

**BOROUGH OF FAIR LAWN
ZONING BOARD OF ADJUSTMENT
Special Meeting
Of April 22, 2010**

Following are the minutes of the Fair Lawn Zoning Board of Adjustment's Special meeting held on April 22, 2010

Chairman Todd Newman called the regular meeting to order at 7:10 p.m. and declared that the meeting was being held in accordance with the Open Public Meeting Law.

Roll Call: Present: Mr. Diner, Mr. Karas, Mr. Lowenstein, Mr. Puzio, Ms. Spindel, Mr. Blecher, Mr.Meer & Mr. Newman

Late arrival: (Mr. Frankel arrived 7:15)

Absent: Mr. Sacchinelli, Ms. Taylor

Also in attendance were William Soukas, Board Attorney and Cathy Bozza, Zoning Board Secretary.

Commercial Business:

1. Application #2009-038, 18-35 River Road, LLC.
18-35 River Road, Block 5834, Lot 1,3&4, Zone I-2
Preliminary and final site plan approval for development. Retail/Commercial uses and a 64unit residential garden apartment building. Sign variances 125-41.B.(3)(b)125-41.B.(40(b)125-41.C.(3) and waivers.

Mr. Newman opens the meeting tonight essentially to adjourn on the record and for Mr. Stuart Liebman (Attorney to Applicant) to explain the reasons for the adjournment.

Mr. Stuart Liebman apologizes to the Board & thanks the Board for coming out & giving their time and explains that he wishes he was here tonight presenting their case.

Mr. Liebman begins with explaining that he received a letter from the Attorney who is representing Rivera's a couple of days ago and that same letter has been distributed to the Board which basically says that Rivera's no longer wants to participate and wants us to go ahead and change the plans without them.

We have told you through testimony and at the last meeting, that this project involves the widening of Maple Avenue and River Road. We have been working with the County and the Borough of Fair Lawn Engineers, Etc....and with the owner of Rivera's. Many times, he thought we had agreements with the owners of Rivera's. They acknowledged and allowed us to make the application and proceed before you but we have been unable to finalize the terms of an agreement to get their full cooperation to the Road Improvements that are part of the plan.

Mr. Liebman continues.....we need all the cooperation of all the property owners involved....The owners of Rivera's have hired an Attorney & an Engineer and we have been working with them, we continue to meet with the County....and again thought we had an assemblance of an agreement but it keeps slipping away from us....

Mr. Liebman followed up the letter & spoke to their Attorney....He acknowledged the conversations ongoing would continue, but they wanted to make it clear to us that they do not have an agreement yet & stopped us dead in our tracks.

We have a very short window of time left for us to complete this application, get the approvals with the tenants we have, to occupy the Commercial part of the site. When that ends, then this part of the project ends and the whole project probably ends....

Mr. Liebman has spoken with the Attorney today and his client spoke with the owners of Rivera's again this morning....they are willing to continue to meet with us and we ask the Board for one more Special Meeting date.

Without having a Specific date set, we don't think we will get Rivera's to the table to finalize this.....

I understand if we don't have a Special Meeting date, we will be carried to the next Public meeting date which is May 17, 2010. You have a full agenda on that date & I would expect we would not be heard on that date....

If you could possibly agree to another specific Special meeting date, hopefully we will be able to deliver an agreement at that time and be able to present to the Board, a complete plan of what the improvements will look like and how the site will function and we can finish. If it does not happen by then (June) we will withdraw the application.

Mr. Karas asks if they are unable to come to an agreement with Rivera's...am I to understand you will withdraw the application? Or are you able to proceed without Rivera's?

Mr. Liebman explains, without Rivera's we can only proceed with an agreement with the town that they are going to act to condemn. We have spoken with the town regarding that going back a year or more. They have indicated they are willing to do that as a last resort

if we cannot reach an agreement...but I'm not sure we have the time to wait for that, because that will not happen all that quickly either. We may still lose the tenants...

We may be able to change the plan, study it and work some form of access without using the Rivera's property which is now part of the plan, but I'm not sure how that would work...we may have to change the plan considerably in its density...we have not fully explored that because we are hoping to avoid that.

Discussion continues.....

Mr. Liebman still feels the application is good for Fair Lawn, good for the County and good for his client... it still would deliver affordable housing, an improved intersection...

What we have been unable to explain and reach an agreement with Rivera's on is, with or without us the County & Fair Lawn are going to approve the intersection...it will be a different improvement to the intersection. It will not be as good...explains this...

Discussion continues.....

Rivera's will lose a good number of parking spaces on his site with the proposal, but what we are offering is replacement and many other items in exchange for their cooperation & as of yet we are unable to reach an agreement.

Mr. Newman states some facts. Without Rivera's, you need a new plan.... To this point, this Board has taken testimony only into consideration when listening to how this project is ultimately going to come together...and really hinging potential approval on...forgive the phase..."what ifs".....The only different from the "what ifs" from the County and the "what ifs" from the Borough and the "what ifs" from Rivera's, is that Rivera's has sent a letter saying, No...we are not doing this. We are still hearing testimony that they've sent a letter but.." we're still trying"....

Mr. Newman continues....If we received a similar letter from the County, saying that there will never be any improvements on the corner, Hypothetical situation here, then heard testimony that" we are still working with the County", I think this Board may want to say; "Until such a time as we hear differently in writing".... we would want to hear back from them, stating they have now gone back to agreeing to do the widening....

Mr. Newman feels it would be reasonable at this point in time, after two letters from this objector in the extreme negative, there has been no communication to this Board from the objector... I think before scheduling to proceed, it would be reasonable to request a copy of the contract agreed upon as evidence so that we can proceed after all the uncertainty that has transpired....I don't mean to be difficult at all. There has been no resistance from this Board in regards to doing what we need to do to hear this application and make a decision on it.

Mr. Newman explains to Mr. Liebman, in order to give him enough of time to deal with the problem at hand, we will carry the application to the next scheduled meeting, just to give you a date....

Discussion continues.....

Special Meeting dates are discussed....

Mr. Newman feels from the Board's prospective, it seems like the further off we give you a date, the better. You have a lot to resolve and it would be nice if it could be resolved in it's entirety, documents sent to the Zoning Officer and forwarded to us long before we get here so that everything will go smoothly and you could be finished in a meeting or two....

May 6, 2010 or May 12th is discussed.....

Discussion continues.....

Mr. Newman asks Mr. Liebman, "If we give you a Special date in May, would that give you enough of time and would it be reasonable for this Board to request prior to opening that meeting, that we have confirmation of a contract between you & Rivera's, in writing....as well as some sort of confirmation at this point from the Borough Council & the County as to what their intent is in moving forward, just so we can start to see things a little more crystallized then we have been seeing them here in this application thus far...?"

Mr. Liebman states that of the two dates discussed, May 6 or May 12th.....yes, that would be reasonable....certainly if we have something from Rivera's....you will get it the same day we get it....

Discussion.....

Mr. Liebman agrees to report to the Board in writing within a week to let them know where he stands and then report again before May 6th, to let you know again as to where we stand.....

Discussion continues.....

Use variance has been completed.
Site Plan is what we are working on...

Mr. Newman asks for a motion to carry the application to a Special Meeting date of May 6, 2010

Ms. Spindel makes motion to carry the application to May 6, 2010
Mr. Puzio seconds the motion.

All Present: AYE

Application is adjourned until May 6, 2010

Mr. Liebman states for the record that he extends the time for the Board to act through the May 6, 2010 Public Hearing and he will provide the extension in writing also.

Mr. Liebman thanks the Board for their time.

Before adjourning, Mr. Karas asks the Board Attorney, Mr. Soukas for his professional opinion, “ If the applicant withdraws the application, is that a pertain only to the Engineering aspect of it? Does it also apply to the Sub-Division that was granted?

Mr. Soukas: I also thought about that today and have not formulated an opinion, but it is an issue. Part of me says, an argument could be made for retaining the Use aspect of it as previously approved, however, I have a problem with that because the Use aspect was predicated upon this access through Rivera’s.....so I have not formulated an opinion just yet...

Mr. Karas feels that the Board should be thinking about that and I feel that in the future, where there is a bifurcated matter, in particular....we should condition a Use Variance upon the completion of the rest of the application...If the rest of the application falls, then the Use Variance would fall and we would be back to square one....

It has been brought to my attention by one of the Board Members, that as far as Zap Lube is concerned, they installed all of the signs that this Board granted...but they never proceeded with the rest of the building modifications to the property itself. Again if we have an application that is twofold, we ought to condition one upon the other...

Mr. Soukas feels that is a good idea. I will take a look at this resolution in which the Board approved the Use Variance here. There may be a condition that relates to this aspect of the proceeding and I will get back to you on that. They are both good suggestions & I thank you.

Mr. Karas continues, “I am speaking for myself, but I think the Board would agree that the Use variance that was granted was predicated upon the rest of it being completed.”

Mr. Newman agrees and states we would have to take a look at the Resolution and the testimony and see if it had been discussed....

Mr. Newman asks for a motion to adjourn.

Adjourn

Mr. Karas made a motion to adjourn this meeting and Mr. Frankel seconded the motion.

TIME: 8:45 P.M.

VOTE: All Present - AYE.

Respectfully submitted,

Cathy Bozza
Zoning Board Clerk

Respectfully submitted,

Cathy Bozza
Zoning Board Clerk