

**PLANNING BOARD  
VILLAGE OF RIDGEWOOD**

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<b>IN THE MATTER OF THE</b>	:	<b>MEMORIALIZATION RESOLUTION</b>
<b>APPLICATION OF HOPPER</b>	:	
<b>CONDOMINIUM ASSOCIATION, INC.</b>	:	<b>APPLICATION NO. PB 2020-02</b>
<b>FOR PRELIMINARY AND FINAL</b>	:	
<b>MAJOR SITE PLAN APPROVAL</b>	:	
<b>WITH VARIANCES AND SOIL</b>	:	
<b>MOVEMENT PERMIT RELATING TO</b>	:	
<b>BLOCK 4104, LOT 3, MAILING</b>	:	
<b>ADDRESS OF 41 KIRA LANE</b>	:	

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**WHEREAS, HOPPER CONDOMINIUM ASSOCIATION, INC.,** (hereinafter referred to as “Applicant”), applied on or about May 20, 2020 to the Planning Board of the Village of Ridgewood for Preliminary and Final Major Site Plan Approval with variances pursuant to N.J.S.A. 40:55D- 70(c) and waivers regarding the premises located on Block 4104, Lot 3, commonly known as 41 Kira Lane in the R-1A Zone; and

**WHEREAS,** Applicant applied to the Planning Board for a Major Soil Moving Permit in connection with this Application, in accordance with the requirements of Village Code Chapter 246-9, and

**WHEREAS,** the Applicant provided the Board with correspondence prepared by Conklin Associates regarding Soil Movement calculations dated March 2, 2020: and

**WHEREAS,** the Board considered the permit application in connection with the application for site plan approval and variances; and

**WHEREAS,** public hearings were conducted on October 6, 2020, November 3, 2020, December 15, 2020 and January 5, 2021, upon proper notice certified by Applicant’s proof of service to property owners within a 200-foot radius of the subject property and proof of publication in an official newspaper of the Village; and

**WHEREAS**, during the course of said hearings, Applicant presented expert testimony outlining the site plan application and addressing the variance relief requested; and

**WHEREAS**, during the course of said hearings, Applicant presented testimony as to the details of the soil movement, specifically related to the calculation of the amount of soil;

**WHEREAS**, all application materials, including all plans and reports submitted by or on behalf of Applicant, are a part of the official record of the public hearing on the application; and

**WHEREAS**, Applicant was represented by David L. Rutherford, Esq., 141 Dayton Street, P.O. Box 5108, Ridgewood, New Jersey 07451-5108; and

**WHEREAS**, the Planning Board was represented by Christopher E. Martin, Esq. at the hearings on this Application; and

**WHEREAS**, the Village Engineer, Christopher P. Rutishauser, P.E., was present at the hearings; and

**WHEREAS**, the Board Planner, MaryAnne Bucci-Carter, PP, AICP, was present at the hearings; and

**WHEREAS**, interdepartmental communications and advisory reports of municipal departments and agencies were received and considered as follows:

Review letters of the Board's Planner, MaryAnn Bucci-Carter, PP, AICP of CME Associates, 1460 Route 9 South, Howell, New Jersey 07731, dated October 5, 2020 and revised November 16, 2020.

Preliminary Review of Christopher P. Rutishauser, P.E., Village Engineer, dated September 29, 2020.

**WHEREAS**, the following exhibits were admitted into evidence on behalf of Applicant:

Exhibit A-1- Plan Set, Last revised August 10, 2020

Exhibit A-2- 28 Photographs

Exhibit A-3- Photographs 29 through 51

Exhibit A-52- Photograph

Exhibit A-53- Photograph

Exhibit A-54- Photograph

Exhibit A-55- Photograph

Exhibit A-56- Photograph

Exhibit A-57- Photograph

**BOARD EXHIBITS**

Exhibit B-1- Report of Maryann Bucci-Carter, P.P., dated 6/25/20

Exhibit B-2- Report of Christopher J. Rutishauser, P.E., dated September 29, 2020

**WHEREAS**, testimony in support of the application was given by Tibor Latincsis, P.E., P.P.; Daniel O'Keefe; Marylou Coviello, and James LeRose; and

**WHEREAS**, the Village Engineer, Christopher Rutishauser, P.E., and Board Planner, MaryAnn Bucci-Carter, PP, AICP, provided testimony with regard to the application;

**WHEREAS**, the matter was opened to the public and the following persons commented on the Application:

Susan Luciano, 15 West Ridgewood Avenue

Robert and Eleanor Horbatt, 388 Cedar Lane

Thomas Olsen, 380 Cedar Avenue

Roman Shapiro, 366 Cedar Avenue

Alex and Kimberly Wong, 272 S. Irving Street

Alan Ruby, 47 Kira Lane

Shawn O'Brien, 292 South Irving Street

**WHEREAS**, the Board did consider the testimony and evidence presented, the following are the findings of fact of the Board:

**The Application**

1. The application submitted by Applicant was complete and jurisdiction before the Board was proper.

2. The Applicant is the owner of the property located at 41 Kira Lane, Block 4104, Lot 3 (the “Property”) on 10.3 acres of property in the R-1A Zone.

3. According to the application, the Hopper Ridge Condominium development (“Hopper Ridge”) consists of 36 townhomes in clusters of 4 units. The property is improved with related site improvements, including walkways, driveways, roadways, a swimming pool and retaining walls. The units are located on dated landscape tie retaining walls, which walls are the subject of this application.

4. The property has 3 on-stream detention basins through which flow a headwater tributary of the Ho-Ho-Kus Brook. The townhomes are clustered around and above the detention ponds on the dated landscape tie crib walls. The walls are located in the center of the property and are hidden from view by the ravine-like topography and the townhouses.

5. Applicant is seeking preliminary and final major site plan approval to construct a split faced textured geogrid reinforced Keystone Compact segmental modular concrete block wall, or a wall of equal quality and duration, in front of three existing crib walls that are at the end of their useful life. The existing crib walls will remain and be supplemented by the new wall in front of the existing walls.

6. Applicant seeks the following variances from the Village of Ridgewood Zoning Ordinance:

- Section 190-124(F)(3)(c)(3) regarding wall height, whereas a maximum height of 12 feet is permitted, and Applicant proposes walls exceeding 12 feet in height
- Section 190-124(H) which prohibits this type of development in a riparian zone

7. As the replacement of the walls necessitates a disturbance of the riparian zone, Applicant shall file an application to the NJDEP Division of Land Resource Protection (DLRP) for development within a riparian zone. Applicant contends the NJDEP preempts the Village Code. Applicant will stipulate that any approval by the Planning Board will be conditioned on NJDEP approval.

8. Applicant originally also sought approval for dredging of the ponds on site which portion of the application was withdrawn by Applicant during the course of the hearings.

### **Testimony**

#### **October 6, 2020 Meeting**

9. Based upon the sworn and qualified testimony of Tibor Latincsics, P.E., P.P., of Conklin Associates, 29 Church Street, Ramsey, New Jersey, who was qualified as both a Professional Engineer and Professional Planner, the Board made the following findings of fact:

a. Mr. Latincsics generally described the site which is located on Lot 3, Block 4104, consisting of 10.3 acres at the end of Durar Avenue. The original preliminary approval for the construction of the Hopper Ridge Condominium development was granted on February 15, 1983 and the final site plan was approved in 1990. The plans prepared by Mr. Latincsics were marked as Exhibit A-1 and the photos taken by Mr. Latincsics were marked as Exhibit A-2. Mr. Latincsics testified generally with regard to the site plan and the photos of the property, the

existing and proposed wall locations, the detention ponds and surrounding area. Mr. Latincics testified with regard to the soil movement, stockpile areas, access road and landscape plan.

b. The site contains three on-stream detention basins through which a tributary of the Ho-Ho-Kus Brook flows: the lower detention pond, the middle detention pond and the upper detention pond. The detention basins are located generally in the center of the site. The townhouses are clustered around the detention basin. There are nine buildings containing 36 townhouses in clusters of four. Each building contains 4 units. The townhouses are perched above the detention ponds and held up by landscape tie-crib retaining walls. Mr. Latincics stated that landscape ties are not typically used for walls since the mid-1980's.

c. The retaining wall is a crib wall-similar to a Lincoln log retaining wall, backfilled with crushed stone which extends 11 feet beyond the face of the wall. The walls are past their useful life, in some cases even rotting, buckling and separating, and must be replaced.

d. Mr. Latincics testified with regard to the numerous challenges of the project including: the existence of an asbestos concrete sewer pipe that carries sewage from the various units to the main trunk line which then connects to the Ridgewood line that runs through the middle of the site. Working around the pond and not damaging the pipe is a major challenge. In addition, the wall systems extend 11 feet beyond the face of the wall, in which are the sewer lines. In some cases, the individual patios or decks overlap the wall system. It is very difficult to access the area in between the townhouses and the ponds.

e. A separate part of the project is the dredging of the ponds which is more of a "want" than a "need." The construction of the walls will require some lowering of the ponds, erosion control measures, access, and restoration. Mr. Latincics stated that the area is hidden by the natural ravine topography and is only visible to one neighbor on Cedar Avenue.

f. Mr. Latincsics described the Keystone wall proposed and the benefits of using this type of wall. The proposed new wall will be made of concrete modular block and will take approximately 3 months to complete under good weather conditions. It is a Keystone wall system which is a commonly used wall system and will last 75-100 years.

g. Mr. Latincsics testified as to the soil movement application and the expected truckloads. Applicant is seeking permit approval for 1,950 cubic yards of soil movement, and block and crushed stone fill and select fill will be imported. The total will be 5,876 cubic yards, 326 truckloads.

h. Applicant has provided a tree replacement schedule as 16 trees will be removed and will be replaced with 26 trees.

i. In summary, through this application, Applicant is seeking the following relief:

1. amended site plan approval
2. variance for wall height
3. Major Soil Movement application
4. Waiver/variance of construction in riparian zone which is prohibited
5. DEP has primary jurisdiction on enforcement of riparian requirements
6. Waiver of site plan checklist items
7. Any other relief requirement from the Board as is deemed necessary

## **November 3, 2020 Meeting**

### **Testimony**

10. Tibor Latincsics, P.E., P.P., of Conklin Associates, 29 Church Street, Ramsey, New Jersey, remains sworn and qualified as both a Professional Engineer and Professional Planner, testified as follows:

a. Mr. Latincsics testified that the Keystone walls are a necessity that must be done now, and the dredging is a “want” not a need and may be done at a later time.

b. Mr. Latincsics testified with regard to Exhibit A-3, which are photographs 29 through 51, dated September 15, 2020. The photographs show the dated condition of the walls and the access to the site, as well as the sequencing of construction and areas in neighborhood that allow for site access.

c. He testified with regard to Exhibit A-1, Sheet 3 of 8, which depicts the ponds where the water must be lowered to commence wall construction. The target time period for construction of the project is 3 months, assuming the weather is good, the Board recognizing that the inability of the applicant to use the Cedar Ave. access point may delay the project . The Applicant will comply with the Village Ordinance regarding the hours during which construction will take place. Trucks will be normal size tandem dump trucks. The target start date is early spring. The access road will be upgraded for construction by the Homeowners Association (HOA).

d. It is anticipated that all three walls may be worked on at the same time by three crews. Access will be from Cedar Avenue through easements. Mr. Latincsics testified with regard to the photographs which depict access from Cedar Avenue with a curb cut to an emergency access driveway (Photo # 40); emergency access driveway shows (Photos #42 and



46); the trees that will be removed for construction and stockpile materials, soil, block and crushed stone (Photo #50). Sheet 4 of 8 of the Plans depicts areas of site and location of the stockpile. The culvert will be repaired first to mitigate potential flooding during construction (Photo #35)

e. It was agreed that Applicant must submit a landscape plan, as required by the Board Planner and that bamboo in the area will be removed.

f. Mr. Latincsics explained that to construct the walls safely, the minimum distance from the old wall to the new wall is 12 feet. The 12-foot area will be backfilled and covered with vegetation and a split-rail fence at the top for safety purposes. The existing wall will not be visible as it will be covered by backfill. The 12-foot sloped area is absolutely not for homeowner use.

g. Applicant stipulates to comply with Village Ordinances as to times of construction and soil movement routes and street cleaning.

h. North pond dredging will not be done at taxpayer cost; even though the Village runoff water does have flow amounts into the north pond.

i. Soil will be inspected for safety issues by a soil engineer addressing the backfill and construction. Johnson Soils Co. of Glen Rock submitted a Geotechnical Report dated January 8, 2020 and will be on-site for construction.

## **December 1, 2020 Meeting**

### **Testimony**

11. Tibor Latincsics, P.E., P.P., of Conklin Associates, 29 Church Street, Ramsey, New Jersey, remains sworn and qualified as both a professional engineer and professional planner, testified as follows:

a. Board members had questions regarding prior documents pertaining to stability issues with the wood retaining wall and requested that the Applicant provide a letter regarding that issue.

b. Board members asked about the access route and if there was a possibility that a temporary access route could be configured to allow access to the staging area. Mr. Latincics stated there are alternatives, but they are not readily available. Mr. Latincics stated that it is the Applicant's intent to use the easement on Cedar Avenue which has been used for decades for other purposes. There were numerous questions regarding the number and size of vehicles accessing via Durar and Cedar Ave.

12. Christopher Rutishauser, P.E., Village Engineer, was sworn and qualified as a professional engineer, and testified as follows:

a. The Village Engineer asked Mr. Latincics about the types and sizes of dump trucks being used and the turning radius of the trucks. Mr. Latincics stated that larger trucks can be used at the site (72,000 pounds gross vehicle weight) Mr. Rutishauser asked if the access roadway of off Hopper Avenue could be used for circular motion access and Mr. Latincics said it would be inefficient. Applicant's position is that it is preferable to utilize the access that is in place and readily available which is to come in at the south end of Daniel Court on a temporary construction road along the south side of the building. The material will come in via the south side, behind a wall, and exit on the north side of the cluster of 4 units. This will disturb existing private landscaping, but that will be restored. To the greatest extent possible, Applicant is configuring the plans so that there is a circular motion for all phases of construction which is more efficient and will avoid the trucks having to back up. This would

reduce the need for commercial vehicle warning devices (backup beepers). At the south end of the site, the primary access will be via Durar Avenue, not Hopper Avenue. Approximately 30% of the vehicles will use Durar Avenue.

- b. Mr. Rutishauser explained the types of trucks that would be used: tandem and tri-axle which are two classes of dump trucks. Mr. Latincsics was asked about turning radius of the trucks. Mr. Rutishauser testified that these trucks are most efficient for transporting the material and the truck loads being discussed are commonly seen in the Village.
- c. Applicant agreed that there will be no more than 1-2 trucks waiting on the road at the same time.

13. Maryann Bucci-Carter, P.P., Village Planner, was sworn and asked that a landscape plan be provided by a licensed landscape architect.

**Questions from the public for Mr. Latincsics:**

1. Robert and Eleanor Horbatt, 388 Cedar Avenue:

(a) The Horbatts had a follow up question regarding wall construction- (a) 39 truckloads of stone; (2) 121 trucks of select fill; (3) 11 Block trucks; 624 feet in length; 5,878 sq.ft; 12 feet between existing wall and new wall.

(b) The Horbatts asked if Mr. Latincsics was aware that Cedar Avenue was a vacated paper street which was not meant to be accessed for anything other than emergency purposes as per a deed of easement. Mr. Horbatt was concerned about the validity of the easement relating to his property for ingress/egress to construction. He also expressed concern that the large tree on Cedar Avenue would cause the trucks to go on his property and asked if the stream bed could be

used for access as it is 99% dry. He also asked if the sewer line could withstand the weight of the trucks. There was discussion regarding the deed of easement, which will be provided to the Board attorney. Mr. Latincsics responded that the sewer line was designed for a public roadway, the weight on the sewer line is satisfactory. If there were an issue, the applicant would be responsible to repair it. Mr. Horbatt asked Mr. Latincsics to consider an alternate access route.

(c) Mr. Horbatt asked about the backfill for the space between the old wall and the new wall and the number of loads of stone. Mr. Latincsics stated it would need 1,993 cubic yards, or 110 truckloads. Mr. Latincsics showed pictures of a similar project in Saddle River.

2. Thomas Olsen, 380 Cedar Avenue, asked if equipment would be stored on Cedar Avenue and if the newly paved road would be damaged. Mr. Latincsics stated there would be no overnight storage of vehicles and the vehicles would be roadway legal. Mr. Olsen asked about the noise of the pumps when draining the ponds, Mr. Latincsics said electric pumps would be used. Mr. Olsen asked about dredging the ponds, which Mr. Latincsics said was no longer part of the project. There may be some limited stripping of the pond muck in the area of the wall construction, which will be stockpiled in the primary stockpile area. Board members asked for more information in regard to noise levels and possible mitigation for the noise of the generators.

3. Roman Shapiro, 366 Cedar Avenue, asked about the expense of using an access route other than Cedar Avenue and about the number of trucks coming through daily and hours of operation.

4. Kimberly Wong, 272 South Irving Street, asked what construction company was being used. Mr. Rutherford said no contractor has been chosen yet. Mr. Rutherford and the

Board attorney explained that a developer's agreement would be drafted to assure that the project is done properly and safely.

5. Alex Wong, 272 South Irving Street, asked about the length of time the project would take and the time of year it would be done. Mr. Latincsics said the target is 3 months with a start in early spring. Mr. Wong was concerned about pollution from the trucks and dust. Mr. Latincsics explained that the soil is kept moistened for dust control.

Board members followed up with questions about the easement on Mr. Horbatt's property. Board members had concerns about the landscaping and concerns about emergent wetlands if the ponds are not dredged and the possibility of mosquito control issues.

14. Tibor Latincsics, P.E., P.P., continued his sworn testimony as follows:

- a. Applicant has withdrawn the dredging portion of the application as it has been determined that part of the project will be too costly. Accordingly, there will be no exporting of pond soil from the site because there will be no dredging. There will be 11 truckloads of concrete block; 39 truckloads of crushed stone; 121 trucks for select fill and topsoil. The total is 171 truckloads over 63 days (presuming a 3-month construction period), including half-days on Saturdays. 171 fully loaded trucks will be needed to deliver the materials. Applicant anticipates 5-8 trucks per day. 12 truckloads may be needed to export the nominal dredging needed but the goal is to try to keep it on site.
- b. The crews will be working on approximately 100 square feet of wall per day, whereas normally there would be approximately 500 square feet completed per day. This is due to the topographical conditions.

- c. Applicant agreed to comply with the Village Ordinance regarding hours of construction. Pursuant to Ordinance § 222-1, from Monday to Friday, between the hours of 7:30 a.m. and 6:00 p.m.; and on Saturday, between the hours of 9:00 a.m. and 1:00 p.m. Such operation is prohibited entirely on Sundays and on all federal holidays.
- d. The Emergency Access Road from Cedar Avenue is 9-12 feet wide and the easement is 15' wide. Some of the travel will be outside of easement and may be on Mr. Horbatt's property. The area will be returned to its original condition.
- e. Applicant wants the DEP to be the lead agency in Riparian Areas. The landscape architect would need to follow the DEP and local standards as applicable to the specific areas of the project.
- f. The upper pond surface area will be expanded due to the loss of areas of the lower pond because of the fill needed in pond to construct wall. The DEP requires surface areas not to be minimized on property, therefore if the pond surface is increased, there is no need to increase depth.

**January 5, 2021 Meeting**

**Testimony**

15. Testimony was heard from several Hopper Ridge residents:

- i. Daniel O'Keefe, 19 Daniel Court, (Hopper Ridge resident) was sworn. Mr. O'Keefe testified that the proposed project would be an aesthetic improvement and the new walls would improve the value of Hopper Ridge and the surrounding area. In addition, he testified that the current walls are unsafe, have significantly deteriorated in the past few months and he is

concerned that it may result in catastrophic failure. Mr. O’Keefe stated that he believed it would be more expensive to make an emergency replacement of the wall rather than a planned construction.

Board members asked Mr. O’Keefe how the walls were unsafe. Mr. O’Keefe described the deterioration of the walls. Board members asked how the property value would be increased. Mr. O’Keefe stated that it was something he felt strongly about.

ii. Ronald Rogers, 25 Daniel Court (Hopper Ridge resident) was sworn and testified as to the age of the existing walls and the knowledge that the existing walls have passed their expected life span. Mr. Rogers stated that if the replacement is not done now, it would be an emergency repair in the near future, which will impact the neighborhood, as well the Hopper Ridge residents. He is also concerned about the sewer lines in the area of the walls which may be damaged by catastrophic failure of the walls.

Board members asked if any repairs to the wall had been undertaken in the past. Mr. Rogers did not know if repairs had been done. Board members asked if it would be possible to repair and not replace.

iii. Marylou Coviello, 9 Durar Avenue, (Hopper Ridge resident) was sworn and testified that she was the “wall liaison” to the Board since approximately 2015 and explained the process of getting to this point of the project. She has been a resident of Hopper Ridge since 2004. Ms. Coviello stated that on-site inspections were done by Mr. Latincsics in approximately 2015 and the project has been planned for years. It is no longer a discretionary project-replacing the walls is a necessity. The Board’s research indicates that the walls have a 30-year life span which has been exceeded. The Board has a

fiduciary responsibility to bring this application now and failure to do so would mean a lapse in fiduciary responsibility.

Board members asked if any other opinions had been sought. Ms. Coviello said that other opinions were sought in years prior based only on theoretical work.

- iv. James LeRose, 26 Daniel Court, was sworn and testified as to the frustration he felt when he looked into the project of replacing the wall and how long it should last and what would happen if it became an emergency. Mr. LeRose stated that he heads the insurance committee of the HOA and that a claim could be denied if this issue is not dealt with.

Board members asked about repairing instead of replacing the walls. Mr. LeRose said they need to think years ahead and the proposed walls should last 100 years. Board members asked if more bids had been sought for the project. Mr. Rutherford said a number of bids would be sought for the work.

Mr. Martin clarified the issues the Board members should be considering.

16. Maryann Bucci-Carter, P.P., Village Planner, was sworn and testified as follows:

- a. Ms. Bucci-Carter testified as to the report she submitted, which was marked as Exhibit B-1. Ms. Bucci-Carter summarized the 2 variances being requested:
  - (1) From Section 190-124 F(3)(c)(3)- Maximum wall height of 12 feet is permitted, and the proposed wall may exceed that by 1 to 2 feet.
  - (2) From Section 190-120H- regulating development in the riparian zone which prohibits this type of development in the riparian zone.
- b. Ms. Bucci-Carter stated that applicant is seeking a c (2) variance and the variances are minor. The Planner opined that Applicant satisfied the c (2) criteria.



- c. Ms. Bucci-Carter requested that a landscape architect should submit a design plan for proposed landscaping to be reviewed and approved by the Village professionals.
- d. The remaining issues are deliveries, timing and routes for construction which should be reviewed and approved.

Mr. Rutherford said the applicant will work with the Village and with NJDEP in regard to landscaping. Board members asked about the landscaping in relation to water issues.

17. Christopher Rutishauser, P.E., Village Engineer, was sworn and qualified, and stipulated to as a professional engineer, testified as follows:

- a. Mr. Rutishauser commented that the landscaping would need to be selected and designed carefully as it could cause minor disruption over a period of time. Mr. Rutishauser stated that the vegetation planted should have the least amount of impact on the wall. Any landscaping proposed would need to be approved by Mr. Latincsics and the Village Engineering Department. Mr. Rutherford said they would submit a landscape plan showing types of vegetation, size and location.
- b. Mr. Rutishauser testified generally as to the report he submitted dated September 29, 2020, which was marked as Exhibit Bd-2. Mr. Rutishauser stated that the existing walls are in a state of gradual failure and that catastrophic failure would affect the sewer.
- c. The proposed wall system is appropriate and has a longer service life. He opined that it is preferable to construct the new walls in front of the existing walls as it will limit potential sewer line damage. Mr. Rutishauser recommended that Village staff engineer be on site periodically to assure stability, etc.

- d. Mr. Rutishauser stated the nature of what is being proposed will require a soil moving permit. The Board will make recommendations to the Village, and the Village ultimately has the authority to grant the permit.
- e. Board members asked about issues with the ponds as they are not being dredged. Mr. Rutishauser said the ponds should be dredged every 20-25 years and depending on the weather, not dredging could cause the pond to become a bog. Board members asked what the pond depth should be. Mr. Rutishauser said he would defer to NJDEP regarding that issue. Board members asked about the possibility of the ponds becoming stagnant and the issues associated with that such as mosquitoes. Mr. Rutishauser said that the ponds are on a stream and circulation will happen unless there are draught conditions. An air pump could be used to ensure that the area around the wall is not stagnant if the pond is not deep enough, at a cost of several thousand dollars.

18. Public questions:

- i. Robert Horbatt, 388 Cedar Avenue, asked what would happen if sewer line was breached. Mr. Rutishauser said the sewer line would be repaired and any sewage cleaned up.

19. Public testimony:

- i. Susan Luciano, Weichert Realty Office, 15 W. Ridgewood Avenue, testified regarding the correlation between HOA fees and home values, and that property values decrease as HOA dues increase.

There were no questions for Ms. Luciano.

20. Mr. Rutherford called Tibor Latincsics for rebuttal. Mr. Latincsics, previously sworn, testified as follows:

- a. The life of the existing wall made of landscape ties is 30 years, and the design life of the proposed concrete block walls is 75-100 years. The existing upper wall is of lower quality than the lower wall. There has been a greater acceleration of wall deterioration in the past year.
- b. Mr. Latincsics said that the HOA solicited several engineer's opinions before moving forward. The HOA sent plans to 7 construction firms to be reviewed, 4 of which are recommended by the manufacturer. Both Mr. Latincsics' firm, Conklin Associates, and Johnson Soils, will be reviewing the construction of the walls as it progresses.
- c. Mr. Latincsics stated that the surface area of the pond is being expanded, not the depth, and that there is a fountain in each of the ponds. A 3-foot excavation for pond expansion is planned, subject to DEP requirements.
- d. Mr. Latincsics made a distinction between landscaping and the riparian zone, stating that the landscaping is decorative and creates a buffer, whereas riparian zone vegetation is not ornamental. Native, indigenous vegetation is required in riparian zones pursuant to DEP requirements and Applicant is required to comply with the DEP standards and regulations. Mr. Latincsics believes the DEP should be the lead agency. The Board attorney commented that any other requirements in the Village Ordinance as to landscaping can be followed to the extent they are in addition to and not inconsistent with the DEP requirements.

Board members asked about the turning radius for the trucks. Mr. Latincics explained the route the trucks will take in and out of the project.

21. Questions from the public:

1. Robert Horbatt, 388 Cedar Avenue, asked how far onto his property the trucks would need to go. Mr. Latincics stated that it could be 8 feet.

Board members asked about noise levels. Mr. Rutherford said they would abide by New Jersey noise standards.

2. Alan Ruby, 47 Kira Lane, asked about the proposed length of the project and clarified that dredging the pond was removed from the project. Mr. Latincics said the project should take 3 months.

22. Public comment:

- i. Robert Horbatt, 388 Cedar Avenue, commented on the encroachment onto his property, referring to an easement deed that says 'no nuisance' use and that the easement is not designed for this kind of usage. He believes the project can be done without using the easement. An encroachment of 8 feet into his property is only 12 feet from his house. He will now be seeking to install a fence on his property. Mr. Horbatt expressed concern regarding dirt, dust and unsafe conditions.
- ii. Shawn O'Brien, 292 South Irving Street, commented that he had never seen the easement used and that established streets should be used for ingress and egress.
- iii. Alan Ruby, 47 Kira Lane, said he was concerned about the proposal and that the plans were incomplete. Mr. Ruby said the property was designed to have clear views of the ponds, which will now be impeded by fences. Mr. Ruby was concerned about the length of time the project will take and about the pond expansion which may

result in an issue with mosquitos, the decreased tree canopy, and the overall environmental degradation, including loss of large trees.

Applicant's counsel stated that the increase in the depth of the pond can be made a condition of approval. He also stated that access from Cedar Street is critical and that it will cost an additional \$150,000 if Cedar Street and the easements are not used for access. It is the position of Applicant's counsel that the access issues are between the Applicant and the property owners affected, and that the Board does not have the jurisdiction to adjudicate private property rights.

### **STIPULATIONS BY APPLICANT**

1. Applicant stipulates and agrees to submit a landscape plan, which is not required to be prepared by a landscape architect, to the Village and its professionals and the DEP for review and approval.
2. Applicant stipulates and agrees that the access roads on the property will be upgraded for construction by the Homeowners Association.
3. Applicant stipulates and agrees that it will comply with all applicable Village Ordinances as to times of construction, soil movement, truck routes and street cleaning.
4. Applicant stipulates and agrees that no more than one to two trucks will be permitted to wait to be unloaded on the Village-owned access roads at the same time.
5. Applicant stipulates and agrees that construction crew will not park their personal vehicles on the Village roadways and that there will be no overnight parking of vehicles.

## CONCLUSIONS OF LAW

**WHEREAS**, the Board, after having reviewed the application, considered the testimony and evidence presented, and considered the impact of the development application on the Village of Ridgewood and its residents, and after careful deliberation, having determined that the application for development is in furtherance of the Municipal Land Use Law, the Board concludes that good cause has been shown to grant the applicant Preliminary and Final Major Site Plan approval, pursuant to the authority of N.J.S.A. 40:5D-46 and N.J.S.A. 40:55D-50;

**WHEREAS**, the Board has determined, based on the testimony and evidence presented as set forth in the Board's Findings of Fact which are incorporated herein, that the variances applied for as to height of the walls and development in the riparian zone may be granted in accordance with N.J.S.A. 40:55-70(c)(2) because the variance as to wall height is de minimis and the construction of the walls is a necessity in the riparian zone. The Board finds that strict application of the ordinance would result in peculiar and exceptional practical difficulties. The Board further finds that the applicant satisfied the criteria for the requested variance relief under N.J.S.A. 40:55-70(c)(2) as the purpose of the municipal land use law would be advanced by deviation from the zoning ordinance and the benefits of that deviation would substantially outweigh any detriment resulting from the grant of the variances; and

**WHEREAS**, the Board has also determined, based on the testimony and evidence presented as set forth in the Board's Findings of Fact which are incorporated herein, that the variances can be granted without substantial detriment to the public good or substantial impairment to the intent and purpose of the Village's Zone Plan and Zoning Ordinances; and

**WHEREAS**, the Board has determined, based upon the testimony presented by Applicant, recommends that a Major Soil Moving Permit in accordance with the requirements of

Village Code Chapter 246-9 be issued by the Village Council with the recommendations set forth below.

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Board of the Village of Ridgewood, that based upon the testimony and evidence presented, the application of Hopper Ridge Condominium Association, Inc. for Preliminary and Major Site Plan Approval with Variances from Section 190-124 F (3) c (3) of the Village Code which limits retaining walls to 12'; and from Section 190-120H of the Village Code which regulates development in the Riparian Zone, and for a Major Soil Movement Permit, with regard to the property commonly known as 41 Kira Lane, and being designated as Block 4104, Lot 3 on the Tax Map of the Village of Ridgewood be and is hereby **GRANTED**, subject to the following terms and conditions:

A. The Applicant shall abide by all of the Stipulations set forth in the findings of fact.

B. The preliminary and final major site plan is approved for the construction of the Keystone Geogrid walls or their equal on the site and the variances are approved for height of walls and development in the riparian zone pursuant to N.J.S.A. 40:55d-70 (c)(2) on the express condition that the pond depth is maintained at its current level or deeper, based upon the final site plans submitted into evidence by the Applicant. These plans shall be further revised in accordance with this Resolution.

C. The application for a Major Soil Moving Permit pursuant to Village Code Chapter 246-9 should be granted with the following recommendations to the Village Mayor and Council:

1. Applicant should not be permitted to utilize Cedar Avenue to access the site.
2. No more than one to two trucks will be permitted to wait to be unloaded on the Village-owned access roads at the same time.

3. Prior to the commencement of any soil operations, Applicant agrees to develop trucking routes for the hauling of soil to the site which shall be submitted to the Village for review and approval. The review will include the Village's Police Department and Engineering Division.

4. Applicant agrees to comply with any and all conditions and requirements rendered by the Village Engineer and/or Board Engineer with regard to the Soil Movement, including but not limited to truck routes and hours of operation.

5. Applicant agrees to comply with Village Police Department Traffic Control Officers in order to provide a safe means for moving the soil as deemed required by the Village Engineer or his designees.

6. The Applicant shall comply with any and all other applicable Village regulations, Ordinances and directives pertaining to soil movement.

#### **CONDITIONS SPECIFIC TO THIS APPLICATION**

1. Applicant shall ensure that the north upper pond must be maintained at its current depth or deeper.
2. Applicant shall enter into an appropriate Developer's Agreement with the Village and Planning Board and shall post all necessary fees, escrows and performance guarantees and payment for off-site improvements in the future. The Developer's Agreement will be drawn by the Applicant and submitted to the Village and Planning Board Attorney for review and approval.



3. Any tree removal by Applicant shall be in accordance with and subject to approval by the Village Arborist, the Village's Shade Tree Commission and Environmental Commission, which may require a Tree Removal Permit Application.
4. This approval is conditioned upon Applicant receiving NJ DEP approval.

### **GENERAL CONDITIONS**

1. The Applicant shall be bound by all of the plans submitted in support of its application, all exhibits introduced, stipulations made, and all testimony given and representations made by it or on behalf of its professionals during the course of the public hearings on October 6, 2020, November 3, 2020, December 1, 2020 and January 5, 2021. Any material deviations in connection with such plans or representations shall require return to the board for further review.

2. All construction shall be completed in accordance with all ordinances and building requirements of the Village of Ridgewood, the Uniform Construction Code of the State of New Jersey and in accordance with the instructions of the Construction Official of the Village of Ridgewood, the Village Engineer and in accordance with the requirements of all other departments of the village.

3. Applicant is required to obtain a building permit, post all necessary fees and costs with the Village of Ridgewood prior to any construction. This approval is subject to applicant obtaining a building permit and any other State, County or Village approvals if required.

4. The Applicant shall pay all fees, costs, bonds and escrows when due or becoming due and shall post all performance guarantees in connection with the review of this application prior and subsequent to the approval of this application. Any monies are to be paid within twenty (20) days of said request by the Board's Secretary.

5. The Applicant shall be responsible for obtaining any other approvals or permits from other governmental agencies as may be required by law and the applicant shall comply with any requirements or conditions of such approvals or permits.

6. All construction shall be completed in accordance with all ordinances and building requirements of the Village of Ridgewood, the Uniform Construction Code of the State of New Jersey and in accordance with the instructions of the construction official of the Village of Ridgewood, the All construction shall be completed in accordance with all ordinances and building requirements of the Village of Ridgewood, the Uniform Construction Code of the State of New Jersey and in accordance with the instructions of the construction official of the Village of Ridgewood, the village engineer and in accordance with the requirements of all other departments of the Village Engineer and in accordance with the requirements of all other departments of the Village.

7. The variance relief granted by this resolution applies to this application only as depicted in this resolution and is subject to all the stipulations set forth within this Resolution.

8. Approval or waiver thereof by the Bergen County Planning Board. If any changes are required by the Bergen County Planning Board to the plan as approved by this Resolution, then the Board retains jurisdiction over this application and reserves its right to amend or withdraw its approval of this application.

9. Bergen County Soil Conservation District approval.

10. All representations and stipulations made by applicant or its agents shall be deemed conditions of this approval and any misrepresentations by applicant contrary to the representations and stipulations made before the Board shall be deemed a violation of this approval.

11. The action of the Planning Board in approving this application shall not relieve the Applicant of responsibility for any damages caused by this project, nor does the Planning Board of the Village of Ridgewood, or its reviewing professionals and agencies, accept any responsibility for design of the proposed improvement or for any damages that may be caused by this development.

12. Any condition imposed upon Applicant shall apply to any successor in interest to Applicant.

13. Publication of a notice of this decision will be published by the Applicant in one of the Village's officially designated newspapers. A copy of the published notice shall be provided to the Board's secretary no later than thirty (30) days from the date of memorialization.

**BE IT FURTHER RESOLVED** that this Resolution does not constitute approval or recommendation for approval for any variance or any exception not requested by the Applicant, nor any variance or exception which may not be expressly or specifically created by this Resolution.

**NOW THEREFORE, BE IT RESOLVED** that the Chairman and Secretary of the Board are hereby authorized to affix their signatures to this Resolution granting the requested application, and furthermore to send certified copies, if requested, at Applicant's cost, to the Zoning Officer, Construction Code Enforcement Official and/or Building Sub-Code Official, the

Applicant and/or the Applicant's attorney, the subject property Owner if other than the Applicant, and to the Village Attorney and Village Engineer.

**MOTION for approval of Application on the conditions set forth above:**

OFFERED BY:

SECONDED BY:

**VOTE ON ROLL CALL:**

**IN FAVOR OF APPROVAL:**

**OPPOSED:**

**RECUSED:**

**DATE APPLICATION APPROVED:      January 5, 2021**

**DATE RESOLUTION APPROVED:      March 16, 2021**

The undersigned certifies that the within Resolution was adopted by the Board and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on March 16, 2021.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Richard Joel, Chairman  
Planning Board

ATTEST:

\_\_\_\_\_  
Jane Wondergem, Secretary  
Planning Board

