

**BOROUGH OF FAIR LAWN
ZONING BOARD OF ADJUSTMENT
Regular Meeting
Of March 24, 2008**

Following are the minutes of the Fair Lawn Zoning Board of Adjustment's regular meeting held on March 24, **2008**.

Chairman Scott Levy called the regular meeting to order at 7:15 p.m. and declared that the meeting was being held in accordance with the Open Public Meeting Law.

Roll Call: Present: Mr. Newman, Ms. Spindel, Mr. Sacchinelli,
Mr. Blecher, Mr. Diner, Mr. Charipper, Benny Salerno
& Mr. Levy & Mr. Meer,

Absent: Mr. Sy Karas, Mr. John Nakashian (due to illness)
Jane Spindel (recused on McDonald's)

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

Mr. Levy opens with Application#2007-104, Fair Lawn Jewish Center to discuss a Special Meeting date to be set for April 17, 2008. No attorneys present. Letter has been sent to carry the meeting and letter will be subject to Public review.
Application to be carried to April 17, 2008. No testimony given

Residential Old Business:

Application #2008-07, Allison Putrino
27-01 Kipp Street, Block 3507, Lot 10, Zone R-1-2
Amendment to prior approval. Prior approval was for an add a level.
Proposed amendment is to demo first floor and rebuild on existing foundation.
Requires as per Section 125-12 Schedule of area yard and building

Mr. Levy swears in Joseph Putrino, 24-13 Hamin Ave, FortLee, N.J.
Tom DeSocio, 27-01 Kipp Street, Fair Lawn, N.J & Joseph Mogelli, Attorney
for the applicant.

Mr. Mogelli: We are here for the second time and notice has been duly published. We were here for an add a level last time in which you did approve and we had some issues at the construction in which required us to go down to the foundation and we now need approval for demolition.

Mr. Mogelli: Mr. Putrino, you have been building homes for a long time. What have you observed on this property?

Mr. Putrino: Basically, the fire had destroyed the floor beams in the basement. I want to remove them and put in all brand new. I'm still keeping within the height regulations and everything else.

Mr. Levy: Let me cut to the chase. You were here previously because you were adding on to the building. During the construction you found there was damage due to the fire that wasn't originally discussed with the previous application. You are not raising the roof line from the previous application. You are not taking down any foundation walls, correct?

Mr. Putrino: I am just bringing it up and stabilizing it. The same plans as before.

Mr. Levy: But you are not changing the height which would be 29.8'?

Mr. Putrino: No

Mr. Levy: I'll open up the Board to any questions for the applicant. No One. I'll open up the applicant to residents within 200'. Seeing no one. I'll open up any questions to the general public....

Mr. Levy swears in Harvey Rubenstein, 28 Rutgers Terrace. Fair Lawn, N.J.

Mr. Rubenstein: My only question is: Why did the applicant have to come before the Board for the second time?

Mr. Levy: Because the applicant started construction and brought everything down to the foundation. He was ordered to stop the work. There was evidence

of fire damage and he was told he had to reappear.

Mr. Levy: Closes this portion.

Mr. Newman makes first motion to approve.
Mr. Meer seconds the motion.

VOTE: Ms. Spindel, Mr. Charriper, Mr. Salerno, Mr. Sacchinelli, Mr. Newman
Mr. Meer & Mr. Levy. YES

APPLICATION APPROVED.

Application #2007-102, Salvatore Calabro
21-18 Dalton Place, Block 3225, Lot 25, Zone R-1-3
Existing lot is 5000sf where 6500sf is required. Lot frontage of 50' where 65'
is required. D-2 expansion of a non-conforming 2 family requires approval.
Proposed addition would increase the impervious coverage from 35.37% to
43.72% where 35% is permitted. Would maintain existing front yard setback
of 10.50' where 25' is required. Would have FAR of 56% where 40% is permitted.
The existing building height is 34.50' and the addition would be 30' where 30' is
Permitted measured from the center of the street as per Section 125-12
Schedule
Of area yard and building requirements.

Mr. Levy: This has been carried to April 24, 2008 Regular Meeting
No Testimony given.

Residential New Business:

1. Application#2008-014, Yuliy Goldman
37-26 Hale Place, Block 2613, Lot 16, Zone R-1-2
Proposed in ground pool, 2ft. concrete around exterior of dwelling and
basement entry would increase the impervious coverage from 38.97% to
52.15% where 35% is permitted as per Section 125-12 Schedule of area
yard and building requirements. Setbacks of 10' and 4' where 10' is
required as per Section 125-37 (B) Swimming pool.

Mr. Levy swears in Mr. Yuliy Goldman & Alex Goldman(son)

Fees have been paid and there is proof of service.

Mr. Goldman: I'd like to put a pool in our backyard and we are over the coverage.

Mr. Levy: On the application, you have concrete to be removed around the house?

Mr. Goldman: Everything was done already and removed before we were having the plans.

Mr. Levy: The concrete around the house I was asking about, is that still there?

Mr. Goldman: Yes.

Mr. Levy: Anyone from the Board have questions or comments?

Mr. Newman: I'm a little confused, it says something about a replacing a Jacuzzi?

Mr. Goldman: The pool that is in the plans includes a Jacuzzi, not replacing.

Mr. Newman: The 38.97% impervious coverage includes the concrete slab of 265 1/2sf.?

Mr. Goldman: I would assume it does.

Ms. Spindel: You are asking for concrete paving that goes from your new deck to the kidney shape pool. Where is the Jacuzzi going?

Mr. Goldman: It will be within the pool and there is a 90% chance that we may not add it.

Ms. Spindel: Well you're here tonight to be approved with what you have tonight in this drawing. You are asking for it to be within 4ft. of the property line. I think you are much to close to the property line. When you cover this pool when it is not in use, the rainwater will flow right off of it and it will have no where to go.

Mr. Goldman: We can maybe do a drain? Run it from the garage?

Mr. Levy: Why isn't the pool closer to the house? Why is it so close to the property Line? It could be closer to the house.

Mr. Goldman: Maybe the architect screwed it up? I don't know.

Mr. Newman: The included documents says the entire property is surrounded by a 6ft. fence on all four sides. That sounds like the whole property.

Mr. Levy: He is not here for the fence. Are you? Oh. I see what you are saying, too

much calculations for the planned drawing.

Mr. Newman: I just want to make sure that we are not here to approve a 6ft. fence

around the entire property.

Mr. Levy: No, the fence is existing.

Mr. Levy opens up the applicant to residents within 200ft., seeing no one.

Mr. Levy closes this portion.

Mr. Levy opens to the general public, seeing no one.

Mr. Levy closes this portion.

Mr. Salerno makes first motion to approve the application.

Mr. Sacchinelli makes second motion to approve.

VOTE: Ms. Spindel, NO. Mr. Charipper, NO. Mr. Salerno, YES.

Mr. Sacchinelli, YES. Mr. Newman, YES. Mr. Meer, NO

Mr. Levy, NO.

Mr. Levy states his concern that the pool is larger for the area and for the lot than it's supposed to be, even though the applicant has agreed to pull it back 10ft. The size of the pool is over the limit than has been comfortably set for this zone so my vote is NO.

APPLICATION DENIED

2. Application 2008-015, Simon Mukkatt

16-62 Elliot Terrace, Block 4800, Lot 1, Zone R-1-3

Proposed addition would increase the existing building coverage from 22.6% to 28.4% where 25% is permitted. Would increase existing impervious

Coverage from 31.5% to 37.35% where 35% is permitted as per Section 125-12

Schedule of area yard and building requirement.

Mr. Levy swears in Mr. Simon Mukkatt.

Fees have been paid and there is proof of service.

Mr. Mukkatt explains that he would like to add an addition to his home which would increase the existing impervious coverage.

Mr. Levy: You have submitted pictures and these are residents around the neighborhood.
your house will be similar in nature. You are adding on to the back & you are not adding to the height.

Ms. Spindel: This is a very small lot and I don't think there will be any problem with this. It is a minimal addition.

Mr. Levy: Anyone else with comments or questions?

Mr. Levy opens up applicant to residents within 200ft. seeing no one
Mr. Levy closes this portion.

Mr. Levy opens the applicant to the general public, seeing no one
Mr. Levy closes this portion.

Mr. Charipper makes first motion to approve the application
Mr. Newman seconds the motion.

VOTE: Ms. Spindel, Mr. Charipper, Mr. Salerno, Mr. Sacchinelli,
Mr. Newman, Mr. Meer & Mr. Levy. **YES.**

APPLICATION APPROVED.

3. Application #2008-016, Sali Vlashi
19-01 Saddle River Road, Block 1802, Lot 1, Zone R-1-3
Existing lot frontage of 50' where 65' is required. Proposed side entrance
Would have a side yard setback of 2.6' where 8' is required as per Section
125-12 Schedule of area yard and building requirements. Concrete
walkways
Would have a 0' setback where 4' is required as per Section 125-3

Mr. Levy's swears in Mr. & Mr. Vlashi & Mr. Brown (works for the applicant)

Fees have been paid and there is proof of service.

Mr. Vlashi: We created stairs leading to the cellar & then poured concrete to

created a walkway.

Mr. Levy: This work is already done? I'm not sure what is going on here. The concrete is already poured and you poured it up only 2ft. off the property line?

Mr. Brown: I believe it is 3ft. off the property line.

Mr. Levy: What was the purpose? You created stairs to go down into the basement,
so you wanted a switchback? Why did you need so much concrete?

Mr. Newman: I wouldn't show prejudice with work already done, but since the work is done, I think we should have some photographs of the work
that was done as to have a much better idea as to what we are being
asked to approve.

Mr. Levy: I'm having a little problem with this one too. You are looking for more evidence, correct?

Ms. Spindel: I was there today and it's a concrete slab and a couple of inches off the fence. There is a synagogue adjacent to the property so it doesn't
impact anyone on that side.

My concern is that they are using it as a living space. Are you using it for some one else to live down there? No one is using it as a bedroom?

Mr. Vlashi: No.

Ms. Spindel: The problem is, you went ahead and did this without asking the Building
department and getting permits. Is that what happened here?

Mr. Sachinnelli: Did anyone from the building department come out and look at it since
you had a retaining wall put up? Were the footings inspected?

Mr. Vlashi: They told us we needed to get a permit and that is when we were told we
had to come before the board and get permission for what we had done.

Mr. Levy: They are here because the side yard setback is 2ft.6 where 8' is required, and
concrete walkways is set at 0' where 4' is required.

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

Mr. Levy opens applicant to the general public. Seeing no one.
Mr. Levy closes this portion.

Mr. Newman: Mr. Chairman, where did we leave off having more to look at?

Mr. Levy: I was going to call the Board? Mr. Levy asks Board Members what their decision is as far as addition information needed. Everyone agrees that the information given is fine.

Mr. Meer makes 1st motion to approve the application,
Ms. Spindel makes 2nd motion to approve

ROLL CALL: Ms. Spindel, Mr. Charripper, Mr. Salerno, Mr. Sacchinelli,
Mr. Meer, **YES.** (Mr. Newman abstains)

Mr. Levy: **NO**, these are my reasons, regardless of the steps that was put in because
of drainage problems, it does not give the applicant the right for a slab
of
concrete should be put up against a property line with a 0' setback.
There
is 4ft. required. There is evidence that they could have stayed within
the
4ft. requirement with a little thought and no effort was made.

APPLICATION APPROVED.

4. Application #2008-017, Igor Yeslisseyev & Alexander Mirtchouck
12-23 Fairclough Place, Block 4613, Lot 4, Zone R-1-3
Existing lot is 5500sf where 6500sf is required. Lot frontage of 55' where 65' is required. The proposed addition would have existing building coverage of 25.6% where 25% is permitted. Would have existing 47% impervious coverage where 35% is permitted. Would maintain existing front yard setback of 24.85% where 25' is required. Would maintain existing side yard setbacks

of 6.66' and 5.93' where 8' is required as per Section 125-12 Schedule of area yard and building requirements.

Mr. Levy swears in Mr. Alexander Mirtchouck & Mr. Haim Ainzo, Professional Engineer and Attorney Mr. Edward Evans.

Fees have been paid and there is proof of service.

Mr. Evans: This is an application for a partial demolition and to build a second story

On the property.

Mr. Levy: Mr. Ainzo, you are a Licensed Engineer in the state of N.J.? You have testified in application such as this before?

Mr. Ainzo: No. I have testified before other land use boards in the State of N.Y. and gives his history. I am testifying as to the layout of the home, not the structural soundness of the home. I designed the house.

It is determined that Engineers do Architectural design in the state of Pennsylvania.
and the matter is questioned as to it is allowed in the state of N.J.

(Discussion is done whether or not Mr. Ainzo is qualified as an Architect to design the house in the State of N.J.)

Recess to discuss approval for Engineer to qualify as Architect.

ROLL CALL: All Present

Mr. Ainzo states: The house is built and designed by an Architect, all I'm doing is adding the structure to the second story. I have specialized knowledge in this field.

(Mr. Soukas, Board Attorney cross exams Mr. Ainzo to determine eligibility)

Mr. Levy continues questioning Mr. Ainzo and confirms that he is going to testify more as to the layout of the house, not to the constructability of it. Mr. Levy then states he is comfortable with him being an expert witness and it is decided to continue.

Mr. Levy turns questioning over to applicants attorney.

Mr. Evans: Mr Ainzo, can you tell us what you observed at the property.

Mr. Ainzo: Yes, when I was asked to develop the second story plan, I walked around the
area and looked around to what what going on in this area.

Mr. Evans: Did you find that the homes were all in the same character having two Stories?

Mr. Ainzo: Yes, a lot of the homes were two stories that were originally 1 story buildings

Mr. Levy: You are testifying as a fact witness based on your knowledge of the setting of the surrounding area, just so the record is clear. You are not testifying as a professional because you have not been qualified to do so.

(Mr. Evans continues to cross examine Mr. Ainzo)

Mr. Newman: You haven't depicted the attic on the plans. Why is that?

Mr. Levy: Is the attic going to be used as living space?

Mr. Ainzo: No. Open space.

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

Ms. Lauri Sparaga, 12-26 Western Drive, Fair Lawn, N.J.

Mr. Levy swears in Ms. Sparaga.

Ms. Sparaga: What does existing 47% impervious coverage where 35% is permitted

Mean? Is that what the house is now? Are you only going up or are
you going across?

(Questions are answered and she is satisfied)

Mr. Levy swears in:

Mr. Ernesto Simpliciano, 12-19 Fairclough Place, Fair Lawn, N.J.

Mr. Simpliciano: I am the house right beside the subject property. I don't understand

what impervious coverage is.

Mr. Levy explains clearly what impervious and pervious coverage is to the resident.

Mr. Simpliciano is satisfied with Mr. Levy's explanation, then questions him on the height of the house to which he is satisfied to 27' high.

Mr. Levy opens applicant up to the general public. Swears in:

Mr. Harvey Rubenstein, 28 Rutgers Terrace, Fair Lawn, N.J.

Mr. Rubenstein: I didn't pick up if you were staying within the footprint of the building or are you going out of the footprint of the building?

Mr. Evans answers within the footprint.

Mr. Levy: Anyone have additional comments from the Board?

Mr. Newman makes 1st motion to approve the application
Mr. Charipper makes 2nd motion to approve.

VOTE: Ms. Spindel, Mr. Charipper, Mr. Salerno, Mr. Sacchinelli, Mr. Newman
Mr. Meer & Mr. Levy. **YES**

APPLICATION APPROVED.

5. Application #2008-18, Kurt & Catherine Schark
25-16 Urban Place, Block 3417, Lot 9, Zone R-1-3
Proposed replacement and expansion of existing patio and new shed would increase the impervious coverage from 39.03% to 41.47% where 35% is permitted. Patio would be 1' from property line where 4' is required. Shed would have 2' & 6' setbacks from property line where 4' is required as per Section 125-12 Schedule of area yard and building requirements.

Mr. Levy swears in Mr. & Mrs. Schark

Fees have been paid and there is proof of service.

Mr. Schark: I am here to replace and expand the existing patio and to put in a new shed.

(There is confusion as to having the correct survey with the proposed plans.)

Mr. Levy: I am going to mark a plan that was just handed to me by the applicant as A-1. It is a plan that indicates in blue the outline the proposed patio

and expansion of the concrete that the applicant would like to have
and the location of the shed. I will pass it around so that the board sees it
before I start asking questions.

Mr. Levy: With the plan that you showed me, you want to bring the concrete
against the house as well?

Mr. Scharck: It is a small area and I just want to add that little bit so that from the
house out, it will be about 4'wide. Looking at the pictures you will
just see a small fence where we store the garbage cans behind it, we
want to add a small piece.

Mr. Levy: From the end of the enclosure up to the corner of the house, you will
maintain that as planted area? The only area of concrete you want to
put in is where you store your garbage cans, correct?

Mr. Scharck: Yes.

Mr. Levy: Your intention is not to put concrete up to the chain link fence?

Mr. Scharck: No, I just want to even it out.

Mr. Levy: I want to label the pictures pointing to the Storage Area as A-2.

(Pictures are passed around) Picture of existing patio labeled as A-3.

Mr. Levy: You want to add a 1ft. piece of concrete there? Who's fence is that?

Mr. Scharck: My neighbor's.

Mr. Levy: You have 3ft. there now and the ordinance is 4ft. You want to create
more of a variance in that area? Do you want to have a 2ft.strip of
soil there?

Mr. Levy goes over the exhibits and labels them.

A-1- Proposed plans.

A-2-Picture pointing to the Garbage area

A-3- Shows a picture of the existing concrete patio to the left and the neighbors fence

to the right & the view towards the background of a wooden fence.

A-4-Photo taken from a bird's eye view looking towards the SE corner of the Residence showing the wooden fence and where the shed would liked to be placed.

Mr. Levy asks if anyone has comments or questions?

Ms. Spindel makes the comment that it is a very unusual shaped lot.

Mr. Levy has Mr. Schark go over the pictures again with him.

Mr. Levy: That is a 15ft. storage area there? That is where I'm having the problem trying to understand. Bear with me.

Mr. Newman: What is the need for the 4ft. width? You don't need it for access of any kind. It is just for walking to the entrance. Would you consider narrowing it to a normal walkway and correcting the soil runoff with a dutch block border creating a bed for planting. Why have more soil instead of less if you are already having issues with the soil runoff.

(Mr. Schark & Mr. Newman discuss different options for the area.)

Mr. Levy: Let's wrap this up and let me cut to the chase here. What they want to do is take the 3ft. walkway and make it 4ft. wide and take the existing patio and move it 1ft. closer to the fence and the put concrete under the garbage storage area which is approximately 12ft. in length and 2-3ft. in width.

Mr. Newman: I think there is a sense of unnecessary amount of impervious coverage.

Mr. Levy: I don't see any reason why it can't be up to 4' in the walkway, nor concrete under the location of the garbage cans, my concern is getting closer to the property line.

Mr. Levy opens up the applicant to residents within 200'. Seeing no one Mr Levy closes this portion.

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

Mr. Levy closes this portion.

Mr. Levy states that his concern is the existing patio. I don't understand why you are bring it 1ft. closer to the fence when there is 3ft. there, why make it 4ft. The walkway I have no problem with that. So instead of bringing the patio up towards 1ft. leaving the existing line as it is and carrying it down, get rid of the triangle and add the concrete in there instead of bringing it closer to the fence line, fill in the corner. Amend the lines on that.

Mr. Scharck: I see that. Yes, that may work.

Mr. Levy: There are two things here, so I'm going to ask for two motions. One motion will be on the concrete for the patio where it is a 4ft. patio and with the concrete under the garbage cans where it is a approx. 12ft.in length and 2ft. width and maintaining the patio existing line and creating concrete in the triangle.

The second motion would be the location for the variance for the shed.

Mr. Newman makes 1st. motion with the clarification of the amendment as stated. Patio will remain as existing with the applicant filling in a portion of the concrete where the irregularity exists where 4' is required and the applicant will be able to create a 4' walk from the gate and place concrete under the garbage area.

Ms. Spindel seconds the motion.

VOTE: Ms. Spindel, Mr. Charipper, Mr. Salerno, Mr. Sacchinelli, Mr.Meer & Mr. Levy: **YES.**

SECOND MOTION FOR LOCATION OF SHED.

Mr. Newman makes 1st motion to approve.
Mr. Salerno seconds the motion

VOTE: Ms. Spindel, Mr. Charipper, Mr. Salerno, Mr. Sacchinelli, Mr. Meer & Mr. Levy. **YES**

APPLICATION APPROVED.

6. Application #2008-019, Daniel & Deena Jarashow
4-39 2nd Street, Block 5306, Lot 31, Zone R-1-3
Proposed addition would increase the impervious coverage from 30.6% to 35.58% where 35% is permitted as per Section 125-12 Schedule of area yard and building requirements. FAR of 46.7% where 40% is permitted requires a D-variance as per Section 125-57.D. (d) use variance.

Attorney Jeffery Kantowitz for the applicants steps up and states this is an application Seeking two variances. A variance to exceed FAR requirement and a variance to exceed the impervious coverage by less than ½%. I have a couple of witnesses and what we have is an effort to modernize& improve an existing home on 2nd St. in Fair Lawn. To enable a family to live comfortably and enjoy the amenities here in Fair Lawn. My Two witnesses here tonight are Ms. Deena Jarashow and Mr. David Bilow, Registered Architect with experience of 40 yrs who will go over the particulars of the Application and walk us through.

Fees have been paid and there is proof of service.

Mr. Kantowitz wants the Board to know that his experience with the Building Dept. staff were very helpful, timely and very clear with instructions and my inter-reaction with the staff have been very favorable.

Mr. Levy swears in: Ms. Deena Jarashow of 4-39 2nd Street in Fair Lawn
Mr. David Bilow, Architect for Mr.&Mrs.Jarashow.

Mr. Kantowitz is asked to qualify Mr. Bilow for the Board.
Mr. Bilow gives his background and it is decided he is qualified for the Board.

Ms. Jarashow steps up and gives her reasoning behind her needs for an addition. Explaining she has six children and her husband's family have relocated closer to their family. They would love to stay in Fair Lawn but the needs have changed as her family has grown. She wishes to build a bigger kitchen and living space so that when the family comes she has a aplace in which she can entertain.

Mr. Levy: Set of plans will be marked as A-1

Mr. Billow: As I show you the site plan they are the additions that are in the Western portion. There is a 2nd floor over the existing garage. There is a two story addition directly behind it. It will be an extension of the kitchen and the dining room of the existing house. On the second floor there will be five bedrooms and a new master suite. The site plan needs two variances. One for impervious coverage and the other for FAR. The lot is a very particular lot. We have a frontage on 2nd St. because of the way it bends of 138' and the rear yard of the property is only 55'. It is a very difficult lot to work with.

Mr. Billow continues to explain the reasoning behind the overage on the FAR and the impervious coverage.

Panels of pictures are introduced which are marked as A-2 and another one as A-3.

Board reviews all the pictures as Mr. Billow explains.

Mr. Billow: The character of the neighborhood would not change as the house will blend in perfectly with the neighborhood. Mr. Billow gives extensive reasoning behind the addition.

Mr. Kantowitz questions him on the materials to be used including brick work, etc. and asks if he will be maintaining the integrity of the neighborhood.

Mr. Billow explains they are in conformance with the all the setbacks with the sideyard and rear yard. The only violation is the FAR because of the issue of the lot. This addition works very well with the neighborhood.

Mr. Kantowitz continues to question Mr. Bellow

Mr. Meer: Does any other house in that neighborhood have 7 bedrooms and 5 baths?

Mr. Bellow: That is a very difficult question, only because it is hard to learn from

property record cards and I can't answer that.

Mr. Levy: Anyone else have any questions or concerns?

Ms. Spindel: Can the same basic design be done by pulling in these rooms a little bit
and still have the space they need?

Mr. Levy: The room designs are modest compared to what you have done in recent years?

Mr. Bilow: Very modest.

Ms. Spindel again questions the huge size of the kitchen and dining room & asks Ms. Jarashow if she would consider pulling it in.

Ms. Jarashow does not agree with Ms. Spindel and does not want to consider it.

Ms. Spindel is concerned about the size of the house, the neighbors view being affected. It is such a large house. The drain is an issue. I'm concerned about more water running off the property. It is an odd shaped lot that is true, but...

Mr. Kantowitz states that he will carefully review the matter of the drainage with an engineer to assure the Board that runoff would not exceed the regulations allowed.

Mr. Levy opens up applicant to residents within 200'.

Mr. Levy swears in Allison Jaris, 4-30 2nd street, Fair Lawn, N.J.
I live diagonally across from the Jaris house. I've seen the plans and I think they were very thoughtfully done in keeping with the character of the other homes on the block.
I think it will improve the value of the neighborhood and I am in favor of it.

Mr. Levy asks if there is anyone else. Seeing no one.
Mr. Levy closes this portion.

Mr. Levy opens the applicant up to the general public.
Mr. Levy swears in Mr. Harvey Rubenstein, 28 Rutgers Terrace, Fair Lawn, N.J.

Mr. Rubenstein: I didn't hear what the highest point of the house would be?

Mr. Bilow: It matches the existing roof line at 28.9'.

Mr. Rubenstein: In reference to the footprint. Are you staying within the footprint or
out of the footprint?

Mr. Bilow: It is a two story addition of approximately 500sf. we are adding.

Mr. Levy swears in Ms. Sharon Shwartz, 34-15 Berdan Avenue, FairLawn, N.J. I live in Fair Lawn 25 years. I currently own a home which has 7 bedrooms and 5 bathrooms. I like the fact that people are expanding their houses. If it gets to the point where we are not able to expand for our family, people who are wealthier will move out. The people who can't pay their taxes will be left.

Mr. Levy closes this portion.

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

VOTE: Ms. Spindel, Mr. Charipper, Mr. Salerno, Mr. Sacchinelli, Mr. Newman
Mr. Meer & Mr. Levy. **YES.**

APPLICATION APPROVED

7. Application #2004-084, Brian Behan & Robert Schaefer
23-33 Berkshire Road, Block 3222.01, Lot 5, Zone R-1-3
The construction of a 5ft.x31ft. rear yard addition which would have a side yard of 4.71ft. where 10ft. is required.

Mr. Levy: This letter is asking for an extension for 1 year.

Mr. Meer makes 1st motion to approve extension.
Mr. Salerno makes 2nd motion to approve.

VOTE: Ms. Spindel, Mr. Charipper, Mr. Salerno, Mr. Sachinnelli, Mr. Newman
Mr. Meer & Mr. Levy. **YES.**

EXTENSION APPROVED.

5 MINUTE RECESS.

Commercial Old Business

1. Application #2006-018, Sebastian E. Lentini (McDonald's)
37-01 Broadway, Block 2320, Lots 10-12, Zone B-2/R-1-3
Amendment to approved use/site plan approval requires site plan approval as per Section

Mr. Meer: Mr. Karas and Ms. Spindel & are recused from this application.
Mr. Nakashian is absent.

Mr. Charipper states for the record, pursuant to discussion with the Chairman & Counsel, he will abstain from this particular vote. I was not present at all these meetings and have not read all the transcripts. The alternate will take my place.

Mr. Levy: The alternate has been involved in all the meetings and understands the
application.

ROLL CALL: Mr. Salerno, Mr. Blecker, Mr. Diner, Mr. Newman, Mr. Meer
& Mr. Levy

Mr. Levy: This is the continuation of the McDonald's application.

Mr. Steinberg (Attorney for Lentini)
Mr. Steinberg requests that the two alternates can.....?????

Mr. Levy: Absolutely.

Mr. Andrew Karas (Attorney for the Objective, IHOP)

Mr. Levy: Counsel, if I remember correctly, all of your witnesses have testified and
there are no other witnesses to come forward. Opposing counsel was
going to present other information to us.?

Mr. Karas: All my witnesses have been called and testified. The only thing I have to
do now is move in with my Exhibits. O-1 thru O-7.

Mr. Steinberg: I will also be moving my exhibits.

Mr. Levy opens the applicant to residents within 200'

Mr. Levy swears in Lou Salvestro, 1-30 7th street, Fair Lawn, N.J.

Mr. Salvestro: As far as the fence is concerned, I believe that McDonald's should take down this oversized fence. If the Board allows them to keep it,

they should put it back up to 3' which I think is the maximum allowed.

They put it up illegally and were afforded the luxury that most homeowner's are not given when the fence went up while the hearings went on. I am still trying to figure out the reasons for the gate? Mr.

Lentini never showed up for any of the meetings in which he could have explained the reasoning behind all this.

Mr. Salvestro continues giving his opinion and questioning a lot of the reasoning behind

tow trucks, and the gate....saying if he (Mr. Lentini) cared about safety, he never would have had the tow trucks coming and going in and out of the gate. Children are abundant and if he truly cared about safety, he never would have had the tow trucks going through those gates at all times during the day leaving the entrance on 37nd St. and believes that Mr. Lentini is only doing this to hurt the IHOP business. Thank you.

Mr. Levy swears in Michael Obsuth, 1-21 37th St. Fair Lawn, N.J.

Mr. Obsuth: I won't go through the entire scenario again because I totally agree with Mr. Salvestro in everything he said. Speaking with Mr. Lentini on my own were very few and anytime I asked him anything, he would say, "We'll see". He was rude to my wife and doesn't have any concern for his neighborhood or his neighbors. I know you are up there on the Board to do the best for Fair Lawn so please consider this when you make your decision tonight. Thank you.

Mr. Levy swears in Carolyn Soojian, 1-42 37th Street, FairLawn, N.J.

Ms. Soojian: I have lived on 37th St. before McDonald's was built. Have seen all the

changes that have been made. Tried to fight some of them but nothing happened. The tow trucks were a big problem for us. The entrance on 37th St. was closed and I want to

thank you. Ms. Soojian goes on to explain there are new babies on the block and families are constantly growing. The tow truck sit there all the time. We have to put

up with trying to get through the barriers when we eat at the IHOP. They pull the tow

trucks up to the driveway and block the entrance. They are causing more problems than solving them. It is ridiculous. There was never a problem before, it was created by Mr. Lentini. Thank you.

Mr. Levy: Anyone else? Seeing no one.
Mr. Levy closes this portion.

Mr. Levy opens the applicant to the general public.

Mr. Levy swears in Kurt Miller, 5 ??? Terrace, Fair Lawn, N.J.

Mr. Miller: Growing up in Fair Lawn, there used to be two way traffic going into IHOP to McDonald's. There always was a shared neighborly thing going on between the two restaurants. McDonald's are now being selfish and the big bullies of the block. I just wish they can solve their differences and get back to being good neighbors. Thank you.

Mr. Levy asks if there is anyone else?

Mr. Levy swears in Harvey Rubenstein, 28 Rutgers Terrace, Fair Lawn, N.J.

Mr. Rubenstein: In the interest of safety and having attended all these meetings Should you in your wisdom decide to approve the application that is presented, I want to bring up a fact that in exiting the McDonald's property, the sign for The McDonald's exit blocks you if you are in a normal car coming west on Rt. 4 You cannot see the pedestrians. I would suggest to the Board that you may want to condition if indeed you see fit to approve this application. Again if you approve this application, to insist that the face of the gate have either striping on it facing into the McDonald's lot if someone were to come through the entrance and shoot for the IHOP property to protect those people who are exiting the IHOP restaurant. Thank You.

Mr. Levy: Anyone else? Seeing no one.
Mr. Levy closes this portion.

Mr. Levy turns it over to counsel.

Mr. Karas: My comments will not be lengthy tonight because the evidence speaks for itself. The facts are what the facts are. I don't need to sell anything to this Board tonight. I think it is very clear of what has transpired and what this application is about. The Board has to decide what was originally passed as far as the gate is concerned. What does the prior site plan provide?

Mr. Karas brings up Mr. Fears prior testimony and discusses in length the testimony and states he simply was not credible.

Mr. Karas states the testimony from Mr. Edward Trawinsky, attorney for John Alaimo about the conversation that was discussed in the hallway between Mr. Alaimo and Mr. Lentini with the agreement that there would be no impediment between the two properties. After that the plans were changed and the plans were presented here as evidence before this board indicating all the changes. Clearly there was evidence between the two properties that there was ingress & egress. The applicant is looking to change the approved site plan, restrict it to a one-way access and put up a gate to assure that it is a one way access. The facts are the fact. There is no way to change that.

Mr. Karas continues with his closing statements in length adding that there is no evidence and no facts to support this application. That is why this application must be denied.
Thank you.

Mr. Steinberg(Attorney for the applicant) prepares for his closing statements.

Mr. Steinberg: Mr. Chairman and members of the Board, let me thank you first for the consideration that was given to this application which I am confident has set a new N.J. record....these past two years. I would like to begin where Mr. Karas left off. Mr. Steinberg quotes from pg, 365 of Cox 2007 edition and quotes that under justification for denial he is talking about reviewing an application for a site plan not a sub-division. Mr. Steinberg continues on with the whole explanation of the site plan ordinance. If the site plan is not in violation of the site plan ordinance then it has to be approved.

I listened very carefully to what Mr. Karas said about the resolution that was approved in 1983. Pg. 4 of that resolution says there was a barrier there and the applicant at the time (Not Mr. Lentini) It was the Mc Donald's Corporation agreed to remove the barrier. It says: the removal of this barrier will provide Lot 3/IHOP with free access through the rear portion and exit drive of the McDonald's lot.

Mr. Steinberg brings up the letter that was written to the zoning board by the attorney for the applicant on December of 1982 after the last hearing and before the resolution was adopted.

Mr. Steinberg goes on in length about the resolution and its explanation before the Board. In February of 2003, this application was denied and it went before the court and was reversed. The resolution of 2003 where Mr. Aliamo testified that he was the owner of the IHOP and had an agreement with the owner of the McDonald's site to allow Egress from the IHOP parking lot. (Mr. Steinberg says this with emphasis on the word Egress)

Speaks of the supplemental resolution in June of 2005 that was mandated by the court and this Board did not propose any condition about any two way traffic.

Mr. Steinberg then brings up records of a site plan that was revised in September of 1985. The arrows goes from IHOP to the McDonald's property. There was never a Site plan EVER filed before this board at any time by anyone connected with the McDonald's Corporation from 1982 to this minute that ever showed arrows pointing from McDonald's to IHOP. Never was it a two way traffic area.

Mr. Steinberg argues the testimony of the expert who was supposed to be sitting in the parking lot and making his assumptions of safety.

Mr. Steinberg brings up the fence and states if they need to get a variance, fine. Signage is brought up and he will work with any solutions for the issues. If the board feels it is necessary, he has no problem.

The site plan has to be approved because they are not in violation.

Mr. Steinberg summarizes all factors involved. The testimony before this board by Mr. Trawinsky was improper and tainted this

hearing. I want that on record. This Board has no jurisdiction to determine whether there was an agreement by anyone. I thank you for your attention. I know this is a hot potato in this town. I urge you to do your sworn duty to apply the land use law and approve the application for a site plan approval that this applicant has put before this Board. Thank you.

Mr. Levy: Mr. Steinberg, this Board has always sat as an unbiased board and body. It has never been influenced nor has it been asked to be influenced by anyone outside or involved in events or political policies or anything that may go out as political in this town.

Mr. Levy states the issues of Mr. Twawinsky's testimony and goes over the legal matters the board must be aware of. There was testimony in March of 2002 about the access/e-gress...of the two properties. Mr. Levy reads the testimony out loud regarding this issue in length. In 2002 there was enough of room to allow two cars to go through. Over the years that is how the process worked. There was never a problem with safety until the barriers were put up. Only one incident had occurred between 2002 and this time. The transcripts were from March 4, 2002, pgs.720-724. Regarding information regarding traffic counts, that I was interested in. Mr. Fears did not have them and did not provide those. I found that to be lack of creditability on Mr. Fears part based on his testimony on certain details in that area. Regarding the approval of the original site plan, the fence was not part of the approval, it was put up. The signs were never part of the approval, they were put up, the barriers also, were never a part of the approval and that was put up. Those were the violations. Mr Levy reviews the zoning ordinance and speaks of the regulations.

Mr. Soukas speaks of the Cox quotes and use variances. The situation here is whether or not the site plan application following the grant of the use variance can satisfy the negative criteria which is whether you can grant the approval without substantial detriment to the public good and without impairment of the intent and purpose of the zone plan and ordinance.

Mr. Levy: I do not like the barriers, I would like to see them removed because of the issue of public safety. The fence, I have no issue with that except if it stays lower it to 3ft. The signage, depending on what happens with the Board, I think that depends on if the barrier comes down, the signs would disappear.

Mr. Levy: Comments or questions?

Mr. Newman: Looking at this application with safety in mind and taking into consideration the site plan with safety in mind. I think it contradicts itself because the reasons for this application are to remedy situations on the site that has to do with parking and use on the McDonald's site. The solution that is being offered is one that contradicts itself as far as safety. You have signage everywhere saying that if you not here for McDonald's you will be towed. The applicant has every right to do that...but

Mr. Newman continues to explain his thoughts regarding the Ingress-Egress and states it does contradict the site plan ordinance.

Mr. Levy & Mr. Newman discuss this dilemma and Mr. Levy has noted that if McDonald's wanted to put a sign up with "PARKING FOR MCDONALD'S CUSTOMERS ONLY, He would be fine with that, but Mr. Newman notes it does substantially impair the public good so I think that an addition of any blockade, a gate or anything else would be a problem.

Mr. Blecker: What is the current width? Answer 20'. Mr. Karas testimony he said there was an approval for two-way traffic and during Mr. Steinberg testimony, he said there was never was an approval for a two way? Which is it?

Mr. Levy: There was a site plan that approved there was enough width to allow an Ingress-Egress and it was occurring without issues between the two.

Mr. Steinberg presents a site plan revised from 1982. Mr. Karas states that the Site plan the Board is working off of is the approved site plan from 2005.

Mr. Levy sees the site plan and states "This site plan has never been entered into evidence the past two years.

Mr. Steinberg: We'll mark it into evidence now.

Mr. Levy: How can I allow this now after closing testimony, we're in discussions.

Board reviews the plans.....from 1982. Questions are now being asked of Mr. Steinberg about this Site plan.

Mr. Soukas: The 1982 Plan **has not** been entered into evidence and will not be considered at this time.

Mr. Steinberg objects and states that the material from the Board's file is not Admissible?

Mr. Soukas: I am saying it is not admissible AT THIS TIME AT THE END OF CLOSING ARGUMENTS BY COUNSEL, MR STEINBERG. We have been here two years, I think there was sufficient amount of time to enter this.

Mr. Steinberg objects.

Mr. Levy and Mr. Steinberg discuss this entirely all over again with the Ingress & Egress. History of this case is again reviewed.

Mr. Levy: I'm going to go over the areas in which we have to vote. The fence. The Board either agrees that there can be a fence there and the applicant has indicated that they will lower it to 3' or it has to be removed. The original site plan did not have a fence. It was put up without approval. A variance is required.

Mr. Levy: I'll entertain a motion but I must state, the approval or disapproval is going to be broken up into these parts....
1. Gate, 2. Fence. 3. Signs.

Mr. Steinberg strongly objects to the site plans of 1985 not being reviewed and entered into evidence. I would like a ruling as to whether or not they can be marked into evidence.

Mr. Soukas: I think what has been marked into evidence and what has been agreed to

by the attorneys will go into evidence.

Mr. Steinberg speaks to Mr. Karas: Do you have an objection to these going into the record?

Mr. Karas replies, absolutely.

Mr. Steinberg: O.K. Please note my objection.

Mr. Levy: You're objection is noted.

Mr. Soukas discusses the way the voting is concerned, it's all part of the application and he doesn't believe that voting should be done in three separate categories because it is one application....

Mr. Levy defers to Counsel's recommendation.

Mr. Levy: The motion will be made to approve or disapprove the application as presented, including the gate, the fencing and the signage. I'll entertain a motion to approve the application as presented and testified to. No One

Mr. Levy: I'll entertain a motion to deny the application.

Mr. Newman makes 1st motion to deny the application.
Benny Salerno seconds the motion.

Mr. Levy states to the Board that a **YES** vote is to **DENY** the Application and wants each member's explanation after.

VOTE: **Mr. Salerno:** **Yes**, I believe the safety of the onsite regulation is the main reason why I'm voting against it.

Mr. Sacchinelli: I'm voting **NO**, the application that was presented I feel was acceptable.

Mr. Blecker: I'm voting **YES**, because after going back and forth and based on the site plan that was used, it was a two way egress. I feel that McDonald's has the right to control the parking and not have IHOP customers park on his property, but I think as far as safety is concerned, I see that the safest way to get into the IHOP would be through the egress and they should be able to do so. He could properly do something with the signage

so that the customers going to IHOP would be aware of it.

Mr. Diner: I am voting **YES** to deny this application for some of the same reasons regarding the safety issues. I feel the gate is a deterrent and will prove not to be helpful at all. For many years this condition has existed or should I say co-existed and I still can't fathom why the change came about. The fact is there are things taking place without the concern of safety. Fences, signage, etc.. There is difficulty reading 28 signs, a multitude of directional's and arrows. It is not a way to be user friendly or customer friendly.

Mr. Newman: I am voting **YES** to deny. As I stated the site plan contradicts itself and what it is trying to accomplish. I don't think it creates a safer traffic pattern on site, I think it does the contrary. The site plan marked as O-2 clearly demonstrates access and egress, a two way based on the markings on the site plan. It is non-conforming with the zoning and site plan ordinance. What is being proposed here is not safe. This has created havoc on site and it has impacted the neighborhood negatively.

Mr. Meer: I am voting **YES** for the previously stated reasons, but also with respect to our Ordinance 125-48C (2) where it notes: It is encouraged where possible a connection between an abutting parking lot to provide more efficient vehicle or movement. I can't think of two more properties which are abutting each other. I strongly feel that it is not supportive of this ordinance.

Mr. Levy: O.K. Here it goes. A lot of time has gone by and there has been questions asked of the applicant's expert witness Mr. Fears. I found lack of credibility with his approach and his discussion of the site. Part of the testimony that he has presented at previous meeting, Mr. Fears indicates that there was no concern for safety at the site. He gave possible numbers, the types of conflicts, no times and a number of other things that bothered me. There has been no evidence of loss of business because of access or egress between the two businesses. Going to the safety access, the barrier that was put up created the safety issue. I believe that there is substantial detriment to the public good and there is substantial impairment to the intent and purpose of the zoning plan and the zoning ordinance. With that my vote is **YES.**

APPLICATION IS DENIED.

Estimates:

Estimate submitted by Birdsall in the amount of \$2, 036.25 regarding McDonald's.

Mr. Diner made 1st motion to approve this estimate & Mr. Sacchinelli seconded the motion.

VOTE: All Present - AYE

Vouchers:

Karen Koscis in the amount of \$275.00 court services.

Mr. Newman made a motion to approve these estimates and Mr.Sacchinelli seconded the motion.

VOTE: All Present - AYE

Mr. Soukas, our attorney in the amount of \$833.33.

Mr. Blecker made a motion to approve this estimate & Mr. Sacchinelli seconded the motion.

VOTE: All Present – AYE

Resolutions:

1. Application #2006-100, Omnipoint Communications, Inc.
33-02 Morlot Ave., Block 2410, Lot 49-56, Zone R-1-2, Denied
2. Application #2008-06, Anavi, 9-15 Malcolm Terrace, Block 2526, Lot 5,
3. Zone R-1-3- Approved.
4. Application #2008-07, Putrino, 27-01 Kipp Street, Block 3507, Lot 10,
5. Zone R-1-2 - Approved.
6. Application #2008-08, Eldana, 3-23 Grunauer Place, Block 3319, Lot 35,
7. Zone R-1-3– Approved.
8. Application #2008-09, Sulkin, 23 Reading Terrace, Block 3607.01, Lot 13,
Zone R-1-2– Approved.
9. Application #2008-10, Grassi, 0-03 Yost Place, Block 2221, Lot 12,
Zone R-1-3 -Approved.
10. Application #2008-11, Gugliotta, 2-32 Grunauer Place, Block 3323, Lot 5,
Zone R-1-3– Approved.
11. Application #2008-12, Carlucci & Gallo, 2-19 Berdan Ave, Block 5627, Lot
6, Zone R-13–Approved.

12. Application #2008-13, Cohen, 39-11 Paterson Street, Block 2401, Lot 16,
Zone R-1-2– Approved.

Mr. Newman made a motion to accept these resolutions and Mr. Sacchinelli
seconded the motion.

VOTE: All Present – AYE.

Adjourn

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

TIME: *****P.M.

VOTE: All Present - AYE.

Respectfully submitted,

Cathy Bozza
Zoning Board Clerk