

**BOROUGH OF FAIR LAWN  
ZONING BOARD OF ADJUSTMENT  
Special Meeting  
of August 30, 2007**

Following are the minutes of the Fair Lawn Zoning Board of Adjustment's special meeting held on **Thursday, August 30, 2007**.

Chairman Scott Levy called the regular meeting to order at 7:15 p.m. and declared that the meeting was being held in accordance with the Open Public Meeting Law.

Roll Call: Present were: Mr. Newman, Mr. Sacchinelli, Mr. Diner,  
Mr. Meer and Mr. Levy.

Absent were: Mr. Charipper, Mr. Salerno, Mr. Blecher, Mr. Nakashian, Ms. Spindel and Mr. Karas. (Mr. Charipper and Mr. Salerno were on vacation; Ms. Spindel and Mr. Karas both recused themselves from hearing this application; and Mr. Nakashian was ill).

Mr. Blecher arrived at 7:30 p.m.

Also in attendance were William Soukas, Board Attorney; Paul Azzolina, Board Engineer; Mark Kataryniak, Board Traffic Engineer; Cheryl Bergailo, Board Planner; Ann Peck, Assistant Zoning Officer; Carol Hardiman, Court Reporter and Carol LoPiccolo, Zoning Board Clerk.

**Residential Old Business:**

1. Application #2007-072, Seymour & Joell Karas  
11 Lamring Drive, Block 5728, Lot 4, Zone R-1-3  
The proposed shed would have a sideyard setback of 21" where 4' is required as per Section 125-12 Schedule of area, yard and building requirements.

Mr. Levy stated that Mr. Karas is a member of the Zoning Board and the MLUL allows that he be represented by an attorney. The objectors in this case could not be present and this matter is carried to September 6, 2007. Mr. Sy Karas would be represented by Andrew Karas and there was a consent of time for the Board to act on this application.

**Application carried to September 6, 2007.**

**Commercial Old Business:**

1. Application #2006-018, Sebastian E. Lentini (McDonald's)  
37-01 Broadway, Block 2320, Lots 10-12, Zone B-2/R-1-3  
Amendment to approved use/site plan approval requires site plan approval as per  
RGO Section 125-6.

Mr. Levy stated that at the last meeting Mr. Fears was in the middle of being cross examined.

Mr. Andrew Karas [attorney for the objector - IHOP] came forward.

Mr. Steinberg [attorney for McDonald's] stated that at the last meeting Mr. Levy, Mr. Meer, Mr. Salerno, Mr. Sacchinelli and Mr. Blecher, Mr. Nakashian were all present. The transcript indicates that Mr. Newman arrived at the previous meeting at 7:45 and asked if Mr. Newman read the transcript. Mr. Newman stated that he did read the transcript. Mr. Steinberg noted that Mr. Blecher would be late and the Board would take a 10 minute recess until Mr. Blecher would arrive. Mr. Blecher arrived at 7:30 p.m.

The meeting resumed at 7:30 p.m. Roll call was taken and everyone was present as previously called, including Mr. Blecher.

Mr. Karas asked Mr. Fears when he designed the traffic patterns, if signage was used to control the traffic. Mr. Fears responded yes. Mr. Karas stated that arrows were placed on the pavement. Mr. Fears stated that arrows on the pavement could be interpreted as signage. Mr. Karas asked how drivers are directed to go in a particular direction. Mr. Fears stated chanelization would be used such as curbing, fencing, a gate, signing. Mr. Karas asked if arrows painted on the ground to direct a car. Mr. Fears responded yes, it would be an acceptable way.

Mr. Karas asked if Mr. Fears is familiar with what was approved at the original application. Mr. Fears stated that he testified at that application, but was not present for the entire meeting. Mr. Karas asked if before the plan was approved, did he review the plan. Mr. Fears did not. Mr. Karas asked Mr. Fears if he was not aware of what final plan was approved. Mr. Fears responded he did not know. Mr. Karas asked if Mr. Fears' recommendations were put into the final plan. Mr. Fears did not know. Mr. Karas asked if the plan that he did review did include how the plan should have been laid out per his recommendations. Mr. Karas asked the area in between the McDonald's and IHOP has signs that say do not enter. Mr. Fears stated he did not see anything like that. Mr. Karas asked if he had recommended not to include signage to that effect. Mr. Fears did not think he would have recommended signage not be included to that effect.

Mr. Karas asked Mr. Fears if his opinion is that two way traffic should not have been permitted between the IHOP and McDonald's. Mr. Fears thought that in 2002, he did not recall if 2 way traffic was a recommendation or not. Mr. Karas asked if Mr. Fears prepared any plans on this project. Mr. Fears responded no, only that he contributed to them.

Mr. Fears referred to Exhibit O-2 and commented that the drive area does have an arrow on the pavement. Mr. Karas asked if there is an arrow on the plan at 176. Mr. Fears stated no.

Mr. Karas asked about the Resolution from 1983. Resolution dated January 3, 1983 was marked as **Exhibit O-3**. Mr. Fears stated he was not familiar with that Resolution. Mr. Steinberg objected to questioning regarding this Resolution as Mr. Fears is a traffic expert and is not here to testify on what happened in 1982 and 1983. Mr. Karas stated it does have relevance regarding the ingress and egress between the two properties. Mr. Soukas stated the issue of the driveway between the two properties is part and parcel of the application and there should be some leeway given to questioning by Mr. Karas.

Mr. Karas asked if Mr. Fears has seen that Resolution. Mr. Fears did not know. Mr. Karas referred to Page 4, Paragraph 3E. Mr. Fears read from the Resolution. Mr. Steinberg objected to questioning of Mr. Fears in interpreting the Resolution. Mr. Soukas asked Mr. Steinberg if he felt that Mr. Fears could answer questioning regarding the Resolution as it pertains to traffic engineering. Mr. Steinberg did not feel that Mr. Fears could answer any questioning regarding the Resolution.

Mr. Levy asked if Mr. Fears did design the site in 2002. Mr. Fears stated yes, and the ability to preserve the egress from the IHOP to the McDonald's. Mr. Karas asked if in March 2006 that Mr. Fears did not anticipate that vehicles would want to go from the McDonald's to the IHOP. Mr. Fears responded yes.

Mr. Karas read from the transcript of October 2002 – Page 47 and asked Mr. Fears if he recollects from the testimony about free access between the two properties. Mr. Fears responded no. Mr. Karas asked if Mr. Fears testified that a gate is needed for safety reasons. Mr. Fears responded yes. Mr. Karas asked how many accidents have occurred since the drive-thru. Mr. Fears did not know. Mr. Karas stated that as previously testified by Mr. Fears regarding emergency access from the IHOP to McDonald's. Mr. Fears responded yes. Mr. Karas asked where the closest firehouse is to the IHOP. Mr. Fears did not know. Mr. Karas asked the most direct route for a fire truck to get to IHOP. Mr. Fears did not know. Mr. Karas stated the way the property is designed with a proposed gate, how would a fire truck get through a gate. Mr. Fears stated that it could be done with a keypad, a key, an audio alarm, there are a number of ways that could be managed. Mr. Karas asked if power would have to go to the gate. Mr. Fears stated not necessarily. Mr. Karas asked how a fire truck would get through if it

malfunctioned. Mr. Fears stated if need be, the fire truck would have to go through it. Mr. Karas asked how it would go up from the IHOP to the McDonald's. Mr. Fears stated there would be a sensor in the pavement on the IHOP property, or another way it could be done is with video detection, laser, infrared, etc. Mr. Karas asked if any sensor fails, the gate doesn't go up. Mr. Fears responded no, if the sensor fails, the gate would go up. The gate system could be designed fail safe, so that if there is any failure, the gate goes up.

Mr. Karas referred to Exhibit O-2, the driveway between the 2 properties and asked how wide the driveway is on the McDonald's property is at the property line. Mr. Fears responded 20'. Mr. Karas stated that it widens as it makes the left turn to the McDonald's property and there is curbing to the right that does not offer any direction. Mr. Fears stated yes. Mr. Karas stated there is STOP on the pavement at the driveway. Mr. Levy stated that at the previous meeting Mr. Fears stated it goes from 20' to 10' at that point.

Mr. Steinberg referred to O-2 to the street curb as exiting from IHOP the curb to the left goes in a radius to direct traffic and the right hand curb goes straight – why is the right hand curb not designed as the left hand radius curb. Mr. Fears stated that the ability of an area ladder truck to move from the McDonald's to the IHOP it would have to jump the curb and wanted to have accessibility in case of a fire. The IHOP roof has a peak roof and is important to preserve access for a ladder truck.

Mr. Steinberg asked if there were any arrows that may have been observed on the IHOP property to the east. Mr. Fears stated there was a white arrow from IHOP toward McDonald's in 2002 and has since been painted yellow.

Mr. Steinberg asked Mr. Karas to submit the testimony that was previously read from 2002. Mr. Fears read the testimony at this time to himself. Mr. Steinberg asked if IHOP has an exit to Route 4. Mr. Fears responded yes. Mr. Steinberg asked if it is used out to Route 4. Mr. Fears stated that there are cars parked in the driveway which prevent the cars to exit that way. Mr. Steinberg asked how many times Mr. Fears visited the site. Mr. Fears stated 10-25 times. Mr. Steinberg asked if Mr. Fears observed the exit driveway on the IHOP property. Mr. Fears stated that he has seen cars parked in the driveway.

Mr. Karas asked that the reason a directional curb was not put on the northerly side of the property to provide access for a fire truck. Mr. Karas stated that an arrow could have been put there instead. Mr. Fears stated yes.

Mr. Levy asked Mr. Fears how close the exit from IHOP to Route 4 is from the exit from McDonald's. Mr. Fears thought about 25'. Mr. Levy asked what a safe distance would be. Mr. Fears responded 25'. Mr. Levy asked if there are any utility poles in the way. Mr. Fears stated there is a utility pole 1' off the property

line. Mr. Levy asked if that poses a hazard. Mr. Fears stated he did not know. Mr. Levy asked if it were a hazard, would it be better for the traffic to exit through McDonald's. Mr. Fears did not have a problem with the traffic to exit from IHOP – that is how the site was designed. The design accommodates that. Mr. Fears stated that is not the issue. Mr. Fears felt the pole could be moved to accommodate the driveway, which is pretty common. Mr. Levy asked if Mr. Fears has seen any accident reports. Mr. Fears stated he has seen a pedestrian accident report. Mr. Steinberg stated he has an eyewitness to that accident who will be testifying.

Mr. Kataryniak asked if Mr. Fears could describe the DOT standards from the property line to curb return. Mr. Fears stated 12'. Mr. Fears stated the IHOP is non-conforming.

Mr. Karas referred to Exhibit 0-1. Mr. Fears did not recall this site plan with a revision date of 4/25/01. Mr. Karas asked if there is a stop line from the northern curb to the southern curb. Mr. Fears responded yes – coning from the IHOP to the McDonald's. Mr. Karas referred to Exhibit 0-2.

Mr. Steinberg brought forward Mr. Darren Lentini [owner of the McDonald's]. Mr. Steinberg asked if Mr. Lentini was on the site on July 9, 2007. Mr. Lentini stated yes. Mr. Steinberg referred to Exhibit A-4. Mr. Lentini stated he was standing on the sidewalk to the east side of the restaurant and observed a vehicle had parked in one of the parking stalls opposite the building against the east property line. Mr. Lentini stated it was a white car that backed out of the handicapped spot against traffic and proceeded to go through the exit into the IHOP lot. The security guard for McDonald's stood at that exit and the car proceeded to hit the security guard. The vehicle proceeded to go through the exit and go through the IHOP property. Mr. Lentini stated the police were called and a report was made. The security guard has lodged a criminal complaint against the driver of the car. There was a hearing in Fair Lawn Municipal Court. Mr. Karas objected to this testimony. Mr. Levy asked how the criminal part of the case is relevant to the Zoning Board. Mr. Steinberg stated that there is a safety concern at that location of cars going onto the IHOP property and then backing out onto the McDonald's property. Mr. Steinberg stated this is another way to show how this is a safety concern and how cars proceed the wrong way against the traffic. The police report was marked as **Exhibit A-6**.

Mr. Karas asked if the criminal report happened since the barriers were put up. Mr. Lentini responded yes. Mr. Karas asked if Mr. Lentini has knowledge that it is a criminal intent. Mr. Lentini thought yes – the report says assault.

Mr. Levy asked if Mr. Lentini knew if cars have gone against the traffic prior to the barriers going up. Mr. Lentini stated he hasn't witnessed it, but was told that happens.

Mr. Karas asked how many days per week Mr. Lentini goes to the site. Mr. Lentini stated 2 hours/2 days per week and has been there for 8 years.

Mr. Levy opened the meeting within 200' and the general public. No one came forward. Mr. Levy closed the meeting to the public.

A 10 minute recess was taken at 8:45 p.m. The meeting resumed at 9:00 p.m. and Roll Call was taken and everyone was present.

The meeting was opened to the public for questioning of Mr. Fears. Michael Obsuth, 1-21 37<sup>th</sup> Street came forward and was sworn in. Mr. Obsuth asked if Mr. Fears remembers the testimony regarding the entrance from 37<sup>th</sup> Street. Mr. Fears did not recall. Mr. Obsuth asked if Mr. Fears had an amount of cars that should be allowed. Mr. Fears stated there are a number of factors that would have to be looked at and doesn't know. Mr. Obsuth stated there is a sign by Route 4 and from IHOP and the one that says no right turn at the 37<sup>th</sup> Street and wanted to know why that sign is there. Mr. Fears did not know why the sign is there and Mr. Fears had recommended that the sign should have been removed. Mr. Obsuth asked how much square footage of signage is on the site and thought it exceeded the amount allowed. Mr. Fears thought that directional signage would not be included in that square footage.

Mr. Levy opened the meeting to the general public. Mr. Harvey Rubenstein, 28 Rutgers Terrace, came forward. Mr. Rubenstein asked about the McDonald's exit sign to Broadway. Mr. Fears was familiar with the sign. Mr. Rubenstein asked if there were NJDOT required or could it be moved back. Mr. Rubenstein stated as he was exiting and looked east, he had to inch out onto the sidewalk to see if there was traffic coming. Mr. Fears stated that the placement of that sign has a function. Motorists are going to see the McDonald's building and sign and the first driveway they come to, they might want to enter there, so that sign is very important to make sure an approaching motorist does not enter at that location. If it were put back, it might not be as effective. For driveway operation, it is acceptable to inch out onto the sidewalk. Mr. Fears would look at the sign. Mr. Rubenstein felt the sign should be moved back about 2' and raised higher. Mr. Newman asked if it were adequate to move it to the right hand side of the driveway. Mr. Fears stated he and Mr. Kataryniak would look at this and possibly it could be moved and raised a little bit and moved back possibly and would have to be looked at in the field.

Mr. Levy closed the meeting to the public.

Mr. Levy asked Mr. Steinberg that there are directional structures up on the site and have they been changed from barrels to bottles. Mr. Steinberg stated that they originally had cones filled with concrete and they have been removed and new

items have been placed there. Mr. Levy stated this is a violation of the approved site plan and new things have been added over time. Mr. Levy stated that no more items should be added. Mr. Steinberg agreed.

Mr. Karas brought forward Ed Trawinski, 3-33 Lyncrest Avenue, Fair Lawn, and was sworn in. Mr. Levy asked if Mr. Trawinski was here as a council member. Mr. Trawinski was not here in that capacity. Mr. Karas asked what is Mr. Trawinski's position. Mr. Trawinski is an attorney and knew John Alaimo [previous owner of IHOP] for many years and served as his attorney going back to 1984. Mr. Trawinski was retained in July 2001 by Mr. Alaimo. Mr. Trawinski was given a release by the estate of Mr. Alaimo for attorney/client privilege allowing him to testify for John in respect to IHOP and McDonald's application in 2001. Mr. Trawinski stated that John expressed concerns over an application that was filed by McDonald's concerning that his egress and ingress and the parking on the McDonald's site would be blocked. Mr. Trawinski represented Mr. Alaimo as an objector to that application in 2001. That application was filed by Sebastian Lentini who was represented by Mr. Steinberg. Mr. Alaimo's concern were if the egress and ingress were blocked, it would be devastating to his business and that he had an arrangement since the 1970's. The Planning Board and Zoning Board records indicated in 1969 that the arrangement was in place.

Mr. Karas asked if Mr. Trawinski attended these meetings in 2001. Mr. Trawinski stated that application was for a drive-thru restaurant and did attend a meeting on July 2, 2001. Mr. Trawinski had a portion of his file from that hearing. Mr. Trawinski referred to notes taken on July 2, 2001 with conversations with John Alaimo regarding the blockage of parking, and the egress and ingress between the sites. John Alaimo was willing to testify, but it did not get to that point, since the case was dismissed as per res judicata. John Alaimo and Sebastian Lentini went into a discussion in the hallway. John agreed to withdraw his objection as long as the access between the two sites were to remain. Mr. Lentini agreed. Mr. Trawinski had recommended that it be formalized. It was not. The meeting on July 17, 2001 took place to be revised to show the ingress and egress between the site. Mr. Trawinski was not present at that meeting.

Mr. Karas referred to Exhibit O-1. Mr. Trawinski recognized another version of this document but this looks familiar. Mr. Trawinski stated it shows the pole that needed to be re-located to accommodate the ingress and egress between the site. The plan is dated March 14, 2001 with a revision of April of 2001. This plan is consistent with what was submitted with the McDonald's application. The plan dated March 14, 2001 with 6 revisions dates and the final date of 2005 that is not legible. Exhibit O-2 has been changed from Exhibit O-1 consistent with the agreement between Mr. Lentini and Mr. Alaimo. That showed that the existing pole would be moved and relocated. What is on the plan is consistent with what was agreed to. The July 17, 2001 meeting everything went as agreed and a plan showed 2 way egress and ingress and Mr. Alaimo was pleased. Mr. Trawinski

stated that Mr. Alaimo's plan was consistent with the previously approved Resolutions.

Mr. Steinberg asked if Mr. Trawinski had a copy of this agreement between Mr. Alaimo and McDonald's. Mr. Trawinski presented a copy of the minutes from 1985 that referenced this agreement. Minutes of April 27, 1970 were marked as **Exhibit O-4**, of the Fair Lawn Planning Board and were read into the record which referenced the easement and parking. Mr. Steinberg asked if an easement was ever granted. Mr. Trawinski stated he could not find one. Mr. Steinberg asked if Mr. Trawinski has seen a lease that references the parking on the McDonald's site by IHOP. Mr. Trawinski stated there is correspondence from January 3, 1983 that references the arrangement. December 15, 1982 correspondence was marked as **Exhibit O-5**. Mr. Trawinski read the letter of 12/15/82. Mr. Steinberg referred to the letter wherein it mentions where the exit has been used from IHOP through McDonald's and does not mean exit and entrance. Mr. Steinberg stated that in 1982 that was the representation made to the Board. Mr. Trawinski stated that the barrier would be removed that was in place at the hearing in 1985 and was supposed to be removed. Mr. Steinberg asked where is the copy of that site plan. Mr. Trawinski did not know. Mr. Steinberg stated that Mr. Trawinski stated that in 1982 that had a barrier on it that totally blocked the site between McDonald's and IHOP. In December 1982 the site plan was revised where the barrier was removed. Mr. Steinberg asked what happened in between those 2 site plans where the barrier was removed, yet the correspondence clearly states that the removal of the barrier was to allow exit only from IHOP to McDonalds.

Mr. Levy asked who removed the barrier. Mr. Trawinski stated that McDonald's removed the barrier. Mr. Levy asked if there have been any complaints since the barrier was removed prior to now. Mr. Trawinski stated no.

Mr. Steinberg asked if Mr. Trawinski is testifying as a fact witness. Mr. Trawinski responded yes. Mr. Steinberg asked if there was any type of agreement in place. Mr. Trawinski stated yes. Mr. Steinberg asked if any type of agreement has been put into place over the years. Mr. Trawinski stated he could not find one. Mr. Steinberg stated in 2001, Mr. Trawinski advised Mr. Alaimo that he should get an arrangement in writing and he did not. Mr. Trawinski responded correct. Mr. Trawinski stated that over the years there have been a variety of arrangements between the sites for parking, and there was a residence at the rear of the property of IHOP that was converted to office space and there were agreements in place for McDonald's to provide parking to IHOP. Mr. Trawinski stated there have been a variety of applications over the years wherein McDonald's leased a various amount of spaces to IHOP. Mr. Steinberg asked if Mr. Trawinski has seen any lease agreements for spaces. Mr. Trawinski stated that he has seen the site plan of 1969 that depicted the leasing of spaces. Mr. Steinberg went through a timeline of events over the years with Mr. Trawinski of

different applications and arrangements. Mr. Trawinski referred to the minutes of January 3, 1983. Mr. Steinberg asked Mr. Trawinski to read the Resolution of January 3, 1983. Mr. Trawinski read from the Resolution Page 4 which talked about the removal of the barrier to allow for exit from IHOP through McDonald's and not egress and ingress. Mr. Trawinski disagreed and stated that is how it has been for many years.

Mr. Steinberg asked about the arrangement that was done in the hallway back in 2001. Mr. Trawinski stated that egress and ingress would be allowed provided Mr. Alaimo withdrew his objection to the application. Mr. Steinberg stated that previously Mr. Trawinski stated that that discussion Mr. Lentini nodded yes to that agreement. Mr. Trawinski disagreed that that comment was made. The Court Stenographer read back the record.

Mr. Steinberg asked how long Mr. Trawinski has been a council member. Mr. Trawinski stated 6 years. Mr. Steinberg asked if Mr. Trawinski voted yes on the closing of 37<sup>th</sup> Street. Mr. Trawinski stated he voted yes. Mr. Steinberg asked if he voted yes on the recently adopted towing ordinance. Mr. Trawinski responded yes.

Mr. Steinberg asked if Mr. Trawinski what the attorney who covered the meeting of July 17, 2001 told Mr. Trawinski the following day. Mr. Trawinski stated that he said everything went as agreed at that meeting and the pole was to be removed and the plans were revised to show egress and ingress and Mr. Alaimo was pleased. Mr. Steinberg asked if he had seen the plans. Mr. Trawinski stated no. Mr. Karas asked if he had seen the plans subsequently. Mr. Trawinski responded yes.

Mr. Levy asked if parking took place on both sites previously. Mr. Trawinski responded yes. Mr. Levy asked if Mr. Trawinski was aware of any accidents on the site. Mr. Trawinski responded no.

Mr. Steinberg asked if Mr. Trawinski and his family parked on one property and walked across that it was proper. Mr. Trawinski responded that it has been done that way for years.

Mr. Levy opened the meeting within 200' and the general public. No one came forward. Mr. Levy closed the meeting to the public.

**Application carried to November 8, 2007 special meeting date.** Mr. Steinberg consented to the time for the Board to act on this application.

**Vouchers:**

1. Taylor Design Group in the amounts of \$1,124.00 for Zap Lube; \$210.00 for Sprint; \$420.00 for Omnipoint; and \$1,155.00 for 18-01 Pollitt.
2. Birdsall Engineering in the amounts of \$1,100.00 for Zap Lube; and \$1,620.00 for 18-01 Pollitt.

Mr. Diner made a motion to approve these vouchers and Mr. Sacchinelli seconded the motion.

VOTE: All Present – YES.

**Adjourn:**

Mr. Meer made a motion to adjourn this meeting and Mr. Salerno seconded the motion.

VOTE: All Present - YES.

TIME: 10:30 P.M.

Respectfully submitted,

Carol LoPiccolo  
Zoning Board Clerk