

**BOARD OF ADJUSTMENT**  
**MINUTES OF THE MEETING**  
**FEBRUARY 3, 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.

**ROLL CALL:**

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

**FIRE SAFETY ANNOUNCEMENT**

**The fire exits are out the double doors, down the stairs and out the front door and the side exit door down the stairs and out the side door.**

**NEW BUSINESS**

Cal.#2011-3 Application For Lukacs, 275 Indian Trail Drive, Block 2101.02, Lot 4, Appeal,  
Interpretation and Dimensional Variances, which are in violation of the following  
Section of the Ordinance:

<b>TYPE</b>	<b>REQUIRED</b>	<b>PROPOSED</b>	<b>EXISTING</b>	<b>VARIANCE</b>	<b>CODE</b>
No. of Automobiles	4	12	4	8	300-121C(2)(e)
Height of Walls	4' Maximum	> 4'	N/A	Required	300-121F.(3)

The existing dwelling contains a four car garage. The proposed garage provides storage for 8 cars for a total storage capacity on the property of 12 cars.

The underground addition may prove as building coverage, significantly increasing the coverage to a potential variance condition. Dependent also on the determination for the building coverage by the Zoning Board of Adjustment, a lot coverage variance may prove applicable.

DATE DEEMEND COMPLETE: January 14, 2011

DETERMINATION DATE: May 14, 2011

Ben Cascio, attorney for the applicant, recalled that the applicant was in front of the Board last year and received approval for a natatorium which is moving through the building permit process. At this time, the applicant is requesting approval for an underground garage to house his automobile collection. The ordinance states that no detached garage can be constructed for several reasons but specific to this application is the reason that a garage in a residential zone may not be utilized for the storage of more than four automobiles and may not be designed to accommodate more than four automobiles. Mr. Cascio stated that the applicant is requesting an interpretation under the Municipal Land Use Law as well as asking the Board to make a determination that a detached underground garage does not fall within the prohibitory section of the zoning ordinance. There is a secondary issue regarding the height of a retaining wall. The maximum height of the wall at the entry to the underground garage is 6 ft. and the walls are stepped back. There is nothing in the ordinance relating to how much a wall should be stepped back and the applicant is looking for some direction from the Board in order to design the wall within the requirements of the ordinance.

Michael Costantin, of J. Costantin Architecture, 60 Washington St., Suite 107, Morristown, N.J. 07960, was sworn by Mr. Davies. Mr. Costantin stated that the applicant wants to house a collection of ten to twelve cars. Due to lack of available impervious coverage, Mr. Costantine decided to go underground and a 60 ft. by 60 ft. structure is proposed with one third of the area being located under the existing four car garage that is at grade. The remaining area is under the parking court adjoining the garage.

During the meeting, the following Exhibits were marked by Mr. Davies:

- A-1 Plans: 'Lukacs Lower Garage 275 Indian Trail Dr., Franklin Lakes, NJ 07417' by Michael J. Costantin, R.A., J. Costantin Architecture, LLC, dated October 21, 2010, with revisions through January 11, 2011, page 1 of 10 pages, "A-1.0 Data/House Location Plan"
- A-2 Plans: 'Lukacs Lower Garage 275 Indian Trail Dr., Franklin Lakes, NJ 07417' by Michael J. Costantin, R.A., J. Costantin Architecture, LLC, dated October 21, 2010, with revisions through January 11, 2011, page 2 of 10 pages, "A-1.1 Driveway Plan"
- A-3 Plans: 'Lukacs Lower Garage 275 Indian Trail Dr., Franklin Lakes, NJ 07417' by Michael J. Costantin, R.A., J. Costantin Architecture, LLC, dated October 21, 2010, with revisions through January 11, 2011, page 3 of 10 pages, "A-1.2 Main Level- Architectural Floor Plan" also labeled "Lower Garage Plan"
- A-4 Plans: 'Lukacs Lower Garage 275 Indian Trail Dr., Franklin Lakes, NJ 07417' by Michael J. Costantin, R.A., J. Costantin Architecture, LLC, dated October 21, 2010, with revisions through January 11, 2011, page 4 of 10 pages, "A-1.3 Site Section Elevations" also labeled "Site Section Elevation Looking West"
- A-5 Plans: 'Lukacs Lower Garage 275 Indian Trail Dr., Franklin Lakes, NJ 07417' by Michael J. Costantin, R.A., J. Costantin Architecture, LLC, dated October 21, 2010, with revisions through January 11, 2011, page 5 of 10 pages, "A-3.1 Building Section" also labeled "Lower Garage Section Looking West"
- A-6 Plans: 'Lukacs Lower Garage 275 Indian Trail Dr., Franklin Lakes, NJ 07417' by Michael J. Costantin, R.A., J. Costantin Architecture, LLC, dated October 21, 2010, with revisions through January 11, 2011, page 6 of 10 pages, "A-3.2 Building Section" also labeled "Lower Garage Section Looking North"
- A-7 Plans: 'Lukacs Lower Garage 275 Indian Trail Dr., Franklin Lakes, NJ 07417' by Michael J. Costantin, R.A., J. Costantin Architecture, LLC, dated October 21, 2010, with revisions through January 11, 2011, page 7 of 10 pages, "A-3.3 Building Section" also labeled "Garage Section - Elevation Looking North"
- A-8 Plans: 'Lukacs Lower Garage 275 Indian Trail Dr., Franklin Lakes, NJ 07417' by Michael J. Costantin, R.A., J. Costantin Architecture, LLC, dated October 21, 2010, with revisions through January 11, 2011, page 8 of 10 pages, "A-7.0 Driveway Section Detail" also labeled "Permeable Driveway Detail"
- A-9 photos of greenery fence "Green Screen", two pages showing samples of proposed fencing installed at other locations
- A-10 Plans: 'Lukacs Lower Garage 275 Indian Trail Dr., Franklin Lakes, NJ 07417' by Michael J. Costantin, R.A., J. Costantin Architecture, LLC, dated October 21, 2010, with revisions through January 11, 2011, page 9 of 10 pages, "A-7.1 Driveway Section Details" also labeled "Permeable Driveway Section"
- A-11 Plans: 'Lukacs Lower Garage 275 Indian Trail Dr., Franklin Lakes, NJ 07417' by Michael J. Costantin, R.A., J. Costantin Architecture, LLC, dated October 21, 2010, with revisions through January 11, 2011, page 10 of 10 pages, "A-7.2 Driveway Section Details" also labeled "Permeable Driveway Section-Elevation"
- A-12 "Sub-Surface Garage Addition Plot Plan Lot 4 - Block 2101.02 275 Indian Trail Drive in the Borough of Franklin Lakes, Bergen County, New Jersey for Michael Lukacs", dated December 15, 2010 with revision dates through January 4, 2011, consisting of one sheet prepared by Tibor Latinsics, P.E., P.P. Conklin Associates Engineers And Surveyors

Mr. Costantin referred to his drawing A1.0 (Exhibit A-1) which depicts a new 11 ft. wide driveway descending about 120 linear ft. at a 9% grade from the existing turnaround at the front door of the residence. A proposal showing vertical retaining walls with foliage was presented to Kevin Burnette of the Construction Office and Eileen Boland of the Engineering Department in October of last year. At that time, Ms. Boland pointed out that the 4 ft. height requirement for retaining walls was being violated and a wall was created that was setback at 1 ft. in lateral intervals containing earth which would be planted with ivy. This driveway descends down to a maximum height of 10 ft. 2 in. before entering a short tunnel. Mr. Costantin stated that drawing A1.2 (Exhibit A-3) is a more detailed plan of the parking garage. The entry to the garage is in the lower right corner which allows the vehicle to enter a 15 ft. turntable which swivels around in order to access a parking space. There is a mechanical room in the lower left corner as well as a toilet, and a small work bench area with surface sink with tool storage behind folding doors. There is an office in the upper left corner accessible from the garage and a passage way to the rear gardens of the house. The main access from the house is via a new stair on the left side of the parking garage which connects with seven steps to the existing lower level of the residence. Mr. Costantin said that there will be a fire suppression system within the parking garage and an exhaust system that is separate from the air conditioning system.

Mr. Costantin stated that there are four existing garages and the applicant is proposing a fifth set of carriage style garage doors to access the underground facility. These doors shown on Exhibit A-2 will be virtually invisible from the street. Drawing A1.3 (Exhibit A-4) shows front and rear elevations as well as a fence and an outline of the location of the garage in relation to the house. The garage slips under the existing garage in this area. Mr. Costantin said that the entire garage structure is completely underground and not visible from anywhere outside the garage. Mr. Costantin described drawing A3.2 (Exhibit A-6) which shows the four car garage with the proposed

underground garage. The blind door providing access to the passage to the proposed office is visible in this drawing. Drawing A3.3 (Exhibit A-7) shows flush panel doors concealing the work area and mechanical room.

Mr. Costantin stated that A7.0 (Exhibit A-8) depicts the entrance leading to the short tunnel to the carriage style garage doors. The trench drain in this area will be cut through about 5 ft. or 6 ft. in front of the garage doors. Mr. Costantin referred to a drawing showing a freestanding green screen or fence (Exhibit A-9) and the second page shows how ivy is able to grow up the fence without destroying it. Mr. Costantin gave a detailed description of the drawing marked as A7.1 (Exhibit A-10) showing a cross section of the driveway and the retaining walls and he noted that the walls are not higher than 3 ft. on average; however, the overall mass does exceed 4 ft. The lower wall appears to be over 4 ft. also. Mr. Cascio explained that the applicant's engineer will design walls that do not exceed 4 ft. and at this point they are questioning the required setbacks in between the walls. Ms. Tiberi pointed out that when entering the garage, an individual will be looking at an overall mass of 12 ½ ft. to 13 ft. of green screen. The ordinance prevents more than 4 ft. of wall being visible without that wall being stepped back. Mr. Casio reiterated that the applicant is seeking guidance as to how far the wall has to be stepped back. Mr. DiFlora said that he didn't think this wall would be visible from the street.

Ms. Tiberi pointed out that the Board will have to make a decision on coverage as she noted in the review letter. Mr. Cascio stated that coverage was not cited on the zoning denial. Ms. Tiberi explained that she coordinated with the Zoning Official and agreed that the interpretation of the coverage issue would be up to the Board.

Mr. Toronto made a motion to open the public portion of the meeting for questions of the architect only, seconded by Mr. Bavagnoli, all ayes.

John Zall, 104 McGregor Avenue, Mt. Arlington, N.J., said that he is working with the builder on this project. He asked if the green screen could be set back and tiered away so that it doesn't appear to be 4 ft. Mr. Costantin said that this could be done and Mr. Cascio reiterated that they will design whatever criteria the Board wishes.

Tibor Latincsics, of Conklin Associates, 29 Church Street, Ramsey, N.J. was sworn by Mr. Davies. He stated that he prepared the plan entitled "Sub-Surface Garage Addition, Plot Plan, Lot 4, Block 2101.02, Borough of Franklin Lakes, NJ", dated December 15, 2010, revised January 4, 2011. The plan (Exhibit A-12) indicates the footprint of the underground garage most of which being located under the existing garage or underneath the existing or future driveway platform. He recalled that the applicant is reducing the existing driveway platform to comply with coverage amounts. The definition of coverage under the ordinance refers to surface coverage and what is proposed is sub-surface and totally hidden. He reminded the Board that 25% coverage is allowed in the A-40 zone if the property contains a pool. The actual surface coverage is 24.7% which was achieved through the utilization of grass pavers at 8% and the access to the garage also uses grass pavers. Portions of the sub-surface garage extend beyond the existing impervious surfaces which are obscured and landscaped and not counted as coverage. The driveway into the subsurface garage consists of grass pavers at a maximum grade of 9% and is referred to as a fair weather driveway. The show cars will only be used during fair weather and the driveway is a hobby driveway. Mr. Latincsics said that drainage conditions on the property are ideal. He referred to the retaining walls and said that he understands that the reason for the tiering the walls is to prevent a visual mass but this area is totally hidden and is an access through into the subsurface garage.

Mr. DiFlora strongly suggested that all of the grass pavers on the upper area be removed including the area over the tunnel. He suggested that this area should be converted to a conventional surface because there isn't sufficient light for the grass to grow. Mr. Davies questioned how the applicant arrived at an impervious coverage amount of 24.7% with the addition of the access driveway. Mr. Latincsics described the various areas that have been trimmed and Mr. Cascio reminded the Board that the applicant is not looking for an approval on this specific plan only guidance regarding two sections of the ordinance.

Ms. Tiberi noted that the air conditioning details differ from the plan that was approved last year. The prior plan depicted two air conditioning units and one generator and the new plan shows twelve air conditioning units. There is also an oak tree that may have to be removed. Mr. Latincsics said the tree can be saved by shifting the septic field closer to the well while still meeting the 100 ft. and altering the shape of the septic field somewhat.

Ms. Tiberi asked Mr. Latincsics what the building coverage would be of the entire subsurface addition. Mr. Latincsics said that the addition is 3,000 sq. ft. approximately which would be the garage footprint beyond the footprint of the existing home. This would be equal to 15.4% or slightly greater than the 15% building coverage that is permitted in this zone.

Ms. Tiberi said that the plan contains a floodlight that appeared to be spilling onto an adjoining property. She isn't sure whether or not this light has been eliminated and Mr. Constantin confirmed that it has been deleted. Ms. Tiberi questioned the use of the proposed improvements and Mr. Constantin said that the main use is to house the applicant's car collection. Mr. DiFlora commented that there are areas for chairs and a table, three fireplaces, wood paneling, a bathroom and a wet bar with a sink which is a lot more than simply a collection of cars. This appears to be an entertainment area and Mr. Cascio explained that the applicant's hobby is collecting cars and he likes to show people his cars in his hobby area.

Mr. Badenhausen made a motion to open the public portion of the meeting for questions of the engineer only, seconded by Mr. Messaros, all ayes. No one came forward and Mr. Badenhausen made a motion to close the public portion of the meeting, seconded by Mr. Bavagnoli, all ayes.

Mr. Cascio asked Mr. Latincics if underground construction was normally considered as coverage. Mr. Latincics said that normally it is not and he added that the building footprint is normally measured to the foundation line. Underground features such as seepage pits and septic tanks or anything not covering the surface is not considered as coverage.

Joseph Burgis, President of Burgis Associates, Westwood, N.J., was sworn by Mr. Davies. Mr. Burgis confirmed that he was the Planner for the Borough of Franklin Lakes from 1988 to 2008, and he indicated that the regulations regarding the number of automobiles permitted as well as the retaining walls were written during his time as Planner. Mr. Burgis stated that the attached underground garage would be permitted without a variance because the ordinance specifically refers to detached garages. In 2000, there was a concern about over sized detached garages that had been built and the Planning Board wanted to ensure that this practice would not continue. Therefore, an amendment to the ordinance was put into effect. This application concerns a garage that is attached to the dwelling and it is obvious to conclude that this section of the ordinance does not apply here.

Regarding the retaining walls, Mr. Burgis stated that Section 300-121 F 3 notes that if it is demonstrated that a retaining wall of a height greater than 3 ft. is necessary the wall should be terraced where feasible to enable suitable plantings to be installed. He said that the applicant meets the intent behind the Code in that the principal purpose of the regulation was to limit the visual impact. The wall will not be visible from the street or the neighbors because of the design and relationship to the public right-of-way. A one foot terrace is being provided between the steps and the retaining wall to provide the proposed grass wall. Mr. Burgis said that the ordinance has never imposed a specific standard for the dimension of the terraced area and he reiterated that they meet the intent of the Code.

Ms. Tiberi referred to the green screen or fence that had been previously discussed and noted that the fence ordinance limits fence height to 5 ft. or less. If this is considered a green wall, it is more than 4 ft. in the upper section. Mr. Burgis said that there is a distinction between the retaining wall and the green screen on top vs. conventional fencing because it is built with different material and designed to meet a different purpose. Mr. Davies suggested that the Board could grant variances from tiering the wall back and conclude that what is proposed makes sense and is attractive. The Board discussed various alternatives and Mr. Burgis suggested that an alternative to moving the fence back would be to have defensible plantings along the edge of the fence. These thorny plantings would discourage anyone from trying to get through the bushes to the fence.

Mr. Burgis stated that the addition is underground and during his time as the Planner in Franklin Lakes, underground feature were never counted as impervious coverage. Mr. DiFlora asked if Mr. Burgis had ever had to look at a plan where the underground feature extended beyond the outline of the structure. Mr. Burgis said that this situation never arose while he was the Planner in the Borough.

Mrs. Gerber made a motion to open the public portion of the meeting for questions of the Planner only, seconded by Mr. Bavagnoli, all ayes. No one came forward and Mr. Toronto made a motion to close the public portion of the meeting, seconded by Mr. Bavagnoli.

Mr. Cascio reiterated that the applicant is seeking an interpretation on the basic concept in order to submit the final plan to the Building Department and obtain a building permit. Mr. Davies said that his concern is that a garage large enough to accommodate more than four vehicles is fine if it is built into the house, but not fine if it is separated from the house. Mr. Burgis reminded Mr. Davies of the earlier concern regarding oversized accessory structures.

Mr. DiFlora recited conditions under which the Board would consider approving the variance application. Mr. Cascio said that the retaining wall will be built so that it doesn't require a variance when the Board gives guidance regarding the wall. He added that the garage location may have to be moved to ensure that a variance is not needed. The Board discussed impervious coverage and concluded that as long as the applicant can keep impervious coverage

below the 25% maximum, there would be no coverage variance required. Mr. Latincics indicated that the coverage would remain at 24.7%.

Mr. Davies recited the conditions indicated by Mr. DiFlora:

1. Septic tank to be moved to save the oak tree in the front yard.
2. Remove all grass paver areas not associated with the main driveway from the street to the courtyard circle and in the center of the courtyard circle. The applicant will remove the pavers on the right and left side of the driveway leading to the underground garage. Grass pavers will remain in the center of the driveway.
3. Remove all grass pavers on the left and right side of the driveway leading to the underground garage.
4. All mechanical equipment related to the underground garage is to be housed indoors.
5. The fence shall be 4 ft. high instead of 3 ft.
6. 24.9% maximum coverage.
7. Air conditioning units shown on the plans will be the maximum number and capacity that the applicant will construct.
8. The lower portion of the access driveway is to be pavers rather than grass.

Mr. Cascio again said that the applicant is requesting two things: an interpretation of the underground garage and the impervious surface calculations. The retaining wall will be designed to comply with the Borough's ordinance. The applicant doesn't want to be restricted to this particular plan and will design a plan that will comply with Borough ordinances.

After more discussion, several Board Members agreed that the applicant is seeking an interpretation of the ordinance to avoid returning to the Board. Mr. Burgis stated that the applicant wants to move forward and design the project and requires an interpretation by the Board in order to do this. Mr. Bavagnoli said that in this case the applicant could expand the underground structure without the Board ever seeing the plan or commenting on it again. Mr. DiFlora said that underground construction may be considered impervious coverage depending on its size, how deep it is and how much or how little cover is on top of it. Mr. Burgis pointed out that the ordinance amendment eliminated the reference to impervious coverage and replaced it with the phrase "total coverage" and changed the wording to refer to something that is "covered by these features."

Mr. Davies suggested that the Board's interpretation might be that total coverage will vary for underground structures depending on the size and depth of what is being located underground. He added that it is fact specific depending on what it being presented.

Mr. DiFlora said that the conditions of approval were cited earlier and if the applicant cannot meet those conditions he will have to come back to the Board. Mr. Constantin stated that the applicant would like to look at other locations that would be less compromising to the existing house.

John Zall, 104 McGregor Avenue, North Arlington, N.J., said that it appears the Board is counting underground coverage as total coverage which is included in impervious coverage. Mr. DiFlora pointed out that a garage is a building and part of the total coverage.

Ms. Tiberi stated that it appears the applicant is looking for definite guidance in order to complete a fully conforming design which would ensure that they do not have to come back to the Board for further approvals. The Board cannot provide an interpretation unless the approval is based on the design that they are hoping to have approved. Mr. DiFlora stated that underground construction may be considered impervious coverage; however, every application has to be interpreted on a case by case basis. Mr. Cascio said that the applicant would consider an octagonal garage under the circle which would have the same amount of coverage. Ms. Tiberi said that the Board was not comfortable giving the applicant carte blanche and she asked why the applicant was adverse to coming back with a revised plan showing what they propose to build. Mr. Constantin explained that his client wants to complete construction before the end of August and it would probably be doable if they come back in March with a scaled down plan. Therefore, the applicant agreed to come back to the Board with a revised drawing at the March 3<sup>rd</sup> meeting.

Mr. Toronto made a motion to carry the application to the March 3<sup>rd</sup> meeting, seconded by Mrs. Gerber.

**RESOLUTIONS**

**BEKKERMAN, BLOCK 1204, LOT 5**

Mr. Bavagnoli made a motion to memorialize the resolution, as amended. Mr. Toronto seconded the motion.

Roll Call Vote

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

Nays: None

**ABDEL-WAHAB, BLOCK 2420, LOT 3**

Mr. Bavagnoli made a motion to memorialize the resolution, as amended. Mr. Toronto seconded the motion.

Roll Call Vote

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

Nays: None

A motion to adjourn was moved by Mr. Toronto and seconded by Mr. Frankel. All in favor (aye).

The meeting was adjourned at 11:10 P.M.