

The meeting was opened by **Vice Chairman Battista** at 7:30 p.m.

Mr. Battista read a statement of compliance with the *New Jersey Open Public Meetings Law* as follows:

This is a regular meeting of the Zoning Board of Adjustment of the Borough of Tinton Falls and is being held in compliance with the New Jersey Open Public Meetings Law. Adequate notice of this meeting has been given by posting on the bulletin board of the Municipal Building and by publishing in the Asbury Park Press and The Coaster.

Mr. Battista then led the meeting in a salute to the flag.

Ms. Connolly took roll call.

Present: Chairman Palmieri (arrived at 7.42) Mr. Slazyk, Mr. Lomangino, Mr. Battista, Mr. Porzio, Mr. McKindly (arrived at 7:34) Mr. Brawner, Ms. Berk, Ms Hatami

Absent: None

Also present: Mr. Hirsch, Board Attorney
Mr. Neff, Board Engineer
Mr. Marks, former Board Engineer
Lori Paone, Zoning Officer
Ms. Connolly, Board Secretary

Mr. Battista read a statement of procedural guidelines.

The meeting minutes of February 18, 2016 were accepted by all those eligible to vote from that respective meeting.
--

The next order of business is the memorialization of the DiFazio Application.

DiFazio, Marc and Giovanna 43 Whirlaway Drive Blk. 62.01 Lot 4	BA 2016-01 Lot Coverage
--	----------------------------

A motion to memorialize the DiFazio application was brought by Mr. Brawner and seconded by Mr. Lomangino.

Roll Call:

Yes: Mr. Lomangino, Mr. Battista, Mr. McKinley, Mr. Brawner, Ms. Berk, Ms. Hatami

No: None

Ineligible: Chairman Palmieri, Mr. Slazyk, Mr. Porzio

The meeting is paused at 7:37 p.m. in order to wait for Chairman Palmieri, who is en route.

The meeting is resumed at 7:42 upon Chairman Palmieri's arrival. No Board members left the dais.

New Business

Toll Land IV Limited Partnership Request for Interpretation of the "Look-Alike" Restrictions	BA 2016-02
--	------------

Mr. Hirsch states that he has reviewed the affidavit of publication and proof of service and they are in order as to form.

A motion to accept service was offered by Mr. Brawner and seconded by Mr. Battista. All in Favor.

John A. Giunco, Esq., Giordano, Halleran & Ciesla states he is representing the applicant. Mr. Giunco states this application is a request to interpret the redevelopment ordinance which has a "look-alike" provision. Mr. Giunco then gives history of the development and explains that there are 9 collections with 42 different models available. By way of history, Mr. Giunco states that Toll has been successful in this project and has sold a significant number of the houses that are available. Approximately half of the development is sold. There are 9 collections with 42 different models. There are two collections that the buyers have been buying the most of, which are called the Bronson and Farmington. The "look-alike" ordinance provides several criteria to distinguish the different units. Toll sets up each collection to have four or five models and then there are a series of distinctions that are created not just by Toll Bros., but also by the ordinance. We are asking the Board whether or not the differences that are expressed by Toll in the various models meets the criteria of the ordinance

Mr. Hirsch states that that is not an interpretation of the ordinance. Mr. Hirsch states that the ordinance seems pretty clear.

Mr. Giunco states the ordinance speaks to the characteristics that create the differences among the models. We are contending that each of the models (each of the 42) meet those characteristics within the collection, the name is not a determining factor but whether or not it meets the ordinance. To date there has not been an issue with a zoning

officer determination. When there were questions, those were all resolved and every application that has been sought, has been issued. Toll is looking forward and realized that there are not 186 lots to spread out the remainder of the models. It is anticipated that the models will be primarily Bronson and Farmington because that is the sales trend. If that occurs, we anticipate a potential issue and thought that the Board could interpret, for clarity, for Toll and for the Zoning Officer, whether or not Toll would be in compliance with the ordinance.

Mr. Hirsch and Mr. Giunco discuss whether or not this is an interpretation.

Mr. Giunco states that he is trying to make it a simple presentation and in that regard, wishes to focus on the Farmington and the Bronson.

Chairman Palmieri states that he wants to review. As he is understanding it, Toll is at the point now that they are going to build more houses and is embarking on the second half of their development. Toll anticipates that there is a possibility that they might eventually be in violation but then again, might not be in violation, as to the look-alike ordinance but wishes to have the potential problem decided now.

Mr. Giunco states that Toll does not want to be in violation at all. The interpretation we are looking for is to clarify that the models are, in fact, models, and that each of the houses are distinct. Based upon the high sales of Farmington and Bronson, Toll believes that there is the potential to have a problem with the look-alike ordinance because of the volume of Farmington and Bronson being sold.

Mr. Giunco states that Toll Bros. has an internal system in place to make sure they are not allowing houses with the same characteristics next to or across from each other. This system will be explained.

Mr. Giunco states that the reason for this application is to avoid a situation wherein there is a denial of a submission made to the zoning officer and we go back and forth for 30 days, Toll could stand to lose the sale, it could end up delaying the delivery and not make for happy customers.

Mr. Marks states that for some additional clarification for the Board, the Borough reviews the submissions on a lot by lot basis. We have identified the models. They are the Bronson, the Farmington, the Lehigh, etc. The elevations are listed as the classic, the country manor, the federal and so on. How we have evaluated that is the Bronson is the model and then you can pick from the country manor, the traditional, the federal or the classic and then you are permitted to have up to three Bronson's in a row before you have to go to a fourth model and that is 12(c) within the ordinance. Our interpretation is that that the Bronson is the model, even with the elevations presented, it is still a Bronson. .

Mr. Marks explains that as every home comes into the department for review, the home that was sold next to it or immediately across the street is looked at to determine if there

is enough variation between the homes. We have determined that blue door to a green door is not significant. A full length panel door versus a three window across the top door is not significant. Roofline changes, left-hand garage versus right-hand garage – those are the kinds of significant changes that we are looking for in determining that the home meets the ordinance.

Mr. Battista asks if there are three Bronsons in a row, one is a traditional, one is a federal and one is a classic. Are they viewed by the Borough as three of the same? Mr. Marks says that to date the Bronson is a model – you are not permitted to have more than three Bronsons whether it be classic, federal, etc. Mr. Battista confirms that three Bronson classics are viewed no different than a Bronson traditional, federal and classic. Mr. Marks says that is correct.

Mr. Marks explains that all of the developments that have come through over the years have had to comply with, I think 15 requirements versus the five or so that are in place for this redevelopment plan. This redevelopment plan was drafted based on a prior set of architectural. We did not have the current architectural at the time. They were not in play. This was put together from a different baseline than what we have today.

By way of review, Mr. Hirsch states that it seems that everything has been working out for the past two years. Now Mr. Giunco states that because the number of lots available have diminished, the customer may not be able to have, let's say a Bronson, the customer may not be able to have the lot that they want. Toll is looking forward to try and alleviate a problem, so as the lots compress, they are going to run into this issue even though, in Toll's view they are meeting that criteria of the ordinance for those distinctions.

Mr. Hirsch states that previously, it seems that Toll was accepting the interpretation from the engineer and the zoning officer. Mr. Giunco states that he is not looking to change the ordinance that states no more than three models in a row.

Chairman Palmieri asks why not change the Bronson classic to a totally different name if Toll thinks they are so different. Mr. Giunco said that Toll has a corporate situation that keeps the names as they are.

Discussion ensues as multiple board members comment on their interpretation of the application.

Mr. Hirsch reviews his interpretation of the application.

Further discussion ensues between Mr. Hirsch and Mr. Giunco about what the Toll application is actually asking. Mr. Hirsch states that he really thinks we are on the border of what is truly an interpretation of the ordinance or an application of facts to the ordinance.

Chairman Palmieri discusses with the Zoning Officer if they have denied putting too many of one model in a row and Ms. Paone thinks that she did deny them.

Mr. Marks states that there was a letter done in June 2015 wherein Mr. Giunco asked for clarification as to the terms of “adjacent” and “across the street” but I don’t believe we ever talked about the three units in a row.

Mr. Lomangino explains the procedure he encountered at the time he picked out his house in his development and how he could only pick certain houses with certain elevations on the lot he wanted. He asked whether the standards twenty years ago are still the standards in place today. Mr. Marks states that the Borough would have had a zoning ordinance at the time which would have had a variety of housing design requirements that the development would have been subject to. It’s been adjusted to the smaller nature of this versus maybe a bigger development like Park Place.

Mr. Hirsch asked Mr. Marks further discuss the substance of the correspondence between himself and Mr. Giunco.

Mr. Giunco calls his architect, Mr. Timothy O’Neil of Drexel Hill, PA before the Board. Mr. O’Neil is sworn in by Mr. Hirsch. Mr. O’Neil presents his credentials and is accepted by the Board. Exhibits were marked into evidence. Mr. O’Neil states that he is familiar with the ordinance in question. Mr. O’Neil testifies as to the collections of this development and how he believes they meet the ordinance. Mr. O’Neil presents exhibit A-2 which he states is a realistic look of 10 lots containing Farmington and Bronson houses. Mr. O’Neil goes through the differences between the houses on the exhibit. Mr. Hirsch suggests referring to the ordinance when showing the differences.

Mr. Porzio asks a series of questions regarding the differences in the terms model, collection, and elevation.

Chairman Palmieri asks if he is understanding the application and what the applicant wants the Board to interpret.

Mr. Giunco explains what the Toll application is asking for. Discussion continues between the board members and Mr. Giunco.

Mr. Hirsch asks Ms. Paone if she would like to say something. Ms. Paone states that Toll has been denied previously. We have sat down and have had many discussions regarding what are considered significant versus not significant changes. For example, a garage being on the left versus the right side is a significant change. There are a lot of homes built already and they are not significantly different and we have used up many changes within these houses to get them to be as different as possible. I’m saying there are not enough models, there are not enough elevations for the models. We have had discussions going back and forth for two years discussing what makes a home different.

Mr. O'Neil states that they have a picture of an existing streetscape, Exhibit A-5, the streetscape is brought before the Board and discussed. The differences per the ordinance are discussed looking at the streetscape.

Mr. O'Neil brings forth exhibit A-3. The top row of homes are all Farmingtons. Mr. O'Neil is instructed by Mr. Hirsch to point out the three out of five differences, per the ordinance, among each house shown. Mr. O'Neil also refers to Exhibit A-1 to point out differences.

Mr. O'Neil discusses the internal Toll standards in place utilized to promote differences between the houses.

Chairman Palmieri asks Ms. Paone and Mr. Marks their opinion about the testimony given so far. Mr. Marks suggests that there are nuances to this that are being missed in the exhibits. Mr. Marks further explains.

Mr. Marks states that he believes we have been able to work with the applicant on making sure they had three significant differences between adjacent houses. It is my contention that no there aren't enough significant differences between these elevations to distinguish them as separate models

Discussion ensued regarding windows and rooflines, differences in building materials and color differences.

Next Mr. Giunco instructs Mr. O'Neil to go over the roof differences and garage elevation differences.

Mr. O'Neil brings up exhibit A-3 which shows the protocol in place that Toll uses to show what houses are available to be built next to or across from each other. Board members ask questions about how this chart works.

Mr. Giunco asks for a short recess at 9:14 p.m. No Board members leave the dais and the hearing is back on the record at 9:20 p.m.

Mr. Giunco states that after speaking with his client, they wish to withdraw this application that is before the Zoning Board of Adjustment. Mr. Giunco also wishes to say that his client, zoning officer and borough engineer have all worked together in good faith to try and address these issues and his client hopes that all will continue because at this point, we still have to sell the remainder of these units. We believe that based upon the comments we have received here, a better avenue for us to take would be to seek a variance from the ordinance before the Planning Board.

BOROUGH OF TINTON FALLS
ZONING BOARD OF ADJUSTMENT

REGULAR MEETING
April 21, 2016

Mr. Battista make a motion to accept the withdrawal of this application. Mr. Brawner seconded. All in Favor.

A motion to adjourn the meeting at 09:25 p.m. was brought by Mr. Lomangino and seconded by Mr. Porzio. All in Favor.

Respectfully submitted,

Colleen Connolly
Zoning Board Secretary

Adopted at meeting held on
May 5, 2016.