

**BOROUGH OF FAIR LAWN  
ZONING BOARD OF ADJUSTMENT  
Regular Meeting Minutes  
Of November 26, 2012**

Following are the minutes of the Fair Lawn Zoning Board of Adjustment's regular meeting held on November 26, 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. Seibel, Mr. Dunay, Mr. Sina, Mr. Lancaster, Mr. Puzio,  
Mr. Meer & Mr. Newman

Absent: 0

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 are in Attendance.

**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**APPLICATION WITHDRAWN WITHOUT PREDJUDICE.**
  
2. 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}

Mr. Newman swears in: Igor Komarica  
28-12 Berkshire Road  
Fair Lawn, N.J.

Belinda Kalaska  
3 Tina Court  
Elmwood Park, N.J.

Mr. Newman speaks to Mr. Komarica and notes the last time he was heard, there were a number of questions regarding the application...He is assuming he came here this evening with answers to these questions.

Mr. Rosenberg (Board Attorney) notes this application would require 5 Affirmative votes being it is a Use variance. A vote to establish who is qualified to vote is suggested.

Mr. Newman notes, Mr. Blecher, Mr. Sacchinelli, Mr. Sina or Mr. Lancaster are not eligible to vote but are able to ask questions and participate in this application.

Pictures and paperwork submitted entered into evidence.

Exhibit A-1-Pictures of Vehicles/Registration & License plates (Vehicle 1 & 2)

Exhibit A-2-Photos of Street views

Exhibit A-3- Vehicle descriptions (Vehicle 1 & Vehicle 2) 4-pages

Exhibit A-4- Photo marked Fair Lawn Property with 2 vehicles.

Exhibit A-5-Photo of Truck

Mr. Newman reviews the application to reiterate why the applicant is here tonight...

Mr. Komarica testifies there are two vehicles in a residential lot on the North end of the garage. Two Commercial vehicles are allowed on the lot but only one is allowed to be visible...they had their driveway done a couple months back and one of the vehicles is hidden and not visible from the street...refers to pictures.

Mr. Komarica notes the real questions & concern from the Board were the size & weight of the vehicles and how we could specify the type of vehicles they were so they could not keep coming in with different types of vehicles and keep switching them around....

Mr. Komarica testifies in order to alleviate this concern he took pictures of the Licenses & registrations; the Logo's on the vehicles in question and shows the street & how the vehicles are parked and what the street views are when you are driving by.

He has specifications from the Dealers themselves giving all information on the vehicles themselves-4 pages-2 pages per car summarizing the Engine type, cargo size, etc...

He refers to a photo of a Commercial truck on a property in Fair Lawn-which has two Commercial vehicles. One size truck is the size of his truck, another being very large which is visible from the street, noting these trucks are much larger than his trucks...using this as an reference only....

Mr. Newman notes to Mr. Komarica although he appreciates the effort in providing the Board with the photo, each application stands alone in front of this Board especially in these particular situations where they have no idea whether these vehicles are always parked there, if there were variances granted or not, they would have to consider it circumstantial at the moment.

Mr. Komarica understands.

Discussion continues.....

Mr. Komarica testifies he has no issues with specifying a stipulation on any of the vehicles. In the next couple of years, his father is retiring; there will be no issue with this property. One of the vehicles would not be there anymore.

Discussion continues...

Mr. Komarica again reiterates he has no issues whatsoever with whatever the Board would like to stipulate...

Mr. Newman defers to Mr. Rosenberg (Board Attorney) if he has any recommendation as to which information they should be considering as any part of variance relief.

Discussion...

Mr. Rosenberg notes these are the two vehicles the Board will consider for purposes of the Use variance. The applicant has provided documentation with respect to the size, the makes and models...etc., and other manner of information that certainly can be integrated as stipulations or restrictions if the Board is so inclined to improve the application, being this is the only type of vehicle that could be parked on that location...

Discussion continues...

Hypothetical situations discussed...

Mr. Karas (Board Member) refers to Vehicle #1- the weight of the vehicle is 2,780 pounds, which is less than 3qtr tons...refers to Section 125-40. (A)1(B)1...reads... This is prohibited. Refers to Vehicle #2- which is over 1 ton....(naked weight)

Mr. Karas feels the vehicles are in direct violation with the Ordinance.

Discussion...

Mr. Newman notes part of the relief they are seeking is their non-compliance with that very Ordinance..

Discussion continues....

Mr. Sacchinelli (Board Member) asks Mr. Komarica to explain how the town would benefit by allowing the use of these two vans in the driveway.

Mr. Rosenberg explains to Mr. Komarica what Mr. Sacchinelli is asking regarding Negative & Positive criteria being met. How is the site particularly suited for this type of use in the Residential zone?

Mr. Komarica understands and gives his reasons why he feels the site is suited for this use.

Discussion continues....

Mr. Newman feels the Ordinance was written with the “Onsite business” in mind. To restrict the operation of any business “on site” that would require two commercial vehicles of this size and /or the off street parking for the amount of vehicles. He is certain it was meant to limit this and not to limit one’s employment which brings the applicant here tonight. These are tools of his employment that he has to keep onsite. He does not run the business out of the house. It is not his business...

Mr. Newman notes due to the fact there is screening and there will be minimal to no negative impact onsite...

Discussion continues...

Mr. Dunay (Board Member) clarifies with Mr. Newman that due to the Ordinance, if in fact the Board was to deny this variance, the applicant would be required to remove both vehicles on this property because both of them are in excess of the weight requirement.

Mr. Newman states yes. That is correct.

Mr. Dunay wonders if there were some possibly, if in fact the consensus of the Board were to go & deny the variance of both vehicles, there is an alternative possibility to amend the application to allow 1 vehicle, rather than both...

Discussion continues....

Mr. Lowenstein (Board Member) clarifies with Mr. Komarica that he or his father does not own these vehicles and they are owned by their employer based in New York.

Mr. Komarica testifies this is correct.

Mr. Lowenstein continues to ask if either he or the company looked at renting space locally. Mentions Banta Place where there are Commercial vehicles stored overnight. Mr. Komarica states the business itself does not have a shop, so there is no specific space where he checks in every morning. There is an office in Manhattan. He would not be here if this was the case because he would personally drive to Manhattan & pick up his truck there...He has advised his office, he may have to move the van and find a garage for it. The company was not too fond of this being there is thousands of dollars worth of tools inside and machines if God forbid were stolen...being away from the vehicles is stressful.

Mr. Komarica continues he has also checked into areas of Wallington, the Passaic area, affordable but not safe areas...his father & him really have exhausted any option they have.

Mr. Komarica stresses the fact they have tried to work this out by enlarging the driveway, screening the vehicle. They have tried to use the garage but the vehicle does not fit.

Discussion continues...

Mr. Sacchinelli (Board Member) sympathizes with Mr. Komarica, he knows the Board does not want to put anyone out of work. Asks if he has looked into renting a driveway out in towns like Lodi, etc...

Mr. Sacchinelli has concerns with once you allow one....you open up an avenue for others in town...

Mr. Komarica again stresses his father will be retiring so it will not be a long term issue. He has never got a complaint from anyone of the vans being an eyesore. He has neighbors asking him for advice rather than complaining...asking for references in the field...

Discussion continues...

Mr. Karas questions the Assistant Zoning Officer (Ms. Peck) asking if she recalls any applications that were granted for two large vehicles being allowed to park in the driveway.

Ms. Peck remembers an employee of Cablevision having a Cherry-Picker allowed to park one weekend per month...

Discussion continues....

Mr. Sacchinelli defers to Mr. Rosenberg (Board Attorney) asking if the Board allows this will it open an avenue for everyone in town to allow one or would everyone have to stand on its own merit.

Mr. Rosenberg states each application does stand on its own merit. It is always a case by case, property by property analysis the Board has to engage in....he does not believe their actions are presidential with respect to looking at any other applicant who may come forth in the future.

Mr. Newman discusses the type of wordage which should be stipulated if the Board makes a motion to approve, would it be ok with the Board Attorney & Board Members if we used the following identifying information...

Details the type of Cargo van...with a "Logo"...

Mr. Lowenstein recommends the size & weight of the vehicles should be stipulated.

Discussion amongst the Board Members.....wordage decided...

Mr. Newman opens the applicant up to Residents living within 200ft. for questions or comments. Seeing none,

Mr. Newman closes this portion.

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 with the following limitation restrictions.

1. Vehicles shall be a G3500 or equivalent or G2500 or equivalent
2. No Roof Rack or Cherry Pickett shall be permitted on the vehicles
3. Vehicles will have Logo "Crossland Mechanicals"

Mr. Puzio seconds the motion.

**VOTE:** Mr. Lowenstein, Mr. Puzio, Mr. Dunay,

\*\*Mr. Lowenstein would like to amend the motion that the vehicles would be parked only as demonstrated in the applicants plan (Single file)

Mr. Puzio seconds the motion to amend.

**VOTE:** Mr. Lowenstein, Mr. Puzio, Mr. Dunay, Mr. Newman, **YES**

Mr. Karas, Mr. Seibel, Mr. Meer, **NO**

Mr. Newman explains to Mr. Komarica being it was for a use variance; he would have needed 5 affirmative votes to be approved which he did not. Explains he has the option of coming before the Board again with a substantially different application...

**Motion does not carry.  
Application denied.**

**New Residential:**

1. Application #12-042, Stonewall Properties, LLC.  
7-20 Forest Street, Block 5830, Lot 6&7, Zone R-1-3  
Required lot size 65'x100' (6500 Minimum Lot Requirement.) Proposed new  
One family dwelling on legal non conforming existing lot of 50'x100' requires  
a C(1) variance.

Fees have been paid and there is proof of service.

Peter A. Scandariato, (Attorney)  
Eastwood, Scandariato & Steinberg  
336 President Street  
Saddle Brook, N.J.

Mr. Scandariato steps forward on behalf of the applicant, Stonewall Properties, LLC.  
states on October 14, 2012 the Fair Lawn Zoning Officer denied Stone wall's request for  
a construction permit for a proposed one family dwelling. The reason for the denial was  
the required lot size was a 6500 min. lot requirement....the proposed new family  
dwelling on a legal non conforming existing lot of 50x100 requires a C-Variance.

Mr. Scandariato has brought two witnesses with him this evening...Principal of  
Stonewall Properties, LLC & Architect

Mr. Newman swears in: Tom Panso  
31 Stonewall Court  
Woodcliff Lake, N.J.

Albert Dattoli (Architect)  
70 Chestnut Ridge Road  
Montvale, N.J.

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

Mr.Scandariato begins his questioning of Mr. Panso, Principal of Stonewall Properties.  
He explains to the Board how they would like to build a single family home on a 50x100.

Mr.Scandariiato (Applicant's Attorney) refers to photos...

Set of Photos taken in as separate Exhibit from Mr. Scandariato

A-1- A Collection of 13 photos submitted.

A-2-Plans dated 8/21/2012 Albert Dattoli (Architect)

Mr. Panso refers to photo of a single family house which is also on 50x100 lot...

Another photo is reviewed and Mr. Panso notes it was another house that was built within the past 10years.

Mr. Karas suggests individually marking each photo, A-1 of 13, A-2 of 13, etc...

Mr. Newman so notes.

Mr. Panso continues with photo A-4 of 13-a home built in the last 3 years.

Mr. Panso references a lot of neighboring homes with photos...

Mr. Panso continues with description of photos...focusing on the current property where the proposal is being made. Speaks of the existing garage that will be demolished...

Mr. Newman asks if there are any questions for this witness.

Mr. Karas (Board Member) references Photo A-7-questions if this property was sub-divided.

Discussion...

Ms. Peck (Assistant Zoning Officer) clarifies this by stating this application came before the Board approximately 2 years ago. The Board declared it did not need sub-division because it was not held by the same principals.

Mr. Lowenstein asks Mr. Panso if he was a builder for any other of the homes recently built in the photos shown.

Mr. Panso testifies no.

Mr. Newman asks if there are any other questions from the Board of this witness. Seeing none, Mr. Newman tells Counsel to proceed.

Mr. Dattoli (Architect) is called forward to testify.

Mr. Dattoli begins his testimony by explaining he was obtained by Stonewall Properties to design a residence for the property. He describes the design as a single family

residence with 1,889.9 square foot of living area on two floors. It has a basement and a two car garage.

Mr. Dattoli refers to Sheet 2-Elevations of the building....details the plan.

Mr. Datolli refers to Sheet 3-1<sup>st</sup> & 2<sup>nd</sup> floor plan.-details the plan.

Testimony continues...

Mr. Datolli feels the positive criteria would be the increase of value to the surrounding properties as this will be a new house. It would be a good benefit for the neighborhood.

Mr. Datolli feels there would be no detriment or negative impact to the Public good.

Discussion continues....

Mr. Karas has concerns with the 4 bedrooms proposed. Applications for additional parking come before us all the time because there is insufficient parking for the amount of people that occupy the house...could this reasonably be reduced to 3 to reduce the probability of having a parking issue.

Mr. Datolli testifies that two cars could park in the garage and two on the driveway. A total of 4 vehicles...

Mr. Datolli states yes it could be decreased to 3 bedrooms, but would devalue the residence. His client requested a 4 bedroom residence.

Mr. Lowenstein (Board Member) addresses the aesthetic aspect of the testimony of Mr. Datolli. The client is proposing a pocket park like setting and building a one family house on an undersized lot, by what likes does he conclude this would be an improvement to the neighborhood.

Mr. Datolli explains. It is filling in a vacant lot; it is a new residence on a street with existing residences and typically when this occurs, the value of the residences goes up.

Mr. Seibel (Board Member) notes there is a Garage, so technically it is not vacant..

Mr. Sacchinelli (Board Member) questions if there is any issues with drainage or water. Technically you are taking a piece of property that was all green.

Mr. Datolli testifies he does not know the answer to this question, but whatever the Storm Water Management requirements are will be abided by. There will be an Engineer Site plan and we will follow the regulations. To his knowledge there are no still water problems at the property.

Discussion continues...

Mr. Newman asks Mr. Datolli, in his expert opinion what else could be done with this property other than the type of proposal set forth this evening.

Mr. Datolli states this is zoned for Single family residences. He does not believe there are any other permitted uses...so no in his opinion.

Mr. Newman opens the application to Residents living within 200ft. of the applicant for questions or comments. 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 a motion to approve this application.

Mr. Puzio seconds the motion.

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

Mr. Lowenstein, **No.**

**Motion carries.**

**Application Approved.**

2. Application#12-043, Kenneth Montello, Jr.  
12-20 Fair Lawn Ave, Block 4603, Lot 39, Zone R-1-3  
Proposed 6' fence in the front yard setback where only 3ft. is permitted  
as per Section 125-38.A. Fences & walls.

Mr. Newman swears in: Kenneth & Ming Montello, (Applicants)  
12-20 Fair Lawn Avenue  
Fair Lawn, N.J.

Fees have been paid and there is proof of service.

Mr. Newman asks the applicant to begin their testimony.

Ms. Montello explains they are applying for a variance to install a 6ft. fence in which she considered her back yard, but has since been told because they are a corner lot, they have two front yards.

Review of Pictures submitted with the application.

Pictures entered into evidence as Exhibits A-1 thru A-5.

A-1-Photo of 12-20 Fair Lawn Ave-pictures showing fence in Front yard setback of two homes.

A-2- Photo of 12-20 Fair Lawn Ave-Picture of a side yard fenced in with shed in background, car in driveway.

A-3-Photo- 12-20 Fair Lawn Ave-Brick home with a chair & table in middle

A-4 -Photo- 12-03 Fair Lawn Ave-Garage door & swing in front.

A-5-Photo-12-03 Fair Lawn Ave-Picture of Tree in center with a white fence behind it.

Mr. Newman clarifies the location of the 6ft. fence and being a corner lot brings them here this evening. What they would reasonably consider their side yard is considered another front yard due to the Ordinance.

Ms. Montello walks the Board through the pictures...

Discussion...

Mr. Karas (Board Member) asks why they would need a 6ft. fence and what material.

Mr. Montello states they would like the privacy and it would be a vinyl fence with 1ft. of Lattice.

Mr. Montello will not consider a 5ft. fence & will not consider moving the location when asked.

Mr. Sacchinelli clarifies the height of the fence with the Lattice.

Mr. Montello testifies to a 5ft. fence with 1ft. lattice, totaling 6ft. in height.

Mr. Karas questions the existing 3ft. fence and questions who installed this.

Mr. Montello states he had no idea; it was there when he bought the home.

Mr. Karas notes it goes beyond the property line and is on the Borough's right-of-way.

Mr. Montello is aware of this and states the new fence being installed will be moved to the inside of their property, correcting this error.

Clarification of the location of the fence installation is done.

Mr. Dunay (Board Member) states for the record, if he is reading the dimensions of the property survey correctly, the lot is a little oddly shaped. It is 89ft. on one of the longer sides and 99-100ft. on the other and on the shorter size it is 37ft. & 42ft. respectively, it would make it a significantly undersized lot..if in fact, this were a conforming lot, the applicant would be able to construct a fence in the similar area without being as close to the sidewalk as they are now.

Mr. Newman notes Mr. Dunay's observation.

Mr. Newman so notes the Board, they have seen this type of application many times on corner lots and as a result, they have partition the Counsel to consider changing the Ordinance and not count the side yard as an additional front yard in matters such as a fence.

Mr. Newman asks if the Board has any further questions for the applicant. Seeing none,

Mr. Newman opens the applicant to residents within 200ft. for questions or comments. Seeing none,

Mr. Newman closes this portion.

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

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

Mr. Meer makes a motion to approve the application for a 5ft.fence with a 1ft. lattice totaling 6ft.

Mr. Sacchinelli seconds the motion.

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

Mr. Lowenstein, **NO.**

**Motion carries.**

**Application Approved.**

1. Application#12-044, Regina & Gene Tsimerman  
39-11 Tierney Place, Block 1611, Lot 9, Zone R-1-2  
Proposed addition would maintain the existing front yard setback of 21.9'  
Where 30' is required as per Section 125-12 Schedule of area yard and building requirements.

Mr. Newman swears in: Gene & Regina Tsimerman  
39-11 Tierney Place  
Fair Lawn, N.J.

Fees have been paid and there is proof of service.

Mr. Newman asks the Applicant to please explain the reason for their attendance tonight.

Mr. Tsimerman states they are proposing an addition to their house which is a corner lot. When we brought the drawings, we were informed because it was a corner lot; our front yard setback is 21.9ft. , which is short of the required 30ft...

Discussion....

Mr. Puzio (Board Member) clarifies from what he has looked at, all they are doing is adding a level over the existing footprint of the left side of the house.

Mr. Newman notes the height of 29.10 1/2....just a word of warning to the builder not to exceed 30ft...

Applicant so notes.

Mr. Karas (Board Member) asks the applicant; "The existing house is short as far as the front yardage is concerned. It is currently 21.9ft. , and you want to put on a second floor addition which matches this setback. Is this the only variance you are seeking?"

Mr. Tsimerman testifies yes.

Mr. Newman asks if this home has a basement and was it included in the FAR? He cannot find the basement elevation and asks Ms. Peck if it were included?

Ms. Peck (Assistant Zoning Officer) defers this question to the Architect present with the applicants.

Mr. Newman swears in: Waldemar Wysocai  
19 Belmont Ave;  
Madison, N.J.

Mr. Newman asks if he is a Licensed Architect in the State of New Jersey to which Mr. Wysocai replies no.

Mr. Newman then asks if he is a Licensed Architect to which Mr. Wysocai replies not in this Country.

Mr. Newman states he will be testifying as a Fact Witness only, not as an Expert Witness.

Mr. Newman asks Mr. Wysocai for information regarding the FAR.

Mr. Wysocai refers to Site Plan, page 1 and states all the calculations are there.

Mr. Newman notes he sees the calculations, but he wants to know if the calculations include the basement.

Mr. Wysocai testifies they do not include the basement. Existing basement is not higher than 3ft. as required by the Fair Lawn Zoning Requirement.

Discussion.....

Mr. Newman has concerns with it not being on the plans.

Mr. Wysocai explains....

Mr. Newman questions Sheet A-9, a calculation on the site plan...what does top of finish elevation 4ft. means?

Mr. Wysocai tells the Board the house is a split level. Half of the floor is lower than the other half by 4ft....

Discussion continues....

Questions continue.....

Mr. Newman tells Mr. Wysocai he is a little uncomfortable with the way things are presented because they (The applicants) are maxed out on FAR & height which is fine because they are not requiring any variances, as long as there are no errors....what is missing is a clear delineation of the maximum height of the basement above grade.

Mr. Newman continues; this is a sloped grade and a split level house so it becomes pretty confusing and if this is not clearly stated in the plans....we don't know if the FAR is accurate.

Discussion continues.....

Mr. Wysocai refers to the calculations on Sheet A-1...explains to the Board.

Mr. Rosenberg (Board Attorney) makes the suggestion of carrying the application to the following month where the FAR calculations can be clearly stated on the plan...

Mr. Newman stops Mr. Wysocai and explains because they are not Engineers or Architects; the Borough Attorney has the right idea...

Mr. Wysocai insists on trying to explain to the Board the calculations..

Mr. Newman gives Mr. Wysocai another chance at trying to explain...

Mr. Newman listens but decides it is too confusing for the Board to make a decision tonight on this. They will have the Borough Engineer take a look at the plans and be sure the basement does not have to be taken into the FAR calculation...

Mr. Newman notes to Mr. Wysocai his appreciation for trying to explain but the plans are confusing; there are a lot of elevations issues. They are not clearly stated and it would not be the first application where the basement was accidentally left out of the FAR calculations which would then require a whole other type of variance relief.

**Application carried to the meeting of December 17<sup>th</sup>, 2012.**

**Recess: 5 minutes:**

Mr. Newman re-opens meeting.

**Let it so be noted:** Mr. Karas & Mr. Lowenstein recused themselves from the following application. Mr. Sacchinelli & Mr. Lancaster were not in attendance at first hearing-not eligible to vote.

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

**Commercial Business Carried:**

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 Twshp. Section 125-65&125-41.B.

Mr. Steinberg (Attorney) opens with only one witness this evening and wants to advise the Board they had received a text message earlier this evening from the Attorney representing the IHOP who advised them he had determined there was no reason for his attendance this evening and has stated if there were no changes in the plans, his client had approved the plan and supported the application.

Mr. Newman asks Mr. Steinberg for a moment before continuing to read 3 emails received.

First, being from Eric Reamy (Fire) on November 14, 2012- He has reviewed the revised plan for curbing at the McDonald's on Broadway and the Fire Department has no issue with this change.

Second, being from William Soukas, Esq. addressed to Mr. Steinberg, & Paul Carvelli...as they are aware, Judge Langan adjourned the status conference based on the continuation of the public Whispering Woods Hearing related to the settlement. In light of the upcoming Public hearing he wanted to reach out and remind them of the Board's interest in having Mr. Lentini address the issues raised by the Board's members as to how any agreed upon design elements in an Approval Resolution can be put into recordable form.

Third, being from Mark Kataryniak (Board Traffic Engineer) dated Tuesday, November 20<sup>th</sup>, addressed to Ann Peck-stating he received the updated plans and will not issue another report and will comment at the upcoming meeting on Monday.

Mr. Steinberg calls his first witness who is still under Oath. Mr. Beasley (Engineer)

Mr. Steinberg asks Mr. Beasley if he attended the meeting of October 22, 2012 and if he recalls at that time the changes that were proposed by Mr. Kataryniak (Board Traffic Engineer) and if at that time he recalls a neighbor requesting certain screening and

signage on 37<sup>th</sup> being removed. The Board adjourned the matter until this evening to give the applicant and you an opportunity to prepare a set of plans which would reflect those aspects but also to address a couple of other comments that were made by the Board's consultants.

Mr. Beasley testifies yes to all the questions and begins his testimony addressing all the changes that were made...

Mr. Beasley begins by marking the Exhibits as A-3 as requested. It is a revised set of drawings. Revised through 11/05/12

Mr. Beasley begins his testimony explaining the changes made. Rather than have the bollards define the Traffic pattern we were to create a traditional curbed island. The plans have been revised to show the curbed island with some low plantings...the bollards have been removed. Landscaping is shown and is called out on the schedule. In addition, in response to the neighbor's concern, we have provided 6ft. Evergreens along the wall on the back side...in addition, some planting along the former entrance on 37<sup>th</sup> street.

Mr. Beasley continues with the comments regarding paving. They have shown in the shaded area (refers to Exhibit) an area of approximately 20-25ft. to be repaved in conjunction with improving a storm inlet in this area. Speaks to a previously proposed traffic controlling speed bump at this area and has provided a detail as a pre-fab rubber speed bump. Details are provided on the Sheets for this. 3 separate speed bumps separated by a foot or so and it is illustrated this way. This is effectively a weep and would not change the drainage pattern.

Mr. Beasley continues speaking to the concern regarding the gate. It was removed off the drawing. It was never the intent to keep this. They also modified the details on the signs, make sure they have break-a-way sign posts...lastly; they had indicated one way signs on both sides of the island. They have changed this to chevrons & triangle chevrons...there was also discussion about the misleading signage on 37<sup>th</sup> street...we have added a note to remove this signage that is on the site.

Mr. Beasley summarized they have done everything the Board has asked.

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

Mr. Newman opens the witness to residents within 200ft. of the applicant for questions or comments, seeing none,

Mr. Newman opens to the General Public for questions or comments for this witness.

Mr. Newman swears in: Jane Spindel  
395 Plaza Road North  
Fair Lawn, N.J.

Ms. Spindel would like information regarding the Plantings. How will they get water?

Mr. Beasley replies they have not provided any specific irrigation for them. Either the owner puts a hose on them or Mother Nature will water them.

Ms. Spindel states Mother Nature isn't going to water enough for planting 5-6 shrubs. If planting in the Spring, someone will need to be responsible for watering and what will the guarantee of them staying alive be and if they don't, who will replace them & how often.

Mr. Newman notes this is a good point. In fairness to the applicant, he asks Ms. Spindel if she is on any Board's or Committee in this town.

Ms. Spindel notes she is with Garden Committee, Shade Tree...she is a Landscape Architect with credentials. She wants these plants to be maintained and not just planted in the ground, too often plants have been planted in the town, not watered, left to die and they look terrible...

Mr. Newman asks Mr. Steinberg if this could be addressed.

Mr. Steinberg states as a condition of approval, they could maintain the plants and replace them if they die...this is a business property and the last thing they would want would have the shrubbery die. He understands the concern so if Counsel would provide a Condition....

Mr. Rosenberg comments they could carry a "Maintenance Bond" if the Board wanted for 2 years...there are a number of things that could be done.

Discussion.....

Mr. Newman swears in: Mark Kataryniak, Board Traffic Engineer

Mr. Paul Azzolina (Board Engineer) previously sworn; discusses recommendations for possible irrigations system.

Discussion continues....

Mr. Newman requests Mr. Steinberg's client to come forth...

Mr. Darren Lentini steps forward, previously sworn in....

Mr. Newman questions Mr. Lentini on the current Landscaping Maintenance.

Mr. Lentini testifies he has a complete Maintenance Staff in the morning & evenings and when needed, they water the lawn with sprinklers & long garden hoses. If you visit his

site, there is no dead vegetation...if something does die, he has another crew that comes in and puts new in. The last thing he wants is dead vegetation.

Discussion on a Maintenance Bonding & costs with Paul Azzolina, (Board Engineer)

Mr. Azzolina testifies that a maintenance bond for the 13 evergreens & 15 planting of Juniper & Japanese Yews require a \$5000 bond to be maintained for two years.

A \$5000.00 Bonding and Maintenance in accordance with the current Landscape Maintenance on site for two years is agreed to.

Discussion on a concern over the “conditions” being imposed by the Board with the Resolution will be binding on the property owner, because the property owners have agreed & consented to the “Deed Restriction”.

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

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

Mr. Newman would like to detail & recap all conditions & restrictions discussed before asking for a motion.

Mr. Rosenberg recaps his recollections of the conditions:

Maintenance of the landscaped buffer as shown on the revised plan which now consists of additional plantings as well as shrubbery along 37<sup>th</sup> street.

The proposed Amended Site plan would provide access from the adjoining property in accordance with the Site Plan application.

The applicant will also agree to maintain the Landscape Buffer as shown on the Site Plan in the area of the Egress driveway..

Mr. Steinberg would like to make a suggestion in regards to the 3 different plantings areas end up getting folded into one condition that is supported now by a (inaudible) which was not referred to earlier. We are talking about 3 different areas of Landscaping which is covered by the two year, \$5000.00 Maintenance Plan & Bond.

Mr. Rosenberg (Board Attorney) wants to be clear; even after the Bond expires, certainly the reason for the condition in the “Deed” is to insure it is something which runs with the Land, this was the whole purpose.

Mr. Steinberg understands.

Mr. Newman notes the Board's main concern was; the entire agreement be recorded as well.

Discussion...

Nothing further from the Board, Mr. Newman asks for a motion.

Mr. Rosenberg reminds the Board, the motion is on the Settlement Proposal because this is the way it was presented to the Board, so the motion should be phased as such; for purposes of the amended Site Plan application...

Discussion....

Mr. Newman would like to make note of an email from Sanogita Chavan, of Birdsall Engineering (Board Planner) addressed to Ann Peck, dated November 21, 2012 stating she will not be preparing a review letter but may present her comments or opinions to the Board.

Mr. Puzio makes a motion reading all conditions agreed to.

Mr. Meer seconds the motion.

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

**Motion Carries.**

**Application Approved.**

### **Order of Business:**

#### **Approval for 2013 Calendar:**

Mr. Puzio makes a motion to approve.

Mr. Seibel seconds the motion.

All Present: **AYE**

**Resolutions:**

1. Application #2012-037, Scott & Audrey Gross, 45 South Broadway, Block 1105, Lot 9, Zone R-1-3– Proposed One Story Rear Addition- Approved.

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

**VOTE:** All Present – **AYE.**

2. Application #2012-038, James & Leslie Noonan, 3-27 Pickett Place, Block 1309, Lot 15, Zone R-1-2– Proposed addition & new roof over existing landing- Approved.

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

**VOTE:** All Present – **AYE.**

3. Application #2012-039, Avi Holczer, 2-34 17th Street, Block 4312, Lot 1, Zone R-1-3– Board determined, not Res Judicata- Proposed 6ft. fence in front yard setback-Approved.

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

**VOTE:** All Present – **AYE.**

4. Application #2012-040, Mustafa Gazilov, 8-02 Forest Street, Block 1512, Lot 1, Zone R-1-3– Remove existing deck & replace with larger deck- Approved.

Mr. Meer made a motion to accept these resolutions and Mr. Seibel seconded the motion.

**VOTE:** All Present – **AYE.**

**Vouchers:**

1. Winne, Banta ,Hetherington ,Basralian & Kahn for Legal Services rendered in the amount of \$816.66 for Legal services rendered for the Zoning Board of Adjustments on November 12, 2012 meeting.

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

**VOTE:** All Present – **AYE.**

**Minutes:**

**1. Closed Session Minutes:-Lentini versus Fair Lawn Zoning Board**

Mr. Sina made a motion to approve the minutes for the August 2, 2012 meeting and Mr. Puzio seconded the motion.

**VOTE:** All Present – **AYE**

**2. Regular Meeting Minutes:**

Mr. Dunay made a motion to approve the minutes for the August 2, 2012 meeting and Mr. Seibel seconded the motion.

**VOTE:** All Present – **AYE**

**Adjourn**

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

TIME: 10:15 P.M.

VOTE: All Present - AYE.

Respectfully submitted,

Cathy Bozza  
Zoning Board Clerk