

**BOROUGH OF FAIR LAWN
ZONING BOARD OF ADJUSTMENT
Regular Meeting Minutes
Of November 25, 2013**

Following are the minutes of the Fair Lawn Zoning Board of Adjustment's regular meeting held on November 25, 2013

Vice Chairman, Mr. Kevin Puzio 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. Gil, Mr. Sina
Mr. Meer, Mr. Puzio (Chairman: Mr. Todd Newman arrived)
7:15pm

Absent: Mr. Dunay, Mr. Seibel

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

Board Professionals in Attendance: Paul Azzolina (Engineer)
Azzolina & Fuery Engineering

Berge Tomabalakian (Traffic Engineer)
Boswell Engineering

Paul J. Kittner (Rep. Peter Van Den Kooy (Planner)
CME Associates.

Mr. Newman opens:

Ms. Peck (Assistant Zoning Officer) brings to the attention of the Board, the agenda is wrong in the description of the first Residential request for a Variance. Explains....

Mr. Newman (Chairman) so notes.

New Residential:

1. Application #2013-031, Alon and Maria Gesthalter,
16 Garwood Road, Block 3904, Lot 2, Zone R-1-1

Proposed In ground pool would increase the impervious coverage from 29.08% to 36.90% where 35% is permitted. Would have a 5' rear yard and side yard setback where 15' is required as per Section 125-12 Schedule of Area yard and Building Requirements.

Mr. Joshua Levine (Attorney on Behalf of the Applicant) of the Levine Law Firm, Fair Lawn, N.J.

Fees have been paid and there is proof of service.

Mr. Levine takes a step forward and explains it is a very straight forth and simple application, His clients are seeking a variance by allowing an in ground pool in their rear yard. The reason we are here is because there is a 35% impervious coverage requirement where the installation of the pool will exceed this requirement by just under 2%. with 36.9%.

Mr. Levine mentions; there is also local Legist ration pending with respect to water in the pool, had this Legistration been in place, this requirement would have been satisfied.

Mr. Newman reminds Mr. Levine, the key word being pending....

Mr. Levine understands.

Mr. Levine continues with the second variance being requested. His clients are seeking a variance to allow a 5' side yard setback both on the left side & the rear of the property. From review of the plans, as you can see there is an unusual shape to the lot which lends itself in creating a hardship on the applicant.

Mr. Levine calls his first witness.

Mr. Newman swears in: Michael Harnett, Landscape Architect
B& B Pools
3-837 Chestnut Ridge Road
Chestnut Ridge, N.Y.

Mr. Newman clarifies Mr. Hartnett is here tonight to give testimony as a Landscape Architect or.

Mr. Newman certifies Mr. Hartnett as an Expert witness with no objections from the Board.

Mr. Rosenberg (Board Attorney) clarifies Mr. Harnett is here as an Expert in Landscape Architect and not a Planner with Mr. Levine for the record.

Mr. Levine begins his cross of his witness Mr. Harnett.

Mr. Hartnett submits Board Exhibit which is the same as the plan submitted.

Mr. Rosenberg (Board Attorney) marks it as Exhibit A-1 (Colorized version of the plan submitted)

Mr. Hartnett reiterates upon cross this draft was submitted by him and the same as submitted to the Board.

Mr. Levine asks Mr. Harnett to please explain to the Board what exactly is proposed.

Mr. Hartnett testifies what they are proposing to do is put a 650sf pool in the backyard which is not a big pool by pool standards... They have designed in so that on the property line sides there is no patio on that side so that the children won't be running around and the entrance to the pool would be across a wood deck, points to Board Exhibit and shows the location.

Mr. Hartnett is questioned on what the requirement is for the side yard setback to which he answers 15ft. and explains the proposal would change the side yard setback to 5ft. to the water...

Rear yard is also 15ft. requirement and also would be 5ft. to the water.

Mr. Hartnett explains the plan detailing the green circles representing shrubbery (Hypress) that would be installed at a height of 6-7ft. They are fast growing evergreens that will make a complete hedge around the property. The neighbors would not be able to see in and they will not see out.

Discussion regarding neighbor to the South of the property...neighbor to the East- Rear yard.....

Mr. Hartnett explains the reason for the location of this pool because any other plan would bring the pool very close to the house...

Discussion continues...

Mr. Hartnett continues to explain the property is not squared off and narrows down to a 40ft. width in the back property, if you come 15ft. from either area, you have 10ft back there – points to location and reiterates it is an unusual shaped property. It's a unique shaped property.

Discussion continues...

Other options are discussed if the property had been shaped differently...

Mr. Hartnett is asked if the pool is consistent in the area to which he testifies it is consistent with the pools in the neighborhood. He looked at Google Map and could see the other pools in the area.

Proposed shrubbery is again discussed...Mr. Hartnett explains it would be the best aesthetically...

Mr. Hartnett believes with this unique shape of property, he would deem this a hardship.

Mr. Levine asks Mr. Hartnett if he sees any adverse affects on the neighborhood to which Mr. Hartnett replies no.

Mr. Hartnett referencing the Public Good notes he believes it would add to the value of the house.

Discussion continues....on the reasoning for the location of the pool.

Mr. Levine has no further questions for this witness.

Mr. Newman (Chairman) questions Mr. Hartnett (hypothetically) what would prohibit him from putting the Spa and the stairs on the opposite side of the pool.

Mr. Hartnett reviews this suggestion...

Mr. Hartnett explains the Spa is the noisiest area of the pool and he tried keeping it away from the neighbors....he would have to check and see but it looks like it may come to close to the house...

Discussion continues...

Mr. Newman states it looks like it could work. He may have to put the fatter end of the pool to the back of the property but he feels there is a way he could do this and keep the 15ft setback, would he agree?

Mr. Hartnett states he is not 100% sure...it may be possible. He does not know if Fair Lawn has a 10ft. setback requirement from the house, because a lot of towns do....

Discussion continues....

Mr. Rosenberg (Board Attorney) clarifies for the record what Mr. Newman is talking about...it's a shifting of the pool to the West according to the North arrow.

Discussion continues....

Mr. Hartnett explains there would be no play area for the children if they were to do it that way.

Mr. Lowenstein (Board Member) questions Mr. Hartnett on the zone and the minimum square footage for the property.

Mr. Hartnett testifies he is here as a Landscape Architect, not as a Planner and does not know.

Ms. Peck (Assistant Zoning Officer) answers 75x100, 10,000sf.

Mr. Lowenstein asks if there were a 90degree rotation of the pool, would it fit within the property lines and the setbacks requirements.

Mr. Hartnett states it may be possible, but he would have to check...there would have to be a redesign to answer that.

Mr. Lowenstein questions if there would be any consideration to changing the shape of the pool and making it more of a Lap pool so it could run parallel to the Western end of the property rather than the Eastern end..

Mr. Hartnett explains because of the children we decided to make it a usable pool, it would not be a deep pool. The purpose is to be only a play pool. A lap pool doesn't serve the purpose.

Mr. Lowenstein corrects the use of the term Lap and corrects it to Rectangular shaped pool...

Discussion continues on shapes of pools that could be used....

Mr. Lowenstein mentions the Landscaping greenery and asks Mr. Hartnett if he is aware of a requirement that there must be a concrete surface around the pool.

Mr. Hartnett testifies there is not, explains...it used to be with the old vinyl pools, to stabilize the pool you would have to put a 3ft walkway around it, but with this type of pool you would not need it.

Discussion continues....

Mr. Lowenstein mentions he had issues entering the property because of locked fencing and had to use the neighbor's properties...makes the suggestion to Ms. Peck to inform applicants.

Ms. Peck states she does let the applicants know because they sign a form giving permission for the Zoning Board Members to enter their property...

Mr. Sacchinelli (Board Member) questions the materials being used with the 5ft. clearance...

Mr. Hartnett explains with mulch & wood chips through this area. (Points to exhibit)
Mr. Sacchinelli questions the size of the bushes & how big do they grow.

Mr. Hartnett explains they will get to be 10ft wide and will need to be maintained.
They must be pruned.

Mr. Sacchinelli how they intend to do this when they are installed they are 3ft wide..

Discussion continues...

Mr. Hartnett states they could walk on the side of the pool to get in and prune there..

Mr. Sacchinelli asks what the effect of chlorine splash over on these bushes would be.

Mr. Hartnett states he chose bushes that tolerate this and they are also using a salt water pool so the chlorine is minimal but they still have to tolerate the salt.

Mr. Sacchinelli asks if they would consider a smaller size pool.

Mr. Hartnett explains; they go by the total of 650sf, this is on the smaller size of what they usually do...

Discussion continues....

Mr. Puzio (Board Vice-Chairman) clarifies with Mr. Hartnett stating his comment was the pool was 650sf in total~ the plan showing 618sf?

Mr. Hartnett explains; the pool water is 650-the spa is 55-

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

Mr. Newman opens questions for this witness to Residents living within 200ft of the applicant. Seeing none,

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

Mr. Newman closes this portion.

Mr. Newman asks Mr. Levine if he has any other witnesses.

Mr. Levine (Applicant's Attorney) states the Homeowner would like to speak briefly.

Mr. Newman swears in: Maria Liana Gesthalter
16 Garwood Road
Fair Lawn, N.J.

Mr. Newman asks her to proceed..

Mr. Levine begins his questioning.

Ms. Gesthalter testifies she has lived in this home for approximately 10yrs with her husband and children. The reason why she would like this pool is the children. They would like a pool to stay cool in the summer.

Upon cross, Ms. Gesthalter states they did try to come up with different solutions to the layout of the pool but this layout made more sense because they do not want to lose the whole backyard, the children still like to run around and kick balls.

Ms. Gesthalter explains the different ways they worked on the plan configuring the layout of the pool...

Discussion continues...

She testifies they worked with many designs and states one neighbor is very close to their property, the other two are not. This design made the best sense to them and would very much appreciate their consideration in approving this plan.

Mr. Levine reviews the variance with Ms. Gesthalter and concludes because of the unique shape of the property, it is a hardship for them. She agrees.

Mr. Levine reviews all code requirements and Ms. Gesthalter testifies she would follow all requirements including fencing, etc...

Ms. Gesthalter states there would be no detrimental effect on her neighbors and the shrubbery/trees would enhance the neighborhood and look much nicer.

Ms. Gesthalter testifies there are two houses in front of her have pools, so they are staying within the character of the neighborhood...a corner property also has a pool.

Mr. Sacchinelli (Board Member) has a concern with the location of the pool and suggests maybe another area...reviews options with Ms. Gesthalter..

Discussion continues.

Ms. Gesthalter explains again the reasons why they have decided on this location and states the closest neighbor's have no issues with the location of the pool as proposed.

Mr. Lowenstein (Board Member) questions if there were any effort made to remove some impervious coverage to get them down to the 35% or less.

Ms. Gesthalter testifies she has nothing to remove & asks the Board for suggestions.
Discussion....

It is determined there is nothing to remove.

Mr. Sacchinelli has issues with the Trees/Shrubbery being so close and questions how they plan to maintain these bushes when they start to grow on the side of the neighbor's property...you would have to get permission from your neighbors to go on their lawn.

Ms. Gesthalter states she will get permission and they do have a Landscaper...the neighbor will not have an issue with this. They spoke with them.

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 to the General Public. Seeing none,
Mr. Newman closes this portion.

Mr. Newman asks for a motion.

Mr. Meer makes a motion to approve the application but wants to add the Shrubbery must be maintained at all times.

Mr. Sacchinelli seconds this motion.

Mr. Rosenberg (Board Attorney) interjects to ask; in terms of commitment by this property owner to maintain this planted screen/shrub area. He would like Mr. Levine (Applicant's Attorney) to acknowledge the Resolution will provide, and under our Ordinances, he would like the motion to specifically provide, this is a condition which is going to run with the Land and therefore will be part of the Deed of the Applicant.

Discussion...

Mr. Levine states his clients will do whatever Landscaping is necessary. The neighbors are not here tonight to testify they would allow them onto their property so the only thing they could put forward is the agreement to do so...

Discussion continues...

Mr. Rosenberg reiterates it will be a “Deed Restriction” that runs with the Land so if this property owner ever sells the house, any subsequent successor owner understands as Mr. Meer’s motion has been made, this Buffer must be maintained.

Mr. Levine asks for a moment to speak with his clients.

Mr. Levine asks Mr. Newman (Chairman) after speaking with his clients if there were different shrubs planted and they weren’t so wide would the application be considered.

Mr. Newman states at this point, the application would be a different application that has not been heard.

Mr. Levine understands and asks if they could return with a different date or if the Architect could testify to a different type of shrubbery tonight.

Discussion continues...

Mr. Newman explains the motion has been seconded.

Mr. Rosenberg (Board Attorney) explains it would be up to the Applicant whether he would like to amend or withdraw the application. The applicant could move forward tonight with a vote or they want to adjourn the application to amend the plan with whatever type of Landscaping the Architect deems necessary in light of what the Board has heard this evening.

Mr. Levine consults with his clients and speaks to the Board stating in the specific regard of the “**Deed Restriction**” for the maintenance of the Shrubbery, the applicants **have agreed to the terms** and would like to move forward tonight with this agreement.

Mr. Newman states the motion was seconded and asks for a Roll Call.

VOTE: Mr. Blecher, Mr. Sacchinelli, Mr. Gil, Mr. Meer, **YES.**

Mr. Lowenstein, Mr. Puzio & Mr. Newman, **NO**

Motion Carries. 4-3

APPLICATION APPROVED.

Mr. Newman calls a Recess. 5-10 minutes

Mr. Newman reopens.

Roll Call: Mr. Blecher, Mr. Sacchinelli, Mr. Lowenstein, Mr. Gil, Mr. Sina,
Mr. Lancaster, Mr. Puzio, Mr. Meer & Mr. Newman- **Present**

Commercial New Business:

1. Application #2013-030, Patel Holdings, LLC
16-23 River Road, Block 5716, Lot 11.01, Zone B-4
Amendment to prior site plan approval. Amendment to the prior parking variance of 27 spaces . Section 125-57.D.(1)(d)[1] requires D-1 variance for the proposed conversion of two retail spaces to apartments on the first floor where no residence is permitted on the first floor of a mixed use building in the B-4 zone as per Section 125-A.(2) .

Mr. Carl Spector, steps forward. He is here acting as Attorney on behalf of Patel Holdings, LLC.

Fees have been paid and there is proof of service.

Mr. Spector begins by stating this is a use variance application for the location to convert two commercial spaces on the first floor to Residential....

Mr. Spector states he will have two witnesses this evening who will testify, one being the Architect, & one is the Planner...

Mr. Spector calls his first witness.

Mr. Newman swears in: Kevin Spink, Canzani Associate Architects
8 East Ridgewood Ave;
Paramus, N.J.

Mr. Newman clarifies Mr. Spink will be testifying this evening as an Expert in the Field of Architecture.

Mr. Newman certifies Mr. Spink as a Licensed Architect in the State of New Jersey and with no objections from the Board accepts him as an Expert Witness.

Mr. Spector begins his questioning of Mr. Spink.

Mr. Spink testifies he has reviewed the application and begins by explaining he had looked at the overall sight, the location site, and the spaces in question and he did the Architectural layout to create the apartment spaces the client is looking for....

Mr. Spector asks Mr. Spink to explain what revisions were recommended in the plan in order to convert these units into residential units.

Mr. Spink explains they were looking at the existing plumbing so they could maintain the plumbing in the general location in order not to disrupt the space....they would be doing one space which is a 589 sf. it would be too small to make it a one bedroom so we would make this into a Studio Apartment.

The second space is an 865sf space that we are able to convert into a one bedroom apartment with the same entrances off the rear, above the stairs...explains.

Mr. Spink continues; the front of the building, the doors would be removed and the commercial style windows and replacing them with egress able windows for Fire Safety and we are aligning them with the windows from above, so aesthetically we would make a nice appearance on the outside of the building...

Mr. Spink continues with his description of the changes to be made....refers to River Road...

Mr. Spink notes there would be no Code issues with regards to Fire Issues; they would be able to bring it up to code. Fire walls, etc....

Mr. Spink believes they could do this conversion while trying to maintain a nice appearance to the Building, etc....we are trying to lay it out to match the rest of the building.

Mr. Spector has no further questions for this witness.

Mr. Newman notes during Mr. Spink's testimony he mentioned he is looking to mimic the windows on the first floor with the 2nd floor, can he explain this...

Mr. Spink notes generally in shape & size they would look the same and he is also trying to align them on the River Road side...explains...

Discussion continues....

Mr. Newman questions the Grids?

Mr. Spink explains the upper floors all have grids...

Mr. Newman remarks this Building needs all the help it can get aesthetically and he feels every effort needs to be made here if there is an approval of any kind here to spiff it up and make it look uniform....

Discussion....

Mr. Newman questions if there still would be Awnings and some Commercial space.

Mr. Spink states this is correct. Refers to Exhibit and explains there is a Nail Salon which would remain...this Awning would remain.

Mr. Spector (Applicant's Attorney) would like to make the record clear. Explains there are 3 Commercial spaces existing on the 1st floor and one will remain if this application is accepted and approved. The application is for the other two spaces to be converted into Apartments.

Mr. Newman asks Mr. Spink for his Professional opinion and notes; is there any way other than matching the size and shapes of the windows to further improve the overall aesthetics of the Building and the flow between the Commercial & Residential.

Discussion....

Mr. Spink tends to agree with Mr. Newman and understands his concern with the building's haphazard look...this is a standard look unfortunately on a Commercial Style image. He explains they will put Stucco on the outside, etc....

Mr. Newman mentions the Awnings...

Mr. Spink testifies they could do different Awnings over all the windows, including the new egress able windows...

Discussion continues....

Mr. Sacchinelli (Board Member) questions the wall codes with this conversion...noise, etc...

Mr. Spink addresses his concerns.

Discussion continues...

Mr. Sacchinelli asks Mr. Spink in his Professional opinion, how many buildings have he seen in the area with Residential conjoined common walls with a Commercial use...

Mr. Spink has not done any of these.

Mr. Sacchinelli asks how it would benefit this area, this type of use..

Mr. Spink testifies it would bring another residential use to the town, whether it is beneficial to the town, he would not know. Looking at the neighborhood that is immediately adjacent to this structure....describes homes in the area...salon with a house

above, etc...he does not see this as detrimental to the neighborhood by having the apartments on the first floor.

Parking is discussed...

Mr. Spink states they do not have a Parking Professional here but he does know that the Parking requirement for a Commercial space is greater than the requirements for a single use...something of this maximum would require two parking spaces for each apartment.

Discussion continues....

Concerns are discussed....

Mr. Spink addresses the concerns and sees no issues.

Mr. Lowenstein (Board Member) questions the apparent disparity in square footage. Discusses Store B which fronts River Road....discusses the Studio apt and refers to Page 2 of the previous Architects drawings...

Mr. Spink explains he believes these are the Construction drawings from when the building was actually built...cannot answer for his the previous calculations.

Discussion continues....

Mr. Spink explains how he did his calculations and the total square footage of this space is 589sf... Points to Exhibit and states his square footage were based on how they do their square footage counting is based on the center of any demising wall and the exterior of any exterior wall...including all the outside masonry wall, all the way around to the center of this demising wall and back.

Discussion continues.....

Mr. Lowenstein asks if Mr. Spink understands the reasoning behind the Ordinance and why it recites what it does and why there are no residents permitted in a mixed use building in the B4 Zone...

Discussion....

Mr. Sacchinelli (Board Member) asks the Board Attorney, Mr. Rosenberg is ever they applicant wanted to convert back to Commercial, would they have to get permission.

Mr. Rosenberg states yes they would have to come before the Board. They are agreeing to the alteration of a use from what is permitted as commercial now to Residential and would have to come back if they wanted to change back to Commercial.

Mr. Spector (Applicant's Attorney) is aware of this.

Discussion continues...Clarification is made on the subject...

Parking is discussed...

Mr. Spector states he would like his Planner answer these questions.

Mr. Newman opens for any other questions for the Architect, Mr. Spink. Seeing none,

Mr. Newman discusses his concerns and issues with the aesthetics of this property with Mr. Spink. There has been a lot of talk regarding mixed use/residential/Commercials done elsewhere/ 1st floor & 2nd floor, etc....asks Mr. Spink if there is anything that could be done further with the façade, specifically maybe the windows as well as the awnings on the commercial space to make it more uniform & aesthetically pleasing so nothing looks out of place. A finished project that looks like you went to the drawing board with this...

Discussion continues...

Mr. Spink testifies he would have to speak to his client and see what exactly he is willing to do, but yes it certainly can be done.

Discussion on recommendations, suggestions, etc....

Mr. Newman swears in all Board Professionals:

Mr. Paul J. Kittner (CME Associates) representing Peter Van Den Kooy, Board Planner
Berge Tombalakian (Boswell Engineering) Board Traffic Engineer
Paul Azzolina (Azzolina & Feury Engineering) Board Engineer

Mr. Kittner asks Mr. Spink just for the record in terms of Architectural standards that are in the existing Ordinance, does his design comply with the architectural requirements in the Ordinance.

Mr. Spink testifies to the best of his knowledge, yes.

Mr. Kittner questions why the cantilever is constructed?

Mr. Spink assumes it was to increase the square footage on the 2nd floor and maintain additional parking in the lower level in the rear.

Mr. Kittner states he will reserve the rest of his questioning.

Mr. Tombalakian (Board Traffic Engineer) has no comments or questions for this witness.

Mr. Paul Azzolina (Board Engineer) has no comments or questions for this witness.

Mr. Newman asks if any of the Board Professionals have any recommendations or suggestions to his questions and comments in terms of improving this site, please feel free to do so.

Mr. Spector (Applicant's Attorney) calls his 2nd witness.

Mr. Newman swears in: Dan Bailer (Principal of Urban Thinker Associates)
Licensed Planner
329 Palisade Ave
Jersey City, N.J.

Mr. Newman certifies Mr. Bailer as an Expert Witness without any objection from the Board.

Mr. Bailer begins his testimony and reiterates as the Architect has stated, what they are planning to do is a change of use on the ground floor, converting the 3 existing commercial ground floor units and converting two into residential units...

The middle space between the two proposed apartments will remain commercial.

There will be no changes to parking requirements...just a change of use.

Mr. Bailer states he has prepared a Picture Board and a Zoning Map showing the location of the property in context to the B4 Zone. (Mr. Spector hands the Exhibits to Zoning Members)

Mr. Rosenberg enters into the Record-Exhibit A1-Zoning Map
Exhibit A2-Picture Board

Mr. Bailer continues his testimony...

Reviews the Picture Board and explains these pictures were taken approximately 3 months ago...on the bottom right hand corner is a location map which coordinates to each of the letters...

Picture A- Frontage of the Building on River Road-
Picture B-Side of Building-facing the driveway parking lot area of the Building
Picture C-Parking Spaces- (27) parking spaces on the property, reserved for a particular unit or a Commercial unit.

Picture D- Entrance to the Building in the rear.

Mr. Bailer reviews what the Architect has already testified to; the entrances to the newly proposed two residential units will be in the back. The front of the building where the door is will be removed and changed to a egress window.

Picture F- Corner of Fair Lawn which is a mixed use building.

Picture G- A Residential building adjacent to the property.

Picture H- American Legion Building.

Picture I- Residential directly across from the building.

Picture J – Food Store

Picture K – TD Bank

Mr. Bailer explains why he had the Picture Board. It is to show there is a Residential component in the area. Across the street, next door...this property on the Zoning Map is at the edge of the B4 Zoning District, it is not in the heart of it....

Testimony continues....

The neighborhood does have a Residential character...

Mr. Bailer testifies to the Positive & Negative Criteria...

Positive Criteria at this site; he believes it is suitable for the proposed two residential ground floor units, reviews all the picture boards with the Board pointing out the residential homes in the area. He believes the Architects rendering will be an aesthetic improvement to the building...there will be more unity to the structure and create a more cohesive character to the building. There is sufficient parking, more than enough. There is reduction just by removing the two Commercial spaces.

Parking is discussed....

Mr. Bailer discusses Negative Criteria...in his opinion it is on the end of the B4 Zone and not in the heart of the Business District. He does not see any substantial detriment. Taking these two vacant Commercial spaces that have been vacant for almost 14 months and providing them and proposing a residential unit would bring life to the building...

Mr. Bailer continues...he sees no conflicts with the Municipal Land Use Law and in his professional opinion this proposed change is suitable for a Residential use and sees no detriment to the surrounding area.

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

Mr. Lowenstein (Board Member) asks the same question he questioned Mr. Spink on and this is; does he have an understanding to the underlying rationale behind the existing restriction as to having residential space on the 1st floor of a Commercial building.

Mr. Bailer does understand the rationale and to continue on the Architect's testimony as mentioned before, the rationale to have a mixed use with no residential on the ground floor is more appropriate for the main intersection of the River Road District, in his opinion. He feels this is on the edge and there is different types of uses...explains..

Testimony continues...

He sees no detriment. You have to consider the location. It is not in the heart of the River Road location, it is at the end. This is an improvement of the building. There is no detriment to the two residential uses.

Mr. Sacchinelli (Board Member) questions if the Commercial use pays for Garbage removal...

Mr. Bailer testifies he is not aware.

Mr. Sacchinelli continues and questions since this is a proposal to change the use to residential, is there an area for the new residents to have a garbage disposal...the town has an obligation to remove...

Discussion...

Mr. Spector (Applicant's Attorney) would like his client to answer this.

Mr. Newman swears in: Gus Patel
12 Audrey Hepburn Court
Alpine,N.J.

Mr. Patel testifies he does not think this will change any requirement but if he has to put a bigger compactor, depending on the Garbage Contractor.

Mr. Sacchinelli questions if the Town picks up the Garbage or does he pay for this.

Mr. Patel believes he pays for this.

Mr. Sacchinelli questions if the Commercial garbage & the Residential portion share the same compactor.

Mr. Patel believes there is one Garbage Compactor for all.

Discussion continues...

Mr. Patel has two services, one for regular garbage and one for Environmental disposable.

Mr. Patel believes he has a Compactor for the Resident. He cannot swear but he thinks for sure there is one.

Mr. Paul Azzolina (Board Engineer) testifies he has visited the site, he does not believe there is a Compactor on the site. There is a large Dumpster that does appear to be shared by both the Commercial uses as well as the Residential use. This is on the Southerly part of the property. There are two stand alone Dumpsters what would be the NW corner of the site for the Recycling, one for cardboard, one for plastic. Both he believes are private...

Discussion continues....

Mr. Sacchinelli inquires if it will obligate the Municipality to provide the services & cost the Borough more money now because of the change of use to Residential...

Mr. Rosenberg (Board Attorney) discusses the situation Mr. Sacchinelli is questioning and notes he does not think this question can be answered by Mr. Azzolina...states Ms. Peck (Assistant Zoning Officer) may have to inquire about this because you are in a mixed use building, adding more residential to this use and whether now it falls under an obligation of a Municipal Carter to be included is an issue that cannot be answered tonight... he notes it is a very important issue that he has raised about the positive and negative criteria.

Mr. Azzolina concurs...he recommends they get the confirmation from the Superintendent as you would normally do.

Discussion continues....

Mr. Spector (Applicant's attorney) states he thinks there is an assumption here that Residential would cause more waste than the Commercial....

Mr. Sacchinelli (Board Member) reiterates it would cost the Tax payer to remove the garbage. Right now if it's all commercial, the money to remove the garbage would be paid by the Tenant.

Discussion continues....

Mr. Spector again states Commercial would create more garbage than Residential...

Mr. Newman (Chairman) states; if he understands everyone correctly, the issue is not the amount of garbage; it's where the obligation falls to collect the garbage in general.

Discussion continues....

Mr. Rosenberg (Board Attorney) clarifies the discussion and notes the Chairman is absolutely right. It is not the issue of volume, it's the issue of responsibility for Carting Services going into the future because they are now changing the mix...but if the applicant is prepared they could make it a stipulation in the Resolution.

Mr. Newman asks if there are any other questions for Mr. Patel. Seeing none,

Mr. Newman asks if there are any other questions for the Planner, Mr. Bailer.

Mr. Meer (Board Secretary) asks Mr. Bailer what the advantage would be for Fair Lawn to change the code from a B4-business zone and make it Residential.

Mr. Bailer explains the property and these two spaces have been vacant for over a year and the client has made every attempt to rent it. Unfortunately with no success...there is 8 apartments where all are occupied and Mr. Patel feels he would be able to rent out the spaces....

Testimony continues on the benefits...

Mr. Puzio (Vice Chairman) asks Mr. Bailer if he feels traffic would increase or decrease in this area.

Mr. Bailer testifies in his opinion it would be less. Residential has been shown to be less. This is a Studio apartment where you would most likely have one person living there as compared to Commercial...

Mr. Newman opens Mr. Bailer to the Board Professionals for questions or comments.

Mr. Paul Kittner (CME Associates) asks Mr. Bailer if they received the letter from CME Associates dated 11/14/13.

Mr. Bailer testifies yes.

Mr. Bailer refers to page 2- when asked & discusses Items questioned with the proposal with Mr. Kittner.

Testimony continues....regarding Master Plan & Zoning Plan...

Discussion & questioning continues....

Mr. Bailer answers all questions...keeping to his opinion this area is at the end of the Business district and would not negatively impact the Master Plan.

Mr. Kittner refers to Item #7 and asks Mr. Bailer to address this.

Mr. Bailer testifies in his opinion towards the positive criteria, the neighborhood is in the Residential area of the B4 area, residential character. It would be no detriment to the Master Plan or Zoning Ordinance...there would be a reduction in parking, there would be no impediment to pedestrian flow...it would show aesthetic improvement...there is no negative detriment...there is no parking requirement or any other negative issues that would negatively affect this conversion from Commercial to Residential...

Mr. Kittner continues with his questioning regarding signage on the first floor and asks if they comply with the Ordinance.

Mr. Bailer testifies yes they do.

Mr. Kittner questions Mr. Bailer in reference to the Landscaping and asks in his opinion, does he feel the site is adequately screened.

Mr. Bailer testifies yes. The building has been there for over 10 years, there have been no complaints. There is enough of shrubbery...

Mr. Kittner discusses the applicant has two options. One is to build affordable housing units so they could physically build and deed restricts the property, satisfying the obligation for providing affordable housing ...

Mr. Kittner states the other option is to pay a fee...explains...under some circumstances, you can interpret it as 1 ½%....being the fact this is a Use variance application and currently residential uses are not permitted on the ground floor, one could argue, you are increasing the density of residential in the zone, and if this happens, under regulations, it's a D-5 variance, then regulations would require a 6% fee....

Mr. Kittner continues...they have talked with the Board Attorney and also the Borough's COAH Planner and they still have some discrepancies on how to evaluate it, so in terms of their recommendations and in determining what the fee might be, they would defer this issue specifically to the Tax Access or & to the COAH Planner and any Council the Applicant can acquire.

Discussion continues in regards to fees....how they are based...

Mr. Kittner continues to explain how fees are determined based on improvements, etc..

Mr. Rosenberg discusses the issue with the Chairman and in his opinion, he feels before the Board acts on this application, he feels it is important the Applicant know exactly what they are talking about in terms of a calculation...only the Tax Access or COAH

Planner can come up with a number. It is not fair for the Applicant to agree with something without really knowing what the monetary impact of this will be.

Discussion continues....

Mr. Kittner again reiterates there is a COAH obligation the Applicant needs to satisfy...

Mr. Newman (Chairman) notes; it sounds like there are too many outstanding issues to proceed this evening....

Discussion...

Mr. Rosenberg also mentions in discussion, the Board is not in the position to vote on the application and Mr. Spector (Applicant's Attorney) agrees with this. It would not be right to vote on an application with a condition where the applicant does not know exactly what it is they are agreeing to.

Discussion continues....

Mr. Spector understands and agrees to come back when all the information is given, etc...

Mr. Rosenberg reminds Mr. Spector that some of the members of the Board articulated they would like to see some changes to the Architectural plan as well, so now he will have the opportunity to make these changes before the next hearing as well.

Mr. Spector so notes this...

Mr. Rosenberg defers to the Chairman (Mr. Newman) and states he still is in the position to hear the rest of the application and comments...

Mr. Berge Tomabalakian (Traffic Engineer) questions the applicant on the assigned parking for the new units located on the site...will they be adding additional spaces to the location?

Mr. Patel discusses this with Mr. Bailer, who explains there would be numerous spaces available...explains...

Mr. Rosenberg notes for the record, Mr. Bailer, you are referring to Site Plan Schedule & notes that were prepared for the Site Plan by Piazza Engineering, dated 9/23/13?

Mr. Bailer testifies yes...it is part of the application...

Mr. Bailer testifies there is more than sufficient parking available....

Discussion continues on parking...

Mr. Azzolina (Board Engineer) has no specific questions for this Applicant, but notes as part of his report dated November 22, 2013, he had several concerns with the parking, the way it was originally presented and the way it apparently is assigned by the owner.

Mr. Azzolina explains there are notices posted on the property, signage that is in conflict with one another. He has set forth these conflicts in his reports. He does not know if any of the witnesses are prepared to address these certain conflicts...maybe they would be more prepared at the next meeting.

Mr. Spector (Applicant's Attorney) so notes this issue and will be addressing this at the next meeting.

Mr. Newman asks if there are any other questions from the Board...

Mr. Newman asks Mr. Spink (Applicant's Architect) for a summation of what may have been discussed with his client in regards to change to the building's aesthetics.

Mr. Spink explains...discusses what they could do in order to present the Building in a much more unified way.

Mr. Newman states it looks like a nice plan and looks forward to seeing it on the new plans.

Mr. Newman opens to Residents living within 200ft. of the Applicant for any questions or comments.

Mr. Newman swears in: Ray Sarestha
16-37 River Road
Fair Lawn, N.J.

Mr. Sarestha explains he lives on River Road. This is a Commercial area, but everyday 18,000 cars run here on River Road and there is a 40mph speed limit but the cars run 50-60mph...nobody cares about this...he has spoken many times about this issue. There are many accidents and it happens a lot. Where this building is right now, it is on a corner so people hardly can see this place. It is very difficult to run a business in that location.

Mr. Sarestha notes he has seen 14 months of these stores being vacant and it is not good personally for this Landlord, for the neighbors and for the Town and also does not look good vacant. He feels something is better than nothing. It would be better for everybody.

Mr. Newman thanks him for his input.

Mr. Newman asks if there are any other Residents within 200ft. of the applicant with questions or comments. Seeing none,

Mr. Newman closes this portion.

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

Mr. Newman swears in: Robert Landzettel
President of the River Road Improvement Corp.
65 Cummings Court
Mahwah, N.J.

Mr. Landzettel begins by remembering when this application came up over 10 years ago and it was a difficult one. It did come along and the building was developed. The existing structure was approved and a mixed use building consistent with the River Road Master Plan in the B-4 Zone...explains.

It would help improve the District by creating additional Residential usage together with Business use to create a better Downtown atmosphere.

As part of the Master Plan which was adopted by the Borough, it also provided for a 3rd floor which had not been in the zone before and part of this was to provide an incentive to Developers to redevelop the District that had many older residential houses that were converted to businesses along River Road...

Mr. Landzettel continues...he has seen over the years the changes & a lot of improvements. He feels the mixed use/master plan concept regarding retail or business only on the first floor should be maintained...explains...

He feels that other owners may use this as a precedent in the process of developing other properties on River Road...

Mr. Landzettel would like them to consider this in their deliberations...they understand that renting small spaces can be difficult but the subject property could still be viable as currently designed...

Testimony continues...

Mr. Landzettel completes his testimony.

Mr. Sacchinelli (Board Member) questions if there are members of the Board from Fair Lawn on his Board.

Mr. Landzettel testifies no, there is not but they are business owners and it is open to the Public and persons who are qualified in Planning, Zoning, etc...there are openings...

Mr. Sacchinelli asks when these openings are advertized.

Mr. Landzettel testifies they are advertized on the Borough Website but there are open meetings, 6-7 times a year....explains...

Discussion continues...

Mr. Landzettel clarifies with questioning; there is a Website for River Road that is connected through the Borough Website which lists the available properties on River Road. They are working to expand it to make it more accessible.

Discussion continues...

Mr. Sacchinelli questions Mr. Landzettel on how business owners could get in touch with the Fair Lawn River Road Improvement. How would you be able to help them because there are a lot of vacancies on River Road? How could you help them rent?

Mr. Landzettel testifies he is in Fair Lawn practically every day at the business, Landzettel & Sons Paint Manufacture. Come and see him, the door is open.

Mr. Lowenstein (Board Member) asks Mr. Landzettel if there is a conclusion as to whether this application should be approved or not.

Mr. Landzettel testifies he sat on this Board back in the 60's and was Chairman for about 4 of those years, so he has heard a lot of cases. The merit of the case has to be decided by this Board and he is speaking from the River Road point of view and the Planning point of view, they would prefer business to remain on the 1st floor...

Mr. Landzettel understands the applicant is planning for the larger space to remain business and to convert the two smaller spaces to Residential, but feels they would like to remain consistent for the purpose of the Ordinance and the purpose is to bring in more business in the downtown area.

Mr. Newman (Chairman) just has a few comments. Notes Mr. Landzettel was once a resident of Fair Lawn and a lot like him, other business owners on River Road may not longer live in the Borough but grew up here and purchased property on River Road and now maintain the property and still a part of the Community.

Mr. Newman also notes Mr. Landzettel has been a Pillar of this Community for a very long time (Lazar Paints) and has supported kids programs and sponsored all kinds of things over the years in addition to the work on the RRIC. He does not want anyone to get the impression the Improvement Corporation is just a bunch of Out of Town Business Owners with no roots or interest in Fair Lawn, it is quite the contrary.

Mr. Landzettel mentions some of the Business Owners-Doug Kuiken-100 yrs in Business
Noorigian-Noorigian Tires
Todd Maiken
Charlie Roogal

Owners who no longer live in Fair Lawn, but they get together and try to move things forward...

Mr. Spector (Applicants Attorney) speaks to a meeting they had with him (Mr. Landzettel) and present members, the RRIC exchanged ideas with them and had a meaningful conversation and thanks him for spending their time in doing so.

Discussion continues...

Mr. Newman thanks Mr. Landzettel for his comments and his efforts.

Mr. Newman sees no other question or comments from the General Public so he closes this portion.

Mr. Newman asks what date for the next meeting in order to carry this application.

Ms. Peck (Assistant Zoning Officer) states December 16, 2013. It is early this time.

Mr. Newman asks the Applicant if this is enough of time for them to do what needs to be done.

Discussion...

Mr. Spink (Applicant's Architect) discusses another change to the plan with the Board.

Color Rendering is discussed and Mr. Spink testifies he could bring a color rendering for the Board's review.

Mr. Newman so notes this would be appreciated.

Mr. Newman announces there will be no further Public Notice on this application.

Application is carried to December 16, 2013.

Mr. Newman opens for Public Comment. Seeing none,
Mr. Newman closes this portion.

Mr. Newman opens order of Business:

Mr. Newman regretfully announces the Resignation of Mr. Lancaster (Alternate) and notes he has been an asset to the Board.

Mr. Lancaster thanks the Board and has enjoyed his time working with the Board Members.

Mr. Newman wants to congratulate Mr. Dunay (not present) on his election to Council and regretfully notes he will be leaving the Board as well. He feels it's a great thing for everyone.

Resolutions:

1. Application #2013-018, Nickolas & Sarah Twawinski, 3-33 Lyncrest Avenue, Block 4315, Lot 33-36, Zone R-1-3–2nd Driveway- Approved.

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

VOTE: All Present: AYE 1-Nay

2. Application #2013-25, Ralph Groth, 0-80 Elden Placet, Block 2219, Lot 14, Zone R-1-3– Above Ground Pool- Approved.

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

VOTE: All Present: AYE

3. Application #2013-029, Nicolas & Michele DiGenio, 39-38 Sycamore Drive, Block 1110, Lot 21, Zone R-1-3– Patio- Approved.

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

VOTE: All Present: AYE

4. Application #2006-038, Zap Lube, 37-04 and 37-14 Broadway, Block 2201, Lot 2 & 3, – Site Plan Amendment- Approved.

Mr. Sina made a motion to accept this resolution and Mr. Sacchinelli seconded the motion.

VOTE: All Present: AYE

Vouchers:

1. Winnie Banta Hetherington Basralian & Kahn in the amount of \$866.66 for the month of November, 2013 meeting.
2. Winnie Banta Hetherington Basralian & Kahn in the amount of \$675.00 for the Zap Lube Application.

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

VOTE: All Present: AYE

Discussion amongst Board Members & Assistant Zoning Officer, Ms. Peck regarding Mr. Lowenstein's question earlier in reference to the opening of properties and the access to properties of Applicants.

Adjourn

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

TIME: 10:00 P.M.

VOTE: All Present - AYE.

Respectfully submitted,

Cathy Bozza
Zoning Board Clerk