

**ZONING BOARD OF ADJUSTMENT
MINUTES**

APRIL 4, 2011

Meeting properly advertised according to the New Jersey State Sunshine Law.

Roll call: Attending: Mr. Gelley, Mr. Mund, Mr. Naftali, Mr. Zaks,
Mr. Ribiat, Mr. Gonzalez, Mr. Halberstam

Absent: Mr. Lankry, Mr. Schwartz

Also present: Attorney – Russ Cherkos
Terry Vogt, Engineer/Planner
Jackie Wahler, Court Stenographer
Fran Siegel, Secretary

Salute to flag.

Motion to approve minutes of March 21, 2011 with a waiver to read – Mr. Gelley
Second – Mr. Mund

Roll call vote: affirmative: Mr. Gelley, Mr. Mund, Mr. Naftali, Mr. Zaks, Mr. Ribiat,
Mr. Gonzalez, Mr. Halberstam

Letter from Sean Gertner, attorney representing **Appeal #3662 & 3662A**, asking for an amendment to a variance. There was an oversight when they requested the use variance and did not ask for phasing of the project. They showed on the site plan 149 parking spaces. The building has been opened with a temporary Certificate of Occupancy and there have been no parking issues. There are existing 51 delineated spaces.

Mr. Halberstam asked Mr. Vogt if there is enough parking for the existing building.

Mr. Vogt – needs time to review.

The issue is the resolution does not talk about the phasing. The application was presented with a proposed Jewish Community Center.

Mr. Vogt agreed to review the files.

Motion to approve a phased project condition of Mr. Vogts review of the parking to see if the 51 existing parking spaces are sufficient – Mr. Zaks

Second – Mr. Mund

Roll call vote: affirmative: Mr. Gelley, Mr. Mund, Mr. Naftali, Mr. Zaks, Mr. Ribiat,
Mr. Gonzalez, Mr. Halberstam

Letter from Ms. Weinstein, attorney representing **Appeal # 3725**, Zafrani, to amend the condition of approval in the resolution to substitute chain link fencing with evergreen vegetation for white vinyl fencing around the garbage enclosure.

Mr. Zaks – would prefer a white vinyl fence.

Motion to amend the resolution to substitute a chain link fence with evergreen vegetation around the garbage enclosure – Mr. Mund

Second – Mr. Gelley

Roll call vote: affirmative: Mr. Gelley, Mr. Mund, Mr. Naftali, Mr. Ribiat,
Mr. Halberstam

Nays: Mr. Zaks, Mr. Gonzalez

Letter from Saul Mizrahi - **Appeal # 3755**, MTR Ventures request to carry until the May 2nd meeting

Motion - Mr. Mund

Second – Mr. Gelley

Roll call vote: affirmative: Mr. Gelley, Mr. Mund, Mr. Naftali, Mr. Zaks, Mr. Ribiat,
Mr. Gonzalez, Mr. Halberstam

With re-notice because they are revising the plans.

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Appeal # 3770 – request from Mr. Daniels, attorney, to carry until the May 2nd meeting to notice one of the omitted owners.

Agreed to waive time.

Motion to carry – Mr. Gelley

Second – Mr. Gonzolez

Roll call vote: affirmative: Mr. Gelly, Mr. Mund, Mr. Naftali, Mr. Zaks, Mr. Ribiat
Mr. Gonzalez, Mr. Halberstam

Appeal # 3768 – Prospect 1500, LLC, Prospect Street, Block 490 Lot 43, M-1 zone.
Use variance to allow townhouses.

Secretary read reports.

From: Terry Vogt, Engineer/Planner – January 25, 2011

The applicant requests a use variance and other relief necessary for construction of a 20-unit townhouse development within the M-1 zone on the south side of Prospect Street. In addition, a Community Building (with dedicated handicap accessible parking) and a designated “Play Area?” are also proposed.

A previous use variance application for a 24-unit townhouse development at this property (Appeal # 3750) was filed by the applicant and denied by the Board at the November, 210 zoning board hearing. The Variance map accompanying the previous request did not include the Community Building and designated Play area now proposed with this application.

Sam Brown, attorney for applicant. The plan was revised to work with the neighboring application and improves the area. The play area was expanded to work with both developments.

Brian Flannery, engineer/planner sworn. The application is a 3 acre parcel.

A-1 site plan of the adjacent property, Lakewood Cheder

A-2 rendered version of the variance map showing how the 2 roads connect and the play area and the community building

A-3 shows cul-de-sac

A-4 aerial of surrounding area.

Mr. Flannery –There are two separate property owners. This is only for the use of the property for townhouses. They will come back for site plan.

Mr. Brown - This has the potential for connectivity which enhances the overall area.

Mr. Flannery – reviewed Mr. Vogt’s report. This use is shown in the Master Plan and the Smart Growth Plan and consistent with the plans. Last time the two projects did not connect and complement each other.

Mr. Brown - This development proposes to enhance the neighboring project – it is squaring out a fixed area.

Mr. Flannery - Right-of-way will extend to the adjacent area.

Mr. Brown - The applicant will agree to the asphalt and the improvement to the road will reach the property line so that if a road comes from the other side they can be connected.

The Board discussed a temporary cul-de-sac or a hammerhead.

Mr. Brown – They will present both choices at site plan.

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Chairman – strictly a use variance to square out the Lakewood Cheder piece or not.

Brian Murphy- planner/engineer, sworn.

Board accepted credentials.

Mr. Murphy testified that the interconnection of the two sites provides much better access and safety conditions to the Lakewood Cheder site. The recreation areas will now be adjacent which enhances the site. Provide a temporary grading easement along his eastern boundary which will bring their retaining wall down to a 5 foot range. They will be grading both projects together so they will function well.

Moshe Klein, attorney for the Cheder parcel. This project will enhance the Cheder site. The access, playground and grading will be improving their project.

Open to public. Closed to Public.

Motion to approve use variance for townhouses, subject to road lining up with the Cheder property - Mr. Zaks

Second – Mr. Gonzalez

Roll call vote: affirmative: Mr. Gelley, Mr. Mund, Mr. Naftali, Mr. Zaks, Mr. Ribiat,
Mr. Gonzalez, Mr. Halberstam

**Appeal # 3759 – S & H Builders, Conrail & 7th Street, Block 165 Lot 12, RM Zone –
To construct 8 townhouses with basements.**

Secretary read reports.

From: Terry Vogt, Engineer/Planner – February 24, 2011

The applicant is requesting preliminary and final major subdivision and site plan approval to construct 8 townhouses with basements in 2 separate buildings of 4 units each. The property is located within the RM (multi-family residential) zone. Townhouses are a permitted use in this zone. The applicant is requesting a use variance based on density (23.2 units per acre proposed, 16 units per acre allowed) and associated bulk variances.

John Doyle, represented applicant. This application is to provide additional housing in an area the Master Plan has identified as appropriate for the vacant land on 7th street. This use is permitted. They meet the width and area requirements, they meet front and rear yard setbacks. The issue is density.

Brian Flannery, engineer/planner, sworn. They will satisfy the board engineer in all engineering comments. Asking for density variance. They could go to Planning Board

with 6 units. They are asking for 8. Asking because of location. They are 20.5 wide units to fit in better with neighborhood.

A-1 rendered version of the variance map

A-2 aerial exhibit

Mr. Flannery – described the area. There are townhouses to the east of this property approved at 10 units per acre. The smaller units will provide more housing units and will be more consistent with the area. There is a mix of uses that the smaller type units will fit in better. This will provide the housing opportunities that are needed. The garbage will be in individual contains and in the front of the unit.

Mr. Zaks –the garbage, the front door, the entrance to the basement all has to be in 20 feet.

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Mr. Gonzalez - These units are way too small. Not in favor of this project.

Mr. Flannery – As a planner there are different housing types that people need. The typical unit is 26 feet. This is a smaller unit so that it will be more affordable.

Mr. Doyle – this meets the requirements for granting a special use variance.

Mr. Gonzalez - This starter unit has 6 bedrooms.

Mr. Halberstam suggested that taking one unit out and the other 7 will be about 24 feet wide. 8 at 20 feet wide is way too absurd. Also suggesting separating them and staggering the units.

Mr. Gelley suggested that they table the application and redesign.

Mr. Doyle asked for the application to be bifurcated and approve the 7 units and they will come back for site plan.

Open to Public. Closed to Public.

Mr. Naftali – they should come back with a proper plan, 7 may be an overkill also. They should come back with a different plan.

Mr. Gonzalez agreed.

Motion to carry until May 2nd with revised plans – Mr. Zaks

Second – Mr. Gelley

Roll call vote: affirmative: Mr. Gelley, Mr. Mund, Mr. Naftali, Mr. Zaks, Mr. Ribiat,
Mr. Gonzalez, Mr. Halberstam

Mr. Doyle agreed to waive the time.

Recess.

Abe Halberstam stepped down.

Appeal # 3769 – Chagai Matzliach, 115 Twelfth Street, Block 137 Lot 3, R-10 zone.
Proposed to build back to back duplex where both units will front on a Public ROW and have the look of a single family residence.

Secretary read reports.

From: Terry Vogt, Engineer/Planner – February 24, 2011

The applicant seeks a use (density) variance and a zero lot line subdivision approval in accordance with Section 18-911 of the UDO to subdivide an existing 11,730 square foot property known as Lot 3 in Block 137 into 2 new residential lots, designated lots 3.01 and 3.02 on the subdivision plan. A two-story residential duplex building and off-street parking areas serving each unit are proposed. As noted in the application, each unit will have frontage on a public street and “have the look of a single-family residence”.

Miriam Weinstein, attorney for applicant. Application is for demolition of the existing structure located on the property and for the construction of a back to back duplex. It fronts on Courtney Road and 12th Street. There will be no rear yards. Asked also that the two lots be fee simple lots under the zero lot line ordinance.

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Walter Hopkin, engineer/planner sworn.
Board accepted credentials.

Mr. Hopkin – this is a density variance. They have 5,865 square feet where 6,000 would be required. From the street it gives the appearance of a single family home. They are providing for off-street parking spaces for each unit. The applicant will be living in one of these units.

Ms. Weinstein – garbage will just be cans to the curb. The applicant is proposing to put the HVAC equipment on the 10 foot side of the house. The stone will be half way up the first floor. The shed will be relocated by the neighbor. There are 6 total bedrooms. 5 on the main bedroom floor and one in the attic. The basements are not being finished now. There will be outside entrances to the basement. It will be a zero lot line subdivision. One will have a Courtney address and one will have a 12th street address

Open to Public. Closed to Public.

Motion to approve subject to the ability to put the HVAC units on the 10 foot side of the house covered with shrubbery, garbage will be placed on the side of the house not in the front of the house - Mr. Zaks

Second – Mr. Mund

Roll call vote: affirmative: Mr. Gelley, Mr. Mund, Mr. Naftali, Mr. Zaks, Mr. Ribiat,
Mr. Gonzalez

Appeal # 3764 - Elm O, LLC Block 437, Lot 3.02 & 4 Times Square and Elmhurst Blvd
R-12 Zone. (Single-Family Residential) Use variance to allow townhouses in the R-12 zone.

Secretary read reports.

From: Terry Vogt, Engineer/Planner – January 25, 2011

The applicant requests a use variance for the construction of a 6 unit townhouse building with the R-12 (single-family residential) zone on Elmhurst Avenue. The site is located on the northeast corner of the intersection of Times Square Boulevard in Lakewood. The property is undeveloped in its current condition. Multi-family development existing southeast of the property. Townhouses are not a permitted use in the zone. The applicant is only seeking the use variance at this time and will return at a future date for subdivision and site plan approval.

Miriam Weinstein, represented applicant. Asking only for a use variance for a townhouse use. This is a bifurcated application and if the use is approved they will come back for site plan.

Brian Flannery, sworn.

A-1 colored tax map of the area.

Mr. Flannery described the area.

Mr. Zaks – there are no townhouses in the R-12 zone.

Mr. Flannery – this is a transitional piece of property. Hearthstone is predominately 8,000 square foot lots. This is an island and adjoins the HD-7 zone with the R-12. The property to the right has a wetlands corridor. Reviewed Mr. Vogt's report. Looking at this as a transitional use.

Ms. Weinstein suggested duplexes.

Mr. Halberstam – that would be transitional from a townhouse to an R-12.

Ms. Weinstein – they have a plan for two duplexes fronting on Elmhurst and then a single family facing Times Square. The application is for a use variance only.

Mr. Flannery – the applicant would amend the application to be a use variance for a duplex use and not for a townhouse use.

Mr. Zaks – R-12 to townhouses is a very large leap.

Open to Public

Yehoshua Schwab, affirmed. Townhouses would fit in better.

Closed to Public.

Ms. Weinstein - Request is only for use variance for duplex use. They have to come back for unit count.

Mr. Cherkos – the notice is for a use variance for townhouses. This is a significant difference. I think that it would need re-notice.

Motion to carry until the May 2nd meeting to re-notice for duplex use – Mr. Zaks

Second – Mr. Gelley

Roll call vote: affirmative: Mr. Gelley, Mr. Mund, Mr. Naftali, Mr. Zaks, Mr. Ribiat,
Mr. Gonzalez, Mr. Halberstam

Agreed to waive time.

Appeal # 3743 – David Seebag -Lakewood Courtyard, 68 Madison Avenue, Block 74

Lots 5 & 8, R-OP zone. Addition for assisted retirement living units.

Secretary read reports.

From: Terry Vogt, Engineer/Planner – March 10, 2011

The applicant is requesting preliminary and final major site plan approval to construct an expansion to the existing Lakewood Courtyard assisted living facility with no nursing care. The expansion will contain (40) new dwelling units, consisting of 7 studios, 28 1-bedroom apartments, 4 2-bedroom apartments and one 2-bedroom superintendant's apartment. The applicant has requested a "D" variance for the proposed height of the expansion. The applicant has revised the plans, including additional parking underneath the north end of the proposed building. The building will be constructed with an overhang to allow for additional parking, removing the need for a parking variance.

The applicant has further revised the plans to reconfigure the traffic circulation on the site. The circulation has been revised to restrict the First Street entrance to the property to right-in/right-out turning movements only, and the existing Lake Street entrance will be one way into the site. An additional handicapped parking space has been provided.

Abraham Penzer, attorney for applicant.

- A-1 Architects elevation of the front of the building
- A-2 Architects depiction of the typical recreation/lounge area
- A-3 Architects depiction of lobby
- A-4 typical hallway in the facility
- A-5 rendered version of Site Plan
- A-6 Aerial exhibit of surrounding development.

Edward Liston, attorney for objectors.

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Mr. Penzer – the Lakewood Courtyard is an assisted living facility that received approval approximately 13 or 14 years ago. This is to be an age restricted continuation of the existing facility. It is not an apartment house. It is attached to the building.

Edward Liston, Toms River on behalf of Aaron Stefansky who is an adjoining property owner and an objector to this application. Objected to the notice, December 24, 2010. This addition is an apartment house for people over the age of 55. This facility is not licensed as an assisted living facility under the laws of the State of New Jersey.

Mr. Cherkos determined that the new notice of March 23, 2011 is acceptable.

Aaron Stefansky, affirmed – said that he did not get notice.

Secretary checked and there was a receipt of notice.

There was another objector in the audience that also said he did not receive notice.

Secretary checked and there was a receipt of notice.

Silverberg Family Trust, 1750 Oak Street, affirmed.

Secretary checked and there was a receipt of notice.

Yisroel Rabinowitz, affirmed. Lives in an apartment.

Eli Young was notified as the owner of the property.

Brian Flannery, licensed engineer/planner/architect, sworn.

Mr. Flannery – this is for an expansion of the Lakewood Courtyard assisted living facility. There is currently 91 units there and they are asking for an additional 40 units to bring it to a total of 131 units.

Reviewed Mr. Vogts report.

Board accepted Mr. Flannery's credentials.

Mr. Flannery - the units will be restricted to the people that need help with the normal activities of daily life and they will be age restricted.

Scott Kennel, McDunnough & Rea Associates, qualified as a traffic expert. Sworn.

Board accepted qualifications. Familiar with Lakewood traffic.

Mr. Flannery – the vacant property to the north will be added to the existing assisted living facility. There was an application approved for 140 units with 54 parking spaces on a little less than 2 acres. There was only 91 units constructed at that time. The applicant is seeking less than what was approved by the board in 1995. The services are the same type of services that was approved then.

A-7 copy of the resolution of approval from 1996.

A-8 copy of the plan

Mr. Flannery – the same conditions still exist today - there is still a need for the project and it is still an enhancement to the area. This addition takes a restaurant that can when it is in use can cause a traffic problem. The issue with the neighbors is the traffic on First Street. This facility has very low traffic. The applicant did meet with the neighbors but they could work it out. They went to the Department of Transportation – they tried to push part of the building back. They do not want to impact Route 9. They would not let them exit out on Route 9. They can have an entrance onto Route 9. The DOT suggests that we exit on First Street. The plans that were submitted in the fall have been revised to try and satisfy the neighbors. They added parking and they now have 66 parking spaces consistent with the RSIS standards. Referred to A-5 and described the parking spaces and the access drive. The driveway on First Street has been redesigned to be right turn in and right turn out only.

Mr. Flannery - Based on the RSIS standards for an assistant living they no longer need a parking variance. This facility is not for people that are relatively healthy. This is meant for people that need help for daily activities. They are provided with 2 meals a day and housekeeping. The applicant will give testimony on the staff.

Mr. Halberstam suggested a special meeting and the applicant agreed.

Motion to have a special meeting on May 16, 2011 to continue this application with no further notice and a waiver of time – Mr. Mund

Second – Mr. Gelley

Roll call vote: affirmative: Mr. Gelley, Mr. Mund, Mr. Naftali, Mr. Zaks, Mr. Ribiat,
Mr. Gonzalez, Mr. Halberstam.

Resolutions

Appeal # 3761 – Nissen Steger, New York Avenue, Block 223 Lots 1.01, 1.02 & 2.
Resolution to approve minor subdivision with use and bulk variances.

Motion to approve – Mr. Zaks

Second – Mr. Gelley

Roll call vote: affirmative: Mr. Gelley, Mr. Naftali, Mr. Zaks, Mr. Halberstam

Appeal # 3710A – Ford Land Equities, Lanes Mill Road, Block 189.04 Lots 68, 197 & 201, OT Zone. Resolution to approve preliminary and final major subdivision with bulk variances. Use variance for multi family units approved 1/27/09.

Motion to approve – Mr. Zaks

Second – Mr. Naftali

Roll call vote: affirmative: Mr. Gelley, Mr. Mund, Mr. Naftali, Mr. Zaks, Mr. Ribiat,
Mr. Halberstam

Motion to pay bills.

All in favor.

Motion to adjourn.

All in favor.

Meeting adjourned at 11:15 P.M.

Respectfully submitted,

Fran Siegel