

**ZONING BOARD OF ADJUSTMENT  
MINUTES**

**JUNE 6, 2011**

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

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

Arrived Late: Mr. Gonzalez

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

Salute to flag.

Motion to approve minutes of May 2, 2011 with a waiver to read – Mr. Zaks

Second – Mr. Mund

Roll call vote: affirmative: Mr. Lankry, Mr. Mund, Mr. Zaks, Mr. Ribiat, Mr. Schwartz

Motion to approve minutes of May 16, 2011 with a waiver to read – Mr. Mund

Second – Mr. Naftali

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

**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 subdivision  
into 4 – 7,500 square foot lots.

Secretary read reports.

**From: Terry Vogt, Engineer/Planner – May 25, 2011**

The applicant has amended its pending use variance at the Board to now request a use (density) bulk variances and preliminary and final major subdivision approval to allow creation of 4 single-family homes on the subject .72 acre property, located with the R-12 (single family residential) zone on Elmhurst Avenue. As shown on the revised design, 4 single family units are proposed. Two of the units would have frontage on Elmhurst Blvd and 2 units would have frontage on Times Square Blvd. Road improvements and sidewalk are proposed along both property frontages.

Miriam Weinstein represented applicant.

Obi Gonzalez arrived.

Mr. Flannery – application is for 4 single family lots. 2 lots are 8,000 square feet and the other two are approximately 7,500 square foot lots

A-1 area map

Mr. Flannery – this is a transition from the HD-7 zone to the Hearthstone development where most of the lots are 80 x 100, 8000 square foot lots. There are 46 units that go to the pump station – it is owned by NJ American Water. The pump station has adequate capacity. Elmhurst Blvd would be improved to Times Square Blvd.

Reviewed Mr. Vogts report.

Mr. Flannery - asking for density variance – property is 31,000 square feet – asking for 4 units. Lot areas are consistent with the area. Asking for bulk variances for side yard setbacks. The two lots facing Elmhurst Blvd. are 90 feet deep. Asking for 27 to 29% lot coverage where 25% is required. This is a good transitional use. They are providing 4 off street parking spaces per unit. The HVAC units will be buffered. They will provide dry

wells for the roof run-off. There will be foundation plantings. They will do a wetlands investigation as requested. Most of the homes in Hearthstone do not have basements. They will be extending the sewer and the water and will provide availability to neighbors with septic. They need a "d" variance for special reasons, this is not a hardship variance. The benefits outweigh the detriments.

Mr. Flannery agreed to scale the units back to meet the 25% lot coverage. The coverage does not include the deck and the porch. If they did 3 houses they could have septic and go to Planning Board. Biltmore Avenue to the south is improved to the north it has been vacated.

Open to Public.

Joseph Weingarten, 62 Tova Drive, affirmed, Manager of the Elmwood Village Homeowners Association. Their development was approved for 3 cars per house which is not enough. There is not enough parking in the area – by making more intersections they are taking out more parking spaces for the shul. Intersections should not open straight into a driveway. The lamppost is right in the proposed new roadway. The sewer on the street now goes to their water basin.

Closed to Public.

Mr. Vogt – they recommend that a final review of the road design be done with the Township.

The applicant agreed to provide a lighting pole and any additional lighting necessary.

Motion to approve subject to drywells, street trees, foundation plantings, lighting, road design, rear yard setback for the 2 lots will be 20 feet and agreeing to the size of the house being scaled down to meet the 25% lot coverage, irrigation system, 1/3 brick and upgraded architectural – Mr. Gelley

Second – Mr. Mund

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

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

Secretary read reports.

**From: Terry Vogt, Engineer/Planner- April 27, 2011**

The applicant is requesting preliminary and final Major subdivision and site plan approval to construct 7 townhouses with basements, in three separate buildings of two, three, and two units. The property is located within the RM Multi-family residential zone. Townhouses are a permitted use within the zone. The applicant is requesting a use variance based on density (20 units per acre proposed, 16 units per acre allowed) and associated bulk variances.

John Doyle represented applicant. Revised the plans to 7 units rather than the 8 units previously proposed. Instead of one building they now have 2 duplexes and 1 triplex.

Mr. Flannery - asking for a variance for the duplex on a lot that is less than 10,000 square feet. Asking for density, side yard setback, separation between buildings is 8 feet where 25 is required. Townhouses are a permitted use and the duplex is a permitted use. Garbage

will be provided with a screened in shelter in the back of the units. The entrances to the basements are in the front.

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Mr. Flannery- For the middle unit in the triplex they agreed to create a screened in enclosure in the front to match the façade of the building. Each unit has a 1,492 square foot footprint per floor, the units are 23 ½ feet wide.

Open to Public. Closed to Public.

Mr. Doyle - The plan will conform with the picture, A-1. They will put in the Homeowners Association that there will be no fences between the units.

Mr. Flannery – they are proposing a recharge system maintained by the Homeowners Association. It is totally below ground.

Motion to approve subject to no fences between the units, garbage in back of all units except for the middle unit of the triplex, no bay windows on the sides of the units, irrigation system, the units should look like A-1 – Mr. Zaks

Second – Mr. Gonzalez

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

Sam Brown, attorney for **Appeal # 3772** – requested to carry until the July 11<sup>th</sup> meeting.

Motion to carry no further notice and a waiver of time – Mr. Naftali

Second – Mr. Mund

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

**Appeal # 3755 – MTR Ventures**, Lois Lane & Dr. Martin Luther King Drive, Block 768  
Lots 16 & 18.13, RM and R-7.5 zone. Use variance to construct 6 townhouses.

Secretary read reports.

**From: Terry Vogt, Engineer/Planner**

In response to the Board input at the March 21, 2011 meeting, the applicant has submitted a revised design. The applicant now proposes to combine two existing lots that fall within separate zoning districts into a single tract and then subdivide the tract into 5 proposed lots, encompassing 2 zero lot-line style duplex buildings and one stand-alone single family dwelling. The single family dwelling will fall within the R-7.5 single family residential zone, incorporating a small portion of the R-M zone by means of relocating the lot line. Both duplex buildings will fall wholly within the R-M Multi family residential zone, where duplexes are an approved use.

We have received and reviewed a revised subdivision plat only for the revised design concept. If this application is approved in its entirety (versus bifurcation) we recommend that technical review of the revised design be deferred to compliance review. Otherwise the current application should be bifurcated.

Abraham Penzer, attorney for applicant.

Mr. Flannery – the prior application was for 6 townhouses – they revised the plans to include 2 duplexes and a single family.

A-1 rendered version of application

A-2 aerial exhibit

Mr. Flannery – the duplex units are on 4,400 square foot lots apiece, 8,800 square feet where 10,000 is required. There are existing duplexes on the block. Reviewed Mr. Vogts, report. Provided 2 duplexes and a single family. All the uses are permitted uses. The single family lot will be on 7,326 square feet where 7,500 is required. The lot coverage they are asking for is 31.1% where 30% is required. Density proposed is 8.3 dwelling units per acre. On lots 16.02, 16.03 and 16.04 the lot coverage proposed is 37.9% where 30% is the maximum. Lot 16.01 has access off the cul-de-sac

Open to Public. Closed to Public.

Motion to approve subject to sprinkler system and 1/3 brick, garbage will be behind the houses on a pad – Mr. Zaks

Second – Mr. Naftali

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

**Recess.**

**Appeal # 3743, Lakewood Courtyard**, continued from the May 16<sup>th</sup> meeting.

Abraham Penzer represented applicant.

Ed Liston represented Aaron Stefansky, objector.

Mr. Liston wanted to submit pictures that were taken in January.

Mr. Penzer objected to the pictures being submitted.

Mr. Cherkos – the photographs can be accepted even though it was January and the traffic patterns have changed. The board has to decide how much weight should be put on them.

O-1 thru O-7

Yehoshua Weisberg, affirmed. Manage the Lakeview Apartments on First Street. Testified that he was there when the pictures were taken. The back-up on First Street is from Beth Medresh Govoha on a daily basis at about 1:45.

Mr. Cherkos said that Mr. Weisberg also manages apartments for Mr. Zaks but that there is no conflict.

Mr. Penzer cross-examined Mr. Weisberg.

The Board members reviewed the photos.

Thomas A. Thomas, sworn, professional planner.

Board accepted credentials.

Mr. Thomas – reviewed the notice. The notice describes this application for preliminary and final site plan and to construct an expansion to the existing Lakewood Courtyard assisted living facility with no nursing care. Applicant also seeks a use variance for an age restricted multi-family housing with independent units as a new non conforming use. The existing facility cannot tell from the testimony they know that there are some rooms that are licensed for nursing care but does not know that this is an existing assisted living facility. The current assistant living facility requirements are extensive, licensing procedures, certifications, dining facility, resident activities, etc. At no point has the applicant mentioned that there is any license proposed for the expansion.

Mr. Penzer – these are State requirements and not part of any site plan approval.

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Mr. Liston – the applicant has called this an expansion of an existing assisted living facility and that is a fraud and they are misrepresenting it to the board.

Mr. Cherkos – there is an existing living facility and this is clearly an expansion of this building.

Mr. Penzer – they do have to satisfy the state but now they only have to satisfy the UDO.

Mr. Thomas – believe that the proposed addition to the building is not an assisted living facility. Also the configuration of the rooms is very unusual from the ones that he has reviewed for assisted living facilities. There is no hardship for the height variance.

Mr. Penzer cross-examined Mr. Thomas.

Mr. Thomas – currently the property was a drive-in restaurant. These rooms are much larger than the typical assisted living facilities that he has seen.

Mr. Penzer - Do you think that they are trying to sneak apartments in?

Mr. Thomas - Is it an assisted living facility or is it multi-family apartments? Yes you could rent to seniors as an apartment. The assisted living facilities that he knows of are typically small. Concerned about the 3 units that are bigger. Very rarely do you see 2 bedroom units.

Mr. Gelley - There are 7 studios at 373 square feet, 28 1 bedrooms at 585 square feet

Mr. Thomas - The other 5 are 750 – 800 square feet. An age restricted facility would have more vehicles than an assisted living facility.

Mr. Zaks - Why do you think that this would be active seniors vs more assisted living seniors

Mr. Thomas – They could well be active seniors for the 1 bedroom and 2 bedroom units.

Mr. Zaks - The typically active senior would be looking for a much larger unit.

Mr. Thomas - If these are apartments than there could be a deficiency in parking.

Open to Public.

Charles Silberberg, 1472 Cedar Row, affirmed. No objection to the height or set backs. Concerned about the traffic on First Street. It is an impossible, catastrophic situation. Cars are bumper to bumper many times from Madison Avenue back to Forest Avenue. Applicant is proposing to take the entrance from Madison Avenue to First Street. They met with the applicant many times to try and resolve this situation. This facility will have a study hall, synagogue, buy there meals, eat in the dining room and yet they have the ability to drive a car.

Mr. Cherkos – Mr. Halberstam is an employee of Mr. Silberberg and suggested that the Chairman stepped down and not participate further.

The Chair was turned over to Vice Chair, Obi Gonzalez.

Raphael Bamberger, affirmed. Property Manager of Lakeside Apartments on First & Forest Avenue. Concerned about the traffic and the safety of the residents and anybody trying to get up and down the block. There must be an alternative to alleviate this problem.

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Yisroel Rabinowitz, 415 First Street, affirmed. Have no problem with the building. Concerned about the traffic. They do have affairs in the building, engagement parties, circumcisions, etc. They park on First Street, North Lake Drive.

Mr. Cherkos suggested that the meeting be closed tonight and continue the application on July 11<sup>th</sup>.

Motion to carry until the July 11<sup>th</sup> meeting Mr. Mund -  
Second – Mr. Zaks

Mr. Penzer – he cannot agree to waive time – it is not fair to his client – would rather that there is a vote

Mr. Cherkos – we cannot carry the application.

Mr. Mund withdrew his motion.

Mr. Gonzalez – will open it to the public with no reiterations bringing new facts to the case.

Aaron Stephansky, affirmed. The needs of the apartments for adults cannot be compared to the size of apartments for young couples.

Reifman, 420 First Street, corner of First & Forest, affirmed. Living with 2 children in a one bedroom apartment. Parking is not convenient. Cars are always backed up and it is a dangerous factor.

Aaron Silberberg, affirmed. Agree with everything everyone has said. There are many families in Lakewood that come to visit there elderly grandparents 2 or 3 times a day and that adds to the traffic.

Mr. Zaks announced that he has to leave.

Mr. Cherkos announced that there is only 5 members here.

Mr. Penzer agreed to waive the time until the July 11<sup>th</sup> meeting.

Motion to carry and continue this **Appeal # 3743 Lakewood Courtyard**, to July 11<sup>th</sup> –  
Mr. Mund

Second – Mr. Gelley

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

No further notification.

Motion to carry **Appeal # 3773, Route 88 Properties**, until the July 11<sup>th</sup> meeting –  
Mr. Mund

Second – Mr. Gelley

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

**Resolutions**

**Appeal #3666A – Stanley Rieder** – Amended resolution.

Motion to approve – Mr. Mund

Second – Mr. Gonzalez

Roll call vote: affirmative: Mr. Mund, Mr. Ribiat, Mr. Gonzalez

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**Appeal # 3770 – New Vistas Corp.** – 1328 River Avenue, Block 534 Lot 4, HD-7 zone.  
Resolution to approve the construction of a sign 214 square feet and 75 feet high.

Motion to approve – Mr. Mund

Second – Mr. Ribiat

Roll call vote: affirmative: Mr. Mund, Mr. Ribiat, Mr. Gonzalez

**Appeal # 3748A – Eli Schwab**, Oak Street, Block 1158 Lot 3, R-40 zone. Resolution to  
approve site plan

Motion to approve – Mr. Mund, Mr. Ribiat, Mr. Gonzalez

Second – Mr. Ribiat

Roll call vote: affirmative: Mr. Mund, Mr. Ribiat, Mr. Gonzalez

Motion to pay bills.

All in favor.

Motion to adjourn.

All in favor.

Meeting adjourned at 11:48.

Respectfully submitted,

Fran Siegel, Zoning Secretary