

**BOROUGH OF FAIR LAWN
ZONING BOARD OF ADJUSTMENT
SPECIAL MEETING
OF MARCH 12, 2015**

Following are the Fair Lawn Zoning Board of Adjustment's Special Meeting Minutes from the Zoning Board Special meeting held on March 12, 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. Blecher, Ms. Perchuk, Mr. Lowenstein, Mr. Puzio,
Mr.Naveh & Mr. Newman.

Absent: Mr.Sacchinelli, Mr. Racenstein, Mr. Pohlman & Mr. Zharnest.

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

Board Professionals in Attendance: Board Engineer: Paul Azzolina,
BoardTraffic Engineer: Mark Kataryniak
Board Planner: Paul John Kittner

Commercial Business Carried:

1. Application #2014-15, Varvara Property LLC/Oceanos Oyster Bar and Sea Grill
2-27 Saddle River Road, Block 1301, Lot, 13-15, Zone R-1-2
Proposed expansion to create additional Dining room seating. Will create a Dining room on first floor and move all offices to second floor at existing structure located on site currently being used for offices. Will create additional Dining area on first floor of existing storage structure and move storage to second floor. Will remove an existing structure in rear of the property and create additional parking. Restaurant is not a permitted use in the R-1-2 zone which requires a D-2 variance for expansion as per Section 125-57.D.(1)(d)[1]. Would increase the impervious coverage from 86.1% to 87.5% where 35% is permitted as per Section 125-12 Schedule of area yard and building requirements. Required 10' minimum rear and side yard buffer where less than 10' is existing and 1.0' is proposed as per Section 125-42.F. It requires an amendment to existing parking variance. Presently site had 64 parking spaces with expansion site will have 67 spaces where 115 spaces are required. All other variances and/or waivers that may be required for this application.

Pledge of Allegiance is cited.

Mr. Newman defers to Applicant's Counsel, Mr. Socrates Lambrinides who states this meeting is a continuation of the Oceanos Bar & Sea Grill Application and tonight he has before him, Mr. Kauker who is their Planner.

Mr. Lambrinides notes at the last meeting the Board asked for a Traffic Study to be done by Mr. Luglio (Applicant's Traffic Engineer) who has done so but is running a little late but he will be here to testify on this.

Mr. Lambrinides also states in his possession is a Fair Lawn Police Department Traffic Safety Report which was also requested. (Passes along to Board Chairman) for later review.

Mr. Newman swears in: Mr. Michael F. Kauker
356 Franklin Avenue
Wyckoff, N.J.

Mr. Newman certifies Mr. Kauker as an Expert in the Field of Planning with no objections from the Board.

Mr. Newman swears in Board Professionals: Paul Azzolina (Board Engineer)
Mark Kataryniak (Board Traffic Engineer)
Paul John Kittner (Board Planner)

Mr. Kauker begins his testimony. Has worked on this proposal in the infancy stages and he is very familiar with the nature and the expansion proposal, also the Master Plan and Zoning Plan. He references all the prior testimony regarding the Commercial history of the site in order to establish it would be a continuation of a prior non-conforming use....

References Mr. Van Den Kooy's report dated August 18, 2014....Item 6/variances: Required procedure and methodology regarding the necessity to place certain documented proofs before the Board in order to enable the consideration of this application.

Speaks to the D-2 variance, noting the Board must determine whether permitting an expansion would promote the purposes of the MLUL, the Master Plan, the State Development Plan and the Zoning Ordinance itself....

Speaks to the C variance regarding parking...

References other cases in Cox that have been recognized which are somewhat related to the expansion of non-conforming uses...explains.

Testimony regarding the positive criteria of this proposal...references Grundlehner versus Danglar; Special reasons which could be recognized with the application of an expansion of a non-conforming use...testimony regarding special reasons ...particularly suitable site; explains..

Speaks to the compatibility or support and consistency of the purposes of the MLUL. Explains...

In his opinion, certain improvements render this site safer, more appropriately accessible, esthetically pleasing, manageable, etc...

Testimony continues on positive criteria. All improvements are reviewed pertaining to the positive aspect of the application; the interior and exterior...valet parking, events, outdoor dining area, reduction of impervious coverage, height reduction, landscaping, shielding of the HVAC so as to not disturb neighbors with noise pollution and to reduce the amount of buildings to two...all of these meet the objectives of the D-2 burdens of proof.

Mr. Kauker moves to the number one area of concern is the impact of the added seating from 135 to 189, the availability of the parking and how it will be accommodated onsite. There are two aspects that contribute substantially to the sites ability to accommodate the addition. Explains.....

Speaks to the Master Plan amendment that was put in place sometime last year. (Distributes copies of the amendment to Board Members)

Exhibit A-9, Master Plan Amendment.

Mr. Kauker references “Substation I”. Reviews with the Board.

Mr. Kauker concludes his testimony by stating if this application is approved, it will be a renewed, revitalized facility the Borough of Fair Lawn can be proud of.

Mr. Kittner (Board Planner) references the letter from Mr. Van Den Kooy. One of the proofs for the variance would have to promote the purpose of not only the MLUL but also the Municipality Master Plan.....on pg. 34 of the Master Plan, it specifically mentions Oceanos....

Mr. Kittner questions if he could provide testimony and demonstrate how this project promotes the goals and objectives and recommendations of the Master Plan?

Mr. Kauker addresses the question...they are not asking for a Zone change, they are asking for a specific consideration of expansion...the nature of the application and all of its components parts are reflective of their awareness of the particular cautions mentioned in the Master Plan and have heeded to these cautions to the greatest extent possible.

Mr. Kittner continues with his questioning with Mr. Kauker addressing all.

Mr. Kauker makes a correction in his earlier testimony, he stated there was a reduction in impervious coverage. He meant building coverage. There would be an increase in the impervious coverage because of the parking and a reduction in the building coverage.

Bulk variances are discussed. Front yard, side yard, impervious coverage, etc...

Discussion on design waivers, buffers, etc. screening is also discussed....refuse area& fencing is questioned...

Mr. Kauker defers this question to Mr. Rigg (Applicant's Engineer) this is not his area of expertise.

Mr. Kittner has no further questions.

Mr. Newman (Chairman) asks Mr. Kittner (Board Planner) if he agrees with Mr. Kauker's testimony in regards to his analysis that it promotes the objectives & recommendations of the Master Plan.

Mr. Kittner believes yes and no. They are making it more of a Commercial use...does it blend in more with the neighborhood? As a residential permitted house, no, clearly not, however he thinks the improvements proposed will certainly beautify what exists today and will be an enhancement to the current operation.

Discussion.

Mr. Seibel (Board Member) questions prior testimony relating to parking requirements of other towns. Mr. Kauker addresses the question.

Mr. Kataryniak (Board Traffic Engineer) agrees 1 per 3 is the standard used in a lot of Towns.

Discussion continues...

Mr. Lowenstein (Board Member) clarifies building height.

Discussion regarding buffer and impervious coverage numbers. Square footage is calculated and given.

Mr. Newman opens to Residents living within 200ft. of the Applicant for questions of Mr. Kauker.

Mr. Newman swears in: Marina Paley
2-18 Saddle River Road
Fair Lawn, N.J.

Ms. Paley questions testimony regarding glare. She has a glare. All the parking lot looks directly into her windows and side streets are packed with cars who walk to the restaurant...

Mr. Kauker addresses her concerns regarding the glare of headlights. It will be mitigated by the additional landscaping.

Discussion on taller landscaping...sight distance issues. Applicant's agrees to working with Professionals on finding a solution as long as the sight distance is not affected.

Mr. Newman swears in: Kenneth Maat
40-14 Brookside Avenue
Fair Lawn, N.J.

Mr. Maat questions what the benefit to the residents is by making a non-conforming Commercial structure larger & obvious in a residential zone of single family homes

Mr. Kauker addresses the question by stating they are not making it more obvious.

Discussion continues... concerns are discussed.

Mr. Newman would like to clarify with the Applicant's Attorney, Mr. Lambrinides, whether it be a landscaping buffer, a brick wall... whatever the Professionals recommend as the most extreme way to mitigate any headlight glare shining on the neighbors across the street within the guidelines of safety be done.

Mr. Lambrinides has no issues with this. Whatever the Professionals decide would be in the best interest of the neighborhood and restaurant is fine.

Parking concerns are discussed...

Mr. Kauker reiterates 75% of the parking lot is filled at peak time.

Other concerns are discussed and addressed. Overflow parking on side streets is questioned and addressed.

Mr. Newman swears in: Bernice Katz
2-22 Saddle River Road
Fair Lawn, N.J.

Ms. Katz questions testimony regarding the restaurant stating it is never more than 75% at full capacity.

Mr. Kauker testifies 75% is an average. There are certainly times when it is more than this.

Ms. Katz notes to Mr. Kauker most of the time the parking lot is full. It's full more than 75% of the time.

Mr. Kauker defers this question and area of knowledge to Mr. Luglio (Traffic Engineer)

Discussion on concerns....

Mr. Newman (Chairman) would like to clarify to Ms. Katz and all the residents, the concerns regarding the glare. Explains if there is an approval by this Board, whatever conditions are set have to be met. This situation is going to be improved as much as it could possibly be improved.

Valet service is discussed...Mr. Kauker again defers questioning to Mr. Luglio for his expertise.

Ms. Katz speaks to the amended Master Plan is reviewed regarding the Parking requirement...

Mr. Newman & Ms. Katz have a detailed discussion regarding recommendations of the Master Plan & Ordinances...

Mr. Newman swears in: Bob Nowack
39-35 Brookside Ave
Fair Lawn, N.J.

Mr. Nowack questions Catering events. Does this not mean more customers coming at one time creating more traffic going into the facility?

Mr. Kauker explains the catering or small gatherings will be better accommodated as a result of the expansion for special purpose groups...they would be better served and separated from the general restaurant population...This proposal is not for large Catering groups. It will not become a Catering Facility.

Concerns regarding a full parking lot. Where do the cars go once the lot is full?

Mr. Kauker defers this question to the Traffic Expert, Mr. Luglio.

Mr. Newman (Chairman) explains what has been testified to regarding the parking lot reaching full capacity. Valet parking and stacking of cars....beyond this, as stated in previous meetings, what a private resident decides to do with their vehicle within the legal confines of the Borough is up to them and they do have a legal right to park on any street unless signed otherwise...he understands the concerns of the residents but there are no restrictions or conditions the Board can put on the operators to stop private residents from legally parking on side streets...

Discussion continues...Concerns of the parking on Brookside Ave with Soccer games, etc..

Mr. Newman explains this side street parking issue cannot be addressed here, there is nothing they (the Board) can do about this. Recommends going to the Borough Counsel if the residents of the area feels it needs to be addressed. It's up to the Counsel what can be done.

Kenneth Maat steps forward (previously sworn) references the testimony that the parking lot is 75% full on average...clarifies with Mr. Kauker there are 64 existing parking spaces. Using the # of 3people per car, it comes out to 192 people on average at a time and the seating now is 139...

Mr. Kauker defers this question to Mr. Luglio.

Discussion....

Mr. Newman asks if there are any questions from residents within 200ft. for the witness. Seeing none, Mr. Newman closes this portion.

Mr. Newman asks if there are any questions from Members of the General Public.

Mr. Newman swears in: Lesley Boghosian-Murphy
3 Sandow Court
Fair Lawn, N.J.

Ms. Murphy questions how the improvement will help promote the Public Health and Safety of the area.

Mr. Kauker addresses the question: Code compliant, modernized, etc...regarding safety: handicapped access, sidewalk improvement, parking lot design, etc.

Visual Design is discussed. Ms. Murphy has concerns and opinion that the restaurant will no longer look residential...

Mr. Kauker testifies the general scale and appearance of the structure that fronts Saddle River Road will essentially remain the same. Buffer will be made more architecturally compatible with the remaining core parting the restaurant.

Concerns with the Restaurant becoming a Catering Hall are discussed and addressed.

Mr. Newman (Chairman) interjects to state he will swear in the Applicant again to testify stating he will not convert this into a Catering hall. They are legally bound, if the variance is granted.

Mr. Rosenberg (Board Attorney) reiterates and addresses Ms. Murphy's concerns. Explains any conditions imposed are in the Resolution of any action taken by the Board and fully enforceable by the Police Power of the Borough. It cannot be a Catering hall.

Discussion...

Mr. Newman swears in: Nickolas Pantanleakos (Applicant, Owner of Oceanos)
2-39 Saddle River Road
Fair Lawn, N.J.

Mr. Pantanleakos addresses Ms. Murphy's concerns regarding future plans to convert restaurant and use as Catering Hall. The types of events are more geared towards small corporate functions...pharmaceutical, financial meetings, Wi-Fi presentation screenings...

Mr. Newman states to Ms. Murphy the testimony given is going to be made a condition of approval if there is an approval from the Board.

Discussion.

Mr. Newman states to Mr. Pantenleakos; he needs to define the size of the events he plans to host by number and this number needs to be memorialized in resolution if there is any approval by the Board. Mr. Pantenleakos agrees to this with no problem.

Discussion continues...enforcement issues are discussed.

Mr. Newman swears in: Ms. Peck (Assistant Zoning Officer) for clarification on Enforcement issues.

Ms. Peck states the conditions that are set by a resolution are enforced by the Zoning Department. If an approval should it go through and they are in violation, the department would investigate and issue summonses if required...

Discussion.

Mr. Lambrinides (Applicant's Attorney) notes the only restriction they could put is; if they exceed the seating capacity. His applicant cannot govern whether 50 or 100 people will be there.

Mr. Newman notes (the residents) are concerned this facility will be used regularly for very large events and feels the applicant could come up with a number in which they could memorialize to make the residents in this area comfortable.

Discussion...

Mr. Pantenleakos (Applicant) explains. The two rooms they are proposing are very small and the existing restaurant will still remain in the same footprint. It is not physically possible to have Weddings in there...

Discussion continues....

Ms. Murphy continues with her questioning...what makes it particularly suited to the neighborhood.

Mr. Kauker addresses the question.

Discussion....

Mr. Newman closes the portion to the General Public.

Recess: 5 minutes

Mr. Newman calls the meeting back to order.

Roll Call: Mr. Seibel, Mr. Blecher, Ms. Perchuk, Mr. Lowenstein, Mr. Puzio,
Mr. Naveh & Mr. Newman.

Mr. Lambrinides (Attorney for the Applicant calls his next witness.

Mr. Newman swears in: Mr. Louis Luglio (Traffic Engineer)
160 Hillcrest Avenue
Leon, N.J.

Mr. Newman states he has already been accepted as an Expert Witness and to please proceed.

Mr. Luglio reviews the report he prepared and submitted to the Board Traffic Engineer and he would like to document the traffic counts they prepared.

Mr. Rosenberg (Board Attorney) would like the Report dated March 2, 2015 marked into evidence.

Exhibit A-10-Report submitted by Mr. Luglio.

Mr. Luglio begins his testimony regarding the study requested; average speed of vehicles along Saddle River Road. Sight distance traveling from Rt. 4 onto SRR, traffic volumes along SRR at the site and the lastly, the intersection analysis for the driveway and SRR...

Mr. Luglio details of each new study and result. No issues with vehicles turning into or out of the site...speaks to volume of traffic, valet operation.

Mr. Luglio speaks to page 3-introduces Board Exhibit.

Exhibit A-11-Board Exhibit of Valet parking and circulation diagram.

Before proceeding, Mr. Newman asks Mr. Luglio if he can speak to Headlight glare as it relates to Valet parking.

Discussion and Testimony.

Mr. Luglio continues with his testimony regarding the operation of Valet circulation, Fire Truck circulation and the number of parking that cars could be positioned onsite is now up to 90. beyond the 67 striped spaces.

Mr. Luglio moves to Pg. 4. The number of new vehicles trips that would be generated with proposal. A difference of 14 vehicles during peak hours....details specifications...

Moves through Pg. 5-Speed and Delay Studies. An average 35mph miles in the northbound direction in the vicinity or in front of the site and 38mph in the southbound direction..

Site Distance is reviewed from NJ 4 onto Saddle River Road. Mr. Luglio introduces another Exhibit to the Board.

Exhibit A-12, Site Distance. Enlarged version of the Graphic on Pg. 5 of A-10.

Mr. Luglio reviews with the Board...360ft. is required for vehicles on SRR to have ability to stop at a certain point at the speed they are traveling...they exceed the 360ft. for the vehicle to stop in advance of the driveway similarly coming southbound on SRR...there is enough stopping distance...

Testimony continues....speaks to Accident Report from P.O. Timothy Franco.

Exhibit A-13, Report submitted from Officer T. Franco (Traffic Supervisor) F.L.P.D.

Mr. Luglio testifies no accidents related to operations of the Restaurant or driveway...explains.

Reviews Pg. 6-Traffic Volumes.

Testimony continues....

Mr. Luglio summarizes his report and states the site would continue to operate in a safe and efficient manner.

Discussion between Mr. Newman and Mr. Luglio regarding the Valet operations...headlight positioning...recommendations are offered.

Mr. Kataryniak (Board Traffic Engineer) discusses report Mr. Luglio provided. He agrees with the methodology he utilized...agrees with the concept of the analysis he provided. Reviews the Valet operation report....refers to Exhibit A-11 to clarify some points regarding parking and valet operations...

Discussion regarding signage & parking spaces #61-67 was discussed. Asks the Applicant to provide the Board with a detailed of the proposed signage which could be reviewed to be sure the Board is ok with the wording and the location of the signs...

Glare is discussed... Mr. Kataryniak has concerns and likes the idea of requirements & restrictions of backing into the parking spaces. Recalls a discussion on providing a landscaped screen....recommends a solid barrier to have the highest degree of effect.

Discussion....

Mr. Paul Azzolina (Board Engineer) states he and Mr. Kataryniak discussed this topic. Possible option; Cinder Block Wall with stone face. Another option, the sidewalk could be repositioned, discussion would have to be with the County...

Discussion & frontage recommendations....

Mr. Kataryniak speaks to height of headlights, standards...2 1/2ft. Discussion....3ft. would effectively block the source of the headlights.

Discussion continues on recommendations which would not affect safety on the operations of the driveway....3ft. Boxed shrubbery, planting, etc...

Mr. Luglio agrees with the recommendations and testifies they will come up with a plan which could be reviewed with the Board Engineer, the Traffic Engineer and the Board and come to an agreement.

Mr. Kataryniak reviews and clarifies testimony regarding Site distance...

Mr. Luglio addresses his question and offers additional testimony using the Board Exhibit to clarify his report

Mr. Kataryniak speaks to C-Level/Did he run an analysis to identify how many vehicles had to be added to the intersection before it crossed from the C-threshold into Level service D?

Testimony from Mr. Luglio states he did not &addresses this concern....explains.
Discussion continues....

Mr. Kataryniak questions if there has been any conversations with the County regarding the driveway operations....Mr. Luglio has not had discussions with the County as of yet...

Fire Lane striping is discussed and agreed to.

Discussion on concerns of residents...U-turns, accidents, etc...Officer Franco's report is referenced. Offers recommendations...U-turn restrictions possibly, etc...The Board may want to consider a Condition of approval...It would have to be an Ordinance but the Borough may want to consider this...

Mr. Rosenberg (Board Attorney) explains the Board could not make this a condition of approval but certainly a recommendation, recognized by Mr. Kataryniak, and work with the Borough Engineer on it.

Discussion continues....

Mr. Newman (Chairman) requests a motion for Mr. Kataryniak to draft a memo & pursue this recommendation with the Borough.

Mr. Puzio motions to approve this recommendation and Mr. Seibel seconds the motion.

All Present: AYE

No further questions from Mr. Kataryniak.

Mr. Lowenstein (Board Member) has questions regarding A-11. Fire Lane Access...clarification on car circulation in lane, valet operation, headlight beam distance, etc...

Discussion....

Mr. Puzio (Vice-Chairman) questions stopping distance....testimony & discussion.

Mr. Naveh (Board Member) clarifies Fire Lane and Parking Space 59/ concern is addressed... Discussion on parking spaces...

Mr. Newman explains he will open to the Traffic Engineer for questions from the Public at the beginning of the next meeting. He would like to review what it is they would like to see at the next meeting....

1. Maximum number of attendees at any one event.
2. Landscaping Plan. Planters? Wall? To med-i-gate the headlight situation.
3. Fire Lane plan be submitted to the Fire Department for approval & finalized diagram.

Mr. Newman notes it is his opinion but he would ask the Architect if he could work on other Façade options that would be more residential such as the awnings & copper roof, he does not feel this is really a residential look or feel...

Mr. Kittner (Board Planner) discusses a concern regarding setting a maximum number of attendees for an event. If number is high, an additional D-1 variance may be required...he recommends it be put on record it is not a primary use, it would be an accessory to the restaurant use.

Discussion continues.

Mr. Azzolina (Board Engineer) clarifies a mathematical mistake discussed with Mr. Rigg on Impervious coverage. The impervious coverage will remain the same. (85.9%)

Discussion on next meeting date....

APPLICATION CARRIED TO MARCH 23, 2015 MEETING. NO FURTHER NOTICE REQUIRED. NO TESTIMONY TO BE HEARD.

Mr. Newman asks for a motion to adjourn.

Mr. Seibel makes a motion to adjourn and Mr. Naveh seconds the motion.

All Present: AYE

Adjourn: Time: 10:45

Respectfully Submitted,

Cathy F. Bozza
Assistant to Zoning Department