

**BOROUGH OF FAIR LAWN
ZONING BOARD OF ADJUSTMENT
Regular & Reorganization Meeting
Of January 26, 2009**

Following are the minutes of the Fair Lawn Zoning Board of Adjustment's regular & Reorganization meeting held on January 26, 2009.

Board Secretary, Cathy Bozza called the regular meeting to order at 7:10 p.m. and declared that the meeting was being held in accordance with the Open Public Meeting Law.

Roll Call: Present: Mr. Karas, Ms. Spindel, Mr. Salerno, Mr. Charipper,
Mr. Diner, Mr. Frankel, Mr. Blecker, Mr. King,
Mr. Meer & Mr. Newman,

Absent: Mr. Sacchinelli

Mr. Bill Soukas (Board Attorney) steps forward to state that the Council has reappointed Marvin Diner, Sy Karas, Benny Salerno & Gary Sacchinelli, and has appointed Ira Frankel & Jarett King. (Gary Sacchinelli will be sworn in separately.)

Mr. Soukas swears in all members.

Roll Call: Mr. Diner, Mr. Salerno, Mr. Karas, Ms. Spindel, Mr. Charipper, Mr. Meer,
Mr. Frankel, Mr. Blecker & Mr. King

The Board Secretary, Cathy Bozza makes a motion for Nomination for Chairperson.

Mr. Joe Meer makes a motion to nominate Mr. Todd Newman for Chairman.
Mr. Sy Karas seconds the motion.

VOTE: Mr. Diner, Mr. Salerno, Mr. Karas, Ms. Spindel, Mr. Charipper, Mr. Meer,
Mr. Frankel, Mr. Blecker & Mr. King. YES.

Mr. Todd Newman nominated as Chairman.

Mr. Newman opens nomination for Vice-Chairperson.

Mr. Diner makes a motion to nominate Mr. Benny Salerno for Vice-Chairman.
Mr. Meer seconds the motion.

VOTE: Mr. Diner, Mr. Karas, Ms. Spindel, Mr. Charipper, Mr. Meer, Mr. Frankel,
Mr. Blecker & Mr. King

Mr. Benny Salerno nominated as Vice Chairman.

Mr. Newman opens nominations for Secretary.

Mr. Karas makes a motion to nominate Mr. Joe Meer for Secretary.
Ms. Spindel seconds the motion.

VOTE: Mr. Diner, Mr. Salerno, Mr. Karas, Ms. Spindel, Mr. Charipper, Mr. Meer,
Mr. Frankel, Mr. Blecker & Mr. King.

Mr. Joe Meer nominated for Secretary.

Mr. Newman opens nominations for Board Attorney.

Mr. Meer makes a motion to nominate Mr. Bill Soukas for Board Attorney.
Mr. Karas seconds the motion.

VOTE: Mr. Diner, Mr. Charipper, Mr. Karas, Ms. Spindel, Mr. Salerno, Mr. Meer &
Mr. Newman. YES

Mr. Bill Soukas nominated for Board Attorney.

Mr. Meer opens the nomination for Board Engineer.

Mr. Meer makes a motion to nominate Mr. Paul Azzolina of Azzolina & Feury
Engineering for Board Engineer.
Ms. Spindel seconds the motion.

VOTE: Mr. Diner, Mr. Charipper, Mr. Karas, Ms. Spindel, Mr. Salerno, Mr. Meer &
Mr. Newman. YES.

Mr. Paul Azzolina nominated for Board Engineer.

Mr. Newman opens nomination for Traffic Engineer.

Mr. Meer makes a motion to nominate Mr. Mark Kataryniak of Medina Consultants for
Traffic Engineer.
Mr. Karas seconds the motion.

VOTE: Mr. Diner, Mr. Charipper, Mr. Karas, Ms. Spindel, Mr. Salerno, Mr. Meer &
Mr. Newman. YES.

Mr. Mark Kataryniak nominated for Board Traffic Engineer.

Mr. Newman opens nomination for Board Planner.

Mr. Meer makes a motion to nominate Mr. Peter Van Den Kooy of Birdsall Engineering for Board Planner.

Mr. Karas seconds the motion.

VOTE: Mr. Diner, Mr. Charipper, Mr. Karas, Ms. Spindel, Mr. Salerno, Mr. Meer & Mr. Newman. YES.

Mr. Peter Van Den Kooy nominated for Board Planner

Mr. Newman opens the nomination for Court Stenographer.

Mr. Meer makes a motion to nominate Karen Koscis for Board Court Stenographer

Mr. Karas seconds the motion.

VOTE: Mr. Diner, Mr. Charipper, Mr. Karas, Ms. Spindel, Mr. Salerno, Mr. Meer & Mr. Newman. YES.

Ms. Karen Koscis nominated for Board Stenographer.

Mr. Newman opens the meeting.

Residential New Business:

1. Application#2009-089, Mr. Carl Lodge
4-15 Bellair Avenue, Block 5510, Lot 27, Zone R-1-3
Installation of a 6ft. fence within the front yard setback where 3ft. is permitted as per Section 125-38.A. Fences and Walls.

Fees have been paid and there is proof of service.

Mr. Newman swears in Mr. Lodge.

Mr. Newman: Please tell us why you are here.

Mr. Lodge explains he would like to put up a 6ft. fence by the front yard of his property and his property is a corner lot with no privacy.

Mr. Newman asks Mr. Lodge what street does the yard face?

Mr. Lodge replies 5th street. I have no backyard only a side yard.

Mr. Newman explains to Mr. Lodge that one length of the fence is in the front yard setback and cannot be higher than 3ft. by Borough Ordinance.

Mr. Lodge understands that and that is what brings him here tonight.

Discussions continue.....

Mr. Spindel mentions to Mr. Newman that the fence already exists.

Mr. Newman is aware of that but for the benefit of the new members, if someone is in violation and constructs something without the approval of the Board, in our determination we should neither be punitive in our actions or in our thoughts nor should we feel sorry for the applicant who may have already done something that may have to come down. It is good to look at it as a relief being sought whether it is existing or not.

Mr. Newman asks if there have been any issues with lines of sight when the neighbor is pulling out or of neighbors complaining?

Mr. Lodge replies no.

Ms. Spindel speaks to the zoning officer in regards to where the fence is, was that where it was supposed to be erected in the first place?

Ms. Peck responds no, it was a 25ft. setback and 10ft. behind the house.

Mr. Soukas (Board Attorney) states that anyone who is to make a motion, if it is to approve it, it be modified to reflect a variance request for an additional 10ft. whereas it was supposed to be 25ft. it is currently 15ft.

Discussions continue.....

Mr. Newman marks the photograph of Mr. Lodge's fence as Exhibit A-1

Mr. Newman: Any other comments or questions from Board Members?

Mr. Karas questions the survey where it states 20ft. setback.

Ms. Peck: That is the surveyors' marking, the town's setback is 25ft.

Mr. Newman: Any other questions from Board Members? Seeing none,
Mr. Newman closes this portion.

Mr. Newman opens the applicant up to residents within 200ft. Seeing none
Mr. Newman closes this portion.

Mr. Newman opens the applicant up to the General Public. Seeing none,
Mr. Newman closes this portion.

Mr. Salerno makes a motion to approve the application w/an additional variance for 15ft.
setback where 25ft. is required.

Mr. Diner seconds the motion.

VOTE: Mr. Diner, Mr. Karas, Ms. Spindel, Mr. Charipper, Mr. Salerno, Mr. Meer &
Mr. Newman, YES.

APPLICATION APPROVED.

2. Application#2009-090, Peter Denio
3-11 Plaza Road, Block 3720, Lot 2, Zone R-1-3
Existing lot is 2940sf where 6500 is required. Lot frontage of 30' where 65' is
required. Proposed patio would increase the impervious coverage from 38.94% to
42.43% where 35% is permitted as per Section 125-12 Schedule of area yard and
building requirement.

Mr. Newman swears in Peter Denio.

Fees have been paid and there is proof of service.

Mr. Karas speaks of the application and states he does not feel there is enough
information. Speaking of the survey and how it doesn't show square footage of the patio.
Photographs do not have addresses on them.....I would like more detailed information to
make a determination. Bulk requirements, etc.....

Mr. Newman: Since Mr. Denio is here this evening, I'd like him to be given the
opportunity to address your concerns.

Ms. Peck states that all the bulk requirements & calculations were done at the office with
Mr. Denio. We are here for a variance for impervious coverage only because it's a patio.

Mr. Denio explains he lives in a Duplex and he had a screened in porch. Upon purchasing
the house, the screened in porch was in poor shape to begin with and in exploring the
possibility redoing it, the suggestion was to explore other options because it was
crumbing in his hands. We thought it would be more user friendly to have a pavor patio.
We could use that for outdoor living when we have family gatherings.

The upper landing would be 84sf, the patio and steps would be 190sf for a total of 280sf. for the area he is proposing.

Mr. Denio clarifies that upon going to Radburn, they asked that he remove 2ft. from the patio on the side of the attached neighbor.

Mr. Newman reviewing this, states that it still puts him over the requirement for impervious coverage. Patio puts you up to 42.43%.

Mr. Newman questions the photographs with the application and asks him to identify the addresses.

Mr. Denio explains he took photos of all the neighboring properties with the same similar backyard setup, some with screened in porches, some with enclosed porches.

Mr. Newman summarizes and states this is an undersized lot with a house attached. If this was a 6500sf lot, the applicant would not be here this evening.
Are there any questions from the board? Seeing none,

Mr. Newman opens the applicant to residents within 200ft. Seeing none
Mr. Newman closes this portion.

Mr. Newman opens the applicant to the general public. Seeing none,
Mr. Newman closes this portion.

Mr. Charipper makes a motion to approve the application.
Mr. Salerno seconds the motion.

VOTE: Mr. Diner, Mr. Karas, Ms. Spindel, Mr. Charipper, Mr. Salerno, Mr. Meer &
Mr. Newman, YES.

APPLICATION APPROVED.

Commercial Old Business:

1. Application#2008-072, Oscar Krieger
8-05 River Road, Block 5503, Lot 24, Zone R-1-3
Existing one family dwelling being used as an office in a residential zone.
Zoning Certification required.
Carried to February 23, 2009. No testimony to be heard.

5minute Recess.

Roll Call: Mr. Diner, Mr. Karas, Mr. Charipper, Ms. Spindel, Mr. Salerno, Mr. Meer
Mr. Newman, Alternates Mr. Frankel, Mr. King(Mr. Blecker left for the
evening)

Commercial New Business:

1. Application#2009-091, Cohen Plaza, LLC
11-16 Plaza Road, Block 1-23, Zone R-1
To appeal the determination of the Zoning Officer's violation dated
August 27th, 2008

Fees have been paid and there is proof of service.

Joshua Levine, Attorney appearing on behalf of the Gans Iris Nursery School and Iris
Cohen.

My clients purchased the property, made an application to convert it into a nursery
school. The building department, Exhibit B. and directed them to the Planning Board to
seek approval of a site plan and any other waivers that were necessary. Accordingly, that
is what they did. The Planning Board did approve the site plan. Subsequently, the
applicant came back and made application for a building permit because they wanted to
amend the plan and extend the property and again were referred back to the Planning
Board, which is what they did and on June 11, 2007, it was granted by the Planning
Board. They got all the necessary permits, expanded the building, and received a
Certificate of Occupancy and began operation of the building. All of which cost them
close to a million dollars all predicated on the approvals that they received from the
planning Board with the authority of the zoning officer and the building department,
under their guidance and consent.

In August of 2008, the zoning officer states that there was a mistake they should have
applied for a use variance. That position was not correct. The proper channels were
followed.

Mr. Levine explains the letter from Ms. Peck, dated August 27, 2008 which is Exhibit A
With reference to 125-16 of the Fair Lawn Ordinance.....reads "permitted uses".....

A Childcare Center is a permitted use in all zones.

Mr. Levine questions why do they need a use variance if permitted in all zones?

Ms. Spindel refers to the ordinance and states that a Childcare Center is prohibited to be within 750ft of another Childcare Center and questions Mr. Levine if there is another Childcare Center within 750ft.

Mr. Levine answers no, at the time the application was submitted there was no childcare center there.

Ms. Cohen had operated at 10-10 “Temple Avodah” when she made the application, she wanted to expand the facility. She wanted to keep the older kids at Temple Avodah and the younger ones at the new location. This was spelled out very clearly that we were working under the same application.

Mr. Levine states that the Ordinance says...750ft of each other, so clearly this is potentially vague and should not construe against the applicant. The applicant made another application to the zoning board because the Planning Board said they weren't sure if they had jurisdiction to handle it.

We had two applications going before the Two Boards. The Borough Officials agreed that the proper jurisdiction was before the Planning Board. This is not a use issue, it's a waiver that needs to be received and granted.

Mr. Charipper questions Mr. Levine if there are any letters from the Zoning Board that addresses what you are talking about.

Mr. Levine: No, my understanding was that it has been brewing since August since Ms. Peck wrote my client to say, she was in violation and that she was going to revoke her Certificate of Occupancy. I spoke to the Planning Board Attorney who didn't really have a specific recollection of the event and told me “If he needs to get involved, he would, but someone would have to let him know.

Mr. Karas refers to Exhibit G-A1 and states that it is his understanding that in November 6 of 1995, the Planning Board granted a child care resolution for child care at 10-10 Plaza Road. What is there now?

Mr. Levine gives a brief history and explains that after his client had vacated the property. Temple Avoda is now selling the property and Rabbi Neubort, who represents Anshei Lubavich has moved their child care facility.....

Mr. Karas asks if there is a childcare facility there now?

Mr. Levine: Yes, It's called Anshei Lubavich., which was originally at 8-09 Plaza Road which gave rise to that 1995 application.

Discussion continues on the history of the childcare facilities and if there were two childcare facilities being operated at the same time on those two blocks.

Mr. Levine explains Don Iris was the operator at the time of the application in 2005 & 2006 for Lot 3513-which is 11-16 Plaza Road, she was operating across the parking lot at 10-10 Plaza Road, so at the time of the application she sought to expand her operation across the parking lot.

Authority was given on the first resolution which was August 14, 2006.

Mr. Karas asks if there were two facilities operating at the same time?

Mr. Levine explains that their intent was an extension of the same facility, but they were not attached and also were under the same name. At the time of the application both the Zoning Office, the Building Department and the Planning Board knew of the operation of 10-10 and had approved it with that knowledge.

There is some confusion with the diagram. Mr. Levine explains that the diagram is establishing a distance from 11-16 Plaza Road and 8-09 Plaza Road which is greater than 750ft. away.

Mr. Levine refers to a letter which establishes that the distance from 10-10 Plaza Road & 8-09 Plaza Road was 629ft. and the importance of this is, at that time, in 1995 it was within 750ft. and also went before the Planning Board, such a limitation was required within 750ft. and they acknowledged it and provided a waiver for it. It happened in 95' with the same applicant who came back before the Planning Board again in 2006 and 2007, under the eye of the zoning office and it was all approved.

Mr. Levine explains the history again that in 1995, Temple Avodah owned 10-10 Plaza Road & Gan Iris was a tenant operating a daycare center, made application that was approved by the Planning Board and she spent between \$50,000&\$100,000 renovating the property. 9 years later, she had an opportunity to purchase the property which was the Jewish War Veterans Property next door. She went from being a tenant to a property owner. At that time made an application to expand the operation. It was under the knowledge at that time that she was working here and expanding there. As it turned out it never materialized, so in reality at the time she opened her doors, she was never within 750ft. of any childcare center.

Mr. Newman: Mr. Levine, the argument you are making is that they were the same childcare center. 10-10 property owners, Temple Avodah, 11-16 property owners Gan Iris. The only reason why at that time the determination was made was that it was not within 750ft. of another childcare center was because the operators were the same.

Mr. Levine, yes, it was an expansion of the use. We made an application before the Zoning Board and were ultimately told "This is where you have to go. It is not another childcare center, it is the same state license, the same operator and the same owner at that time.

Discussion continues.....

Mr. Newman questions the approval and asks if the approval was given to the tenant, and moves with the tenant whatever address they want or does that approval stay at 10-10 Plaza Road.

Mr. Levine believes it runs with the landowner, he would have to do more research on the issue to make sure but he believes that Mr. Newman has it correct, that it stays there at 10-10 Plaza.

Mr. Newman and Mr. Levine discuss all the applications that were submitted and again discuss the history and the ordinance.

Mr. Newman: Just to be correct, today there are new owners and tenants who are being allowed to run a daycare center because of the approval that runs with the property... a new tenant that is operating under the approval that was given.

Mr. Levine refers to Exhibit E-Letter from Cathy Hochkeppel in 2006. If we are arguing that there are two separate properties and the use runs with the property...at the time we made applications, there was no wool pulled over anyone's eyes, everyone knew what we know now, the fact that there is a new tenant does not change the fact that the property at that time, 10-10 was approved by the Planning Board for use as a childcare center knowing that.

Mr. Newman: Do you have a copy of that Resolution?

Mr. Levine: Yes, I do, but if you look at Exhibit B, this is a letter of denial from the zoning officer dated October 5, 2005 directing the applicant to the Planning Board and siting the reasons why and which are the very reasons why we are here today.

Mr. Levine continues to explain it was considered by the Zoning Office, the Building Construction Officials, there was a Certificate of Occupancy issued. For some reason, the zoning office looked at it again, and said;"Sorry, we made a mistake, you should have gone before the Zoning Board.

Mr. Charipper clarifies what Mr. Levine's argument is.....

Mr. Levine: Under 125-16, it is a permitted use. Yes, there is a limitation on it in as much it cannot be within 750ft. of another Childcare, but does that rise to a use variance? I think that the Zoning officer and the Planning Board correctly determined that it didn't in 2006 & 1995 but for some reason there was an evaluation that it is no longer the case. The answer was correct in the first place and that is why we are appealing.

Mr. Karas: What you are saying is, if a application for a daycare or childcare center is within 750ft. of another, it doesn't require a use variance, it just requires a variance from the limitation on the ordinance.

Mr. Levine: Essentially, that is correct.

Mr. Karas: You also indicate that because there are two daycare centers under the same operating name that one is like a subsidiary or an annex of another?

Mr. Newman interjects and states that he would like to add to what he is saying, I was going to mention in your letter of February 21st, 2006 in which the language that is used is; "the owner, operator of each childcare center is Gan Iris Nursery School.

Mr. Karas: Correct, so if you have a Daycare/childcare center on Plaza Road and you then under the same operator have one on River Road, you don't need any proof, all you need is a site plan approval?

Mr. Levine: Under the argument that we were presenting at that time that is correct. However, after examining it, given the fact that in 1995, there was one within 750ft. and it was approved under the Planning Board. It doesn't need to be the same owner/operator it's just a waiver, it's not a conditional use or a use variance issue. It's a waiver.

Discussions continue.....

Mr. Karas: The only thing you want right now is a waiver of the fact that your client has a childcare center within 750ft. of another? Is that correct?

Mr. Newman: No, the reason they are here tonight is because they are appealing the zoning officer's decision, which was that they were in violation in that they would require a D-variance in order to continue operations there. So they are in appeal of the zoning officer's violation.

Discussions are amongst the Members of the Board.....

Mr. Levine: We are asking that you reject the threatened replication of the Certificate of Occupancy because the basis is that we did not get a use variance, and we are saying we didn't need one, we never thought we needed one and we still don't need one. Just one more point, at the time we made application, and there were two applications made before the Planning Board, not one single person came to object. Rabbi Neubort who is operating across the parking lot is here tonight in support of us being here.

This situation is by no means what the ordinance was intended for in terms of residential child care center because this parking lot, a very large parking lot for that matter and we shrunk the parking lot per the agreement with the Planning Board.

After the approval we had to go back to the Building Department to get construction permits which were granted and under their supervision, obtain a Certificate of Occupancy. At no time did anyone say, hey, you got an approval you shouldn't have got it in 2007 after a full blown review another time.

Mr. Newman: I would like to ask Ms. Peck to testify and Ms. Cohen to testify.

Mr. Newman swears in Ms. Peck, Assistant Zoning Officer for the Borough of Fair Lawn.

Ms. Peck explains that when Gan Iris first came to her to request a daycare and she initially denied it for being within 750ft. of another daycare. We received a letter dated February 21st., which Mr. Levine marked as Exhibit C. He explained it was not a second daycare. It was an extension to the existing. Our office determined it was no longer two daycare but one daycare but two buildings. Under banner back and forth with the Planning Board, the denial letter was written because the Planning Board would not hear the application until they had a denial.

Mr. Levine disagrees with that stating that could not be correct. The denial letter came in October and he wrote the letter in February as an appeal of a denial at that time.

Ms. Peck continues explaining that Gan Iris went before the Planning Board Department. Our department assumed it was an extension but somewhere along the line, the extension became a separate unit. It did not come to the attention of the Zoning Board that that is how it was functioning even though it went through the permit process because we weren't looking at the use we were looking at the renovation. It came to our attention, when Temple Avodah came in with an applicant who wanted to put a daycare into the Temple. That is when we realized the Temple was vacant and now we had a situation where we had the Temple who had an approval to have a daycare and we have this stand alone building because it was no longer annexed to the original Temple without any use variance.

Ms. Peck continues with the steps she took, contacting Mr. Doug Burn via fax asking for his interpretation of what took place and never received a response. Also spoke with Ms. Hochkeppel who said that 2006 approval was not for an expansion. It was for moving the daycare from the Temple to its present location. At the time there was no other operational daycare within 750ft. and attached the Resolution.

Ms. Peck further explains that the ordinance does not state that it has to be operational. It states that it has to be a daycare. The Temple, in our opinion had the approval and stayed with the temple, even though Gan Iris Nursery School was the original applicant. It did not move with her. We made the determination that she is now independent and no longer is with the Temple. We also made the determination that a daycare is a permitted accessory use to the house of Worship and they wouldn't fall under the same guidelines.

We sent a letter out to Ms. Gans explaining to her that a use variance was required because she no longer was annexed to the Temple, she was independent of them.

Mr. Newman clarifies the reasoning behind the Zoning Department decision.

Mr. Karas then questions Ms. Peck on Exhibit G.

Ms. Peck & Mr. Karas discuss the parking lots which are adjoined and both Daycare Centers.

Mr. Karas discusses his view with the Board Members and states that there is not a use variance involved here. A childcare center is a permitted use in a residential zone.

Mr. Soukas (Board Attorney) agrees with Mr. Karas and states that the Ordinance provided states that it is a permitted use in all zones, there is the 750ft. radius limitation. Based on my reading of the zoning officer's letter of this year, it seems they were talking about a Conditional Use Operation, in light of the fact that there appeared to be a condition. The 750ft. radius was a condition. "Conditional Use" according to the Miscellaneous Law is what the Ordinance defines it to be. Our Ordinance based on my review does not provide that a Childcare Center is a Conditional Use, so we are not talking about a use variance in that respect. It is a permitted use and based on what I have heard from Mr. Levine's presentation, there are issues of referral from the Zoning Office to the Planning Board for Planning Board jurisdiction; there is historical exercise of Planning Board jurisdiction over these 3 childcare centers located on Plaza Road.

Mr. Levine refers to Exhibit E -Ms. Hochkeppel letter to Mr. Levine dated April 17, 2006, addressing the issues of extension, annexation and contiguous lots and asks Ms. Peck if she has ever received a copy.

Ms. Peck states she has never received a copy of the letter.

Mr. Levine and Ms. Peck review the Ordinance and continue to discuss the interpretation of this.

Discussions continue among the Board Members, Revisions in the Ordinance are mentioned.

Mr. Karas asks Mr. Soukas, (Board Attorney) If the Planning Board grants permission for two childcare centers within 750ft. of one another and the applicant in reliance upon that has expended funds to utilize one of those facilities, would the Borough not be a stopped from contesting that?

Mr. Soukas replies that he would suggest that there would be grounds for an a stoppable in this particular circumstance. There have been good faith efforts to comply with the Zoning Officer's recommendation to refer the applicant to the Planning Board. There has

been an effort to appear before the Planning Board on a hearing in order to establish their rights and these applications were for site plan and amended site plan approval and related bulk type variances, a grant by the Planning Board and conduct by the applicant in reliance upon the bodies grant. I would agree where I think you are going with that.

Mr. Newman: Does anyone else have any questions for Ms. Peck? Seeing no one, Mr. Newman asks Ms. Cohen to testify.

Mr. Newman swears in Ms. Iris Cohen.

Mr. Newman: Can you please tell us in general the operations of your business?

Ms. Cohen states she is a mother of 7 children and 13 years ago she decided she wanted to open a Nursery School and inquired at Temple Avodah. I invested a lot of effort and money to get all the certificates in Temple Avodah. I operated there successfully for 12 years with the intention to create another daycare center. I had an opportunity to purchase 11-16 from the Veterans and it took us around 3 years to build the building. It is a beautiful building. I was still at 10-10 Plaza Road and intended to be there. Unfortunately, Temple Avodah went bankrupt. I had to leave Temple Avodah, I had no choice, they kept telling me I had to evacuate the children because they were going to shut down the electric. Quickly, I finished 11-16 and moved in January 24.

Ms. Cohen continues to explain the history of her Daycare Center and currently what she is doing now, running a Daycare Center from Monday through Friday from the morning until 6:00pm. Children ages range from a few months old to kindergarten age. I have children that come after school who are older.

Mr. Newman asks if she is running a school of any kind?

Ms. Cohen replies no. It is a Daycare Center.

Mr. Karas asks when she purchased the Old Jewish War Veterans Building and put the extension on, was that approved by the Planning Board and had a Building permit for it?

Ms. Cohen: We were twice before the Board and of course we had a permit for it. I would never had invested in this building had I not had permission to do so. I would not do anything I was not permitted to do. I went to Zoning and was told to go to the Planning Board. It took me three years to go through the whole system and I was surprised to get this letter.

Mr. Newman asks the Board members if there are any more questions. Seeing no one.

Mr. Levine calls up Rabbi Neubort.

Mr. Newman swears in Rabbi Neubort, 7-09 22nd Street. Fair Lawn, N.J.

Rabbi Neubort states to the Board that he knows the reasoning behind the Zoning Ordinances so that the town runs smoothly and that no one encroaches on another's space and so forth. Rabbi Neubort explains that he has been operating since September along side Gan Iris. Everything runs very smoothly, there is no traffic issues, etc..... No complaints from neighbors. If you grant this to them, there is no backlash that will happen. It is in a sense like a one unit. We are sharing the parking lot, sharing spaces. I would encourage the Board to accept their appeal and allow them to continue to operate.

Discussions continue.....

Mr. Newman questions Rabbi Neubort and wants to be sure they have it correct for the record that currently they are tenants and that in the future they will eventually be the owners.

Rabbi Neubort states that it is correct and that sometime in the future weeks, they will close the deal, but currently they are not the owners.

Discussions continue with the history of the two daycare centers.....

Rabbi Neubort states that he thinks the Law should be more clearly written so in the future if more daycare center's open and if they have off site parking, they shouldn't have to have that variance. That is my personal opinion. In this case, they have sufficient parking. They have almost 40 spaces.....By Law they would only need 10-12 spaces. In my opinion, this should be granted.

Rabbi Neubort continues to support Gans Iris, summarizes and thanks the Board.

Mr. Newman: Any other question for Rabbi Neubort. Seeing none,
Mr. Newman asks Mr. Levine if there are any other witnesses.

Mr. Levine: No other witnesses. Thank you.

Mr. Levine summarizes his argument, reiterating all the proper channels were followed. Ms. Peck was doing her job in trying to interpret an ordinance that is clearly vague. This ordinance needs to be revisited and revamped.

We ask that the members of the Board overturned the threatened ratification of the Certificate of Occupancy and allow Ms. Cohen to continue with her business.

Mr. Newman opens the applicant to residents within 200ft. Seeing no one.
Mr. Newman closes this portion.

Mr. Newman opens the applicant to the general public.

Mr. Newman swears in Mr. Harvey Rubenstein, 28 Rutgers Terrace.

Mr. Rubenstein: Was there a cap in the number of students in the childcare? Did the town put a maximum on Temple Avodah?

Mr. Levine: I think the cap was issued by the State. The size of the facility determines how many students are allowed by State regulations.

Mr. Rubenstein asks if a fire hydrant was ever put in as he requested on the Resolution?

Mr. Newman: Approval 2007-4 on Pg. 5, the applicant agreed to have a fire hydrant installed in the front of the building with the Borough providing water service. Was it ever put in?

Ms. Cohen replies yes.

Mr. Rubenstein asks the Board that they approve this applicant and gives his reasoning behind his support.....

Discussions continue.

Mr. Newman explains that although Mr. Rubenstein's comments all have merit, the proceedings tonight really don't allow them to do what he is suggesting. He defers to Council. We have to decide to uphold or reject the Zoning Officer's decision and nothing more because we are not granting any variances or waivers, so there cannot be conditions put upon the ruling.

Mr. Soukas(Board Attorney) agrees to keeping it simple. I assume there is a site plan that is final and unless Mr. Levine has any comments, I suggest that we keep it to grant or denial.

Mr. Newman asks if there are any other questions from the general public, seeing none. Mr. Newman closes this portion.

Mr. Newman: I will ask for a motion to approve or deny the Zoning Officers decision. Yes vote is to deny. No vote is to approve.

Mr. Charipper makes 1st motion to deny the Zoning Officer violation dated August 27, 2008.

Mr. Salerno seconds the motion.

VOTE: Mr. Diner, Mr. Karas, Mr. Charipper, Ms. Spindel, Mr. Salerno, Mr. Meer & Mr. Newman, YES to deny action taken by Zoning Officer.

1. Application #2008-078, European Learning Center
41-21 Dunkerhook Road, Block 1702, Lot 7, Zone R-1-2
Change existing nursery school with prior approval to a commercial school.
Commercial schools for profit are not permitted in a residential zone as per
Section 125-17.B.(2)D-1 variance required as per Section 125-57.D.(d)
Application carried to February 23, 2009. No testimony to be heard.

2. Application#2008-072, Oscar Krieger
8-05 River Road, Block 5503, Lot 24, Zone R-1-3
Existing one family used as an office in a residential zone.
Zoning Certification required.
Application carried to February 23, 2009. No testimony to be heard.

Bills/Estimates:

1. Karen Koscis in the amount \$275.00
2. Birdsall Engineering in the amount \$581.25
3. Birdsall Engineering in the amount \$1,232.50
4. William Soukas in the amount \$2,850.82(McDonald's)
5. William Soukas in the amount \$558.00(Lentini)
6. William Soukas in the amount\$654.84(Omnipoint)
7. William Soukas in the amount\$625.00 (GFA Fencing)
8. William Soukas in the amount \$1, 425.00

Mr. Charipper made a motion to approve these estimates and Mr. Salerno seconded the motion.

VOTE: All Present – AYE.

Resolutions:

1. Application #2008-080, Eugene & Annette Monforte, 10-06 Malcolm Terrace,
Block 2511, Lot 7, Zone R-1-2– Addition- Approved.
2. Application #2008-081, Victor Benditch, 39-02 Pellington Drive, Block 1306, Lot
15, Zone R-1-2– Driveway expansion- Approved.
3. Application #2008-082, Jacob & Harriet Sarna, 36-19 Stelton Terrace, Block
2613, Lot 25, Zone – Addition- Approved.
4. Application #2008-083, Thomas Mascoli & Elizabeth Veloz, 5-22 Lyncrest Ave,
Block 4405, Lot 13, Zone R-1-3– Addition- Approved.
5. Application #2008-084, Michael Cerbelli & Susan Choy, 39-33 Romano Drive,
Block 1207, Lot 20, Zone R-1-3– Porch & Portico-Approved
6. Application #2008-085, Gilda Linden & Jeff Krauwitz, 14 Arlington Place, Block
3711, Lot 8, Zone R-1-3– Patio- Approved.

7. Application #2008-086, Eric & Marie Marx, 17-30 Elliott Terrace, Block 4800, Lot 7, Zone R-1-3– Above ground pool- Approved.
8. Application #2008-087, 15-01 Politt Drive Associates,LLC.,15-01 Pollitt Drive , Block 4802, Lot 3&5, Zone I-1– Use Variance- Approved.
9. Application #2008-094,Violetta & Boris Kopeykin, 3-49 27th Street, Block 3403, Lot 2, Zone R-1-3– Variance Extension- Approved.
10. Application#2008- 063, 18-35 River Road, LLC., 18-35 River Road, Block 5834, Lots 1,3&4, Zone I-2-Use variance-Approved.

Mr. Charipper made a motion to accept these resolutions and Mr. Diner seconded the motion.

VOTE: All Present – AYE.

Minutes

Mr. Charipper made a motion to approve the minutes for the August 18, 2008, September 15, 2008, September 22, 2008 and the October 6, 2008 meeting.

Mr. Karas seconded the motion.

VOTE: All Present - AYE

Adjourn

Mr. Karas made a motion to adjourn this meeting and Mr. Charipper seconded the motion.

TIME: 11:00 P.M.

VOTE: All Present - AYE.

Respectfully submitted,

Cathy Bozza
Zoning Board Clerk