Chairman Nargiso brought the regular meeting of the Butler Planning Board for December 20, 2018 to order followed by a Pledge to the Flag. Chairman noted that this meeting is being held in conformance with the Sunshine Law Requirements having been duly advertised and posted at Borough Hall.

**ROLL CALL:**

Present: Donnelly, Roche, Hauck, Brown, Finelli, Grygus, Vath, Nargiso

Absent: Veneziano (excused), Alviene (excused), Fox (excused)

**CORRESPONDENCE**

Letter read from Azrak & Associates dated December 20, 2018

Mr. McArthur sated in the letter that he request that the date for this application be assigned for January 17, 2019. Mr. McArthur understands that the board has not had the reorganization meeting which is scheduled for January 10, 2019. This would be advertised and noticed at his own risk. He hereby holds the Butler Land Use Board harmless from any and all claims which may arise from the giving of the January 17, 2019 date in the event that this date is not ultimately given at the reorganization meeting on January 10, 2019.

Mr. Barbarula stated he discussed this matter with Mr. McArthur and the administration, the biggest problem that any municipality has or board in regard to allowing someone to do this is to have any liability against the board or the municipality, the outline of the letter of Mr. McArthur clearly indicate that the onus would be on them and that is with the acknowledgement of his client and therefore the borough would not be exposed, the only thing that the board would have to do is to make a motion to restore the matter to the calendar because of the time frame that we would have to decide or have to dismiss it without prejudice, a motion would have to be made to restore and then Mr. McArthur would notice at his own peril and it is recommended after the reorganization the board deals with any pending applications and select dates.

Motion to restore matter to the calendar

Motion: Brown

Second: Vath

Voted Aye: Donnelly, Roche, Hauck, Brown, Finelli, Grygus, Vath, Nargiso

Mr. Barbarula stated the matter is being restored to the calendar, if we are in agreement we will decide the date after reorganization and Mr. McArthur will publish as per his letter.

Correspondence received from Darmofalski Engineering dated December 17, 2018 regarding SP18-74 211 Main Street, LLC stating the application is administratively complete and recommend that this application be placed on the next available agenda of the Butler Planning and Zoning Board for public hearing.

Mr. Barbarula stated that this be place on the agenda for after the reorganization meeting, so it can be deemed complete and be given a date.

**CASES TO BE HEARD:**

18-198V 141 Kiel Avenue LLC

141 Kiel Avenue

Block 51 Lot 6.01

Steven Schepis, Esq. appearing on behalf of the applicant

**Presented exhibits**

A1 – color rendering by architect

A2 – Pilar and gate rendering

A3 – Landscape exhibit

A4 – Arborvitae exhibit

A5 – Area exhibit

A6 – Building lighting plan

A-7 Planning photo display

Tomasz Adach, RA testified to the following

* Description of the proposed changes to the site plan that improved the overall design and the reduction number of retaining walls required based on the Zoning Board and the public’s comments
* Patio redesign – Patio surrounding the proposed in ground pool has been arranged into two levels by lowering the section of the patio facing the front yard from the main patio by 2.0’
* Pool equipment area – Following consultation with the homeowners pool installer, it was determined that a 4.0’x8.0’ pool equipment area (previously 5.0’x10.0’) will be sufficient for the proposed size of the pool. Additionally, the pool equipment has been moved closer to the pool to provide a 10.0’ setback from the front and the right property lines.
* Pool backwash not required. Following consultation with the homeowner’s pool installer, it was determined that backwashing the pool filtering system will not be required as replaceable cartridge filters will be used.
* Omission of tiered retaining walls – due to the multi-level patio design, one of the retaining walls has been omitted as it is no longer required. The revised site plan will have a single retaining wall that will be no higher than 2.25’ at any point
* Combined retaining wall – fence height variance – since the retaining wall has been reduced 2.25’ a fence above of 1.75’ will be added on top, thus the combined height will be 4.0’. This eliminates the previously requested combined wall fence height.
* Omission of front gate and masonry piers – the gate and supporting piers have been eliminated, the fence will now enclose the pool area and the backyard only
* Fence specifications – proposed fence materials have been clarified, there will be a proposed black aluminum 50% open, 4.0’ high picket fence facing front yard and 4.0’ high black vinyl chain link fence, min. 11 gauge at side yards and rear
* Drainage at left side of the property – to address the public comments, a new berm and swale have been added to divert all storm water from spilling onto the neighboring property and be directed into a proposed French drain
* Additional seepage pits – Three additional seepage pits locations have been added; two for drainage of driveway and one for drainage of left side yard, complete drainage
* Calculation and seepage pits sizing will be provided contingent on the pool location approval.
* Increase length of parking spaces – The parking area at the north end of the property adjacent to the 141 Kiel Ave property has been increased from 38.0’ to 40.0’
* Site lighting – per the zoning board members request a site lighting layout plan has been added as sheet L1.3 included in the attached revised sheets of the submission drawings Note that this layout depicts a general intent of the design with a specific focus of not spilling illumination on to adjacent properties. Should an engineering lighting plan be required, it will be provided contingent on the pool location approval.

Board Engineer reviewed his report and recommendations

The board questioned the witness on various aspects of his testimony

Public portion opened for questions by motion

Patricia Moxley 147 Kiel Avenue

Questions regarding

* Lighting
* Fencing
* Seepage pits

Kennedy – 49 Western Avenue

Questions regarding

* Seepage pits and water run off
* Screening

Bob Norman – 31 Cascade Way

Questions regarding

* Vehicle site line

Public portion closed by motion

Lisa Phillips – Licensed Professional Planner

Accepted as an expert witness by motion

Oath Given

Ms. Philips testified to the following

* Planning photo exhibit
* Description of property
* Description of pool area
* Description of house and driveway
* Flag lot
* Large lot not allot of frontage which defines it as a flag lot
* Description of surrounding area
* Screening from Kiel Avenue
* Proposed Landscaping
* Guest house
* Positive criteria
* Negative criteria

Board questioned the witness on various aspects of her testimony

Public portion opened by motion for questions

Public portion closed by motion

Christian Miloykovich – property owner

Oath Given

Mr. Miloykovich testified to the following

Location of pool

Location of BB court

Description of landscaping

Public Portion opened by motion for questions

Public Portion closed by motion for questions

Public portion opened by motion for comments

Patricia Moxley – 147 Kiel Avenue

Comments regarding

* Comments regarding survey and property lines
* Landscaping

Bob Norman – 31 Cascade Way

Comments regarding

* Statute regarding parking a vehicle on dirt or gravel driveway

Peter Torellio 45 Western Avenue

Comments regarding

* Comments and concerns regarding drainage
* Future values of surrounding properties

Public portion closed by motion by for comments

Mr. Schepis’ summation

Motion to approve as presented

Motion: Hauck

Second: Grygus

Voted Aye: Hauck, Finelli, Grygus, Vath, Nargiso

Voted Nay: Brown

AP1-18 Johan Kafil

1465 Route 23

Block 54 Lot 1.08 & 1.09

David Dixon of Feeney and Dixon, Esq. appearing on behalf of the applicant

Mr. Dixon stated this started approximately June of 2018 when an application was made by a prospective tenant to occupy a portion of the remaining square footage of the building which contains approximately 9600 square feet. The area in question was going to be occupied to the extent of 1500 square feet and was orally denied a zoning permit by the borough but received no explanation as to the reason for the denial or any written denial. After several attempts, finally in July a zoning permit denial notice from the Zoning Officer which indicated that the application for this retail store was denied and for the reasons stated that this must be approved by the Butler Planning Board.

After several letters to Mr. Budesheim and also borough council a conference was conducted in September with Mr. Barbarula, Mr. Oosdtyk and Mr. Budesheim at which time it was informed that the deviation had something to do with the fact that the building plan was different from what was originally approved. Mr. Oostdyk promised a formal letter outlining what that would be and received no response and application for appeal of the denial of the zoning permit not even knowing what the reasons for the denial were. This past Monday a letter was received from Mr. Budesheim for the first time confirming that the reason for the denial and deviation that he is referring to was that there were 5 units in the retail space in the building whereas 4 were approved. He did not identify which resolution he was referring or what site plan he was referring to.

The reason for the appeal is that there is no provision in the previous resolutions there is anything on the previous site plans that indicate that there was a condition of approval that it would be limited solely to 4 retail units. If you look thru each of the resolutions and each of the site plans that were included and read the resolutions that were approved over the years leading to the most recent site plan application at which as built plans were produced, site plans do not spell out any particular number of units, do the resolutions do not specify any number of units and you would not be permitted to because site plan approval does not concern the architectural elements or the construction code elements within a particular building. You do not have that authority.

One of the other aspects that has to be understood is that site plan approval is not approval like for a use variance, where you can attach any conditions you believe you can in this instance site plan approval has 5 elements that you can review it based upon, your ordinance is based upon 5 elements that you must look at when granting an approval for site plan, they are spelled out in the statute and spelled out in the ordinance. There is no legal basis for the denial in this instance.

We ask that the zoning permit be issued for this application.

Mr. Barbarula asked the date of the denial

Mr. Dixon stated it was July 13

Mr. Barbarula stated the appeal was not filed within 20 days

Mr. Dixon stated he asked for an explanation as to why it was denied, you can’t appeal something when you don’t know why it was denied. He stated he asked immediately upon receipt of the notice of denial which was after an oral denial to the tenant in June. If that was considered an appeal, yes it was done within 20 days.

Mr. Barbarula stated if you did not appeal within 20 days this board has no power to act and the Zoning Officer’s decision stands.

Mr. Dixon stated he requests for information or clarification because that is part of the application that is being submitted today is an interpretation because there was no clarification of the denial. How can you appeal from something when you don’t know what it is?

Mr. Barbarula stated his suggestion would be to carry this and submit the documents.

Mr. Dixon asked that this application be adjourned to the next regular meeting to have the opportunity to submit the additional information that proves that it was requested the information clarifying the appeal with the required time period. He further stated he holds the letter of December 10 from Mr. Budesheim as the actual denial.

Mr. Barbarula stated this will be carried to the reorganization meeting.

**APPROVAL OF VOUCHERS**

Motion: Brown

Second: Finelli

Voted Aye: Donnelly, Roche, Hauck, Brown, Finelli, Grygus, Vath, Nargiso

Voted Nay: None

**APPROVAL OF MINUTES** – October 18, November 8, December 13, 2018

Motion: Donnelly

Second: Vath

Voted Aye: Donnelly, Roche, Hauck, Brown, Finelli, Grygus, Vath, Nargiso

Voted Nay: None

January reorganization meeting will start at 7:00 PM

Motion to adjourn:

Motion: Brown

Second: Donnelly

All Ayes

Chairman – James Nargiso

ATTEST: Secretary – Michael Hauck