

**BOROUGH OF FAIR LAWN  
ZONING BOARD OF ADJUSTMENT  
Special Meeting  
Of March 6, 2007**

Following are the minutes of the Fair Lawn Zoning Board of Adjustment's special meeting held on **Tuesday, March 6, 2007**.

Chairman Scott Levy called the regular meeting to order at 7:30 p.m. and declared that the meeting was being held in accordance with the Open Public Meeting Law.

Roll Call: Present were: Mr. Karas, Mr. Nakashian, Mr. Newman, Ms. Spindel, Mr. Sacchinelli, Mr. Salerno, Mr. Blecher, Mr. Diner, Mr. Charipper, Mr. Meer and Mr. Levy.

Also in attendance were William Soukas, Board Attorney; Ann Peck, Assistant Zoning Officer; and Carol LoPiccolo, Zoning Board Clerk.

Mr. Levy announced that Karen Kocsis was absent due to an illness and there is no Court Reporter for tonight's meeting. The meeting is being recorded on tape.

1. Commercial New Business:

1. Application #2006-014, AmeriSuites/Hyatt Place Conversion  
41-01 Broadway, Block 1201, Lots 1 and 2, Zone B-2  
The proposed addition of a bar and kitchen requires relief from the prior condition of approval dated December 8, 1997. This is an expansion of a prohibited use. Hotels are prohibited in all zones as per Section 125-15, uses prohibited in all zones. Food handlers/license/minor site plan as per Section 125-65.B.(3).

Mr. Karas: "In 1998 the resolution states that my former partner Morton Hirschklau, represented AmeriSuites. I have no knowledge of that application. I was retired at that point."

Mr. Camp [attorney for the applicant]: "I have no conflict with Mr. Karas sitting on the Board for this application."

Terance Camp [attorney for the applicant] came forward. Fees totaling \$313.00 and \$4,500.00 in escrow were paid and there is proof of service.

Mr. Camp: "What I propose is to review the procedural history and review the legal issues on what our position is and then I will have Mr. Richard Morgan as a witness [of AmeriSuites]. In 1997 there was a 35 year old hotel that was demolished and AmeriSuites built a new hotel that still exists today. That was

subject to that the kitchen and bar were not applied for and the Board imposed a limitation of not having a kitchen and bar on the site. Should it come up, that would require us to come back before this Board so that the Board can take a review of this. AmeriSuites was constructed and operated. I was told by Mr. Smart that the tax contribution went from \$30,000 per year to \$300,000 year. Select Hotel Group/Hyatt Place has since purchased AmeriSuites. The current application arises out of that purchase. A permit was issued for a room renovation of the hotel and for a lobby area, café space. The construction began on that project. On December 8, it was discovered that the kitchen/bar area was being added and a stop work order was issued. We apply tonight for an application for relief from the variance issued in 1997. This is the subject of the issue for relief of the condition of the variance. There is a change of circumstance. We would be faced with an accessory use to the existing use."

Mr. Camp read from the Sherman case. "Once the condition is lifted, we are left with a permitted hotel use. All we're talking about is a kitchen non-four walled food space and this café/bar. This is only a beer and wine bar. This is not hard liquor drinks."

Mr. Soukas: "You've mentioned a change in circumstance. I did mention to you that this is a permitted by a variance the Hotel. This is an expansion of a non-conforming use which would be subject to a D2 variance. I don't disagree that changed circumstance, the case law lacks any guidance in voting. I would submit to counsel and the Board that the addition of the bar and kitchen facilities is an expansion of a non-conforming use."

Mr. Charipper: "At the conclusion of this presentation, then we have to go by the recommendation of our attorney."

Mr. Soukas: "The original resolution was for a D variance."

Mr. Camp: "I will address these issues."

Mr. Levy: "Let's let them prove their case."

Mr. Soukas: "The case law does exist of changed circumstance."

Mr. Camp: "We will prove it all. It starts 125-8 of your Ordinance a non-conforming use that was lawful prior to the development of such Ordinance. 40:55D talks about expansion, by definition this does not apply here. The hotel is not a non-conforming use. In 1997, hotels were prohibited. However, if the Board were to conclude that this is a non-conforming use, then the positive and negative criteria are to be applied. This is an accessory use. The expansion does not interfere with the Master Plan and is not detrimental to the area. Special reasons: The proposed use promotes the general welfare. The typical commercial

use can benefit the general public that is particularly suited for that enterprise. This is typical of a contemporary state of the art luxury hotel. In addition, the suitability, the hotel is suited to accommodate the needs of the patrons for providing affordable food. Next door is the River Palm which does not provide this type of food service. A quality hotel is a draw for businesses. The negative criteria: There is no substantial detriment to the public good, nearby neighborhood, county or state. The clientele of the Hotel may also service the River Palm. The traffic can also be decreased, as the patrons will not need to leave the hotel for food service. The limited food and beverage issues will not compete with the local eateries. This is not a conflict with the Master Plan. The use is an appropriate use for the zone. The accessory use is an accessory to what is now a permitted use of the hotel. The character of the community has changed since 1997. A variance is not incompatible since the Ordinance was passed. Such circumstances as the use of a hotel did not anticipate this type of accessory at the time the Ordinance was passed."

Mr. Richard Morgan, 130 North Clay, Hinsdale, IL, came forward and was sworn in. "I have been with Hyatt since June of 1976. I am Sr. Vice President."

Mr. Camp: "You have been in the hotel business for how long?"

Mr. Morgan: "Since 1969. We bought from Prime Hotels the AmeriSuites product which is 70%. The other 30% are a group of franchises. We manage the specific properties."

Allyson Englishman, Oakland, NJ and Pauline Berke, Director of Sales, Springfield, NJ were both sworn in.

**Exhibit A-1**, Richard Morgan Certification, was marked.

Mr. Morgan: "The lobby can be referred to as a gallery. The gallery is your home. This is like walking into someone's living room. We have self check in kiosks. The host would make you a fresh cup of Starbucks coffee. You also have a little deli with sandwiches, salads, and bakery items. Around that is a kitchen for fruit, cereal, etc. If you want something else, we will sell you eggs, fritatas, waffles, an egg sandwich. One gallery host does all the jobs. Behind the guest kitchen (where you can get your own stuff) is the kitchen where we boil the bag of soup, chile, etc. We are not cooking the food. We are putting the food together. We have a pizza oven. We have a holding piece where we keep the pre-cooked foods. We have a convection oven to heat things up. We don't cook, fry, or broil anything. We have 11 Hyatt places open and we are going to have 120 open by the end of the year with this project. The 8 items of alcohol that we want to serve are 2 white wines, a soft red wine and Merlot, and 4 type of beers. This gallery area is a small area. We do not want people coming in for the food and beverage. We are not making money from this. This is to serve our

customers. We have our own money in this - not someone else's. The piece for us that's fits there is Starbucks. The customer base likes it. We don't want outside people coming here. The touch screen to order food is paid for by credit card or room charge only. There will be no cash register there. This is for our hotel guests only. We deliver to this hotel 2 times per week. It hurts cost distribution to deliver more than that. There is no change in what is presently being done there. With this we will raise our room rates - that's how it will pay off."

Mr. Camp: "What about the issue of training of employees?"

Mr. Morton: "We use safe served. We bring a professional group in to provide training for liquor. Since we are not using any hard liquor, it is how you I.D. a customer, and watch your customer, how you take keys away, etc."

Mr. Camp: "There is no wait staff?"

Mr. Morton: "No, it is only the 1 gallery host who does it all."

Mr. Camp: "Can you speak to a night club atmosphere and signage?"

Mr. Morton: "In our striving to make this like home, there is no signage, we have a small placard to list the menu items. There is no other signage. We have a small business center to use your computer. We have a system that dims the lights at a certain time. We have a few flat-screen t.v.'s. We are competing against Hilton and Marriott Courtyard. We have to be able to provide food and beverage to our customers. AmeriSuites did not change with the times."

CNN Article was marked as **Exhibit A-2**.

Mr. Morton: "This is anew kind of hotel."

Mr. Camp: "Has any area prohibited you from adding this?"

Mr. Morton: "No, but in one instance we had a problem purchasing the liquor license."

Mr. Charipper: "Is the traveler that you're getting a business traveler verses a family?"

Mr. Morton: "We are changing our clientele to more an upscale clientele. We are looking for a frequent traveler program. Families are our weekend clientele."

Mr. Charipper: "Basically you are sprucing up the place and bringing it to a higher level."

Mr. Morton: "The difference in the clientele, we have smoking rooms in AmeriSuites and Hyatt. How many in AmeriSuites and Hyatt?"

Ms. Englishman: "30 - Hyatt had 1."

Mr. Charipper: "In terms of the deliveries it will be 2 per week?"

Mr. Morton: "Correct, it will not be changed. We will cut down on the runs to the convenience store. The River Palm Terrace business will actually increase due to this renovation."

Mr. Newman: "Could you clarify the use of the food and beverage facility by other than hotel guests? What is the percentage of what items are charged opposed to what is included with the free continental breakfast? Someone may stop in to get their Starbucks coffee."

Mr. Morton: "We have limited space and the gallery space is for our hotel guests. We do not have room for outside customers."

Ms. Burke: "Directly across the street from the AmeriSuites is a Starbucks being built. Would they come to our property - probably not. The mall is a 1/2 mile down the street, and that has a lot to offer. Where we are located is somewhat more isolated."

Ms. Englishman: "We are dealing with out of town guests and they do not want to have to leave the property."

Mr. Diner: "How is the alcohol consumption process going to be handled? Is it only the gallery host that has access?"

Mr. Morton: "We have a cooler with doors with wine and beer. This is not a self-serve. There will be no alcohol served past 11 p.m."

Ms. Spindel: "Right now you don't serve any breakfast?"

Ms. Burke: "Just our continental breakfast."

Mr. Morton: "It is the same distributor that we will use."

Ms. Spindel: "You are not going to advertise in the newspapers that this is now available?"

Mr. Morton: "No."

Ms. Spindel: "There is no parking change?"

Mr. Morton: "Correct."

Ms. Spindel: "Mr. Lotermann noted that there is a need for a third recyclable dumpster."

Mr. Morton: "We will take care of that."

Mr. Karas: "What is the relationship between Prime Hospitality Corp. and the present applicants?"

Mr. Morton: "We bought AmeriSuites from Prime. I believe Prime no longer exists."

Mr. Karas: "The breakfast that is presently being served - does that include any hot meals?"

Mr. Morton: "Eggs, Waffles, Sausage."

Ms. Englishman: "It is brought in and then heated in the microwave."

Mr. Levy: "Your garbage pick up will remain the same along with the screening?"

Mr. Morton: "Yes."

Mr. Levy: "Do you plan to change the sign on Rt. 4?"

Mr. Morton: "We will put whatever sign is allowed."

Mr. Levy: "Do you plan to put any signs in the window?"

Mr. Morton: "No."

Mr. Levy: "There are 2 signs on the building?"

Mr. Morton: "Correct. So far we have used the existing signs and sometimes we have removed signs. No additional signs will be added."

Mr. Levy: "What about the hours of operation?"

Ms. Englishman: "6:30 to 9:30 and weekends 7 to 10."

Mr. Levy: "The bar will shut down at 11 p.m.?"

Mr. Morton: "Yes."

Mr. Levy: "There will be 1 additional person in the service area?"

Mr. Morton: "Yes. In the evening you'll have 3 people until 8 p.m. and when things get quiet you go down to 2 people."

Mr. Levy: "How many additional staff to the current staff?"

Mr. Morton: "About another 50%. It depends on the business."

Mr. Levy: "It could be up to 5 additional people?"

Mr. Morton: "Yes. There would be no change in the parking needed."

Mr. Levy: "The deliveries won't change?"

Mr. Morton: "Correct."

Mr. Levy: "No open flames in the cooking facility?"

Mr. Morton: "Correct."

Mr. Levy: "You have to go for a special liquor license."

Mr. O'Neill: "That will have to be applied for and obtained."

Mr. Levy: "A food handlers license is required."

Mr. O'Neill: "Counsel for the Board and the Assistant Zoning Officer stated we can obtain this license here under the jurisdiction of the use variance."

Mr. Soukas: "Minor site plan review does fall under this Board with a D variance."

Mr. Levy: "The amount of traffic - this will not be added to?"

Ms. Englishman: "No, I believe this will reduce the amount of traffic since customers no longer have to leave the facility."

Mr. Levy: "There will be no Starbucks sign outside?"

Mr. Morton: "No."

Mr. Levy: "This is a hooded system?"

Mr. Morton: "Yes, the kitchen is a 620 s.f. area. It takes the heat and humidity out."

Mr. Levy: "There have been no objections from the professionals."

Ms. Peck: "We received reports from Birdsall, Recycling, DPW and Fire."

Mr. Soukas: "On the last page of the Birdsall Report, the applicant should describe the location within the site where service deliveries will take place and will not conflict with the parking and circulation."

Ms. Englishman: "They do not."

Mr. Levy: "If you enter from 208?"

Ms. Englishman: "You enter down and you are turning right then left."

Mr. Levy: "Where are deliveries made?"

Ms. Englishman: "At the front door."

A 5 minute recess was taken at 9:00 p.m. The meeting resumed at 9:15 p.m.

Mr. Camp Marked the remaining exhibits:

Mr. Morgan Certification **Exhibit A-1.**

CNN Article **Exhibit A-2.**

Draft 208 Corridor Study **Exhibit A-3.**

Zoning Application **Exhibit A-4.**

Terrance Camp Certification **Exhibit A-5**

Denial letter dated January 30, 2007 **Exhibit A-6**

Zoning Map **Exhibit A-7**

Survey **Exhibit A-8**

Plans **Exhibit A-9**

BIC letter dated 3/6/07 **Exhibit A-10**

EDC letter **Exhibit A-11**

Menus from River Palm **Exhibit A-12**

Richard Berry Certification **Exhibit A-13**

Ms. Burke: "I spoke with George (the general manager of the River Palm) about the renovations going on at the hotel. George came back over to the AmeriSuites and I showed him one of the rooms. He was excited to see more of a partnership between the two of us. He provided us with a copy of a menu. In addition, we discussed possibly utilizing his catering facility for our groups."

Mr. Levy: "Did he mention any access between the two facilities?"

Ms. Burke: "There presently are stairs."

Mr. Levy: "That was part of their requirement and you should now make sure that it is properly maintained."

Ms. Burke: "He mentioned to me that he has a grounds facilitator and would like to update that pathway. We will make sure it is maintained and safe."

Mr. Camp: "Also attached is Mr. Berry's Certification who is a member of the firm who took the pictures."

Mr. Levy opened the meeting to the public. The following came forward and were sworn in:

Todd Malkin, 16 Brearly Crescent: "I am here as a member of the EDC. We had a meeting this morning and we are in support of this application. We should allow the Hyatt to be competitive in the market place."

Dennis Cummins, Jr., 24-07 Broadway, The Broadway Improvement Corporation. "This application could not come at a better time. We are now in the process of developing a Master Plan for Broadway and are revising our sign Ordinance. We welcome this application and this will upgrade Broadway. The fact that Hyatt will be advertising Fair Lawn is something that we couldn't get. This is free advertising for the Town. We are upgrading ourselves by having this type of hotel in the community. On behalf of the BIC I ask this Board to approve this application."

Mr. Levy closed the meeting to the public.

Mr. Camp: "The public is in great support of the application. We are glad we came to a special meeting. Whether it is changed circumstances or positive and negative criteria and not inconsistent with the Master Plan, we made an adequate application to support this application and ask for relief for the variance and minor site plan application."

Mr. Levy: "The vote and the motion will have to be made on the D variance (an expansion of a non-conforming use) and also for the food handlers license."

Mr. Meer made a motion to approve this application. Garbage dumpsters must be added and recycling be done and the applicant must obtain the proper liquor license and that wine and beer will be the only alcohol served. Mr. Charipper seconded the motion.

VOTE: Mr. Karas, Mr. Nakashian, Mr. Newman, Ms. Spindel (I believe it is beneficial to the area and a convenience to the hotel guests and a safety issue), Mr. Charipper, Mr. Meer and Mr. Levy - YES.

**Application Approved.**

**ADJOURN**

Mr. Newman made a motion to adjourn this meeting and Mr. Charipper seconded the motion.

VOTE: All Present - YES.

TIME: 9:35 p.m.

Respectfully submitted,

Carol LoPiccolo  
Zoning Board Clerk