members that can vote on the minutes are Byrne, Erickson, Foreman, Dubowsky and Zalewski.

Chairman Byrne stated I went over them and I didn't see anything that stuck out. Does anyone want to move them?

Mr. Erickson made the motion to accept the minutes.

Mr. Dubowsky seconds.

**Roll call:**

**Yes: Erickson, Dubowsky (Alt. #1), Byrne, Foreman, and Zalewski (Alt. #2)**

**No: None**

**Abstain: None**

Ms. Ward mentioned they are approved.

Chairman Byrne stated the next order of business is the Preliminary and Final Major Site Plan #363, Variance Application #2016-06 (use/bulk) and Flood Plain Encroachment Application #FPE 16-04 by Beavco, LLC, on property known as Block 9, Lots 80.01 and 94 on the municipal tax map also known as 209 Comly Road and 57 Brook Street (time extension granted through January 31, 2018). This is a consideration of a resolution.

Ms. Ward mentioned you have the resolution before you and it is a memorialization. The members that can vote are Byrne, Erickson, Foreman, Dubowsky and Zalewski.

**LINCOLN PARK BOARD OF ADJUSTMENT  
RESOLUTION**

**Preliminary and Final Major Site Plan Application #363  
Variance Application #2016-06  
Flood Plain Encroachment Application #FPE 16-04  
Zoning Permit #2016-80Z**

**WHEREAS, Beavco, LLC** (the "Applicant") has filed an application before the Lincoln Park Zoning Board of Adjustment (the "Board") with regard to property known as (i) 209 Comly Road, Lincoln Park, New Jersey, also identified as Block 9, Lot 80.1 on the official tax maps, and (ii) 57 Brook Street, Lincoln Park, New Jersey, also identified as Block 9, Lot 94 on the official tax

maps (collectively, the “Property”); and

**WHEREAS**, all persons located within 200 feet of the Property have been notified according to law and a public hearing was held before the Board on September 12, October 10, and November 14, 2017; and

**WHEREAS**, based on the hearing and a review of all the testimony and documents submitted in conjunction with the application, the Board makes the following findings and facts:

1. The Applicant proposes to construct a new dog run, a new pedestrian bridge over Beaver Dam Brook, and a new parking lot. These proposed improvements will be situated on the Beaver Brook Gardens apartment complex (Lot 80.01), except for the new parking lot which will be constructed on the adjacent lot (Lot 94). The Applicant is the contract purchaser of the adjacent lot. The Beaver Brook Gardens apartment complex is located in the Garden Apartment Residential (GAR) zone. The adjacent lot is located in the R-15 zone.

2. The Applicant submitted to the Board for its review the following materials:

(a) Revised Standard Development Application;

(b) Revised “Variance Report” prepared by Art Bernard and Associates, LLC, dated August 20, 2017;

(c) Revised site plans prepared by Joseph S. Miannecki, Jr., P.E., consisting of seventeen (17) sheets, dated September 16, 2016, bearing two (2) revisions through August 14, 2017;

3. The following exhibits were marked by the Applicant into evidence at the hearing:  
Exhibit A-1: photographs of proposed trees

4. The following variances are required in connection with the application:

(i) a use variance for Lot 94 to permit its use as an accessory parking lot;

(ii) bulk variances for Lot 94 for impervious coverage (25% maximum; 84% proposed; size of parking stalls (9' x 20' required, 9' x 18' proposed), and to allow on-street parking;

(iii) there are several existing non-conforming bulk conditions at Lot 80.01 (including parking on internal streets), which were granted in connection with the development of the complex, and which will continue unchanged by this application.

5. The Beaver Brook Gardens apartment complex consists of 13 garden apartment buildings. Each building has a letter designation starting with “A” and ending with “M”. The complex is primarily accessed from Comly Road to the west with secondary access via Brook

Street to the east. The Beaver Dam Brook flows along the southern boundary of the site. A small parking lot is located between the Beaver Dam Brook and Park Avenue, which is connected by an existing pedestrian bridge to the complex. Each garden apartment building is served by an internal network of roads with surface parking lots located within the horseshoe shaped buildings and adjacent to the buildings themselves. In the center of the complex is a swimming pool, gazebo, and pool house that serves apartment dwellers and their guests. The existing accessory structures are limited to the pool house, pool, and gazebo. All accessory structures conform to the rear and side yard minimum requirements as well as building heights. The Applicant does not propose any work to the existing parking areas or to the apartment buildings other than modifications to the utility room in Building “F” to provide electric service to the proposed outdoor parking lot lighting.

6. There is no existing dog run. The new dog run is proposed to be located between Buildings “G”, “H” and “I”, and constructed in the lawn area adjacent to an existing light pole. The dog run is proposed to be 25-ft by 50-ft in area and enclosed by a 6-ft high chain link fence with galvanized fence posts. The dog run is to be situated so the existing light pole remains outside the enclosed run area and a pet waste station is proposed to be installed adjacent to the light post. The pet waste station will contain a sign, a waste bag dispenser, and a refuse can installed on a post. Additional items include can liners, waste bags, can clamps, a hardware pack, and dispenser keys. The dog run is proposed to be accessed by a 7-ft by 7-ft entry area containing gates and collocated inside the dog run area.

7. Lot 94 is an unimproved and wooded lot fronting on Brook Street. One of the apartment complex’s parking lots abuts the northerly boundary, with Brook Street to the east, Beaver Dam Brook to the south, and the subject apartment complex to the west. The lot is within the R-15 zone and its lots size substantially conforms at 30,156-sf where a minimum of 15,000-sf is required. The lot has a frontage of 250-ft where a minimum of 100-ft is required. Bulk dimensional requirements are not applicable as there are no existing improvements.

8. The GAR zone requires at least one assigned parking space per dwelling unit. However, eight units at the Beaver Brook Gardens apartment complex do not have a garage. The Applicant intends to assign spaces in the parking lot for these units.

9 Steven Schepis, Esq. represented the Applicant at the hearing. Joseph Mianecki, a licensed professional engineer, testified at the hearing. He confirmed there will be no change

In access to the Property, and that the adjacent vacant lot will be merged into the larger lot. Mianecki also testified that the existing bridge is damaged and needs repair. The bridge will be replaced in the same location, will have new lighting, and will be handicapped accessible. The Applicant will need to obtain permits from the NJDEP to construct the bridge. The dog run will be fenced and be for the exclusive use of the residents of the Beaver Brook Gardens apartment complex. There will be a code box for security purpose. There will also be a sidewalk leading to the dog run.

10. Mianecki testified that lot 94 is surrounded on three sides by the Beaver Brook Gardens apartment complex. The parking lot will serve the complex. Because parking lots are not permitted uses in the R-15 zone, a use variance is required. The Applicant proposes to construct eighty nine (89) new parking stalls of 9 feet x 18 feet in size, together with eight (8) new light poles with LED fixtures. There will also be an underground detention basin to mitigate storm water runoff.

11. Mitch Leff and Judith Flor, representatives of American Properties, the property manager for the Property, testified at the hearing. They advised the complex needs additional parking because more residents have vehicles. They testified that they were unable to find any other parking to satisfy the needs of the complex. They also agreed to post “No Parking” signs in the areas of the complex where parking is prohibited.

12. Art Bernard, a licensed planner, testified in support of the application. Mr. Bernard referenced his report dated August 20, 2017 and discussed the criteria to support the requested variances. Mr. Bernard testified that Lot 94 is particularly suited for the proposed use as a parking lot because of its proximity to the complex as well as the GAR zone, because it is isolated from the rest of the R-15 zone, and because it can be integrated into the complex with minimal flooding risk. He also testified that the application addresses the purposes of the MLUL by promoting the general welfare and safety and advancing the appropriate use of land. He further testified that the benefits of the variances will outweigh any detriments because the additional parking is a more appropriate use considering the site constraints as well as the close proximity of the apartment complex.

13. During the hearing, Mr. Schepis submitted a letter dated November 3, 2017 in which the Applicant agreed to prohibit any vehicle with a gross vehicle weight of 6,000 pounds or more from parking at the complex, excluding any vehicles of contractors servicing the complex

and municipal vehicles.

14. The following members of the public testified at the hearing: Patricia Lukacsko, Forest Harper, and Judy Campanell. Ms. Campanell also introduced the following exhibits for the Board's review:

Exhibit CA-1:	photograph of trash
Exhibit CA-2:	photograph of Beaverbrook
Exhibit CA-3:	water flow analysis
Exhibit CA-4:	water flow analysis
Exhibit CA-5:	photograph behind Building F
Exhibit CA-6:	photograph of vehicles
Exhibit CA-7:	two photographs of Brook Street
Exhibit CA-8:	graph of parking area
Exhibit CA-9:	photograph of parked vehicle
Exhibit CA-10:	photograph of open parking spaces

15. The application, subject to the terms and conditions set forth herein, is consistent with the intent and plan of the zoning ordinances of the Borough of Lincoln Park and will not adversely impact the neighborhood or surrounding properties.

**NOW, THEREFORE, BE IT RESOLVED**, that based upon the testimony and facts as found above, the Lincoln Park Zoning Board of Adjustment does hereby grant the application and the requested use and bulk variances on the following terms and conditions:

1. This Resolution is subject to any comments offered by the Borough's Construction Official on the application and the plans. The Applicant shall comply with any requirements imposed by the Construction Official with respect to this application or the plans.

2. All construction work must comply with all applicable rules, regulations, ordinances and statutes. All construction work shall be completed within twenty four (24) months of the date of this Resolution.

3. The Applicant shall comply with all of the items set forth in the report dated August 31, 2017 from the Board's Engineer, Thomas A. Boorady of Darmofalski Engineering Associates, Inc., except as amended by this Resolution. The plans (including a landscape maintenance plan) shall be revised in accordance with such report as well as the testimony at the hearing and shall be submitted to the Board Engineer for his review and approval. The light poles shall be reduced to 12 foot maximum height and revised on the plans.

4. The Applicant shall record a deed of merger for the Property with the Morris County Clerk's Office. The deed shall also contain a restriction that the parking areas at the Property shall be restricted to the exclusive use of the residents of the Beaver Brook Gardens apartment complex. The deed shall be subject to the review and approval of the Board's Engineer and

Attorney.

5. The Applicant shall remove pet waste daily from the dog run and prior to any flood events. The revised plans shall ensure that the dog run will be outside the effective and preliminary floodway.

6. The Applicant shall provide an affidavit confirming the number of bedrooms per dwelling unit for the Beaver Brook Gardens apartment complex for the Board's Engineer review and approval in order to confirm the parking calculations.

7. The Applicant shall submit revised plans complying with the federal ADA parking requirements for the existing and proposed parking areas at the complex for the Board Engineer's review and approval.

8. The Applicant shall install "No Parking" signs at the Property and such other traffic control signs and parking/towing/flooding signs, including striping of the parking areas, as may be determined necessary by the Board Engineer. All signs shall also be subject to the Police Department's review and approval.

9. The Applicant shall prohibit any vehicle with a gross vehicle weight of 6,000 pounds or more from parking at the Beaver Brook Gardens apartment complex, excluding any vehicles of contractors servicing the complex and municipal vehicles.

10. The Applicant shall designate parking spots for each unit in the complex without a garage.

11. The Applicant shall make the property subject to Title 39 enforcement by the Borough.

12. The parking areas at the property shall be restricted to the exclusive use of the residents of the Beaver Brook Gardens apartment complex and their guests and invitees. The parking areas shall be used exclusively as an accessory use to the Beaver Brook Gardens apartment complex.

13. The Applicant shall prepare a stormwater facility operations, maintenance and repair plan for the Board Engineer's review and approval, which shall be recorded with the Morris County Clerk's Office.

14. The Applicant shall replace the sidewalks along Park Avenue and Comly Road where deemed necessary by the Board Engineer.

15. The Applicant shall perform stream cleaning to the extent permitted under the

various “permits by rule” outlined under NJAC 7:13 *et seq.*

16. The Applicant shall apply for and obtain all required permits and approvals from all other governmental agencies having jurisdiction over the Property, including the NJDEP.

17. The Applicant shall enter into a Developer’s Agreement with the Borough and provide a bond for the construction of the improvements and post an escrow for inspection fees and engineering and professional fees. The Applicant shall be obligated to keep the escrow accounts current at all times.

18. Before a Certificate of Occupancy may be issued, the Applicant must submit a copy of the Borough’s Project Completion Report, signed and sealed by the Applicant’s engineer or architect as well as six (6) copies of an as-built survey. Any remaining balance in the Applicant’s escrow account will not be returned until the Project Completion Report has been properly submitted. The Applicant must submit to the Board Secretary a status report from the Borough Finance Office confirming that all Borough fees for the property and this application are current.

19. All other rules and regulations of any governmental agency having jurisdiction over the Property shall be complied with, including but not limited to the payment of all taxes, water and sewer charges and application fees and/or charges. No alternation of any construction plans submitted with this application and on file with the Board shall be permitted without the Board’s prior written approval.

Chairman Byrne asked does anyone want to move it. I’ll move it. Does anyone want to second it?

Mr. Foreman seconds.

**Roll call:**

**Yes: Byrne, Foreman, Erickson, Dubowsky (Alt. #1) and Zalewski (Alt. #2)**

**No: None**

**Abstain: None**

Ms. Ward stated it’s approved.

Chairman Byrne mentioned the next order of business is a discussion with Francis Kelly Jose, 242 Pine Brook Road (Block 46.4, Lot 269.1) regarding Variance Application #2016-03 by Dorothy Ippolito the recording of the deed for the extended family dwelling unit.

Ms. Ward stated Mr. Jose called today and said he is out of town.

\*Mr. Bracchitta arrived at the meeting and apologized for being late.

Chairman Byrne stated no problem. They elected me again; Tom and everybody else.

Ms. Ward mentioned the title company is going to be recording the deed probably tomorrow. I said that was fine and you have the paperwork in front of you. If the deed is not recorded sometime this month, he'll be back in front of you for the February meeting because this has been going on for more than a year. The title company promised him they were going to rerecord the deed so we shall see.

Chairman Byrne stated all right so we don't have to do anything on that.

Ms. Ward mentioned that's the update on it.

Chairman Byrne stated next is the time extension being requested by Steven C. Schepis with reference to Minor Subdivision Application #631, Amended Site Plan Application #339-A and Variance Application #2017-01 by 499 Pine Brook Realty, LLC and 521 Pine Brook Realty, LLC, on property known as Block 136, Lot 20 and 20.03 on the municipal tax map also known as 499 Pine Brook Road and 521 Pine Brook Road.

Ms. Ward mentioned their time ran out to get the subdivision map recorded and they are looking for a ninety-day extension. We have the mylars. Steve is attending another meeting tonight but asked for a ninety-day extension so they can record the mylars.

Mr. Alexander stated the way they perfect a minor subdivision is by recording the deed.

Ms. Ward mentioned right, but in this case we are not having a deed recorded. Normally we do, but we are recording the map because there is so much information on that map that it would be impossible for them to record it as a deed. Tom requested they record the map instead of a deed Charlie agreed. We have the map now.

Mr. Alexander stated under the Municipal Land Use Law the Board can grant an extension of time for a reasonable reason for not having perfected the subdivision on time. Here you have a complicated matter and had a map they had to redo with easements and descriptions which Schepis describes in his letter, so there is no prejudice to the Board by granting the extension.

Chairman Byrne stated okay. Tom you were good with the map? Did you get a chance to look at it?

Mr. Boorady stated I'm going to look at it now before we sign it.

Ms. Ward mentioned they gave us 5 copies of the map (paper prints), and Steve dropped off the mylars to be signed.

Chairman Byrne stated so if you look it over and there are some discrepancy that need to be clarified, they can do that within this ninety-day period.

Ms. Ward mentioned yes.

Mr. Boorady stated the Borough's surveyor has already reviewed it.

Ms. Ward mentioned the deed descriptions were approved by Mark Mantyla.

Mr. Boorady stated these are just the mylars exactly what we reviewed.

Mr. Zapf mentioned it is giving you more time.

Chairman Byrne stated right.

Mr. Zapf mentioned we have so much invested in this so I don't have a problem granting the extension. I'll make the motion. First of all they came to us and we approved it years ago. They've had some different circumstances but they are interested in pursuing it and it is still the same thing that we originally approved but there have just been some changes. I'll make the motion to grant the extension.

Mr. Foreman seconds.

Chairman Byrne stated I have no problem with it either.

Ms. Ward asked do you want to do a ninety-day extension. Craig can we do that by correspondence or do we need a resolution? It was a complicated application so do you think we should do it by resolution?

Mr. Alexander stated I can do a very simply resolution.

Ms. Ward mentioned okay so I'll put it on for February.

Mr. Alexander stated it is granted tonight but it will be a memorialization. It will be recorded before that anyway.

Ms. Ward mentioned probably, but it makes the file more complete.

Mr. Boorady asked do they have to wait for the resolution to record it though. Can they record it prior to obtaining the resolution?

Ms. Ward asked did they record the other resolution. Did they have to record the resolution I don't remember?

Mr. Alexander stated they can record the resolution.

Mr. Boorady mentioned I just didn't know.

Mr. Alexander asked when is the next Board meeting.

Ms. Kubisky stated February 13<sup>th</sup>.

Chairman Byrne asked would the clock start tonight.

Mr. Alexander stated it has started the extension runs through February 13<sup>th</sup>.

Mr. Zapf asked did the clock start on November 17<sup>th</sup> when the other one expired. Should we grant more than ninety days?

Mr. Alexander stated you can only grant them in ninety-day increments.

Ms. Ward stated they primarily have mostly everything done.

Mr. Alexander stated they have a month to get it done.

Mr. Zapf mentioned if something goes wrong, we can grant them another ninety days in February correct?

Mr. Alexander stated correct.

Chairman Byrne mentioned all right it works for me.

**Roll call:**

**Yes: Zapf, Foreman, Bracchitta, Byrne, Erickson, Kubisky and Wolfson**

**No: None**

**Abstain: None**

Ms. Ward mentioned okay that's seven of you.

Chairman Byrne asked any other business which may arise. I just want to make a comment about our friends over at Beaver Brook. I thought we had specified in here about the parking and she told us you know back in November that it was going to be done in the next week or

two, but it is not done not even close there is not a sign there at all.

Ms. Ward mentioned according to her testimony she was going to have the signs within two weeks.

Chairman Byrne stated and that was in our November meeting. I don't know if anyone has been through there, but there has not been any improvement in the parking. They still park in the fire lane around the pool.

Ms. Ward mentioned Ms. Campanell from Brook Street was in my office today complaining about the cars parked on her street during the snowstorm. I told her she had to contact the police on that. The police have a sign by the pump station on Comly Road stating no parking on the streets during snow events so I told her to speak with the police. She mentioned she contacted them but they didn't do anything.

Mr. Zapf stated we are not the customer service department for the police.

Chairman Byrne stated my question is if they haven't complied with that, then they shouldn't be doing anything.

Ms. Ward asked how do we handle that. She said she was going to have the signs from Stagers in two weeks.

Chairman Byrne stated right and there are no signs.

Mr. Boorady stated give her a call and say where are you with the signs.

Ms. Ward mentioned she was the one that put it on the record that she was going to have the signage within two weeks.

Mr. Zapf asked should it be a friendly letter so it is recorded.

Mr. Boorady stated maybe just send her a letter.

Ms. Ward stated I'll mention you've been through the complex and noticed the signage hasn't been installed yet per her testimony.

Mr. Boorady suggested sending her a letter asking her to provide the status.

Chairman Byrne asked if she doesn't comply with that though, my understanding is that they can't do any of it. I mean the resolution is pretty specific and it is one of the requirements.

Mr. Boorady mentioned well yeah he won't get a C.O.

Chairman Byrne stated right.

Mr. Boorady stated they have a long way to go with the DEP permit for the bridge. I don't know what part of the project they are going to start first but they have a long way to go with the DEP permit for the parking lot so they are not breaking ground any time soon.

Chairman Byrne stated right.

Mr. Boorady mentioned their approval was conditioned upon them getting the DEP permit so it could be six months from now before they get it.

Chairman Byrne stated it could be a long time before they do the parking.

Mr. Boorady stated so you are right in asking for the memo because she promised that sooner than later. Ultimately I'll enforce it when they give us the as-builts; the signs will have to be on there but that could be two years from now.

Chairman Byrne stated that is my concern.

Mr. Boorady stated we should send her a memo now.

Ms. Ward stated all right I'll mention per her testimony.

Mr. Boorady stated sure.

Chairman Byrne stated and it was part of our reason for the agreement.

Ms. Ward ask when do you want the status report by.

Mr. Boorady stated it is easy, when she puts them in we'll inspect it.

Ms. Ward asked do you want to give her a time limit.

Mrs. Kubisky mentioned a time limit

Mr. Boorady stated she said two weeks and it hasn't been done.

Ms. Ward asked what's the Board's pleasure.

Mr. Zapf stated why don't you make it by the next meeting.

Ms. Ward mentioned by the next meeting.

Mr. Boorady stated the ground is all frozen right now.

Mr. Zapf mentioned if you are a sign company this is your job, you can deal with ice.

Mr. Boorady stated just laying that out there.

Chairman Byrne mentioned well if she comes back and says that, then maybe we will make an adjustment. It is going to be 50 on Thursday.

Mr. Erickson stated with soaking rain all day.

Mr. Zapf stated sign companies know how to do this they don't go on a hiatus in the wintertime.

Ms. Ward mentioned okay then by the next meeting.

Chairman Byrne asked what about the handicap signs that are there what is that covered under. There is a handicap sign and it mentions an ordinance but I couldn't read it.

Mr. Boorady asked which ordinance are we talking about.

Chairman Byrne stated I don't know. There are all handicap signs and underneath it says if you park there --

Mr. Boorady mentioned the fine is a state fine.

Chairman Byrne stated it says towing, you'll be towed.

Mr. Boorady mentioned it is like a \$250 fine if you park in a handicap spot.

Chairman Byrne asked but what's the towing ordinance. How is she able to say that you'll be towed from this handicap spot because that's what is says?

Mr. Boorady asked they cite the Borough's ordinance.

Chairman Byrne stated yeah. There is another part that says no parking zone.

Mr. Boorady stated that is under the Borough's code. I don't have the code book with me.

Chairman Byrne mentioned but it is not the same as this Title 39.

Mr. Boorady stated Title 39 allows the police to come in and enforce.

Chairman Byrne stated so she wouldn't be enforcing it.

Mr. Boorady mentioned so they can enforce anything from speeding to parking, to accidents, to whatever. The police can enter the property and enforce traffic regulations but there has to be a traffic plan accepted by the mayor and council and introduced into the ordinance. There is already Title 39 for Beaver Brook. If you open up the code book it's in there. Your approval because of the new parking lot is going to make them update that Title 39 to include the new parking lot, and revisit the old one to make sure everything is listed; handicap parking spaces, number of stalls, traffic arrows, stop signs so the police can go and enforce that.

Chairman Byrne stated so I've been in there three times in the last two weeks where at night when you come around the pool, and Brook Street is on your right, two cars are parked there like where the yellow line is that you are not supposed to park and the two of them are actually sticking out into the street.

Mr. Boorady mentioned right now the police should be able to enforce that under the current Title 39 ordinance.

Chairman Byrne stated so they are not and there are cars in the fire lane and nobody enforces it. I'm just pointing this out and I want this on the record because it has really been three months, in October and we asked for an update and she said two weeks.

Ms. Ward stated you mentioned the two cars; the red car and the white car sticking out all the time then.

Chairman Byrne stated yeah and nothing.

Mr. Boorady mentioned those kind of issues are fairly typical not only to the Zoning Board but to the Planning Board. You, as a Board grant an approval for something, whatever it might be, whether it be as simple as a sign or a five-story nursing home, but then something isn't getting done and unfortunately the enforcement is either up to the zoning officer if it is zoning related which goes to Sal, or if it is something police related it is the Police Department. It could be fire related if they are parking in a fire zone. Unfortunately as a volunteer Board, you don't necessarily have the power to go and knock on their door and say hey you have to do this. What you can do is perhaps write a memo to the Police Department or the mayor and council, and say listen we are concerned about this if it becomes a problem. Maybe Craig has some other advice but we are not an enforcement Board.

Mr. Alexander stated the most you can do is reach out to the people in charge of enforcement and bring it to their attention.

Ms. Ward mentioned they do have Title 39 on their property but Russ Ruggiero is in charge of traffic. As a matter of fact, she brought his name up at the meeting that she was working with him with the signage and everything.

Chairman Byrne stated that's good enough for me.

Mr. Zapf stated something just jumped into my mind when you said what do we do when something was contingent upon our vote in the past. The house on Two Bridges Road, Tom specifically instructed them as part of their approval when they put that addition on the side --

Chairman Byrne stated right.

Mr. Zapf mentioned that they had to move that driveway off of public property and she promised us what a year ago, or last year around that time that they were going to have a very slow period because of money and that driveway was going to get moved. Well I don't drive by there every day like I use to, but the last time I went by there a couple of weeks ago nothing has been done.

Mr. Dubowsky mentioned they had a party and they left the sign up, like park here and they used that driveway.

Mr. Zapf stated that is on town property and it was contingent upon their approval that that had to be moved off and onto their property which she was here for the follow-up and that was raised, and it is in the minutes.

Ms. Ward mentioned the deed has not been recorded yet for the road encroachment. The ordinance was adopted by the Council for the section of the roadway on their property but the deed hasn't been recorded yet. The paperwork has been given to the Borough Attorney and they are in the process of preparing the deed for recordation.

They hired a contractor to do phase 2 in the spring. I assume in the spring it will be going forward and then all of the conditions in the resolution will have to be addressed and satisfied.

Mr. Zapf mentioned I don't know if we send reminder letters or anything like that.

Ms. Ward stated we do. They've been in touch with us but not on the driveway. They are aware that the conditions in the resolution have to be satisfied before they get their certificate of occupancy. We will need the as-builts and the project completion report for Tom's review and approval prior to them getting a C.O.

Chairman Byrne stated I would just like to remind everyone that when we hear some of these applications keep in mind that when we are asking for restrictions and/or things like that, it could take years before they are in place.

Mr. Zapf stated yup.

Chairman Byrne mentioned and that is something we should bring up to the applicant.

Mr. Zapf stated we have a couple of applications even before my time that are still going on because they never finished them.

Mr. Boorady mentioned what we can do in the future for something like that is perhaps reword the resolution to say prior to being issued a building permit you have to remove the driveway first. I can tell you they are not going to get a C.O., or I'm not going to approve the project completion report until they restore that.

Chairman Byrne stated I know.

Mr. Boorady mentioned but you are right it has been two to three years and you've even given them an extension of time on their approval and they haven't done it yet.

Chairman Byrne stated it is just like when you have these complicated or even easy ones you think they will remove the driveway and you think they are probably going to do it soon, but it could be years before they do it.

Mr. Boorady mentioned all I can promise you is I'll make sure they do it before they get a C.O.

Chairman Byrne stated I trust you.

Mr. Foreman mentioned I drive past there and I was thinking about it. The thing I recall about the meeting is that I thought it was grossly unfair that they had to move that driveway. When they bought that property, their deed didn't reflect that it wasn't theirs so they are using it thinking it was theirs and then all of a sudden we spring this on them. They didn't do anything to deserve to have to spend the money to move the driveway. I never thought it was reasonable in the first place.

Mr. Boorady stated they are not really moving a driveway they have a driveway.

Mr. Foreman stated yeah I know. I know it is like an (inaudible) that they drive into the back of their lot.

Mr. Boorady stated there is no macadam down or anything it is dirt.

Mr. Foreman asked how are they supposed to move it then.

Chairman Byrne stated they have to block it off.

Mr. Boorady stated they have to put topsoil and seed it, I don't think that is much of a burden and not use it. They are supposed to topsoil it, seed it, and let it grow back.

Mr. Foreman stated they were kind of a good faith buyer and it never came to their attention in the first place they were just doing what the prior owner had done.

Chairman Byrne stated they never objected to that and said it wouldn't be a burden on them.

Mr. Foreman mentioned I'm just giving you my opinion that I thought it was unfair in the first place.

Mr. Boorady stated they probably did a survey when they closed and knew the driveway wasn't on their property, I mean I know what you are saying.

Mr. Foreman mentioned my recollection of their testimony is that that was really the first time they learned about it and they agreed to do it. You know nobody is down there bothering it so people park there sometimes, big deal what do we care? What does the town do, does the town go down there and park stuff on it? It is swamp next to them. They built a house next to a swamp so what.

Mr. Zapf stated other people can do it and say well you let them do it.

Mr. Foreman asked what other people.

Chairman Byrne stated anyone.

Mr. Zapf stated all around town anybody.

Mr. Foreman mentioned you enforce the ones where it really matters and this one why are you excited about it.

Mr. Erickson stated I don't think you can do that that would be discriminatory.

Mr. Foreman mentioned I don't think it is being discriminatory I think it is like trying to balance the fairness in the issue. I thought it was unfair to pose it on them in the first place.

Chairman Byrne stated I can address that real quick. We can't give a variance on public property, like we can't give variances on the property that the owner doesn't own, and we can't say well the town has to allow you now to park on there or drive on there.

Mr. Boorady mentioned I don't think you can give them a license to park on municipal property it has to come from the mayor and council.

Chairman Byrne stated right.

Ms. Ward asked isn't that the state's property.

Mr. Boorady stated yeah, good luck getting anything from them.

Mr. Zapf mentioned the people that live around the corner from them, right across from the exit from Pine Brook School where they built those two new houses up against the woods, the one house went in and they cleared all the property in the back and put up a gazebo. They cleared all protected public land and the state came in and said you have to restore everything that was back there and they did it.

Chairman Byrne stated including the trees yeah.

Mr. Foreman asked specifically what do we want them to do.

Mr. Zapf stated move the dirt driveway over on their property. They have a huge piece on the left and they have almost nothing on the right.

Mr. Foreman mentioned so just throw some seed down.

Chairman Byrne stated yeah seed it and don't use it.

Mr. Boorady mentioned my recollection is they are not moving anything they already have a driveway.

Mr. Zapf stated you could cut some trees down and move it over, put it just closer to the house if they want to have a driveway. They had horses back there which I don't think they have anymore.

Chairman Byrne stated no. Did you want to say something?

Mr. Wolfson mentioned just getting back to what Tom said before, on Hunter Road that one family came in, the mother where the child was crippled and they wanted to do something there. There is a pod sitting there and you know the situation is when we grant these things and the neighbors sometimes don't want to complain because they don't want to cause a problem, but somebody has to be policing this to make sure these things are getting done in ordinary time.

Ms. Ward mentioned the pods were brought up by Sal and on the Planning Board agenda for review. The Borough is doing a codification of the Code Book and the DRO and we brought that to the attention of Chris DiLorenzo, our Borough Attorney, whether the pods were being addressed. Sal had a concern because pods were being placed in front yards or wherever, and they are using them like storage sheds and not removing them. We don't know if it being addressed in the codification process for time limits, certain locations and then it has to be removed.

Mr. Foreman asked when you put up a shed you have to get approval.

Ms. Ward stated yes. You need to meet the required setbacks for the placement of a shed so we know it is in the proper location. If the shed is larger than a 10 x 10 they need a building permit too.

Chairman Byrne stated I thought it was 200 feet.

Mr. Boorady mentioned what happens is everybody gets a zoning permit and if it is less than 10 x 10 you don't need a building permit and you don't need a foundation permit, you can lay it on your lawn on two pieces of wood.

Chairman Byrne stated so it is only 100 square feet I thought the ordinance says 200 square feet.

Ms. Ward mentioned 200 square feet is the maximum shed you can have on your property.

Chairman Byrne asked you need a building permit.

Mr. Boorady stated anything over 100 square feet you need a building permit. You don't need a foundation but it has to be anchored, you need like 4/6 inches of stone to set it on so it is stable. I think the Code Book says anything over 200 square feet you need a foundation.

Ms. Ward mentioned 200 square feet is the maximum on a shed.

Mr. Boorady mentioned that is the maximum, but if you don't have a detached garage the zoning official will allow you a larger structure because 200 square feet isn't necessarily that big of a shed for some people, especially in the R-40 Zone and some other areas. The town does sign off on sheds larger than 200 sq. ft. and they do that under really a small garage.

Chairman Byrne mentioned the reason I asked is because I'm building a shed this spring.

Mr. Boorady stated what is happening there are these sea land container, metal containers that you get from Newark, and when they are done with them you can buy them for \$1,200 bucks and they are almost indestructible. I mean they are air/watertight almost and you can lay them on the ground and they are great. A lot of people see that you can buy them on Craig's list and they drop them off and it is cheaper than a shed.

Chairman Byrne stated they are huge.

Mr. Boorady mentioned they come in different sizes but they are really inexpensive.

Chairman Byrne stated so you are saying I should go with a shipping container.

Mr. Boorady mentioned no I'm telling you what is happening as things become available to people, but unfortunately people like to take advantage and not come in for a zoning permit and they'll just have a pod or a sea land container dropped off.

Chairman Byrne stated I have seen sheds in Lincoln Park right up against the property line; seven or eight sheds on a property, large sheds, small sheds and tall ones.

Mr. Boorady mentioned that's another enforcement issue and if you see something say something to Sal, it is really up to Sal to enforce the zoning.

Ms. Ward stated he has been enforcing zoning on sheds when there is an issue.

Chairman Byrne mentioned we've had a lot of sheds removed in our applications.

Mr. Zapf stated I was going to say that. The one house all the way down on West William Street right up against the woods there was nothing next to them, but the house had to be cantilevered and the shed was too close to the side yard and they had to move it before we would approve it.

Chairman Byrne mentioned we have people just say we will get rid of it. Well that's all I had and it was a good discussion so I appreciate the support.

Ms. Ward mentioned your next meeting is February 13<sup>th</sup>. We have one applicant on that agenda Van Der Berg and the resolution.

Chairman Byrne asked does anyone want to make the motion.

Mr. Zapf made the motion to close regular meeting.

Mr. Dubowsky seconds.

Meeting adjourned 8:04 P.M.

Respectfully submitted:

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Joan Ward, Secretary

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Patrick Byrne, Chairman