

BOROUGH OF UPPER SADDLE RIVER PLANNING BOARD

MEETING MINUTES – WEDNESDAY, NOVEMBER 13, 2013

Mr. Virgona called the meeting to order at 7:35 p.m. The following statement was read:
Pursuant to The Open Public Meetings Act P.L. 1975, Chapter 231, proper notice of this meeting has been provided by fax and mail to The Record and The Ridgewood News on December 28, 2012 at which time the date, time, place and purpose of the meeting was set forth and notice was posted on the official bulletin board in the Borough Hall.

PLEDGE OF ALLEGIANCE

Present: Councilman DeBerardine, Councilman Durante, Mr. Preusch, Mr. Prober, Mr. Stutman, Mr. Wortmann, Ms. Rosenthal, Mr. Richardi, Mr. Polizzi, Mr. Virgona

Absent: Mr. Friedman, Ms. Miller, Mr. Abramson

Also Present: Mark Madaio, Esq., Planning Board Attorney
Christopher Statile, P.E., Planning Board Engineer

Approval of Minutes:

A motion by Councilman DeBerardine seconded by Mr. Polizzi to adopt the minutes of the October 24, 2013 meeting was unanimously approved by all Members present.

RESOLUTION (*Memorialization*)

1. Application of **GaGa Realty LLC**
209 Route 17 South – Block 1301 – Lot 12
(Preliminary Site Plan w Variances/Construction/*New Commercial Building/Retail Use*)

Mr. Madaio reviewed the Resolution. Councilman DeBerardine expressed concern regarding the yet unidentified retail use. Discussion followed. Mr. Madaio advised that question can be asked when the applicant returns to the Board for final site plan approval.

A motion by Mr. Polizzi to adopt the Resolution as presented seconded by Mr. Stutman.

Roll Call

Ayes: 5 Mr. Polizzi, Mr. Stutman, Mr. Prober, Mr. Wortmann, Mr. Virgona
Nay: 1 Councilman DeBerardine

PUBLIC HEARING

1. Variance Application of **Laurence Dann**
31 Ridge Road – Block 1216 – Lot 7
(Side Yard Setback/*Generator*)

Laurence Dann, applicant, and Tibor Latinscics, P.E., were duly sworn by Mr. Madaio. The following exhibits were identified and marked: *A-1: Generator Location prepared by Conklin Associates dated March 26, 2013 last revised September 11, 2013; A-2: 10 Scale Enlargement of A-2.* Mr. Latinscics testified the applicant is seeking a bulk variance to allow the installed emergency gas generator to be located 32 ft. from the south side property line vs. the 35 ft. permitted.

In response to comments from the Board, Mr. Dann testified he applied for the permit last fall after the generator had been installed. Subsequently applying for and receiving permits, discovered it was in the wrong location. Mr. Latinscics testified the benefits far outweigh the detriments even though the generator is located beyond the setback.

In response to comments from the Board, Mr. Latinscics testified the generator is located 8 ½ ft. from the house, the pad is located 7 ½ ft. from the house and 67 ft. from the neighbor's home. The location of the AC condenser units prevent the generator from conforming as it can't be located under the eaves of the house and there is no electrical service to the far side of the house.

Mr. Virgona opened the Hearing to members of the public. No one appeared to provide testimony.

With no further comments from the Board or public, Mr. Virgona closed the Hearing.

A motion by Mr. Preusch to approve the application as presented seconded by Councilman Durante.

Roll Call

Ayes: 8 Mr. Preusch, Councilman Durante, Councilman DeBerardine, Mr. Prober, Mr. Stutman, Ms. Rosenthal, Mr. Richardi, Mr. Virgona

Nay: 1 Mr. Wortmann

2. Soil Moving Application of **Mark Petrone**
59 Eagle Rim Road – Block 705 – Lot 4
(New Home Construction/*Inground Swimming Pool*)

Mr. Madaio counseled the record reflect Mr. Virgona has recused himself from this application and stepped down from the dais.

Gregg Padovano, Esq., represented the applicant. Brad Meumann, Landscape Architect and Tibor Latinscics, P.E. were duly sworn by Mr. Madaio. Mr. Padovano advised the applicant is seeking a major soil moving permit to build a single family home, swimming pool with surrounding patio, new driveway, and seepage pits requiring the export of 3,689 cubic yards of soil. The

application shows the full development of the property that is compliant to all bulk requirements. The old home will be demolished and the property will be leveled and on even grade with the neighbors.

Mr. Latincscics referring to *Exhibit A-1: Plot Plan dated February 14, 2013 last revised October 13, 2013*, testified to the existing conditions and the proposed new single family home to be constructed similar in character to the homes located on either side. Mr. Latincscics testified to the grading plan as detailed on the plot plan. The property drops in the rear to Lilline Lane, the proposed grading will lower the knoll by several feet creating a rear yard plateau area consistent with the properties on either side. The details provided on the plan present the total anticipated site development, including the septic system, well, and storm water management consisting of (8) seepage pits. All roof leaders are connected to the seepage pits in accordance with municipal standards.

Referring to *Exhibit A-2: Soil Movement Plan, dated February 14, 2013*, Mr. Latincscics testified the bulk quantity of the 3,689 c.y. of soil to be exported comes from the lowering of the knoll to make it more level with the rear yard area; 700 c.y. of soil is associated with the foundation. Soil erosion measures are specific with certification required from the Bergen County Soil Conservation District.

Mr. Latincscics further testified the application is in compliance with the Borough's soil moving ordinance and the development is in compliance with building codes and bulk requirements.

In response to comments from the Board, Mr. Latincscis testified the 14.5% building coverage includes the overhangs. The 5,845 s.f. home is large and leads to a significant soil movement for a large foundation. Mr. Statile made recommendations to ameliorate drainage and runoff.

In response to a Board Member's comment regarding the size of the home being located in a very sensitive area, Mr. Latincscis testified the applicant will submit an as-built survey before the driveway curve is cut to make sure the 30% improved lot coverage is not exceeded and on track; and to allow for any adjustments if necessary.

Mr. Padovano addressed Mr. Statile's report dated October 31, 2013, advising the seepage pits will be relocated closer to the home providing greater space from the septic systems and well. The knoll is being lowered by (3) ft. addressing a concern the house is being mounded up and would tower over the neighbors. The pool is treated as impervious coverage; the patio is on the home side with a dining terrace, patio, lounge terrace and pool deck.

In response to comments from the Board, Mr. Latincscics testified the patio is featured only on one side of the pool, following the English style trend to have vegetation up to the pool.

Mr. Polizzi opened the Hearing to Members of the public for comments regarding Mr. Latincscics's testimony. No one appeared to provide comment.

Brad Meumann, L.A., referring to *Exhibit A-3*, distributed a non-colored version of the landscaping plan, identified as *Exhibit A-4*, testified he was involved in the design of the project from early on, providing a plan that encompassed planting, tree replacement, reforestation, aesthetics buffering, general planting, and for stabilization of the site.

Mr. Meumann testified to the number of trees to be removed, preserved and planted. Mr. Meumann

referring to a 3D model of the actual planting as viewed into the house, identified as *Exhibit A-5*, testified to the (92) trees proposed for planting: (30) deciduous; (42) coniferous and (20) holly in addition to a variety of significant shrubs in excess of (200). Many of these will be planted along the rear and side buffers and throughout the (170) ground covering and perennial shrubs.

Mr. Meumann referring to a concept view identified as *Exhibit A-6*, testified as to the view approaching from the street, depicting the proposed cherry trees and shrubs provided to re-enforce the forestry and aesthetics. Mr. Meumann testified to an aerial view identified as *Exhibit A-7*, depicting the landscaping around the entire site; and *Exhibit A-8*, a concept rear aerial view illustrating the creation of several walkways to the barbeque, steps down to the basement, free form pool, raised spa and waterfall. Mr. Meumann testified a garden with lawn is located off to the side with a sitting area.

In response to comments from the Board, Mr. Meumann testified (30+) trees more than 4 inches in diameter are proposed for removal and (40) trees are to remain. The variety of trees proposed for planting are sugar maple, bi-color oak, hybrid of native dogwood, blueberry and many plants.

Members advised as many trees as possible should be preserved. Mr. Padovano advised the applicant will work with the Shade Tree Commission to save as many trees as possible and submit a revised plan.

Discussion followed. Mr. Polizzi advised it was the consensus of the Board to carry the application to the Wednesday, December 11, 2013 Public Hearing without further notice required.

Mr. Madaio counseled the Record reflect Mr. Virgona has returned to the dais and the Public Hearing.

3. Application of **Martin Wojcik and Creative Gardens**
409 East Saddle River Road – Block 810 – Lot 6
(Appeal of Decision of Zoning Officer/*Destruction of Trees, Expansion and Enlargement of Non-Conforming Use/Violation of the Site Plan Ordinance*)
4. Application of **Concerned Citizens of USR, ACG, Inc.**
409 East Saddle River Road – Block 810 – Lot 6 – Creative Gardens
(Appeal of Decision of Zoning Officer/*Abandonment of Non-Conforming Use; Interpretation of Zoning Ordinance/Expansion of Non-Conforming Use/Discontinuation of Non-Conforming Use/Abandonment of Prior Non-Conforming Use*)

Mr. Virgona advised both applicants are seeking an appeal of the Zoning Officer's determination regarding Creative Gardens, 409 East Saddle River Road.

Michael Profita, Esq., appeared on behalf of Martin Wojcik and Creative Gardens.
John J. Lamb, Esq., appeared on behalf of Concerned Citizens of USR, ACG, Inc.

Mr. Madaio explained the reason why both applicants are before the Board. On July 22, 2013, John Walsh, USR Zoning Officer issued an opinion and determination of claims brought by Concerned Citizens of USR, ACG, Inc. regarding actions taken by Creative Gardens and Supreme Mulch in

several classifications. Mr. Madaio reviewed the issues included in Mr. Walsh's correspondence dated, July 22, 2013 identified as *Exhibit B-1*; and *Initial Issues Outline* identified as *Exhibit B-2*.

Mr. Lamb advised a motion was filed in Superior Court by the Concerned Citizens to dismiss the appeal of (2) issues not under N.J.S.A 40:55D-70(a): the destruction of trees, and violation of the site plan, as these are not zoning ordinances.

Mr. Madaio advised, as there are (2) pending lawsuits in Superior Court, there is no sense for the Board in making a decision on the dismissal.

Discussion followed regarding superceding procedures of the Superior Court. Mr. Madaio advised the Planning Board is an independent Agency; upon the advice of the Borough Attorney, there is no basis not to hear these applications. The decisions of the Board will make a record that will be presented in Superior Court.

Mr. Madaio suggested the Board handle each issue separately advising all (4) decisions will not be made until after the Board has heard all testimony.

Mr. Madaio advised both applicants that the Board can and will make site visits and take photographs, it is not negotiable; and the outstanding fourth quarter taxes on the subject property must be paid.

After confirming the Board will not hear testimony after 10:30 p.m., Mr. Profita requested the applications be carried to the next available Public Hearing date. Discussion followed.

Mr. Virgona announced the applications are carried to Thursday, January 23, 2014 at 7:30 p.m. without further notice required. Both applicants waived any applicable time period within which the Board is to take formal action.

ADJOURNMENT

A motion to adjourn by Mr. Preusch seconded by Councilman DeBerardine was unanimously approved by all Members present. Meeting adjourned at 10:10 p.m.

Respectfully submitted,

Linda Marmora
Clerk

