

**BOROUGH OF INTERLAKEN
MINUTES- PLANNING BOARD
OCTOBER 16, 2017 7:30 P.M.
BOROUGH HALL, 100 GRASSMERE AVENUE**

A meeting of the PLANNING BOARD of the Borough of Interlaken, Monmouth County, New Jersey was held on October 16, 2017 at 7:30 p.m. in the Borough Hall.

Chairman Papp opened the meeting, announced that the meeting was being held in accordance to the Open Public Meeting Act and that Notice of the meeting had been published in the Coaster. The announcement was followed by the Pledge of Allegiance.

ROLL CALL:

Present: Chairman Papp, Vice Chairwoman Umfrid, Councilman Gunn, Ms. Dalton, Ms. Heinz, Mr. Menditto and Mr. Tilton

Also Present: Planning Board Attorney Sanford Brown, Board Engineer/Planner Peter Avakian and Planning Board Secretary Gina Kneser

Absent: Mr. Wasilishen

Late Arrival: 7:42pm Ms. Dalton

Mr. Papp announced that there was an application for consideration.

22 Barra Street

Benjamin Harvey, 22 Barra Street, Block 14/ Lots 8.02, 9.02 & 10.02, submitted an application before the Board requesting an approval from the Planning Board to construct a retaining wall, widening of an existing driveway, construction of a 5ft tall masonry screen wall, patio and walkway. Construction of these items had begun, but was stopped by the Construction Official, due to the need for a variance. Mr. Tilton recused himself and left the table.

Mr. Tilton recused himself and left the table.

Board Attorney Brown stated for the record that, the applicant did appear at the last meeting. There were five members in attendance, four of which were eligible to hear the application. The Applicant's Attorney, Mr. Falvo, requested that the meeting be adjourned to the next month in hopes that there would be a larger number of eligible board members.

Board Attorney Brown stated that at the last meeting, one of the Board members fell ill. They are in serious condition and are in the thoughts and prayers of the Board. There are presently eight members in attendance. Mr. Tilton will recuse himself. Ms. Dalton was absent at the first meeting. Ms. Dalton has listened to the meeting and executed a certification and is now eligible to participate in the hearing. Chairman Papp announced that Ms. Dalton would arrive shortly.

Chairman Papp opened the floor for discussion.

Chairman Papp asked Board Secretary Kneser regarding updates on the pump house station project. There had been no update.

Councilman Gunn told the Board that he had a discussion with the Council in regards to the current number of Board members. The Board is short members and there are no alternates. Councilman Gunn stated that the Mayor noted to Councilman Gunn that several people came to mind to fill the positions.

Councilman Gunn asked the Board to make member suggestions to the Mayor.

Mr. Papp advised Councilman Gunn that he recommended that Douglas Weaver be appointed.

Ms. Heinz indicated that she knew someone who may be interested in joining the Board.

Chairman Papp closed the floor.

Ms. Dalton arrived and joined the table.

Mr. Peter Falvo, Attorney for the applicant joined the table.

Mr. Falvo recapped the application to this point, stating that Mr. Harvey began to make improvements to his property which became in violation.

Mr. Falvo stated that there is a masonry wall in at the rear of the property that was erected that required a variance. There would also be a driveway that was sought to be expanded. As a result there would be a 49.3% impervious coverage, where 45% is permitted. It was discussed at the previous hearing that the patio was constructed by the previous owner. The original driveway that was proposed would have come within five feet of the property line. Photos were submitted of the driveway. The intention was to get as many cars off the street, as possible and to not block one car from the other. There was a drainage problem in the back and the engineer testified that the entire driveway would have to be ripped out, repaved and expanded to allow water to drain to the street into the storm drains.

Mr. Falvo stated that the original height of the masonry wall was testified to by the neighbor of the east side as being three feet. Mr. Harvey has agreed to take the wall down to a height of three feet.

Mr. Falvo stated that the neighbors on the north side, the Trokans, agreed that a five foot wall would be okay with them and provided a letter. The letter was marked into evidence as A-6.

Mr. Fitzgerald, Architect for the Applicant, joined the table. Mr. Fitzgerald remains under oath from the previous hearing.

Mr. Fitzgerald stated that the applicant reflected on discussions with Board members at the previous hearing. A small retaining wall is permitted by ordinance. The applicant is willing to remove portions of the driveway, so no coverage variance or setback variance would be required.

Mr. Fitzgerald stated that the masonry wall was partially constructed when the property was purchased. The neighbor on the north side has no objection to the wall and has submitted a letter. Mr. Fitzgerald stated that the applicant is willing to take the wall on the east side back to where it was when purchased at three feet.

Board Engineer/Planner Avakian stated that when his report was prepared a number of non-conformities were noted. This is a non-conforming lot and a non-conforming structure and it puts the owner at a bit of

a deficit. The proposed changes presented at this hearing is eliminating four out of the five variances that we included in our report. First there is a patio tucked into the back corner of the property. The patio is closer than five feet. This becomes non-conformities because they existed before the applicant purchased the property. The lot area is a non-conformity and the front yard setback is non-conforming. Both are less than the regulations. The reconfiguration of the driveway would eliminate the need for a driveway setback variance. The Borough ordinance stated the driveway must be no less than five feet from property line. The current change does two things. It makes the driveway in compliance and it allows the area that would have been paved with impervious coverage now be covered with grass or other material. This will eliminate the need for an impervious coverage variance. The variance that is left is the masonry wall. It is non-compliant in style and design.

Board Engineer/Planner Avakian referenced his report which stated that a Zoning denial has been received from the applicant indicating the driveway does not comply with the side and rear yard setbacks and also the masonry wall does not comply with the style and design. The definition in the ordinance stated that the fence must be fifty percent open.

Board Attorney Brown noted that the reports referred to by Board Engineer/Planner Avakian are May 15, 2017 which was revised August 16, 2017.

Board Attorney Brown noted that there are comments in Board Engineer/Planner Avakian's report that suggest a drainage plan be submitted. A drainage plan provided by the project engineer should be a contingency of approval.

Mr. Falvo referenced a photos previously submitted as E and F of the north wall showing the north side of the wall had a stockade fence. In front of the stockade fence there are a bunch of evergreen trees.

Mr. Falvo stated that the neighbors, Mr. and Mrs. Hughes, objected to the current height of the wall but indicated there was previously a three feet retaining wall. Mr. Falvo stated that the applicant was agreeing return the wall to three feet. Mr. Falvo stated that he reached out to Mr. and Mrs. Hughes prior to this meeting and asked if there is anything that can be done to make the wall more appealing and indicated in that letter the wall was designed to conceal whatever was stored behind it and a three feet wall may not conceal anything.

Board Attorney Brown questioned how the Board knows the wall is three feet.

Mr. Falvo stated that measurement came from the testimony of Mr. Hughes at the previous hearing.

Chairman Papp opened the floor for comment.

ROLL CALL:

In Favor: Chairman Papp, Councilman Gunn, Vice Chairwoman Umfrid, Ms. Dalton, Ms. Heinz, and Mr. Menditto

Opposed: None

Ineligible: None

Abstain: Mr. Tilton

Absent: Mr. Wasilishen

Mr. Peter Hughes was sworn in by Board Attorney Brown.

Mr. Hughes refuted the previous measurement of the wall was three feet high. The wall was two feet, at most. The new wall was a totally new wall. It is not the original wall that was added to. It is a new wall from the ground up. It is on the property line. Mr. Hughes feels the wall is in violation of the setback ordinance and questioned if there was ever a variance granted to permit a wall on the property line.

Mr. Hughes testified that the current wall is taller than five feet. He is six foot tall and would have to stand on a box to see over the wall.

Mr. Fitzgerald state that the wall clears the property line by three tenths of a foot at one point and one tenth of a foot at the north east corner according to the survey.

Mr. Papp stated that this is a newly constructed wall and asked if there is anything that indicates that the wall was placed exactly where the previous wall was.

Mr. Fitzgerald stated that he can't be sure but he submitted a picture that it is exactly on the line.

Mr. Falvo responded no when asked by Board Attorney Brown whether permits were submitted for the wall construction.

Mr. Falvo noted that topographic survey shows that there is a two foot difference between the two properties.

Board Attorney Brown noted that the ordinance stated that masonry walls are not permitted and suggested that a preexisting non-conforming structure is not applicable here. The structure itself is in violation of the ordinance.

Mr. Falvo stated that there is testimony that there was a wall there before Mr. Harvey replaced that wall and that Mr. Hughes testified at the last meeting that he thought it was a retaining wall.

Mr. Hughes stated that there was a cinder block retaining wall there that was, at most, two foot high.

Board Attorney Brown noted that Mr. Falvo was relying on the testimony of the neighbor of what was there before.

Mr. Falvo stated that the survey in evidence shows where the existing wall is. It is not on the property line. The previous owner put in the patio and the wall. Mr. Falvo stated that Mr. Hughes testified that it is a retaining wall. Mr. Falvo state that maybe it is a retaining wall due to the two foot difference between the two properties

Board Attorney Brown stated that the Planning Board never considered an application for a retaining wall.

Board Attorney Brown and Mr. Falvo had a brief discussion regarding the burden of proof regarding the existence of the retaining wall.

Mr. Harvey joined the table and remained under oath from the previous hearing.

Mr. Harvey stated that there was a wall there that was deteriorating. The contractor building the wall built the wall higher than he was supposed to. It was only supposed to be three courses of block. Mr. Harvey would be happy to take the wall down to be three courses of block. It was not his intention to do something that offend the neighbors. Mr. Harvey noted that the one neighbor would not like to take the wall down. There is a solid fence and ivy in front of it. That wall cannot be seen from the Hughes' backyard.

Board Attorney Brown asked for a break at 8:19pm.

The hearing resumed at 8:39pm.

Mr. Fitzgerald testified that there was a survey done before Mr. Harvey purchased the home which shows the walls. The applicant will agree to keep only the two lowest fully visible courses of block on the wall.

Mr. Harvey stated that only two fully visible courses would remain.

Mr. Papp questioned if there would be a cap.

Councilman Gunn questioned what the retaining wall was retaining.

Mr. Fitzgerald stated that the wall was retaining soil onto Mr. Harvey's lot. Mr. Harvey's lot is higher than Mr. and Mrs. Hughes lot by about fifteen and a half inches.

Councilman Gunn questioned the need for a variance, if the wall was a retaining wall.

Mr. Fitzgerald stated that the applicant was asking for two courses of block with a cap.

Board Engineer/Planner Avakian stated that the measurement is about fifteen and a half inches. When you are looking at the easterly wall, the one that has the filler on the side, it goes two courses and below that retains soil on the other side.

Mr. Fitzgerald stated that the grout would be cleaned up and the wall will be finished. The finished wall will be sixteen inches on one side and approximately thirty inches on the other side.

Ms. Heinz asked about the five foot wall on the north side.

Mr. Falvo stated that it would not be seen from the street.

The Board reviewed the previously submitted photos of the walls.

Mr. Falvo submitted a survey by Brunswick West, Inc. dated April 9, 2014, made of the property at the time of Mr. Harvey's purchase. It shows a retaining wall on the south, east and north sides of the property.

Board Attorney Brown asked Mr. Fitzgerald, if he relied on this survey to prepare the topography.

Mr. Fitzgerald stated that the original survey was used to prepare the topography.

The Board, Mr. Falvo, Board Attorney Brown and Board Engineer/Planner Avakian had a brief discussion regarding the Borough ordinances pertaining to retaining walls.

Board Engineer/Planner Avakian stated that the elevation contour adjacent to the northerly property is approximately a foot and a half lower on the applicant's side.

Board Engineer/Planner Avakian noted to the Board that the Borough's fence ordinance goes by height. The applicant would be allowed to put a three foot fence on top of the wall and confirmed to Vice Chairwoman Umfrid that the total height could be no higher than five feet.

Board Attorney Brown stated that, after being allowed to speak to Mr. Harvey by Mr. Falvo, Mr. Harvey agreed to have the wall on the north be the same height as the already agreed upon east conditions.

Mr. Falvo stated that he would not utilize testimony of the Planner that was in attendance on behalf of Mr. Harvey.

Mr.Papp opened the floor for public comment.

Board Attorney Brown noted that there was no other public present.

Vice Chairwoman Umfrid suggested the Board consider placing a deed restriction to prevent any development of the wall.

Mr. Falvo object to this consideration.

Mr. Fitzgerald noted that any future development of the wall would be in violation of Borough Ordinances.

Board Attorney Brown stated that it would be made very clear in the resolution that no future non-conforming improvements can be made.

UPON MOTION of Ms. Dalton, seconded by Mr. Menditto, carried, the Board closed the floor.
ROLL CALL:

In Favor: Chairman Papp, Councilman Gunn, Vice Chairwoman Umfrid, Ms. Dalton, Ms. Heinz, and Mr. Menditto

Opposed: None

Ineligible: None

Abstain: Mr. Tilton

Absent: Mr. Wasilishen

Board Attorney Brown noted that the motion would be to accept the wall on the east and north side to be two cords above the grade with a finished side. Within 30 days the courses would be removed. The wall would be coated and if need be and there would be a drainage plan submitted for the driveway.

UPON MOTION of Councilman Gunn, seconded by Mr. Menditto, carried, the Board approved the application.

ROLL CALL:

In Favor: Chairman Papp, Councilman Gunn, Vice Chairwoman Umfrid, Ms. Dalton, Ms. Heinz, and Mr. Menditto

Opposed: None

Ineligible: None

Abstain: Mr. Tilton

Absent: Mr. Wasilishen

UPON MOTION of Councilman Gunn, seconded by Mr. Menditto, carried, the Board approved the application.

ROLL CALL:

In Favor: Chairman Papp, Councilman Gunn, Vice Chairwoman Umfrid, Ms. Dalton, Ms. Heinz, and Mr. Menditto

Opposed: None

Ineligible: None

Abstain: Mr. Tilton

Absent: Mr. Wasilishen

Approved: _____
Mr. Papp, Chairman

Attest: _____
Gina Kneser, Secretary