**BOROUGH OF MOUNT ARLINGTON**

**LAND USE BOARD MEETING MINUTES**

**November 13, 2013 -7:00 PM**

### Regular Meeting

# Meeting called to order at 7:02 p.m. “Pledge of Allegiance to the Flag” recited.

This meeting was advertised in the Daily Record and the Roxbury Register.

Roll Call. Present: Keuntje, Driscoll, Hallowich, Loughridge, Simard, Cerasoli, Fostle, van den Hende, Rinaldi, Ondish. Absent: Foley, Wilson, Windish

Motion to Approve Minutes, October 23, 2013. Motion by: Cerasoli, second by Simard. Yes: Keuntje, Driscoll, Hallowich, Loughridge, Simard, Cerasoli, Fostle, van den Hende, Rinaldi. No: None. Abstain: Ondish

Motion to Approve Vouchers, November 13, 2013. Motion by: Cerasoli, second by Simard. Yes: Keuntje, Driscoll, Hallowich, Loughridge, Simard, Cerasoli, Fostle, van den Hende, Rinaldi, Ondish.

Correspondence distributed. Originals on file with secretary.

**Public Hearing:**

**Windemere Associates – Block 38, Lot 4 – 499 Windemere Avenues** – Application for development of a primary single family residence and the reconstruction of the boathouse.

Recues: van den Hende and Mayor

Fostle moves to chair position.

Selvaggi explains that this is a continued public hearing and that it is possible that it could conclude this evening. It is a use variance and only seven members can vote and that is why the mayor stepped down. We are identifying the members that can vote. Rinaldi, Fostle, Cerasoli, Simard, Loughridge, Hallowich, Alternate II, and Driscoll, Alternate III. Eight people are here so you have one extra alternate.

Leo Morris Greb, Esq. representing the applicant asks if the alternates have attended the entire hearing. Selvaggi affirms that they have.

Selvaggi turns the meeting over to Chairperson Fostle.

Greb calls D’Amico, P.E. who was sworn in at the last meeting.

D’Amico begins with Exhibit A-6; Plot Plan marked up (revision date 08-05-13). The Plot Plan has been marked up to include red, blue and green descriptions to answer questions that had been brought up at the last meeting. Plot Plan distributed to the Board and professionals.

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D’Amico begins with the well and where the exiting well is on the property. After research there was never a well. There was water service from the lake and it wasn’t potable. The boathouse had a shower and toilet. There will be a new well. The proposed well and service line are represented in blue on the plot plan. It is not the design plan but it will give you reference to where it will be located. It is in line of other wells and there set backs from adjacent properties, in speaking with the property owner.

A Board member asks D’Amico based on the grade you mentioned how do you propose to getting machinery down to the location?

D’ Amico states that there is a sanitary access easement that can be used for the machinery to drill.

D’Amico continues with a question that was brought up at the last meeting about adding a landscape buffer. The eastern property line between the house on Lot 5 and the proposed dwelling, in green, it’s noted to add landscape screening the house. In the same area, in red, it is noted to add up grades, which will make sure that the water does not go onto the adjoining property. There will be a swale put in. Greb points out that there is not any green where she indicated. The call out is at the bottom of the plan. In that same area is a call out that states “shift dwelling 5 inches”. The proposed dwelling has been shifted 5” to eliminate the side yard variance.

There is an existing pump tank that serviced the boathouse. The pump tank remains and will be reutilized for the new boathouse. If it is found to be deteriorated it will then be replaced.

Selvaggi points out that sanitary sewer is regulated by the County Board of Health and they have ultimate approval. Whatever is proposed may need to changed based on the County approvals.

D’Amico continues pointing out the existing sewer, the existing laterals to the boathouse that will remain. There will be an introduction of the new lateral to the larger house with a pump for that home. Again, this is subject to the County.

Fostle asks the Board if there are any further questions of D’Amico

Board member asks how many feet will the well be from the sanitary sewer line. D’Amico states that she did not design the plan but it will be in accordance of the County standards for separation.

There is discussion about the easement that benefits Lot 4 that runs alongside the west side of the driveway. D’Amico mentioned the easement however it is not marked on the plot plan. The easement is for sanitary and possibly water. If the access is not included then work will need to be done; so that it is.

Caldwell asks if there are any concepts on the landscaping plan. D’Amico states that they have not gotten that far. We know that it will be subject for review.

Watson asks if that the grading that is on the northeast corner of the building will be revised to provide for a swale away from Lot 5 boundary line? D’Amico affirms that it will.

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Board member asks that you mentioned about bringing in heavy equipment down along the west side of the property. D’Amico states that her understanding is that it is a sanitary and access easement. If it is not, it will be negotiated with the homeowner for such.

Joseph Spataro is sworn in and resides in Bridgewater, New Jersey. As part of my testimony I will speak to the easement.

Fostle asks if the easement is deeded to his property. Spataro states, he is not sure who was responsible for the running of the sanitary sewer line. It was already on the property when he purchased it. The documents that are associated with the sanitary sewer line provide for a 10 foot wide easement that goes from the lake to the street; along my property land and my neighbor’s property line. That easement is for access, maintenance and repair of the sanitary sewer line and the property associated. Consequently my neighbor and I have always used it as common access maintenance path. We used it for the improvements that have already been done on the property.

Board member points out from the drawings that there is very little room there along the side.

Spataro states that is not a lot of room, from the side of the retaining wall to the side of the house; approximately 25 feet or 26 feet. 10 feet of that, not the 10 feet closest to the wall, it varies between 3 to 5 feet off the retaining wall.

Board member asks if the neighbor has been using that access as well. Spataro states, yes.

Board member points out that the drop from the driveway leading out to the garage drops right off. Spataro explains that when he purchased the property, when you stepped off the paved surface, your first step was 18 feet down. It was a vertical drop from the roadway. That vertical drop extends across past the garage of the neighboring property. That’s why they have a wooden platform to park their cars. That easement runs down through the properties to the lake and is five feet on each property. From the road there is still five or six foot drop. He explains how they get to access the easement. His neighbor has access from a lower parking area and he has access from the ramp off is driveway. All the existing storm filtration system, the three tanks and stone all went into the property along that route.

There is discussion about the approvals for the well and sanitary sewer, the County has jurisdiction for both.

There is a brief discussion about the waterline and the tree locations and removal of trees.

Watson asks about the fuel requirements for heating of the two buildings, issues that were brought up at the last meeting. Spataro states that the property has always had electrical service. The way the home is designed is basically layered in sections. We will use package electrical units whereby you can regulate heat in different zones of the house without heating the entire house. He mentions propane and oil as other alternatives. Propane is what was used in the boathouse. At this point we will be looking at electrical packages that will be ground mounted and possibly put into the landscaping plan. Thermal was also looked at but it would take 9 wells to do just the boathouse.

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Spataro explains that there was a 2” line that runs along one side of the boathouse and runs up through the property and across the street to the main house that feed the main house. That’s how they drew the water. The water is about 12 feet by the dock and was drawn from the bottom of the lake. The boathouse used water from the lake for the water closets and they had a small filtration system that filtered water that was used for the bar sink and shower. The boathouse has minimal electric service.

The boathouse will use minimal amount of heat. It will be shut down for the off season. The main house will use the electrical units.

Greb asks a question from the last hearing, what provisions will be made for the storage of the boats during the winter. The ordinance prohibits front yard storage.

Exhibit A-7 - Rendering of the main house with side elevations. .

Spataro begins with page 2, side elevation he points out the steep grade from the entry level down to the walk out lower level. There is exactly 100 feet of vertical drop from Windemere Avenue to the surface of the lake’s edge and with a 300 foot length. He continues to discuss the drop to the lake.

Spataro discusses the main house and how he addressed another structure being put onto the property to accommodate storage. The boathouse could accommodate some storage. He can’t make the grade work with the elevation if you want to hold the main elevation at the driveway. There is still too much of a void under the lower level. The solution that we came up with was that the second elevation was to be the bedroom space and living space; it is not a mechanical space. We came up with the idea to have the lower level under it to fill the void and to keep from filling in more property to get the extra storage. Sliding glass doors were added to look like it is part of the building and not a full storage basement. In the same footprint we have been able to accomplish the living area and storage areas.

Fostle asks Spataro to address boat storage.

Exhibit A-8 Reconstruction Victorian Guest – Boat House dated 04-30-07 marked up architechual, labeled sheet A 1.3.1, labeled with the boathouse floor plan. The original plan Exhibit A-5 was not marked up with the floor plan. Spataro continues to discuss the proposed first floor.

He points out the boat slip, 17 feet wide that will include a walkway that is not shown. This will be the boat storage area. The gabled roof is set up to have a lift that will accommodate the boat being lifted out of the water. Horizontal racks will also be available for additional storage; fishing poles, fishing gear, etc. Patio furniture will go into the house. The original building had a garage door. Spataro passes around an old blue print of the original boathouse; marked as Exhibit A-9. He is not sure if this is the original blue print but thinks the boathouse was built close to this. The look is very similar from pictures he had taken of the old boathouse. He discusses the blue print. His proposal is to put on a decorative door similar to the original garage door.

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Fostle asks, from the last meeting, we asked for confirmation of the height of the boathouse, from the turret not including the finial; structural height.

Spataro says it is 31 feet from the first floor elevation from the line on the drawing. We have approximated the roof slope of the turret based on the measurements we took on the other building before it came down as you can see that the spire is much higher. The insurance people are not real pleased with the spire and may not occur. The top of the turret is 31 feet.

Selvaggi states that there was a question on the number of stories and height of the house from the last meeting. This may require another variance.

Spataro says depending on how you define the living space. It is two and a half stories and it is not unlike every other house that’s along that strip, then a basement level which is a walk out basement and certainly has no access to it from all four sides and is not presented as occupied space.

Selvaggi asks what is the height of the ceiling in the basement. Spataro says the unfinished ceiling will probably be eight feet four inches and the finished will be eight foot, if we put a ceiling in it. The only reason to put a ceiling; is to help insulate the area.

Selvaggi asks Spataro if he is familiar with the Borough’s ordinance for height. Spataro said he looked at it and he does not see any reason why this would not conform to it and it is consistent with every other house along that area.

Board member asks if heat will be put in the basement and how will you access the basement.

Spataro states he will not heat it for living. It is for storage, it solves a site problem for other storage. There is a side staircase that comes off the balcony that meets grade and then a walk way is planned. There is a walkway that is on the property that goes from the upper parking area along the property line and goes down to the lake. It is in disrepair. The staircase that goes into the lake, that is part of the retaining wall, has always been there. He points out a sandy beach area at the lake. He also talked about how you use to have to walk down to the lake on a concrete walkway that had no steps and was very steep. Most was eliminated and steps were put in. The steps act as drainage control and to help with the grade

Fostle asks about the drainage and what he means. Spataro explains instead of just doing the swale to help control the drainage we created a staircase higher on the outside edge leaning to the inside to control the water. Spataro further explains that all the water in the flat area and in the parking area is collected in the inlet and all the water running down is on the staircase that is built up and goes into the tree area.

Spataro states that his neighbors are here, Mr. and Mrs. Coviello; he is my landscape contractor and has constructed this, so I can tell you that the water does not go onto his property. Mr. Coviello and I have also been developing a landscaping plan for some time. We are now adjusting the plans based on submission here and approvals here. It will be submitted. All the landscaping that was previously approved has been done and has been approved.

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Fostle asks if he addressed the shadowing of his neighbors properties. Spataro said it was addressed by moving the building to eliminate the variance.

Spataro explains that he is not parallel to either house on either side. The house from the first floor grade; we are only one and a half stories. The house next door to us is a full story and a half. I have not gone out to measure it. The design intent is to be parallel.

Fostle states that at the last meeting you brought up grade differences. Your neighbor is lower; sunken. Watson explains that Lot 5 is actually set down into the property with a retaining wall just adjacent to the property line and based on the height of where the building is and your proposed is estimate that the roof lines would be offset approximately 10 to 14 feet and yours will be higher by that amount. Without the benefit of actually knowing exactly where your roof line is and not having your elevations submitted that determination cannot be done.

Watson points out that the height of the building, Exhibit A-7, is different than what is shown on A-6. She asks will there be dramatic changes with the grading on both sides of the building or is the spot elevation remain as shown on A-6. Spataro states that the renderer does not have the sense of the engineering and did the drawing prior to us finalizing. Watson states for the Board’s benefit to have them realize that where the current grade line is that is where the approximate proposed grade line will remain. The grade line will not be going up as shown here, to meet the garage elevation and that there are actually retaining walls that are going to be located or the structure itself and will be built down to meet the existing grade line. Spataro states that there will be excavated material from the site and that material will not leave the property and will go to either side to soften the impact of the walls and exposed foundation. Watson says given the location of the building to the side yard lot line that material cannot really be located to the east of the structure.

Fostle asks if he had calculated the line of the proposed excavation. Spataro says no. He continues to say that he will keep the material on site. Fostle state you are filling in and changing the grading. Spataro points to Exhibit A-7, the material will be used to soften the edge of the building and will not appear as exactly how the rendering is shown. The intent is to use the material to make the solution better. We are building to the legal side yard line.

Fostle asks at the basement level or mechanical level how deep is your basement, where does it end. Spataro Exhibit A-7 the side elevation. The decorative window with the arch, to the left of that is a line that is the edge of the diagram of the main floor of the house. vertical line that goes down to the grade. That line represents the anticipated depth of the lowest level. Fostle asks how long is that. Spataro states 15 feet. Exhibit A-3 the living level is 28 feet which includes the staircase going to the main level. We will be about half that.

Caldwell and Spataro discuss the grade and if it can be improved by using the excavated material.

Selvaggi states that our definition of basement and stories to make sure that you get the approval you need. Your plans show that this is a two and a half story building. Why do you think it is two and a half and have you looked at our ordinance to make sure it is two and a half stories? Why do you think it complies with the definition of story?

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Spataro begins by pointing out the main living level of the proposed home which contains the garage, the foyer, living room, kitchen, breakfast area; constitutes a full level. I took the loft level over the dining room, kitchen and staircase has less than half a floor on it and it has a very low plate height. Consequently, where it is one and half stories. In order to accommodate the other living area that you would want in a year round house and to accommodate the grade, from this main level we go down one full story to this level which contains two bedrooms, small recreation area and bathroom. It sits under a small box. It doesn’t sit under the entire box just a small part. It is not a full level from the stand point of area. It is a level from the standpoint of ceiling height. Consequently that’s where I come to the two and a half stories; these three drawings represent two and a half stories. The area below that is an unfinished basement and it is only half of the size.

Selvaggi asks to be clear. The Story is defined by ordinance as that portion of the building included between the upper surface of a floor and the upper surface of the floor or roof next above. It is measured as the vertical distance from top to top of two successive tiers of beams or finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

Selvaggi asks if your testimony is consistent with that definition of story. It is important to look at this to make sure you get the relief that is needed.

The basement is defined as that portion of the building that is partly or completely below grade plane.

Selvaggi asks if this is partly or completely below grade. Spataro states the basement is. A Board member asks what percentage is below grade. Spataro states more than 50% below grade. Watson and Fostle disagree.

Selvaggi continues with the definition. A basement shall be considered as a story above grade plane where the finished surface of the floor above the basement is:

1. More than 6 feet above the grade plane; or
2. More than 12 feet above the finished ground level at any point.

Selvaggi states that the testimony was only 8 feet and it’s not more than 12 feet above finished ground level at any point. However, is it more than 6 feet above grade plane?

Watson states that based on the existing floor elevations provided for the basement level on A-6 and grade on the same plan A-6 there is at least if not more than 6 feet in the basement that is above the grade shown.

Spataro says in terms of the area of wall that is enclosed by ground, the only wall exposed is the wall facing the lake and the return of that wall until you get to that grade. It is more than 50 % buried.

Watson states that she agrees with the back of the room is not exposed, however the area that is located on both sides is defiantly more than six feet of exposure. The only reason the back is not exposed is because there is fill in back of it.

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Spataro points out that they are only going back half way. It will be half the depth of the floor above therefore it is less buried and should be treated as any other walk out basements. I know of two others that are the same and they are on either side of me.

Fostle states that those could have been constructed prior to this ordinance. We are trying to define does this constitute more than two and a half story.

Spataro testifies that in his 35 years of being an architect this would not constitute more than a two and a half stories

Caldwell asks what is the third level.

Spataro states a walk out basement.

There is a question about the window above the dormer area.

Spataro points to Exhibit A-7 and goes through the levels.

Selvaggi asks Watson. Our definition of Building Height is the vertical distance from grade plane to the average height of the highest roof surface. Selvaggi asks what is that calculation. She discusses the way she would recommend a building grade profile be provided to put to rest the actual height of the building; where the peak is. You would also know the exactly the exposed surfaces around the entirety of the building as opposed to looking at the elevations provided on the rendering.

Caldwell states that the definition is what brings up the concern about the grading around the building because it is creates the height and if the grade is changed then the height can be changed dramatically.

D’Amico stated we have presented a conservative view of the grading of the lot.

Spataro stated that they took about 10 truck loads of dirt out of the site to build the existing stormwater. When we build the new one, which is a chamber bigger, then we will have more material to improve the grading around the building; the building facing out of the ground will be softened by the grading. This is a better solution for the property.

Selvaggi asks when looking at the right side elevation and we start from the top going down. There are two windows at the very top, what is going to be on that level? Spataro says that that window will be at the loft at the staircase and the other will be the upper window in the living room area. There is no floor area; it’s a loft. Spataro states that out of the 20 feet, 14 feet of that has a floor. Selvaggi asks, the next two windows down (second level down) that floor run’s the entire length of the building. Spataro states it runs the entire 29 feet. Selvaggi states at that point those two levels that run the entire 29 feet you count those as two stories? The upper level is the story and a half and then at the bottom is the basement and that does not count as a story to you.

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Spataro explains that they are going down to accommodate the necessary uses on the property and to accommodate the existing grade.

Selvaggi states that when I look from the lake and someone asks me how many stories is that house I would say it is a four story house. We are trying to say that one and half levels really don’t exist. What we do here and in terms of how we define this, this ordinance went into effect in 2008. Since 2008 the economy went down. We have not had an application that involved this definition. What we do here is critical as to how we calculate for future the story, building height; the basemen. This is binding on everyone else after this application.

Spataro mentions all the issues he has had to deal with to date; stormwater improvements and the grade.

Selvaggi explains that that came down to design. This comes down to an interpretation and an application of what the governing body passed. This ordinance defines what a story is; what is building height; this is what a basement is. This is very important.

Spataro states that he has a need to store things and we have a grading situation that calls to do one of two things. I can either build a big a concrete wall and bring in loads and loads of backfill it and it is a basement or build this concrete enclosure put nice doors and make it as it is part of a well designed house and do the same thing with it. It will not be finished. I do reserve the right to close the ceiling to enclose the insulation. There will not be any heat, water or services in there; it is for storage. I would not have done it except for the grade.

Fostle states that there are unknowns; you have not provided your grading to us. Our Engineer has requested that you provide those finished grades so that we can define the overall height. Spataro states he has provided the finished grade that he feels are the most conservative finished grades that

we would have to provide. We will not be able to provide anything other than that until the house is built. We have said that we are bound by the same ordinance and approval and we will only be able to work to those grades or present a case why those grades would be better and better being that we would be able to raise the grade and keep more of the house in the ground because of the spoils that we have on the site.

Board member reiterates again that there is not a lot room for grading.

Spataro states that he will use the material that he has. There are a lot of places on the property where it can be used. There is quite a bit of vacant land and an area where we need to soften the area going to the lake. The issue is, we have presented grades that we can live with? The answer is yes. The grades meet and conform to the requirements.

Spataro asks that we be given some consideration for the work that has been done. We have delivered a quality product on that site. We created a safe and useable situation on the property.

Greb brings up a question from the last meeting. I want to confirm that you agree to remove the kitchen after the main house is constructed. Spataro agrees.

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Spataro clarifies that he will deed restrict the property so that the boathouse cannot be rented out.

Spataro goes into detail on the material that will be used on the main house and boathouse.

Selvaggi brings up Lascano’s application. We found that his bottom level was in fact a basement, which then does not count as a story and his upper level was a half story. So if you eliminate the bottom level now you only have three potential stories and the upper story is that. So we affirmatively found that a basement was a basement under our definition. This was in 2011. The half story was in fact a half story. The question is if whether the basement that Spataro proposes is a basement. I don’t have a problem with the upper level being a half story the way it has been described. The question is the basement below. The resolution from Lascano does not go into detail on why the Board was convinced that it was a basement. We did not engage in any variance relief for it.

There is discussion about Lascano’s resolution.

Selvaggi reads from the Basement ordinance that a basement shall be considered as a story when the finished surface of the floor area above the basement (we’re not talking about the basement but about the floor area above it) is more than 6 feet above the grade plane. Is it more than 6 feet above the grade plane? Spataro and others state, yes it is.

Or more than 12 feet above the finished ground level at any point.

Selvaggi continues a basement shall be considered a story above grade plane when the finished surface of the floor area above the basement is more than 6 feet above the grade plane. And it is. So a basement shall be considered a story. Under that definition; it would be a story.

Board member states, then it has nothing to do with the use.

Selvaggi states that when the ordinance was done in 2008. We know people come in and say that they will never use it and then the next thing a contractor comes in and starts sheeting rocking.

There is continued discussion about Lascano’s house. Spataro states that he has been through Lacano’s house.

It seems that we all agree that a basement shall be considered as a story above grade plane where the finished surface of the floor above the basement is more than 6 feet above grade plane. This should be considered a story.

There is continued discussion with the professionals and board members on the basement definition and the grade plane.

Watson requests to see the building profile, specifically to verify the grade plane averaging.

Discussion continues about the submissions that are being requested.

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Selvaggi asks a question on the rendering of the upper level to the rear, looking at the right side, is going to run the entire length and that will be a vaulted ceiling. Spataro gives detail to the vaulted ceiling and the dormer window.

Watson states that we need a building grade profile so that we can determine exactly whether or not this is a basement or story and the actual building height.

D’Amico qualifies what is exactly needed. Watson states the she wants to see the building unfolded showing exactly where the grade is in accordance with the profile of the house. That would then illustrate also how you came up with the grade elevation.

Spataro basically the grading around the building and calculate from the average grade to calculate the height.

Selvaggi confirms that is what our expectations are and we will use that measurement going forward. I believe that was consistent with what we asked of Lascano.

The next meeting date is December 11.

Fostle open the meeting to the public for questions.

There being no questions the meeting was closed to the public.

Selvaggi states that the hearing will carry forward without the need for any further notice to the December 11 meeting at 7:00 pm.

Rinaldi asks when is the information to be submitted.

Selvaggi states that it should be in 10 days prior to the meeting which is Wednesday, November 27 and send it directly to CP Engineering and copied the Board Secretary.

Motion to adjourn by Simard, second by Rinaldi. All in favor. Motion approved.

# Meeting adjourned at 8:56 p.m.

Debra-Ann Halik

Secretary to the Land Use Board

Approved: December 11, 2013