

**BOROUGH OF FAIR LAWN
ZONING BOARD OF ADJUSTMENT
Regular Meeting of
June 26, 2006**

Following are the minutes of the Fair Lawn Zoning Board of Adjustment's regular meeting held on Monday, June 26, 2006.

Chairman Scott Levy called the regular meeting to order at 7:40 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. Meer, Mr. Levy, Mr. Salerno, Mr. Sacchinelli.

Absent were: Mr. Diner, Mr. Charipper and Mr. Blecher.

Also in attendance were Bruce Rosenberg, Board Attorney; Paul Azzolina, Board Engineer; Ann Peck, Assistant Zoning Officer and Carol LoPiccolo, Zoning Board Clerk.

Mr. Levy announced that Application #2006-038, Zap Lube, would not be heard. Ronald Mondelo, Esq. [attorney for the applicant] came forward.

Mr. Mondello: "I spoke with Mr. Rosenberg and we will re-publish using the specific words "Use Variance". I understand that the residents will not have to be re-noticed within 200'."

Ms. LoPiccolo: "I spoke with the residents that inquired about this application and the residents asked if they would be re-notified and I told them they would be re-notified."

Mr. Mondello: "I will re-notify the residents."

Residential New Business:

1. Application #2006-045, Carl Mecky and Christopher Rodriguez
10-26 4th Street, Block 5512, Lot 10, Zone R-1-3

Existing lot has a frontage of 50' where 65' is required. The proposed addition would have existing side yard setback of 7.86' where 10' is required. The proposed front yard cantilever of 1.6' would reduce the front yard setback to 23.65' where 25' is required as per RGO Section 125- 12 Schedule of area, yard and building requirements.

Ms. Spindel: "I am recusing myself from this application."

Mr. Carl Mecky and Mr. Christopher Rodriguez came forward and were sworn in. Fees totaling \$88.00 were paid and proof of service was provided.

Mr. Mecky: "We are architects in Fair Lawn and will be presenting a little house on 10-26 4th Street. As you can see, this is a simple application. There are however, 3 variances, 2 of which we can't do a thing about. The minimum width is 65' and we have 50'. The side yards existing are 7.86'.

We need a variance for the front yard setback of 23.65' where 25' is required. All other areas we conform. The purpose is for a renovation."

Plans dated June 5, 2006 were marked as Exhibit A-1.

Mr. Karas: "Will that be a 2 story addition?"

Mr. Rodriguez: "Yes."

Mr. Karas: "The addition will not go beyond the existing side yard?"

Mr. Rodriguez: "Yes."

Mr. Karas: "What will the deck be made of?"

Mr. Mecky: "Wood."

Mr. Karas: "With spacing in between?"

Mr. Mecky: "Yes."

Mr. Levy: "Can you explain the character of the neighborhood?"

Mr. Mecky: "This fits in with the neighborhood - your typical Fair Lawn house."

Mr. Levy: "Do most have a similar height?"

Mr. Mecky: "Some of them do."

Mr. Levy: "You're doing a 2' overhang in the front?"

Mr. Mecky: "Yes, that is to add some character to the house."

Mr. Levy opened the meeting to the public within 200 feet. No one came forward. Mr. Levy opened the meeting to the general public. Mr. Harvey Rubenstein, 28 Rutgers Terrace came forward and was sworn in.

Mr. Rubenstein: "What is the exact height of the building?"

Mr. Rodriguez: "30' to the mean."

Mr. Rubenstein: "Is it a tear down?"

Mr. Mecky: "No."

Mr. Levy closed the meeting to the public.

Mr. Levy: "The extension to the side would remove the variance on that side?"

Mr. Mecky: "Yes."

Mr. Rodriguez: "Removing that would be a detriment to the house."

Mr. Meer made a motion to approve this application. Mr. Newman seconded the motion.

VOTE: Mr. Karas, Mr. Nakashian, Mr. Newman, Mr. Salerno, Mr. Sacchinelli, Mr. Meer and Mr. Levy - YES.

APPLICATION APPROVED.

2. Application #2006-046, Adolph and Thecla Everett
0-102 Blue Hill Avenue, Block 1110, Lot 24, Zone R-1-3

A proposed 6' fence in the front yard setback where 3' is permitted as per RGO Section 125-38.A.

Adolph Everett, 0-102 Blue Hill Avenue came forward and was sworn in. Fees totaling \$88.00 have been paid and there is proof of service.

Mr. Everett: "I would like to put a 6' fence where only 3' is permitted around the front and side yard."

Mr. Levy: "What type of fence?"

Mr. Everett: "A PVC white fence."

Mr. Rosenberg: "Mr. Everett has submitted 2 drawings."

They were marked as Exhibit A.

Mr. Levy: "Do you have a fence there now?"

Mr. Everett presented photos of the area and they were marked as Exhibit B.

Mr. Newman: "What was the previous variance in 2003?"

Mr. Everett: "When we first bought the house, we wanted privacy on that side of the house and did the portion on the side with the patio and couldn't afford the rest, so we are here now to do the rest."

Mr. Salerno: "Are there any other fences in your area?"

Mr. Everett: "Yes, 75 Blue Hill across the street and to the right."

Mr. Levy: "Any other fences in the neighborhood?"

Mr. Everett: "Yes, but 75 Blue Hill is exactly what we're looking for and is the same type house."

Mr. Sacchinelli: "What is the reason?"

Mr. Everett: "For privacy and security."

Mr. Meer: "There was a request before the Board in 2003?"

Mr. Everett: "Yes and it was approved, but it expired."

Ms. Spindel: "Would you considering lowering the height?"

Mr. Everett: "We would like the 6' and to keep in line with the Sycamore side."

Mr. Karas: "Would you consider moving the fence back in line with the front of your building?"

Mr. Everett: "I believe it would take away too much of my yard - that would take away 15'."

Mr. Levy: "You're on a corner lot?"

Mr. Everett: "Yes, but the fence is not near the corner."

Mr. Karas: "That would still give you 40' worth of yard."

Mr. Everett: "I wouldn't want to take away that much of my yard."

Mr. Karas: "Would you consider a 4' fence with 1' worth of lattice."

Mr. Everett: "I think that would take away the privacy and security."

Mr. Levy: "What do you mean security?"

Mr. Everett: "I mean with a predator with a child."

Mr. Levy: "Have you considered plant material?"

Mr. Everett: "No."

Mr. Karas: "The present fence along Blue Hill is .6' over your property line into Blue Hill Ave which comes out to 7.2" - I would not be prepared to grant what you're asking this Board to do which would be sanctioning going onto Blue Hill Avenue."

Mr. Everett: "That will be moved back."

Mr. Levy: "On 0-75 - that house is down the street - not across."

Mr. Everett: "That is correct."

Mr. Everett pointed out to Mr. Levy where the property was in relation to his house.

Mr. Levy opened the meeting to the public within 200' No one from the public came forward. Mr. Levy opened the meeting to the general public. The following members of the public came forward:

Mr. Lawrence Guthartz, Registered Architect, was sworn in. "I used to live across the street from the applicant. How far from the corner is the fence

located on both sides? There has to be a minimum 50' line of sight from a corner."

Mr. Guthartz looked at the pictures and thought it was 50' from the corner.

Mr. Harvey Rubenstein: "On the transition of Blue Hill and Sycamore would this interfere with traffic?" Mr. Rubenstein looked at the pictures. I believe the Zoning Board has a responsibility to see that the corner is safe and refer to Section 125-38."

Mr. Levy: "I don't disagree with you and safety is a concern to the Board as well. Mr. Everett, personal hardship doesn't come into play under the MLUL. You have to explain why your site is unique."

Mr. Rosenberg: "You have a C1 variance here and have to prove a hardship. Then you have a C2 variance and it has to show how it benefits the zoning code and is not detrimental. Every site and application rests on its own merits."

Mr. Everett: "I understand, and don't think it will cause any hardship and will improve the area."

Mr. Rubenstein: "The property across the street with the fence was allowed because of an autistic child."

Mr. Levy: "Mr. Azzolina, can you take a look at this, there has been a question regarding safety coming from Sycamore onto Blue Hill."

Mr. Levy closed the meeting to the public.

Mr. Azzolina: "It is difficult to tell from photos, this would be something I would look at in the field."

Mr. Levy: "The length of the property of the house from the corner is that a detriment or benefit to Mr. Everett?"

Mr. Azzolina: "Most likely it would work to his advantage."

Mr. Levy: "We don't have a conclusive opinion from our professional. There is a concern over the line of sight. We have offered to other applicants to lower the height of the fence. If you stay with the 6' fence, the Board will either approve or disapprove your application, should we disapprove, you would have to come back with a new significant plan. You could adjourn and reconsider what you would like to do. You could lower the fence or get your own professional to evaluate the line of sight."

Mr. Everett: "I think my pictures show that it will not effect anything."

Mr. Levy: "You have a corner lot?"

Mr. Everett: "Yes."

Mr. Nakashian made a motion to approve this application for a 6' fence in the front yard setback where 3' is required. Mr. Levy seconded the motion.

Mr. Karas: "No. I visited and Blue Hill dead ends on Rt. 4 and is a quiet street and every resident has the same concerns for their children. If we disregard the Ordinance, every resident will be entitled to a 6' fence. I believe a 4' fence would be more than sufficient."

Mr. Nakashian: "Yes. This doesn't have a back yard and you have children and it would be needed."

Mr. Newman: "No. This has not met the negative and positive criteria. The applicant was given other solutions and the character of the neighborhood does not support this."

Ms. Spindel: "No. I feel the fence is oversized for the placement. I've had corner houses and children, and you watch them. I agree with my colleagues."

Mr. Salerno: "No. I think there are circumstances where it is needed, but here if you would have lowered it, I would have voted yes."

Mr. Meer: "No. For the reasons given by Ms. Spindel. If the fence was lowered I would have voted yes. There was no compromise."

Mr. Levy: "Yes. It is an odd sized lot and the distance from the corner I feel is sufficient. This is not a heavily traveled street. A licensed architect felt it was also o.k."

APPLICATION DENIED.

3. Application #2006-047, Junelito and Josefa Fuertes
38-40 Vanore Drive, Block 2504, Lot 45, Zone R-1-2

Existing lot is 5,890.14 s.f. where 7,500 s.f. is required. The proposed second floor addition would reduce the front yard setback from 25.96' to 20.96' where 30' is permitted. Would have existing side yard setbacks of 7.05' and 7.09' where 12' are required as per RGO Section 125-12 Schedule of area, yard and building requirements.

Junelito Fuertes came forward and was sworn in. Fees totaling \$88 have been paid and there is proof of service.

Mr. Fuertes: "I am doing renovations on my house and I have a small lot and that is a hardship and this fits the character of the neighborhood."

Mr. Levy: "You'll be reducing the front yard setback by 5'."

Mr. Fuertes: "Yes, but it is only the foyer."

Mr. Levy: "You also have an existing side yard of 7'."

Mr. Fuertes: "Yes, that doesn't change."

Mr. Levy: "The lot is irregular shaped."

Mr. Fuertes: "Yes."

Mr. Levy: "The height will be 30'?"

Mr. Fuertes: "Yes, but there are some houses that are higher in the area."

Mr. Levy opened the meeting to the public within 200' and no one came forward. Mr. Levy opened the meeting to the general public. Mr. Harvey Rubenstein, 28 Rutgers Terrace, came forward: "Why is this building going forward?"

Mr. Fuertes: "It fits the character of the neighborhood."

Mr. Levy closed the meeting to the public.

Mr. Karas: "Your survey shows a concrete pad at the back of your property - what is that used for?"

Mr. Fuertes: "We will be removing that."

Mr. Karas: "The proposed wood deck, what type will that be?"

Mr. Fuertes: "Wood."

Mr. Karas: "Is that solid or spacing?"

Mr. Vincent Scappaticcio, 4-03 Lyons Avenue, came forward: "I am the general contractor. I think it will be a composite wood deck. There will be spacing in between of 1/8 inch."

Mr. Meer: "The concrete pad, what will replace it?"

Mr. Fuertes: "Grass."

Mr. Newman made a motion to approve this application stating that it has existing lot hardships and thought the additional variance in regard to the front foyer helps the applicant meet the positive criteria. Mr. Meer seconded the motion.

VOTE: Mr. Karas, Mr. Nakashian, Mr. Newman, Ms. Spindel, Mr. Salerno, Mr. Meer, Mr. Levy - YES.

Mr. Levy: "He is not going beyond the setbacks now, he is building a house that fits with the character of the neighborhood. The front foyer is something that also fits with the character of the neighborhood. The lot is an odd sized lot."

APPLICATION APPROVED.

4. Application #2006-048, Angelo and Christina Ingrati
2 Burnham Place, Block 3716, Lot 12, Zone R-1-3

Existing lot is 3,325 s.f. where 6,500 s.f. is required. The proposed second floor addition would have existing front yard setbacks of 12.75' and

11.85' where 25' is required. Would have an existing side yard setback of 5.72' where 8' is required as per RGO Section 125-12 Schedule of area, yard and building requirements.

Fees totaling \$88.00 have been paid and there is proof of service.

Mr. Angelo Ingrati came forward and was sworn in.

Mr. Levy: "You have existing setbacks that are there now."

Mr. Ingrati: "Yes."

Mr. Levy: "What is the total height?"

Mr. Ingrati: "26.33'."

Mr. Newman: "Everything is existing. Is there an impervious issue?"

Mr. Rosenberg: "Impervious is 41.7% and should be included in the denial. It is not increasing the non-conformity."

Mr. Newman: "Obviously, all the hardships are existing."

Mr. Levy: "If that Ordinance had not been changed, would he be here?"

Ms. Peck: "Probably, he would have to be here, since the previous application in 1998 put him before the Board."

Mr. Karas: "On the first page, where you have totals 22.34.56 you're adding square feet, and you show it being less."

Mr. Ingrati: "It's a typographical error."

Mr. Karas: "The footprint is not changing?"

Mr. Ingrati: "Correct."

Mrs. Spindel: "The addition is on the back of the house?"

Mr. Ingrati: "Yes."

Ms. Spindel: "Is this a Radburn property?"

Mr. Ingrati: "Yes."

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

Mr. Karas: "This requires Radburn approval."

Mr. Rosenberg: "In respect to Radburn, this Board does not have jurisdiction."

Mr. Meer made a motion to approve this application. Ms. Spindel seconded the motion.

VOTE: Mr. Karas, Mr. Nakashian, Mr. Newman, Ms. Spindel, Mr. Salerno, Mr. Meer and Mr. Levy - YES.

APPLICATION APPROVED.

5. Application #2006-049, Dennis and Catherine DeRitter
13-20 3rd Street, Block 5622, Lot 12, Zone R-1-3

The proposed garage and addition would have a side yard setback of 5.01' where 10' is required. Would have an existing front yard setback of 7.15' where 25' is required as per RGO Section 125-12 Schedule of area, yard and building requirements.

Dennis and Catherine DeRitter came forward and were both sworn in. Fees totaling \$88.00 have been paid and there is proof of service.

Ms. DeRitter: "We would like to put a 2 car garage with an addition."

Mr. Sacchinelli: "Is this a 2 family dwelling?"

Ms. DeRitter: "Yes, and there is no garage and we have very small bedrooms and need to enlarge them."

Mr. Newman: "What efforts have been made to keep with the architectural style of the house?"

Mr. Lawrence F. Guthartz, registered architect of the applicant, came forward and was accepted by the Board as an expert witness.

Mr. Guthartz: "We did try to keep the style. It was built in 1886."

Mr. Newman: "How come the window over the garage isn't double hung?"

Mr. Guthartz: "It works that way."

Mr. Newman: "What type of garage is there now?"

Mr. Guthartz: "1 car that is falling apart."

Mr. Levy: "How far is the shed?"

Mr. Guthartz: "3.5'."

Mr. Levy: "What is the height?"

Mr. Guthartz: "34.10' is what is existing of the house."

Mr. Guthartz: "The other side is too close to the adjoining house. It would be 3'. The proposed side offers 16'."

Mr. Levy: "What is the hardship for the variance?"

Mr. Guthartz: "For a 2 car garage we needed at least 18' and we looking for 21'."

Mr. Levy: "Is there a grade differential from the front to the back?"

Mr. Guthartz: "Yes. Over a 3' drop."

Mr. Meer: "The garage in the back and the shed behind it is being removed but the other shed will remain?"

Mr. Guthartz: "Yes."

Ms. Spindel: "The garage that is being removed - what will be there?"

Mr. Guthartz: "Grass."

Ms. Spindel: "What about the fence?"

Mr. Guthartz: "That will be removed and brought back."

Ms. Spindel: "I compliment you on keeping with the style of the house."

Plans dated 6/16/06 were marked as Exhibits A-1 through A-5.

Mr. Karas: "Referring to A-2 of the plans, looking at the building from the front, there is a cellar with a stairway up to the first floor."

Mr. Guthartz: "Yes."

Mr. Karas: "Then there is another stairway to the attic."

Mr. Guthartz: "No. It is on the other side. That stairway goes to the second floor."

Mr. Karas: "Within the same footprint there is a stairway going from the second floor to the attic."

Mr. Guthartz: "Yes."

Mr. Karas: "If the garage is shortened, a 2 car to a 1 1/2."

Mr. Guthartz: "It would impact the master bedroom."

Mr. Karas: "The master bedroom is 17' long and it is also 11' wide."

Mr. Guthartz: "It's 17' x 12' which is a standard size master bedroom for today."

Ms. Peck: "If they made the garage a 1 1/2 car garage they would have to widen the driveway."

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

Mr. Newman: "Have you discussed this with your neighbor?"

Mrs. DeRitter: "Yes, they felt it would improve their property."

Mr. Levy: "The neighbors are not here and that is hearsay."

Mr. Newman made a motion to approve this application. Mr. Salerno seconded the motion.

VOTE: Mr. Karas (I was hoping to enlarge the side yard, but it has been pointed out that a 2 car garage is required and is not feasible), Mr. Nakashian, Mr. Newman (I think the addition improves the character of the neighborhood and although in line with bringing the garage in), Ms. Spindel, Mr. Salerno, Mr. Meer, Mr. Levy (the applicant has indicated that the conditions on the site - the grade - prohibit the garage being moved back and this will not adversely affect the neighborhood.)

APPLICATION APPROVED.

6. Application #2006-050, Syama and Madhumita Sinha
11-14 5th Street, Block 5510, Lot 2, Zone R-1-3

Existing lot is 5,500 s.f. where 6,500 s.f. is required. The proposed add-a-level would have an existing front yard setback of 24.5' where 25' is required. Would have an existing side yard setback of 4.6' where 8' is required as per RGO Section 125-12 Schedule of area, yard and building requirements.

Syamo Sinha came forward and was sworn in.
Fees totaling \$88.00 and proof of service was given.

Jacob Soloman, GKA Architects, 36 Ames Avenue, Rutherford, NJ [architect for the applicant] came forward.

Plans dated 3/29/06 were marked as Exhibit A-1 through A-3.

Mr. Solomon: "The Sinha's would like to construct an addition on the second floor over the garage with a 2' cantilever. The variances required are pre-existing, non-conforming. The side yard of 4.6' is existing. The garage side will have 8' where required. The front yard setback of 24.5' where 25' is required. The existing impervious coverage is 39.4% and will reduce the impervious coverage to 39.3% by removing a walkway. The lot is 5,500 s.f. where 6,500 is required. We are reducing a previous variance for a deck as well. I believe this can be granted without impacting the zoning plan and would enhance the character of the neighborhood with minimal impact. The schematics addition plan the garage is setback 4' from the front of the house. The rear yard would be 12" beyond the rear of the house to provide for a circular stairway."

Mr. Levy: "What is the height?"

Mr. Solomon: "We are matching the existing height of 26'."

Mr. Levy: "The addition is going on the side yard and meet the current setbacks?"

Mr. Solomon: "Yes. The variances are for the existing house."

Ms. Spindel: "You will retain the tudor style of the house?"

Mr. Solomon: "Yes."

Ms. Spindel: "Will the trees remain?"

Mr. Solomon: "Yes."

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

Mr. Newman made a motion to approve this application and Mr. Karas seconded the motion.

VOTE: Mr. Karas, Mr. Nakashian, Mr. Newman, Ms. Spindel, Mr. Salerno, Mr. Meer, Mr. Levy (the variances granted were pre-existing) - YES.

APPLICATION APPROVED.

A recess was taken at 9:20 p.m. The meeting resumed at 9:40 p.m.

Request for Variance Extension:

1. Application #2005-04, Peter and Joann Dutzer
12-63 3rd Street, Block 5621, Lot 22

Variance granted January 31, 2005 - Resolution adopted February 28, 2005. Applicant requesting an extension of time for the variance granted for a 20' x 24.8' addition which would increase the building coverage from 20.95% to 27.56% where 25% is permitted and would increase the impervious coverage from 36.96% to 43.57% where 35% is permitted and would have a side yard of 7.23' where 10' is required.

Mr. Rosenberg: "Should the Board grant this extension, that extension would expire February, 2007."

Mr. Newman made a motion to grant the extension and it was seconded by Mr. Meer.

VOTE: Mr. Karas, Mr. Nakashian, Mr. Newman, Ms. Spindel, Mr. Salerno, Mr. Meer, Mr. Levy - YES.

EXTENSION GRANTED.

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. [attorney for the applicant] came forward.

John Nakashian recused himself from this application.

Paul Azzolina read his report dated June 26, 2006 and it was marked as Exhibit A-5. Mr. Azzolina also read the Broadway Improvement Corporation's report dated June 16, 2006 and that was marked as Exhibit A-4. Mr. Maycher stated that the applicant would comply with both of those reports.

Paul DeMassi came forward [architect for the applicant]: "The rear yard toward Hartley place is setback 15' feet. Parallel to that side of the building will be the trash area. What would be stored behind that chain link fence would be auto parts, replacement parts which would be in an enclosed fashion to be picked up by a private contractor. There is no wet garbage or cooked food."

Mr. Sacchinelli: "This would be a covered dumpster?"

Mr. DeMassi: "Yes."

Mr. Sacchinelli: "Is 5' enough space?"

Mr. DeMassi: "Yes. It's either there or on the other side, which is where we have the employee parking. The trash being stored in this container being more than 1/4 of the way full. This is not a supermarket."

Mr. Levy: "The garbage container will be fenced in?"

Mr. DeMassi: "Yes - With a cyclone fenced area. Batteries are stored indoors."

Mr. Levy: "As long as it's maintained and the applicant polices the area, that's all we can hope for."

Mr. Sacchinelli: "Is there a hose bib back there?"

Mr. DeMassi: "I don't know. But it could be put in."

Ms. Peck: "That might be a health department issue with washing that type of waste into the sewer."

Mr. Maycher: "We can address those issues. Based on the size of the store, it is not going to be a Dunkin Donuts or McDonald's."

Mr. Levy: "After it is before the Board it becomes an enforcement issue."

Mr. DeMassi: "The goods that are delivered are small boxes, not large crates. They have small items."

Mr. Karas: "I was absent at the last Hearing and cannot vote, but I don't see that this is a customary accessory use. I disagree and feel this is strictly a use variance."

Mr. Rosenberg: At the last Hearing, this was argued by Mr. DeMassi and Mr. Maycher."

Mr. Levy: "In regards to the fencing, is there a fence along the length of the property?"

Mr. DeMassi: "I am proposing an open chain link fence that would be enclosing an area 10' behind the building and about 15' wide that would be behind lot 41 and 42. I am remiss that we didn't bring it up at the prior Hearing, but because of the residential uses behind the building we can enclose the rear property line 100' with a vinyl solid privacy fence across the rear of the property and in that space enclose a 15' x10' trash storage area with an open chain link fence. So that whatever is stored in that area, is visible from the street."

Mr. Maycher: "If you prefer the slats in the chain link fence, we could do that also."

Mr. Levy opened the meeting to the public within 200' No one came forward. Mr. Levy opened the meeting to the general public. Mr. Harvey Rubenstein, 28 Rutgers Terrace, came forward and was sworn in.

The applicant's attorney and Mr. Azzolina stated that there was approval by BIC [Broadway Improvement Corporation]. Is this correct?"

Mr. Levy: "They recommend approval - not give approval."

Mr. Rosenberg: "This type of communication that the Chairman receives, is the same as from any professional of the Borough and the Board can weigh that, even though it is not an official organization of the Borough but is treated the same."

Mr. Rubenstein: "Is that within the MLUL?"

Mr. Rosenberg: "I will research the MLUL."

Mr. Levy closed the meeting to the public.

Mr. Karas: "Broadway Improvement Corporation is not a public corporation."

Mr. Maycher: "I agree with the Board."

Ms. Spindel: "Ron Conte responded with 2 items."

Mr. DeMassi: "I believe those comments were if the bay was converted to the convenience store, which is not the case."

Mr. Maycher: "It is this applicant's position to create a living for his family as you see throughout the area, to add to his customer base. The

applicant will try to buffer further the residential area. This is a diminimous change. I'm asking that this Board approve this application."

Mr. Levy: "What about the conditional use?"

Mr. Maycher: "The use is customary and incidental to the business in a B-2 zone. Although they are permitted there are certain restrictions. This business has been at this location for many years and this is an ancillary use to allow him to increase his profitability. The impact is diminimous and it will not hurt the zone plan and I believe that is the case as is so indicated by your engineer and BIC."

Mr. Levy: "The Board has to know that this is an accessory use and is already a conditional use and is also here for a food handler's license. The items addressed by Mr. Azzolina, but nothing there indicated that it would be detrimental to the zone itself or to BIC."

Mr. Rosenberg: "The Board is being asked to vote, which 5 affirmative votes are needed. Because the expansion of the non-conforming use, we should take that vote first, and the approval of the minor site plan including the food handler's license."

Mr. Maycher: "We could take 1 vote for all of it."

Mr. Rosenberg: "That is fine."

Mr. Levy: "The extension of the fence along the property should also be included along with the Board's professionals."

Mr. Karas: "In connection with the comments by counsel for the applicant and our attorney, shouldn't the vote be taken separately?"

Mr. Maycher: "The necessity of the food handler's license is needed for the site plan approval and without the use variance it is not needed."

Mr. Rosenberg: "Mr. Maycher has decided not to bifurcate his application and this is o.k."

Mr. Meer made a motion to approve this application for 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 15-24.B. and 125-24.C. Food Handler's license/minor site plan approval as per RGO Section 125-65.B(3). Also include the water cupling valve in the service area and the solid fence be extended in the back to shelter the residents and to comply with the Board's professionals. No prepared food, no deli counter, no convergence of the bays to a convenience store. Mr. Salerno seconded the motion.

VOTE: Mr. Newman: "NO. I haven't been convinced that it has a diminimous effect on the neighborhood and adequately restricts the uses in the resolution to be easily enforceable."

Ms. Spindel: "Yes. The concerns have been addressed."

Mr. Salerno: "Yes. I haven't heard any negative concerns."

Mr. Sacchinelli: "NO."

Mr. Meer - "YES."

Mr. Levy - "YES."

APPLICATION DENIED.

Commercial New Business:

1. Application #2006-051, Maple Auto
11-12 River Road, Block 5506, Lot 1, Zone B-5

The expansion of a non-conforming use. Requires a use variance as per RGO Section 125-15. Uses prohibited in all zones.

Fees totaling \$313.00 and escrow totaling \$4,500.00 were paid and proof of service was provided.

Ronald Mondello, Esq. [attorney for the applicant] came forward.

Mr. Mondello: "This is in a B-5 zone and is a 1 story auto repair garage. There is no gas being pumped and the applicant wants to add another service bay which requires 2 variances. It is within 1,000' of a fire station and is 200' below Berdan Avenue which prohibits this use. This is not a use variance but a conditional use."

Glenn Stubeaus, 26-02 Broadway, Professional Architect, was accepted as an expert by the Board.

Mr. Mondello: "You've reviewed the plans and visited the site?"

Mr. Stubeaus: "Yes. The property used to have a gasoline station and presently has 3 service bays. The existing lot is conforming and the proposal is to put an addition on the southwest rear corner of the property. The proposed addition also conforms with the zoning requirements. There are 2 existing non-conformities, which is the use, the property is 100% impervious coverage. It's a 1-story structure. The materials used would match the existing."

Mr. Stubeaus: "The existing use is a vehicle repair station - this is not a new use, and currently there is some repair being done outside which can be brought inside. 100% coverage is an existing condition. The property to the West is also 100% coverage and to the East as well. The continued use of this property does not detrimentally effect the surrounding neighborhood."

Mr. Mondello: "This will not impair the intended purpose of the zoning plan and scheme?"

Mr. Stubeaus: "It will be beneficial and will be a visual improvement and will not be detrimental. The neighboring properties are non-conforming and are closer to the property in question."

Mr. Levy: "This is your opinion as an architect."

Mr. Mondello: "There is no case law that a planner must give that opinion."

Mr. Levy: "This is an expansion of a non-conforming use."

Mr. Mondello: "No. This use is permitted."

Mr. Levy: "There is asphalt in the rear, essentially you are putting a roof over the asphalt."

Mr. Stubeaus: "Yes."

Thomas Mosca, property owner, came forward and was sworn in.

Mr. Mosca: "It is an auto repair shop and gasoline is not pumped."

Mr. Mondello: "Were there pumps?"

Mr. Mosca: "In 1989 when I bought it I removed them. Monday through Friday I am open 7 am to 6pm with 2 employees with 13 parking spaces, I have plenty of parking."

Mr. Mondello: "You are not actually changing the structure?"

Mr. Mosca: "Correct. I'd like to work inside. Presently I do some repairs outside."

Mr. Levy: "The parking is not being changed?"

Mr. Mosca: "No."

Mr. Levy: "What about cars being left?"

Mr. Mosca: "Only cars being left overnight that the customers couldn't pick up."

The plans dated May 15, 2006 were marked as Exhibit A.

Mr. Newman: "There are 3 service bays and will be adding 2 more. And you have 2 employees and yourself?"

Mr. Mosca: "Yes. Even though you can only work on 1 car at a time, you put a car in the bay and need to order parts and can then work another car."

Mr. Newman: "You're not looking to increase the number of mechanics?"

Mr. Mosca: "No. Just improve the working conditions."

Mr. Sacchinelli: "Without the structure being built, how many spots are there?"

Mr. Mosca: "13, I will not be losing any."

Mr. Sacchinelli: "Do you have a problem with parking?"

Mr. Mosca: "No."

Ms. Spindel: "Is there any place to put a tree on this property?"

Mr. Mondello: "No."

Mr. Levy: "It doesn't appear to be."

Mr. Spindel: "Can you make it look a little nicer and put some potted flowers?"

Mr. Mondello: "Yes."

Mr. Karas: "To the West of you is a pizza place?"

Mr. Mosca: "Yes, Arthur Avenue."

Mr. Karas: "Across the street is Friendly's. Looking at the plot plan it shows the West of the building is concrete."

Mr. Mosca: "When there were tanks there was concrete there and when the tanks were removed, it was replaced with macadam."

Mr. Levy opened the meeting to the public within 200'. No one came forward. Mr. Levy opened the meeting to the general public. Mr. Harvey Rubenstein, 28 Rutgers Terrace, came forward and was sworn in.

Mr. Harvey Rubenstein: "Does the existing 8' fence cover the whole rear of the property? Why on the zoning chart does the rear yard say n/a?"

Mr. Stubauss: "According to the rear yard because it is a corner lot and yes the fence covers the whole rear of the property."

Mr. Levy closed the meeting to the public.

Mr. Levy: "This is a pre-existing site and use. The only change is really putting a roof and walls over existing asphalt where work is being done."

Mr. Mondello: "Yes."

Mr. Rosenberg: "The zoning officer issued a letter that states expansion of a non-conforming use. You're saying it is a permitted use and is a conditional use."

Ms. Peck: "The conditional use is in a B-5 but refers everything back."

Mr. Mondello: "From my perspective the Section of 125-15 was mentioned in the denial and Mr. Mosca's use is not mentioned in Section 125-15."

Mr. Rosenberg: "The auto repair is a permitted conditional use in a B-5 zone."

Ms. Peck: "Yes, I agree."

Mr. Levy: "The River Road Improvement Corporation does not oppose this application."

Mr. Newman made a motion to approve this application and that there be no increase in the business and no increase of traffic flow.

Mr. Rosenberg: "It is not an appropriate condition to put in no increase in your business."

Mr. Levy: "The testimony was that there wouldn't be an increase in the amount of employees and was not the reason for the additional bays."

Mr. Rosenberg: "How can you make sure that the business doesn't explode to the degree that you're concerned with?"

Mr. Newman: "Should we disapprove this, you would have to come back with a new significant plan. I just have concerns over it being a parking lot and the traffic."

Mr. Rosenberg: "An appropriate condition would be on-site stacking of vehicles so there is not the kind of "parking lot" you're speaking about. You can't have any vehicles waiting to be serviced except in designated parking spots. That would be an appropriate condition."

Mr. Levy: "The existing location of the cars, do you take from the back lot to the front?"

Mr. Mosca: "It depends on the situation. We back every car in so that each customer can pull out."

Mr. Levy: "At the end of the day, the cars are parked in the rear?"

Mr. Mosca: "Yes."

Mr. Newman: "Currently, since nothing's changing, during your busiest time, what is the maximum number of cars on the site?"

Mr. Mosca: "Between 12 and 13."

Mr. Newman: "Would you find an acceptable condition to limit the maximum number of cars on the site inside and out?"

Mr. Mondello: "I don't believe it could be formulated and could be carried out."

Mr. Mosca: "I couldn't really answer that. I have enough room to park more than the 13."

Mr. Mondello: "We don't have an expert in traffic, but even if the business would double, it would not have an impact of traffic on River Road."

Mr. Levy: "The bays are being done to accommodate the work that is being done already."

Mr. Karas: "There's no parking on River Road or Berdan, I pass this site regularly and he has cleaned it up substantially and has never put any cars on the street and are usually at the rear of the building. There always seems to be room in the rear lot. I really don't see the concerns of my colleague."

Mr. Sacchinelli: "I think Mr. Newman is worried that if you sell down the road. I have also a concern of stacking cars."

Mr. Mondello: "If he sells, and someone else wants to change things, they will have to come back before the Board. I think the nature of this business - there will be stacking of cars."

Mr. Levy: "Can we stipulate that there be no work done outside?"

Mr. Mondello: "I think it is unreasonable to request that there be no stacking of cars. It is the nature of the business."

Mr. Levy: "It is also the nature of the business that there may be an occasional change of a tire, a battery outside. You're not going to add to that. Any major work will be done inside."

Mr. Mosca: "Yes."

Mr. Nakashian: "I've not heard any negative comments about this applicant and there are other uses that would promote a lot more traffic and I don't see the concern of the traffic."

Mr. Newman: "I have a concern over making a bigger building that will promote more business. Is there any way to come up with a number with the maximum number of cars being parked there?"

Mr. Mondello: "Even if the business were to double, there is not a substantial impact on the traffic."

Mr. Mosca: "11 cars could be at the front of the building."

Mr. Levy: "The back - how many?"

Mr. Mosca: "I could get another 12 in the back."

Mr. Levy: "Let's say then 25 cars maximum can be on the site."

Mr. Mosca: "Plus what's in the bays."

Mr. Levy: "Only on the outside. Once the work is done, it replaces a car outside."

Mr. Mosca: "Yes."

Mr. Sacchinelli: "With 11 cars in front, does it have to be moved out to the street to get a car out of the bay?"

Mr. Mosca: "No."

Mr. Mondello: "25 cars would be maximum."

Mr. Rosenberg: "Also no major repairs be done on the outside."

Mr. Newman made a motion to approve this application as to permit the addition of 2 service bays requiring approval of the requirement from 125-24B and C to permit a service station within 1,000 feet of a firehouse and 200' within Berdan Avenue and River Road; not to permit major repairs outside of the service bays; and to permit not more than 25 cars parked on the site. Mr. Karas seconded the motion.

VOTE: Mr. Karas, Mr. Nakashian, Mr. Newman, Ms. Spindel, Mr. Salerno, Mr. Meer, and Mr. Levy - YES.

APPLICATION APPROVED.

VOUCHERS

Vouchers submitted by Winne Banta in the amounts of \$863.30 in reference to Fair Lawn Zoning Board adv. Sebastian Lentini; and in the amount of \$546.00 in reference to Fair Lawn Zoning Board adv. Mac Brothers Developers were presented for approval. Ms. Spindel made a motion to approve the vouchers and motion was seconded by Mr. Newman.

VOTE: All Present - YES.

RESOLUTIONS

1. Resolution of Approval for Guy and Debra DellaMonica
15-51 Elmary Place, Block 4708, Lot 1
2. Resolution of Approval for Andrej Solteys
28 Plaza Road, Block 3223.01, Lot 1
3. Resolution of Approval for Rhoda Jaffe
6 Sheridan Place, Block 3623, Lot 4
4. Resolution of Approval for John and Muriel Overmars
9-09 Bush Place, Block 6506, Lot 26
5. Resolution of Approval for Hennadiy and Halyna Fateev
33 Winslow Terrace, Block 1110, Lot 12
6. Resolution of Approval for Eli and Lisa Goldman

16 Aberdeen Place, Block 3706, Lot 9

Mr. Newman made a motion to accept these Resolutions and Ms. Spindel seconded the motion.

VOTE: All Eligible - YES.

The Board went into Closed Session to discuss the McDonald's litigation.

Mr. Newman made a motion to open the meeting to the public and Ms. Spindel seconded the motion.

Mr. Newman made a motion for the Board to respond to Mr. Kates letter dated June 14, 2006, to attend the July 6 meeting. Ms. Spindel seconded the motion.

VOTE: All Present - YES.

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

ADJOURNED AT 11:45 p.m.

Respectfully submitted,

Carol LoPiccolo
Zoning Board Clerk