

**BOROUGH OF FAIR LAWN
ZONING BOARD OF ADJUSTMENT
Regular Meeting
Of May 18, 2009**

Following are the minutes of the Fair Lawn Zoning Board of Adjustment's regular meeting held on May 18, 2009.

Chairman Todd Newman 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: Ms. Spindel, Mr. Charipper, Mr. Sacchinelli, Mr. Diner, Mr. Meer & Mr. Newman. (Mr. Charipper arrived at 7:50p.m..)

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.

Residential Old 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 requirements.

Mr. Newman swears in Mr. Mukkatt.

Mr. Newman reiterates the reason why he is here before the Board this month because of errors in the site plan, the errors having to do with impervious coverage.

Mr. Mukkatt explains that the patio that was not included in the calculations was there before he bought the house.

Ms. Ann Peck (Assistant Zoning Officer) states to Mr. Newman the application is now amended to include the front porch.

Discussion between the Board Members and the Zoning Officer clarifying the amended Application and calculations.

Mr. Newman defers to counsel and explains to the Board that the porch is there already and he asked counsel if the Board could consider the front porch and the application for

the yet installed driveway separately, but was advised that they(the Board) could not. The application has to be looked at in its totality.

Discussion continues.....

Mr. Newman asks Mr. Muckatt to explain briefly why the Porch wasn't included.

Mr. Muckatt explains with the new addition, the front side of the roof projected out and his contractor asked if he would like a small porch and he did not know he needed a permit and checked with the inspector and she (The Building Inspector) had no objection and he thought that was enough to get her approval.

Mr. Newman: Just to clarify, all the proper permits were taken out, no variance required because he was not over building coverage at the time.

Mr. Newman questions total impervious coverage without the driveway.
Calculations: Existing 37.8% with the porch, and with the driveway, 44.76%.

Discussion continues.....Calculations are redone.....

Impervious with the Porch and walkways: 39.35%
and with the addition of the driveway: 44.35%

Mr. Newman asks if anyone from the Board have any questions.

Mr. Karas questions the survey.....

Mr. Newman asks Mr. Muckatt what hardships he has to warrant the enlargement of the driveway.

Ms. Spindel voices her concern about the water runoff....there is a lot of house for this size lot. She feels the Board should consider a drywell be installed prior to the approval, if there were an approval.

Mr. Newman feels that he doesn't know how the Board could do that without the applicant consulting an engineer prior to the approval. It may not be necessary, it may not be possible, so for us to require it as part of any approval may be immature.

Mr. Karas questions the site plan.....and the porch.

Discussion continues.....

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

Mr. Newman opens up the applicant to residents of the general public. Seeing none.
Mr. Newman closes this portion.

Mr. Newman explains to Mr. Mukkatt, that he has a couple of situations here. An increase in his impervious coverage that was based on the work that was done that was not part of the original approval in 2008. In addition, he is asking for another 5% for the driveway.

It is an all or none application. If it is approved, everything is approved, retroactively the porch and walkway and moving forward, the driveway. If denied, then it would also mean you would have to remove the porch and walkway.

Mr. Newman asks if anyone has suggestions to amend the application.....

Ms. Spindel suggests that they vote on the porch separately and then the driveway.

Discussion.....

Mr. Newman asks for a show of hands to proceed with the application separately.

The Board would like to proceed with two separate votes. One addressing the existing alterations and one addressing the driveway.

Mr. Newman asks Mr. Mukkatt if he would object to this. Mr. Mukkatt has no objection.

Mr. Newman asks for a motion to approve the building coverage of 29.4% impervious coverage of 39.35%.

Mr. Meer makes a motion to approve the Impervious Coverage increase to 39.35% where 35% is permitted and the Building coverage of 29.4% where 25% is permitted.

Mr. Diner seconds the motion.

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

Motion carries.

Mr. Newman asks for a motion separately for a 5% increase in Impervious Coverage for a driveway. It would increase the Impervious Coverage from 39.35% to 44.35%

Mr. Meer makes a motion to approve the application.

Mr. Diner makes second motion.

VOTE: Mr. Diner, Mr. Meer, Mr. Newman, **YES.**
Mr. Karas, Ms. Spindel, Mr. Frankel, **NO.**

3-YES

3-NO

Mr. Newman calls for a 5min. Recess to discuss decision in a tie vote.

The Board Attorney consulted Case Law and in the case of a tie, the application is denied.

**Tie Vote goes to denial of application.
Application Denied.**

1. Application#2009-015, Joshua & Amy Fogelman
3-34 Lyncrest Ave, 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 53% 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 for the applicant) steps forward and states this is the continuation of the application.....

At the last hearing we adjourned for a couple of reasons....there were some opened questions about some measurements and information with the actual height of the building and we perceived some concern on the Board about what we could do to lessen in some fashion the extent of the relief we were seeking. We went back and tried to examine that. Also a concern was how to apply the definition of FAR & building height.

Mr. Kantowitz continues.....

Mr. Kantowitz asks Mr. Peter Cooper (Architect for the applicants) who has been accepted as an expert witness at the last meeting to return to the podium to testify again and to address each of the items in order and to respond to questions and concerns the Board Members had.

Mr. Newman swears in Mr. Peter Cooper.

Mr. Peter Cooper repeats his qualifications.

Mr. Kantowitz begins his questioning in regards to height, etc.....concerns.

Mr. Cooper begins with stating the Board has received copies of all the changes in all the affected areas, and the only revision is the typo to the lot areas. In fact, there are no changes.

Mr. Cooper speaks of the basement plans.....speaks of the cantilevers....first floor...
FAR....speaks of the building height.....they are compliant at 30ft.

The Ordinance is discussed...and the definition of this...

Mr. Kantowitz explains that upon discussion of the Ordinance with the Zoning
Official(Mr. Kolano) it was defined, that when it pertains to a residential property, the
calculation is made based upon the center of the building facing the street and this town's
administrative officer determined that for this situation, it would apply to the Lyncrest
Ave side.

The section of the Ordinance is read: It states that the height of any detached single
family dwelling, semi-detached single family dwelling, townhouse attached single family
dwelling or two family dwelling SHALL BE measured.

Discussion continues on the interpretation of the ordinance.....

Mr. Newman does not agree with it....and asks Mr. Kantowitz, if the Board gets to enjoy
interpretation of the zoning ordinances as well.

Mr. Kantowitz states that he feels Mr. Kolano's interpretation is a valid one.
He is the Official charge in interpreting it, and in an unusual instance a Board which is
charged under the Land Use Law to interpret and to review interpretation given by the
Zoning Official, I think at the end of the day, the Board could say that you don't agree
with what the Official has to say but.....

Mr. Kantowitz continues with his argument.....

Mr. Newman states there are several statements in the definition of building height.
Explains his view.....

Ordinance is again read....Mr. Newman explains that no where does it state if you are on
a corner lot you shouldn't measure both streets, cause it says opposite. Aren't both streets
opposite?

Mr. Kantowitz & Mr. Newman continue the discussion.

Mr. Newman would like to know how many front yard setback the property has and Mr.
Kantowitz explains because it is a corner lot it does have two but....the governing body
when they defined building height for purposes of measuring building height and in
connection with FAR have said; use one. It's yard...it's front door...The center of the
building.

Discussion continues....

Mr. Karas speaks and states that he has been listening and reading & rereading while this discussion has been going on and unless we accept the description of counsel as verified by our Zoning Officer, this entire Ordinance does not make sense. The only sense that it makes is if you except the definition that counsel has given subject however to what our Attorney has to say.....

Mr. Charipper suggests that perhaps the Zoning Official should come in and explain the definition because there may be other issues coming forth with other applications in the future. Perhaps then we can come to a decision.

Mr. Soukas(Board Attorney) states that he has no problem with Mr. Kantowitz's factual recitation regarding the height ordinance and how it was amended together with the FAR ordinance. It is correct. Presently we are guided by the highlighted portion which is applied to residential. This building height definition is viewed as having two portions, the first half being applicable to Commercial structures and the second being applicable to Residential. I note that Mr. Kolano states there is no provision for a corner lot, I am not so sure about that conclusion, it appears in the highlighter portion however that there is not an exclusive provision for a corner lot...you have two front yard setbacks so where do you measured it from?...I know the Board members are keenly aware of the issue of applicants reliance on our Zoning Officials determinations, statements and how they interpret our zoning ordinances applicable to these types of applications.....

Discussion continues... questions arise as to whether or not they should continue or move forward without a clear interpretation because if you rule on this and come back with an interpretation and you rule it differently drastically it affecting this application...

Mr. Newman and Mr. Kantowitz discuss the interpretation again...

It is determined & agreed upon that this new portion was added as a result of an FAR ordinance in essence to help control size of homes in Fair Lawn.

The mean and the ridge are discussed...

Mr. Newman's biggest concern is the variance on height that he is requesting.

Mr. Kantowitz continues his argument.....

Mr. Charipper again suggests adjournment for reasons regarding the interpretation of the definition.....

Mr. Newman suggests that they poll the Board whether or not to accept Mr. Kolano's interpretation. If the vote is to accept, we move forward and no other variance is required. If we vote not to accept we will move forward with the addition of the necessary variance and the presentation is essentially the same.

Mr. Kantowitz suggests that for purposes of complete record, you may wish us to proceed with the height variance testimony as an alternative rather than polling the Board for this reason...If you poll the Board and the agreement is, yes, you agree with me and my definition and I don't put height testimony in, you may revisit it at some point later and say, we feel there should be a different definition.....at least if you have all the testimony and I've offered you two basis's on which to prevail on my case.... I'd rather put in the height proofs and have you decide as you would on the alternative or both means, rather than poll the Board and have the Board possibly agree with my interpretation and get an approval and then find that someone says; wait a second, he didn't make his case, there was a height variance needed. I think the proofs will be compelling to my case.

Mr. Newman agrees and asks if he needs to officially amend the application at this point to include that additional variance.

Mr. Kantowitz explains that he is doing so and I believe the notices have included a request for a height variance and it I don't believe that it affects the notice or the validity of the notice in terms of what is being sought here.

Mr. Soukas agrees.

Mr. Kantowitz states for ease of reference....when they speak about right and left, unless we speak otherwise, we speak of those sides based upon one standing on Lyncrest Ave., straight in front of the existing front door of the house as it exists now. The right side of the building is the side that is closer to Willow...

Mr. Cooper states that he will walk the Board through to show how they came to the numbers. Sheet A-1 thru A-5 is discussed and Mr. Cooper explains how the calculations were done.

Applying the measurements and using both grades, taking the average of the grade and comparing that grade to the height of the finished product as we amended it with the lowered height, we have a building height of 31.63ft.

Mr. Kantowitz continues to cross examine Mr. Cooper and asks if he has an opinion on whether the benefits to developing the property to this height are advanced and outweigh any detriment to deviating from the allowable height by 1'7" on this property.

Mr. Cooper explains that based on the position of the house relative to the street the impact is to the street itself and not to the immediate neighbors.

Mr. Cooper discusses the slope of the property towards Willow Street and states that the topographic features that exist on this site are unique and deviates substantially within the surrounding neighborhood. I could reference a half of dozen other properties that exceed

this height and it is not out of the ordinary. The benefits to be derived from the height provided, given the aesthetics and the features to be yielded from this height outweigh any detriment.

Mr. Cooper continues speaking of pitch, design, etc.....there is quite a variety of types of houses, types and styles....and if you reference the Master Plan it provides for a mixed amount of houses of all types. The scale is consistent with other houses in the area.

Clarification of how much the roof has been lowered is asked and answered that it is calculated to be 1.6ft.

Mr. Newman asks if there are any questions for Mr. Cooper from residents within 200ft. Seeing no one.

Mr. Newman asks if there are any questions from the general public. Seeing no one.
Mr. Newman closes this portion.

Mr. Kantowitz summarizes and states that they have gone to a considerable length to identify the variances needed and at this point we suggested we only need one but I think we made our proofs for two C variances. The side yard variance that is a pre-existing situation that takes us on to Willow and the testimony from one of the neighbors at the last meeting was very telling and seemed quite sure and relieved that nothing was intruding into the front yard in Lyncrest.....
He speaks of topographic features, grade issues, Slope of the property, etc.

Mr. Kantowitz continues.....
Character of the neighborhood is mentioned, characteristics of the roof line, etc...

Mr. Karas questions the garage and the FAR calculations. (36.1%)
Garage removed would make it 35.2% and if you take out both the garage and the basement and the mechanical room you come out even lower 27.23% but the garage has to be included because it is over 400sf. Correct?

Mr. Cooper answers yes and reiterates the topography is the essence of why it pushes us over....

Mr. Newman states that if there are no other comments or questions from the Board, he will ask for a motion and to bear in mind we are looking at a FAR, D-2 variance and looking at a pre-existing side yard variance, C-1 variance and a C-2 height variance. 31.7.2"...with that in mind would someone make a motion.

Mr. Meer makes a motion to approve the application,
adding a C variance for height, 31.63ft. where 30ft. is required.

Mr. Karas suggests that a provision be put in the motion that the basement not be used for any residential purposes under any conditions.

Mr. Kantowitz and Mr. Karas discuss this.....

Mr. Newman suggests that they already have livable space in that area and I don't think it makes sense to take that away in a stipulation that we put to the approval. What I suggest that we put into the approval is at no time is the garage or mechanical room to be converted into habitable space.

Discussion continues.....

Mr. Kantowitz explains that the condition takes away a living area that has been granted with this addition.

Ms. Spindel mentions that the condition would have to have to have enforcement and involve someone from the zoning department having to go over to see if someone is living there or not.

Mr. Karas states that upon consideration, he withdraws the suggestion.

Discussion continues and all agreed at a half way point.

Mr. Meer amends the motion to add that at no time should the garage or the mechanical room be converted to living space.

Mr. Charipper seconds the amended motion.

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

Application Approved.

5min. Recess

Mr. Newman opens the meeting.

Residential New Business:

1. Application#2009-016, Michael Zislis & Julia Vogman
25-06 Berkshire Road, Block 3218, Lot 14, Zone R-1-3
Existing lot is 5000sf where 6500sf is required. Lot frontage of 50' where 65' is required. Proposed addition would increase the building coverage from 26.4% to 31.3% where 25% is permitted. Would increase the impervious coverage from

46.6% to 49.4% where 35% is permitted. Would maintain existing side yard setback of 4.8% where 8' is required. Proposed new foyer and front platform would reduce the existing front yard setback from 25' to 16.5' where 25' is required. Deck coverage of 85 where 5% is permitted. FAR of 45% where 40% is permitted. It Requires a D-4 use variance as per Section 125-12 Schedule of area yard and building requirements. 125-57.D.(d) use variances.

Mr. Newman swears in both Ms. Julie Vogman & Michael Zislis & Mr. Larry Guthartz, Architect to the applicants & qualified as an expert witness.

Fees have been paid and there is proof of service.

Mr. Guthartz begins with the explanation of the variances they are asking for and the proposed plans including a addition, foyer and front platform....stating that the original architect had included the garage in the calculations as part of the FAR. In removing the garage, the FAR is now lowered to 39.74%.

Impervious coverage is discussed.....Mr. Guthartz states that the reason for this large amount of impervious is that the existing driveway is 873sf. That is a significant piece of concrete.

Discussion continues....Calculations are discussed.

Deck was questioned and Mr. Guthartz states that proof was given that deck was existing. Height will be 29ft. from center of street.

The Board discusses ways on how to reduce the impervious coverage with Mr. Guthartz.

Discussion continues.....

It is decided and agreed to by the applicant to remove a significant portion of the driveway to reduce the impervious coverage to 48%.

Mr. Newman asks if the Board has any questions.

Ms. Spindel mentions the tree in the front of the house which is going to stay.

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. Seeing no one, Mr. Newman closes this portion.

Ms. Spindel makes 1st motion to approve the application.
Mr. Charipper makes second motion to approve.

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

Application Approved.

2. Application#2009-017, Tadeusz & Halina Sadej.
13-15 Emerson Drive, Block 4711, Lot 1, Zone R-1-3
Proposed in ground pool would increase the existing impervious coverage from 38% to 47.9% where 35% is permitted as per Section 125-12 Schedule of area yard and building requirement.

Mr. Newman swears in Tadeusz & Halina Sadej.

Fees have been paid and there is proof of service.

Mr. Sadej explains he is applying for a variance for an in ground pool....

Ms. Peck, the zoning officer asks if she could explain this application stating that Mr. Sadej had applied for a pool and a walkway and while I was out on inspections today I noticed he had extended his driveway an additional 3ft. when he redid it, bringing it to a width of 25ft. where 22ft. is allowed and also installed a shed without a permit and within 3ft. of the property line instead of the required 4ft.

Ms. Peck stated also when Mr. Sadej realized the numbers were high he was willing to reduce the patio and walkway.....

Discussion on calculations.....

Mr. Sadej is willing to work with the Board in order to meet the requirements.

The 3ft. walkway around the pool is discussed

Ms. Peck explains that the electric code dictates that if you put any walkway around the pool, it must be 3ft.wide to bond it.

Ms. Spindel suggests that they vote and split the application into two parts, one being the proposed and one that was done without permission.

One part vote would for the existing non conformities at the site.

1. 3ft extension to the driveway, making it wider than the allowed 22ft.
2. A shed within 1ft. of the wrong location.
3. Curb cut is wider than the allowed 20ft.

Ms. Spindel asks the applicant the pool size could be changed and the applicant explains it is the smallest in the fiberglass selection.

Calculations are done again.....

Discussions continue....

Mr. Newman asks the Board again what their feelings are in hearing the application as a whole or in part. We need to decide on that first.

The Board decides on a motion to vote as two parts.

Mr. Newman opens the applicant to residents within 200ft.

Mr. Newman swears in:

Mr. Allen Bisik, 15-50 Elmary Place, Fairlawn, N.J.

Mr. Bisik testifies he is directly across the street from the applicant.

He wants to bring to the attention of the Board the ground coverage in which everyone is concerned with and points out that the land directly behind the applicant's property is vacant and swampland. It does not have other homes behind them which should help with the Board's water concerns.

Mr. Newman swears in:

Debbie Dellonica, 51 Elmary Place, Fair Lawn, N.J.

Ms. Dellonica testifies that she is in favor of the applicant, stating that they keep their property very well maintain and it will only increase the value of our properties. They are very good neighbors.

Mr. Newman asks if there is anyone else within the 200ft.? Seeing no one,

Mr. Newman closes this portion.

Mr. Newman opens up the applicant to the general public. Seeing no one

Mr. Newman closes this portion.

Mr. Newman reviews the application and notes the 2% reduction in the concrete around the pool. Applicant agrees to the reduction of the patio by 3% which would bring the coverage of 500sf to 254sf.

Mr. Newman again questions the maximum driveway width.....and the shed?

Mr. Sadej explains that the shed is bolted to the concrete and speaks of how it was done incorrectly.....

Mr. Newman asks for a motion on:

1. A shed that is 3ft. from the property line where 4ft. is permitted.
2. A driveway which is 25ft.in width where 22ft. is permitted.
3. A driveway curb cut that is 26ft. where 20' is permitted.
4. A increase of 39.3% impervious coverage where 35% is permitted.

Mr. Karas makes the 1st motion to approve the application.
Ms. Spindel seconds the motion.

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

Mr. Newman asks for a motion on the pool that will require an increase in impervious coverage from 39.3% to 46.3% an increase of 7%.

Ms. Spindel makes 1st motion to approve the application
Mr. Charipper seconds the motion.

VOTE: Mr. Diner, Mr. Karas, Mr. Charipper, Ms. Spindel, Mr. Frankel, Mr. Meer, **YES**
Mr. Newman, **NO**

Motion carries.
Application Approved.

Mr. Newman states that Mr. Jarett King has resigned from the Board referring to his letter of resignation.

Minutes

Mr. Meer made a motion to approve the minutes for the March 16, 2008 meeting and Mr. Charipper seconded the motion.

VOTE: All Present – AYE

Corrected Resolution:

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

Mr. Karas made a motion to accept this resolution and Mr. Charipper seconded the motion.

VOTE: All Present – AYE.

Vouchers; Bills:

Karen Koscis in the amount of \$275.00 for services rendered.
Karen Koscis in the amount of \$150.00 for services rendered
Bill Soukas in the amount of \$833.33 for April, 2009
Bill Soukas in the amount of \$833.33 for May, 2009
Bill Soukas in the amount of \$880.00 for April 23, 2009
Birdsall Engineering in the amount of \$3, 097.50 for Professional services for Grand
Pointe Fitness.

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

VOTE: All Present – **AYE.**

Mr. Newman speaks to the Board regarding the By Laws for the Zoning Board and discusses with the members that he would like to present updated By Laws for review and approval next month.

Adjourn:

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

TIME: 11:00 P.M.

VOTE: All Present - AYE.

Respectfully submitted,

Cathy Bozza
Zoning Board Clerk

Commercial Old Business

Commericail New Business

Vouchers; Bills:

Bill Soukas in the amount of \$833.33 for March, 2009
Bill Soukas in the amount of \$833.33 for April, 2009
Bill Soukas in the amount of \$833.33 for May, 2009
Karen Koscis in the amount of \$275.00 for services rendered.
Karen Koscis in the amount of \$275.00 for services rendered.

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

VOTE: All Present – AYE.

Corrected Resolution:

2. Application #2009-098, Peter Wong/ Ice Cream Shoppe,
0-116 30th Street, Block 2207, Lot 71, Zone OBS-2,
Approved.

Mr. Karas made a motion to accept this resolution and Mr. Charipper seconded the motion.

VOTE: All Present – AYE.

Minutes

1. Mr. Meer made a motion to approve the minutes for the March 16, 2008 meeting and Mr. Charipper seconded the motion.

VOTE: All Present - AYE

Adjourn

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

TIME: 11:00 P.M.

VOTE: All Present - AYE.

Respectfully submitted,

Cathy Bozza
Zoning Board Clerk