

**BOROUGH of GARWOOD**  
**PLANNING BOARD**

**MEETING of May 26, 2021**

*Stephen Greet called the meeting to order at 7:30 p.m. and stated the following:*

**Meeting Notice:**

Pursuant to the Open Public Meeting Law, this is to state for the record that adequate notice of this meeting has been provided to the public by publication in the Westfield Leader and by filing of said notice in the office of the Municipal Clerk. This is a regularly scheduled meeting of the Board. This is a Special meeting of the Board. The VIRTUAL PUBLIC MEETING is being held via remote access VIA RING CENTRAL. Notice to access the meeting via phone conference & Ring Central was made public on the Borough website and social media.

Flag Salute – Moment of Silence

**ROLL CALL**

**Present:** Mayor Sara Todisco, Councilman Russ Graham (*Arrived at 8:40 p.m.*) Stephen Greet, Ken Capobianco, Kathleen Villaggio, Paul Tarantino, Richard McCormack (Alt II), Stephanie Bianco Alt. III      Alt. IV - VACANT

**Absent:** None

**Excused:** Steve Napolitano, Michael Vena, William Nierstedt, Steve Barcan (Alt. I))

Also present were Board Attorney Donald Fraser, Board Secretary Adele Lewis and Victor Vinegra, P.E., P.P.

It was announced that Councilman Graham, who served in Vietnam, was being recognized for his military service by the Union County Board of Commissioners and the Office of Veterans Service.

**MINUTES**

- **MINUTES OF THE APRIL 14, 2021 PLANNING BOARD MEETING**

On a motion by Kathy Villaggio and seconded by Rich McCormack, the Board voted by general consent to adopt the minutes of the April 14, 2021 Planning Board meeting.

**RESOLUTIONS**

**Case #PB20-03**

**242 Second Ave. B 205 L 26    R/A Zone**

Applicant: Paul T. Martin

*Denying a Use Variance for a two-family house in a one family zone*

Board Attorney Fraser informed the Board that the he had spoken to the applicant's attorney, Joshua Koodray, Esq. of Javerbaum and inquired on the status of the transcript from the last meeting of 4/14/2021. Mr. Koodray confirmed that the transcript had not yet been received. Mr. Fraser and Mr. Koodray agreed that the resolution should be prepared after the receipt of the transcript. Mr. Fraser also confirmed he spoke with Zoning Enforcement Officer Lenny DeStefano who informed him the second apartment is vacant so no violation currently exists.

**Update on litigation in the matter of Fred Balsamo v. Borough of Garwood Planning Board and Lidl U.S. Operations, LLC**

Attorney Don Fraser informed the Board that the court has directed them to reaffirm their previous approval. Mr. Fraser stated they are to re-memorize and reaffirmation their previous action. Ms. Villaggio noted incorrect dates on pg. 2 for the statement of reasons and the judgement date referencing the incorrect year of 2019, whereas it should be 2021. Mr. Fraser stated that this will be corrected prior to being signed and distributed. The present original voting members were identified.

*On a motion by Kathy Villaggio, and seconded by Ken Capobianco, the Board voted Affirmative: (5) Stephen Greet, Kathy Villaggio, Paul Tarantino Ken Capobianco, Richard McCormack to reaffirm the resolution in the matter of Lidl.*

**APPLICATION**

**Case #PB21-01**

**78 North Ave. B 208 L 27 G/B Zone**

Applicant: Lee A. Frankel, LLC

*Seeking a waiver from site plan to cover an existing patio*

Chair Greet explained the procedure and format for the evening. Board Attorney Fraser reiterated the process.

Paul Tarantino stated that he may have a conflict of interest as his stepdaughter is an employee of the applicant's establishment. He was advised by Board Attorney to not comment on the application if he chose to stay on and view the meeting.

Mayor Todisco stated she would also be recusing herself as she has been a longtime patron of the establishment and has hosted political events at this establishment, as well as other businesses in town. Mr. Fraser also informed Mayor Todisco that she was welcome to view but not comment.

The five eligible voting members were identified:

Stephen Greet, Ken Capobianco, Kathleen Villaggio, Richard McCormack, Stephanie Bianco

**Gary Goodman, Esq.** represented the applicant. He stated that he wanted to dispel inaccuracies regarding parking being removed. He also addressed the noise issue addressed by Mr. Vinegra's review Item # 13. Mr. Vinegra stated that the wording is verbatim from the ordinance and it appears a variance will be required. Mr. Fraser recommended that Mr. Goodman proceed with his professionals.

**Gregory Waga, R.A.**, Waga Architects was sworn and qualified. He reviewed the two sheets he prepared A -1.01 and A.3.00. He reviewed the survey and stated it is a true transposition and identified the location of the patio area. He noted the site is developed with a three-story building. He identified the parking area and stated they are proposing to cover the existing previously approved patio with a 23.0" X 48.2 covered canopy. He noted the Harbor Consultant report dated 3/24/2021 incorrectly depicts the size of the structure as being 28.5" X 48.1". He noted that this will be a wood frame structure that will not exceed 18 ft. in height and will be sloped downward with 4 ft. high walls and will be partially opened. It will be handicap accessible and have a secondary access for kitchen staff. The materials will absorb the sound with the wood columns. He noted that they took into consideration the concerns of the neighbors.

Mr. Waga addressed the sound attenuation from an architectural standpoint but noted he is not a sound engineer. He referenced the various decibels noting normal decibel level is 70 decibels. He

reiterated that wood absorbs sound and noted that as a dining facility this will have a decibel rating of 70-75 decibels. He noted the distance of 74.76 ft. from the rear façade to the edge of the adjoining yard. He noted that there are two wood frame garages on the adjoining properties and stated from the back wall to the nearest home is 120 – 130 ft. He referenced the travel of sound and its dissipation.

Board Attorney Fraser questioned Mr. Waga's credentials for sound travel. Mr. Goodman stated that Mr. Waga prefaced his comments by noting he is not a sound engineer.

Mr. Fraser noted that while Mr. Waga can testify that wood absorbs sound and mitigation of sound, noting the dissipation of sound is beyond his area of expertise.

Mr. Waga testified to the rear yard buffer noting that a minimum rear yard buffer is 10 ft. He noted that there is a 6 ft. high fence and a recent planting. He testified that he will work with Mr. Vinegra's office for onsite water control with possible excavation into rain gardens for the absorption of rain water.

Mr. Fraser stated it would be beneficial to identify the relief being sought. Mr. Goodman stated that they are seeking a waiver of site plan approval along with the variance for outdoor speakers in the outdoor dining area. All other items are preexisting conditions. Mr. Vinegra noted there is no loss of parking.

#### **QUESTIONS FROM THE BOARD**

*How many tables will there be?* Mr. Waga stated that a seating plan would be provided to Mr. Vinegra prior to formalization. Mr. Waga stated they would be permitted to accommodate 74 people under the canopy with 18 tables/74 chairs.

*It was noted that the ordinance states no more than 25% of the total on-site seating may be provided outdoor.* Mr. Waga noted that the indoor seating holds 200 inside and by ordinance 50 people would be permitted outside. Mr. Fraser noted the outdoor seating could be counted in the **total** seating which would permit 66 people/chairs and 16 tables for the outdoor dining.

*Will the covered patio be used only for outdoor dining?* Mr. Waga deferred to Mr. Frankel.

*Will emergency vehicles still be able to access the site?* Mr. Waga stated that they are not encroaching any further and they can safely enter they property.

*Will the bathrooms be able to accommodate the increased patron capacity?* Mr. Waga stated that interior alterations are being contemplated to address this.

*Should the interior renovations also be submitted as well as more information on the speakers and sound attenuation for the outdoor area?* Mr. Waga stated that he had notations on his plans, and stated that he did not consider the speakers in his attenuation efforts. He deferred to Mr. Frankel to testify to the speakers.

#### **QUESTIONS FROM THE PUBLIC:**

The following members of the public asked questions of Mr. Waga regarding his testimony:

Larry Nyitray, 63 Second Ave.

Shari Littman, 92 North Ave.

Hugh Sinclair, 228 Second Ave.

Joe Gola, 25 Second Ave.

Albulena Berisha, 308 North Ave.

Samantha Hewitt, 80 Second Ave.  
Cheryl Saleskie, 59 Second Ave.

**Lee Frankel**, applicant and owner was sworn in. He confirmed that the indoors capacity holds 200 people. He testified no food will be prepared outdoors. He stated that they will repair the fence at the rear of the property and add plantings to buffer the site. Mr. Frankel stated that when COVID restricted his indoor seating he installed the patio. He is contemplating small speakers outside for background music. He described his operations and stated they regularly patrol the property with sound decibel meters. He spoke to the parking and stated they have secured parking next door at the Premier Collision for staff.

Mr. Frankel noted that they have entertainment for the inside patrons. The outdoor patrons will have the small speakers directed away from the neighbors. He noted the patio was constructed during COVID when Gov. Murphy placed an order restricting capacities. He stated no special approval was required for the patio and added that Council approved his expanded liquor license. Mr. Frankel spoke to parking and stated in the summer their business is down by 50 %. He added that more and more people are using Uber and Lyft.

#### **QUESTIONS /COMMENTS FROM THE BOARD:**

*Tables have been set up in parking spots, will that cease?* Mr. Frankel stated that they would eliminate this practice.

*Will there be smoking in the patio area?* Mr. Frankel stated that they are looking into the legality of having smoking under the structure. He would like to have them under the structure but can also look to relocate the smoking to another location.

*Will there be live music on the patio?* Mr. Frankel stated that he may eventually look to acoustic live music which would not go beyond 9:30 p.m.

*Would you be agreeable to cutting the outdoor speakers at 10:00 p.m.* Mr. Frankel stated that they are very mindful of the noise ordinance and would be agreeable to shutting off the speakers at 10:00 p.m.

*Has consideration been given to the increased demand for parking?* Mr. Frankel stated he has about 35 onsite parking and 4 next door to service the patrons. Mr. Vinegra clarified that nine spaces are being brought back into play. Mr. Frankel stated that they don't anticipate that capacity will ever reach the maximum and the parking is sufficient.

*Who controls the volume of the speakers?* Mr. Frankel stated the sound tech crew controls the sound level.

*Only half the required parking is the currently provided and the condition is being exacerbated by the patio and increased seating. Mature landscaping should be provided as well as plans for the interior renovations for the Board to make an informed decision.*

*Would you be willing to work with Mr. Vinegra's office to provide a better buffer?* Mr. Frankel stated that he would be happy to work with Mr. Vinegra's office.

Mr. Frankel stated the patio currently services 60 people and the proposed covering will stifle some of the sound.

#### **QUESTIONS FROM THE PUBLIC**

The following members of the public asked questions of Mr. Frankel regarding his testimony:

Cheryl Saleskie, 59 Second Ave

Larry Nyitray, 63 Second Ave.

Debbie Ledger, 66 Second Ave.

Justin O'Hea 429 Willow Ave.,

Sharon Nomenco, 103 Anchor Place  
Terry Nyitray, 63 Second Ave.,  
Samantha Hewitt, 80 Second Ave.  
Al DelConte, local business owner  
Sharon Nomenco, 103 Anchor Place  
Albulena Berisha, 308 North Ave.  
Charlotte Berisha 305 North Ave.  
John Bartolick, 231 Hemlock Ave.

Mr. Goodman requested a brief recess to confer with his client.

**RECESS:** 9:55- 10:03 p.m.

Mr. Goodman stated that they would like to continue their application to a subsequent meeting to address the concerns regarding buffer and sound. They will return with a more detailed plan. Chair Greet recommended they return with a sound expert such as a sound engineer along with more detail regarding the increased bathroom facilities as well any proposed interior renovations.

Mr. Fraser noted it was past 10:00 pm and it is the Board's practice to not take new testimony after 10:00 p.m. He noted the applicant's request is appropriate. He suggested that the applicants request to continue the application to another meeting date.

*By consensus of the Board, Stephen Greet, Ken Capobianco, Kathleen Villaggio, Richard McCormack, Stephanie Bianco voted affirmatively to carry the application to a new date. It was noted Councilman Graham joined the meeting late and would not be voting.*

The Board discussed the upcoming schedule. It was noted that Garwood PaperBoard was scheduled for June 23<sup>rd</sup> and Russo II amended site plan was tentatively scheduled for July 28<sup>th</sup>. Mr. Goodman will contact the Board Office when they are prepared to continue.

*On a motion by Kathy Villaggio and seconded by Chair Greet, the Board voted Affirmative Stephen Greet, Ken Capobianco, Kathleen Villaggio, Richard McCormack, Stephanie Bianco voted affirmatively to carry the application with the requirement for new legal notice when the new meeting date is established.*

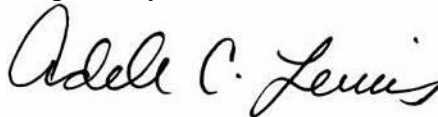
**CLAIMS-** *The following claims were presented and approved for payment:*

Harbor Consultants invoices for March 20221

- Inv. 31341 South Ave Redevelopment Phase I \$332.50
- Inv. 31342 10 South Ave / Lidl \$185.00
- Inv. 31345 75 North Ave/self storage \$145.00
- Inv. 31346 75 North Ave. Garden Homes \$507.50
- Inv. 31347 242 Second Ave. \$1015.00
- Inv. 31349 78 North Ave/ Crossroads \$ 1515.00

**ADJOURNMENT -** There being no further business, the Board adjourned 10:03 p.m.  
The next meeting of the Board is June 23, 2021.

Respectfully Submitted,



Adele C. Lewis, Board Secretary