**LAYTONSVILLE BOARD OF APPEALS**

**APPROVED MEETING MINUTES**

**December 9, 2019 – 7:30 p.m.**

**Roll Call**

A meeting of the Laytonsville Board of Appeals was called to order by Chair Cecere at 7:45 p.m. Board Members Foster, Ols, and Ryan were present. Member Kerns was absent

**Guests**

Mr. Brian Kline, Applicant; 6720 Olney-Laytonsville Road; Laytonsville, MD

Mr. Jody Kline, Esq.; Counsel for Applicant; 200-B Monroe St., Rockville, MD

Mayor Jim Ruspi, 7111 Brink Road, Laytonsville, MD

Mr. Eric Wenger, 5715 Maple Knoll Drive, Laytonsville, MD

Mr. John Connors and Mrs. Sandra Connors, 6830 Warfield Road, Gaithersburg, MD

Mr. Shaw Seman and Mrs. Petula Alleyne-Seman, 20922 Brooke Knolls Rd., Gaithersburg, MD

**Minutes**

Chair Cecere suggested that the approval of the minutes for the last meeting be postponed until the end of the current meeting.

**Old Business**

None.

**New Business**

None.

**Hearing**

Chair Cecere opened the Hearing and read the procedural policies for all those present and explained that all those wishing to provide testimony would be sworn in.

Chair Cecere provided a summary of the last meeting which discussed the Special Exception for Mr. Brian Kline and requested an update from Mr. Kline regarding the agreed upon actions.

***Special Exception SE-01-19 – Mr. Brian Kline, J.B. Kline Landscaping***

Mr. Brian Kline provided an update regarding his meeting with Mr. and Mrs. Seman indicating that they discussed one issue in particular which he would address later in the year. He informed the Board that he reached out to Mr. Connors but was not able to meet with him due to Mr. Connors’ unavailability.

Mr. Brian Kline provided the additional items which had been requested by the Board at the last meeting:

* Photos of proposed trailer and views of the main complex (Exhibits 4 and 5);
* View from Route 108 of the residence (Exhibit 6).

Mr. Jody Kline, Counsel, reiterated that there was a restriction of the annexation approval that indicated that the land annexed could not be used in a manner different than what was allowed under the Montgomery County Zoning Ordnance as of the date of approval until February 7, 2022. Since the original request did not include an area of approximately one acre (front parcel), used by Mr. Brian Kline as his residence because it was not essential to the operation of his business, the request for a Special Exception was based on that area and only that area.

Mr. Jody Kline also addressed the questions regarding higher density than what was originally envisioned. He quoted from Montgomery County’s Planning and Zoning Ordiance, Division 4, Section 4.1 which deals with building types allowed by zone in the commercial/residential, employment, and industrial zones.

Mr. John Connors requested clarification on several points including timeline for remodeling of residence to be reconfigured as office, function of trailer, number of employees, projected change in density.

Chair Cecere introduced Exhibit 7 which was a letter from Mr. Charles Hendricks. In the letter Mr. Hendricks outlines the following:

* While the firm’s operations, both current and projected, may conform to the town’s C-1 zoning rules, they require a special exception under the Montgomery County R-200 zoning regulations that applied to the property before it was annexed to the Town of Laytonsville. State law requires that no substantial increase in intensity of use be permitted within five years after annexation. Montgomery County on December 7, 2011, authorized Kline Landscaping in its special Exception Case S-2807 to operate on this property subject to 17 enumerated conditions. (Montgomery County Board of Appeals Special Exception Case #S-2807 documentation entered into record as Exhibit 8.)
* Documents in the Montgomery County Board of Appeals file indicate that Kline Landscaping, Inc. proposed many of the limitations in 2011 when they submitted their applications, which include: number of employees, vehicles, and operating hours.
* Concerns from neighbors regarding recurring noise.
* Environmental protection concerns.

While Mr. Henricks was in favor of approval of the special exception, he also “urged the Members to examine closely the 17 conditions the county placed on its special exception approval in 2011, as these conditions limit the level of intensity of use that was permitted at the property on the date of its annexation. These conditions limit the number of employees at the site, the number and type of vehicles used and parked, the hours of clerical and landscape crew operations, the storage of fuel and hazardous materials, and the installation of lighting, and they place other restrictions on the firm designed to avoid environmental contamination or disturbances to neighboring residents.”

Eric Wenger provided a clarification regarding the process and noted the frustration regarding various correspondence. He noted that the current application for a special exception is regarding one additional plot of land but does not change the current use of the property which was previously approved by Montgomery County Board of Appeals.

Chair Cecere asked if there was any opposition to the application.

Mr. John Connors submitted Exhibit 3 (pictures of the view from his property overlooking Kline Landscaping, Inc.), Exhibit 5 (Annexation Agreement), and Annex 7 (Board of Appeals for Montgomery County, Case No. 2-2807).

Mr. Connors shared his concerns regarding the increase in intensity of the property due to the increase of staff, parking, working hours, etc. Mr. Connors indicated that Kline Landscaping was changing the use of the property by installing a trailer and changing a residence to a commercial property. He also asked who in the town scrutinized what property owners do when these types of gradual alterations are incorporated over time, culminating in significant changes to the original, agreed upon landscape.

Mrs. Sandra Connors also provided testimony regarding the changes to the Kline property over the years and the impact these changes have in relation to her property, view, and noise level.

Mr. and Mrs. Connors reiterated their concern regarding the removal of a berm by Mr. Brian Kline and the replacement of said berm with a smaller, less appealing one.

Members Foster and Ols asked questions regarding neighbor relations and the previous steps taken to negotiate possible alternatives over the years. Member Foster also provided insight into the functions of the Board of Appeals in relation to this particular Special Exception application noting that the original request focused on a one-acre piece of land, to be used in the same manner as the rest of the property. He indicated that he did not hear anything to the contrary and urged the neighbors to come together to resolve some of their issues.

Mrs. Sandra Connors reiterated her concern that Kline Landscaping would increase their commercial business.

Chair Cecere listed the issues that would need to be addressed regarding the incorporation of the additional piece of land as it pertains to the Special Exception:

* Increase in the number of employees;
* Timeline for completion of project;
* Increase in number of commercial vehicles as well as administrative vehicles;
* Increased footage for parking lot and material to be used;
* Noise factors (caused by commercial vehicles backing up and tree chippers);
* Removal and storage of hazardous materials, i.e. fertilizer, ice melt bags, pesticides, manure, etc.

Chair Cecere indicated that the approval of the Special Exception needed parameters regarding the above-mentioned issues.

Mr. Judy Klein requested that a decision regarding the Special Exception be made so that Mr. Brian Klein could begin preparations for the inclusion of the one-acre of land.

Member Ryan asked Mr. Brian Klein if he would agree to maintain the previous rules set down in the original Special Exception.

Chair Cecere closed the record informing the Board that they could vote to either accept (with provisions to be included) or deny the request for Special Exception.

A motion was introduced by Member Foster for the Board of Appeals to grant the Special Exception with the condition that parameters be worked out at the next Board of Appeals Meeting. The motion was seconded by Member Ols. Motion passed unanimously.

**Adjourn**

There being no further business, Member Ols made a motion to end the meeting which was seconded by Member Foster. Motion passed unanimously. The meeting adjourned at 9:22 p.m. The next Board meeting will be held on January 14, 2020.

Respectively Submitted,

Nadine Tarwater