

**BOROUGH OF FAIR LAWN
ZONING BOARD OF ADJUSTMENT
Regular Meeting Minutes
Of October 22, 2012**

Following are the minutes of the Fair Lawn Zoning Board of Adjustment's regular meeting held on October 22, 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. Lowenstein, Mr. Karas, Mr. Puzio, Mr. Seibel, Mr. Sina, Mr. Meer & Mr. Newman

Absent: Mr. Sacchinelli, Mr. Lancaster, Mr. Dunay (Arrived 7:35)

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

All Board Professionals in Attendance: Board Planner; San Chevan,
Board Engineer; Paul Azzolina &
Board Traffic Engineer; Mark Kataryniak

Residential Business 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 November 26, 2012. To be heard or withdrawn. No Testimony this evening.

1. Application#12-036, Mladen & Frankia Komarica,
28-12 Berkshire Road, Block 3209.01, Lot 1, Zone R-1-3
Proposed overnight parking of two commercial vehicles in a residential zone where two are permitted but one must be garaged. Weight of vans exceed the permitted three quarter ton capacity. Section 125-40.A. (b) 125-40.A.(b){1}
D-1 Use variance required as per Section 125-57.D. (1)(d){1}

Application carried to the meeting of November 26, 2012. No Testimony to be heard.

Residential New Business:

1. Application #12-037, Scott Gross,
45 South Broadway, Block 1105, Lot 9, Zone R-1-3
Proposed one story rear addition would increase the building coverage from 17.6% to 28.64% where 25% is permitted. Would increase the impervious coverage from 35.26% to 41.88% where 35% is permitted. Would maintain the existing side yard setbacks of 6.8' where 8' is required as per Section 125-12 Schedule of area yard and building requirements.

Fees have been paid and there is proof of service.

Mr. Newman swears in: Scott & Audrey Gross
45 South Broadway
Fair Lawn, N.J.

William J. Martin, (Architect/Planner)
25 Blvd West
Westwood, N.J.

Mr. Newman certifies Mr. Martin as an Expert witness in the Field of Architecture & Planning without any objections from the Board.

Mr. Martin begins by detailing the application.

Marked into Evidence:

Exhibit A-1-Site Plan
Exhibit A-2-Application
Exhibit A-3-Survey
Exhibit A-4-Front/Rear Elevation
Exhibit A-5-Basement Plan-
Exhibit A-6-1st Floor Plan
Exhibit A-7-2nd Floor Plan
Exhibit A-8-left & right side elevations.
Exhibit A-9
Exhibit A-10 Photographs of Property & neighboring homes.

Mr. Martin proceeds; the project consists of a one story addition to an existing one story home. Consisting of a rear addition, refers to floor plan...details.

The proposal is to add two bedrooms, 1 bath & Laundry space. His clients are in need for an accommodation for an elderly mother who will be moving back in with her daughter, & Son-in-Law & their children.

The lot itself is an undersized lot, explains....

The Project is to blend the existing house with the renovations to create a desirable, visual environment for the property & the surrounding neighborhood.

Mr. Martin details the variances sought...notes they conform to the FAR & other requirements.

Feels there is no detriment to the Zoning ordinance and asks the Board for their consideration in approving this proposal.

Mr. Karas (Board Member) questions the basement floor plan notes part of it would be used for a home office. Is it part of the FAR calculations?

Mr. Martin explains the basement is officially in the ground, so it would not be calculated into the FAR. This home office exists now. His client has a Masonry business and he uses this space to keep his business records, etc.

Mr. Martin states the FAR calculation is .286 which is below the FAR.

Discussion on overage with impervious coverage & ways they could lower the calculation...

Proposal is to keep 4 bedrooms, two of which exist now, all on the first level.

Mr. Martin explains the Mother in Law is not well; they have three children, two boys & a girl...

Mr. Newman interjects & asks Mr. Martin to stick with planning issues because although sympathetic, none of these issues could be considered.

Mr. Martin understands, then explains they did consider going up but the desire was to have all the bedrooms on one level and also felt the addition would be tucked entirely behind the house and would not be visible from the front of the house, therefore minimizing the impact visually on the neighborhood.

Mr. Lowenstein asks if there were any consideration given to removing some impervious, noting there is quite a bit of concrete, walkway...

Mr. Martin notes they did and details the locations where walkway was removed.

Mr. Newman asks if there are any other questions or comments from Board Members, seeing none,

Mr. Newman 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 for questions or comments, seeing none.

Mr. Newman asks for a motion.

Mr. Meer motions to approve the application.

Mr. Seibel seconds the motion.

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

Motion carries.

Application Approved.

2. Application #12-038, James Noonan
3-27 Pickett Place, Block 1309, Lot 15, Zone R-1-2
Proposed addition would increase the Building coverage from 18.9% to 27.7% where 25% is permitted. Would increase the impervious coverage from 34.5% to 35.3% where 35% is permitted. Would have side yard setbacks of 5.5', 7.7' and 6.5' where 10' is required. Proposed new roof over existing landing would decrease the existing front yard setback from 21' to 18' where 30' is required as Per Section 125-12 Schedule of area yard and building requirements.

Fees have been paid and there is proof of service.

Mr. Newman swears in: James & Lesley Noonan
3-27 Pickett Place
Fair Lawn, N.J.

Frank Hall (Architect)
27 Chestnut Street
Ridgewood, N.J.

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

Mr. Noonan begins his testimony stating his wife & he live on a small lot at the end of Pickett place and have lived there over 30 yrs and really haven't done much so we are now looking to put an addition out the back of the house along with a new roof, new

siding, new front door, which would improve the house and also improve the neighborhood.

Mr. Noonan notes the variances they are seeking are modest in nature, defers to Mr. Hall for the explanation of the proposal to the Board.

Mr. Hall begins by explaining, his clients asked him to design an addition to their home to improve an update the lifestyle of their home.

Refers to Exhibits, (Entered into Evidence)

Dated September 20, 2012
Exhibit A-1-Site Plan
Exhibit A-2-Floor Plans
Exhibit A-3-Elevations

Mr. Hall details the type of home, Cape Cod. Within the original Cape Cod design, there are no open flowing spaces and what he has done is at the rear of the home is to expand the kitchen and add a Dining Room. The kitchen and the Dining room will be open to each other so at least there is one open flowing space. He relocated a Bedroom in the back so it could be larger and relocated a bathroom and expanded this somewhat.

Mr. Hall states he has designed a more modern configuration. He has expanded to the rear and not at the sides. We added a small deck.....

Mr. Hall speaks to variances sought & why.

Testimony continues....

Portico extension is discussed which does increase the encroachment into the front yard setback but as Mr. Hall has stated it is done entirely for esthetic purposes.

Mr. Hall continues with the proposal description...explaining most of the addition of the DR/kitchen extension is constructed over an existing concrete patio in the rear. Points out if they were on a 7500 square foot lot, which is the requirement for the zone, the proposed project would not need the variances for coverage....explains.

Mr. Puzio (Vice-Chairman) questions the Portico and if this will cover the existing stairs?

Mr. Hall explains it will not cover the entire stoop. He believes the stoop is 4ft. deep and he is only going out 3ft.

Mr. Newman asks Mr. Hall to clarify for the Board why this decreases the front yard setback.

Mr. Hall states the setback is measured to the front wall of the entry portion of the home. 21ft. We are projecting out a roof which is not supported by columns or walls, but technically we are required to measure the setback up to the roof projection...

Discussion...

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

Mr. Newman opens the witness to questions or comments from residents living within 200ft., seeing none,

Mr. Newman opens to the General Public for questions or comments, seeing none, Mr. Newman closes this portion and asks for a motion.

Mr. Lowenstein makes a motion to approve the application.
Mr. Puzio seconds this motion.

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

Motion Carries.
Application Approved.

3. Application#12-039, Avi Holczer
2-34 17th Street, Block 4312, Lot 1, Zone R-1-3
Board must determine Res Judicata. Prior owner was denied a 6' fence within the corner lot transition area 125-42.D. instead of permitted 3ft. fence in 1986 application. Proposed 6ft. fence in the front yard setback where only 3ft. is permitted as per Section 125-38 Fences & walls.

Mr. Rosenberg reviews Res Judicata for the Board Members, explaining the applicant had been denied on its merit as the one before you was in 1986. The applicant who comes before the Board has the obligation to demonstrate the proposed application now is substantially different in that which was originally denied...

Ms. Peck (Assistant Zoning Officer) is sworn in:

Ms. Peck reviews the original proposal of 1986, in which Applicant William & Elizabeth Pollinger sought a variance for a 6ft. fence to be erected in the front yard setback where 3ft. is permitted.....the current applicant today is seeking to do just that...

Questions on the wood fence existing cannot be answered. Ms. Peck has no record from 1986 to today with a change in the fence.

Mr. Newman swears in: Irena Rivera
12th Street
Garfield, N.J.

Alexander Miloseski
Washington Ave
Cliffside Park, N.J.

Mr. Newman wants clarification on who the applicant is.

Ms. Rivera explains the applicant was not able to make tonight's meeting because of a prior engagement & they are here to represent the client, from the Challenger Fence Company who are doing the work.

Ms. Peck (Assistant Zoning Officer) explains to Mr. Newman, there is a letter from the applicant giving permission to pursue the application on his behalf.

Fees have been paid and there is proof of service.

Mr. Newman explains to both Ms. Rivera & Mr. Miloseski, the Board has to determine Res Judicata before they could consider the newly proposed fence. The determination is to decide whether or not the proposal now is substantially different from what was proposed in 1986.

Ms. Rivera & Mr. Miloseski both understand.

Discussion....

Mr. Karas questions the photographs that have been presented with two showing a fence, he would like to know if this is the applicant's property.

Mr. Miloseski states yes, but the homeowner would like to increase the height of the existing fence shown in the pictures...

Clarification on fence....

Mr. Miloseski begins his testimony stating on the Columbia Street side, the previous homeowner requested a variance for a fence from the corner of the garage door down towards the street & across which was denied....

Mr. Miloseski states the proposal today is not looking to do this, they are seeking from the corner of the garage backexplains the requirement for the zone is 25ft. back, but the house is existing at 11.7' back from the sidewalk.

Clarification again necessary as to where the location of the fence proposed will be.

Mr. Newman refers to the survey from 1986, which shows the proposed 6ft. fence location, which should clear up what is being proposed today, which is 11ft. 7ft back in line with the front of the garage.

Discussion continues....

Mr. Newman asks the Board if there has been enough information to determine Res Judicata in this case and if there are no other questions, he would ask for a vote.

A **Yes** vote would be considered Res Judicata and not substantially different.
A **No** vote would be a vote to say it would not be Res Judicata and can proceed to hear the application because it is substantially different.

VOTE: Mr. Blecher, Mr. Lowenstein, Mr. Seibel, Mr. Puzio,
Mr. Meer & Mr. Newman, **NO**.

Mr. Karas, **YES**.

Application deemed NOT RES JUDICATA
Application proceeds.

Mr. Miloseski begins his testimony as to why the client would like to change this particular fence to a 6ft. explaining his client has no privacy being a corner property. He has three children and is concerned with the traffic in the neighborhood. There will be no obstruction of any kind with cars. The fence will be uniform with the house and at the same time the client could get some privacy.

Question & clarification on the neighbor on Columbia Street having a 6ft. fence between the applicant's & their properties...

Discussion continues....

Mr. Newman questions if the neighbor has been consulted and if there are any issues.

Ms. Rivera testifies the neighbor has been consulted and no, there are no issues.

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

Mr. Newman opens the application to residents living within 200ft. of the applicant.

Mr. Newman swears in: Rosemary Peters
2-22 17th Street
Fair Lawn, N.J.

Ms. Peters is questioning the 17th street side and if the location of fence will affect her.

Mr. Newman explains it would be on the Columbia street side. Explains in a corner lot, there is no side yard and it is counted as two front yards...

Ms. Peck (Assistant Zoning Officer) refers to the survey to help Ms. Peters understand where exactly the fence is proposed.

Ms. Peters states she has nothing to object then based on the information & clarification of the fence location proposed.

Mr. Newman opens the application again to anyone living within 200ft. of the applicant. Seeing none, Mr. Newman closes this portion.

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

Mr. Newman asks for a motion.

Mr. Meer asks what type of fence is being proposed.

Ms. Rivera states solid white 6ft. fence.

Mr. Lowenstein asks the “Acting” applicant if they would modify the application to conform to a 5ft. fence with a 1ft. Lattice...

Discussion amongst the Board Members...

Mr. Lowenstein makes a request of the Homeowner. The section that parallels Columbia Street be 5ft solid topped with a 1ft. Lattice and no objection to the solid 6ft. solid that will be the continuation of the existing fence that the neighbor already has erected.

Mr. Newman asks the Contractor’s if the applicant has provided them with the ability to make this concession this evening.

Ms. Rivera testifies he has.

Mr. Newman amends the proposal to include condition and asks for a motion.

Mr. Meer makes a motion to approve the application with amended condition.
Mr. Seibel seconds the motion.

VOTE: Mr. Blecher, Mr. Seibel, Mr. Puzio, Mr. Meer & Mr. Newman, **YES**.

Mr. Lowenstein, Mr. Karas, **NO**.

Motion carries.

Application Approved.

4. Application #12-040, Mustafa Gazilov,
8-02 Forest Street, Block 5819, Lot 1, Zone R-1-3
Remove existing deck and replace with a larger decl. Proposed deck would be
4' from the front yard setback where 35% is required for accessory structures
within the front yard as per Section 125-12 Schedule of area yard and building
Requirements and Section 125-33 A (2) accessory building structures and use.

Mr. Newman swears in: Mustafa Gazilov, (Applicant)
8-02 Forest Street
Fair Lawn, N.J.

Fees have been paid and there is proof of Service.

Mr. Gazilov testifies he has a very small deck in his backyard which is a 6x8ft. He has 5 children and he would like to have a place he could sit and have barbecues. He would love to have a larger one and refers to pictures submitted. He found out he was too close to Central Avenue so he is here to ask permission to build a larger one.

Discussion...

Mr. Gazilov explains why he would have to keep it in the same location because of where his door is.

Corner property is discussed.

Mr. Newman asks Mr. Gazilov if the deck he is proposing still in line with the side of his house.

Mr. Newman refers to pictures submitted.

Mr. Newman asks if there are questions or comments from Board Members, seeing none,

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

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

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

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

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

Mr. Lowenstein, **Abstains.**

Motion carries.

Application Approved.

RECESS:

Mr. Lowenstein & Mr. Karas recuses themselves on the Lentini Application.

Mr. Newman calls to order:

Roll Call: Mr. Blecher, Mr. Seibel, Mr. Dunay, Mr. Sina, Mr. Puzio, Mr. Meer

Mr. Lowenstein & Mr. Karas recuses themselves on the Lentini Application.

Commercial New Business:

1. Application#12-041, Sebastian E. Lentini,
37-01 Broadway, Block 2320, Lots 10, 11&12, Zone B2/R-1-3
Preliminary & Final amended site plan approval. The application requests
approval of directional bollards and new signage (directional & parking) in lieu of
a traffic control automatic gate & different signage than the one requested in
2006, as well as installation of a speed bump. Application will be the subject of a
public hearing before the Zoning Board of Adjustment relating to the settlement
of the litigation, pursuant to the requirements of the case of Whispering Woods
vs. Middletown Townshp. Section 125-65&125-41.B.

Fees have been paid and there is proof of service.

Joseph Steinberg, Counsel to the firm of Lowenstein, Sandler in Roseland, N.J. who will be presenting the Case with Paul Carvelli this evening steps forward.

Mr. Steinberg begins a brief statement regarding the background of this application. He explains he was first before the Board for a Use variance in 2001 in connection for a proposed Drive-Thru for this location. Ultimately, that case wound its way through the Court System of N.J. and up to the Appellate Division of the Superior Court...

The Site Plan was approved at that time through the Superior court of the appellate Division as was the Variance and was memorialized by a Resolution by this Board.

Mr. Steinberg continues; they were again back here in 2006 for a Site Plan approval. The application was denied by the Board; an appeal was filed with the Superior Court Law Division and at the same time a suit was commenced by his client against the neighboring I-HOP operator to establish there was no property rights held by IHOP in the McDonald's property.

After the cases were tried, an opinion of the Law Division was handed down and an order was entered by the Court and this was appealed to the Appellate Division...

Mr. Steinberg continues.....through all this there was a suit going on between the two businesses. Ultimately, on the second piece of it, a settlement agreement was entered into and signed by the IHOP Operator & the McDonald's Operator and the settlement agreement which will bring peace to a very contentious relationship over many years is the pendent upon the matter between his client and the Board being settled as well.

What they are proposing is an application to this Board for a different Site Plan for the property. Different from the one that was filed in 2006...if this application were to be approved by this Board and if this Board in its wisdom would adopt a memorializing Resolution from which there would be no appeal, not only would that matter be settled but the settlement between the IHOP & McDonald's be settled as well.

Mr. Newman would like an explanation as to why they would not be looking at a situation of Res Judicata in this case.

Discussion.....

Mr. Steinberg feels Res Judicata does not apply. Explains....but also feels if Res Judicata were applied here, the application would pass the test.

Mr. Rosenberg details his opinion of Res Judicata particularly on this application....

Discussion...

Mr. Steinberg has two witnesses, Daren Lentini & David Beasley, (Professional Engineer) who has appeared before the board on many occasions.

They will present the case as submitted to the Board...

Mr. Steinberg refers to Mark Kataryniak (Board Traffic Engineer) who is not present tonight but had proposed in his letter of comment an interesting thought and we looked at it and thought it was an excellent idea, so we are going to defer to what Mr. Kataryniak has suggested because when all said and done we think it is an excellent idea.

There is an Attorney here tonight representing the IHOP. The Attorney and his client and has seen the original application and have also seen a drawing which we will show you as part of our application which was done to illustrate Mr. Kataryniak idea. They are here to support the application and not oppose it.

Mr. Newman references Fire Chief Eric Reamy comments in his memo regarding the Site Plan stating he has no issues provided the Bollards are removable in the event a fire apparatus would need to use that space in an emergency...

Mr. Steinberg states they will discuss this comment.

Mr. Newman swears in: David Beasley (Engineer for Bertin Engineering)
66 Glen Avenue
Glen Rock, N.J.

Mr. Newman certifies Mr. Beasley as an Expert Witness in the field of Engineering with no objections from the Board.

Sanyogita Chevan of Birdsall Engineering Group
(Board Professional Planner)

William Jenson from French & Perrello Associates
(Board Professional Traffic Engineer)

Paul Azzolina of Azzolina & Feury Engineering, Inc.
(Board Professional Engineer)

Mr. Steinberg calls his first witness: Daren Lentini.

Mr. Newman swears in: Darren Lentini (Director of Operations for the Applicant)
13 Swin wood Drive,
Monroe Township, N.J.

Mr. Steinberg begins his questioning, first asking Mr. Lentini if he is related to Sebastian Lentini.

Mr. Lentini states yes, he is the son. He is one of the franchisees and the Director of Operations for the Applicant's Organization.

Testimony continues...

Mr. Lentini is aware of the settlement agreement and it is contingent upon this application being approved.

Mr. Steinberg asks if Mr. Lentini has been on site at the store on Broadway and is he familiar with the conditions on the property.

Mr. Lentini testifies he was there at the location today and is very familiar with the conditions at the property.

Mr. Steinberg asks Mr. Lentini to please describe to the Board what he has observed on such times when there had been no barriers of any kind that had been channeling the traffic from the IHOP down the McDonald's driveway out to Route 4.

Mr. Lentini states uncontrolled traffic. He spends at least 6 days a week there, mostly in the morning and two times a week in the afternoon, he has noticed traffic going from East to West & West to East in & out the IHOP entrance/exit uncontrolled. One of his functions as a franchisee is to keep the McDonald's property safe, their employees, their customers or any pedestrians that are on site.

Discussion on Accidents on record....

Mr. Lentini continues to testify that the drive through traffic is in conflict with cars going in or out of the IHOP entrance creating another hazard.

Mr. Dunay (Board Member) would like clarification on the Traffic Issue at hand. Ingress & Egress....when there is no barriers.

Discussion continues...

The question is asked if part of the desire to construct this barrier not only for safety issues but also to prevent patrons of the IHOP from parking in the McDonald's parking lot.

Mr. Lentini states it is within the franchise agreement to keep the property safe. There is a parking issue, but there is a primary concern to keep our customers as well as theirs safe.

Mr. Steinberg (Applicant's attorney) interjects & notes that as part of the Settlement agreement, IHOP does acknowledge their customers have no right to park in the McDonald's parking lot...

Types of Delivery trucks are questioned.

Mr. Lentini explains. They used to have a larger McDonald's truck. They now have a smaller one that comes down Broadway & circulates around just as a smaller vehicle would.

Mr. Puzio asks if the truck would have any issues with the bollards.

Mr. Lentini testifies there would be enough of space to get through.

Mr. Newman asks if there are any other questions for this witness from the Board. Seeing none,

Mr. Newman asks Mr. Rosenberg (Board Attorney) to speak to the members regarding the Affirmative votes they will need to acquire on this application.

Mr. Rosenberg explains....the application arises as a Use variance, everything relies upon the use variance and his position is in order to approve the settlement, they would need 5 Affirmative votes.

Mr. Steinberg responds to this. This issue arose in 2006 and he had submitted at that time a brief to Mr. Soukas (Board Attorney) at the time. It cites a case of Julio versus New Brunswick Township.....

Discussion....

Mr. Rosenberg alerts Mr. Steinberg to the fact there probably will not be a vote made tonight, but he will certainly review the case.

Mr. Steinberg hopes there would be a vote this evening.

Mr. Newman opens the Witness to questions or comments from residents living within 200ft of the Applicant.

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

Mr. Obsuth defers to Mr. Lentini, refers to his testimony regarding Property safety & Pedestrian safety...there is a question on the plans that he has. His question is in regards to the 37th street entrance that has been permanently closed.

Mr. Newman & Mr. Steinberg feel this question will be better suited for the Engineer to answer...

Mr. Obsuth understands.

Mr. Newman reopens the Witness to questions or comments from Residents living within 200ft. of the applicant. Seeing none,

Mr. Newman opens the witness to the General Public for questions or comments. Seeing none,

Mr. Newman closes this portion and if there are no other questions from the Board for Mr. Lentini, he will ask Mr. Steinberg to continue.

Mr. Steinberg calls Mr. Beasley to the podium & begins his questioning.

Mr. Beasley begins his testimony and states he was obtained by the applicant to produce a plan that would be consistent with the Settlement agreement the IHOP & McDonalds had decided on. He states he is familiar with this property for at least 4-5 years for various issues that had come forth and asked me to take a look at it...he has had a long relationship with the Lentini's.

On this particular property, he was asked to create a drawing and he was given drawings from the prior application to use as the background for this; for the signage, the gate and he was asked to modify the plan to what in fact is presented in front of you.

It is a controlled exit from IHOP, through the use of bollards, bollards being steel Columns.

Plans marked into evidence. A1-consists of series of sheets;

- 1-Cover sheet
- 3-Site Plan
- 4-Detail Sheet of the signing

Mr. Beasley explains the direction of movement...5 basic movements, explains....from Sheet 3, bottom left...

Testimony continues....

There is only one entrance & one exit....all vehicles that enter have to circulate and exit the one exit out.

Mr. Beasley refers to Mr. Obsuth comments on the exit drive that was permanently closed and cannot be used anymore. It has been barricaded. The curbing on 37th has been reconstructed to a full height 6inch curb.

Mr. Beasley states he has been there at the site numerous times over the past 4-5 years to study traffic movements.

Testimony continues....

Mr. Beasley in speaking of 5 traffic movements did leave out one regarding the vehicles that enter the McDonald's entry driveway, go around the building and into the lane for the IHOP...

Mr. Beasley discusses pedestrian traffic...there is a lot of movement and a lot of potential for accidents. He himself has not witnessed any but feels there is a high risk.

Mr. Beasley feels this proposal channelizing the traffic, eliminating at least two movements. Explains.....

Two vehicular movements are removed and leaving 3, which in his opinion is much, much safer.

What is proposed, are 8 removable bollards, metal columns, 3ft. high.

Mr. Newman asks if a key is needed to remove them.

Mr. Beasley testifies there are a couple of options...reviews the options to clarify for the Board.

Mr. Beasley states they did select something that was a lockable bollard.

Mr. Newman is concerned with this because of the Fire Chief's concern regarding Emergency Vehicles.

Mr. Steinberg interjects testimony and notes Mr. Newman's concern, states they will get to this fact and meet it head-on...

Discussion.....

Mr. Beasley continues with the bollards location. This location was done by computers that design the paths. We asked it to accommodate a 30ft. truck-Box truck with a 20ft.

wheel span. Refers to the Site plan and notes; they are not up to the curb; they are not up to any overhang. They do have clearance...

Testimony continues.....

Mr. Beasley was asked to take a look at Fire Trucks in virtue of a comment from one of the review letters and he is not aware of what the largest Fire Truck Fair Lawn itself owns but he can say if a Fire Engine can maneuver onto the IHOP site and get through the IHOP site and line up here (points to Site Plan) the Fire Engine can maneuver through the turn.....

Mr. Dunay (Board Member) questions this...asking Mr. Beasley if he is stipulating the turns are so angled in the rest of the IHOP parking lot not pictured, in order for a vehicle to traverse the remainder of the parking lot, this turn would therefore be passable.

Mr. Beasley testifies he has not studied the turning radius or the alignment of the IHOP site but does know it is tight. The separation between the main restaurant building and the other building (Storage Building) is 17ft. between the buildings....

Discussion continues...

Mr. Steinberg (Attorney) directs his question to Mr. Beasley and refers to a letter the Board received from French & Parrello, dated October 11, 2012 by Mark Kataryniak, Professional Board Traffic Engineer. He directs his attention to Paragraph 4.... & asks Mr. Beasley if after he read this, he had thoughts of the viability of pursuing the suggestion made by Mr. Kataryniak in this letter.

Mr. Beasley replies the suggestion was rather than creating this channelized exit for the use of bollards, to create the same (inaudible) traffic pattern for a use of a Landscaped Island using conventional curbing to outline & create....refers to Exhibit...

Mr. Beasley hands out 8 1/2x11 reduced version of his Exhibit for reference to all Board Members.

Exhibit entered into evidence.
A-2- Proposed Landscaped Island.

Review & Discussion.....

Planting & Shrubs to discourage Pedestrian Traffic ...these are visual cues for drivers and allows the driver to know there is a turn. In addition, rather than the one way sign proposed for the bollards, Mr. Kataryniak proposed we use chevrons (Giant arrows).

Mr. Steinberg continues his questioning...asking Mr. Beasley to address the Chairman's, Mr. Newman question regarding the use of the area by the Fire Department.

Mr. Beasley states one of the reasons Mr. Kataryniak made this suggestion was; bollards have an impact possibility. A vehicle can actually strike it and stop the vehicle, jar the driver. This would not happen with an Island....this would not have an impact issue. However, should a truck or a Fire Engine have difficulty with any of these maneuvers, this is a standard 6inch curb....they can easily get up and over a 6inch curbing...

Discussion continues...

Landscaping is better than the bollards...operates just as effectively.

Mr. Beasley testifies he has had discussion with the applicant and they are both in agreement this would work just as effectively.

Mr. Steinberg refers to Mr. Azzolina's (Board Engineer) report, referring to Page 4,

Mr. Beasley directs his question to Page 3, where there is a request for the Posts for the signage is made of the break-a-way type and they will comply. Item 4 was addressed regarding the vehicles and the circulation patterns...

Drainage pattern was brought up...speed bump proposed could impact the drainage pattern and to account for this, Mr. Beasley suggested he would modify the plan to have an opening in it and essentially there would be two speed bumps which create a drainage weep...discusses other issues. Piping? He does not have piping diagrams and has been out there during very heavy rains and has not seen backup in the sewer.

Mr. Beasley is questioned on the type of material to be used on the speed-bumps. Mr. Beasley testifies to Asphalt overlay or the rubberized type, unless the Board has a preference of a separate pre-manufacture speed bump over a rolled asphalt one...he would have no issue with this...

Discussion continues....

Paragraph #7 where there is discussion on the pavement, a section that is pretty bad.

Mr. Beasley addresses this issue.

Mr. Steinberg addresses the issue of existing signage on the 37th street...is the applicant prepared to remove this.

Mr. Beasley testifies any misleading signage directing traffic will be removed.

Mr. Steinberg directs his comments to Mr. Newman (Board Chairman) notes they did not go into all the details regarding the bollards themselves, the construction, painting, etc.. when the alternative was suggested by Mr. Kataryniak, we thought it looked a lot better...

Mr. Meer (Board Secretary) questions the 37th street side, can Emergency vehicles still use this entrance, if necessary?

Mr. Beasley notes they now have plastic jersey barriers...there is a full height curb but should an Emergency Vehicle need to get through, yes, they could.

Mr. Meer questions snow removal. How will this be taken care of from this exit?

Mr. Beasley directs this question to Mr. Lentini.

Mr. Lentini steps back to the podium.

Mr. Lentini testifies at his other locations, the snow plow company has snow removal equipment and he relocates it to other areas of the property where it would be safe.

Mr. Newman would like to hear from the Board Professional's and if there are any comments.

Mr. Azzolini (Board Engineer) feels the applicant has fully addressed all the comments pertained in his report...he would rule in favor of the redesign if the Board were to grant this approval.

Mr. Jenson (Representing French & Parrello) Board Traffic Engineer, Mark Kataryniak, has a question regarding trash removal at the newly proposed site.

Mr. Beasley testifies that presently, the trash is picked up early in the morning. It is 3mornings a week. The truck circulates around the site and backs up to access the trash and pulls straight out. This will not interfere with this.

Mr. Newman would like Mr. Beasley to comment on Mr. Dunay's (Board Member) concerns earlier regarding a Fire Truck going through the IHOP & going out through this site...in as much as he has been able to look at this situation, does he agree with the testimony there should be no issue with an average size Fire Truck circulating there.

Mr. Beasley notes based on his testimony, if the Fire/Emergency vehicles would be able to maneuver through the IHOP, there is no indication, they would not be able to exit the property there because they would be able to mount the curb and swing out further...

Discussion continues regarding this concern.

Ms. Chevan (Board Planner) regarding Sheet 4 (inaudible) ...questions on a Gate?

Mr. Beasley notes it was a detail that was carried over by mistake and there is **no gate** proposed. There will be no gate.

Mr. Puzio (Board Vice-Chairman) questions if the 37th street is being permanently closed, would the applicant consider doing some landscaping to insure its closure.

Mr. Beasley notes there is **not** alot of opportunity in order to sustain vegetation, maybe 4ft and if he were to do this, it would severely impact the circulation. The space between property & sidewalk is discussed. Mr. Beasley notes he could possibly put some shrubbery.

Discussion continues....

Low fencing is discussed...wrought iron...combined with some planting would certainly be more aesthetic as well as clearly defining visual cues...

Mr. Newman suggests just planting and no additional fencing...

Discussion continues...

Mr. Steinberg asks if the Board asks for such a condition, he would ask that conditional wording be used” such as; “if possible, to plant in an area that would not impact on the drive lanes but would be sufficient to sustain the landscaping and if not, the fall back would be wrought iron fencing.

Mr. Newman interjects and states; the Board does not want any more fences.

Discussion continues.....

Mr. Beasley does his calculations and notes he has enough room to do shrubbery...container plantings.

Mr. Newman has a question for the Traffic Engineer regarding the composition of the Speed bump. Does he have a suggestion regarding Asphalt, pre-fab?

Mr. Jenson (Traffic Engineer) explains Pre-fabs can get damaged easily from the snow plowing, the same as the asphalt, but he prefers pre-fabs because if it is not needed in the future, you can remove it.

Questions from Mr. Dunay (Board Member) regarding “Aggressive” car either exiting the IHOP or exiting McDonald’s....violating or ignoring the signage?

Discussion....

Mr. Beasley addresses this concern...

Mr. Dunay mentions mountable curbs?

Mr. Beasley notes it may encourage the circulation scenario just mentioned. Their objective is clear and this would compromise it...explains.

Mr. Newman asks if there are any further comments from the Board, seeing none

Mr. Newman opens the witness to questions or comments from residents living within 200ft of the applicant.

Mr. Michael Obsuth steps to the podium. Previously sworn, Mr. Obsuth states Mr. Beasley has answered a lot of his questions with his testimony, especially the safety part on 37th street. Any form of flower bed or landscaping would be perfect there and that is what the neighbors wanted.

Mr. Obsuth speaks for himself and his neighbors, referring to an existing 3ft wall, on the Northwest side. Would his client agree, if the Board would allow a 6ft. high Evergreen buffer on the outside of the wall? As in 2001, when this all started, we were going to hear & see a lot of traffic, he living right next door does....this may put in some sort of sound barrier and visual barrier...feels it would be an easy fix to make the block happy.

Discussion.....

Mr. Obsuth notes when he opens his door he is looking at trucks, cars, tow trucks, tractor trailers that deliver at any given time of the day which was not like this when he bought the house...

Mr. Beasley clarifies the location of where exactly he would like this shrubbery...

Discussion...

Mr. Newman reopens for questions or comments from Residents living within 200ft. of the resident. Seeing none,

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

Mr. Steinberg defers to Mr. Darren Barreiro
99 Wood Ave South
Islin, N.J.

Mr. Barreiro is the Attorney for IHOP. Notes they have come a long way. There has been a lot of litigation and legal proceedings and they have reached a settlement with McDonald's. As part of the settlement, we have come here today to support the application. Looking at the two different alternatives, we agree the suggestion by the Town's Engineer's are a lot more aesthetically pleasing and seem a lot safer from a Fire & Safety position.

Mr. Puzio questions Mr. Barreiro if this results in a permanent easement on the property of McDonald's.

Mr. Barreiro states it is not a permanent easement. They have stipulated in their settlement, however, the IHOP's owner & Mr. Lentini & passes on to its heirs agrees this will stay the same way in the future. They are dealing with both the IHOP operator and the McDonald's operators not owning the property. They felt this was the best way to resolve the issue since we could not impose anything on the owners of the properties themselves.

Discussion on it being revoked in the future...

Mr. Barreiro is not going to agree on that and will not take that position on record. There was a lot that went into the settlement and the settlement is worded in a way that protects his client as well as Mr. Steinberg's client. We feel getting a Zoning variance and putting it together with conditions...as long as egress from his client's property onto the McDonald's property stays the same...it is changes, we will have to deal with it at that point.

Mr. Steinberg stipulates this agreement does bind the two parties and their successors. The Council is correct...neither party to the settlement owns the property, so neither of us is in a position to place easements or take easements from the other.

Discussion continues...

Mr. Rosenberg (Board Attorney) speaks to both Mr. Barreiro & Mr. Steinberg and states normally when the Board approves something with a condition. In order to put everyone on notice in the future, i.e. your successors, we put this in the Deed. This is the only way any subsequent person would know what the conditions are.

Mr. Rosenberg continues speaking to both and stating, you have told us we cannot do this because your clients do not own the property...

Discussion...

Mr. Steinberg states he wouldn't worry about this being enforced because one side or the other is going to enforce it against the next operator...

Mr. Newman states; unfortunately, this is the very type of situation that brought us here years ago...

Discussion continues....

Mr. Steinberg insists there is a signed agreement between these two parties, if Mr. Lentini is no longer the operator of McDonald's, you could bet the other party would be sure the agreement would be adhered to.

Discussion continues.....

Mr. Rosenberg asks Mr. Steinberg if there is any way to talk with the owners of the properties to acknowledge this Resolution if the Board so grants it.

Mr. Steinberg states they could certainly approach them, but knowing McDonald's Corporate in the Midwest, chances are very slim they would agree to this provision...

Discussion continues....

Mr. Barreiro makes note if someone were to change the approval granted, assuming it were approved, they would have to come back and give notice, including the other operator...the person would have to stand up and make his objections noted...

No other questions....

5 Minutes granted for Mr. Steinberg to discuss with Mr. Lentini the discussion regarding the shrubbery along the 3ft. wall on 37th street.

ROLL CALL: Mr. Blecher, Mr. Seibel, Mr. Dunay, Mr. Sina, Mr. Puzio,
Mr. Meer & Mr. Newman, Present.

Mr. Steinberg (Applicant's Attorney) notes he has spoken with his client, Mr. Lentini who has agreed to erect or plant 6ft. Evergreens as discussed along the 3ft. Brick wall.

Mr. Newman acknowledges this agreement and also asks Mr. Steinberg to revise the plan to everything agreed to tonight for a vote and address some of the other issues.
Explains...

Mr. Rosenberg (Board Attorney) directs his comments to Mr. Steinberg, states he will give back the letter from 2008. He would like to research a little more before next month's meeting....

Discussion continues...

Mr. Rosenberg also recommends that both IHOP & McDonald's speak with the owners of the properties regarding attaching any Resolution of Approval to the Deeds so they would be part of a Record.

Mr. Steinberg asks for an unusual request and hopes the Board will be in a position to accommodate them. The Judge in this case has called for a conference in his chambers on Thursday of this week, it has been explained to him what is going on and that we would be here tonight, frankly it was our hope, we would have had a final vote...

Mr. Steinberg continues...just for the benefit of giving the Judge some continence that this matter is resolved, subject to the Board actually voting on it. Would it be possible, assuming the conditions we all discussed tonight are incorporated, if it would be fair to go back to the Judge on Thursday and although they have a couple of matters and they need to revise the plans, etc...would it be possible to give some comfort that the Board seems to be pleased with what is presented...

Discussion...

Mr. Newman asks the Board Members to clarify if anyone has concerns with this application that has not been raised this evening....

Mr. Dunay (Board Member) suggests running the new plan with the Island by the Fire Department and make sure they would be as equally comfortable with this as they would have been with the removable bollards...

Mr. Newman so notes and agrees.

Mr. Steinberg is satisfied.

Mr. Newman recaps the changes needed in the revised Site Plan...

Landscaping requested by the neighbor as well as landscaping in planters that would replace the Jersey Barrier, Curved Island version..

Mr. Steinberg acknowledges all three.

Mr. Newman opens the application one more time to residents living within 200ft. of the applicant for questions or comments.

Mr. Obsuth (Neighbor) steps forward to clarify the sign would be removed on 37th street which states "Entrance only"?

Mr. Steinberg does note this and has agreed to this condition.

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

APPLICATION IS CARRIED TO NOVEMBER 26, 2012

Memorialized Resolutions:

1. Application#12-029, John Vigilante, 8-01 Fern Street, Block 5815, Lot 12, Zone R-1-3-Proposed new storage loft to existing garage-Approved

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

VOTE: All Present – **AYE.**

2. Application #2012-031, Paul DiPalma, 9-01 Saddle River Road, Block 1514, Lot 1, Zone R-1-3– Proposed Additions & Renovations- Approved.

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

VOTE: All Present – **AYE.**

3. Application #2012-032, Stanley & Joan Ehrlich, 3-10 Pickett Place, Block 1307, Lot 1, Zone R-1-2– Proposed 14x14 deck in front yard setback- Approved.

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

VOTE: All Present – **AYE.**

4. Application #2012-033, Edward Dagnino & Maritza Hernandez, 10-17 Fairhaven Place, Block 4411, Lot 7, Zone R-1-2– Proposed 10x10 Patio- Approved.

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

VOTE: All Present – **AYE**

5. Application #2012-034, Alex & Amy Hopwood, 340 Howard Ave, Block 3705, Lot 7, Zone R-1-3– Proposed Patio- Approved.

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

VOTE: All Present – **AYE**

6. Application #2012-035, Robert & Theresa Bergamini, 0-10 West Amsterdam Avenue, Block 2216, Lot 12, Zone R-1-3– Corner/Proposed 2nd floor Addition- Approved.

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

VOTE: All Present – **AYE.**

Vouchers:

1. Winne Banta Hetherington Basrali & Kahn for Legal Service rendered for the month of October, 2012 in the amount of \$816.66.

Mr. Puzio made a motion to accept this voucher and Mr. Seibel seconded the motion.

VOTE: All Present – **AYE.**

2. French & Perrillo for services rendered for October 13, 2012 for McDonald's application in the amount of \$625.00.

Mr. Puzio made a motion to accept this voucher and Mr. Seibel seconded the motion.

VOTE: All Present – **AYE.**

Minutes

1. Mr. Puzio made a motion to approve the minutes for the **June 18, 2012 & July 16, 2012** meeting and Mr. Sina seconded the motion.

VOTE: All Present – **AYE**

Adjourn

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

TIME: 10:30 P.M.

VOTE: All Present - **AYE.**

Respectfully submitted,

Cathy Bozza
Zoning Board Clerk