

**BOROUGH OF FAIR LAWN  
ZONING BOARD OF ADJUSTMENT  
Special Meeting  
Of December 9, 2009**

Following are the minutes of the Fair Lawn Zoning Board of Adjustment's Special meeting held on December 9, 2009.

Chairman Todd Newman called the Special 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. Blecher, Mr. Meer & Mr. Newman

Absent: Mr. Salerno, Mr. Sacchinelli, Ms. Taylor

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

**Commercial Old Business:**

1. Application #2009-038, **18-35 River Road, LLC**  
18-35 River Road, Block 5834, Lot 1, 3&4, Zone I-2  
Preliminary and final site plan approval for development. Retail/Commercial uses and a 64unit residential garden apartment building. Sign variances 125-41.B.(3)(b)125-41.B.(40(b) 125-41.C.(3) and waivers

Mr. Stuart Liebman (Attorney for Applicant) opens the meeting with a review of the reasons they are here tonight. They are an approved Use Variance and an approved Sub-Division with some other minor variances that were approved by the Board some time ago. It is a mixed use property at the intersection of Maple & River.

Continues with the site proposal and what issues were addressed at the last meeting. A sign variance was one of the issues and they had both the Planner and the Architect here who testified to the design of the signage for the site. We heard concerns about the proposed size of the lettering so we had a discussion with the proposed tenant at the end of the last hearing. We did spend more detailed time on the signage so now we are able to address the specifics. We revised the architectural plan....

Continues with the proposed revisions.....

Mr. Liebman states that he has brought his Traffic Engineer here to present the traffic studies and answer any concerns or questions from the Board members and also our Board Professionals.

Mr. Liebman comments that he is aware of the fact that the report from the Site Engineer Board Professional, Mr. Paul Azzolini is not yet complete. He had spoken with Mr. Azzolini who was unable to be here this evening and he has sent another representative from his office to be here but we have decided not to present the site testimony....grading, lightening, etc...without having his report here.

Mr. Liebman brings Mr. Alan Weissman(Architect) of Studio 5 Partnership, Glenrock, N.J. up to the podium

(Mr. Weissman is still under Oath)

Mr. Newman states before going forward he would like to go over notes from the last hearing regarding signage that we were hoping to hear back on....

1. Possibility of Illuminated lettering? which we preferred.
2. Line of sight in time standard being used in the calculations.
3. Revisit the Canopy in the back...
4. Consider signage on the right side elevation.

Mr. Weissman gives his architectural background on the question regarding the line of sight and explains that Studio5 Partnership does an extensive amount of retail design work for this geographic area for National & Global tenants....I've done this for over25years and have never heard any retailer of planner talk to me in terms of time and size of sign. Generally they try to get as big as they can, so I have never heard of time distance studies done by any retailer, national or locally....

Revisions are discussed, Mr. Weissman explains the presentation marked A-0-5 is the true signage program of CVS.

Discusses the signage on the right side of the building as you come up River Rd. it shows in the corner the side elevation of CVS agreed to put a sign in that location.

Outbound side of the Canopy facing the Brook, CVS has agreed to remove the signage that had previously been shown on the canopy....the right side elevation.

Mr. Weissman also points out that they have simplified and reduced the size of the signage on the drive up window.

CVS has also agreed to reduce the signage from 4' 1" to 4ft. It is consistent with what was approved on the CVS on Fair Lawn Avenue.

Discussion.....

Mr. Liebman hands out the CVS plans(Photos) and permits dated July 28, 2008, and marks them as Exhibit A6. Gives description of signage and measurements of the signage that were approved...

Mr. Weissman continues his testimony and explains they are not changing the number of variances that are being requested we are just being very specific since we know that it will be a CVS....

Continues with the specifics of the signage....size, placement, etc.

Birdsall's report states that the window sign is counted as a sign and requires a variance, we do not agree....it is up to the Board how to interpret the ordinance. Based on our reading of the text, it is truly a window sign....does not need a variance.

Mr. Van Den Kooy(Board Planner from Birdsall) comments that he was under the impression that it was an illuminated sign and there is a subsection, 125-41-I-4.B. & reads:

“Illuminated interior signs located within 24inches of the window of the building that are visible from the street or adjacent properties shall meet all the requirements of this section and area thereof shall not either by itself or accumulatively with any other exterior or interior illuminated sign or signs hereby permitted exceed the total area permitted for exterior signs as regulated in 125-41.B.

Mr. Van Den Kooy again states; that is for illuminated signs, so if the window sign is not going to be illuminated, it may not need a variance.

Mr. Weissman states that it will be illuminated.

Mr. Van Den Kooy concludes that he feels, based on the reading of the ordinance, it would need a variance...

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

After careful discussion, Mr. Weissman adds that where ever the Board chooses to adjust the calculations of the total area they would abide by.

Mr. Van Den Kooy feels that since it is the front entrance, I think it would be most appropriate to add it to the front elevation total. Offers his suggestions....

Mr. Liebman states they will have no problem with that. They will add 7.68sf.... to the total area for 5signs in the front elevation....

Mr. Weissman continues his testimony on signage with other locations of the signage proposed....right side elevation....we have addressed the concerns regarding the Canopy facing the brook, eliminated that and modified other.....

Discussion continues.....

Mr. Newman voices his concerns still on the size of the signage....he feels it still is too big and the visual impact is negative. He feels everyone knows the big red logo of CVS and he doubts that it needs to be 48inches to know that it is a CVS Pharmacy...

Discussion.

Mr. Liebman mentions the speed limit on River Road and the necessity of the size for the visual impact of drivers going past Maple & River Road....

Mr. Newman disagrees...The traffic going past that intersection is not going at great speed that these signs need to be that big and not to mention it is close to the road.

Mr. Weissman comments that CVS did agree to adjust it and they did reduce it a little bit, a very little bit but there is a ratio between the height of the sign and the letter form of the width. It is proportional.

Discussion continues.....

Mr. Weissman would like to have a proposed size that the Board Members agree on so that he can go back to the tenant....

Mr. Newman offers his opinion on the size: The largest letters, which are now 48inches be 36inches and everything else be proportionally smaller.....

Discussion & Questions.....

Board Members take a poll on the size of the signage and if they would like to see it reduced....

Mr. Diner, Mr. Karas, Ms. Spindel, Mr. Meer, Mr. Charipper, Mr. Frankel,  
All agree that the size of the signage could & should be reduced.

Mr. Blecher would like to pass at this time until he drives by the CVS on Broadway & Fair Lawn Avenue to get a better perspective on the size of the signage and the difference in both locations.

Mr. Weissman thanks the Board for their opinions and it has given him a new direction on how to speak to CVS and see what we can do....

Mr. Newman reiterates the two signs on the front elevation and the Maple Avenue elevation should be reduced by 25%...which would be 36inches and the 3<sup>rd</sup> CVS Pharmacy sign on the left side elevation, could be a bit smaller because it does not fit on the wall space in the same format.....shoot for a 30-35% reduction.

Mr. Weissman continues his testimony with the proposal.....Speaks to other locations of signage and directional signage issues..

Mr. Newman opens questions or comments to the general public for Mr. Weissman, seeing none.

Mr. Newman closes this portion.

Mr. Liebman brings his next witness: Mr. Dan DiSario

Mr. Newman swears in Mr. Dan DiSario, of Langen Engineering, Licensed in the State as a Traffic Engineer.

Mr. Newman accepts him as an expert witness.

Mr. DiSario begins his testimony. He is familiar with the site and will give an introduction to the site and circulation with traffic patterns and its impact.

A-8 is an Exhibit Prepared by Langen Engineering entitled “Intersection Improvements of Maple Avenue, Wagaraw Road & River Road”, dated December of 2009.

Mr. DiSario explains this exhibit A-8 replicates the information already in the revised site plan package that everyone has received and details from other information as it relates to the professionals improvements along Maple Avenue....

He takes them through the site itself on the Board Exhibit.....speaks to access. What they are proposing is an access driveway along River Road as far South as possible which would allow left turns and right turns.....

We have had initial discussions with the County in respect to the site access and the improvements that the County is planning for the intersection along River & Maple...

Mr. DiSario continues to explain the third point of access....Weber Place. The driveway there would allow left turn and right turns both in and out in both directions.

Mr. DiSario explains all the proposed plans for access & egress, explaining how it will serve the residents & the Drive thru customers of CVS.

Truck Delivery access for the deliveries to CVS loading zone/trash compactor is going to be on the easterly side of the CVS building....

Mr. Newman questions why not restrict flow to only truck and drive thru traffic there?

Mr. DiSario answers he thinks it would be a benefit to allow the residents to have the ability to access this portion of the site along River Road....they would have the ability to make the right hand turn into that driveway and then enter their apartment building....

Mr. Newman understands the convenience factor for the residents, but has concerns it would greatly increase traffic on the site using that particular entrance?

Mr. DiSario addresses Mr. Newman's concerns...stating that 64 additional residences would not greatly impact flow....explains different time flows....

Discussion continues.....

Mr. Newman continues with his concerns pointing out that if someone were to enter the site from Maple Avenue...they would have an option where they could enter...most likely from Maple, but when they leave though, rather than come back onto Maple or River, the preferred way to leave would be to come out the front of the site, make the left hand turn and take the access drive behind the drive thru, come out to Weber to try to get back onto Maple to avoid all the congestion on Maple & River. Mr. Newman feels it would create a problem on Weber & Oak.

Mr. DiSario reviews it (looking at the Board Exhibit) but disagrees with this and gives his reasoning behind his opinion.

Discussion on circulation of traffic continues.....

Concerns from Board Members are discussed.....

Mr. DiSario explains to the Board that it is only a "preliminary plan" and there is still alot the County is working on regarding the improvements of Maple & River that will determine the final outcome of the design after the initial approval of the site plan is approved....

Continues with information regarding the County and the discussions they have had regarding the improvements...speaks to the Restaurant and parking and the benefits related to the plan.

Questions from the Board for Mr. DeSario.....time frame with the County if the site plan is approved, etc....concern over County pulling out for financial reasons down the road...

Mr. DeSario states there is no inclination of this....

Mr. Newman swears in Mr. Mark Kataryniak(Board Traffic Engineer)

Mr. Mark Kataryniak would like to comment and take the Board a couple of steps back before they get too involved in too many details with things.....going back to the use variance when it was approved, the applicant couldn't provide a lot of specifications when it came to the traffic operations really in light of these County Improvements and one of the struggles with the review side of this application has been difficult on the site plan is the improvements along Maple & River has been an unknown variable and a blank space when you look at the improvements relative to the site plan.....alot of it lies with the jurisdiction of Bergen County but the way it directly ties into the circulation and access for this site...it is certainly an issue that the Board has to deal with when it looks at the overall access pattern and circulation plans with this site plan...

Mr. Kataryniak continues that he also is struggling with on one end of a review and a report he received a few days ago that he is still not clear what commitments the applicant can make or is willing to make in terms on what portions of this will be implemented by the applicant and what would be implemented by the County...if the County chooses to say; "Our improvements will only be limited to the intersection based on funding and scheduling limitations", is the applicant prepared to affect the changes to Weber Place and Oak Street. These questions need to be answered and defined.

In review of the operational aspects, the levels of service, the improvements...The Exhibit A-8 do offer improvements to the intersection....the added left turn, it does improve the operations of the intersection, etc....they do offer a betterment, I think they all need to be implemented. My concern is that we go too far afield here and we end of with part of this improvement and not all of it.

Mr. Kataryniak continues..." This concept of this site plan that you see here shows an access onto Maple Avenue from this site here (points to Board Exhibit) it shows circulation improvements in close proximity to Maple Ave, mentioning he does have some technical issues with.....these are current properties not owned by this applicant and not part of this property...(Rivera's Property) leaving the questions open to who will be responsible for this property improvement...there are a few players missing here in the mix and some details that still need to be clarified"....

In light of the complexity with the access and the County Improvements, Mr. Kataryniak would encourage involvement from the Board with the County because he feels it is a collective exercise that needs to take place.

Mr. Kataryniak offers his time and would be willing to hear what the County concerns are and have the opportunity to also bring the Board's concerns to the County....

Addresses the concerns of Mr. Newman regarding the alignment of the internal drive aisle, particularly as a one way here as it aligns with Weber Place

(Points to Board Exhibit) he is not as concerned with the left turns in front of the CVS, internal to the site as I am concerned with the potential to drain traffic off of River Road and create a cut through and increase traffic volume on Weber Place in general....the concern is the impact to residents along Weber.

He states he has asked for additional truck circulation, exhibits and analysis on how delivery trucks will circulate through the site, etc.....We need to hash out some of the access issues on the intersections and once we get past that level, then we need to start talking about how we can improve discouraging left turns out of driveways. There are Engineering and Mechanical ways to do that...signage, visual islands, etc....

Mr. Kataryniak also states he is still not clear on what is on this Exhibit as far as what is a representation of Bergen County Improvements and their designs versus what is suggested by the Applicant as an enhancement to that design and lastly, what is proposed by the applicant as part of his improvement.

Mr. Newman agrees and would like to open the discussion with Counsel on both ends here as to what direction do we go in the approval process? States reasoning behind this...

Mr. Newman states; This has to be an all or none package....There has to be a way to say our approval, if any is going to be contingent upon all proposed improvements being completed and being completed before the site becomes operational. I don't know exactly how that could be done legally but I think that has got to be the direction we move in here. It doesn't make any sense to sit here for a number of meetings, hear everything, then say; "This all sounds great" You're approved then you do everything you need to do on your site and then the County drags their heels for two years. We would have a nightmare scenario on that intersection and in the whole area.

Mr. Newman continues that they would have to figure out options and what needs to be put in any resolution just to make sure we do not end up with a horrible situation.

Discussion continues.....

Mr. Liebman explains he understands what the concerns are and argues that someone has to go first here. We have met with the county the last several weeks and the last few years on the designs here, especially with the Rivera's site and the County couldn't do anything so we came along and stated we will work with Rivera's....we've been pretty close, then it falls apart. Now we have a handshake on doing this.....but the "this" is still undefined. You want to know what "this" is and Rivera's wants to know what "this" is and the County does not know what "this" is yet because they are giving us the opportunity to design it with them and that is the process we are in right now...

Continues.....

We think this design is good for the region....The County has not seen yet everything that we are bringing to Oak & Weber and Maple....we are bringing that to you first.

We would like you to work with us and then we can take the design that will get the approval and work with the County....

Mr. Newman asks; If something did go terribly wrong with the County's funding, could with the permission of the County, the applicant make the necessary improvements? How do we approve anything, if what we are approving, never happens? There may be a way in the approval process to say: "If in such an event, the County does not provide funding and does not make said improvements, the applicant would make the improvements in order to....but I don't know if we could do that as a condition of an approval.....

Mr. Liebman states he thinks we're getting too far ahead of ourselves.

Mr. Newman states that it is way ahead but it is what is on the mind of the Board. There are a lot of what-ifs....

Mr. Liebman again reiterates that you have to start somewhere....

Discussion continues.....

Mr. Mark Kataryniak (Board Traffic Engineer) states that Mr. Liebman is correct in saying that this Board approves a Site plan condition upon outside agencies approval and in this particular case, any approval granted here would be conditioned upon approval of Bergen County & both the Planning Board. Improvements along Maple Ave are a copulation of what has been proposed or envisioned by Bergen County as part of their intersection improvements and also suggestions made by the applicants engineer to further enhance those improvements along Maple Avenue....the Catch 22 here and where you have to be careful as a Board here is, you condition something on an approval from Bergen County, if there are improvements along Maple Ave, that the applicant may want the County to do and we may want the County to do but we cannot dictate to the County what those improvements are, so my concern is that since the County does not have a specific plan that states, "this is what we are building"...we cannot define what the limit of their improvements are, so the approval that would be conditioned here...on the County approval also has to have specificity to it is as far as what the physical improvements are.....

Explains.....

It is suggested that an agreement with the County be made with the Applicant.

Discussion continues in length.....

Questions from the Board on circulation issues....

Mr. DeSario addresses all concerns of the Board Members and does state some tweaking will be done up to final approval.

Discussion on attendance of Mark Kataryniak (Board Traffic Engineer) with the County and applicant is mentioned.

Mark Kataryniak speaks to the Applicant's Attorney, Mr. Liebman and tells him to let him know when the meeting is and he will be there.

Mr. DeSario continues .....answering concerns that Mr. Karas has pointed out with a left turn operation regarding the intersection.

Mr. Karas continues with his questioning regarding the intersection and the concerns traveling South on River Road, etc....64 Residential units and traffic issues that would be created in addition....

Mr. DeSario states there is no question that traffic backs up during peak hours on River Road because of the signal. In terms of the site design as it relates to access, left turns out onto Maple by virtue of the County's request and the signing and the striping that we are proposing for the Maple Avenue access. The proposed River Road access plan has been physically designed and proposed in terms of location to be as far South along River Road as possible, you can't go any further South.... as part of the proposed site plan, we are putting forth an access system that is clearly defined, properly located and we envision would operate smoothly....

Mr. Karas continues with his questioning.....regarding circulation of traffic from Oak & Weber onto Maple.

Mr. DeSario addresses Mr. Karas's concerns regarding delays that will be created by people who wish to make that left turn from Oak onto Maple, no question there will be delays but will the delays be significant, in my opinion, they will not. During high traffic times, will people waiting to make the left turn onto Maple from Oak require a courtesy gap, absolutely? It will no different from what exists presently. County Designs are mentioned.....

Discussion continues... suggestions are given.....

Safety issues are discussed....

Different options are discussed....two lane egress is suggested.....

Intersection left turn signal is mentioned. The County will set and adjust the light timer....Left turn signal site will be 90second cycle....which is average.

Mr. DeSario summarizes his testimony and asks the Board to support the site with all the improvements.

Mr. Liebman also summarizes that it is a great site plan and beneficial to all of Fair Lawn and asks the Board to work with them because they will do the best that they can to improve this site and intersection....

Mr. Newman states the Board is just as excited to be a part of a great improvement on this site and hopefully our involvement doesn't come across as micromanaging, but we all have good intentions and we all have the same common goal to see the best possible thing happen to this site and hopefully when all is said and done we can all sit back and feel pride as to what the input was to reach that point.

Mr. Liebman thanks the Board and discusses dates to carry the application.  
Extension of time is granted

#### **Application carried to December 21, 2009**

Mr. Newman opens the hearing up to Public comment. Seeing none,  
Mr. Newman closes this portion.

Calender of 2010- Correction to the Reorganization date, meeting is January 25, 2010  
Ms. Jane Spindel makes 1<sup>st</sup> motion to approve and Mr. Ira Frankel seconds the motion

Doug Charipper announces his decision not to return to the Board next year.

#### **Vouchers:**

1. Karen Kocsis for \$275.00 for 12/9/09

Ms. Spindel makes 1<sup>st</sup> motion to approve this invoice and Mr. Diner seconds it.

Vote: All present: Aye

#### **Adjourn:**

Mr. Frankel made a motion to adjourn this meeting and Mr. Blecher seconded the motion.

TIME: 10:15 P.M.

VOTE: All Present - AYE.

Respectfully submitted,

Cathy Bozza  
Zoning Board Clerk