

BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
JANUARY 6, 2011

CALL TO ORDER: This is a regularly scheduled meeting of the Board of Adjustment of the Borough of Franklin Lakes. In compliance with the Open Public Meetings Law, Notification of this Meeting has been sent to our Official Newspapers and Notice has been posted on the bulletin board at the Borough Hall. I direct that this announcement be entered into the Minutes of the meeting.

OATH OF OFFICE TO NEW MEMBER

The new Zoning Board Member, Paul Frankel, was sworn by Mr. Davies.

OATH OF OFFICE TO REAPPOINTED MEMBERS

The following members who were reappointed to the Zoning Board were sworn by Mr. Davies: Joanne Gerber, Richard Badenhausen and Roy Messaros.

ROLL CALL:

Present: Mr. DiFlora, Mrs. Gerber, Mr. Messaros, Mr. Bavagnoli, Mr. Badenhausen,
Mr. Toronto (8:06), Mr. Frankel, Board Attorney Davies, Board Engineer Tiberi
Absent: Mr. Khoury, Mr. Toronto

FIRE SAFETY ANNOUNCEMENT

Mr. DiFlora reviewed the routes to the fire exits.

REORGANIZATIONAL MEETING

Election of Chairman, Vice Chairman and Secretary

Mr. Davies called for nominations for Chairman of the Board of Adjustment. Mr. Messaros nominated Stephen DiFlora as Chairman, seconded by Mrs. Gerber. Nominations were closed and after a roll call Mr. DiFlora is elected as Chairman for 2011.

Mr. Bavagnoli nominated Joanne Gerber as Vice Chairman, seconded by Mr. Messaros. The nominations were closed and after a roll call Ms. Gerber is elected as Vice Chairman for 2011.

Mrs. Gerber nominated Robert Bavagnoli as Secretary, seconded by Mr. Messaros. The nominations were closed and after a roll call Mr. Bavagnoli is elected as Secretary for 2011.

Appointment of Board Council

Mr. DiFlora made a motion to appoint the Davies Law Firm as Board Attorney for 2010, seconded by Mrs. Gerber. The nominations were closed and the Davies Law Firm is elected as Board Attorney for 2011.

Appointment of Board Engineer

Mr. DiFlora made a motion to appoint Boswell Engineering as Board Engineer for 2010, seconded by Mr. Bavagnoli. The nominations were closed and Boswell Engineering is elected as Board Engineers for 2011.

Appointment of Board Clerk

Mr. DiFlora nominated Maria Berardi as Board Clerk, seconded by Mr. Messaros. The nominations were closed and Mrs. Berardi is elected as Board Clerk for 2011.

Motion of Official Newspapers

Mr. DiFlora made a motion to name the Bergen Record as the official newspaper of the Board for 2010, seconded by Mr. Bavagnoli. There was no opposition.

Motion of 2011 Schedule of Meetings: Meeting nights have been the first Thursday of each month, commencing at 8:00 PM.
Meetings added or deleted at the discretion of the Board.

Mr. DiFlora stated that these dates could be changed if necessary. Mr. Toronto made a motion to accept the dates, seconded by Mrs. Gerber. There was no opposition.

NEW BUSINESS

Cal. 2011-1 Application For Abdel-Wahab, 617 Route 208, Block 2420, Lot 3, Dimensional Variances, which are in violation of the following Sections of the Ordinance:

TYPE	REQUIRED	PROPOSED	EXISTING	VARIANCE	CODE
North Building Setback	24.17’*	20.2’	20.2’	3.97’	300-102
North Side Yard Setback (Concrete Walk)	25’	16’	16’	9’	300-102
South Side Yard Setback (Concrete Walk)	25’**	20’	20’	5’	300-102
Side Yard Setback (Driveway)	11’***	5’	5’	6’	300-102
Lot Coverage	22.5%****	25.98%	25.98%	3.48%	300-102

*Variance approved by the Zoning Official in 2002.

**The Zoning Board approved a south side yard building setback of 19’ in 1999. The building’s south side yard setback is conforming to this variance approved setback at 24.2’.

***A driveway setback of 11’ was approved by the Zoning Board in 1999.

****This is the current allowable lot coverage for properties not containing a pool. However, at the time of Soil Moving Permit approval for this application the allowable lot coverage was 25%.

A wall exists within the south side 20 foot no disturbance area and encroaches onto the neighboring property to the south. A portion of the septic tanks exists within the south side 20 foot no disturbance area.

DATE DEEMED COMPLETE: December 7, 2010 DETERMINATION DATE: April 7, 2011

Ben Cascio, attorney, introduced himself on behalf of the applicant. He stated that the property in question is located on the southbound side of Route 208 at the beginning of the Ewing Avenue ramp. There was an approval for an addition by the Franklin Lakes Zoning Board in 1999. Mr. Davies marked Exhibit A-1: application and resolution of the original owner approved by Resolution 98-20 on January 7, 1999. Mr. Cascio explained that construction began on the addition in the rear. After the foundation and exterior building shell was constructed, the property was sold to Mr. Farrell in 2004. Nothing was done during the time Mr. Farrell owned the property and it was sold to a new owner, Mr. Abdulla. Mr. Abdulla obtained a permit to complete construction on the existing foundation. When the as-built survey was prepared by Mr. Eid, it was discovered that the original survey, granting the original approval in 1999, was 6 ft. in error. The foundation was built in accordance with the original survey; however, the survey was not accurate which is the reason for tonight’s appearance. Mr. Cascio stated that the property was then sold to the nephew of Mr. Abdulla who is the applicant Abdel-Wahab.

Mr. Cascio referred to Exhibit A-2: a series of communications between the Franklin Lakes Building Department and Mr. Abdulla including the response from the Borough Engineer who indicated that although the building was constructed in accordance with the original plans the building was mislocated due to the inaccuracies in the original survey.

Stephen P. Eid, P.E., Eid Associates, 555 Goffle Road, Ridgewood, N.J., applicant’s engineer, was sworn by Mr. Davies. Mr. Eid testified that the survey used in 1999 was based on a 1965 survey by Mr.

Varkenbush. This survey did not indicate the taking of the ramp for Route 208 by the Highway Department which consisted of 27,000 sq. ft. When Mr. Abdulla owned the property, he paid the neighbor to the rear \$60,000 for access to a portion of his property; however, that neighbor went bankrupt. Mr. Abdulla was never successful in completing this access due the refusal of the Bankruptcy Court to recognize this transaction. Mr. Cascio stated that there are many unresolved site issues affecting this property. He noted Exhibit A-3 which is a copy of the deed from Mr. Abdulla to Mr. Abdel-Wahab.

Mr. Eid distributed a brief outline of his testimony and a revised As-Built drawing reflecting the recent comments by Boswell Engineering. Mr. Eid described the following variances:

Side building setback 24.17 ft. required; 20.2 ft. is proposed; front of the house on the north side 24.5 ft. proposed

Walkway on north side required to be 25 ft. ; 16.3 ft. is being proposed

Walkway on south side of the house where 25 ft. is required; 20.6 ft. proposed

Driveway on the north side 11 ft. on original plans; 4.9 ft. proposed

Lot coverage allowable is 22.5% for properties without a pool; 25.98% requested

Rock wall on southerly property line and septic tank located in the buffer area

Mr. Eid stated that it is odd that the original plan is dated October 13, 1999; however, the resolution is dated January 1999. The plan shows additions approved to both sides of a small dwelling consisting of 25.4 ft. on the north side and 19 ft. on the south side. A new driveway in the front was proposed and approved. Mr. Eid said that the State acquired additional property along the front of this property in 1959 for the Route 208 ramp on Ewing Avenue. Mr. Davies marked as Exhibit A-5: Site Plan/Floor Plan dated October 13, 1999 for 617 Route 208 South, prepared by Sommer Amma Mash, architect. Exhibit A-4 is a revised As-Built Plan by Stephen Eid dated September 10, 2010, revised through December 14, 2010.

Mr. Eid explained that Mr. Abdulla applied for a building permit in 2006, when some discrepancies were discovered by the Zoning Official. The building permits were approved based on the survey that was in error; however, the additions were built to the size that was approved. Even though the property was incorrectly located, the Zoning Official decided that that applicant had conformed to the intent of the plan and resolution. Mr. Cascio stated that Exhibit A-2 describes in chronological terms what took place on the property.

Ms. Tiberi, the Board Engineer, stated that the variance that was issued in 1999 was for a 19 ft. setback and the Board accepted the 11 ft. nonconforming driveway. Mr. Cascio said that at the time it was believed that the property was 27,000 sq. ft.; however, the property is actually 24,000 sq. ft. Mr. Eid stated that Exhibit A-6, foundation location plan dated 3/3/2000, prepared by Summer Ala Marsh, architect references the 1965 survey and shows 24.17 ft. on northerly side rather than the 25.4 ft. reflected on the original proposal. This discrepancy was allowed, building continued and the property was sold in 2005. The property continued to sit idle with no work commencing again until April 2006.

Mr. Eid asked that Exhibit A-7 be as the location survey dated 4/11/06. revised 8/21/06 by Eid Associates. The original Varkenbush survey dated March 17, 1965 prepared by John Varkenbuch, L.S. was marked as Exhibit A-8. Exhibit A-9, As Built Survey dated 9/10/10 prepared by Eid Associates is the basis of the engineer's review. Mr. Eid stated that Exhibit A-10, dated 7/26/06 revised 8/01/06 by Samuel M. Roth and Associates is a site plan prepared for Mr. Abdulla addressing the issue of lot coverage and grading. This plan was never approved.

Mr. Eid referred to Exhibit A-7 which is the survey Mr. Eid prepared for Mr. Abdulla when he purchased the property. The highway property with the new dimensions is shown at approximately 2,500 sq. ft. There is now 20.4 ft on the rear of the house and 24.5' on the front of the house on the northerly property line. Mr. Eid stated that in July 2006, Mark Palus submitted plans for a new septic system in the rear which may actually be located within the 220 ft. side buffer area. Ms. Tiberi pointed out that the tanks were not installed to the specifications shown on the drawings.

Mr. Eid asked that the drawing dated 8/17/06 by Samuel Roth and Associates, Engineers be marked as Exhibit A-10. He said that Boswell Engineering would not approve these plans and a Stop Work Order was issued due to variances. On 8/25/06, the Stop Work Order was lifted in order to complete the interior rehab work. Mr. Joe McDonnell stated that everything had been constructed according to size but the survey was incorrect. In September 2006, Mr. Abdulla and the neighbor to the rear came to an agreement that would allow Mr. Abdulla access through the neighbor's property in order to exit onto Cobblestone Court. In 2007, the neighbor went bankrupt; nothing was done regarding this access route and Mr. Abdulla

stopped the project. Mr. Eid stated that in 2010, Mr. Abdulla completed the project, even though he failed to submit revised plans as requested by Boswell Engineering, and the As-Built survey was submitted which is marked as Exhibit A-9. The applicant is now hoping to get a CO for the building in order to complete the purchase of the property.

Mr. Eid referred to the Boswell Engineering review letter of December 7th stating that it summarizes the history of the property noting that no approvals were granted. After reviewing the September 10, 2010 survey many existing nonconformities are noted. Mr. Eid stressed that it is very dangerous to back out of the driveway onto Route 208 and in order to maneuver a vehicle out headfirst it is necessary to maintain the entire driveway. Several Board Members questioned why the driveway is so completely different from the 1999 approval. Mr. Eid said that he couldn't answer that question and Mr. DiFlora said that a good part of this application consists of the lot coverage issue. Mr. Eid said that the lot coverage is indicated at 25.9% versus the 25% that was permitted at the time of the soil moving approval for this application. Based on the current lot coverage regulation of 22.5%, a 3.48% variance is required. The original approval was based on a 27,000 sq. ft. lot and the applicant was not aware of the State taking of 2,500 in the front.

Ms. Tiberi pointed out that the walkway along the perimeter of the home, is 561 sq. ft. and lot coverage would conform if this were removed based on the 25% impervious coverage in effect at the time of approval. Mr. Eid indicated that Mr. Abdulla said this walkway was added to try to direct drainage away from the house. He noted a wall along the southern property line within the 20 ft. buffer and said that the Board could decide whether it should remain or be removed. The concrete walkway has an approximate setback of 16 ft. to the north side yard and 20 ft. to the south side yard requiring variance approval. A portion of the septic tank exists within the south side yard 20 ft. No Disturbance area which was approved by the Board of Health.

Mohammed Abdulla, 1602 Ellis Avenue, Fair Lawn, was sworn by Mr. Davies and said that he is the prior owner of the property. Mr. Abdel-Wahab, the applicant, 1 Lakeshore Drive, Netcong, was also sworn by Mr. Davies. Upon questioning by Mr. DiFlora, Mr. Abdulla confirmed that approval for the septic tank was given by the Board of Health based on a plan submitted by Mark Palus.

Mr. DiFlora stated that the major issue for this application is impervious coverage and this drawing does not conform to the drawing that was approved by the Board in 1999. Many of the dimensional variances are related to the 1965 survey. Ms. Tiberi commented that if the development of the lot had been based upon the originally approved plan of 1999 the coverage issue wouldn't exist. The taking of property and the impervious expansion has created this problem. Mr. DiFlora stated that he can accept five of the six variances that are required; however, he cannot accept the variance for impervious coverage which must be brought into conformance. The applicant can chose his own method of resolving this problem; however, Mr. Cascio pointed to the issues of health and safety as being the reason why the impervious coverage variance should be granted. Mr. DiFlora said that the safety issue wasn't brought up in 1999 and Mr. Cascio said that it would be impossible to back out of this driveway onto Route 208 due to safety considerations. Mr. DiFlora said that the size of the driveway can be reduced in a variety of ways and not necessarily by width alone. Mr. Cascio noted that in this case, the special reason accepted under the Land Use Law for the granting of this variance is the highway taking. Other Board Members agreed with Mr. DiFlora indicating that because everything was built without approvals, there is no justification for any variances being granted in this case.

Mr. Davies recited the following conditions:

1. Applicant must reduce the impervious coverage to 25%.
2. Applicant must provide to the Borough Engineer a drawing approved by the Board of Health showing the septic tanks in their current location.

Mr. Bavagnoli made a motion to approve the application with the above stated conditions. Mr. Badenhausen seconded the motion.

Roll Call Vote

Ayes: Mr. DiFlora, Mrs. Gerber, Mr. Badenhasen, Mr. Messaros, Mr. Badenhausen,
Mr. Toronto, Mr. Frankel

Nays: None

Cal.#2011-2 Application For Bekkerman, 954 Colonial Road, Block 1204, Lot 5, Dimensional Variance, which is in violation of the following Section of the Ordinance:

<u>TYPE</u>	<u>REQUIRED</u>	<u>PROPOSED</u>	<u>EXISTING</u>	<u>VARIANCE</u>	<u>CODE</u>
Lot Coverage	25%	26.85%	24.28%	1.85%	300-102
*No Disturbance Buffer	20'	20'	0	20'	300-124.B.(1)

DATE DEEMED COMPLETE: December 15, 2010 DETERMINATION DATE: April 14, 2011

*On 3-4-09 Mr. Liebman, Mr. Bekkerman’s attorney, appeared before the Planning Board under Oral Communications to discuss an application for a tennis court. Temporary access was required on the side of the lot to get to the rear of the lot to construct the tennis court. The Ordinance section which talks about the 20’ no disturbance area is under tree removal. There is no tree removal in this no disturbance area; therefore, there would be no need for a variance. It was determined that a variance was not required for this. A copy of the minutes of that meeting was provided to the Board in their packets.

Attorney Ben Cascio identified himself as the applicant’s attorney. He described the property, which was purchased by Mr. Bekkerman in 2006, as a single family residence with a pool, patios and a tennis court that had been approved in March 2009. This applicant proposes an expansion of the tennis court area into a regulation size tennis court due to safety issues. The tennis court would be expanded within the existing fenced area. There is an existing coverage on the lot of 24.28% where 25% is allowed and the proposed addition would result in coverage of 26.95%. Mr. Cascio stated that there had been an issue of disturbance in the no disturbance area which has now been resolved.

Tibor Latincsics, of Conklin Associates, 29 Church Street, Ramsey, N.J and Peter Bekkerman, 954 Colonial Road, Franklin Lakes, were both sworn by Mr. Davies. Mr. Bekkerman stated that he constructed the house on the property as well as the pool, cabana and tennis court. The tennis court was surrounded by grass in order to comply with the coverage requirements; however, grass in the area causes a tripping hazard when people are playing tennis. Mr. Bekkerman said that he hopes to increase the size of the tennis court from 50 ft. x 90 ft. to 60 ft. x 120 ft. for safety purposes.

Mr. Latincsics referred to “Tennis Court Plot Plan, Lot 5, Block 1204, Borough of Franklin Lakes, New Jersey.” dated November 1, 2010, revised December 12, 2010, prepared by Conklin Associates” which was marked as Exhibit A-1. An expanded version of the plan was marked as Exhibit A-2. Mr. Latincsics stated that this is a 2.3 acre lot with the home set back 192 ft. from Colonial Road which is significantly greater than the required front yard setback. The house is 115 ft. wide and appears much wider due to the dramatic architecture. The approach driveway uses 115 sq. ft. of impervious coverage and there are two, two car garages hidden to the rear behind the center courtyard. Originally the driveway came straight out to Colonial Road; however, it was pushed to the southern front corner to preserve a cluster of attractive conifer trees. Relocation of the driveway has contributed to additional impervious coverage. There is statuary in the rear of the property and Mr. Latincsics recognized that this pushes the envelope as far as coverage goes. Therefore, during construction, he recommended that the size of the tennis court be reduced to 90 ft. by 50 ft. since court use was to be for guests only.

Mr. Latincsics stated that due to safety concerns, the applicant is now proposing additional impervious surface of 15 ft. to the rear, 10 ft on one side and 5 ft. on the other side for a total of 1,215 additional square footage or 26.85%. The tennis court is hidden by landscaping at the far rear of the property and there are four seepage pits dedicated to adequate drainage. Mr. Latincsics added that there is no lighting proposed for the tennis court.

Mr. Latincsics argued that this is not a self created hardship and he pointed to the extensive planning that went into the house including the location which is 190 ft. back from Colonial Road. The tennis court is concealed to the rear of the home requiring additional impervious coverage which should be considered by the Board.

Mr. DiFlora indicated that although an expansion is proposed for the tennis court, it is still within the required setbacks. The Planning Board noted that there is no tree removal and no disturbance of the area and additional screening is not necessary. Ms. Tiberi confirmed that the tennis court expansion will drain into the existing system. Mr. DiFlora said that the applicant is only seeking one variance, unlike the previous application, and he would be in favor of granting this variance request.

