

**BOROUGH OF FAIR LAWN
ZONING BOARD OF ADJUSTMENT
Regular Meeting
Of February 22, 2010**

Following are the minutes of the Fair Lawn Zoning Board of Adjustment's regular meeting held on February 22, 2010.

Secretary Joe Meer 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. Diner, Mr. Karas, Mr. Lowenstein, Mr. Puzio, Ms. Spindel, Mr. Meer, Mr. Sacchinelli, Ms. Taylor.

Absent: Mr. Blecker, Mr. Frankel, Mr. Newman,

Also in attendance were William Soukas, Board Attorney; Karen Kocsis, Court Reporter; Ann Peck, Assistant Zoning Officer and Cathy Bozza, Zoning Board Secretary.

Old Residential Carried:

1. Application#10-001, Michael & Elissa Cucciarre
37-02 Gardenview Terrace, Block 2606, Lot 12, Zone R-1-2
The proposed removal of two existing decks and replacing them with patios 12x11 & 12x19 will increase the impervious coverage from 33.5% to 40% where 35% is permitted as per Section 125-12 Schedule of area yard and building requirement.

Mr. Bill Soukas swears in Mr. Michael Cucciarre.

Mr. Meer asks Mr. Cucciarre to please explain what it is he is doing.

Mr. Cucciarre explains he currently has two wooden decks in the backyard and he would like to replace them with patio pavers.

At the last meeting, he spoke of replacing an existing 12x19 deck and another 12x10 with Patio pavers, but after discussion here, he realized that was too much to ask so, he would like to just change the one deck, the 12x19 wooden deck to patio pavers and he is going to take out the other wood deck and put landscaping in its place.

Mr. Cucciarre is also removing the walkways between the two decks.....

New calculations: The existing impervious coverage as it stands is 34.87% with the replacement of the 12x19 wood deck to patio he is asking for a variance of 37.65%.

Mr. Meer asks if any Board Members have questions... Seeing none,

Mr. Meer opens the applicant to residents within 200ft. Seeing none.
Mr. Meer closes this portion.

Mr. Meer opens the applicant to the General Public. Seeing none.
Mr. Meer closes this portion.

Mr. Lowenstein makes a motion to approve the application as modified.
Ms. Spidel seconds the motion.

VOTE: Mr. Diner, Mr. Karas, Mr. Lowenstein, Ms. Spindel, Mr. Sacchinelli, Mr. Puzio,
Mr. Meer, **YES.**

Application Approved.

2. Application#10-004, Rocco Francica
12-41 Roosevelt Street, Block 4605, Lot 88, Zone R-1-3
Proposed patio and walkways in place of a deck will increase the existing
Impervious coverage from 34% to 41% where 35% is permitted as per
Section 125-12 Schedule of area yard and building requirement..

Mr. Soukas swears in Mr. Rocco Francica.

Mr. Meer asks Mr. Francica what has been done since the last meeting to reduce the
Impervious coverage?

Mr. Francica begins by explaining that since the last meeting where a couple of different
suggestions were offered about doing research about the impervious pavers & rain
gardens, I devised a plan to take the runoff of water that is coming off the pavers and put
it into the ground faster. I made a printout of the plan for everyone on the Board to look
at of the plan I would like to put in place.

Mr. Francica continues to testify that he linked with the ICPI, which is the Interlocking
Concrete Pavement Institute in Virginia and spoke with the Technical Director, Dave
Smith who has done a lot of tests on pavers, how pervious they can be with rainwater &
storm water and found that they are about 80% pervious to water.....

Mr. Francica continues.....

He explains his proposal. Everywhere he is over his coverage, he would like to put in place a collection system with 4” perforated pipe and dig a trench and put the pipe in a 3’ wide x3’ deep trench with (inaudible) stone inside. This way, when water runs off the paver patio, it will collect there and put it into the ground faster....This is one way to circumvent the runoff from other people’s property....and I am proposing a planter bed along the back wall that I put in as well as a rain garden in the back right hand corner.

Mr. Francica states he has done a lot of research on rain gardens and found that in the urban areas where there is a lot of concrete....they utilize pretty well to collect a lot of storm waters.....

Mr. Francica proposal is marked as Exhibit A-1.

Discussion amongst the Board Members & Professionals.....

Mr. Paul Azzolina (Board Engineer) states it would help the situation and offers more suggestions & recommendations...connecting his drainage system to the Municipal Sewer System, etc.....

The Rain Garden & the Planter Bed is discussed.....

Mr. Meer asks if anyone from the Board has questions or comments,

Mr. Soukas(Board Attorney) asks for clarification on the size of the piping and also suggests if there is a motion for approval, the Board should likely consider a Deed memorizing the conditions of the system in a Deed Restriction so that not only can these conditions be maintained, but also the drainage system, since this situation is likely to continue in the future. Future people should be placed on notice that they are not able to remove what Mr. Francica has put together to alleviate the water situation.

Mr. Meer opens the applicant up to residents within 200ft. Seeing none,
Mr. Meer closes this portion.

Mr. Meer opens the applicant up to the General Public, Seeing none,
Mr. Meer closes this portion.

Before a motion is called, Mr. Karas would like to clarify the Impervious Coverage..
47.5%...

Mr. Soukas asks Mr. Francica if he is willing to connect the drainage system to the Municipal Sewer System as suggested by our Engineer.

Mr. Francica replies, yes, if he does get the approval & depending on what it entails...he doesn’t know if there are other permits involved or needed and other design submissions to put into play, but he would be willing.

Discussion on carrying the application so that Mr. Francica can explore with the Borough Engineer before voting yes or no. It will give him the chance to see what the cost will be and what it entails before being tied into it.

Mr. Francica replies that he is new to this whole process and would like to know if he was not approved, what is the outcome at that point? He explains he is trying to close on a mortgage and needs to fulfill this process before closing on it....

Mr. Soukas explains if the Board denies the application, it could mean that you would have to remove some the Impervious Coverage that is creating the variance condition...

Mr. Soukas states that the decision is his...

Discussion continues.....

Board Engineer explains the benefits of connecting to the Municipal Sewer System...

Mr. Karas comments that he does not know if it is possible for Mr. Francica to connect this drainage system around the patio to the storm basin. If we make that a condition based on an approval and that condition realistically cannot be fulfilled, either by the physical characteristics or a problem with engineering, we are placing this applicant in a dire-straits...I would oppose any amendment that would make it a condition that he attach or connect this proposed drainage system to the storm basin.

Discussion.....

Mr. Meer asks if there are any other questions from the Board Members, seeing none
Mr. Meer asks for a motion.

Mr. Karas makes a motion to approve the application to include a Deed Restriction that conditions be maintained as such in the future.

Mr. Diner seconds the motion.

VOTE: Mr. Diner, Mr. Karas, Mr. Lowenstein, Mr. Puzio, Ms. Spindel, Mr. Sacchinelli,
Mr. Meer, YES.

Application Approved.

RECESS:

Mr. Meer reminds the Board that Residential Applications are heard prior to Commercial Applications.

ROLL CALL: Mr. Diner, Mr. Karas, Mr. Lowenstein, Mr. Puzio, Ms. Spindel, Mr. Sacchinelli, Ms. Taylor, Mr. Meer.

Residential New Business:

1. Application#10-006, Steven & Jane Kovel,
11-02 12th Street, Block 4524, Lot 13, Zone R-1-3
Proposed deck and hot tub would increase the impervious coverage from 41.46% to 42.90% where 35% is permitted. Proposed deck and hot tub would require front yard setback variances for 10' and 20' where 35' is required for 12th Street and Charles Street when accessory structures are in the front yard setbacks as per Section 125-12 Schedule of area yard and building requirements. Proposed 6' fence in the front yard setback where only 3' fence is permitted as per Section 125-38.A. Fences & walls.

Mr. Soukas swears in: Jane Kovel (Applicant)
Steven Kovel (Applicant)
Michael Hartnett (Licensed Landscape Architect) of
B&BPools&Spa Center
Chestnut Ridge, N.Y.

Fees have been paid and there is proof of service.

Mr. Meer asks Mr. & Mrs. Kovel what it is they would like to do.

Mr. Hartnett steps forward and asks if he could explain.

Mr. Soukas asks Mr. Hartnett if he will be testifying as an Expert in the field of Landscape Architect.

Mr. Hartnett replies yes, as a Design for the property, licensed by the State of N.J.

Mr. Soukas qualifies Mr. Hartnett as an Expert in Landscape Architecture.

Mr. Hartnett begins his testimony. Explains the proposed Hot Tub would increase the impervious coverage to 42.9%, but if the lot was at the required lot of 6500, it would only be 32%. The house meets none of the required setbacks. Side yard, rear yard & it's a corner lot so...the only place we could put the hot tub would be on the corner of 12th & Charles Street.

Continues.....

Mr. Meer questions the 6ft. fence and if it impedes the view...

Mr. Hartnett explains anytime you put anything on a corner it is going to impede it. We have the fence 8ft. in from the sidewalk, when it close to the front of the house we turned it at a 45degree angle so that you maximize the line of sight.

Mr. Meer wants to know if anyone else in the neighborhood has anything similar to this proposal.

Mr. Hartnett testifies that there are properties in the same neighborhood that have fences and plants right on the sidewalk that block all visibility....

Pictures are submitted that were taken over the last week by Ms. Kovel that were not submitted with the application. Marked as A-1.

Discussion continues....

It is determined the pictures are not within 200ft. of the Applicant's property.

The letter submitted by Mr. Kovel by his physician, Dr. Pelicoti is referenced by Mr. Lowenstein.

Mr. Soukas interjects and states that letters such as this are known as "heresy" documents and in order to be accepted for the truth of the matter that they assert, the individual who signed the document must actually testify, so the Board is really not at liberty to consider this particular letter without the testimony of Dr. Pelicoti.

The proposed fencing & setbacks are questioned by Ms. Spindel. She has concerns on this because when you stand on the corner and look up & down, it's clear, there are no other fences...I understand it's an undersized lot, but this is a lot of house on this property...no backyard..no grass,....the proposal of a 6ft. fence coming along 12th street, around to Charles....with the driveway and not much green space...it would look like a fortress.

Discussion continues.....

Photographs with proposed fence, marked as A-2

Mr. Hartnett explains his proposed photo display in detail regarding the proposed visual impact of the fence.

Board Members question impervious coverage calculations regarding hot tub, deck...

Ms. Taylor (Alternate member) has concerns and would like to express to her colleagues who will be voting tonight that she is not in favor of this plan. It is a high pedestrian area along 12th street and when she walks with her children, there is an overgrowth of bushes and shrubbery through fences that are so close to the sidewalk, pedestrians have to walk single file because of the overgrowth of the bushes. She finds this much too close to the sidewalk.

She continues to explain she understands they do not have a lot of yard and it is an unfortunate setup, but she is not in favor of this.

Discussion continues....

Mr. Sacchinelli proposes the question, if the hot tub and the deck were not proposed, would they in fact be able to put hedges along that area, 6ft.high...

Ms. Peck (Assistance Zoning Officer) explains front yard setbacks & regulations..if hedges, they would have to be maintained at 3ft. If they were trees, maintained at 6ft.

Discussion continues.....

Mr. Meer asks if there are any other questions from the Board, seeing none.

Mr. Meer opens the application to residents within 200ft.

Mr. Soukas swears in: David Cevallos
11-06 12th Street
Fair Lawn, N.J.

Mr. Cevallos is a neighbor of Mr. & Mrs. Koval and thinks this plan would be a wonderful plan for the backyard. Our driveway runs along the whole side, and our site line will be cut in half...12th street is a very highly trafficked area and I think the chances of a bad accident will be increased dramatically with the site line being reduced, not only from my driveway but coming from Charles Street. It is a blind spot that will be created for no reason...

Discussion continues....

Mr. Cevallos ends his testimony.

Mr. Meer asks if there is anyone within 200ft. who wishes to speak for or against this application.

Mr. Soukas swears in: June Salzman
11-07 112th Street
Fair Lawn, N.J.

Ms. Salzman testifies that she is opposed to this application, more aesthetically than anything else and agrees with Mr. Cevallos about the line of sight issues. Every other property on 12th & Charles and surrounding streets is all privacy. Everything that is done is done in the backyards. It is a very quiet neighborhood. I've worked for Orthopaedic Surgeons, I could tell you that many patients put Whirlpool baths inside their homes...

Ms. Salzman continues with her objections to this application.

Ms. Salzman ends her testimony.

Mr. Meer opens the applicant up to residents for or against the application.

Mr. Soukas swears in Matthew Gavzy
11-06 Charles Street
Fair Lawn, N.J.

Mr. Gavzy begins his testimony and explains that he has concerns living on Charles Street is that currently with all of the traffic on 12th Street & Charles and the students from F.L.H.S. parking on our streets and surrounding streets, it is already a precarious site line going down towards Berdan....especially in the morning.

If you are traveling towards Charles Street at that time, even getting a clear view of Charles Street from Berdan can be dangerous. Putting an 8ft. fence that tall or even that close to the property line would decrease the site line greatly.....

There are a number of families with small children and this is a major concern for the safety of the children..

Mr. Gavzy ends his testimony.

Discussion.

Mr. Meer opens the application to the general public.

Mr. Soukas swears in: Marsha Minuskin
11-03 Norma Ave
Fair Lawn, N.J.

Ms. Minuskin wants to concur that this property is already overbuilt and I do consider this proposal a dangerous situation for pedestrians and I don't feel that it should be approved.

Ms. Kovel steps forward and asks if they agree to abandon the idea of the fence and put

shrubs instead, refers to the pictures of 12th street....states that the shrubs on 12th street are 6-8ft. high that go to the sidewalk and she is not sure how that is different. We're not putting shrubs up to the sidewalk.... we're setting it back 8ft.

Ms. Spindel explains to Ms. Kovel that if someone makes a complaint, it would be followed up and they would be required to cut them down.

Regulations are discussed regarding fences and hot tubs....

Discussion continues on the difference between being allowed to put shrubs or trees up versus a fence within the setback allowed.

Mr. Meer asks for a motion.

Mr. Karas makes a motion to deny the application. Explains this lot is undersized. The property is overbuilt. He is concerned about the line of sight with a 6ft. fence and from his own personal experience, he has driven where the line of sight has been impaired through fences, hedges or shrubbery and feels it poses a real substantial danger. He does not like the pictures that have been submitted depicting the proposed fence.

Ms. Spindel seconds the motion.

VOTE: Mr. Diner, Mr. Karas, Mr. Lowenstein, Mr. Puzio, Mr. Sacchinelli, Ms. Spindel
Mr. Meer. **YES to DENY.**

Application Denied.

2. Application#10-007, Michael Fawkes
333 Plaza Road North, Block 3716, Lot 14, Zone R-1-3
Proposed new covered side entry would reduce the existing side yard setback
From 9' to 5'5" where 8' is required as per Section 125-12 Schedule of area yard
and building requirements.

Mr. Soukas swears in: Mr. Michael Fawkes(Applicant)
Ms. Amy Hummerstone (Architect to the Applicant)

Fees have been paid and there is proof of service.

Mr. Meer asks the applicant to explain why he is here tonight.

Ms. Hummerstone wishes to speak for the applicant.

Ms. Hummerstone begins her testimony explaining she is a registered Architect in the State of New Jersey.

Mr. Soukas certifies Ms. Hummerstone as an expert witness in Architecture.

Ms. Hummerstone continues that the applicant would like to take down an existing aluminum awning that projects out 3'6" into the side yard and replace it with one that projects out to 4' of wood structure with more of a slope so that the entire stoop below is covered in inclement weather so that he does not get ice. The stoop is already 4' out.

Photos are reviewed and questioned for verification of what is proposed....

Ms. Hummerstone testifies that the stoop would not be changed. It is just the awning we are proposing to change.

Gutters are discussed.

Mr. Meer asks if anyone from the Board has any other questions. Seeing none,

Mr. Meer opens up the witness to residents within 200ft. Seeing none,
Mr. Meer closes this portion.

Mr. Meer opens up the witness to the General Public, Seeing none.
Mr. Meer closes this portion.

Mr. Karas makes a motion to approve this application.
Ms. Spindel seconds the motion.

VOTE: Mr. Diner, Mr. Karas, Mr. Lowenstein, Mr. Puzio, Mr. Sacchinelli, Ms. Spindel,
Mr. Meer. **YES.**

Application Approved.

Commercial Business Carried:

1. Application#10-005, Just 4 Wheels, Inc.
4-24 Banta Place, Block 3411, Lot 1, Zone I-2
Proposed Motor Vehicle Rental Agency is not a permitted use in the I-2 Zone,
D-1 Variance required as per Section 125-28 & 125-57.D.(d)

Mr. Karas states that he had previously recused himself from this application for obvious reasons and will continue to be off the platform until the application is completed.

Mr. Andrew Karas(Attorney for the Applicant) steps forward.

Mr. Karas points out that at the last meeting a couple of revisions were requested with regard to the site plan. Mr. Fox has those revisions. He had them dropped off at the office. Unfortunately, they were not submitted to the Board. The revisions that were requested were relatively minor. With the permission of the Board, I'd like to go ahead with the application tonight as Mr. Fox is here tonight to testify as to the revisions and with your approval they would be subject to engineering review of the minor revisions.

Mr. Soukas sees no problem with proceeding unless any Board Member does.
Seeing none,

Mr. Karas continues with the reason for the application and states to the Board that he has with him tonight, representatives with testimony as far as the use that is existing on the Northeast site and the intensity of these uses.

Mr. Soukas swears in: Henry Tanski
678 Belmont Ave
North Haledon, N.J.

Mr. Karas begins his questioning of Mr. Tanski....

Mr. Tanski testifies that he is the President of Morris Trucking and has been since 1985. He is familiar with Banta Place since 1966. His affiliation & utilization with the site is still as it is today and that is just parking of some trucks, a little shed that contains tools for working on the trucks. Major work is sent out to a repair shop.

Continues with his testimony.....

Amount of trucks that occupy the site is 12 vehicles...when we have work they go out in the morning and come back in the afternoon.

Description on types of trucks kept at site: Flat Bed, straight jobs & a couple of Trailers.

Mr. Tanski explains the procedures of his business. He tries to lease the trucks & the drivers on a yearly lease basis. The driver would go to their warehouse where they would load it at night and the driver goes there and takes the truck out and returns there again. I only have Banta Place to park the trucks if I lose the lease or if the lease runs out and so on.....

Testimony continues.....

No major repairs are done on site. Minor repairs are only done. Tail lights, oil changes, etc...

Storage of oil is questioned....
Amount of oil kept on site is questioned....

Mr. Meer opens up the witness to the general public. Seeing none,
Mr. Meer closes this portion.

Mr. Karas calls his next witness.

Mr. Soukas swears in: Mr. Joel Carraro
421 Banta Place

Mr. Karas begins his questioning.

Mr. Carraro testifies that he is the owner of Kitchen Magic and purchased the business twenty years ago. It has been in the family since 1938. I am familiar with the site and have been renting from them for parking. There is a box truck, a van and some tenants that rent from my building park there. We have 16 parking spots and 8 spaces are used regularly. We have had the same type of use for over 40 years...

The tenants in the building rent from me and they come in around 7:00am or 8:00am and leave 4-5pm. I have a showroom, so occasionally I have 3-4 customers that come in or out daily. The van goes out 7:00 in the morning and comes back around 4:00 and the Box truck stays in the parking lot unless there is a delivery of cabinets.

Testimony continues....

Mr. Karas concludes his questioning.

Mr. Meer asks if anyone from the Board has questions, seeing no one,

Mr. Meer opens the witness up to the general public. Seeing none.

Mr. Karas calls his next witness.

Mr. Soukas swears in: Mr. Matthew Ray Fox
(President of Canger Engineering Associates)
6-20 Plaza Road,
Fair Lawn, N.J.

Mr. Soukas accepts Mr. Fox as an Expert witness in the field of Engineering.

Mr. Karas begins his questioning of the witness.

Mr. Fox testifies that he initially submitted the application to the Board and the Board Professionals & received 3 subsequent reports commenting on the content of the plan... We took into review the comments on the reports as well as the comments made at the last meeting and we updated the plans to address all the comments and suggestions.

Mr. Fox discusses Site Plan dated September 8, 2009 and carries a revision date of February 3, 2010. Those revisions incorporate the Ordinance discussed at last month's meeting.

Mr. Fox continues explaining that the site plan is a general layout of the existing conditions on the site as well as (inaudible)... also shows a proposal of how we intend to utilize the parking spaces on the property.

Testimony continues.....

(Sheet #1) which discusses the Zoning Analysis
Bulk Schedule

Location of the property in relation to the surrounding streets, specific details in regards to the fencing.

Signage that was added to the plan subject to the Engineer's review

Additional sheets to satisfy the checklist requirements.

(Sheet#2) contains a Variance Map which shows all the adjoining properties along with Lot identification #'s, street addresses with the names of the owner.

(Sheet#3) provides an existing lightening Plan, Light intensity as it is distributed over the property, a point by point analysis...# of fixtures, the type of fixtures, etc...with location of them at the site.

Survey of the site....

Mr. Karas discusses Mr. Azzolina report regarding striping.

Mr. Fox explains they have identified the location of the proposed vehicles and we have indicated also where we have proposed striping in the area where parking space would not be (inaudible) We have also have provided a stop bar, in which we have indicated..

Testimony continues.....

Based on last month's comments, we have provided one handicap space.

Mr. Fox continues with the revisions since the last plan was submitted...we relooked at the site and located an existing seepage pit that was located on the property. The seepage

pit was installed a year or two prior and we have shown the elevations to the grate at the bottom of the pit as well...

Additional pavement was added as some of the vehicles would have to utilize a portion of the property that was not paved along the back of the property.

We will remove 120sf in pavement to offset the increase that we will provide along the rear, so that there is no increase in runoff. In fact there is a decrease in runoff on that side of Banta Place.

The proposal would include a planted isle in the location with an additional shade tree, as discussed at the last meeting.

Lightening is discussed. Mr. Fox reviews with the Board the concern that one of the fixtures were not operating. PSE&G was called to correct and a letter sent to correct that light.

Testimony continues....

Southeast corner of the building there is a dumpster.....
All the comments & concerns were addressed.

Signage is discussed based on the requests. Mr. Fox explains the revisions...Stop signs, etc.....No parking signs were added.

Fencing is addressed by Mr. Fox. It is indicated on the plan that they will provide a 4ft. high chain link fence with a gate along the lease end to separate the two properties and we will also provide a copy of this plan to the Fire Sub code Official for his review and comments regarding placement....

Mr. Fox concludes his testimony.

Ms. Spindel would like to know who will be responsible for the maintenance of the trees in regards to watering.

Mr. Karas states that the applicant will take the responsibility of watering the trees.

Mr. Sacchinelli poses the question in reference to the fencing. Would there be anything in front of the fence to stop the trucks from smashing into the fence?

Mr. Karas replies they will have no problem with installing concrete stops there.

Mr. Sacchinelli questions snow removal. Presenting where is the snow going with all those trucks there?

Mr. Tanski steps forward and states he plows the whole North side.

Mr. Sacchinelli questions how many parking spaces are lost after the plowing is completed and where does the snow melt...

Mr. Tanski states none, he pushes the snow pretty high. No spaces are lost due to the snow plowing.

Snow melting is addressed.

Mr. Meer opens the witness to the General Public. Seeing no one,
Mr. Meer closes this portion.

Mr. Karas calls his next witness.

Mr. Soukas swears in: Kathleen Gregory
(Licensed Professional Planner in the State of N.J.)
96 Linwood Plaza #350
Fort Lee, N.J.

Mr. Soukas accepts her as an expert witness in the Field of Municipal Planning

Mr. Karas begins his questioning.

Ms. Gregory hands out a Photo Exhibit that she has prepared. It is an 8 1/2 x 11 Photo Exhibit by herself. It is entitled Existing conditions and surrounding characteristics' on Just4Wheels, 4-24 Banta Place in Fair Lawn, N.J.

Exhibit marked A-2, 7 photos....

Ms. Gregory testifies and details all pictures taken....discusses all pictures and their locations. She explains they are here for a Use variance. We need to meet both the positive and negative criteria....we have to prove that the use is clearly beneficial or we prove that the site is particularly suitable.

Ms. Gregory discusses why is particularly suitable....we are not making any changes to the site, other than some minor improvements, including fencing, striping, storm water management & trees....I believe that we promote some of the purposes of the MLUL so that we meet also the special reasons under the positive criteria.

Ms. Gregory continues....promotes general welfare, etc.....redeveloping the site and promoting the State plan...Also, air, light, open space....

Ms. Gregory testifies that under any negative criteria, she does not believe there is any substantial detriment to the public good. This particular site is well suited to the proposed use....it is similar to the prior use.....

It is not a very intense use.....

Ms. Gregory continues to testify she does not believe there is any substantial impairment to the zone plan based on prior uses and surrounding uses....

Ms. Gregory concludes her testimony.

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

Mr. Meer opens this witness up to the general public, seeing none.
Mr. Meer closes this portion.

Mr. Karas has no other witnesses.

Mr. Meer notes there were no issues with the proposed site with the Fire Department, DPW, Recycling Departments and it is noted that is will be a far less traffic than when the buses were there and other obvious pluses.

Mr. Karas summarizes the application and believes that all testimony given supports all the positive criteria.

Mr. Soukas(Board Attorney) speaks to Mr. Karas regarding a Deed Restriction and states that he is probably aware, there is an Ordinance in place that requires Deed Restrictions to be placed on the record of the property when in fact there are conditions attached to an approval. There are a few conditions that are being attached in concluding this application, such as seepage pits, shade tree and other plantings....asks if Mr. Karas if he has any particular feelings on that....

Mr. Karas states No.

Mr. Meer reminds the Board, that this is a D-Variance and will require 5 out of 7 votes.
Mr. Meer asks for a motion.

Ms. Spindel makes a motion to approve the application, adding the Impervious Coverage variance that Ms. Gregory detailed which is 95.253% where 80% is permitted.

Mr. Diner seconds the motion.

VOTE: Mr. Diner, Mr. Lowenstein, Mr. Puzio, Mr. Sacchinelli, Ms. Taylor, Ms. Spindel, Mr. Meer, **YES.**

Application Approved.

Mr. Meer makes announcement that Application #09-038, 18-35 River Road, LLC. will be heard at a Special Meeting on March 4, 2010

No Testimony to be heard. Application to be carried to Special Meeting of March 4, 2010.

Commercial New Business:

1. Application#10-008, Metro PCS Communications, Inc.
21-18 Rosalie Street, Block 3330, Lot 4&5, Zone I-2
Cellar antennas are not permitted in the I-2 zone. The proposed addition of 6 New Antennas, New Antenna cables, & additional equipment added to existing equipment room to the existing 140ft. monopole will require a Use Variance as per Section 125-57.D.(d)

Mr. Frank Ferraro, Attorney on behalf of the Applicant, Metro PCS Communications, LLC.

Fees have been paid and there is proof of service.

Mr. Ferraro continues...they are here tonight to propose additions to the already existing site at the location of 21-18 Rosalie Street, this is a Use variance application as well as a application for site plan approval since it is not a permitted use in the I-2 Zone.

Mr. Ferraro calls his first witness:

Mr. Soukas swears in: Mr. Daniel Penesso, (Radio Frequency Engineer
Fairfield, N.J.

Mr. Soukas accepts Mr. Penesso as an Expert in the Field of Radio Frequency Engineering.

Mr. Ferraro begins his line of questioning.

Mr. Penesso testifies to the knowledge of this particular site and has prepared a particular exhibit to describe to the Board the existing Metro PCS sites & Proposed sites.

Exhibit is marked A-1, dated 2/22/10.

Mr. Penesso continues to explain the Exhibit with color dots.....

What Metro PCS is trying to design is a network utilizing existing structures as best we can to provide seamless reliable sources and not having to create new structures to provide that coverage.

Metro PCS has existing locations within Fair Lawn. A Monopole is located at 1 Cooper's Way...one at the water tank located at Maple Ave.....

Continues with all site locations: Paterson, Elmwood Park, Rochelle Park, Paramus & Glenrock.

Mr. Penesso continues his testimony on the proposed plan.

It will be an Un-manned site. Technician visits the site every month or month ½...
No additional parking is proposed.

Mr. Ferraro asks if any Board Members have questions for his witness:

Mr. Lowenstein refers to a white gap area on the Exhibit.

Mr. Penesso explains that is a Paramus area and they have to further investigate the alternatives they have in order to provide coverage in that area.

Discussion continues....

Ms.Spindel refers to concerns of the public regarding the Antenna pole & Health questions were a big issue.....

Mr. Penesso testifies that a report received from Pinnacle Telecom Group shows they are well within the compliance of the safe zone and reads from the report.

Report from Pinnacle Telecom Group dated November 16, 2009 is marked Exhibit A-2.

Mr. Penesso continues explaining all the requirements regarding radiofrequency RF levels. The FCC requires all wireless operators to perform an assessment of the RF fields emanating from all antennas at a site and to ensure compliance with the MPE (Maximum Permissible Exposure).....

Continues with the details of such a test and the results, stating they are well below the maximum amount and the compliance requirement has been satisfied.

Discussion continues on the concerns....

Testimony continues....

Questions regarding the amount of antennas.....
Mr. Penesso explains this & concerns are satisfied....

Mr. Meer clarifies that Metro PCS are only adding new antennas to the existing structure.

Mr. Meer opens the witness to the General Public.

Mr. Soukas swears in: Randolph Bortz
1-21 Banta Place
Fair Lawn, N.J.

Mr. Bortz questions the witness on poles in other towns and if all the poles are 130ft.
high with antennas around that like the one you are proposing here?

Mr. Penesso answers yes and gives locations of the sites.

Mr. Penesso explains there are monopoles all over the state which are identical to this
structure.

Discussion continues.....

Mr. Bortz has concerns on the weight of these structures and being top heavy.

Mr. Penesso offers the suggestion to hold that question for the Engineer who will answer
any concerns regarding that concern.

Discussion continues.....concerns are answered by Mr. Penesso.

Mr. Soukas swears in: Willis Carlini
1-25 Banta Place
Fair Lawn, N.J.

Mr. Carlini still has concerns about health issues. Radiation concerns....

Mr. Ferraro(Applicant's Attorney) would like to clarify that Mr. Penesso is an FCC
Compliance Expert, he is not a health physicist, so a lot of these questions as far to
Health effects of Radio Frequency are general questions, Mr. Penesso is here to testify
that this facility is going to operate well within the guidelines....

Mr. Carlini would like to know where to get these answers to his concerns....

Discussion continues.....

Mr. Meer asks if anyone else from the general public have any questions for this witness,
Seeing none,

Mr. Meer closes this portion.

Mr. Ferraro calls his next witness.

Mr. Soukas swears in: Gary Nusciano, Registered Architect in N.J.
240 Cedar Knolls Road
Cedar Knolls, N.J.

Mr. Soukas accepts Mr. Nusciano as an Expert Witness in the Field of Architecture.

Mr. Ferraro begins his questioning.

Mr. Nusciano refers to Colored Board Exhibits.....

Marked A3-Z1, dated 9-16-09, Lucian Group, LLC.

Mr. Nusciano explains all the coverage areas and site design....maximum impervious,
building coverage of which none would be affected because there are no buildings being
proposed, etc.....

Mr. Meer opens the witness to the General Public. Seeing none.
Mr. Meer closes this portion.

Mr. Ferraro calls his next witness:

Mr. Soukas swears in: David Karlebach, Licensed Professional Planner
38 E. Ridgewood Avenue
Ridgewood, N.J.

Mr. Soukas accepts Mr. Karleback as an Expert Witness in the Field of Municipal
Planning unless the Board has any further questions, we can proceedd.

Mr. Ferraro begins his questioning.

Mr. Karleback is aware of the Master Plan, Site Plan in regards to this application and has
done a planning analysis' of what is required at this facility.

He explains this site is located in the I-2, Industrial Zone, where this use is not permitted.
Cellular communications, equipment & Antennas are only permitted in the Commercial
Antennas zone so therefore a D-Variance is required....

There is no proposed increase in the height of the structure. There is no proposed increase in the size of the compound, no onsite employees, no increase in building area or the amount of refuge generated. No Traffic Impact.....

Mr. Karleback continues his testimony.....regarding the D-variance explaining that the Supreme Court said that 1st the Board needs to determine the Public interest at stake. Metro PCS is a holder of a FCC license to provide service into this area and the Court recognizes that the mere issuance should suffice for this carrier to establish that the General Welfare purpose is served....

Mr. Karleback discusses the site and how it is particularly suited for this use for several reasons.....explains....

1. Centrally located.
2. No detrimental effects.
3. No Traffic Impact, noise, glare, etc..no adverse effects....
4. No Community Impact.
5. Benefits are numerous. No detriments seen at all.

Speaks to the Height variance.....

Mr. Karleback believes that the Use Variance, Height Variance & the continuation of the existing non conforming conditions should be granted.

No questions from the Board.

Mr. Meer opens the witness to the General Public.

Mr. Randolph Bortz (Already sworn) steps forward.

Mr. Bortz comments that he feels that the witness states minimal expansion to them (Metro PCS) but not to him, the homeowner.....he also questions a statement made by Mr. Karleback.....

Discussion.

Ms. Spindel responds to Mr. Bortz comments on the statement made by Mr. Karleback...

Discussion continues....

Mr. Karleback completes his testimony.

Mr. Meer opens the application to Public Comment.

Mr. Louis Carlini steps forward. (Already Sworn in)

Mr. Carlini begins by saying he remembers when this pole was originally erected. We never had a clue when it was brought in because it was brought in under false pretense....

Mr. Carlini continues....It was the Planning Board that first heard these applications and they were told it was an inherently beneficial use and they couldn't stop them from bringing them in...."We could have prevented them from coming in at that time because there was nothing there"....A lot of you did not know what went down at the time...

Mr. Meer interrupts Mr. Carlini and explains that the Federal Government states that it is a beneficial thing, it is not the Board....you can med iGATE these things, but you can't stop it. We went to Court on this and lost...

Discussion continues.....

Mr. Bortz comes forward again and comments that he is against anymore antennas going up. It is an eyesore when I look at it.

Mr. Meer closes the Public Comment section.

Mr. Ferraro summarizes the application...

Mr. Karas makes a motion to approve the application. (Addresses the Public)

Mr. Karas begins by explaining that this Board opposed a similar application for a pole in a residential zone. The Superior Court in Bergen County reversed our decision, it was taken to the Appellate Division of the Supreme Court and both of which approved the application, which means that there is a pole going into a Residential Zone. You, unfortunately reside next to an Industrial Zone....our hands are basically tied. The Courts Feel that this type of application is beneficial to the Public, even if we denied it here, we would be reversed. The only thing that would be accomplished is imposed additional taxes and fees on the residents of Fair Lawn. I just want you to understand these types of applications and where we stand as a Board.

Mr. Puzio seconds the motion.

VOTE: Mr. Diner, Mr. Karas, Mr. Lowenstein, Mr. Puzio, Mr. Sacchinelli, Ms. Spindel, Mr. Meer, YES.

Application Approved.

Minutes

1. Mr. Diner made a motion to approve the minutes for the December 9, 2009 meeting and Mr. Spindel seconded the motion.

VOTE: All Present – AYE

Vouchers:

1. Karen Koscis in the amount of \$275.00 for February 22, 2010 meeting.
2. Karen Koscis in the amount of \$75.00 overtime fee for February 22, 2010 meeting.
3. Bill Soukas for legal services in the amount of \$198.00 (Lentini Litigation)
4. Bill Soukas for legal services in the amount of \$306.00 (Non litigation requests)
5. Bill Soukas for legal services in the amount of \$192.50 (Just4Wheels)
6. Birdsall Engineering in the amount of \$375.00
7. Birdsall Engineering in the amount of \$375.00

Mr. Lowenstein made a motion to accept these resolutions and Ms. Spindel seconded the motion.

VOTE: All Present – AYE.

Estimates:

1. Estimate submitted by Mark Kataryniak in the amount of \$380.00 regarding 18-35 River Road, LLC
2. Estimate submitted by Mark Kataryniak in the amount of \$1,740.00 regarding 18-35 River Road, LLC
3. Estimate submitted by Birdsall Engineering in the amount of \$5, 500.00 regarding Zoning Board Hearings of December 21, 2009, February 22, 2010 & proposed Special Meeting of March 4, 2010.
4. Estimate submitted by Birdsall Engineering in the amount of \$1,850.00 regarding the application, Just4Wheels, Inc.
5. Estimate submitted by Azzolina & Feury Engineering in the amount of \$3,000. To review site plans for T-Mobile Northeast, LLC on George Street.

Ms. Spindel made a motion to approve these estimates and Mr. Sacchinelli seconded the motion.

VOTE: All Present – AYE.

Resolutions:

1. Application #2009-043, Peter & Marianne Levan, 15-07 Eberlin Street, Block 4703, Lot 31, Zone R-1-3– Proposed Patio & walkway around in- ground pool- Approved.
2. Application #2009-045, Michael & Olga Elelov, 39-19 Van Duren Avenue, Block 1512, Lot 8, Zone R-1-3– Front platform with amendment- Approved.
3. Application #2010-002, Samuel & Susan Ludski, 23-21 Carol Place, Block 3520, Lot 17, Zone R-1-3– 5ft. Fence- Approved.
4. Application #2010-003, Shaji & Shenna Abraham, 2-10 29th Street, Block 3308, Lot 12, Zone R-1-3– Addition- Approved.

Mr. Lowenstein made a motion to accept these resolutions and Mr. Sacchinelli seconded the motion.

VOTE: All Present – AYE.

Adjourn

Mr. Lowenstein made a motion to adjourn this meeting and Ms. Spindel seconded the motion.

TIME: 11:00P.M.

VOTE: All Present - AYE.

Respectfully submitted,

Cathy Bozza
Zoning Board Clerk