

BOROUGH OF FAIR LAWN

Regular Meeting

Zoning Board of Adjustment

PRESENT:

Scott Levy, Chairman
Doug Charipper, Vice Chairman
Joseph Meer, Secretary
Jane Spindel
John Nakashian
Todd Newman
Gary Sacchinelli, Alt # 2
Brian Belcher, Alt #3
Marvin Diner, Alt #4
Bruce Rosenberg, Brd. Atty
Ann Peck, Asst. Zoning Officer
Carol LoPiccolo, Brd. Clerk
Paul Azzolina, PE, Board's Professional
Mark Kataryniak, PE, Board's Professional

Declaration by Chairman Levy that meeting is being held in accordance with Open Public Meeting Act.

Public Comment. Harvey Rubinstein, 28 Rutgers Terrace: Why doesn't an applicant have to answer when he asked a question .The attorney says, what's brought up is fair game. The Board ruled it wasn't.

Residential Old Business:

1. **Application #2006-024, Andrzej Soltys**

28 Plaza Road, Block 3223.01, Lot 1, Zone R-1-3

Existing lot is 5,000 sq. ft. where 6,500 sq. ft. is required. The proposed new one family dwelling would have a front yard setback on Berkshire Road of 12' where 25' is required as per RGO Section 125-12 Schedule of area, yard and building requirements.

Larry Goodman, Esq. sworn and testified.

Proof of service and payment of fee of \$88 is on file in Building Dept.

Andrzej Soltys sworn and testified.

Exhibits: A-1 and A-2 Photos.

On motion by Ms. Spindel to approve, seconded by Mr. Meer and unanimously approved by roll call vote.

Residential New Business:

1. Application #2006-030, Rhoda Jaffe

6 Sheridan Place, Block 3623, Lot 4, Zone R-1-2

Existing lot is 6,187 sq. ft. where 7,500 sq. ft. is required. The proposed additions and front porch would increase the building coverage from 23.03% to 27.45% where 25% is permitted. Would have a front yard setback of 19.75' where 30' is required. Would have a side yard setback of 5.81' where 10' is required as per RGO Section 125-12 Schedule of area, yard and building requirements.

Proof of service and payment of fee of \$88 is on file in Building Dept.

Rhoda Jaffe sworn and testified.

Exhibits: A-1 to A-4 Photos.

Public: Steven Nitty and Harvey Rubinstein, asked questions.

On motion by Mr. Newman, seconded by Mr. Charipper, there was a roll call vote:

Roll Call Vote: Levy: no. Meer, Newman, Charipper, Nakashian, Spindel and Sacchinelli: yes.

2. Application #2006-031, Hennadiy and Halyna Fateev

33 Winslow Terrace, Block 1110, Lot 12, Zone R-1-3

Existing lot is 6,267 sq. ft. where 6,500 sq. ft. is required. The proposed addition would have an existing side yard setback of 7' where 8' is required as per RGO Section 125-12 Schedule of area, yard and building requirements.

Proof of service and payment of fee of \$88 is on file in Building Dept.

Hennadiy and Halyna Fateev were sworn and testified.

Public: Harvey Rubinstein, 28

On motion by Mr. Newman and seconded by Mr. Nakashian and unanimously approved by Roll Call Vote:

3. Application #2006-032, John and Muriel Overmars

9-09 Bush Place, Block 6506, Lot 26, Zone R-1-3

The proposed addition would increase the building coverage from 18.62% to 29.62% where 25% is permitted. Would increase the impervious coverage from 26.07% to 41.11% where 35% is permitted. Would have an existing side yard setback of 6.46' where 8' is required as per RGO Section 125-12 Schedule of area, yard and building requirements.

Proof of service and payment of fee of \$88 is on file in Building Dept.

Muriel and John Overmars were sworn and testified.

Public: Guy DellaMonica spoke to approved the application.

On motion by Mr. Newman and seconded by Mr. Nakashian, there was a roll call vote: Levy: no. Nakashian, Newman, Spindel, Charipper, Meer and Sacchinelli: yes

4. Application #2006-033, Guy and Debra DellaMonica

15-51 Elmary Place, Block 4708, Lot 1, Zone R-1-3

The proposed driveway expansion would increase the impervious coverage from 37.07% to 39.29% where 35% is permitted as per RGO Section 125-12 Schedule of area, yard and building requirements.

Proof of service and payment of fee of \$88 is on file in Building Dept.

Guy and Debra DellaMonica were sworn and testified.

On motion by Mr. Charipper and seconded by Mr. Meer and unanimously approved by Roll Call Vote:

5. Application #2006-034, Risa Goldman & Eli Greenbaum

16 Aberdeen Avenue, Block 3706, Lot 9, Zone R-1-3

Existing lot is 4,729 sq. ft. where 6,500 sq. ft. is required. Existing lot has a street frontage of 15' where 65' is required. The proposed addition would increase the existing impervious coverage from 40.28% to 41.45% where 35% is permitted as per RGO Section 125-12 Schedule of area, yard and building requirements.

Proof of service and payment of fee of \$88 is on file in Building Dept.

Eli Greenbaum was sworn and testified.

On motion by Mr. Meer, seconded by Mr. Charipper and unanimously approved by roll call vote.

5. Application #2006-035, Michael and Christine Mappa

7-26 Chester Street, Block 5829, Lot 10, Zone R-1-3

Existing lot is 5,000 sq. ft. where 6,500 sq. ft. is required. The removal of the existing front yard concrete platform and replacement of a new foyer, platform and walkway would increase the building coverage from 33.79% to 34.59% where 25% is permitted. Would reduce the impervious coverage from 38.81% to 38.45% where 35% is required. The proposed second story addition would have an existing front yard setback of 10.2' where 25' is required as per RGO Section 125-12 Schedule of area, yard and building requirements.

Christine Mappa appeared.

Carried to June 5, 2006.

6. Application #2006-036, Joseph D. Ravenelle

12-18 Bellair Avenue, Block 4520, Lot 19, Zone R-1-3

The proposed deck would have deck coverage of 8.49% where 5% is permitted as per RGO Section 125-12 Schedule of area, yard and building requirements.

Carried to June 5, 2006.

7. Application #2006-037, Antonio & Julie Beites

5-29 Elizabeth Street, Block 1405, Lot 55, Zone R-1-2

Existing lot is 6,000 sq. ft. where 7,500 sq. ft. is required. The proposed construction would increase the building coverage from 27.10% to 30.43% where 25% is permitted. With the removal of walkways and concrete, it would increase the impervious coverage from 45.26% to 46.26% where 35% is permitted. Would have an existing front yard setback of 23.71' where 30' is required. Would have an existing side yard setback of 5.74' where 10' is required as per RGO Section 125-12 Schedule of area, yard and building requirements.

Carried to June 5, 2006.

Commercial Old Business:

1. Application #2006-022, Michael Chang, LLC

23-07 Broadway, Block 3324, Lot 23, Zone B-2

A proposed accessory use convenience store to an existing service station which is a conditional use in a B-2 Zone as per RGO Section 125-24.B. and 125-24.C. Food Handler's license/minor site plan approval as per RGO Section 125-65.B(3).

Dennis Maycher, Esq. appeared for the applicant.

John Nakashian recused himself.

Paul DeMassi, AIA and Michael Chang sworn and testified.

Exhibits: A-1, A-2 and A-3.

Public: Harvey Rubinstein and John Nakashian.

Application continued.

Correspondence/Resolution/Bills

Karen Kocsis, CSR for Attendance fee, making of stenographic record and preparation of minutes and overtime for April 17, 2006 \$300.00

Bruce Rosenberg, Esq., \$886.50, \$1,776.00, \$1,351.00, \$495.

On motion by Ms. Spindel, seconded by Mr. Diner, the bills were approved.

Resolutions

On motion by Ms. Spindel, seconded by Mr. Sacchinelli, and all those eligible to vote, the following resolutions were passed:

IN THE MATTER OF THE APPLICATION	:	FAIR LAWN ZONING BOARD
	:	OF ADJUSTMENT
DUNKERHOOK ROAD ASSOCIATES, LLC	:	APPLICATION 2005-05
	:	
41-41 DUNKERHOOK ROAD	:	RESOLUTION
	:	
BLOCK 1702 - LOTS 4-10	:	OF FINDINGS AND CONCLUSIONS
	:	OF THE ZONING BOARD OF
	:	ADJUSTMENT OF THE
	:	BOROUGH OF FAIR LAWN

WHEREAS Dunkerhook Road Associates, having offices at 1-01 Saddle River Road, Fair Lawn, New Jersey, hereinafter referred to as "Applicant" has applied to the Fair Lawn Zoning Board of Adjustment for preliminary site plan approval, use variances and bulk variances in order to construct 18 townhouses on the 1.76 acre site with access to the site being from Dunkerhook Road; and

WHEREAS the proposed townhouse development will be in the R-5-2 Zone which permits townhouses; and

WHEREAS the Applicant has applied to the Zoning Board of Adjustment for preliminary major site plan approval and variance relief in accordance with N.J.S.A. 40:55D-70(c) and (d) from the strict application of the zoning ordinances of the Borough of Fair Lodi; and

WHEREAS the Zoning Board's time to grant or deny approval of the application pursuant to N.J.S.A. 40:55D-46 has been extended by agreement on an ongoing basis through and including the last public hearing held in this matter on October 24, 2005; and

WHEREAS the application was the subject of public hearings on January 31, 2005, March 22, 2005, April 25, 2005, May 10, 2005, June 2, 2005, June 20, 2005, July 7, 2005, September 27, 2005 and October 24, 2005, at which hearing the Applicant, through counsel, Ira J. Levine, Esq., presented testimony and exhibits in favor of the Board granting the requested relief; and

WHEREAS certain objectors appeared in opposition to the application, one of whom was represented by Darius Z. M. Winnicki,

Esq. of the firm of Hartman & Winnicki, Esqs., and

WHEREAS the Board unanimously voted to appoint the Public Advocate, Ronald P. Mondello, Esq., to participate in the within hearing

NOW, THEREFORE, be it remembered that the Zoning Board of Adjustment at its official meeting held on October 24, 2005 in accordance with the Open Public Meetings Act did make the following

findings of fact, conclusions and determinations:

FINDINGS OF FACT

1. All persons required to be served with the notice of the hearing were duly served and proof thereof has been filed with the Board.

2. The Applicant has properly published notice of the hearing 10 days prior to the public meeting. The Applicant has consented, on an ongoing basis, to an extension of the time within which the Board must render a decision as required under the municipal Land Use Law, through and including the meeting of October 24, 2005.

3. The Applicant seeks preliminary major site plan approval in order to construct 18 townhouses on the site. An historic property, commonly referred to as the Naugel House, a pre-Revolutionary structure sits on the property. As part of the application the Applicant has agreed to subdivide off and convey title to the Naugel House to the Borough of Fair Lawn. The Applicant has also agreed to make repairs to the Naugel House to bring it up to current code standards.

The Board has agreed to include the entire 1.76 acres of the site, including that portion of the site on which the Naugel House is located, for purposes of calculating density, lot size, etc. on the site.

4. With respect to the townhouse project, the Applicant seeks the following variance relief:

a. Construction of Townhouses in the R-5-2 Zone on a 1.76 acre lot where a minimum of 2.4 acres is required.

b. Building coverage of 22.07 percent where a maximum of 20 percent is permitted.

c. Impervious coverage of 52.35 percent where 45 percent is permitted.

d. 18 foot front yards on Rio Vista Drive where 25 feet is required.

e. 20.3 foot front yard on Dunkerhook Road where 25 feet is required.

f. A density of 10.22 dwelling units per acre where a maximum of 10 dwelling units per acre is permitted.

g. 15 foot rear yards where 35 foot rear yards are required between townhouses and adjoining vacant land zone residential.

h. 14 feet between townhouses where 20 feet between townhouses is required.

i. No evergreen buffers between common parking areas in dwelling units or parking areas within 15 feet of the property line.

j. Two units per building where a minimum of three units per building is required.

5. The following documents were marked into evidence:

A-1 Major site plan Sheets 1 through 8, last revised October 26,

2004

A-2 Conte memo dated 1/25/05

A-3 Bender memo dated 1/31/05

A-4 Brouca memo dated 11/14/04

- A-5 Traffic report prepared by Simoff Associates dated February 17, 2005
- A-6 Major site plan dated 4/5/05
- A-7 Environmental Assessment Report prepared by PK Environmental dated January 10, 2005
- A-8 Architectural plans A-I through A-4 dated November 4, 2004
- A-9 Color rendering of townhouses
- A-10 Major site plan dated 6/14/04 revised 6/2/05 consisting of 10 sheets
- A-11 Site plan consisting of 10 sheets with a revision date of 6/13/05
- A-12 Site plan consisting of 12 sheets with a revision date of 7/14/05
- 0-1 Report prepared by Louis A. DiGeronimo, AIA1 dated June 17, 2005
- 0-2 Schoor DePalma report dated 7/14/04

6. In addition to the foregoing exhibits, the Board also received written reports from the Board's consultants, Azzolina, Feury and Raimondi, Birdsall Engineering, Inc. and Rivardo, Schnitzer & Capazzi Architects.

7. The Applicant's testimony may be summarized as follows:

7.1. Matthew R. Fox, P.E., of Canger Engineering Associates, the Applicant's site engineer, was sworn in and

qualified as an expert witness. Mr. Fox testified as to the overall site plan and discussed the various waivers and variances being requested by the Applicant. Mr. Fox further testified that the bulk schedule for the overall site included the portion of the property occupied by the Naugel House and that whatever amount of property was eventually subdivided off and given to the Borough was not being deducted from the overall bulk schedules.

Mr. Fox also testified that if the Naugel House were demolished this would reduce the impervious coverage on the property. With respect to storm water management, he indicated that the site runoff would be reduced from the existing pre development flow.

At the meeting on April 25th, Mr. Fox further testified with respect to a revised site plan dated April 5, 2005, which was amended based upon Bergen County input. The impervious coverage was reduced to 52.35 percent. Mr. Fox further testified that the drainage report would be revised once final site plan is configured

and that DEP approval would be required. No structures are within the flood hazard area. He further testified that the stormceptor,

which was part of the storm water management system, would be maintained by the homeowner's association.

In his testimony of June 2nd, Mr. Fox indicated that the Applicant would retain the services of Scott Levy as a landscaping consultant for the site. He further testified that the Well House which is currently part of the Naugel House would remain and that the number of parking spaces were being reduced to 47. Mr. Fox also testified that, as a condition of approval the Applicant would agree to maintain the roads and the storm water management system.

Based upon comments from the public and the Borough, the lighting plan for the project would be revised for better lighting.

In answer to questions by the general public, Hr. Fox testified that the residential site improvement standards did not apply to the interior roads in the project as they constituted a private drive

7.2. The next witness to testify on behalf of the Applicant was Hal Simoff of Simoff Associates. Mr. Simoff was sworn in and qualified as a traffic expert. Mr. Simoff went over his report dated February 17, 2005 and indicated that based upon the current level of traffic on Century Road the additional 11 trips in the morning peak hour generated by the proposed development would be, in his opinion, imperceptible.

7.3. The next person to testify on behalf of the Applicant was John Peel, the Applicant's environmental consultant. Mr. Peel was sworn and qualified as an environmental consultant and made reference to the environmental assessment report dated January 10,

2005 which was prepared by PK Environmental. Mr. Peel testified there were no fresh water wetlands or wetlands transition areas on

the site; that there were no environmental sensitive plants or tree species and that there were DO specimen trees on the property.

He further testified that as part of the overall development the Applicant should clean up invasive species, cull out dead trees and

generally create a healthier growing environment. In his overall opinion, there was no significant environmental impact resulting from the proposed development. The most critical issue in his professional opinion was the storm water management plan, which was

being addressed and was subject to Department of Environmental Protection approval.

7.4. The next witness to testify on behalf of the Applicant was Mr. Danon of The Danon Group, the Applicant's architect. Mr. Danon was sworn and qualified as an expert witness. He took the

Board through the overall design of the units, including the location of the garage and the various floor plans. Mr. Danon testified that there would be 16 three bedroom units and 2 four bedroom units. The air conditioning compressors would be in the rear of the buildings and would be screened with landscaping.

7.5. The next witness presented by the Applicant was Frank D. Mileto an architect and professional planner. Mr. Mileto was sworn and qualified as an expert witness. Under questioning from the Applicant's attorney, Mr. Mileto went through his planning report dated April 13, 2005. He testified that in his professional

opinion there was no negative impact from a planning perspective and that the site suffered from many physical hardships such as shape, topography, bulk requirements, etc. Mr. Mileto also testified that the impervious coverage variance was being generated

in part by the Applicant providing eight more parking spaces than the ordinance requires and that this was a tradeoff the Board would

have to weigh. He also indicated that the benefit to the community

by preserving the Naugel House went a long way in satisfying the positive criteria proportion of the Applicant's proofs.

8. At the conclusion of the testimony of each of the Applicant's witnesses, the Board opened the floor to specific questions by members of the general public and numerous members

of

the general public came forward to ask the Applicant's witnesses specific questions concerning their testimony and their reports.

9. Testimony was given by Jane Depeveen, the Borough Historian, regarding the current physical condition of the Naugel House. Ms. Depeveen also testified that Louis A. DiGeronimo, a local architect, had volunteered to prepare a report on the physical condition of the Naugel House to be presented in conjunction with the Applicant's proffer to bring the structure up to code. Mr. DiGeronimo subsequently presented a report dated June 17, 2005 which was marked O-1 for identification.

10. At the close of the Applicant's case public comment was taken from numerous members of the general public, the bulk of whom opposed the project. Concerns were raised concerning overall density, the storm water management on the site, the destructive impact of storm water on the foundation of the Naugel House, the potential for flooding in the area, etc.

11. The Public Advocate, Ronald P. Mondello, Esq., also commented on the project. The Public Advocate opined that while the use was a permitted use in the newly rezoned district, the

Applicant needed a minimum of 7 variances. He further commented that if several of the townhouse units were eliminated from the project, it would substantially reduce the number of variances. Lastly, Mr. Mondello reminded the Applicant that should the application be approved the Applicant would have to contribute toward the Borough's portion of affordable housing as mandated by the Council on Affordable Housing.

CONCLUSIONS AND DETERMINATIONS

12. The foregoing facts are made a part hereof as if set forth herein at length.

13. The Board of Adjustment has the authority, pursuant to N.J.S.A. 40:55D-70(d), to grant a variance to allow departure from the Zoning regulations to permit (1) a use or principal structure in a district restricted against such use or principal structure; (2) an expansion of a nonconforming use; (3) a deviation from a specification or standard pertaining solely to a conditional use; (4) an increase in floor area ratio; (5) an increase in permitted density; or (6) a height of a principal structure which exceeds by 10 feet or 10 percent the maximum height permitted in a district for a principal structure.

14. A variance pursuant to N.J.S.A. 40:55D-70(d) may be granted only upon a showing that such a variance or other relief can be granted "without substantial detriment to the public good

and will not substantially impair the intent and purpose of the zone zoning plan and zoning ordinance."

15. "If the use for which a variance is sought is not one that inherently serves the public good, the Applicant must prove, and the Board must specifically find that the use promotes the general welfare because the proposed site is particularly suited for the proposed use" *Medici v. BPR Co.*, 107 NJ 1, 3 (1987).

16. The statute thus requires an applicant's proof of both positive and negative criteria to obtain a use variance. In

general, the positive criteria require that an applicant establish

"special reasons" for granting the variance. *Sica v. Board of Adjustment*, 127 NJ 152, 156 (1992).

17. The negative criteria require proof that the variance "can be granted without substantial detriment to the public good and that it will not substantially impair the intent and purpose of

the zone plan and zoning ordinance" *Ibid.*

18. The Board of Adjustment also has the power, pursuant to N.J.S.A. 40:55D-70(c) (1) to grant a variance when (a) by reason of

exceptional narrowness, shallowness or shape of a specific piece

of
property; or (b) by reason of exceptional topographic conditions
or

physical features uniquely affecting a specific piece of
property;

or (c) by reason of an extraordinary and exceptional situation
uniquely affecting a specific piece of property or the structures
lawfully existing thereon, the strict application of any
regulation

or ordinance would result in peculiar and exceptional practical
difficulties to or exceptional and undue hardship upon the
property
owner.

19. Further, under N.J.S.2\ . 40:55D-70(c) (2), wherein an
application or appeal relating to a specific piece of property, a
deviation from the zoning ordinance would advance the purposes of
the zoning ordinances of the Borough of Fair Lawn and the
benefits

of that deviation would substantially outweigh any detriment, the
Board of Adjustment may grant the requested variance relief.

20. Such "C" variances may only be granted upon a showing
that one of the foregoing tests have been met.

21. At the conclusion of both the Applicant's testimony,
comments from the Public Advocate and Objectors and comments from
the general public, a motion was made by John Stramiello to
approve

the application and variances for an undersized lot, building coverage, impervious coverage, rear yard setback, distance between

townhouses and the evergreen buffer on the condition that the Applicant eliminate Unit No. 1, which would result in the Elimination of both the front yard setback and density variance. The further condition would be the repair of the Naugel House as per the DiGeronimo letter and Depeveen letter made part of the record, that the land surrounding the Naugel House to be deeded to

the Borough would be no less than originally agreed with the Borough Council; that a satisfactory developer's agreement be entered into; that the Applicant eliminate the possibility of any third floor living space by stipulating that the third floors could

be used for storage only; that Units 17 and 18 be reduced to 26 feet in width; that the Applicant comply with the requirements of the Council on Affordable Housing; that the roadways and storm water management system be maintained by the homeowner's association; that the Applicant review the plan to see if any additional parking could be provided for the Naugel House; that the

Applicant work with Scott Levy to come up with an acceptable landscaping plan in return for a waiver of a tree for tree replanting requirement and that the Applicant be granted a design waiver for a two unit building where a minimum of three units is

required.

22. Mr. Stramiello's motion to approve the matter was seconded by Burt Feldman at which time a roll call vote was taken.

23. Mr. Feldman indicated that, notwithstanding the Applicant's efforts in agreeing to preserve the Naugel House and the condition imposed by Mr. Stramiello in his motion of reducing the number of units from 18 to 17, he still felt the application was seeking too much density on the undersized and irregularly shaped parcel and that the Applicant has failed to meet its burden

of proving both the positive and negative criteria. He voted no.

24. Douglas Chairipper voted against the application indicating that he believed that the application as presented, even

with the conditions imposed by Mr. Stramiello, were the wrong application at the wrong place and at the wrong time. He further indicated that he believed there were substantial public detriment

to approving the application in its present form and that while he

was not opposed to townhouses being built on the site, in general the overall number of units and the site difficulties created too much public detriment.

25. The next Board Member to vote was Larry Morgenstein. Mr. Morgenstein also voted no agreeing with the comments of the

two

Board Members who voted before him. Mr. Morgenstein specifically commented on the density of the project, the substandard driveways

and the other dimensional variances being generated by trying to squeeze Units 17 and 18 into the project. Based upon the application as presented, the Applicant did not meet the burden of proof.

26. The next member to vote was John Stramiello, who made the motion. Mr. Stramiello voted in favor of the application, placing substantial reliance on the preservation of the Naugel House and the de minimus bulk variances which would result from a 17 unit project.

27. The next Board Member to vote was Joseph Meer who voted no. Mr. Meer commented that while he was not philosophically opposed to townhouses and that there was a need for them in Fair Lawn, he did not believe that this location or the application as presented were necessarily in the best interest of the community, notwithstanding the fact that a denial of the application might endanger the future existence of the Naugel House, the application as presented was too dense.

28. The last Board Member to vote was the Chairperson, Lisa Swill, who voted in favor of the project. Ms. Swill commented that

the developer made significant concessions and that the preservation of the Naugel House was paramount. Ms. Swill believed

that considering the preservation of the Naugel House and the Applicant's agreement to the various conditions put forth by Mr. Stramiello, that the Applicant more than satisfied the positive and negative criteria.

29. Based upon the Board vote of 4 No votes and 2 Yes votes, the motion to approve the project as amended failed. No further motions being made the application was deemed denied.

30. The proceedings in this matter were stenographically transcribed. The recital of facts in this Resolution is not intended to be all inclusive, but merely a summary and a highlight of the complete record made before this Board.

THEREFORE, BE IT RESOLVED that the requested variances as more particularly set forth herein above; as well as preliminary site plan approval and any required waivers, are hereby deemed denied by virtue of the fact that Zoning Board of Adjustment of the

Borough of Fair Lawn, at its meeting on October 24, 2005 upon the motion of John Stramiello, and seconded by Burt Feldman to approve

the application, and upon the roll call vote as follows: Burt

Feldman-No; Douglas Chairipper-No; Larry Morgenstein-No; John Stramiello-Yes; Joseph Meer-No; Lisa Swill-Yes; (4 No votes, 2 Yes votes) failed to receive the required minimum of 5 votes.

BE IT FURTHER RESOLVED that a copy of this Resolution be forwarded to the Applicant, the Borough Clerk, the Construction Code Official and the Zoning Officer of the Borough of Fair Lawn.

This Resolution was adopted on the ____ day of March, 2006 upon a motion of and seconded by by a vote of _____ yeas and _____ nays

Chairman

I hereby certify that this is a true and correct copy of the Resolution as adopted by the Board of Adjustment of the Borough of Fair Lawn, County of Bergen, State of New Jersey in the within application.

Secretary

**Resolution of Findings and Conclusions
of the Zoning Board of Adjustment
of the Borough of Fair Lawn,
County of Bergen, State of New Jersey**

**RE: Block 1208
Lot 7**

App. #2006-026

WHEREAS, an application was filed by **Winston and Demaris Ensuncho** residing at 29-26 Romana Drive, Fair Lawn, New Jersey, for bulk variances pursuant to N.J.S.A. 40:55D-70(c) with respect to the construction of a second floor addition and front cantilever which would the building coverage from 26.23% to 27.41% where 25% is permitted and would have a front yard setback of 23.3 feet where 25 feet is required for real property commonly known as 29-26 Romana Drive, and shown on the official tax map of the Borough of Fair Lawn as Lot 7 in Block 1208; and

WHEREAS, the property is located in an R-1-3 district according to the zoning map and zoning ordinance of the Borough of Fair Lawn; and

WHEREAS, the application was duly considered by the Board of Adjustment at a public hearing held on April 17, 2006 at which hearings the Board had an opportunity to hear sworn testimony and receive documents into evidence; and

WHEREAS, the Zoning Board of Adjustment, having conducted a public hearing on said application on April 17, 2006, at which time the Board heard the testimony of the Applicant and the Board having opened the meeting to the public and received no comments therefrom and having considered all the evidence presented, the responses to the issues raised by Board members and the public and otherwise having reviewed the plans submitted, the Board now makes the following findings of fact and conclusions of law:

1. The Board of Adjustment acquired jurisdiction for a hearing upon the filing of an application. The Applicant has properly published notification of said hearing and has properly notified the property owners as required by law and proof of said publication and notification are on file with the Board.

2. The property in question is presently located in an R-1-3 district on a lot approximately 52 X 101 feet. The lot is irregular in shape.

3. There is presently located on said lot a one and one-half (1-1/2) story brick and frame residential dwelling.

4. The applicant proposes to construct a second story addition with a front cantilever which would increase the building coverage from 26.23% to 27.41% where 25% is permitted and would have front yard setback of 23.3 feet where 25 feet is permitted.

5. The Board finds that with respect to this application and the specific property which is the subject of the application, the purposes of the municipal land use act would be advanced by permitting a deviation from the requirements of the zoning ordinance and the benefits of said deviation which substantially outweigh any detriment. More particularly, the proposed development will enhance the aesthetics of the area while not creating any hardship or inconvenience for any of the surrounding properties.

6. The Board also particularly finds that the subject property is irregular in shape. Irregularity constitutes a hardship with the respect to the variances requested.

NOW, THEREFORE, be it resolved by the Zoning Board of Adjustment of the Borough of Fair Lawn, on this 22nd day of May, 2006, that the variance application as more particularly set forth above be granted, subject to the following conditions:

1. Applicant must comply with the necessary requirements of the Zoning Ordinance of the Borough of Fair Lawn and the Municipal Land Use Act of the State of New Jersey.

2. The Applicant shall develop, prepare and improve the subject premises so as to conform with all the details as shown on the plans submitted with the application and in accordance with all applicable building codes.

3. This application is granted expressly conditioned upon Applicant showing satisfactory proof that all taxes and assessments are current at the time of approval or that the Applicant will pay all of the appropriate taxes and assessments within 15 days of the date hereof, and that for the failure to pay same within this time frame, this resolution shall be null and void.

4. The variances granted by this Board are valid for a period not to exceed 12 months and

Lot 11

WHEREAS, an application was filed by **James and Susan Corcoran** residing at 2-10 35th Street, Fair Lawn, New Jersey, for bulk variances pursuant to N.J.S.A. 40:55D-70(c) with respect to the construction of a second floor addition and roof over an existing platform which would maintain an existing frontage of 60 feet where 65 feet is required; and would have an existing front yard setback of 22 feet where 25 feet is required for real property commonly known as 2-10 35th Street, and shown on the official tax map of the Borough of Fair Lawn as Lot 11 in Block 2314; and

WHEREAS, the property is located in an R-1-3 district according to the zoning map and zoning ordinance of the Borough of Fair Lawn; and

WHEREAS, the application was duly considered by the Board of Adjustment at a public hearing held on April 17, 2006 at which hearings the Board had an opportunity to hear sworn testimony and receive documents into evidence; and

WHEREAS, the Zoning Board of Adjustment, having conducted a public hearing on said application on April 17, 2006, at which time the Board heard the testimony of the Applicant and the Board having opened the meeting to the public and received no comments therefrom and having considered all the evidence presented, the responses to the issues raised by Board members and the public and otherwise having reviewed the plans submitted, the Board now makes the following findings of fact and conclusions of law:

1. The Board of Adjustment acquired jurisdiction for a hearing upon the filing of an application. The Applicant has properly published notification of said hearing and has properly notified the property owners as required by law and proof of said publication and notification are on file with the Board.
2. The property in question is presently located in an R-1-3 district on a lot approximately 60 X 121 feet.
3. There is presently located on said lot a one and one-half (1-1/2) story brick and frame residential dwelling.

4. The applicant proposes to construct a new second floor and roof over an existing front porch which encroaches into the front yard setback.

5. The Board finds that with respect to this application and the specific property which is the subject of the application, the purposes of the municipal land use act would be advanced by permitting a deviation from the requirements of the zoning ordinance and the benefits of said deviation which substantially outweigh any detriment. More particularly, the request for the existing front yard setback to be maintained and the proposed enclosed roof area will not cause substantial detriment to the public good in that the proposed encroachment of the front yard setback is limited to the area of the enclosed porch with the remainder of the front yard setback being greater than the required 25 feet.

NOW, THEREFORE, be it resolved by the Zoning Board of Adjustment of the Borough of Fair Lawn, on this 22nd day of May, 2006, that the variance application as more particularly set forth above be granted, subject to the following conditions:

1. Applicant must comply with the necessary requirements of the Zoning Ordinance of the Borough of Fair Lawn and the Municipal Land Use Act of the State of New Jersey.

2. The Applicant shall develop, prepare and improve the subject premises so as to conform with all the details as shown on the plans submitted with the application and in accordance with all applicable building codes.

3. This application is granted expressly conditioned upon Applicant showing satisfactory proof that all taxes and assessments are current at the time of approval or that the Applicant will pay all of the appropriate taxes and assessments within 15 days of the date hereof, and that for the failure to pay same within this time frame, this resolution shall be null and void.

4. The variances granted by this Board are valid for a period not to exceed 12 months and shall then terminate if not implemented or otherwise extended by the Board.

5. Nothing herein contained shall be deemed to affect, alter or rescind any privately imposed restrictive covenant or private agreement, which this Board cannot and will not enforce.

Lot 1

WHEREAS, an application was filed by **Collins Rodrigues and Susan Correa** residing at 1-41 Rosalie Street, Fair Lawn, New Jersey, for a bulk variance pursuant to N.J.S.A. 40:55D-70(c) with respect to the construction of a proposed 5 foot and 6 foot fence located in a front yard setback where 3 feet is permitted for real property commonly known as 1-41 Rosalie Street, and shown on the official tax map of the Borough of Fair Lawn as Lot 1 in Block 2317; and

WHEREAS, the property is located in an R-1-3 district according to the zoning map and zoning ordinance of the Borough of Fair Lawn; and

WHEREAS, the application was duly considered by the Board of Adjustment at a public hearing held on April 17, 2006 at which hearings the Board had an opportunity to hear sworn testimony and receive documents into evidence; and

WHEREAS, the Zoning Board of Adjustment, having conducted a public hearing on said application on April 17, 2006, at which time the Board heard the testimony of the Applicant and the Board having opened the meeting to the public and received comments therefrom and having considered all the evidence presented, the responses to the issues raised by Board members and the public and otherwise having reviewed the plans submitted, the Board now makes the following findings of fact and conclusions of law:

1. The Board of Adjustment acquired jurisdiction for a hearing upon the filing of an application. The Applicant has properly published notification of said hearing and has properly notified the property owners as required by law and proof of said publication and notification are on file with the Board.

2. The property in question is presently located in an R-1-3 district on a corner street with lot approximately 50 X 106 feet.

3. There is presently located on said lot a two (2) story frame dwelling. There is also a mature hedge row planted along the entire front yard setback which is the subject of this application.

4. The applicant proposes to construct a 5 foot fence along the northern and western areas of the subject property along the existing hedge row and a 6 foot fence along the front yard setback located on the eastern most side of the property line and the existing hedge row.

5. The Board finds that with respect to this application and the specific property which is the subject of the application, the purposes of the municipal land use act would be advanced by permitting a deviation from the requirements of the zoning ordinance and the benefits of said deviation would substantially outweigh any detriment. More particularly, the applicant has agreed to modify the site plan so as to provide a 4 foot high fence rather than a 5 foot and 6 foot high fence located behind the existing hedge row. The Applicant shall also maintain the hedge row planting so as to provide shielding of the 4 foot high fence.

NOW, THEREFORE, the Zoning Board of Adjustment of the Borough of Fair Lawn, finds that the variance application, as amended herein, and as more particularly set forth above be granted, subject to the following conditions:

1. Applicant must comply with the necessary requirements of the Zoning Ordinance of the Borough of Fair Lawn and the Municipal Land Use Act of the State of New Jersey.

2. The Applicant shall develop, prepare and improve the subject premises so as to conform with all the details as shown on the plans submitted with the application, as amended hereby, and in accordance with all applicable building codes.

3. This application is granted expressly conditioned upon Applicant showing satisfactory proof that all taxes and assessments are current at the time of approval or that the Applicant will pay all of the appropriate taxes and assessments within 15 days of the date hereof, and that for the failure to pay same within this time frame, this resolution shall be null and void.

4. The variances granted by this Board are valid for a period not to exceed 12 months and shall then terminate if not implemented or otherwise extended by the Board.

5. Nothing herein contained shall be deemed to affect, alter or rescind any privately imposed restrictive covenant or private agreement, which this Board cannot and will not enforce.

6. The applicant shall cause the existing hedge row to be maintained at its current height and density and this conditions of approval shall be binding upon the applicant and all successors and assigns of the applicant.

The application was approved by the Zoning Board of Adjustment of the Borough of Fair Lawn at its meeting on April 17, 2006 upon the motion for approval by Doug Charipper and seconded by Todd Newman and upon the roll call as follows:

Sy Karas – No; John Nakashian – Yes; Todd Newman – Yes; Jane Spindel – No; Doug Charipper – Yes; Joseph Meer – Yes; Scott Levy - Yes.

Yes: 5 Abstain: 0
No: 2

BE IT FURTHER resolved that a copy of this resolution be forwarded to the applicant, the Borough Clerk, the Construction Code Official and the Zoning Officer of the Borough of Fair Lawn.

This resolution was adopted on May 22, 2006, upon the motion of _____ and seconded by _____ by a vote of _____ yeas and _____ nays.

Chairperson

I do certify this is a true and correct copy of the resolution as adopted by the Board of Adjustment of the Borough of Fair Lawn, County of Bergen and State of New Jersey in the within application.

Secretary

**Resolution of Findings and Conclusions
of the Zoning Board of Adjustment
of the Borough of Fair Lawn,
County of Bergen, State of New Jersey**

**RE: Block 2803
Lot 9**

App. #2006-029

WHEREAS, an application was filed by **Steven and Lily Markowitz** residing at 32-08 Heywood Avenue, Fair Lawn, New Jersey, for bulk variances pursuant to N.J.S.A. 40:55D-70(c) with respect to a proposed addition and new second floor which would increase building coverage from 25% to 26.4% where 25 is permitted; increase impervious coverage from 41.34% to 38.4% where 35% is permitted; would maintain an existing front yard setback of 22 feet where 30 feet is required and would maintain a side yard setback of 9.9 feet where 12 feet is required for real property commonly known as 32-08 Heywood Avenue, and shown on the official tax map of the Borough of Fair Lawn as Lot 9 in Block 2803; and

WHEREAS, the property is located in an R-1-2 district according to the zoning map and zoning ordinance of the Borough of Fair Lawn; and

WHEREAS, the application was duly considered by the Board of Adjustment at a public hearing held on April 17, 2006 at which hearings the Board had an opportunity to hear sworn testimony and receive documents into evidence; and

WHEREAS, the Zoning Board of Adjustment, having conducted a public hearing on said application on April 17, 2006, at which time the Board heard the testimony of the Applicant and the Board having opened the meeting to the public and received comments therefrom and having considered all the evidence presented, the responses to the issues raised by Board members and the public and otherwise having reviewed the plans submitted, the Board now makes the following findings of fact and conclusions of law:

1. The Board of Adjustment acquired jurisdiction for a hearing upon the filing of an application. The Applicant has properly published notification of said hearing and has properly notified the property owners as required by law and proof of said publication and notification are on file with the Board.

2. The property in question is presently located in an R-1-2 district on a lot which is approximately 55 X 120 feet. The subject property is irregular in shape located on the curve of Heywood Avenue and Hunter Place.

3. There is presently located on said lot a one and one-half (1-1/2) story frame dwelling.

4. The applicant proposes to construct a second floor with 2 concrete patios. A new second floor would increase building coverage from 25% to 26.4% where 25% is permitted and the removal of 2 concrete patios would decrease impervious coverage of 41.34% to 38.4% where 35% is permitted; an existing front yard setback of 22 feet where 30 feet is required would be maintained. An existing side yard setback of 9.9 feet where 12 feet would also be maintained.

5. The Board finds that with respect to this application and the specific property which is the subject of the application, the purposes of the municipal land use act would be advanced by permitting a deviation from the requirements of the zoning ordinance and the benefits of said deviation would substantially outweigh any detriment.

NOW, THEREFORE, the Zoning Board of Adjustment of the Borough of Fair Lawn, finds that the variance application, as amended herein, and as more particularly set forth above be granted, subject to the following conditions:

1. Applicant must comply with the necessary requirements of the Zoning Ordinance of the Borough of Fair Lawn and the Municipal Land Use Act of the State of New Jersey.

2. The Applicant shall develop, prepare and improve the subject premises so as to conform with all the details as shown on the plans submitted with the application and in accordance with all applicable building codes.

3. This application is granted expressly conditioned upon Applicant showing satisfactory proof that all taxes and assessments are current at the time of approval or that the Applicant will pay all of the appropriate taxes and assessments within 15 days of the date hereof, and that for the failure to pay same within this time frame, this resolution shall be null and void.

4. The variances granted by this Board are valid for a period not to exceed 12 months and shall then terminate if not implemented or otherwise extended by the Board.

5. Nothing herein contained shall be deemed to affect, alter or rescind any privately imposed restrictive covenant or private agreement, which this Board cannot and will not enforce.

WHEREAS, an application was filed by **Alex Mirtchouk** residing at 12-23 FairClough Place, Fair Lawn, New Jersey, for bulk variances pursuant to N.J.S.A. 40:55D-70(c) with respect to the construction of an addition which would have existing side yard setbacks of 5.93 feet and 6.66 feet where 8 feet is required; would decrease existing impervious coverage from 47.4% to 47% where 35% is permitted; would reduce the front yard setback from 24.88 feet to 20.88 feet where 25 feet is required; and would increase the building coverage from 25.2% to 32.9% where 25% is permitted for real property commonly known as 12-23 FairClough Place and shown on the official tax map of the Borough of Fair Lawn as Lot 4 in Block 4613; and

WHEREAS, the property is located in an R-1-3 district according to the zoning map and zoning ordinance of the Borough of Fair Lawn; and

WHEREAS, the application was duly considered by the Board of Adjustment at public hearing held on January 23, 2006 at which hearing the Board had an opportunity to hear sworn testimony and receive documents into evidence; and

WHEREAS, at the applicant's request, the application was adjourned for the purpose of submitting amended plans and was carried for the months of February, March and April without any amended plans being submitted to the Board;

WHEREAS, under and pursuant to N.J.S.A. 40:55D-73, the Board must act on any application within 120 days from the date of the submission of a complete application for development or be subject to the grant of an automatic approval; and

WHEREAS, the Zoning Board of Adjustment, having conducted a public hearing on said application on January 23, 2006, at which time the Board heard the testimony of the Applicant and the Board having opened the meeting to the public and received no comments therefrom and having considered all the evidence presented, the responses to the issues raised by Board members and the public and otherwise having reviewed the plans submitted, the Board now makes the following findings of fact and conclusions of law:

1. The Board of Adjustment acquired jurisdiction for a hearing upon the filing of an application. The Applicant has properly published notification of said hearing and has properly notified the property owners as required by law and proof of said publication and notification are on file with the Board.

2. The property in question is presently located in an R-1-3 district on a lot approximately 55 X 100 feet.

3. There is presently located on said lot a one and one-half (1-1/2) story frame residential dwelling.

4. The applicant proposes to construct an addition which would provide an existing side yard setback of 5.93 feet and 6.6 feet where 8 feet is required; decrease the impervious coverage from 47.4% to 47% where 35% is permitted; would reduce the front yard setback from 24.88 feet to 20.88 feet where 25 feet is required and would increase the building coverage from 25.2% to 32.9% where 25% is permitted.

5. The Board finds that the Applicant has not satisfied its burden under N.J.S.A. 40:55D-70(c)(1) based upon a hardship with respect to either an irregular shape of the subject property, unusual topography, or any other physical features which uniquely affect the subject property.

6. The Board finds that the Applicant has not met the criteria under and pursuant to N.J.S.A. 40:55D-70(c)(2) with respect to the proposed variances as benefiting the zoning code and zoning ordinance of the Borough of Fair Lawn when compared with the proposed deviation from the standards of the code.

7. The Board specifically finds that the increase of building coverage from 25.2% to 32.9% where 25% is permitted is a material deviation which will adversely impact the surrounding neighborhood with respect to air, light and open space.

NOW, THEREFORE, be it resolved by the Zoning Board of Adjustment of the Borough of Fair Lawn, on this 22th day of May, 2006, that the request for “c” variances to permit existing side yard setbacks

Meeting Adjourned

On motion by Ms. Spindel, seconded by Mr. Belcher, the meeting was adjourned at 11:45 p.m.

Karen Kocsis, CSR