

**BOROUGH OF FAIR LAWN
ZONING BOARD OF ADJUSTMENT
SPECIAL MEETING
OF FEBRUARY 26, 2015**

Following are the Fair Lawn Zoning Board of Adjustment's Special Meeting Minutes from the Zoning Board Special meeting held on February 26, 2015

Chairman Todd Newman called the Special 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. Seibel, Mr. Racenstein, Mr. Naveh, Mr. Zharnest
& Mr. Newman

Absent: Mr. Blecher, Mr. Sacchinelli, Ms. Perchuk, Mr. Lowenstein,
Mr. Puzio & Mr. Pohlman

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

Board Professionals in Attendance: Board Engineer: Paul Azzolina,
Board Traffic Engineer: Mark Kataryniak
Board Planner: Chas Holloway

Pledge of Allegiance is cited.

Commercial New Business:

1. Application#2014-10, Barrister Land Development Corp.,
41-25 and 41-29 Dunkerhook Road, Fair Lawn, NJ
Block 1702, Lots 5 & 6
D-1 use variance as a Health Care Facility is not a permitted use in the R-12 Single family zone.
D-6 height Variance as 30' is permitted and 38' is proposed.
D-6 Density as per Section 125-57.d.(1)(d)
Major site plan required as per Section 125-65.A
Impervious coverage of 52.2% where 35% is permitted
Three story facility where only 2 ½ stories are permitted as per Section 125-12 Schedule of area yard and building requirements. Sign variance as per Section 125-41 & Any other variances and/or waivers that may be required for this application.

Mr. Newman defers to Applicant's Attorney, and states tonight they will open for Public Comment regarding this application and asks Mr. Huntington before opening this portion this evening, is there anything he would like to add, or any other witnesses?

Mr. Huntington (inaudible) microphone issues....heavy static.

Mr. Newman opens to the General Public and notes now is the time to express their sentiments regarding this application and today the public is allowed to make any comment they wish. General Rules are stated.

Mr. Newman swears in Board Professionals in case anyone has a question:

Paul Azzolina, Board Engineer
Chaz Holloway, Board Planner
Mark Kataryniak, Board Traffic Engineer

Mr. Newman swears in: Robert Milanese (Applicant, Barrister Land Development)

Public Comment: (Residents within 200ft. of the Applicant.)

Mr. J. Morgenstern
42-00 Fox Court
Fair Lawn, N.J.

Mr. Morgenstern is against application. Feels an Assisted Living Facility is not the best type of development for this property. Explains how it is being squeezed onto less than 3 acres and in his opinion the property is too small for an Assisted Living and it's parking requirements. Speaks to the River and the historic Naugle house.... He explains how he has done a lot of personal research which contradicts the testimony given...explains... Concerns with the loss of the Vander Platt House, etc., reiterates it is not appropriate for the location.

Ms. Brenda Kaplan
15-27 Landzettel Way
Fair Lawn, N.J.

Ms. Kaplan is against application. Also has done personal research and a lot of the information contradicts the testimony given...

Mr. Huntington (Applicant's Attorney) objects to hearsay. It is not proper for the witness to testify to what someone else has told her.

Objection noted but Mr. Rosenberg (Board Attorney) does tell Mr. Huntington, the strict rules do not apply to the Zoning Board hearings, there is latitude. Objection is noted...

Ms. Kaplan continues with the information she obtained from another facility regarding visitors and events. Speaks heavily of the traffic impact and the visual impact, etc...she urges the Zoning Board to reject this extremely flawed plan.

Mr. Simon Fridman
15-08 Landzettel Way
Fair Lawn, N.J.

Mr. Fridman is against application. He is a Professional Engineer. Speaks to concerns with design, exit & entrances flaws in case of Emergency evacuation. Refuse trucks weighing 82,000pds with heavy vibration affecting the Naugle House. Maintenance issues will arise in a few years and runoff issues will follow. He sees no compelling reasons whatsoever to grant an approval.

Mr. Paul Wittenberg
15-09 Saddle River Road
Fair Lawn, N.J.

Mr. Wittenberg is against application. His concern is not the Vander beck house, it would be nice to save it, but whoever owns the property can do what they want with it. His main concern is twofold. They need to be concerned with the negative impact. Explains....

Mr. Newman (Chairman) would like to clarify for the record. When a variance is granted, it is not changing the zoning of the parcel. It is variance relief granted based on the legal proofs.

Mr. Wittenberg continues with his concerns. Speaks to Master Plan, height variance, Aging population, etc...concerned with commercializing this part of town.

Ms. Shelley Wittenberg
15-09 Saddle River Road
Fair Lawn, N.J.

Ms. Wittenberg is against application. She is a Home Care Physical Therapist. She is familiar with these types of facilities throughout Bergen County....speaks to residents injuring themselves onsite and the rehabilitation process who may need special care. According to testimony, this patient would no longer be appropriate for going back to the facility. Speaks to bed shortages, etc...

Mr. Seymour Wigod
15-26 Landzettel Way
Fair Lawn, N.J.

Mr. Wigod is against application. Thanks the Board for the countless hours they have put into this application. They have a great burden on their shoulders...concerns with the lack of follow up & information on Ambulances...are the resource's going to be sufficient? Do we know the impact? The Board just keeps going from one meeting to another...

Discussion.....

Concerns with Sewer Lines and Flood Plain. Notice was sent to residents telling them to go to the Bergen County Government Office in Hackensack to take a look at the new Flood Plain Maps to see the impact on their homes. Yet, a new development on the River, the burden rests on our Engineers, rather than the Applicant?

No further comments from Residents within 200ft.
Mr. Newman closes this portion and asks for a Recess.

RECESS: 5 Minutes

Mr. Newman calls the meeting back to Order.

ROLL CALL: Mr. Seibel, Mr. Racenstein, Mr. Naveh, Mr. Zharnest & Mr. Newman.

Mr. Newman allows Residents who came late who live within 200ft. to speak before opening to the General Public.

Mr. Gary Stern
15-16 Landzettel Way
Fair Lawn, N.J.

Mr. Stern is against application. He reiterates what Mr. Wigod & other neighbors have stated. He & his wife have lived in this area for a while and thinks it would be a big mistake to allow this type of facility in this location. Speaks to concerns the Builder will build this and flip it to another operator....the Board should make a condition if they decide to approve this application that a qualified reputable buyer would be running this facility.

Mr. Rosenberg (Board Attorney) explains this would be illegal to do.

Mr. Stern has no further comments.

Mr. Raya Moskovich
15-00 Landzettel Way
Fair Lawn, N.J.

Ms. Moskovich is against application. She would be the 1st neighbor to this facility and in her opinion this is one of the most beautiful & quiet areas in Fair Lawn, this is why she bought there 26yrs ago. She sees no reason to put a monster building and change the feel of the Community. Families live here, children run around, almost no cars except for residents. All her windows and doors are facing the Park and if they build this, she will see an ugly wall and no Sun or Trees.

*Ms. Maina Fridman
15-08 Landzettel Way
Fair Lawn, N.J.*

Ms. Fridman is against application. Speaks to costs and the average income in Fair Lawn. Twenty years ago it was \$45,000 and it hasn't changed much, it may be a little worst now. People don't have the money to go to a living facility like this. Costs are \$5,000 a month? She does not feel many families in Fair Lawn could afford this. Beneficial to Fair Lawn? No. Visual as mentioned, an ugly fence instead of the greenery, cars & trucks, traffic only devalue the area.

Mr. Newman asks if there are any other Residents within 200ft. seeing none,
Mr. Newman closes this portion

General Public:

*Ms. Leh Wittenberg
18-14 Chandler Drive
Fair Lawn, N.J.*

Ms. Wittenberg is against the application. Begins with the Traffic issues, heard the testimony of the Applicant's Traffic Engineer. He does not live in Fair Lawn, does not know this intersection. This intersection is a nightmare daily. Testimony at the last meeting from the Planner was; if a resident required a certain amount of care, Oxygen, visiting nurses, etc. they do not belong in this type of facility. Refers to Memory Care testimony.....Assisted living was independent, Memory care was care where an individual's family can pay privately for an Aide. This adds more parking, etc....a lot more activity then they are making it out to be...

*Ms. Felice Koplik
6 Reading Terrace
Fair Lawn, N.J.*

Ms. Koplik is against the application. She is speaking tonight as a resident of Fair Lawn, not as a member of the Historic Preservation Commission. She refers to the detriments of the proposed plan to the preservation of the Historic Vander beck house, detriment to the integrity of the Borough owned Historic Naugle House and its site and detriments of the proposed plan to the Zoning Ordinance and Fair Lawn Master Plan. Gives the history of the historical sites and speaks of the proposed relocation of only half of the Vander beck house which would mean the loss of the State & National Historical registrar designations, etc...The Naugle House would suffer potentially irreversible detriments, both historic and financial due to this plan...explains. Speaks to the overwhelming height of this facility, etc...Refers to the Master Plan and the Zoning Ordinance...preservation and historic districts, maintaining existing characters of residential neighborhoods, etc., and any development at this site should be designed in a compatible manner with the existing residential zone.

Board Members review Master Plan, pg. 82....

Discussions...

Mr. Steve Tichenor
368 Saddle River Road
Saddle Brook, N.J.

Mr. Tichenor is against application. Mr. Tichenor is a neighbor to the far South who lives on the Saddle River. He is constantly impacted on issues along the Saddle River and told development along the Saddle River is not a problem. He has lived in the 100 year Flood zone and has had (4) four floods already. He works in a Public Municipal occupation and has had the opportunity to take the Manhole covers off the Storm Retention systems which constantly become impacted with material and debris...explains. The River goes up fast and floods extreme, he has had up to 8ft. of water in his basement so he does not depend on what people say as far as Retention Systems. Speaks to the bearing of the infrastructure of Sewer systems along some of the Townships which are also impacted by run-off water that mixes into the sewer systems which put a strain on the sewer pumps, etc...he has real concerns regarding the Flooding aspect. Speaks also to concerns with children riding bicycles and the width of the road with trucks....

Mr. Howard Mark
12-23 Ferry Heights
Fair Lawn, N.J.

Mr. Mark is against application. He is also concerned with flooding and refers to a photograph he presented a few months ago to the Board. The picture was of a flood that happened on April, 2007. The pictures were of the Naugle House and down river by Rome Street, it showed the flood that took place. Also, on the internet, April 2007 flooding on Saddle River, it was one of the top 10 that took place. Speaks to the runoff of the building...has concerns.

Mr. Robert Moss (present on behalf of the Siera Club)
17 New Street
Bloomfield, N.J.

Mr. Moss is against application. Refers to the June 26th meeting, the question asked of the applicant's Engineer, regarding the retaining wall on the north/eastern side of the property. He described it as rip raft in the bank, not a retaining wall. He himself went back and took a picture and it is indeed a retaining wall and has a picture he would like to pass to the Board.

Marked into evidence as: Objector's Exhibit- O-1
(Copy also given to Mr. Huntington, Applicant's Attorney)

Discussion on Exhibit.....

Mr. Moss speaks to the retaining wall and his concerns with the proximity of the driveway with this wall. The amount of traffic, etc...speaks to the testimony of this facility being inherently beneficial testimony...would this proposed facility really be beneficial? Refers to the letter from

one of the Board's Professionals, Peter Van Den Kooy which states; the granting of the variance must show one or more of the purposes of the Municipal Land Use Law...

Testimony continues....

Discussion on representation of the Sierra Club & photos...

Mr. Huntington (Applicant's Attorney) cross examines Mr. Moss on the retaining wall.

Mr Eric Bal
16-35 46th Street
North Bergen, N.J.

Mr. Bal is an Attorney representing the N. J. Society of the Sons of the American Revolution and the 1st Mountain Chapter of this Society which covers Bergen County and Ann Goldberg who is a resident in the affected zone. Speaks to a Resolution that was handed out on October 21, 2014 to the Zoning Officer of the N.J. Society of the Sons of the American Revolution. Tonight he hands copies of the resolution to Board Members and Mr. Huntington, (Applicant's Attorney)

Marked as Objector Exhibit-O2

Mr. Bal also would like e-mail from Ms. Peck (Assistant Zoning Officer) entered into evidence.

Marked as Objector Exhibit-03

Mr. Huntington enters an objection. Just as this Board would not accept a partition listing many people, this resolution could be characterized as a partition because of the number of members and should not be admitted.

Clarification from Mr. Bal stating it is admitted solely for the purpose of showing what the Board of Managers resolved at the meeting of October 21st, in Princeton. Not as to the General membership which was never polled...

Discussion....

Mr. Bal hands out a Legal Memo to Board Members and Mr. Huntington (Applicant's Attorney)

Marked as Objector Exhibit -04

Lastly, Mr. Bal would like to hand out the Zoning Map. Mr. Newman (Chairman) states it does not have to be entered.

Mr. Rosenberg (Board Attorney) notes the Zoning Code and Zoning Map is part of the record in the proceeding...

Mr. Bal reads into the record the Resolution of the N.J. Society of the Sons of the American Revolution...speaks to the objection to this proposed development...

Refers to Court opinion, Committee of Ripple for alternative vs. Linden, Appellate division case from 1987 which was affirmed by the N.J. Supreme Court stating; it has been long established that variances to allow new non-conforming uses should be granted sparingly and with great caution as they tend to impair sound zoning....

Speaks to the Municipal Land Use Law...balancing test, etc., the intent and purpose of Fair Lawn's Master Plan...to preserve and enhance Historic places, buildings and districts and to promote the Borough's Cultural resources through preservation...expressly lists the Vander beek house as an historically significant site. Citing its presence on the registrar of Historic places and on the State registrar of historic places...photo in the Master plan of the Vander beek house.

Mr. Bal continues...reviews the Developer's proposed plan and speaks to the negative criteria. Severely impair the intent of the Master Plan...explains. Speaks to the Zoning Ordinance. If a variance is granted, it would constitute an extreme alteration of the scale and streetscape of the R-1-2 Zone dramatically altering the nature of the zone, etc... for all these reasons the Developer's request must be denied...

Mr. Bal refers to the E-mail Exhibit (0-3) asks the reason behind different procedures for different position letters being submitted...

Mr. Newman (Chairman) before deferring to Counsel, states; let the record show Mr. Racenstein is leaving the dais and will need to listen to the CD to hear the entirety of Mr. Bal's testimony.

Discussion....

Mr. Bal discusses the memo from Mr. Rosenberg provided to all Board Members.

Discussion continues...Resolution is discussed.
No further testimony.

Ms. Carol Marcus
42-04 Cosgrove Court
Fair Lawn, N.J.

Ms. Marcus is against the application. Speaks to the size of building, her house is along the Saddle River less than a 1/4 of a mile upstream from the property. This development is being dropped in a residential neighborhood only feet from backyards and this project will ruin the character of this Dunkerhook neighborhood and bring down property values...the attraction in this area is the park & serenity and the expansive wooded area. Her neighbors have already addressed a lot of her concerns, the only thing she would add is the dangerous intersection of Saddle River Road and Century... There are many accidents & heavy traffic backup. Speaks to the Park where she feels both cars and pedestrians are at risk, heavy concerns with flooding...she has experienced the flooding. Speaks to the forestry...natural wilderness that does not exist in

any other part of this town. Asks support from the Board to support the neighbors and keep this development from being built.

Ms. Pamela Coles
13-34 George Street
Fair Lawn, N.J.

Ms. Coles is against the application. Ms. Coles notes over the past year, they have heard issues, views, concepts, facts, presentations, ideas and concepts. This presentation is merely a concept and is different from reality. The drainage that was presented does not work. She has lived at her current address over 20 years, when this building was built in 2010 she had no flooding problems, currently as early as last month, the ground froze and the rain came down, her entire basement was flooded...

Mr. Newman (Chairman) asks Ms. Coles to reference the building she is speaking of for clarification...

Ms. Cole states the building is on River Road. She does not have the address but the building is approximately 75ft. long and 40ft. wide....and was built with Planning Board approval, not zoning, 17 variances were past.

Speaks to the issues of flooding she now has. Never had issues prior to this being built. A lot of impervious coverage...this is why she states this is a concept with many hypothetical realities of which the residents and the Naugle house, which is downhill from this development will not know the impact until reality hits. Concept & reality are two different worlds. Speaks to the issues of parking, density, etc...she also cares about the historical home and what happens to it. She has not heard one person come up in favor of this plan. She asks they hear; "We the people".

Mr. Claude Bienstlck
39-11B Broadway
Fair Lawn, N.J.

Mr. Bienstlck is against the application. References a letter he wrote to the Editor in the newspaper but they did not publish. Reads from his letter...support of the Historical Homes in Fair Lawn...speaks to the history of Historical homes, not in favor of this development. Traffic issues and potential flooding to historic sites. Parking issues, loss of trees, etc...he is not opposed to progress and development but this location is not the right location for this facility. He supports open space, preservation of the environment and historic sites. Speaks to the hard work of the Historical preservation committee...

Mr. Newman, because of the late hour takes a count on how many people would still like to come up?

Discussion with Mr. Huntington (Applicant's Attorney) because of the large amount of residents still wanting to be heard, would he object to continuing Public comment at the next meeting?

Discussion continues....

Mr. Newman would like to clarify statements made by the Public referencing the Board as representatives of them, (the Residents). Unfortunately, they do not, they are not elected representatives of this Town. They are volunteers, who have a very specific task that is very clearly delineated in the Municipal Land Use Law...

Mr. Rosenberg (Board Attorney) explains in detail the function of the Board.

Mr. Roger Berger
38-39 Fair Lawn Ave,
Fair Lawn, N.J.

Mr. Berger is against the application. Speaks to the testimony of the Applicant's Planner regarding the Vander beck property, adjacent lands and properties. He questions and doubts the reassuring statements made by him. Property rights are vital but so are zoning laws. Speaks of the Historical properties, open space and keeping the character of the neighborhood. Allowing for a large magnitude building as a replacement for an historical one will result in the entire community being less desirable to live in...keep it unique. Speaks to the history of such historical sites. There is no reason why this development must be done on the foundation of our town's history as well as an ugly contrast to the surrounding lands...points out all concerns regarding traffic, gas lines, sewage, etc....

Ms. Maureen Moriarty
14 Burham Place
Fair Lawn, N.J.

Ms. Moriarty is against the application. Thanks the Board for all the long meetings and long nights they put in. She was on the Open Space Committee as well as the Historic Preservation Committee in 2008 and references a situation with the Naugle house that was exactly like this and they also had a very strong Public turnout, the variance was denied. She thinks a win-win situation would be to build residential. She believes in Opens space and the Vander beck property is one of our highest priorities for Open space, as well as the Naugle house...it is not beyond their reach to buy the property....

Mr. Walter Tuers
17 Richmond Avenue
Ridgewood, N.J.

Mr. Tuers is 100% interested in the Vander beck home because he is a direct ascendant of Jacob Vander beck. He begins to talk of the history, beginning with the more recent and working back through the Generations....Speaks to the Naugle House, the Gun from the Revolutionary War, etc.... The statements that George Washington did stop by this house and was supplied by Jacob Vander beck are true. He refers to previous testimony of Mr. Milanese (Applicant) who stated he would be willing to look for any remains on the property being the Dutch tradition was to bury their loved ones on the Land. He feels quite sure there are family members on the property so he

would like to see a proper search done before any development is built...although the home will lose its historic significance because of the move, it means a lot to him his Grandfather laid the stones for the home's foundation and would like it preserved as much as possible.

Mr. Newman (Chairman) clarifies with Mr. Huntington (Applicant's Attorney) this was discussed and agreed to by the Applicant. Mr. Huntington concurs it was one of the conditions..

Ms. Cristin Panos
8-23 Palmer Avenue
Maywood, N.J.

Ms. Panos would like to say how important Open Space is because it is diminishing but the incentive and value of keeping Open space should be growing in the Board's eyes. The value of this property will suffer irreparable damage. The buffer riparian zone of the Vander beck property retains ground water...speaks to her Grandfather's house, who's house has been gutted because of the damage from the flooding of the Saddle River during Hurricane Sandy & Irene... There will be more channelization of this River and it would streamline the water down to the immediate neighbors....

Mr. Newman defers to Mr. Huntington to discuss carrying the application to the regular meeting of March 23, 2015 and if there is time, they can hear the rest of the Public & vote and if not, set a Special Meeting date.

Mr. Huntington concurs and grants the Board an extension of time.

APPLICATION CARRIED TO THE REGULAR MEETING DATE OF MARCH 23, 2015. No further notice needed.

Voucher:

1. Winnie Banta Hetherington Basralian & Kahnin the amount of \$816.66 for the meeting of February 23, 2015 for Legal services rendered for the Zoning Board of Adjustments.

Mr. Seibel makes a motion to approve this payment and Mr. Naveh seconds the motion.

All Present: AYE

Mr. Benjamin Lang, 42-00 Cosgrove Court, Fair Lawn, N.J. questions the Chairman on the number of Board Members who were not in attendance tonight. He has concerns with them voting when they did not hear the Public comments this evening.

Mr. Rosenberg (Board Attorney) explains to Mr. Lang the procedure of the Municipal Land Use Law. The Board Member not in attendance must certify they have listened to the disk of the proceeding of this hearing. Anyone who acts on this application will have the responsibility and duty to listen and must certify in a sworn document the disk has be heard.

ADJOURN:

Mr. Racenstein makes a motion to adjourn the meeting and Mr. Seibel seconds the motion.

All Present: **AYE**

Respectfully Submitted,

Cathy F. Bozza
Zoning Assistant