

Vice-Chairman Morris called the meeting to order at 7:30 P.M. Mr. Morris read the following statement: "This is a regular meeting of the Tinton Falls Planning Board and is being held in compliance with the New Jersey Open Public Meetings Act. Adequate notice of this meeting has been given by posting on the Bulletin Board of the Municipal Building and by advertising in the Asbury Park Press and The Coaster."

ROLL CALL

Present: Chairman Cunningham (arrived 7:37), Mayor Turning, Councilman Baldwin, Mr. Romanov, Mr. Lodato, Mr. Collins, Mr. Morris, Mr. Clayton, Mr. Natter, Mr. Mirarchi

Absent: Ms. Guarino

Others: Dennis Collins, Esq.
Thomas Neff, T&M Engineering, Board Engineer
Colleen Connolly, Board Secretary
John Giunco, Attorney for Applicant

All present stood for a Salute of the Flag.

PLANNING BOARD BUSINESS

CITIZEN SERVICE ACT COMPLIANCE – Vice-Chairman Morris stated that Ms. Guarino is absent. She has advised the Board Secretary this evening at approximately 7:30 p.m. via text to another board member, that she is unable to attend due to work obligations. Chairman Cunningham asks if there is a motion for non-acceptance of this absence. Hearing none, Chairman Cunningham states that we can accept this absence.

PROFESSIONAL REPORTS – None

Approval of Minutes

Chairman Cunningham indicated that the Minutes from March 23, 2016 have been previously distributed and there have been a few changes that have been incorporated.

Mr. Morris made a motion to accept the meeting minutes of March 23, 2016. Mr. Clayton seconded the motion. All in favor.

Vice-Chairman Morris states that the meeting minutes of April 13, 2016 have been previously distributed and reviewed and no comments have been incorporated.

Mr. Collins made a motion to accept the meeting minutes of April 13, 2016. Mr. Romanov seconded the motion. All in favor.

NEW BUSINESS

Chairman Cunningham advises the public of the procedural rules on the Tinton Falls Planning Board.

Chairman Cunningham states that our first application this evening is:

PB 2016-04 – Toll Land IV Limited Partnership Application for Amended Site Plan and Bulk "c" Variance Relief from the Look-Alike Requirements of CECOM Redevelopment Plan.

Mr. Giunco, attorney for the applicant states that he has provided service to the adjoining property owners in accordance with the 200' search, published it and provided proof of same.

Attorney Collins stated that he has reviewed same and they are in order as to form and the Board has jurisdiction to hear this matter this evening.

Chairman Cunningham further states that the second matter before the Board is **PB 2016-05** – Toll Land IV Limited Partnership Application for Amended Site Plan and Bulk "c" variance Relief – Patio Setback and Hot Tub.

Mr. Giunco, after speaking with his client, indicates they wish to start with PB 2016-05. Chairman Cunningham gives his consent.

Mr. Giunco presents his first witness, Mr. Mark Zelina, licensed professional engineer and project engineer.

Mr. Mark Zelina and Christine Coffone, professional planner are both sworn in by Atty. Collins. Mr. Neff is also sworn in. The experts' credentials are accepted.

Atty. Collins briefly explains to the public that there are two Toll matters on the Agenda this evening and explains to the public that they may ask questions of the expert at the end of his/her testimony and/or make comments at the end of entire application.

Mr. Giunco briefly explains this application seeking a bulk variance for certain lots which are 105 ft. in depth. 49 of them have been identified and we are requesting a rear-yard set-back variance in order to permit the placement of patios onto those 49 lots. However, Mr. Giunco states that after discussions with Mr. Neff, lot no. 78 is withdrawn due to the location of the drainage pipe on the lot.

Second, we are also seeking a bulk variance to permit the location of hot tubs in backyards of patio areas for any of the lots. Additionally, under that issue, the ordinance calls a hot tub in

Tinton Falls an accessory structure. These are portable units but they meet the definition of structure.

Exhibits are entered. They are as follows:

- A-1 – Zelina Site plan consisting of two sheets;
- A-2 – Overall layout exhibit
- A-3 – Typical plot plans for Regency at Trotters Pointe;
- A-4 – Hot Tub area Exhibit at Trotters Pointe.

Mr. Zelina is called as Mr. Giunco's first witness. Mr. Zelina testifies as to the location of the project. The subject of this application is Block 76.02 lots 12-22, 26-39 and 83-96 and Block 76.03 lots 1&2 and 5-11.

Mr. Zelina addresses the rear yard setback issue. Mr. Zelina discusses what the current set backs are and the relief requested. He also discusses the reasons the applicant is requesting same. The reasoning for reduction of the rear yard setback is to permit the installation of a patio.

Mr. Zelina addresses the issue of a few lots being over drainage pipes on the lots. Mr. Zelina states that the patios will not be constructed over any of those pipes. Either those pipes will be relocated to the rear of those lots or on those particular lots the patios will be short of the pipes and will not extend over the pipes themselves.

Mr. Zelina states that there are no easements on these lots and Mr. Neff concurs.

Mr. Giunco states that in addition to requesting relief as to rear yard setback, the applicant is also seeking permission to place hot tubs on lots where customers would like them after setback relief is granted.

Atty. Collins clarifies that the request is to permit hot tubs as an accessory structure on the properties and then seek variances. Atty. Collins clarifies that the hot tubs will be offered on every property. The request is not limited to the 46 lots.

Mr. Giunco confirms that the applicant is requesting hot tubs for anyone who would like one, however, on these 46 lots there is a need for setback variances.

Mr. Zelina states that in addition to the property line set back, the other variance that is requested is the set back from the structure itself. Mr. Zelina then testifies in detail regarding the variances requested.

Mr. Zelina states that the hot tubs would be placed on the back yard patio.

Mr. Zelina testifies with regard to hot tub landscape screening; hot tub location and safety issues.

Chairman Cunningham clarifies where the hot tubs can and cannot be located.

Mr. Baldwin asks for clarification of buffering and landscaping specifications. Also, specific questions with regard to how close the hot tub would be to the home and neighbor's home are discussed.

Mayor Turning asks the size of the hot tub that will be placed on the patio and if there are restrictions as to size.

Mr. Giunco states that the hot tub is restricted to a four-person portable hot tub. Discussion ensues as to what "portable" means.

Atty. Collins asks if these hot tubs are offered as amenities to purchasers or is this going to be a blanket modification to your homeowner's association. Mr. Giunco answers that it is just going to be for the purchasers. He can only apply for the lots that Toll owns.

Mr. Giunco states that the representatives from Toll Bros. who are here tonight, will research the specifications of the proposed hot tub.

Mr. Giunco states that no additional lighting is requested for the hot tubs. He states that the hot tub unit is purchased as a unit and installed.

Mr. Neff asks about the impact upon grading in the year yards. Mr. Zelina states that adequate drainage or a swale or whatever is in place currently, will be maintained.

Mr. Neff asks about the Farmington Federal which has a covered patio. Covered patios are considered part of the structure and have to have a 14 foot setback. Are you seeking any relief these covered patios? The answer is no from Mr. Giunco.

Mr. Baldwin asks about the hot tub placement with relation to the side yard. Further discussion regarding distances to neighbor ensues.

Mr. Baldwin brings up the issue of noise concerns and the constant running of the hot tub motor with regard to neighbors.

Mr. Morris asks about the draining of the hot tub. Different ways to drain a hot tub are discussed.

Mr. Zelina now has more information about the maximum size of the hot tub. It will not exceed 9' x 9' in dimension.

Chairman Cunningham opens up the discussion to the public and asks if anyone has any questions for Mr. Zelina.

The first person from the public is Mr. Mihlon, 2040 Wayside Road, Tinton Falls. Mr. Mihlon states he owns the property that immediately abuts the development. He asks where the pipes

that may need to be relocated will be relocated to and does it affect his property. Mr. Mihlon is advised that if any pipes need to be relocated, they would only be relocated closer to the property line. They would not be relocated outside of the buffer.

Chairman Cunningham asks if there were any other questions from the public.

Mr. Lodato makes a motion to close the public session pertaining to asking of questions of Mr. Zelina, seconded by Mr. Morris. All in favor.

Mr. Giunco then calls Ms. Coffone, professional planner to address the variances. Ms. Coffone states the applicant is here requesting several bulk variances regarding patio setbacks and installing hot tubs on certain lots and speaks in detail with regard to same. Clarifying that one request is for the rear-yard setback on the 48 identified lots, not exclusively to be used for a hot tub, but to permit the patio to be there and then the remaining four variances all relate to the hot tubs. The 5 ft. rear yard setback is for the patio, whether or not used for a hot tub. The applicant is also proposing a landscape screen that would be designed and installed to meet the satisfaction of the Borough Engineer. The applicant would also request that there be a condition in any approval, if granted, that the patio not extend over any of the drainpipes that are currently in place. They need to be relocated or the patio would not be constructed to extend that far.

Mayor Turning asks if there are any provisions about where the chemicals for the hot tubs will be stored. Discussion ensued and it was proposed that the chemicals be stored in the garage.

Mr. Baldwin wishes to discuss the size of the hot tub. He states that he thinks that 9 x 9 is a little large and that the size needs to be looked at very closely. Discussion ensues with regard to the size of an appropriate hot tub and the noise issue is further discussed.

Mr. Giunco asks Ms. Coffone if she believes a 7 x 7 hot tub, maximum size, would be more appropriate. Ms. Coffone states she believes that this reduction in size would address Councilman Baldwin's concerns and is appropriate for this development.

Chairman Cunningham asks if there are any other questions from Board Members. Chairman Cunningham asks if any member of the public wishes to ask Ms. Coffone any questions about her testimony. Seeing none, Chairman Cunningham asks for a motion to close the public session.

Motion is made by Mr. Clayton and seconded by Mr. Lodato to close the public portion pertaining to Ms. Coffone. All in favor.

Mr. Giunco summarizes the applicant's proposal.

Chairman Cunningham opens up the testimony to the members of the public.

The first member of the public is Marcia Nadell, 152 Sunset Drive, Tinton Falls, NJ. Ms. Nadell testifies that she is against the addition of a hot tub on a back patio primarily due to the noise

factor due to the extreme closeness of the homes. Ms. Nadell also states that she believes she is obligated to wait until midnight to be able to call the police.

Mayor Turning clarifies that if there is ever a problem with noise you do not have to wait until midnight, you may call the police department at any time.

The second member of the public is Larry Nadell, 152 Sunset Drive, Tinton Falls, NJ. He wishes to clarify that he and his wife are all for allowing a variance for a larger patio. However, he is against allowing individual hot tubs on resident's lots due to noise and proximity to neighbors.

The third member of the public is Mr. Joseph Amato, 132 Sunset Drive, Tinton Falls, NJ. Mr. Amato is against the allowance of hot tubs due to issues with privacy, noise and closeness to the neighbors.

Chairman Cunningham asks for a motion to close the public portion.

Chairman Cunningham asks if there are any Board Members that wish to make any comments.

Mr. Giunco is asked by a Board member how Toll has come up with the belief that hot tubs are in demand. Mr. Giunco explains that the sales office of Toll has relayed that buyers are asking for this amenity.

Mr. Giunco goes on to address noise issues and summarizes his client's request.

Mr. Baldwin explains why he is not in favor of granting this application. Several other board members weigh in with their perspective regarding the application including Mr. Natter and Mr. Lodato.

Mr. Lodato asks if there is a projection of how many homes may have hot tubs in the back yard when the development is finished. Mr. Giunco answers that there is no way of knowing this.

Chairman Cunningham asks approximately how many homes are being lived in at this time. Mr. Zelina answers that the answer is approximately fifty (50) homes.

Mr. Giunco verbalizes that based upon the comments received, his clients would like to proceed with the request for a variance for the patio setback only.

Atty. Collins interrupts Mr. Giunco and states that the Board is still deliberating. Right now you have at least three board members that are negative toward the hot tubs, if that trend continues, the vote will probably be broken up between patios and hot tubs as a permitted use.

Mr. Giunco requests permission to address the Board before the vote.

The Board continues to deliberate, the Mayor verbalizes that he believes the properties are too small to accommodate hot tubs.

The Board finished deliberating.

Mr. Giunco asks if the Board would allow Toll Bros. to withdraw at this point, the request for the hot tubs. A lot of issues have been raised here and what Toll would like to do is possibly make another application in the future that addresses all these issues.

Mr. Giunco would like to proceed with the request for setback relief for the patio.

Atty. Collins explains the request to the Board and the Public. The Board now will only deliberate and make a decision as to the patio variance.

Mr. Lodato makes a motion, seconded by Mayor Turning, to approve the application of Toll Bros. with regard to the patio setbacks with conditions.

ROLL CALL:

AYES: Mr. Lodato, Mayor Turning, Mr. Collins, Mr. Clayton, Chairman Cunningham, Councilman Baldwin, Mr. Romanov, Mr. Morris, Mr. Natter

NAYS: None

ABSENT: Ms. Guarino,

INELIGIBLE: Mr. Mirarchi

Chairman Cunningham indicates that there will be a short break before we proceed with the second matter. The break lasts from 9:15 p.m. until 9:30 p.m.

Chairman Cunningham indicates that the second matter this evening is PB 2016-04.

Mr. Giunco states that this is a variance with regard to the designation of models within the Trotter's Pointe development. With regard to the 181 units, there are a number of restrictions in place so the houses do not look too much alike. There cannot be more than three of them in one row. We cannot have more than 50% of any one model sold throughout the development. Toll contends are 43 models.

Toll identifies five criteria pertaining to the models of which three have to be distinct in order to make them not look alike. Toll contends and is prepared to present that each of the 43 models meet three of the five criteria.

Toll Bros. is asking for a variance. As of this date, well over 50% of the units being sold are in the Farmington category. What we are asking is for the Board to consider a variance from the look-alike ordinance

Mr. Giunco requests Mr. O'Neill, the architect for Toll to testify that there are distinctions that meet the ordinance criteria.

Mr. O'Neill testifies that he believes it is important to note that this is a private community.

The concern is that if the variance is not granted then the Farmington will become unable to be sold very shortly because it is getting so popular. Toll contends that there are six models of the Farmington.

Mr. Timothy O'Neill, AIA, is sworn in by Atty. Collins.

Mr. Giunco states that the relevant rules have five categories that require distinction between the models of three of those. Mr. Giunco explains all five categories in detail

Mr. Giunco then further explains that the ordinance states that there shall be more than three consecutive occurrences of the same model. There also cannot be more than 50% of the same model dwelling occurring throughout the development.

Mr. Giunco offers that Mr. O'Neill is an expert in architecture and his credentials are accepted.

Exhibits are marked into evidence as follows:

- A-1 – Colored rendering of various facades – street scape
- A-2 – Streetscape
- A-3 – Photographs
- A-4 – New elevation
- A-5 – Matrix of models and the differences of each one

Mr. O'Neill advises the Board with regard to the designs that he has prepared and are demonstrated in the streetscape and how those five models are distinct from each other referencing the criteria in the ordinance.

Mr. O'Neill discusses the internal controls used by Toll at the point of sale to make the models unique, knowing that two of the models may be next to each other.

Mr. O'Neil discusses A-5, which is the matrix, and that it states the differences between each of the 43 models. He also explains how to interpret the matrix. Mr. O'Neill then explains the differences between the Farmington models, as an example, – materials, window patterns, garage, roof and pitch, porch and features.

Atty. Collins asks Mr. O'Neill if the exhibits that he prepared, reflect what he perceives to be compliance with the spirit and intent of the ordinance regarding look-alike restrictions. Mr. O'Neill answers in the affirmative regarding all 9 collections and all 43 models.

Chairman Cunningham asks if the Board has any questions for Mr. O'Neill.

Mr. Lodato asks about the terms "collections" and "models" and the distinction between the two terms. Mr. Giunco explains that if the board accepts the 43 models to be the variance from the 9 collections so that the collections and the models are distinct and with 43 models

recognized by the board by variance. The second distinction was that there would be more than 50% of any one model in the development so if the model continued to be identified as the collection (Farmington) we would then need relief from the 50% but if we identify the 43 models we don't anticipate that problem at all.

Atty. Collins summarizes that Toll is calling the Farmington a "collection" and the subsets are called "models." You want the board to grant you a variance to say that you cannot exceed the look alike ordinance requirements for those 43 models. That would cover all your variances.

Mr. Giunco states that the percentage issue would be a problem if the collection of Farmington was deemed to be the model because we are very close to 50% now with only 84 or 85 of the units sold.

Atty. Collins states that you, as a Board, should you grant a variance, are not overruling the zoning officer.

A board member brings up that the development is private. Mr. Giunco says it is private and the look-alike ordinance is generally for aesthetics in a public community.

Mr. Neff states that from a strict interpretation of the ordinance, there have been a number of questions as to whether each of these sub-models meet three out of five of the differences or not. Toll feels one way and the Borough has a different point of view.

Mr. Neff is asked by a Board member, as a lay person, if the "models" have enough differences between them to meet the look alike ordinance. Mr. Neff states that in his opinion they do not all meet the differences

Atty. Collins states that the Zoning Officer looks at the ordinance, she makes a fair and honest interpretation. Understand that the Board has the right to grant variances.

Mayor Turning states that to him, he believes they all look different, but he understands the reason for the variance.

Chairman Cunningham asks if there is any public who wishes to comment. Hearing none, the public session is closed.

Mr. Clayton makes a motion to close the public session, seconded by Mr. Collins. All in Favor.

Mayor Turning makes a motion, seconded by Mr. Collins, that we grant the request for a variance.

AYES: Mayor Turning, Mr. Collins, Mr. Clayton, Chairman Cunningham, Councilman Baldwin, Mr. Romanov, Mr. Lodato, Mr. Morris, Mr. Natter

NAYS: None

ABSENT: Ms. Guarino,

**BOROUGH OF TINTON FALLS
PLANNING BOARD**

**REGULAR MEETING
May 25, 2016**

INELIGIBLE: Mr. Mirarchi

*Chairman Cunningham asks if the public would like to speak on any matter. Hearing none.
Chairman Cunningham asks for a motion to close the public session.*

Mr. Clayton makes a motion to close the public session, Mr. Collins seconds the motion. All in Favor.

After the Toll Land applications are finished, Atty. Collins states that we are in receipt of a letter from Mr. Giunco's partner dated May 18, 2016 on the same project regarding the extension of the Amended Preliminary & Final Major Subdivision & Site Plan Approval. Attorney Collins states that the Permit Extension Act expires on June 30, 2016. Attorney Collins asks the Board to extend the date as a matter of course because you do not want to disturb the development.

Mayor Turning offers a motion to grant the Extension of Amended Preliminary & Final Major Subdivision & Site Approval, seconded by Mr. Lodato.

AYES: Mr. Collins, Mr. Clayton, Chairman Cunningham, Mayor Turning, Councilman Baldwin, Mr. Romanov, Mr. Lodato, Mr. Morris, Mr. Natter

NAYS: None

ABSENT: Ms. Guarino,

INELIGIBLE: Mr. Mirarchi

RESOLUTIONS

None

Chairman Cunningham asks if there is anyone in the audience who wishes to address any matter. Hearing none.

Motion to close the public session

Executive Session

Not needed

Chairman Cunningham states that the next meeting is June 8, 2016. Attorney Collins indicates that we will need to memorialize the Resolutions from today's meeting on June 8. Mr. Giunco is advised of same.

ADJOURNMENT –

*Mr. Morris offers a motion to adjourn the meeting at 10:10 p.m., seconded by Mr. Lodato.
All in Favor.*

Respectfully Submitted,
Colleen Connolly
Board Secretary

Approved at a meeting held on:

June 8, 2016