

**BOROUGH OF FAIR LAWN  
ZONING BOARD OF ADJUSTMENT  
Regular Meeting  
Of February 27, 2012**

Following are the minutes of the Fair Lawn Zoning Board of Adjustment's regular meeting held on February 27, 2012

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: Mr. Sacchinelli, Mr. Lowenstein, Mr. Karas, Mr. Puzio,  
Mr. Seibel, Mr. Dunay, Mr. Sina, Mr. Lancaster,  
Mr. Meer & Mr. Newman

Absent: Mr. Blecher

Also in attendance were Bruce Rosenberg, Board Attorney; Candice Galaraza; Court Reporter, Ann Peck, Assistant Zoning Officer, Cathy Bozza, Zoning Board Secretary

No Board Professionals in attendance.

**Residential Carried:**

1. Application #11-034- Bill Nguyen,  
2-30 30<sup>th</sup> Street, Block 3305, Lot 8, Zone R-1-3  
The proposed driveway expansion would increase the Impervious Coverage from 39.55% to 45.71% where 35% is permitted as per Section 125-12 Schedule of area yard & building requirement.

**Mr. Newman makes the announcement this application is being withdrawn without prejudice this evening and no testimony will be heard.**

2. Application #12-004, Joel Berlin  
26-02 Berdan Avenue, Block 3507, Lot 22, Zone R-1-2  
Board must make a determination as to Res Judicata. Proposed new two car garage  
Would have a front yard setback for accessory Structure of 30' where 40' is required  
as per Section 125-12 Schedule of area yard and building requirement.

Ms. Peck (Assistant Zoning Officer) makes notes of a typographical error on this evening's agenda regarding Mr. Berlin's application and clarifies for the Board..

Mr. Newman swears in Mr. Joel Berlin (Applicant)  
26-02 Berdan Ave  
Fair Lawn, N.J.

Fees have been paid and there is proof of service.

Mr. Newman states the Board will have to make a determination on the Res Judicata before asking Mr. Berlin to explain his new application and how it is significantly different from his last application.

Mr. Newman defers to Mr. Rosenberg (Board Attorney) to explain to the Board and its newest members what Res Judicata is and what we need to take into consideration...

Mr. Rosenberg speaks to the Board & members of the Public explaining the Applicant is here before the Board first on a determination of Res Judicata.

Mr. Rosenberg details the past application and the applicant's rights after a denial....Application #2010-048.

Mr. Rosenberg continues.....gives a quick review of the MLUL and its requirements...

Mr. Rosenberg then speaks to Mr. Berlin directly and states his testimony would have to review with the Board the nature of the 1<sup>st</sup>. application in 2010 and how the relief that was sought back in 2010 is different from the present application. We will then take a vote from the Board as to whether or not the application "Res Judicata" or not.

Mr. Berlin starts his testimony. He states the original application called for at least 4 variances regarding impervious coverage, front yard setback, a height variance and a variance on the driveway. Since that submission, he had since received information that the garage did not require a variance, so he submitted a plan that required no variances. He was told there was an error in the front yard setback. It was not a 30ft. setback but a 40ft. setback....

Mr. Berlin states the resubmission now requires just one (1) variance, a front yard setback.

Mr. Newman clarifies with Mr. Berlin that had it not been for the error in the front yard setback, you're intention was not to be here this evening.

Mr. Berlin states yes. I just wanted to build a garage in conformance with the regulations as I understood them...

Discussion...

Mr. Newman reviews the last application & the variances. Questions Mr. Berlin on what the front yard setback was on the original application.

Mr. Berlin explains at the time, there was a 30ft. setback and he was trying to go to 24.8' and was denied, so he then did the new plan and moved it back 30ft....

Mr. Newman asks Mr. Berlin after learning about the required 40ft. front yard setback, moving it back 40ft. is something he would be able to do?

Mr. Berlin states there would be no point. Explains....

Discussion continues...

Mr. Karas notes for the record, looking at the previous application, there were 5 variances required...one being a FAR variance.

Mr. Rosenberg makes note because of the Res Judicata motion, and the Resolution that needs to be drawn up, that application 10-048, together with the original plan be introduced into evidence.

Mr. Berlin agrees and introduces the original plan with the requested variances and the Resolution into evidence.

Marked as Exhibit A.- Resolution application 2010-048 together with the set of plans that were submitted dated, Nov. 9, 2009.

Mr. Newman asks if there are any other questions from the Board regarding the differences between tonight's application & the previous application. Seeing none,

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

Mr. Newman opens the applicant to member of the General Public with questions. Seeing none, Mr. Newman closes this portion & asks for a motion on Res Judicata.

Mr. Lowenstein makes a motion to approve and notes the application is substantially different from the one that was denied. Res Judicata does not apply to this application and so moves to entertain the new application.

Mr. Newman notes to the members of the Board for clarification, that a YES vote would mean that you do not believe is Res Judicata.

Mr. Puzio seconds the motion.

**VOTE:** Mr. Sacchinelli, Mr. Lowenstein, Mr. Karas, Mr. Siebel, Mr. Puzio, Mr. Meer & Mr. Newman, **YES.**

Mr. Newman tells Mr. Berlin, he can proceed with the current application, which is seeking relief for a front yard setback of 30ft. where 40ft. is required.

Mr. Newman asks Ms. Peck, (Assistant Zoning Officer) why a 40ft. front yard setback is required.

Ms. Peck explains the garage is considered an accessory structure which requires a larger front yard setback being on the corner.

Discussion....

Mr. Berlin continues with his testimony. Handing out 3 surveys...One with the proposed garage, one with the existing garage & one is the original proposal....also reasons why relief has been requested.

Mr. Rosenberg, (Board Attorney) notes for purposes of the application, this will be a separate Resolution, so therefore there will be separate sets of Exhibit references...

**Exhibits A1-** Application which consists of several Photos-

**A2-** Site Plan drawings consisting of sheets 1 thru 4 dated 2/2/11 by Rockwood Architecture & Design.

**A3-**5 pages of reasons why relief should be granted.

A Survey of the property called "Current"

A Survey of the property called "Existing Garage"

A Survey of the property called "Original Plan"

A November 15, 2010 Agenda

Mr. Berlin continues with his testimony....stating reasons why the relief should be granted....focusing on #2, #3,& #6 items.

1. Front yard setback-explains the proposed garage does not extend the facades of the other homes facing Berdan Ave.....
2. The homes adjacent to the property have two car garages...this is the only home that does not have a two car garage, so there is nothing that would be out of character of the area. It would be more fitting to the neighborhood.
3. When you review the plans, you can see this would be a nice looking garage. Aesthetically it would be an improvement over the existing garage and would be flattening to the neighborhood and at the same time fulfill some family needs.

Mr. Newman asks the Board Members if there are any questions.

Mr. Meer (Board Member) questions the second floor above the garage and asks if it will be used just for storage.

Mr. Berlin testifies it would be used only for storage.

Height is questioned.

Mr. Berlin believes it to be 20ft.

Mr. Newman asks what the ceiling height would be on the second floor.

Review of plans.....

Ceiling height is not noted.

Mr. Newman continues his questions, asking Mr. Berlin if it will have a ceiling height where someone would have to squat to get into.

Mr. Berlin testifies you would be able to stand up. It would probably be between 7 & 8ft.

Mr. Newman clarifies with Mr. Berlin that he is testifying he will use this for storage only. No plumbing of any kind?

Mr. Berlin states he will use it for storage only, but notes he will have a sink downstairs. It is shown in the plan.

Mr. Newman asks Mr. Berlin if he would agree to a “Deed Restriction” that now or anytime in the future would there be any residential use of the second floor.

Discussion continues...

Mr. Berlin asks if it is “Unlawful” to have a residential use of the second floor. I am not looking for a Tenant, if this is the Board’s concern.

Discussion....

Mr. Rosenberg discusses the fact as to why this is a concern, because any variance runs with the land. If Mr. Berlin or anyone else in the future wished to put a family member up there and use it for dwelling purposes, this is what the concern is...

Mr. Berlin understands the concern but reiterates he has no intention of having any family member living there.

Ms. Peck (Assistant Zoning Officer) explains to the Board there may be an Construction issues with this because there is living space above a garage, penetration from Carbon Monoxide & Fire issues....

Mr. Newman states if they (the Board) do not “Deed Restrict” it, anytime in the future, plumbing could be run upstairs, etc....

Discussion continues...

Mr. Rosenberg explains they are just trying to be sure that everyone would know, they are approving a Garage and is not to be used for habitable purposes...

Ms. Peck states the only solution would be to stipulate, “For Storage only”.

Discussion...

Ms. Peck states, the plan shows the layout with the open staircase going into the second floor. There would be serious issues...explains building & fire requirements...

Mr. Newman explains the issue does not lie with Mr. Berlin’s use, the concerns lies with what happens after you leave and someone else is the owner. Any variance granted by this Board runs with the land, not with the owner.

Mr. Berlin states he is asking for a variance for a Garage & Storage, not for an apartment or living space...

Mr. Newman notes this is understood, but we as a Board want to be sure that future inhabitants of your property do not misinterpret what the use is for.

The Board discusses a stipulation that could be put in the Resolution.

Mr. Berlin agrees to a stipulation to the variance.

Mr. Rosenberg explains to Mr. Berlin regarding the Deed. There would be a filing made so that if you sold the house, someone who is doing a Title Search would see that this particular Accessory Structure” that is a Garage; the upstairs level is only to be used for Storage.

Mr. Berlin agrees to the filing of a Deed Restriction.

Mr. Newman asks if there are any other questions from the Board for Mr. Berlin, seeing none,

Mr. Newman opens the application to residents living within 200ft. of the applicant. Seeing none,

Mr. Newman opens the application to the General Public, seeing none.

Mr. Newman closes this portion and asks for a motion.

Mr. Lowenstein makes motion to approve the application subject to the inclusion of a Deed Restriction specifying the 2nd floor is to be used for Storage only and not for Residential use.

Mr. Karas seconds the motion.

**VOTE:** Mr. Sacchinelli, Mr. Lowenstein, Mr. Karas, Mr. Siebel, Mr. Puzio,  
Mr. Meer & Mr. Newman, **YES.**

**New Residential:**

1. Application#11-040, Iris & Eduardo Galan,  
39 Garwood Road, Block 2811, Lot 2, Zone R-1-2  
Board must make a determination as to Res Judicata. Proposed driveway expansion and walkways would increase the impervious coverage from 35.5% to 39.95% where 35% is permitted as per Section 125-12 Schedule of area yard and building.

**Mr. Newman announces this Application to be carried to the March 19, 2012 meeting.**

2. Application # 12-005, Michael and Michele Rosenblum  
18-05 Hillery Street, Block 2710, Lot 6, Zone R-1-2  
Proposed addition would increase the Building coverage from 19.65% to 26% where 25% is permitted. Would increase the FAR from 34.6% to 45.6% where 37% is permitted. Would maintain existing side yard setback of 6.87' where 10' required as per Section 125-12 Schedule of area yard and building requirements. FAR would require a D variance as per Section 125-57.D. (1)[d]

Mr. Newman swears in: Michele & Michael Rosenblum (Applicants)  
18-05 Hillery Street,  
Fair Lawn, N.J.

Stanley Kufel (Architect)  
337 Demarest Avenue  
Oradell, N.J. 07649

Mr. Newman certifies Mr. Kufel as an Expert in the Field of Architecture with no objections from the Board.

Fees have been paid and there is proof of service.

Mr. Kufel asks that the Homeowners make their presentation first.

Ms. Rosenblum begins her testimony....

Ms. Rosenblum explains the proposed plan. They would like to do an expansion to the 1<sup>st</sup> & 2<sup>nd</sup> floor. She states for the record, they have 5 children. They would like to open up the kitchen & dining room space, extend the family room/den area so the children would have more room to play & hang out.

Ms. Rosenblum continues with the testimony, they would like to expand the bedrooms a little on the second floor. Two of the boys share a room and it's really tight. In addition, we would need another bathroom. Mornings are tough getting ready.

Mr. Newman reviews the proposal with variances requested and asks Mr. Kufel to please begin his testimony, focusing his attention to the FAR.

Mr. Kufel begins by stating for the Board, this is an undersized lot. This is a corner lot & trying to make this all work, it got a little tight. If it were a complying square footage lot, we would not be here for building coverage, and in most cases we would not be here for the full FAR.

Mr. Kufel reviews the details.....

The 2<sup>nd</sup> floor, in the rear of the house, the top back roofline has been removed, and a two ft. cantilever was added to make the bedrooms & bathrooms wider...details...

Mr. Kufel details the proposed 1<sup>st</sup> floor. Additional family area, plus the rear proposed addition of a one story is the continuation of enlarging the kitchen area and dining area for the size of the family.

Mr. Kufel states the entire house will be resided and the majority of the roof will be done over.

Discussion...

Mr Rosenberg (Board Attorney) clarifies for the record the plans were done by Mr. Kufel himself and dates, two noted. 12/20/11 and also 12/30/11 in which the plans were completed. Plans consist of 5 sheets.

Exhibit A-Plans prepared by Stan Kufel, Jr. Oradell, N.J. dated 12/20/11  
With a Zoning Review revision dated 12/30/11

Mr. Karas (Board Member) questions the Rosenblums on the Survey that was provided is dated March 8, 2002. Is this the date the house was bought.

Ms. Rosenblum notes it was the time they bought the house.

Discussion regarding photographs...directing the attention to Photo 1, Mr. Karas asks if this was an addition or the layout of the house at the time it was bought.

Ms. Rosenblum states yes.

Mr. Karas notes it was a pretty large house, at that time. There are also photographs of homes in the immediate area, which are very large homes. It looks as though most of them have been renovated & enlarged...

Discussion continues...

Mr. Karas speaks to the FAR....discussing the 37% Zone vs. the 40% Zone...lot size, etc., regardless of the zone, it is still 8.6% over the requirement...

Mr. Karas notes he has true concerns that the house is being enlarged beyond what the Ordinance intended to obtain.....

Discussion continues...

Referring to the photos, Mr. Karas notes all these photo's are what we term as McMansion's...this is exactly what the Ordinance was intending to prevent any further.

Mr. Karas recommends to Mr. Kufel & the Rosenblum's to reconsider the plans that are being submitted and try to reduce it to something more in line with the FAR according to the Ordinance...

Discussion continues.....

While Mr. Kufel understands Mr. Karas's concerns, he would like to hear what some of the other Board Members opinions are...explaining that most of the examples Mr. Karas has sited are Jordan Road, and many of the home are very big. Others are sporadically placed throughout this neighborhood.

Mr. Kufel points out that Zoning is specifically the hardships of the Land and points out having two front yards on this property, makes it very difficult. If we had two side yards and had an interior lot, we would not be here tonight, except for the FAR.

Mr. Newman notes the fact that there is not a full basement & if in fact there were windows that didn't come 3ft. above grade & an 8ft. ceiling, all the things the applicants are asking for could have been accommodated and the applicants would not be before the Board, but continues to question Mr. Kufel and asks him would he still need to increase the above ground structure to the extent you are to accommodate the space..?

Mr. Kufel states upon the request of his clients and the size of the family, we probably would and the reasoning is all the sleeping space on the second floor and having a partial two story foyer in the front. There is only two ways to go with this house, out the back and out to "technically" the side yard...there is no other way...

Discussion continues...

Mr. Newman asks Mr. Kufel, for conversation sake and for the analysis of the application, if the house were completely rebuilt without the two story foyer....certainly it is not something that can be done, nor is he suggesting it be done, but if it were, would you be able to meet the needs in a way that would not increase the FAR?

Mr. Kufel replies Yes ...under the International Residential Code...we know that living space and sleeping space can now be in basements...we can have a legal egress window out the basement area and have sleeping space...it could have been accomplished with a full basement...

Discussion...

Mr. Rosenberg (Board Attorney) clarifies for the newest members.. "The standard by which the Board has to look at the application, both for the C variances and the FAR variance which is the D-4 variance is really based upon either finding a hardship of the property itself, lot size, dimension, topographical issues....." reminding the Board their deliberations of any application..the personal issues of the applicant do not give rise to a "hardship" and do not give rise to finding a variance relief...regardless how sympathetic you may be to the applicants, it is never a basis to give or grant a relief.

Mr. Newman also clarifies his comments regarding the basement & the FAR. Explains... There are a lot of things that need to be taken into consideration with each structure and each individual application when applying for the constraints of a FAR?

Mr. Sacchinelli (Board Member) discusses the Foyer area proposed and if it is necessary?

Discussion with the Architect continues....

Mr. Newman asks if there is any way to decrease the FAR and still meet the needs of your clients.

Mr. Rosenblum (Applicant) speaks to the Board and states, “what Mr. Newman stated earlier is correct. If we had a basement, we would not need to bump out the house at all. The children would have an area to play. The house may loom large in the picture, but it really is small inside the house. It really is a box. It does not work for us. We are in need of an extra bathroom, etc...

Mr. Rosenblum continues...

Mr. Kufel again speaks to the necessity of his clients. It really is hard to get the FAR down from where we are...

Discussion continues....

Mr. Newman notes; it looks to be they are trying to obtain a more visually pleasing home, losing the boxy feeling of the current structure in exchange for a more architecturally pleasing structure.

Mr. Newman asks if there is any obstruction to the light, air flow, etc. to the neighbors or surrounding residences.

Mr. Kufel states no. They also added a small dormer over the Foyer window giving a focal point instead of having just a covered entryway...

Reviews plan...

Mr. Sacchinelli does note when he first looked at the plan, he thought this home was enormous, but they do not have a basement, nor any storage...I think they are trying their best not to make it just a square box. There is no Garage....

Discussion continues...

Mr. Dunay (Board Member) notes he did go over to the area and did realize there are a lot of photos with larger houses but mostly there are a number of homes in the area which are still relatively modest ranches, a few capes down the street...

Mr. Dunay asks the Board Attorney to please review again for clarification what the D-variance balancing that is required....

Mr. Rosenberg reviews for clarification....details the specifications.

Mr. Newman asks if there are any other questions from Board Members. Seeing none,

Mr. Newman opens the application to residents within 200ft. of the applicant. Seeing none,

Mr. Newman closes this portion.

Mr. Newman opens the application to the General Public.

Mr. Newman swears in: Mr. James McGovern  
11 Sherman Place  
Fair Lawn, N.J.

His concern is about all the rules & regulations about these McMansions that everyone is always complaining about, but he would like to know if it will look like a McMansion?

Mr. Newman does not know if he could accurately answer that question because people's opinions of McMansions are different. In my opinion, it does not appear to be what I consider a McMansion...

Mr. Newman offers Mr. McGovern the chance to review the plans that are proposed.

Mr. McGovern agrees.

Ms. Peck (Assistant Zoning Officer) shows him the plans and explains the drawings.

Mr. McGovern is satisfied with what he has been shown and has no further questions.

Mr. Newman opens for questions or comments from the General Public. Seeing none Mr. Newman closes this portion.

Mr. Rosenblum (Applicant) would just like to say, his wife & he are very involved with the town. His wife does a lot of work with the schools and volunteering and I have a business in town as a Podiatrist in the Plaza building. We do love Fair Lawn. We would like to stay in Fair Lawn for many years and this is really the way we can see the only way of doing it.

Mr. Newman states if there are no more questions or comments, he would ask for a motion.

Mr. Lowenstein makes 1<sup>st</sup> motion to approve the application.  
Mr. Meer seconds the motion.

**VOTE:** Mr. Lowenstein, Mr. Meer & Mr. Newman, **YES.**

Mr. Sacchinelli, Mr. Karas, Mr. Seibel, Mr. Puzio, **NO**

**4-No 3-Yes**

**Motion does not carry  
APPLICATION DENIED.**

NOTE: Mr. Newman explains the Res Judicata option to them if they would like to come back before the Board.

3. Application#12-006, Simran Sethi,  
5-22 Elizabeth Street. Block 1406, lot 8, Zone R-1-2  
Proposed addition would increase the building coverage from 20.53% to 25.44% where 25% is permitted. Would increase the impervious coverage from 34.53% to 38.83% where 35% is permitted. Would reduce the rear yard setback from 27.40% to 13.06% where 20' is required. Increase the FAR from 26.29% to 40.60% where 37% is permitted as per Section 125-12 Schedule of area yard and building requirements. FAR requires a D variance as per Section 125-57.D. (d) [1]

Let the record show, Mr. Lowenstein is recusing himself.

Mr. Newman swears in: Ms. Simran Sethi & Harmeet Sethi (Applicants)  
5-22 Elizabeth Street  
Fair Lawn, N.J.

Chris Blake, (Architect)  
155 North Washington Avenue  
Bergenfield, N.J.

Mr. Newman certifies Mr. Blake as an Expert witness in the Field of Architecture with no objections from the Board.

Fees have been paid and there is proof of service.

Mr. Blake begins his testimony and explains they are here before the Board tonight to add an addition to the house. They would like to make it a little larger to make it more comfortable for family & friends.

Mr. Blake explains they would like to add a larger kitchen and a Master Bedroom Suite. The first floor we would be adding a kitchen in the rear of the existing house. There is no major change...details...14ft. addition to the rear to enclose the new kitchen. The existing Kitchen/Dining Room space would be expanded to make a larger dining room. The only change would be to add an Eat-in-kitchen & make the Dining room larger.

Mr. Blake continues.....

The variance they are seeking is the rear yard setback...the requirement is 20ft. and we are proposing 13.06ft.

Mr. Blake explains this property's back yard faces Saddle River Road. All of the properties that we are backing up against are Commercial Properties...

Specifically behind the property are parking lots...

Mr. Blake feels with the property facing all these Commercial properties, he does not feel it is a strong detriment in their case to make the addition...

Hardships are discussed...Mr. Blake explains, the property is of the right size & measurements but the existing house has a big front yard, a bigger side yard and it has a slightly bigger rear yard so whether we put the addition towards the front, the sides, etc....it is going to require a variance...explains.

Testimony continues....

Building coverage is discussed.

Impervious is discussed.

FAR is discussed....3 1/2 % over the requirement.

All the additions are all in the rear of the property.

Mr. Blake reviews the site plan...he does believe they have a nice front yard and provide an open, airy feeling to the neighborhood. They will not involve any trees or shrubs. It truly is an addition to fit the family needs.

Site Plan is marked into Evidence for the record as A-1  
4 sheets dated December 4, 2012.

Mr. Blake introduces another Exhibit to the Board.  
Aerial Photographs are marked into evidence as Exhibit A-2

Discussion continues...

Mr. Blake explains aerial photographs in the surrounding area of the property..

Ms. Peck (Assistant Zoning Officer) notes Mr. Blake did not add the garage to the FAR..

Discussion...

Mr. Blake explains there is a storage area in the garage which he feels would decrease the size of the garage to 400sf...which would not have to be included to the FAR.

Discussion and calculations are redone.

Mr. Blake notes an error. There is 60sf. of living space in the garage that he did not depict into the calculations...

Discussion....

Mr. Newman (Chairman) states if this is going to be included, you will have to submit new plans.

Mr. Rosenberg (Board Attorney) agrees with the Chairman's decision.

Mr. Blake requests a moment with his clients.

Mr. Blake understands what the Board is requesting and notes it would be hard to make a judgement based on the incompleteness. We would like to postpone the hearing of the application until next month with the opportunity to submit correct & updated information for the Board's review.

Mr. Blake is aware there will have to be a new publication reflecting the new FAR calculations.

Mr. Newman carries the application to the meeting of March 19, 2012.

**APPLICATION CARRIED.**

**Mr. Newman requests a 5minute recess.**

**Mr. Newman reopens the meeting.**

**ROLL CALL:** Mr. Sacchinelli, Mr. Lowenstein, Mr. Karas, Mr. Seibel, Mr. Dunay, Mr. Sena, Mr. Lancaster, Mr. Puzio, Mr. Meer & Mr. Newman, **Present.**

Let the record show, Mr. Lowenstein has recused himself.

4. Application#12-007, Gurpal Singh Farmah,  
29-01 Rutgers Terrace, Block 3621, Lot 25, Zone R-1-2  
Proposed rebuild of an existing non conforming structure. Would maintain existing side yard setback of 6.17' & 9.64 where 10' is required. Would maintain the existing front yard setback of 24.8' where 30' is required as per Section 125-12 Schedule of area yard and building requirements. D variance required as per Section 125-32. B.(2).

Mr. Newman swears in: Mr. Gurpal Farmah  
12-09 Rutgers Terrace  
Fair Lawn, N.J.

Glen Stubaus (Architect)  
26-02 Broadway  
Fair Lawn, N.J.

Mr. Newman certifies Mr. Stubaus as a Professional in the Field of Architecture with no objections from the Board.

Fees have been paid and there is proof of Service.

Mr. Stubaus notes he will be entering into Evidence a set of drawings, A1 thru A3 dated October 21, 2011

Entered as Exhibit A-1

Mr. Stubaus begins his testimony explaining he is the Architect for this project in which Mr. Farmah is a builder and has done a number of projects here in town. He bought this property with the intention of adding an addition onto it and selling it to a buyer...

Mr. Stubaus explains the variances needed...but notes, the Zoning Ordinance permits construction of a second floor on an existing non-conforming structure. The plan proposed was to repair the house and add a second floor on existing house. The plans were submitted to the Building Department and met all the building requirements in Zoning and the permits were issued.

Mr. Stubaus continues...once construction began, at the time of the footing and foundation inspection, Mr. Farmah pointed out to the Building Inspector, there was extensive Termite Damage on the first floor of the house. It was my understanding the Building Inspector suggested the damage should be replaced. Mr. Farmah proceeded to remove the walls on the floor where the foundation could be reconstructed, assuming he had the approval from the Building Department.

According to the Municipal Land Use Law, once all of the walls of the existing house were removed...it is though the house never existed and in order to build it back in the

same location, a variance is required for the side yard and rear yard to reconstruct the house on the exact same location as it existed before...

Discussion....

Mr. Stubaus notes for the record again, Mr. Farmah believing he had the go ahead from the Building department to replace the damaged wood, proceeded to build to the point where all the walls were built up to the second floor, right up to the Roof rafters, at which point it became apparent to the Building Department that the existing non-conformity was removed and the job was stopped and we had to come before the Board for approval to rebuild the house.

Testimony continues.....

Mr. Stubaus states the house is built back on the exact same location, similar appearance, similar setback...conforming to all the other houses in the neighborhood. Mr. Farmah has submitted photographs with the application of other houses which have the same setback or similar setback...

Discussion...

Mr. Newman notes; if not for the Termite damage and the need to reconstruct in the same manner the foundation, Mr. Farmah would not be here tonight at all...

Mr. Stubaus states yes.

Mr. Rosenberg, (Board Attorney) asks if the Assistant Zoning Officer, Ann Peck can give her testimony to collaborate Mr. Stubaus's testimony as to what exactly happened with the Building Department...

Mr. Newman swears in: Ms. Ann Peck (Assistant Zoning Officer)  
(Borough of Fair Lawn)

Ms. Peck begins her testimony explaining the Architect was correct that the Building Permits were issued based upon the plans they were only adding a second floor to the existing structure...if no walls were removed, they would have just gone forward.

Ms. Peck continues with her testimony stating as far as the conversation between Mr. Farmah & the Building Inspector, she cannot collaborate on what was said...

Testimony continues....

Mr. Stubaus refers to the photographs Mr. Farmah submitted showing the wood that was damaged by termites...in order to repair the floors, we had to remove the walls..

The foundation was never removed....

Mr. Sacchinelli questions the amount of damage that all the walls had to be taken down.

Mr. Farmah testifies when he took out the floors, he realized how much damage there was....and reiterates he thought he was given the approval by the Building Inspector to take it out...

Discussion....

Ms. Peck speaks to the Board regarding the misunderstanding and how Mr. Farmah might have misunderstood the situation...explaining he went before the Board for his own variance when he did his home....explains...

Discussion continues.....

Questions arise regarding the inspection by the Building Department...

Discussion continues...

Mr. Newman directs all questions back to the variances the applicant is here for tonight... feels the Board is getting off track...

The Architect & Board Members discussed the Ordinance regarding existing structures.

Discussion continues...

Mr. Newman opens the application to residents living within 200ft. of the Applicant. Seeing none, Mr. Newman closes this portion.

Mr. Newman opens the application to questions or comments from the General Public. Seeing none,

Mr. Newman closes this portion and asks for a motion.

Mr. Meer makes the motion to approve the application.  
Mr. Puzio seconds the motion.

**VOTE:** Mr. Sacchinelli, Mr. Lowenstein, Mr. Karas, Mr. Seibel, Mr. Dunay, Mr. Puzio  
Mr. Meer & Mr. Newman, **YES.**

**Motion carries.**

**Application Approved.**

Application #12-008, Robert Kessler  
37-10 Gardenview Terrace, Block 2606, Lot 14, Zone R-1-2  
Proposed hot tub would have a side yard setback of 7.42'  
where 12' is required as per Section 125-37.B.

Mr. Newman swears in: Mr. Robert Kessler, (Applicant)  
37-10 Gardenview Terrace  
Fair Lawn, N.J.

Fees have been paid and there is proof of service.

Mr. Kessler begins his testimony. He states he plans on building a deck in the back of his home and a Hot Tub on the side of the deck. Doing so, it will encroach on my side yard setback.

Mr. Rosenberg (Board Attorney) notes for the record, Mr. Kessler has submitted a set of plans, consisting of 4 sheets prepared by Conrad Pertilli, an Architect, dated 10/14/11

Entered as Exhibit A-1

Mr. Kessler continues...he describes his proposal for the Deck & Hot Tub. Explains why he decided on this particular location on his property.

Mr. Newman asks if the neighbors can see any part of this Hot Tub, to which Mr. Kessler testifies, no.

Mr. Karas questions the Concrete Pad on his survey and what is this being used for.

Mr. Kessler explains the Deck will go over that portion of concrete.

Mr. Duney notes valid points regarding the setback, states the lot is awkwardly shaped such that in fact the rear of the lot is only 39ft. long vs the zone of 75ft. and if not for this situation, there would not be a setback issue on the side yard....also notes the existing house with the garage has a side yard setback of 6.5ft...the Hot Tub will be 7.42'...and just to collaborate with Mr. Kessler, the sauna cannot be viewed by neighbors...

Mr. Sacchinelli asks if there are any issues with flooding...

Mr. Kessler testifies no.

Mr. Newman asks the Board if there are any questions or comments. Seeing none,

Mr. Newman opens the application to residents living within 200ft. of the Applicant, Seeing none,

Mr. Newman opens the application to the General Public for questions or comments, seeing none,

Mr. Newman closes this portion & asks for a motion.

Mr. Meer motions to approve the application.

Mr. Puzio seconds the motion.

**VOTE:** Mr. Sacchinelli, Mr. Lowenstein, Mr. Karas, Mr. Seibel, Mr. Puzio  
Mr. Meer & Mr. Newman, **YES.**

**Motion Carries.**

**Application Approved.**

Mr. Newman opens Order of Business:

Approval on the 2011 Annual Report-

Mr. Puzio made a motion to accept the Annual Report as completed. Mr. Lowenstein seconded the motion.

**VOTE:** All Present: AYE

A request from Ms. Ann Peck (Assistant Zoning Officer) for approval on changing the regularly scheduled Zoning Board Meeting to be held on April 16<sup>th</sup>, 2012 to April 23, 2012....No objections from the Board.

**Meeting of April 16, 2012 rescheduled to April 23, 2012.**

**Public Notification to follow.**

Mr. Newman reminds the Board of the Land Use Bar Association Symposium being held on Saturday, March 10 at the Bergen Community College.

**Resolutions:**

1. Application #2011-041, Mr. Feng Zhang,  
36-09 Ferry Heights, Block 2606, Lot 23, Zone R-1-2–  
Proposed Addition- **Approved.**

2. Application #2011-042, Gary & Richard Santana,  
7-13 Berdan Avenue, Block 5611, Lot 40, Zone R-1-3–  
Proposed Driveway, 2 curb cuts- **Approved with restriction.**
3. Application #2012-001, Oleg & Liana Shames,  
3-10 Hartley Place, Block 3325, Lot 17, Zone R-1-3–  
Proposed Driveway expansion & Shed- **Approved.**
4. Application #2012-002, Helen Morganstern, Kleinberg,  
12-55 Lexington Street, Block 4611, Lot 26, Zone R-1-3–  
Proposed Addition- **Approved.**
5. Application #2012-003, Laurie Brickel,  
12-34 Western Drive, Block 4616, Lot 18, Zone R-1-3–  
Proposed addition & Deck- **Approved.**

Mr. Lowenstein made a motion to accept these resolutions and Mr. Puzio seconded the motion.

**VOTE:** All Present – AYE.

**Vouchers:**

1. Voucher submitted by Winne, Banta in the amount of \$816.66 regarding Legal service rendered to the Zoning Board of Adjustments for the month of February, 2012
2. Voucher submitted by Winne, Banta in the amount of \$816.66 regarding Legal services rendered to the Zoning Board of Adjustments for the month of January, 2012
3. Voucher submitted by Azzolina & Feury Engineering in the amount of \$1,931.00 regarding Professional services rendered to 18-35 River Road, LLC

Mr. Puzio made a motion to approve these vouchers and Mr. Sacchinelli seconded the motion.

**VOTE:** All Present – AYE

Mr. Newman asks for a few minutes from the Board before adjourning to listen to Mr. Rosenberg (Board Attorney) regarding a subject in which he thought was very interesting. If there is no objection from anyone, I have an interest in asking the Council to see what they could do about this situation...defers to Mr. Rosenberg to open discussion.

Mr. Bruce Rosenberg begins by explaining he was involved in the adoption of the FAR After the adoption, one of the things that was discussed was the possibility of a FAR “Bonus” Mr. Bruce Rosenberg explains, if you did not meet the FAR but were willing to integrate certain defined Architectural elements to the proposed project, details...then

you could get an FAR “Bonus” the FAR would be changed to your particular project and give you the “bonus” which could be applied for your compliance with the FAR. It was raised by the Council and Mr. Newman was wondering whether the Board would be interested in sending a letter to the Council asking for this issue to be reconsidered.

Discussion by Board Members.....

It is decided by the Board to discuss topic in further detail at the next Zoning meeting in April.

**Adjourn:**

Mr. Puzio made a motion to adjourn this meeting and Mr. Sacchinelli seconded the motion.

TIME: 10:00 P.M.

VOTE: All Present - AYE.

Respectfully submitted,

Cathy Bozza  
Zoning Board Clerk