

ALPINE PLANNING BOARD

Alpine Borough Hall
100 Church Street
Alpine, New Jersey 07620

MINUTES

April 25, 2017

CALL TO ORDER/PUBLIC ANNOUNCEMENT/PLEDGE OF ALLEGIANCE: The Planning Board, Borough of Alpine, convened in regular session on Tuesday, April 25, 2017 at 7:30 P.M. Catherine Parilla read the announcement in accordance with the requirements of the Sunshine Law:

In accordance with the provisions of the New Jersey Open Public Meetings Act, the notice of this regular meeting held Tuesday, April 25, 2017 at 7:30 P.M. has met the requirements of the law by publication in The Record and posted on the bulletin board of the lobby in the Borough Hall and filed in the office of the Borough Clerk.

ROLL CALL:

Members Present: Carol Cochi, Gayle Gerstein, Elizabeth Herries, David Kupferschmid, Catherine McGuire, Catherine Parilla, Joyce Sonpal, Mayor Paul Tomasko

Members Absent: Lorraine Mattes, Alt I Jeff Fromm

Staff Present: John Phillips, Board Attorney, Gary Vander Veer, Borough Engineer
Marilyn Hayward, Recording Secretary

APPROVAL OF MINUTES OF MARCH 28, 2017 REGULAR MEETING:

Upon a motion by Gayle Gerstein seconded by Mayor Tomasko, to approve the minutes of the March 28, 2017 Planning Board Regular Meeting. Eligible members voted as follows:

Vote: Ayes: Gayle Gerstein, Elizabeth Herries, Catherine McGuire, Catherine Parilla, Mayor Paul Tomasko

Abstain: Carol Cochi, David Kupferschmid, Joyce Sonpal

MEMORIALIZATION OF RESOLUTION:

Soil Moving Permit Application: Perez, Ramon & Mirna Block 59 Lot 3, 822 Closter Dock Road. A motion to approve the resolution was made by Gayle Gerstein, seconded by Catherine McGuire and carried by those eligible to vote.

Vote: Ayes: Gayle Gerstein, Elizabeth Herries, Catherine McGuire, Catherine Parilla, Mayor Paul Tomasko

{A copy is appended to these minutes}

RETURN OF ESCROW:

Alpine Elite Development \$656.17 Return of Planning Board Escrow

A motion to approve the above referenced return of escrow was made by Mayor Tomasko, seconded by Gayle Gerstein. All were in favor.

BILLS:

John Phillips \$200.00 Monthly Meeting
John Phillips \$520.00 Escrow Perez Block 59 Lot 3 – 822 Closter Dock Road
Clarke, Caton, Hintz \$165.14 COAH Court Appointed Special Master
Azzolina & Feury \$109.00 Escrow Perez Block 59 Lot 3 – 822 Closter Dock Road
Alpine Elite Development \$656.17 Return of Planning Board Escrow

A motion to approve the above referenced bills was made by Mayor Tomasko and seconded by Catherine McGuire. All were in favor.

OPEN TO PUBLIC (NON-AGENDA ITEMS): Chairwoman Parilla opened to the public for non-agenda items. No one from the audience spoke.

COMMUNICATIONS:

March 2, 2017 BER-L-6286-15 Order Granting Extension of Temporary Immunity Against Exclusionary Zoning Actions through May 31, 2017. Mayor Tomasko advised they've been trying to schedule a meeting with the Court Appointed Master whose Trenton office has been swamped but are hoping to schedule a visit for May.

February 10, 2017 cc of Azzolina & Feury letter to Board of Health Re: Alpine Three Block 43 Lots 6.01,6.02,6.03, 982 Closter Dock Road Deferred for later discussion.

February 13, 2017 cc of Azzolina & Feury letter to Construction Official Re: LaBarbiera Block 76 Lot 2, 32 Allison Road Mr. Vander Veer explained he had received an as-built survey; they are not going to be encroaching into the tree buffer but may need to return to the Board on another matter.

HEARING: Soil Moving Permit Application: LaBarbiera Allison Block 76 Lot 2, 822 Closter Dock Road

Joyce Sonpal lives within 200 feet and therefore recused herself and stepped down to the audience.

Matthew Capizzi, Esq. Capizzi Law Offices, 11 Hillside Ave., Second Floor, Tenafly, NJ 07670 appeared on behalf of the Applicant JLB Legal Services PA. Mr. LaBarbiera, present, is sole owner of this LLC. Attorney Phillips deemed the applications for zoning review and soil moving permit revised to reflect JLB Legal Services, PA as owner of the property. The notices sent out in that name are appropriate.

Attorney Capizzi explained this application is unique. They seek relief for a structure already in place. The property was redeveloped with a new single family home, pool and patio in the rear yard. Construction is substantially complete. The home is ready to be lived in. An as-built survey was prepared as part of the process to close out permits. Upon review the Borough Engineer determined the inground swimming pool to be an inch or two higher than the maximum permitted five feet of fill. This meant they also exceeded 30% of the pool coping walls being more than three feet higher than original grade. They require waivers from the soil moving and pool ordinances. There are no other deviations. The difference in pool height resulted from the pool contractor's mistake when doing his initial calculations. This should have been avoided. There is no benefit from the mistake. The pool is not better, deeper or longer. It is just at an elevation two feet higher than what was proposed on the original plan.

Douglas W. Doolittle, PE, LS, PP of McNally Engineering, LLC, 169 Ramapo Valley Road, Oakland, NJ 07436 was sworn and having appeared before the board on numerous occasions deemed qualified.

Mr. Doolittle referenced an As-Built Survey by McNally Engineering, LLC dated 3/1/2017 last revised #2 dated 4/21/17. Secretary Hayward advised the Board's version was last revised #1 dated 3/28/2017. Mr. Doolittle replaced his exhibit with the 3/28/2017 plan and explained revision #2 responded to Mr. Vander Veer's 4/14/17 letter but there was insufficient time to submit to the Board prior to this hearing. The revisions don't affect the waivers before the Board.

Mr. Doolittle described the property located on the southeast side of Allison Road near an S-turn. The property slopes up from the road, plateaus for the house and falls off a little to the rear. They constructed a new 2 ½ story dwelling near the center of the property with a side loading garage on the north side. A greywater septic system is in front and the blackwater system is in the rear. Amenities include AC units, a rear patio and a pool southeast of the structure. All of the drainage and a retaining wall on two sides were constructed in accordance with the approved site plan.

The pool is 2.15 feet higher than the original design. This exceeds the code limits for five feet and 30% of pool walls. Coping is at grade and the pool complies to set backs. Another 400 square feet of patio was proposed but not installed. Improved coverage is currently about 1% lower than what was proposed. The pool is also five feet further from the property line than originally proposed at 20.5 feet; it's about 25 feet now. Ten to twelve foot high Canadian hemlocks have been planted inside the south/side and east/rear property lines. The plantings exceed what was required. Mr. Doolittle

distributed a photo [marked A-1] to show the line of trees behind the pool. The pool is not visible from surrounding properties. Drainage provisions also exceed what was required as they did not install the extra patio.

Attorney Phillips asked are they saying the extra patio will NOT be constructed? Attorney Capizzi and Mr. Doolittle affirmed the original site plan depicted another 400 square feet to be constructed at pool level; this will NOT be constructed. Attorney Phillips asked if the zoning data table has been revised. Mr. Doolittle affirmed the original site plan proposed 23.48% improved coverage. The coverage is now 22.24%. This will change slightly. Since this As-Built they've added drainage improvements consisting of 18" of river rock with a 4" underdrain around the edge of the pool patio. This has to be added in but they will still be roughly 1% below the original calculation. This drain was part of the original plan. There is also an underdrain at the base of the retaining walls.

Mr. Vander Veer questioned if the pine trees will interfere with the drains. Mr. Doolittle stated no because the roots are shallow. Attorney Capizzi noted per Mr. Vander Veer's letter dated April 14, 2017 the perimeter drain is the only outstanding issue. Gayle Gerstein opined the roots may be deeper as the trees grow. Mr. Doolittle agreed but that would take a long time because pine trees have shallow roots.

Chairwoman Parilla asked how many steps go down to the pool? Mr. Doolittle noted five six-inch steps except the bottom step is only about 2-3 inches high. Chairwoman Parilla asked how many steps there would have been in the original location? Mr. Doolittle replied probably an additional three eight-inch steps so probably 8 or 9 steps total.

Mr. Vander Veer questioned the design of the drain around the pool as installed. Where does the underdrain pipe connect? Mr. Doolittle didn't know yet. Mr. Vander Veer advised the connection will have to be exposed for inspection. It must connect to the seepage pits and not into the curtain / French drains next to the retaining wall because that drain is for bypass of the septic system. Mr. Doolittle will verify and comply.

Mr. Kupferschmid questioned elevation of the original pool design. Mr. Doolittle responded the existing is 2.15 or 2 foot 1¾ inches higher than where it was approved. It exceeds the five feet limit by just a few inches.

Chairwoman Parilla opened the hearing to the public for questions of the Applicant's engineer.

Joyce Sonpal, 33 Allison Road, asked how do you fix this problem? Attorney Capizzi explained if they are not granted the waivers they will have to tear out the pool and construct a new pool. This will extend construction by several more months.

Chairwoman Parilla asked if the home is a spec home or will Mr. LaBarbiera live there? Attorney Capizzi advised it's under contract to be sold and a closing scheduled any day now.

Mr. Kupferschmid asked about the pool's side yard setback. Mr. Doolittle replied it was 20.5 feet on the proposed site plan and now a little over 25 feet. Mr. Capizzi stated that the location is better in terms of the side yard setback. Mr. Kupferschmid noted they were off by over two feet in location and height. When you have this egregious an error why are they here and why is this the Board's problem? Either it was intentional or it's such an egregious mistake it should be fixed. This is a property that already had tremendous relief when it was initially approved; the back yard was raised five feet.

Darren Pellegrino was sworn and appeared on behalf of Aquatic Pools of Wyckoff, NJ. He has no other affiliation with Mr. LaBarbiera beyond construction of this pool. This is the first project he worked with him on. He has been a pool contractor for 30 years. Attorney Capizzi asked him to explain how the mistake occurred. Mr. Pellegrino replied he wished he could as it is really egregious. He reviewed with the worker on site and they could not determine how they made such a terrible error. Mr. Pellegrino originally thought it was a joke and shot the location himself finding the as-built was correct. Their worker on site has worked for him for seven years and they never had this problem before.

Mr. Vander Veer asked if they had given any thought to having the engineer stake out the pool location. Mr. Pellegrino stated that is not common practice. Mr. Vander Veer asked even when it's this critical? Mr. Pellegrino replied it's critical now that it's off but they've put in hundreds of pools. Mr. Vander Veer noted the original setback was at 20 feet which was right at what's permitted; isn't that tight a fit critical. Mr. Pellegrino stated he has worked within six inches before. Mr.

Vander Veer noted when he's working with something that close he wants to have it staked twice to make sure of the measurements. Attorney Capizzi offered in hindsight clearly it would have been better practice to have the engineer mark it out. Mr. Pellegrino stated in 30 years not once had he had this issue.

Attorney Phillips asked how many communities that he's dealt with have a height restriction for the pool? Mr. Pellegrino replied not many; there's only a few in the County.

Elizabeth Herries asked if the neighbors were notified of this application. Attorney Phillips stated they were.

Joyce Sonpal asked what it would take to correct this. Mr. Pellegrino replied they need to rip out the whole pool, decking and start fresh. Chairwoman Parilla asked at whose expense? Mr. Pellegrino responded his own. Mrs. Sonpal offered it might be a good lesson. Mr. Pellegrino conceded a very good lesson.

Mayor Tomasko reviewed the property history from 2014. A different engineer and attorney appeared for 2014 application. At the December 22, 2014 Planning Board hearing that engineer testified the septic system had to be set at a certain elevation due to subsurface conditions. The house had to be set higher to permit gravity feed to the septic fields. Noteworthy from the meeting minutes, Mr. Kupferschmid commented that historically quite a bit of water drained from that property onto the intersection of Birch Road and Allison Road. Mayor Tomasko believes they've done their best to address and correct that. At the 2014 meeting Mayor Tomasko had asked if the grade was going to be raised five feet across the entire property. Mr. Frenzel, the engineer at the time, testified *"that it is only an isolated area behind the house and a small area in front."* Mayor Tomasko wished there was some remedy apart from tearing out the pool and starting from scratch. He noted two neighbors are present and hasn't heard they want the Board to go to that extent. Is there some other way to deal with this? Mr. Pellegrino wished there was. There's no way to cut the pool level at the top off and rebuild it; it's just too expensive and it wouldn't be structurally sound. Mayor Tomasko recalled he had told Mr. LaBarbiera's attorney in 2014 (not Mr. Capizzi) that the best advice he could give his client, who owns other lots in town, was not to have to come before the Boards. This is a very distressing and unfortunate predicament confronting the Board.

Mrs. Gerstein questioned if a fine or penalty could be levied as a lesson. Chairwoman Parilla offered such fine wouldn't come close to their cost of fixing the problem. Attorney Capizzi and Attorney Phillips reviewed the statute. The Borough Code Chapter §185-7 provides penalties for a violation of the soil moving ordinance to include a fine up to \$1,000 and or jail time and provisions for restitution upon conviction in Municipal Court.

Mr. Kupferschmid also sits on the Zoning Board. He is seeing a trend with these cases. While not specific to this applicant this a worsening problem and they need to be aware of it. Developers too often are pushing building to the limits and then coming to the Boards with an *"Oops – it was mistake. I need relief"* way too much. He's been doing this a long time and hasn't seen it like this in the past. The rules need to be followed. Mrs. Gerstein agreed there has to be some remedy.

Attorney Phillips noted §185-7(C) provides the *"Borough Council or Board at its discretion may order restoration as nearly as reasonably possible to its condition immediately prior to the violation"*.

Attorney Capizzi understands the Board's position. He reminded the mistake was of no value to the applicant. He asked the Board to look at the application as if it was preconstruction not post. The request for grade change would not be out of the norm considering they're only an inch or two over the five foot rule. Attorney Phillips reminded they're two feet over the 30% coping rule. Attorney Capizzi believed the Board's overall concern with the increase in grade throughout the site. He noted there was no other site changes, such as drainage or retaining walls, required to accommodate the error. Mr. LaBarbiera has other projects in town and has heard the Board's concerns loud and clear, particularly regarding having an engineer involved early on in the process to avoid this in the future. While he's not asking for approval because there's no impact on the neighborhood, relative to location and landscaping that is the case. Personally, he dislikes handling these types of cases because the Board has to wrestle with applicants coming in after the fact. He does not excuse the oversight. Neither he nor the Applicant are happy this has occurred. They appreciate whatever consideration the Board can provide.

Attorney Phillips questioned soil moving as changed from the original application. Mr. Doolittle believed about 2800 cubic yards was being imported. Attorney Phillips noted import here is 2392 cubic yards (cy) and fill 2884 cy using 492 cy on site. How did the extra fill needed to raise the pool impact fill for the rest of the site. Mr. Doolittle did not believe

there was an impact. There was some additional import and if denied they will have to remove it. Mr. Vander Veer's April 14, 2017 letter indicated an additional import of 293 cy. There was less of a cut because the pool didn't go as deep.

Mr. Kupferschmid questioned how the applicant's survey is verified. Mr. Vander Veer explained during the course of construction he visits job sites about every 4-6 weeks to ensure erosion control measures are being maintained and to check for anything egregious. They get a foundation survey just for the house prior to framing to check location and calculate the first floor to be about what is shown on the site plan. When the structure is framed through the roof ridge they require a building height certification. They inspect retaining walls and drainage construction in progress. They do not have the ability to survey elevations of a pool in progress. He has to rely on the owner's engineer. If the numbers on the As-built are off, either by error or intention, the surveyor would be responsible and his license in jeopardy for falsifying a document; he has to believe they wouldn't do that. The processes for reviewing ongoing construction of the house aren't required for the pool.

Attorney Capizzi agreed if the Borough required a pool framing as-built to shoot the coping before the pool was poured they would have caught this early on. Mr. Doolittle noted several towns, like Saddle River, require a stakeout plan for accessory structures prior to framing the pool and a coping as-built prior to pouring the concrete to ensure the location and elevation agree with the proposed site plan.

Attorney Phillips recommended the Board consider making that a reasonable condition of any future approval for waiver requests regarding a pool. Mr. Kupferschmid noted that wouldn't have helped in this case where they didn't seek the waiver. Mrs. McGuire felt it should be codified.

Mayor Tomasko offered in this instance making them rip out the pool and further prolong the construction process would be too extreme a solution. He'd prefer assessing a maximum fine if the applicant agrees.

Mr. Kupferschmid walked the property an hour ago in the pouring rain and he does agree, there is no neighbor here complaining about the pool and it is tucked in. Most of his animosity towards these situations is because they're popping up and while it may have been accidental these events are occurring way too often. The information they provided tonight on ways to police construction in the future is very helpful.

Being no further questions or comments Chairwoman Parilla requested a motion.

Upon a motion by Mayor Tomasko seconded by Catherine McGuire to approve the application subject to a penalty of \$1,000.00.

Discussion: Attorney Phillips noted the fine is payable with consent of the Applicant as affirmed by Attorney Capizzi as the Board is not the Municipal Court. The fine will be payable to the "Borough of Alpine."

Vote: Ayes: Carol Cochi, Gayle Gerstein, Elizabeth Herries, David Kupferschmid, Catherine McGuire, Mayor Tomasko
No: Catherine Parilla

Attorney Capizzi thanked the Board.

The Board requested Attorney Phillips look into codifying requirements for stakeout and progress as-builts which should probably apply to all accessory structures. He was also asked to review penalties that can be imposed for violations as \$1,000 may be too low. They could also look at toughening up language making restoration mandatory with a discretionary out clause if the Board finds special circumstances deem it appropriate not to require remediation.

The Board commended Mr. Vander Veer for detecting the error.

COMMUNICATIONS:

- 1) Northern Valley Press article April 24, 2017 “Barging into the Hudson” regarding the mooring of barges on the Hudson River
- 2) Flyer “Developing a Plan for the Future of Bergen County Parks” regarding public hearings to help create the County Parks Master Plan. The Mayor thanked those who participate in the survey.
- 3) NJDEP Flood Hazard Area Applicability Determination dated April 18, 2017 Applicant: Alpine Three, LLC Attorney Phillips and Borough Engineer Vander Veer will confer further on the implications of the notice. Mr. Vander Veer provided an update on the ongoing water test for the second system.

COMMITTEE REPORTS:

Northern Valley Mayors & Planners Assoc.: The Mayor advised the April 13th meeting hosted the head of Bergen County Community Development. They are considered with next year’s federal funding.

Board of Health: The Mayor advised the Board of Health will meet May 9th to appoint a Registered Environmental Health Specialist. Mr. Vander Veer oversees septic work. The REHS will perform other required health inspections.

Environmental Commission: Mayor Tomasko reported:

- DPW planted a tree on the Ellens Way triangle by and with support of the Environmental Commission last week.
- Arbor Day is April 29 and the EC will be on site at Borough Hall to hand out seedlings. The EC has posters on display in the lobby created by students from Alpine School celebrating this event.
- Family of the late Dr. David Andrews, former Planning Board member, donated three trees in his memory. They will be planted near the firehouse next Saturday by Arrow Tree Service at no cost to the Borough.
- Oil barges on the Hudson was discussed under communications.
- The Northern Valley Earth Fair last Saturday at the Tenakill School in Closter, NJ had a big turnout.

Building Department: Reports distributed without comment.

NJ Transit Update: Cathy McGuire attended last night’s meeting; the first since 2011. It was a good meeting and well attended. The draft environmental impact statement has been supplemented. State Senators Loretta Weinberg and Gerald Cardinale did a joint op-ed for the Record on the necessity of the Bergen Light Rail. Both attended last night’s meeting. Also attending were Jersey City Mayor Phillips, BC Executive James Tedesco and quite a few people from Englewood including Mayor Frank Huttie and his wife, Assemblywoman Valerie Vainieri Huttie who is from our district. Only Englewood Councilman Eugene Skurnick spoke in opposition saying the plan would totally destroy downtown Englewood. The new plan provides for a parking facility within Overpeck Park in Leonia. Englewood parking would include parking south of Route 4 and use of one of the parking structures at Englewood Hospital. A pedestrian overpass would be constructed. There will be no commuter parking in the center of Englewood. There seems to be the political will if they get the funding. If the ARC Tunnel hadn’t been canceled it would have been completed by next year. They need the Gateway because there are currently only two tunnels into Manhattan. They are over 100 years old and still have problems from Hurricane Sandy. The Hudson leg of Light Rail has been a success. The original plans 20 years ago were to extend the rail all the way to the Tappan Zee Bridge or the mall in Rockland County but Orangetown has pulled up all their rails and are talking about making the tracts into a bike path (“Rails to Trails”) from Northvale north. This would benefit cyclists.

COAH Update: Noted earlier under correspondence.

Instructional Session. Postponed to next meeting.

ADJOURNMENT: A motion to adjourn the regular Planning Board meeting was made by Ms. Sonpal and seconded by Ms. Herries. All were in favor. The meeting adjourned at 8:37 PM.

Respectfully submitted,

Marilyn Hayward
Recording Secretary