

**BOROUGH OF INTERLAKEN
MINUTES- PLANNING BOARD
MAY 17, 2021 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 May 17, 2021 at 7:30 p.m.

The meeting was held via Zoom.

Chairman Papp opened the meeting and read the following Sunshine Statement: *“THE NOTICE REQUIREMENTS OF THE OPEN PUBLIC MEETINGS ACT HAVE BEEN SATISFIED BY FORWARDING ANNUAL MEETING NOTICE TO THE ASBURY PARK PRESS AND THE COASTER THAT THE MEETINGS WOULD BE TO BE HELD VIA ZOOM CONFERENCE UNDER THE GOVERNOR’S EXECUTIVE ORDER 107. WITH FULL DIRECTIONS ON HOW THE PUBLIC CAN ATTEND AND MAKE COMMENT AT THE MEETING. A COPY OF THE NOTICE IS POSTED ON THE OFFICIAL BOROUGH WEBSITE ALSO, A COPY WAS PLACED ON THE DOOR AT BOROUGH HALL AND IS ON FILE IN THE BOROUGH CLERK’S OFFICE.”*

IT IS DEEMED THAT THIS HEARING IS BEING HELD THROUGH ELECTRONIC COMMUNICATION. SHOULD THERE BE ANY DISCONNECT OR FAILURE OF TECHNOLOGY, THE MEETING WILL BE CONSIDERED ADJOURNED. ALL AGENDA ITEMS WILL AUTOMATICALLY BE CARRIED TO THE NEXT REGULARLY SCHEDULED INTERLAKEN PLANNING BOARD MEETING, WHICH IS SCHEDULED FOR JUNE 21, 2021 AT 7:30PM. ADDITIONAL NOTICE WILL NOT BE REQUIRED.

These announcements were followed by the Pledge of Allegiance.

ROLL CALL:

Present: Chairman Papp, Councilman Butler, Vice Chairwoman Umfrid, Mr. Tilton, Ms. Dalton, Mr. Wasilishen, Ms. Heinz, Mr. Weaver, Mr. Blasucci, Mr. Wentz, Ms. Kane and Ms. Kapp

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

Late Arrival: Mr. Kane 7:34pm

Absent: None

UPON MOTION of Vice Chairwoman Umfrid seconded by Mr. Wasilishen carried, the Board approved the minutes of April 19, 2021 meeting.

ROLL CALL:

In Favor: Chairman Papp, Vice Chairwoman Umfrid, Ms. Dalton, Mr. Tilton, Mr. Wasilishen, Mr. Weaver, Mr. Blasucci, Mr. Wentz and Ms. Kapp

Opposed: None

Ineligible: Councilman Butler, Ms. Heinz and Ms. Kane

Abstain: None

Absent: None

The Board reviewed Ordinance No. 2021-3 AN ORDINANCE OF THE BOROUGH OF INTERLAKEN AMENDING CHAPTER 26, "LAND USE AND DEVELOPMENT", SECTION 26-28, "PROHIBITED USES" for constancy with the Borough Master Plan.

Board Engineer/Planner Avakian reviewed his letter to the Board, dated May 17, 2021, stating that, while the Master Plan does not speak directly to the matter contained within the ordinance, promoting the public health, safety, morals and general welfare is an overall goal of the Borough's Master Plan and the proposed ordinance amendment intends to further this goal.

BOROUGH OF INTERLAKEN

ORDINANCE NO. 2021-3

**AN ORDINANCE OF THE BOROUGH OF INTERLAKEN AMENDING
CHAPTER 26, "LAND USE AND DEVELOPMENT", SECTION 26-28,
"PROHIBITED USES"**

BE IT ORDAINED by the Borough Council of the Borough of Interlaken, in the County of Monmouth and State of New Jersey, that,

SECTION ONE. Section 26-28 "PROHIBITED USES" of the Code of the Borough of Interlaken is amended to add the following to the existing language:

Without limiting any of the preceding, the Borough of Interlaken expressly prohibits any Class 1 Cannabis Cultivator License, Class 2 Cannabis Manufacture License, Class 3 Cannabis Wholesale License, Class 4 Cannabis Distributor License, and Class 5 Cannabis Retailer License in any zone within the Borough of Interlaken.

SECTION TWO. All other sections and subsections of Chapter 26, “Land Use and Development” will remain unaltered.

SECTION THREE. If any section, subsection, paragraph, sentence or other portion of this Ordinance, be adjudged by a Court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance.

SECTION FOUR. All ordinances or parts thereof inconsistent with the provisions of this Ordinance are hereby replaced to the extent of such inconsistencies.

SECTION FIVE. This Ordinance shall take effect immediately upon its final passage and publication according to law.

UPON MOTION of Mr. Blasucci, seconded by Councilman Butler, carried, the Board found the ordinance 2021-3 consistent with the Borough’s Master Plan.

ROLL CALL:

In Favor: Chairman Papp, Councilman Butler, Vice Chairwoman Umfrid, Ms. Dalton, Mr. Tilton, Mr. Wasilishen, Ms. Heinz, Mr. Weaver, Mr. Blasucci, Ms. Kane, Mr. Wentz and Ms. Kapp

Opposed: None

Ineligible: None

Abstain: None

Absent: None

APPLICATION

200 Grassmere Avenue
Block 5/Lots 1,2 & 19
Santoro
Removal of garage and construct new garage with related improvements

Rick Brodsky of Ansell, Grimm & Aaron, PC, Applicant's Attorney, introduced Paul Grabowski as the Applicant's Architect.

Mr. Grabowski was sworn in by Board Attorney Brown.

Mr. Grabowski, Architect for the Applicant, presented his credentials which were accepted by the Board.

Notice was reviewed and determined to be compliant.

Mr. Brodsky stated that the applicant is asking to demolish the current detached garage and construct a new detached garage in a relocation which facilitates use. The lot is irregularly shaped with a curved corner on the property. There are all front yards and one side yard along the western line. The home dated back to 1914 or so. The homeowner keeps the home beautifully and wants to maintain the nature of the property. The homeowner does not want an attached garage that would be permissible. The necessary variances are driven by the rebuild of the detached garage and fencing, trash containment and privacy.

The following evidence that was received by the Borough on March 31, 2021 was marked:

A-1 Original Survey prepared by Charles Surmonte dated 03/02/2021

A-2 Plot Plan prepared by Charles Surmonte dated 03/29/2021

A-3 Architectural Plans prepared by Paul Grabowski dated 10/22/2021 including color sheet of proposed garage, Page G-1 Floor Plan, G-2 Elevation

Mr. Grabowski shared the screen to display A-1. A-1 shows the unique property which contains three front yards and one side yard. The existing detached garage is crammed in behind the house leaving only a narrow path at the side and a small approximately 10ft x 27ft section for BBQ area. It is dark with no natural light or air. Removal of the existing garage would give more outdoor living space.

A variance is required for the detached garage and patio to be in the front yard. It is a challenge to find a space to make the garage conforming.

Mr. Grabowski shared A-3 on the screen to illustrate the proposed garage would simulate the architectural details of the 1914 house including the roof line and metal roof accents.

Mr. Grabowski shared A-2 on the screen to describe the layout of the proposed garage in relationship to the neighboring properties. The relocation opens up the area on the side and the entirety of the space can be used. There is currently a store-bought garbage enclosure that would be replaced. A fence that was chosen to match neighbor's the existing 5ft board on board wooden fence would continue along to replace the garbage enclosure and create privacy. The matched fence will improve the look.

Mr. Grabowski stated that the plan for the height of the garage was to make the building interesting and also to match the look of the main house. The front facing gables could not be created with the 3ft pitch. Diamond detail would be used in the windows to match the house.

Mr. Brodsky noted that though the proposed garage would be placed in the front yard, it would conform to the front yard setback requirement. The height of the garage would be 17.72ft where 15ft is permitted. There will be no occupancy or living space. The space will be used for winter storage.

Mr. Brodsky stated that the proposed board-on-board fence would match the fence that is existing. A variance is required to have a non 50% open fence.

Councilman Butler asked whether the circular driveway would require an additional curb cut.

Mr. Grabowski stated that there would be an entrance at each end of the driveway.

Mr. Brodsky stated that the impervious coverage is well under the maximums.

Board Engineer/Planner Avakian reviewed his letter dated May 3, 2021. The site is a single-family use. The patio, garage width, depth, home front setback and all frontages comply. The Borough ordinance is funny because of the property being a corner property. The Borough utilizes the westerly property line as a side yard and the architectural front on the Grassmere Avenue side is a side yard. All side yard setbacks comply. Both building and impervious coverages are below the maximum permitted. Four variances are being requested. The garage in the front yard is the only location it could be moved to or it could be attached to the house. A height of 2.72ft above the 15ft maximum is being requested.

Board Engineer/Planner Avakian stated that the architect testimony regarding architectural reliance is valid. When looking at the property from the east side, the architecture of both the house and garage is seen. There is no habitable space being proposed, only storage. A variance requesting a fence in the front yard and being less than 50% open is being requested for security and a buffer. Historically the ordinance requires 50% open. No stockade fencing is permitted which includes board on board style.

Board Engineer/Planner Avakian stated that a review of the proposed circular driveway finds it is not a circular driveway but two independent driveways. It was intended to be a circular driveway which is not permitted. The ordinance, though it does not specifically prohibit gravel driveway, requires that the surface should be paved. Gravel is not paved.

Board Engineer/Planner Avakian stated that the unique lot configuration is generating the need for the variances. There is no other alternative.

Mr. Grabowski stated that gravel was chosen to keep the character of the old home and not have a sea of asphalt. The Hoyle residence on the left side of Windermere Avenue has a nice gravel driveway. The applicant's property is well maintained, recently being awarded the Yard of the Month. The applicants are very mindful of the aesthetic.

Chairman Papp opened the floor for public comment.

Carolyn Roarty, 205 Windermere Avenue, stated that she appreciates the challenge of the dual residential zones of the property and questioned the plan for a landscape buffer. Ms. Roarty stated she has a good relationship with the applicant.

Mr. Grabowski stated that the landscape plan is not finalized but there is no intention to significantly move landscaping from the area. More mature pines and arborvitaes will be added to provide screening.

Board Engineer/Planner Avakian stated that he would agree to review a plan for plantings along the common border should there be a stipulation to do so included with an approval from the Board.

Mr. Brodsky agreed to comply with a stipulation for this review.

Chairman Papp asked the public for all questions.

With no additional questions Chairman Papp closed the floor.

Board Engineer/Planner Avakian stated that the Board does not typically like to see gravel in driveways due to the ability to maintain the gravel. In this case, both curb cuts shall have a concrete apron. The two sides will have a Belgium block border which connects at the back edge of the sidewalk. The block border will prevent losing the gravel onto Windermere Avenue.

Ms. Kapp questioned why it was proposed to match the neighbor's non-compliant fence just because it happened to be there.

Mr. Grabowski stated that the neighboring fence was existing.

Councilman Butler stated that the fence is not compliant, as it is board-on-board.

Ms. Roarty stated that the fence was erected by the previous owner and was there when the home was purchased.

The Board had a brief discussion regarding the 50% open fence requirement and the placement of the new fence.

Charles Surmonte, Surveyor/Engineer for the applicant, stated his credentials with over 30 years' experience, which were accepted by the Board.

Mr. Surmonte used A-2 to describe the location of the fence that would be 70-75ft and would run adjacent to the trash enclosure.

There was additional discussion by the Board to clarify the fence location.

Mr. Charles Santoro, applicant, was sworn in by Board Attorney Brown.

Vice Chairwoman Umfrid questioned why the current section of the fence could not remain and a new, more open, conforming type fence would continue.

Mr. Santoro stated that the new fence was intended to match the existing fence and have one solid run.

Mr. Hedmond Soto, 200 Grassmere Avenue, was sworn in by Board Attorney Brown.

Mr. Soto testified that the proposed fence would match the existing fence and maintain privacy. The applicants do not want to destroy the beauty of nature. The existing bushes are overgrown.

Vice Chairwoman Umfrid questioned the fencing color.

Vice Chairwoman Umfrid questioned the reason for the difference in width of the two driveway entrances.

Mr. Soto stated that the one side of the driveway was designed to be narrower to protect the heritage tree on the property.

Chairman Papp stated that he feels that 24ft is too wide.

Mr. Grabowski stated that 24ft is the minimum cars to be able to enter and exit with a car parked.

Vice Chairwoman questioned altering the curve of the driveway.

Mr. Grabowski stated that 18-20ft may be sufficient at the entrance. The original plan was to provide two rows. 24ft is needed adjacent to the garage.

Mr. Grabowski stated that making the driveway narrower would cause loss of symmetry in lining the driveway up with Interlaken Drive.

Ms. Kapp suggested that the garage be straightened, as the 24ft minimum clearance is triggered by the angle of the garage.

Mr. Thompson, Landscape Architect for the applicant, stated that the plan was a difficult due to the property limitations. Changing the garage angle would cause more limitations.

Mr. Grabowski stated that that moving the garage would crowd Ms. Rawson's property to the west. The 24ft width is the bare minimum to back up a car and makes for a more comfortable egress out to the south.

Chairman Papp stated that 24ft is too wide.

Mr. Surmonte stated that 18-20ft would be fine for function.

Mr. Thompson was sworn in by Borough Attorney Brown. The Board accepted his credentials.

Mr. Thompson testified that he has been working closely with the applicants and with Mr. Surmonte to make the project the most functional, safe easement in and out of the driveway. Egress from Windermere Avenue would allow making a comfortable safe right turn without making maneuvers. The width would allow two cars. The driveway would be screened from the street with ornamental trees at both sides.

Vice Chairwoman Umfrid questioned the position of the trees creating a hazard to pedestrians.

Board Engineer/Planner Avakian stated that any driveway has an intersecting sidewalk that have to be aware of pedestrians.

Vice Chairwoman Umfrid stated that a 24ft driveway is too wide and suggested that each end of the driveway be 15ft.

Chairman Papp suggested that the property would look like a parking lot. 18-20ft would be more accommodating visually. Chairman Papp suggested that each end of the driveway be 15ft and 24ft in the middle at the area of the garage.

Mr. Santoro stated that the suggested measurements would mean driving on the lawn for a turn around.

Mr. Wasilishen stated that an average car is 6ft wide. Three cars could fit in a 24ft driveway. 24ft is not required.

Mr. Santoro questioned whether the driveway could be changed to 15ft on the Windermere Avenue side and widen to 24ft as it gets to the garage.

Mr. Grabowski stated that if a driveway is circular cars enter in one end and exit the other. The driver does not have to back out creating a safer condition. This may still be accomplished with 15ft driveways and 24ft near the garage.

Board Engineer/Planner Avakian agreed to Board Attorney Brown's request whether he would be comfortable reviewing an amended site plan.

Board Engineer/Planner Avakian cautioned the applicant that aligning the private driveway with the roadway may make access to the driveway easier for the residents, it may also cause unintended entry by other vehicles.

Mr. Brodsky stated that the driveway width would be amended.

Board Attorney Brown confirmed with the Board and with Board Engineer/Planner Avakian that the details of the transition could be left up to Board Engineer/Planner Avakian's approval.

Mr. Surmonte stated that he will work with the applicant.

Mr. Wasilishen questioned the legality of the existing fence.

Mr. Brodsky stated that the proposed fence is aesthetically preferred and provides privacy to the adjacent proposed patio.

Mr. Soto stated that a lot of bamboo keeps coming through the fence.

Ms. Umfrid questioned what is on the other side of the fence.

Mr. Santoro stated that Ms. Roarty's bushes and another adjacent neighbor's bamboo along with the unkept corner of their property is on the other side of the fence.

Ms. Kapp stated that a fence is not going to stop bamboo as bamboo has underground crawl.

Mr. Brodsky stated that the applicant is looking for an aesthetically pleasing solution. A chain link fence is not the aesthetic the applicant is looking for but there will be plantings in any event.

Ms. Heinz stated made suggestions to the fence configuration. Ms. Heinz stated that the changes proposed will make an amazing difference but allowing a board on board fence would set a dangerous precedent.

Ms. Heinz stated that her neighbor has an invasive species that creeps under her fence. It is not stopped by the fence and suggested a transition from the existing fence and another type that is 50% open.

Mr. Santoro questioned whether there was a wood fence to match close enough to the existing fence that would not be see through to not see the unkept section of the adjacent yard.

Mr. Thompson stated that there may be options.

Mr. Blasucci questioned whether the fence would be visible from the road or sidewalk.

Mr. Santoro stated that the fence cannot be seen. The fence would not really affect the character of the town, as it cannot be seen.

Vice Chairwoman Umfrid stated that it does not make a difference if the fence cannot be seen. It may affect the future neighbor and allowing it would set a precedent.

Ms. Dalton suggested that there are 50% open fence options that would suit the project very well.

Board Attorney Brown stated that the illegal existing fence must be taken into consideration.

Chairman Papp questioned whether the existing fence would have to be taken down, as it is illegal.

Mr. Thompson stated that there may be options to match the existing fence and would investigate what complies along with plantings. No variance would be necessary if the fence was 50% open.

Mr. Brodsky asked for a stipulation of a solid wooden fence at the garbage disposal area. There are racoons in the area.

Board Engineer/Planner stated that the enclosure around the garbage area should be solid and would not require a variance.

Ms. Heinz agreed that the garbage disposal area should be solid.

Mr. Tilton stated that the enclosure is 3.8ft from the property line.

Mr. Grabowski noted the enclosure should be solid.

Mr. Wasilishen stated that the trash enclosure should be 10ft from the property line.

Vice Chairwoman Umfrid questioned why the trash could not be located inside the garage.

Mr. Tilton questioned the interior depth of the garage and the double door at the back.

Mr. Grabowski stated that the garage depth would be conducive to two spaces with storage. The door would be easier to move things into and out of garage.

Mr. Tilton confirmed that there were pull out stairs to the storage area above.

Mr. Grabowski stated there is a pull down stairway. A full-size stairway would eat up too much room.

Mr. Tilton asked where there would be living space on the second floor.

Mr. Grabowski stated there would be no plumbing.

Board Attorney Brown asked that the applicant stipulate that there would be no plumbing in the garage.

Chairman Papp stated that the detached garage in the front yard was a non-issue for him. The placement is justified due to the unique situation of the property.

Ms. Heinz agreed.

Ms. Kapp made note that the design was respectful of the setbacks.

Chairman Papp noted that the additional height to 17.72ft was testified by the architect that it was done to match the house. Chairman Papp feels this is a non-issue.

Chairman Papp stated that the fence would be compliant to 50% open.

Board Attorney Brown questioned the applicant whether the variance for the fence would be vacated.

Mr. Grabowski stated that the applicant would like to maintain the request for the fence to creep into the front yard at the height of 5ft.

UPON MOTION of Mr. Weaver, seconded by Ms. Dalton, carried, the application was approved.

In Favor: Chairman Papp, Councilman Butler, Vice Chairwoman Umfrid, Ms. Dalton, Mr. Tilton, Mr. Wasilishen, Ms. Heinz, Mr. Weaver and Mr. Blasucci

Opposed: None

Ineligible: Ms. Kane, Mr. Wentz and Ms. Kapp

Abstain: None

Absent: None

302 Windermere Avenue

Block 10/Lot 38

McEvily

Removal of two-story garage and construct a new two-story garage apartment

John Marmora, Applicant Attorney, stated that this application is for a D variance to be before the Zoning Board and would be voted upon by 7 of the 9 members.

Board Attorney Brown stated that, historically, the Board goes down two members to seven. The Mayor or the Mayor's representative and the Councilman are not permitted to vote.

Councilman Butler and Mayor's Designee Mr. Blasucci 'stepped down' from the meeting but remained on the Zoom platform.

Mr. Marmora stated that the application is for a garage apartment. The applicant knows that garage apartments are not permitted, but there is proofs that the apartment is a preexisting non-conformity that date back to the 1920's.

Jim Higgins, Planner for the Applicant, listed his credentials which were accepted by the Board.

Justin Calvert, Architect for the Applicant, listed his credentials which were accepted by the Board.

Both Mr. Higgins and Mr. Calvert were sworn in by Board Attorney Brown.

Mr. Higgins described the existing conditions of the garage apartment stating that the garage apartment has been in existence since 1919. The garage was built at the same time as the main house in the back corner of the lot. It is a two-story existing garage with living space on the second floor. The existing plans show that it is a three-car garage with two bedrooms, living room, kitchen and full bath on second floor. There are very little architectural details that are present in the main house. The main house has larger overhangs and dormers. The only common details are that they are both stucco clad.

A drawing of the existing conditions was shared on the Zoom and marked as exhibit A-1.

Sheet A-5 was also shared and marked as A-2.

A-2 was shared to show an image of the main house. It shows the large overhang the high level of detail the cornice the shed roof and prominent ornate brackets.

Mr. Higgins testified that the garage is proposed open concept to be a studio with a balcony porch at the rear of the property. The height to the current structure is 23'8" The proposed would be 26'10" and would emulate the forms on the main house with similar roof and dormer projections. The new structure will have the same siding and roofing of asphalt shingles to match the main house. There will be a covering to the side door that will be supported by brackets that match the main house.

A reduction to a two-bay garage is proposed. One bay is lost. There is a side wrapped balcony added so that the structure does not feel like a stacked box. All trim will resemble the house.

The garage placement will be set at a 6ft setback, so that it complies and allows for 3ft overhangs.

Mr. Marmora stated that the garage was constructed at the same time as the main house. They are both stucco clad and there is no reason to believe that they were not built at the same time. The apartment was continuously occupied up until the last two years.

Mr. Higgins stated that while the application is a D-1 variance the reality is that it is a preexisting, non-conforming constructed in 1919. The tax records state. The homeowner has a right to maintain and use the garage as it has not been abandoned by law. The current structure is inconsistent with the lot and surroundings. It looks like a commercial garage. It is proposed that it be relocated and a new one built with significant improvements. The three bays will go to two bays. It is less intensive apartment. The proposed garage fits better into the character of the area and site. It is proposed that the applicant's father will live in the apartment.

Mr. Higgins stated that the apartment is there now and can continue to be there. There is no substantial impact on what is proposed and what is currently on the site. The structure will be 6ft side and 5ft rear setbacks which is consistent with an accessory structure. The proposed height of 26'10" will still allow for open space. It will maintain light air and open space. The structure will be moved but there is no substantial change to aesthetics. There will still be a usable back yard. It is a superior planning alternative. The plan maintains the asset and there is no substantial detriment.

Board Engineer/Planner Avakian reviewed his report dated March 29, 2021.

Board Engineer/Planner Avakian stated that the application is requesting the removal of a garage/apartment. Because the apartment is being removed, it is different, in that it becomes a second principal building on a single lot. There is the home and a second physical dwelling. Though Mr. Higgins testified that the intensity will be reduced by reducing the number of bays from three to two and making the two-bedroom apartment into a studio. The current Use of the standalone garage would not exist. The application is not to renovate the existing garage but for a bulk variance to add a structure that is viewed as a second principal structure on the property. What is being asked is contrary to our Zoning ordinances. In fact, the accessory use in this situation is being used as a primary principal structure. The rear and side yard setbacks may be better than exist for the current accessory structure, but it does not comply with the intent of the ordinance. Can the betterment of the structure overcome that?

Chairman Papp opened the floor to the public.

Daron & Mary Ramos of 300 Windermere Avenue were sworn in by Board Attorney Brown.

Mr. Ramos stated that they are happy to support the property owners in their project. The Ramos' have been included in the plans and are satisfied with the work done on the front lot. The Ramos' have been living at their home for almost 26 years. The current structure is an eyesore. The setback is not a big deal for the Ramos'. The garage will still be 80ft away from the house and is obscured by trees. The Ramos' are okay with the plan for landscaping and are willing to answer any additional questions. The Ramos' offered that the Board may come to their property to take a look at what will be affected.

Ms. Ramos stated that she is delighted with the improvements to the property so far. The new structure does not affect the Ramos' because of the location of the Ramos' house on the property. The water view is directed the other way.

Papp told the Ramos' their comments were appreciated.

Ms. Dalton questioned why the new proposed structure was being considered a primary building not a garage apartment.

Board Engineer/Planner Avakian stated that the existing garage with an apartment is an existing non-conforming garage. Once it is demolished the right is lost to the historic non-conformity. The proposed dwelling over the garage is a home. There is the home building and another home over the garage.

Chairman Papp asked about the lot becoming a multifamily lot.

Mr. Higgins stated that municipal land use law states that multi-family lots are considered when there is three or more structures.

Ms. Kapp stated that what is proposed looks great, but asked what proof there is that it is a legal separate dwelling. Ms. Kapp questioned whether there was legal documentation that it was legally constructed and has been in use, so the Board could grant that that use may continue.

Mr. Higgins stated that the current garage was built at the same period of time in the plaster and lath style which predates the zoning ordinance. It was built in the 1930s or 1940s. There is woodwork in the garage that also indicates this time period. The tax records show the second dwelling. Mr. Higgins stated that legal documentation is not necessary. It is not like a court of law.

Board Attorney Brown stated that there was a comment that the building was being rented up to two years ago. That does not mean that the use was abandoned legally.

Chairman Papp asked whether the building was structurally sound.

Mr. Calvert stated that the building is not structurally unsound were it to maintain its current configuration.

Vice Chairwoman Umfrid asked why not renovate the current building on the current footprint? Why does it require a tear down? Why can't changes be made to the existing buildings?

Mr. Calvert noted that the current building could not accommodate the proposed balcony. It is being modified to add the balcony.

Ms. Dalton stated that the amount of destruction that would have to be done would make the structure not worth saving. The new building is gorgeous.

Chairman Papp stated that the Board would be violating its own ordinance to allow that. It would set a precedent.

Ms. Dalton said it would be allowing for a two-story garage apartment to be replaced with another two-story garage apartment. It is being replaced with the same thing. The Board would not allow future applications to add a second-floor apartment to a one-story garage.

Vice Chairwoman Umfrid stated that the current garage can be renovated similar to what was done at the front house.

Ms. Dalton stated that it would not be worth it.

Ms. Heinz questioned the fact that the new structure has a shower, and the current structure does not have a shower. How did anyone live there without a shower? Ms. Heinz also agreed that it sets a precedent for future above garage apartments. Ms. Heinz questioned the reason for doing the project.

Brian McEvily, homeowner, Paul McEvily, father of the homeowner, were sworn in by Board Attorney Brown.

Mr. Paul McEvily stated that the preexisting use was there when the property was acquired. The Board is familiar with several detached structures within the Borough. Many are not legal.

Mr. Paul McEvily stated that he spoke with Borough Clerk/Administrator, Lori Reibrich and confirmed that the apartment is legal and the use can continue. Mr. Paul McEvily stated that Ms. Reibrich researched at town hall and assured him that there was legal tenancy.

Mr. Brian McEvily stated that the proposed structure will be utilized by his dad, who has lived in the town for 35 years. When doing the work on the main house, contractors were consulted regarding the garage apartment. Every contractor recommended a tear down and rebuild. Mr. Brian McEvily stated that he has lived in Interlaken for 35 years. The main home is 100years old. The garage apartment building does not have the same charm as the main house.

Mr. Paul McEvily stated that he agreed with Mr. Higgins that the intensity of the use is lessened by making it a studio from a two-bedroom unit. The proposal is to put a 7 to 9 ft balcony on the second floor. The south elevation is already at 3ft to the property line. The balcony is to create an outdoor space. The square footage of the garage remains the same.

Ms. Ramos stated that she has lived in her house since 1995 and there has been people living in the apartment during that time. Most recently there was a family with two children, so there must be an existing bathroom.

Mr. Ramos stated that in the last 25 years that he has lived next door the unit has been consistently rented or occupied.

Mr. Marmora stated that a precedent would not be set. There is currently a legal use that the applicant is legally entitled to continue for a garage and separate living quarters.

Mr. Marmora stated that real estate is unique. This property backs up to Deal Lake.

Board Attorney Brown stated that Board members looking for support that an approval would not establish a precedent know that each application has unique facts. There was a court case in the 1960's in Sea Girt, NJ for a D-1 Variance. In that case there was an existing rundown hotel that the owners wanted to rebuild in a residential zone. It was shown that the applicant could provide competent proof that the negative criteria had been met due to the fact that the hotel would have fewer rooms. Future applications proposing betterment would be fact sensitive.

Chairman Papp questioned why the project could not be contained within the existing walls and not include a balcony.

Mr. Calvert stated that the balcony could not be included if the garage remains in the same location as that would exceed rear line setbacks.

Chairman Papp stated that not being able to add the balcony without relocating is hardly a hardship.

Mr. Higgins stated that what is proposed is something more beneficial and attractive than what exists. If renovations are made to the existing structure, it will still be a big box that is unattractive. It can still be a studio, but it will not be an exceptionally gorgeous building.

Chairman Papp questioned whether the criteria for a D variance have been met.

Mr. Higgins stated that he has no doubt that the criteria has been met. The proposed project will fit better function better and improve standards. It is a substantial improvement to the site in a way that the existing building never could.

Ms. Kapp questioned whether the applicant received any documentation from Ms. Reibrich regarding the legality of the apartment and asked questions pertaining to the lots behind the property.

Mr. Calvert stated that the lots are vacant now. One of the lots is owned by the Borough.

Mr. P. McEvily stated that there are two separate tax lots. There is a driveway that is the public right of way to a flag lot. Both properties were owned by Peter Thorne. The sheriff's department is taking control over the lot. Lot 50 is existing lakebed.

Mr. Marmora questioned whether the lot, not owned by the Borough, was a buildable lot.

Mr. Tilton stated that the garage apartment is accessed by a driveway easement that is entirely on the neighbor's property.

Mr. Tilton asked if there would be living space on the first floor.

Mr. Calvert stated that there was nothing scheduled for that.

Mr. Tilton stated that this is a preexisting non-conforming garage apartment. The living space is on the second floor. Mr. Tilton does not have a problem with what is proposed. There are a number of houses on Windermere Avenue that have cottages or back houses.

Ms. Dalton stated that it is no great issue. It is not setting a precedent to grant this application. It has been there since the 30's or 40's.

Chairman Papp asked if there were any further questions.

Ms. Heinz asked if the applicants would agree that the apartment would not be rented again and only be used by a family member.

Ms. Marmora stated that it could be stipulated as a condition of approval and agreed to a deed restriction.

Board Attorney Brown stated that if the application receives the 5 votes required that a revised deed provided through Counsel and filed with the County Clerk's office would be required.

UPON MOTION of Ms. Dalton, seconded by Mr. Tilton, carried, the application was denied.

In Favor: Mr. Tilton, Ms. Dalton, Ms. Heinz and Mr. Weaver

Opposed: Chairman Papp, Vice Chairwoman Umfrid and Mr. Wasilishen
Ineligible: Councilman Butler, Mr. Blasucci, Ms. Kane, Mr. Wentz and Ms. Kapp
Abstain: None

The applicant thanked the Board and left the meeting.

At this time, Councilman Butler and Mr. Blasucci rejoined the meeting.

UPON MOTION of Mr. Wasilishen, seconded by Councilman Butler, carried, adjourned the meeting.

In Favor: Chairman Papp, Councilman Butler, Vice Chairwoman Umfrid, Mr. Tilton, Ms. Dalton, Mr. Wasilishen, Ms. Heinz, Mr. Weaver, Mr. Blasucci, Ms. Kane, Mr. Wentz and Ms. Kapp

Opposed: None

Ineligible: None

Abstain: None

Absent: None

Absent: None