

**BOROUGH OF FAIR LAWN
ZONING BOARD OF ADJUSTMENT
Regular Meeting Minutes
Of AUGUST 20, 2012**

Following are the minutes of the Fair Lawn Zoning Board of Adjustment's regular meeting held on August 20, 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. Blecher, Mr. Sacchinelli, Mr. Lowenstein, Mr. Karas, Mr. Puzio, Mr. Seibel, Mr. Dunay, Mr. Sina, Mr. Lancaster, Mr. Meer & Mr. Newman

Absent: All in attendance

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

Board Professional in Attendance: Peter Van Den Kooy, Board Planner

Residential Carried:

1. Application#12-020, Kevin Frick,
15-07 Everett Terrace, Block 4714, Lot 2, Zone R-1-3
Proposed 35'x19' In ground pool with 3' walkway around would increase the Impervious coverage from 32.01% to 44.07% where 35% is permitted as per Section 125-12 Schedule of area yard and building requirement.
Application carried to meeting of September 24, 2012. No Testimony to be heard.

2. Application # 2012-029 John Vigilante
8-01 Fern Street, Block 5812, Lot 12, Zone R-1-3
Proposed new storage loft to existing garage would require a C-2 variance as per Section 125-12 schedule of area yard and building requirements
Application carried to meeting of September 24, 2012. No Testimony to be heard.

3. Application #12-026, Dariusz Majcher,
0-28 Plaza Road, Block 3223.01, Lot 1
Corner Property- Proposed 6' fence in the front yard setback on Berkshire Road
Where only 3ft.is permitted as per Section 125-38.A.

Mr. Newman swears in: Mr. Dariusz Majcher
0-28 Plaza Road
Fair Lawn, N.J.

Fees have been paid and there is proof of service.

Mr. Newman asks Mr. Majcher to please explain the reason he is here tonight.

Mr. Majcher testifies he is here tonight to ask the Board for permission to put a 6ft. fence in his front yard. He explains his young children like to play Soccer and he would like them to do so without worrying about the busy street.

Discussion...

Mr. Lowenstein (Board Member) questions parks in the surrounding areas...

Board discusses the type of fence being proposed.

Mr. Majcher states it will be a 5ft. solid fence with a 1' decorative Lattice totaling 6ft. in height.

Mr. Karas (Board Member) asks if Mr. Majcher would consider fence being moved back from where it is being proposed to line up with the house on the Berkshire Road side.

Mr. Majcher is not keen on this idea and explains the reason....

Discussion continues...

Mr. Newman notes for clarification, the corner property issues regarding fences were noted for review in the Board's Annual Report.

Mr. Newman asks if there are any further questions from the Board, seeing none, he opens the application to residents living within 200ft. for questions or comments. Seeing none,

Mr. Newman closes this portion.

Mr. Newman opens the application to the General Public. Seeing none,
Mr. Newman closes this portion and asks for a motion.

Mr. Blecher makes a motion to approve the application.
Mr. Puzio seconds the motion.

VOTE: Mr. Blecher, Mr. Sacchinelli, Mr. Lowenstein, Mr. Puzio, Mr. Meer & Mr. Newman, YES.

Mr. Karas, No.

**Motion Carries.
Application Approved.**

New Residential:

1. Application #2012-028 Joseph Maslo/ Barbara Rasmussen
34-07 Ryan Road, Block 2204, Lot 7, Zone R-1-3
Proposed 21' above ground pool would increase the impervious coverage from 38.51% to 43.04% where 35% is permitted as per Section 125-12 Schedule of area yard and building requirements.

Mr. Newman swears in: Mr. Joseph Maslo & Barbara Rasmussen
34-07 Ryan Road,
Fair Lawn, N.J.

Fees have been paid and there is proof of service.

Mr. Newman asks Mr. Maslo to please proceed.

Mr. Maslo begins his testimony explaining the reason for wanting a pool, first noting his children would love to have one but also explaining personal issues in which the pool would be very therapeutic to his wife & himself.

Mr. Newman interjects Mr. Maslo testimony and explains, although sympathetic and understanding to his issues, personal hardships cannot be considered a hardship. It must be land related...explains.

Mr. Newman also notes this is an oversized lot and with review of the survey, questions if there is anyway the impervious coverage can be decreased, being the concrete area....etc.

Mr. Maslo explains the concrete area shown on the survey is half covered by a deck that was put in prior by his father...

Discussion continues..

Mr. Karas (Board Member) asks Mr. Maslo if he would consider a smaller pool.

Mr. Maslo explains he would comply if need be.

Mr. Karas also asks if the applicant would consider removal of the pool upon the sale of the home which would require a Deed Restriction filed.

Mr. Newman (Chairman) & Mr. Rosenberg (Board Attorney) discuss the topic of this request by Mr. Karas. Applicant should not be required to get a Deed Restriction. The Zoning Board does not have jurisdiction to ask this of the applicant.

Discussion continues.....

Mr. Newman asks if there are any further questions from the Board, seeing none, he opens the application to residents living within 200ft. for questions or comments. Seeing none,

Mr. Newman closes this portion.

Mr. Newman opens the application to the General Public. Seeing none, Mr. Newman closes this portion and asks for a motion.

Mr. Meer makes a motion to approve the application.

Mr. Sacchinelli seconds the motion.

VOTE: Mr. Blecher, Mr. Sacchinelli, Mr. Karas, Mr. Puzio
Mr. Meer, **YES.**

Mr. Lowenstein, Mr. Newman, **NO.**

Motion Carries.

Application Approved.

2. Application #2012-030 Luciano DiGiacomo
4-13 30th Street, Block 3404, Lot 7, Zone R-1-3
Proposed 18' x 12' above ground pool would increase the impervious coverage from 41.6% to 45.18% where 35% is permitted as per Section 125-12 Schedule of area yard and building requirements.

Mr. Newman swears in: Jonathan & Luciano DiGiacomo
4-13 30th Street
Fair Lawn, N.J.

Fees have been paid and there is proof of service.

Mr. Newman begins by explaining first to Mr. & Mrs. DiGiacomo that being the prior application was also for a Pool variance, each application stands on its own merit.

Mr. & Mrs. DiGiacomo understand and move forward with their testimony as to why they would like a pool & seek approval for an increase to their impervious coverage over the allowable requirement.

Lot size is discussed, etc...

Mr. Newman notes the lot is an undersized lot and is an irregularly shaped lot which creates a hardship and a problem with regards to impervious coverage issues.

Removal of impervious coverage is discussed. There will be the removal of mason blocks & walkway along the garage.

Discussion continues....

Mr. Newman asks if there are any further questions from the Board, seeing none he opens the application to residents living within 200ft. for questions or comments. Seeing none,

Mr. Newman closes this portion.

Mr. Newman opens the application to the General Public. Seeing none,
Mr. Newman closes this portion and asks for a motion.

Mr. Lowenstein makes a motion to deny stating he has concerns with the impervious coverage increase from the 35% requirement to 42.18%. He is also concerned with water runoff...

Mr. Newman clarifies to the Board the motion has been to deny the application, so a 2nd motion would be to deny the application.

No 2nd motion to deny is called.

Mr. Rosenberg (Board Attorney) states the motion fails without a 2nd motion to deny.

Mr. Newman asks for another motion.

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

VOTE: Mr. Blecher, Mr.Sacchinelli, Mr.Puzio, Mr. Meer & Mr. Newman, **YES.**
Mr. Lowenstein, **NO.** Mr.Karas, **ABSTAINS.**

Motion carries.
Application Approved.

Mr. Karas (Board Member) announces he is recusing himself from the Commercial Application to be heard. With the Board's permission, he will leave for the evening.

RECESS: 5minutes

Mr. Karas (Board Member) is recusing himself from the Commercial Application to be heard. With the Board's permission, he will leave for the evening.

Mr. Newman reopens the meeting

ROLL CALL: Mr.Blecher, Mr.Sacchinelli, Mr.Lowenstein, Mr.Puzio, Mr.Seibel,
Mr.Dunay, Mr.Sina, Mr.Lancaster, Mr.Meer&Mr.Newman.

Commercial Business Carried:

1. Application#12-011, Center City Transport,
23-00 Route 201, Block 5902, Lot 9, Zone B-1
The proposed overnight parking of limousines at the existing Limousine Office
Outdoor storage is not permitted in the B-1 Zone as per Section 125-24.D (4)
a D-1 Use Variance is required as per Section 125-57.D. (d){1}

Mr. Puzio announces he was not here for the beginning portion of this hearing he is not eligible to vote.

Let the record show, Mr. Puzio will remain for the hearing but will not be voting.

Mr. Meer announces the members voting: Mr. Blecker, Mr. Sacchinelli, Mr. Lowenstein,
Mr. Meer, Mr. Newman, Mr.Seibel (Alternate I) &Mr. Dunay (Alternate II)

Mr. Andrew Karas of the firm, Forman, Holt steps forward on behalf of the applicant, Center City Transport. We are here for the continuation of the meeting that took place back in March...it had been adjourned quite a number of times because of the lack of a Quorum, in the interim, I've provided to the Board a few pieces of information the Board requested. One being a Plan showing the entire layout of the site, which shows 117 parking spaces on site, the other request was copies of the registrations from the vehicles which have been provided reflecting the address at the property where Center City Transport is a tenant.

Mr. Karas continues he does know Timothy Franco of the Fair Lawn Police Department also sent a letter stating there was no opposition to this application.

Mr. Rosenberg (Board Attorney) requests that Exhibits provided by Mr. Karas be entered into evidence for the record.

Exhibit A-1, Plan of Van Guard Associates dated January 30, 1984
Exhibit A-2, Series of Registrations of Vehicles submitted
Exhibit A-3, Letter from Officer Franco dated May 17, 2012
Exhibit A-4, Report from Birdsall Associates dated March 15, 2012

Discussion...

Mr. Newman swears in: Peter Van Den Kooy, (Board Planner)
Birdsall Associates

Mr. Newman questions Mr. Van Den Kooy on Pg. 4 of his report under Site Plan considerations, reads comments mentioned regarding Site Plan should be provided as to the number of vehicles being proposed on the site, Mr. Newman asks whether or not the old site plan is adequate.

Mr. Van Den Kooy would like clarification on the time of day when this business would be most active & maybe testimony from the other businesses currently at the same location in order to get an idea regarding vehicular circulation & vehicle peak hours in order to see the interaction...

Mr. Karas explains; it is a Commercial building with multi-purpose use within the building. Anytime someone is utilizing the premises, they cannot testify...explains... The vehicles we are speaking of will be parked at night as opposed to during the day and the parking lot is essentially empty at night, so it would not be an issue.

Mr. Karas states he will be providing testimony from his client as far as to whether or not there will be parking of vehicles during the daytime...as far as vehicular circulation around the lot, we are not creating a new parking lot, nor changing the parking, so obviously the circulation is within the current plan as far as Egress & access onto the site.

At the last meeting, we spoke of a retaining wall in the back and parking the vehicles there and there was no objection to any condition proposed by the Board as far as parking vehicles along the retaining wall. This would be the proposal the Board is looking for as far as specified spaces for the vehicles at night.

Mr. Karas continues.....

Mr. Karas calls his witness Zoly Locsh (Principal Owner of Century City) to the stand and reminds the Chairman, he was previously sworn in.

Mr. Newman before hearing testimony from Mr. Karas's witness would like to read into record the issues raised regarding security & answered by Officer Franco, the Safety Officer.

Mr. Newman reads from Officer Franco report, summarizing he does not foresee an issue with security because many businesses park vehicles overnight in town. He does offer a recommendation they may want to consider cameras for observation which are sometimes a deterrent. Officer Franco does however have a concern with parking during the day when employees arrive to get the Limos and take them out...will they park onsite and if so, are there enough of spaces? This particular lot on some days is busy.

Respectfully submitted,
Timothy Franco

Mr. Karas responds to this and states one; his client is a tenant and they have space which is provided by the facility...and even though his client will park his vehicles overnight, in retrospect, you are not intensifying the situation.

Mr. Newman asks where his driver's (employees) park their vehicles"

Mr. Locsh testifies most of the drivers come on Public Transportation or get a ride.

Discussion....

Mr. Locsh states most of his drivers would not be parking onsite...during the day, at most 2 -3 cars.

Testimony continues....

Mr. Sacchinelli (Board Member) asks how many parking spaces come with each office rented & what is the designated parking area given.

Mr. Locsh testifies the Landlord never gave limits as to how many cars he could park and there is no designated parking, they are open spaces.

Discussion.....

Mr. Sacchinelli has concerns with having 12cars parked there overnight, if there is no work for the drivers, they will be parked there during the day.

Mr. Locsh states they will not be parked there. They wait for jobs elsewhere; they do not go back to the base....the cars will be gone all day.

Discussion continues....

Mr. Sacchinelli questions Mr. Losch going forward on future employees, what if some of them do drive to the site?

Mr. Karas speaks for his client and testifies he is willing to limit X amount of cars during the day as a condition if need be.

Questioning continues....

Mr. Sacchinelli reviews the Registrations submitted with the application and notes he does not see “Limousines” on any.

Mr. Losch states it is a “High End” Van service.

Mr. Sacchinelli notes they are 15passenger Van, high top vans. He wants the Board to understand if they are thinking these are “Town Cars” or “Stretch Limos” they are not, these are vans with high tops... the building is a very low building and he is not sure they would fit under the building?

Mr. Losch states they would not be able to go under the building.

Discussion regarding “Emergency Situations”

Mr. Sacchinelli continues...at our last hearing, one of the hardships he mentioned was the cost of keeping the cars in the City...

Discussion...

Mr. Karas states it is a N.J. Company, so they have to have a “Home Base” in N.J. He is a tenant within the building. He wants to be able to park his vehicles at a safe location, at his place of business....

Discussion continues...

Mr. Sacchinelli notes he does not understand why he (Mr. Losch) has to keep his business at the location he is now, he knew when he signed his lease, he could not park even 1 car there...he has been there for 3 yrs...

Mr. Karas states he did not need vehicles parked there at the time. Now he needs a place to park them overnight.

Discussion continues...

Mr. Losch is questioned on the hours of operation.

Mr. Losch states it is a 24hr business/7days a week at home but Office hours are 5-6 days a week during the day, the office is opened and run by himself & his wife

Mr. Seibel (Board Member) mentions he has stopped by to talk with Mr. Losch and no one is in the office...he has a concern with the difficult circle going on to 208 out of the driveway. It is a very dangerous with cars coming down & trying to go into the slow lane from the fast lane and the Loop around there over by Nabisco.

Ms. Peck (Assistant Zoning Officer) interjects with a report from our Board Traffic Engineer, he notes; "providing the applicant is not making physical changes to the parking lot/no striping changes/no changes to the lightening plan, etc and all the parking will be within the designated spaces on the site, he does not need to perform any separate review"

Mr. Sacchinelli asks Ms. Peck if our Traffic Engineer knew they were "High Top Vans"

Ms. Peck was not aware of this and most likely the Traffic Engineer did not either.

Questioning & Testimony continues....

New Regulations from N.J. Motor Vehicles required if an owner or owners are N.J. based and the cars are registered in N.J., they must provide parking in N.J. for every vehicle.

Discussion...

Mr. Newman interjects and notes we are veering off the path of what this applicant is here for...and that is a parking issue. Whatever regulations he is required to meet in order to operate his business properly, is his responsibility. We as a Zoning Board do not have jurisdiction over it nor power of enforcement for those types of issues.

Mr. Newman reads from Mr. Van Den Kooy's (Board Planner) Report...which outlines what we are being presented with....

Reads the report...what is necessary regarding Positive criteria & Negative criteria...

Mr. Karas explains the reason why this particular site is suited for this use is:

Limousines use is permitted. It has a huge retaining wall along the entire rear area where his client is proposing to park, so he would not be impinging upon any Residential property. You will not see the vehicles visually so it will not interfere with anyone. It is a matter of overnight parking...if it weren't for the overnight aspect there would be no problem with his client using his Limousines & parking the vehicles on site. The only thing requiring a variance is the overnight parking as opposed to day parking.

Mr. Newman asks Mr. Karas how many spaces are currently allotted for Mr. Losch's business in his lease agreement.

Mr. Karas states they did not allot the amount of spaces allowed.

Discussion & Questioning continues.....

Mr. Karas explains when this building went for an approval, it was noted the amount of spaces were sufficient for the square footage of the building.

Mr. Sacchinelli has concerns regarding the Landlord having no lease agreement with the amount of parking vehicles allowed for this particular business.

Mr. Newman notes the Landlord's name for the Record & asks if the Landlord is fully aware of this application & what this applicant seeks including the amount of vehicles you currently have and how many you are looking to park overnight.

Discussion...

Mr. Lowenstein (Board Member) asks Mr. Karas if he could define overnight parking. Is it defined in the Borough Ordinance as to what constitutes Overnight Parking?"

Mr. Karas explains it would be "Overnight Storage"...

Discussion & questioning continues.....

Mr. Lowenstein questions the number of drivers he has employed.

Mr. Locsh's testifies he has 14 drivers in total.

Mr. Lowenstein has concerns regarding testimony earlier stating two employees out of 14 may have cars... states buses do not run so great in the suburbs...explains situations hypothetically that may happen...drivers coming back from Atlantic City 3-4:00 in the morning...or Manhattan, how does the driver get home..what buses?

Mr. Locsh's speaks to the concerns of Mr. Lowenstein stating in situations such as what Mr. Lowenstein has described, most likely the driver would take the Company car home.

Mr. Dunay (Board Member) inquires about the Positive & Negative Criteria...defers to Mr. Rosenberg (Board Attorney) asking if both are to be satisfied by the applicant.

Mr. Rosenberg explains.....

Mr. Dunay asks the applicant to specifically address the positive & negative criteria, noting he felt the retaining wall in the rear of the property where the vehicles would be parked overnight would be more toward the negative criteria rather than the positive.

Mr. Karas states in his opinion the retaining wall could both serve to satisfy the positive and the negative, explains...

Discussion continues....

Mr. Karas continues with his argument stating they are not talking about a use that is not permitted on the site. The use is permitted. Are we hindering the code of the MLUL or interfering with it by parking? The Board should enable the permitted business to operate day or night. Is it really what the MLUL intended to do, to prevent overnight parking of vehicles? It is a technical argument, but falls into whether or not there is a special reason to allow this.

Discussion continues...

Mr. Newman asks Mr. Karas, which purpose or purposes of Zoning are being advanced by the proposed use?

Mr. Karas states the purpose of Zoning is allowing permitted uses that are allowed as a Limousine Company, as a tenant in a manner they are intended to operate.

Mr. Seibel (Board Member) has concerns with the Retaining wall, stating it shields anyone from seeing anything going on...he has concerns with vandalism.

Mr. Newman states Officer Franco did mention in his report, the applicant may want to consider surveillance cameras for observation & for deterrents. Lightening may be in order. Would the applicant consider this?

Mr. Karas speaks to his client...

Mr. Locsh (Applicant) testifies and notes the building already has Security cameras. They look over the parking lot all the time and feels there is sufficient lightening already.

Mr. Newman asks if there are any more questions or concerns from the Board. Seeing none, Mr. Newman defers to the Board Planner, Mr. Van Den Kooy and asks; although we have gone through all your Site plan considerations, is there anything else remaining pertaining to the Site Plan that has not been addressed or needs to be addressed or any clarification necessary?

Mr. Van Den Kooy (Board Planner) has only one concern & would like clarification on the irregularly shaped parking spaces that vary in depth according to the Site Plan. Speaks to the rear of the property....explains...would like to clarify the maximum length of the vehicle that would be utilized on the property. His concern would be if Emergency vehicles were needed on site he would not want the vehicles parked protruding into the drive aisle to hinder these Emergency Services.

Mr. Locsh testifies most of the vehicles are the same length as a Town car. It looks bigger because it is square...

Length of car is questioned for the record.

Mr. Locsh cannot answer what the length of the vehicle is.

Mr. Newman asks Mr. Locsh if all of the vans or vehicles he intends to park onsite fit into a standard parking space without protruding.

Mr. Locsh testifies yes.

Mr. Newman defers to Mr. Van Den Kooy asking if the spots are standard in size.

Mr. Van Den Kooy states the plans are a little difficult to read in some respects but they are around 16 1/2 to 20ft....

Calculations are done...parking spaces are 20-20ft+

Discussion continues...

Mr. Van Den Kooy states with the testimony heard, vans would clearly fit, however if the market should change and require a longer vehicle with the maximum length limousine, he would not be sure if the length would be greater than 20ft...

Mr. Van Den Kooy suggestion would be to add a condition, if appropriate, to limit the length of the vehicle.

Mr. Karas (Attorney) has no issues with adding this type of condition. The vehicle would not extend the size & space of the parking

Discussion & questioning continues...

Mr. Newman asks if there are any other questions or concerns. Seeing none,

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

Mr. Newman asks for a motion.

Mr. Meer makes a motion approve.

Mr. Newman asks Mr. Meer to amend the application to include & be more specific to some things that were agreed to by the applicant.

Conditions to be included:

1. Overnight parking is allowed in the parking spaces located along the rear retaining wall for no more than 8 vehicles registered to Center City Transport or Employees of Center City Transport.
2. Vehicles parked onsite will fit within the line parking spaces without protruding into the drive aisle.

Mr. Meer amends the application and motions for approval.

Mr. Dunay seconds the motion.

VOTE: Mr. Blecker, Mr. Dunay, Mr. Meer, Mr. Newman, **YES**

Mr. Sacchinelli, Mr. Lowenstein, Mr. Seibel, **NO**

Application does not carry. (Five affirmative votes necessary)

Application Denied.

Order of Business:

Resolutions:

1. Application #2012-027, Anshei Lubavitch Center, 10-10 Plaza Road, Blocks 3514 & 3515, Lot 1 thru 11, 15 thru 23, Zone R-1-2–New Roof/D-6 Height variance & any other design waivers or approvals- **Approved.**

Mr. Lowenstein made a motion to accept this resolution and Mr. Puzio seconded the motion.

VOTE: All Present – AYE

2. Application #2012-023, Steven & Andriana Tursi, 2-01 28th Street, Block 3308, Lot 23, Zone R-1-3– Corner property-Proposed 6ft. fence in front yard setback- **Approved.**

Mr. Puzio made a motion to accept this resolution and Mr. Lowenstein seconded the motion.

VOTE: All Present – AYE.

3. Application #2012-024, Kenneth & Josephine Niemiec, 12-16 Scribner Road, Block 3619, Lot 14, Zone R-1-2– Proposed 2 story addition- **Approved w/amendments.**

Mr. Puzio made a motion to accept this resolution and Mr. Meer seconded the motion.

VOTE: All Present – AYE.

4. Application #2012-025, Elly Lerner, 39-02 Kuiken Terrace, Block 1710, Lot 10, Zone R-1-3– Corner Lot-Proposed 6’ fence in the front yard setback- **Denied.**

Mr. Lowenstein made a motion to accept this resolution and Mr. Puzio seconded the motion.

VOTE: All Present – AYE

5. Application #2012-033, Benjamin & Sarah Keren, Block 3211, Lot 31, Zone R-1-3– Variance Extension- **Approved.**

Mr. Puzio made a motion to accept this resolution and Mr. Meer seconded the motion.

VOTE: All Present – AYE.

Vouchers:

1. Winnie Banta, Hetherington, Basralian & Kahn for Legal services rendered to the Zoning Board of Adjustments for the month of June, 2012 in the amount of \$816.66.
2. Winnie Banta, Hetherington, Basralian & Kahn for Legal services rendered for the Special Meeting of Anshei Lubavitch, August 2 & August 16 in for the amount of \$382.50.
3. Birdsall Engineering for Professional services rendered for Center City Transport in the amount of \$217. 50

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

VOTE: All Present – AYE.

Adjourn

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

TIME: 10:00 P.M.

VOTE: All Present - AYE.

Respectfully submitted,

Cathy Bozza
Zoning Board Clerk

