

**BOROUGH OF FAIR LAWN
ZONING BOARD OF ADJUSTMENT
Regular Meeting
Of April 27, 2009**

Following are the minutes of the Fair Lawn Zoning Board of Adjustment's regular meeting held on April 27, 2009.

Chairman Todd 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. Diner, Mr. Karas, Mr.Charipper, Ms. Spindel
Mr. Frankel, Mr.Meer & Mr. Newman.

Absent: Mr. Salerno, Mr. Sacchinelli, Mr.Blecker & Mr. King

Also in attendance were William Soukas, Board Attorney; Karen Kocsis, Court Reporter; Ann Peck, Assistant Zoning Officer and Cathy Bozza, Zoning Board Secretary.

Mr. Newman states that he is going to change the Commercial Agenda tonight. The first application under Commercial Business will end up being #2009-013 Tribal Iron Choppers.

Mr. Newman opens:

Residential New Business:

1. Application#2009-014, Simon Mukkatt
16-62 Elliot Terrace, Block 4800, Lot 1, Zone R-1-3
Proposed driveway expansion would increase the impervious coverage
From 37.35% to 42% where 35% is permitted as per Section 125-12
Schedule of area yard and building requirement.

Mr. Newman swears in Mr. Simon Mukkatt.

Fees have been paid and there is proof of service.

Mr. Newman: Mr. Mukkatt, please tell us why you are here tonight.

Mr. Mukkatt begins explain that he would like to extend his driveway to accommodate more cars He states that his son will be getting a car soon and there is no where to park.

Mr. Newman: Right now without the driveway expansion, your property has an impervious coverage of 37.35% and the proposed driveway would put you at 42%.

Correct?

Mr. Mukkatt: Yes.

Mr. Newman discusses lot size with Mr. Mukkatt's. It is determined his lot size is 65x100. Mr. Mukkatt states his existing driveway is 40x11.8' and wants to expand it to 19.6'.

Mr. Newman asks if the property creates a hardship that would support the granting of this variance? The shape of the lot? the size of the lot? Unusual features that put you in this situation that requires you to go over the impervious coverage?

Ms. Spindel interrupts the questioning to explain to the Board that she was over at the property today and the site plan in which the Board received is not indicative of what is going on at the lot. He did an addition on the house that is not reflective here. The zoning officer stated she calculated the new impervious coverage but it still is not what you are seeing on the site plan. The numbers are correct, but the pictures are wrong. If you go out to this property you will see there is really no other place to put this driveway.

Ms. Spindel tries to explain the visual aspect of the property to the Board. There is a sidewalk that goes around the South side of the property around the back and the screen porch is no longer a screened porch that is the addition with probably another 10ft. onto the property than what is depicted. There is also a patio that is not on the site plan.

The Board reviews this.....

Mr. Mukatt is asked about the sidewalk on the property and if it is going to remain to which Mr. Mukkatt states it will.

Discussion continues.....

There are questions as to the impervious coverage here that has not been calculated.

Numbers are being recalculated & Mr. Karas interjects and asks if it would be better to adjourn until the proper figures are submitted.

Ms. Peck wants to confirm the figures and if there are questions she would agree with Mr. Karas to carry the application.

Mr. Newman explains that if the calculations are correct, we will allow the applicant to proceed this evening. Mr. Newman explains to Mr. Mukkatt that while this is being done, he will move to the next application and come back to him.

Mr. Mukkatt agrees to this.

2. Application#2009-015, Joshua & Amy Fogelman
3-34 Lyncrest Avenue, Block 4319, Lot 1, Zone R-1-3
Proposed second story addition would have a front yard setback of 16.4' where 25' is required. FAR of 52% where 40% is permitted requires a D-variance as per Section 125-12 Schedule of area yard and building requirements 125-57.D.(d)(1)

Mr. Jeffery Kantowitz, Attorney on behalf of the applicants, Mr. & Mrs. Fogelman.

Fees have been paid and there is proof of service.

Mr. Kantowitz explains to the Board that the applicants, Joshua & Amy Fogelman seek variance relief to construct an addition on their single family home. It is known in town as the Lyncrest area. We seek bulk variance relief because we have a non conforming setback that faces Willow Street. It is a pre existing and currently existing 16.4ft. The proposal maintains that setback. You will hear testimony this evening to present testimony in support of this variance under both C-1 of the Land Use Law as well as C-2 to show the benefits substantially outweigh the detriments if any are found.

Mr. Kantowitz continues....The variance is required because of the way, I'll use the term, irregular way the house sits on the lot. We also seek a D-4 variance. We exceed the FAR. You will hear testimony tonight why this is a D-variance is required. We have an unusual and topographic condition on this property. It is a slope that exposes more than 3ft. in the basement. All of the basement area is calculated in the FAR. If this were a non sloping lot that did not expose that much of the basement in the two corner areas, we would be under the FAR.....

Exhibits will show the exceptional topographic conditions& other features to justify this relief.

Benefits will outweigh the detriments.....

We have to demonstrate to you that this site can well accommodate the proposed structure that we are seeking and the proposed deviation beyond the FAR limitation.

Ms. Fogelman is here this evening and Mr. Peter Cooper who will testify about the Architectural Planning in support of the relief.

Mr. Newman swears in:

Ms. Amy Fogelman, (Applicant) of 3-34 Lyncrest Ave, Fair Lawn, N.J.
Mr. Peter Cooper(Architect) 7 Cedar Street, Ramsey, N.J.

Mr. Newman certifies Mr. Cooper as an Expert Witness.

Mr. Kantowitz begins his questioning.

Ms. Fogelman explains to the Board that Mr. Edward Trawinsky has given his full support of the application and wishes he could be here tonight and speaks of all the neighbors that are in support of the application.

Mr. Kantowitz has no further questions for the applicant.

Mr. Kantowitz asks Mr. Cooper to please step forward.

Exhibits are placed before the Board to view.

Mr. Cooper begins his testimony....the project involves a-add a level. It is currently a one and a half story home. There are three common bedrooms up and the goal is to have the Master suite on the same level as the other bedrooms. The design called for removing the second floor, adding a level and staying predominately within the existing footprint of the house with a few bumps and protrusions to add interests to the design. There is also a deck to be provided to the rear as well as a front covered porch.

Mr. Cooper points to his Exhibit, which is marked A1 (Drawing of Homeowners property) and shows the Board the proposal.

Discussions of the site plan continues.....

Mr.Cooper explains that the garage and the mechanical room occupy the predominant area of the basement. The habitable space is out of grade is limited to the 26ft. so that is the primary point of discussion.

Mr. Kantowitz: Mr. Cooper, if there was no grade(topography)that exposed more than 3ft. of two walls of the property, would this proposal meet the standards & the limitations of the FAR of the Fair Lawn's code?

Mr. Cooper agrees and states the calculations with and without

FAR without the basement would 39.5%.

Mr. Coopers continues speaking of the C-variance and the D-variance.....

Topography triggers the variance. Without the slope of the grade, the basement would not be considered part of the FAR...

We intend to stay with the character of the neighborhood in the Tutor Style. The surrounding areas have Dutch Colonials, similar type homes.

Mr. Cooper continues to discuss the site plans.....

Mr. Soukas notes that the site plan rendering varies from the one in the application and would like it marked as Exhibit A-2.

Total Living area is discussed.....

Maximum height from the middle of the street is discussed....

Mr. Meer questions the necessity of 6 bedrooms and is there an In Home Occupation being considered? Answer: No home occupation is being considered, only that the homeowner's do have a large family and friends that they entertain frequently. The master bedroom that is on the first floor will be turned into the guest suite. The room in the front will be a Family Room....The design is the appropriate way to build out the first floor....

Discussion continues.....

Roof line and symmetry are discussed.

The Willow street side of the house does not impact the neighbors.....

Mr. Charipper speaks of the FAR, and what they could do to compromise?

Mr. Cooper explains he is very familiar with compromises that are available but the purpose here is to show you this is the best use of the property and the most suitable of design.

Mr. Newman questions the Willow Street side of the property and what the height of the entire structure would be there because it was measured from the Lyncrest Ave side. Visually the residents on Willow Street are no different because it happens to be the side of the house of the rear of the house. How they would be impacted.

Mr. Cooper marks his rendering of surroundings properties as Exhibit A-3.

Mr. Cooper begins his explanation of the different types of homes in the surrounding neighborhood.....showing 1 level homes to two level homes....

Exhibit A-4 is displayed. (Panel of depictions in relation to the tax map, photos of pictures checked with the tax map, block and lot and addresses for accuracy)

Two story homes, Two & ½ story homes..... Larger houses are in the neighborhood, even as high as 3 story high homes are indeed in the neighborhood. All corner lots.....

Mr. Newman: You just did a very expansive view of the surrounding areas and not focused solely on the surrounding ten houses or so....How many large homes are close to this one?

Mr. Cooper explains that he would describe this as an appropriate view of the surrounding neighborhood.

Discussion continues.....

Mr. Cooper describes many of the corner lots in the neighborhood that have FAR overage.

Mr. Newman and Mr. Cooper continue their discussion on the style of the home, pitch of the house, etc.....open air, light.

Mr. Cooper explains that on the one side the height is 29.3' and then as we move along it the pitch extends to 45' on the opposite side.....

Mr. Meer: There would not be much of an impact because the sun sets on Kenneth Ave and the east is on Summit.

Basement is discussed.....Finished basement, but not a place where you would spent time.

Attic is mentioned. No usage in the attic. Storage only.

Grade issues are discussed.....Ridge line is mentioned.

Building Height Ordinance is read: Section 125:10(8) Amended 7-17-2007

Mr. Karas states the Ordinance is difficult to understand...

Mr. Azzolini: My familiarity with the code, was that it was measured to the mid-line of a Gable type roof.

The Ordinance is discussed.....

Mr. Azzolini states that it appears that the other frontage should be considered as well, the applicants architect indicated that he relied upon information provided by the Borough Engineer, and I am not sure if they applied that standard or not.

Mr. Newman: I understand, is it in your opinion that the definition requires an adjustment probably in the height calculation then?

Mr. Azzolini: Yes. If it were not included in the base elevation that Mr. Cooper referred to.

Discussion continues....

Mr. Cooper: The Engineer provided us with the mean of the street. That information was unavailable to us by our own surveyor. That number of was given to us as a starting point.

Mr. Newman: Of what street?

Mr. Cooper: As the mean, the front street.

Mr. Karas questions whether that measurement goes to the ridge line.

Mr. Cooper states no. The ridge line is not considered in the definition.....

Discussion continues.....on the wording of the Ordinance.
The current thinking would be to measure to the ridge....

Mr. Cooper explains that he is still very close to meeting that requirement....

Mr. Karas: It is something that has to be cleaned up. We all have to be on the same page and if someone gave you the wrong information.....It is still something that has to be straightened out.

Mr. Newman agrees. In addition to that, there is the issue of whether or not mean grades of several point of the two grades were used. I know you did your homework but.....

Mr. Karas: If we are to exclude the basement which is 1,116sf from the original living space, I get the FAR at 29%.....

Mr. Kantowitz: We are here because the basement is exposed. If the basement was not exposed, we would not be here.....

Discussion continues.....
FAR is discussed....an attempt to control mass....

Mr. Cooper: All we are asking for is to look at this piece of property, unique to the neighborhood and put it into context with all the other conflicting evidence.

Mr. Karas asks if the applicant would consider a revision in the resolution if the application were approved that the basement specifically not be used under any conditions.....because of the FAR.

Mr. Cooper and the Board again go over the FAR.
Calculations are again discussed.....There is a discrepancy....

Mr. Cooper apologizes and notes there is a cantilever that accounts for the difference between the first floor and the basement. There is also an area that will be taken out in the Foyer.....Calculations are done....

Discussion continues.....

Mr. Kantowitz asks Mr. Cooper what he feels this house would impact based on the Municipal Land Use Law.

Mr. Cooper again explains that it is the best use of the property. If it were a larger house it would expand the footprint and therefore would have more of an impact on the side and the rear property.....

Mr. Kantowitz continues to cross examine Mr. Cooper on all the positive criteria that would come from the approval of this application.

Mr. Cooper speaks of all the surrounding neighborhoods and the designs within the neighborhood and that this design would work with the area.

Discussion continues.....

Mr. Kantowitz has no further questions.

Mr. Frankel questions what percentage of the basement is the living area?

Mr. Cooper calculates 9.6%

Mr. Frankel: The habitable area, does it include a bedroom?

Mr. Cooper: No, they have no plans for one.

Discussions continue.....

Mr. Newman: If there are no more questions from the Board, I'd like to open it up to residents within 200ft.

Mr. Newman swears in: Scott Epstein, 3-23 Lyncrest Ave, Fair Lawn.

Mr. Epstein questions the setback.....

Mr. Epstein continues stating they have a beautiful home but coming up Willow, it is a very large looking home. It is a difficult lot to work with and I do understand that. He expresses concern over the height & questions total square footage including the basement. Front porch is questioned.....

Mr. Cooper answers all questions and concerns and Mr. Epstein is satisfied with all the answers and states that it is in character of the neighborhood.

Mr. Newman: Any questions from residents within 200ft. of the applicant. Seeing none Mr. Newman closes this portion.

Mr. Newman: Questions from the general public.

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

Mr. Rubenstein questions the final height and the final FAR.

Mr. Cooper: The average is 27ft. from the mean of the gable. There is a 5ft.difference between the existing ridge and the go thru.

Mr. Rubenstein questions the final FAR.

Mr. Cooper responds, 552%.

Mr. Rubenstein is finished with his questioning.

Mr. Newman swears in: Carol Weissman, 10-08 Fairhaven Place, Fair Lawn, N.J.

Ms. Carol Weissman speaks of how nice this design would fit into the area because of the variation of styles within the neighborhood. I think it is a nice area and I feel it is a plus to the neighborhood.

Mr. Newman asks if there are any other questions from the general public for Mr. Cooper. Seeing none. Mr. Newman closes this portion.

Mr. Newman asks for a 5minute recess.

RECESS.

Roll Call: Mr. Diner, Mr. Charipper, Ms. Spindel, Mr. Frankel, Mr. Meer & Mr.Newman

Mr. Newman: Before we proceed with the previous application, I need to extend the courtesy to Mr. Karas, the attorney for all 3 of our Commercial Applications tonight.

Mr. Karas: It is my understanding that you will be limited in time as far as getting to my applications. In addition, you only have 6 members tonight and each one of These applications are requesting D-variances so that would require seven(7) members to hear and to vote. After speaking to Counsel to the Board, it is

going to be carried to June 15, 2009.

1. Application #2008-078-European Learning Center
2. Application#2008-088-Eurocars,
3. Application #2009-013, Tribal Irons

No further notice is required.

Mr. Newman refers to Mr. Kantowitz.

Mr. Kantowitz explains that during the testimony and during the break it is obvious that there are still questions which seek answers. We would like to propose if we could address the height issues with your Board Professionals before we vote. Also the issues of how the height is measured and if there is a question in anyone's mind, I don't want the Board voting and obviously as an advocate have someone cast the vote because there is a question.....

Mr. Kantowitz asks the Board if he could carry the application to the next meeting so that the answers are simple and strong and that we may conclude it at that time.

Mr. Newman asks if there is any objection from any Board Members?

Seeing none. I accept the proposal.

Mr. Newman mentions transcripts and if his applicant is willing to provide them if need be.....

Mr. Kantowitz agrees and grants the Board an extension of time.

Mr. Newman reminds Mr. Kantowitz about furnishing copies of the basement floor plan To which Mr. Kantowitz agrees.....

Mr. Kantowitz: I understand that this matter will be carried to May 18, 2009 and there will be no further public notice and we will address the two issues that we have talked about with your Professionals. We will talk with Ms. Peck if there is need for any transcripts.

Continuation of the Application #2009-014, Simon Mukkatt.

Mr. Newman calls Mr. Mukkatt to the podium and reminds him he is still under Oath.

Mr. Newman questions Ms. Peck on the permits in question.

Ms. Peck: We gave permission to put the walkway on the side of the house because of water issues. There is a question on the Patio.

Mr. Muckatt states the patio was there when he bought the house and if that is an issue he could remove that.

Mr. Newman states it probably would make our calculations incorrect. That is the problem at the moment.

Ms. Peck mentions that the survey does not have a patio and the patio was not calculated.

Mr. Muckatt states he would remove the patio because he needs the driveway.

Discussion continues.....

Mr. Newman explains to Mr. Muckatt that they will need to adjourn the meeting tonight and carry it to May 18, 2009 in order to clear up the miscalculations of the patio.

Drainage is brought up by Ms. Spindel and Mr. Muckatt agrees that he will extend the drainage and redirect the drain so that it does not affect his neighbor.

Mr. Muckatt grants the Board an extension and to carry the meeting.

Minutes:

1. Mr. Meer made a motion to approve the minutes for the January 26, 2009 & February 23, 2009 meeting and Mr. Diner seconded the motion.

VOTE: All Present – AYE

Invoices & Bills:

1. Nowell, Amoroso, Klein, & Bierman in the amount of \$687.00
2. Nowell, Amorosa, Klein & Bierman in the amount of \$833.33
3. Nowell, Amorosa, Klein, Bierman in the amount of \$409.20
4. Nowell, Amorosa, Klein, Bierman in the amount of \$1,015.87
5. Nowell, Amoroso, Klein & Bierman in the amount of \$46.32
6. Azzolina & Feury Engineering in the amount of \$1,350.00
7. Birdsall Engineering in the amount of \$1000.
8. Karen Koscis in the amount of \$500.00
9. Birdsall Engineering in the amount of \$712.50
10. Birdsall Engineering in the amount of \$225.00
11. Azzolina & Feury Engineering in the amount of \$340.00
12. Azzolina & Feury Engineering in the amount of \$2,142.00
13. Azzolina & Feury Engineering in the amount of \$416.50
14. Azzolina & Feury Engineering in the amount of \$1, 620.00

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

VOTE: All Present – AYE.

Mr. Charipper amends his motion to include an invoice from Karen Koscis in the amount of \$275.00. Mr. Meer seconds the motion.

VOTE: All present - AYE

Resolutions:

1. Application #2009-096, Robert & Diana Vonsee, 0-118 Blue Hill Avenue, Block 1209, Lot 13, Zone R-1-3– Detached Garage- Approved.
2. Application #2009-095, Timothy Beyer, 33-15 Norwood Drive, Block 2522, Lot 1, Zone R-1-2– Fence- Approved.
3. Application #2009-092, Joseph Costa, 2-01 28th Street, Block 3308, Lot 23&24, Zone R-1-3– Addition- Denied.
4. Application #2009-094, Wayne & Marilyn Bojanowski, 4-34 Hartley Place, Block 3409, Lot 10, Zone R-1-3– Addition- Approved.

Mr. Charipper made a motion to accept the Residential resolutions and Ms. Spindel seconded the motion.

VOTE: All Present – AYE.

5. Application #2009-098, Peter Wong/Ice Cream Shoppe, 0-115 30th Street, Block 2207, Lot 71, Zone OBS-2– Ice Cream Shoppe- Approved.

Mr. Newman explains on this application that Mr. Karas has made mention that he is not included as voting in favor of the application when he indeed had. Mr. Soukas has indicated that he will make that correction.

Ms. Spindel made a motion to accept this correction and Mr. Meer second the motion

VOTE: All Present – AYE

6. Application #2009-099, Grande Pointe Fitness, LLC., 18-01 Pollitt Drive, Block 4802, Lot 2, Zone I-1– Gym- Approved.

Mr. Charipper made a motion to approve and Ms. Spindel seconds the motion.

VOTE: All Present – Aye

7. Application #2009-097, Peter & Sue Lake, 18-01 Ellis Avenue, Block 4506, Lot 11, Zone R-1-3– Foyer- Approved.

Mr. Charipper made a motion to approve and Mr. Frankel seconded the motion.

VOTE: All Present- Aye

Mr. Newman speaks of unexcused absentees and how important it is for all members to be at the meetings. For example, Mr. Andrew Karas (Attorney) his presence tonight with 3 Commercial Applications requiring use variances where 7 voting members are required. There being only 6 members present (once Mr. Sy Karas had to be recused), besides a time issue, the applications had to be carried. We need to have members notify someone if they cannot attend. Four (4) alternates were created so we could avoid this problem...

Discussion continues.....

Mr. Newman stated that he and Mr. Soukas have been working on By-laws and will be presenting them to the Board for review and approval.

Adjourn:

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

TIME: 10:00 P.M.

VOTE: All Present - AYE.

Respectfully submitted,

Cathy Bozza
Zoning Board Clerk