

**ZONING BOARD OF ADJUSTMENT**

**MINUTES OF THE MEETING**

**OCTOBER 4, 2012**

**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, Ms. Schoenberg, Board Attorney Davies, Board  
Engineer Tiberi

**Absent:** Mr. Khoury, Mr. Frankel

**ORAL COMMUNICATIONS**

There were no oral communications this evening.

**NEW BUSINESS**

2012-6 Application for Lombardi (Owner), The Learning Experience (Contract Purchaser),  
861 Franklin Avenue, Block 1512.01, Lot 16 which is in violation of the following  
Sections of the Ordinance:

<b><u>TYPE</u></b>	<b><u>REQUIRED</u></b>	<b><u>EXISTING</u></b>	<b><u>PROPOSED</u></b>	<b><u>VARIANCE</u></b>	<b><u>CODE</u></b>
Child Day Care Facility	Not Permitted in A22.5/LB-1 Zones		Yes	Yes	300-107.A. 300-114.B. 300-120.F.
Side Yard Setback	25'		12'	13'	300-120.F.
Building Coverage	15%/30%		23.9%	6.1%	300-107.E.
Total Coverage	20%/65%		61.3%	41.3%	300-107.E.
Off Street Parking	53 spaces		36 spaces	17 spaces	300-120.F.
Off Street Parking Offset to Street Line	15'		3'	12'	300-121.B.(1)
Off Street Parking Offset to Side Lot Line	15'		5'	10'	300-121.B.(2)
Fence Height	5'		6'	1'	300-121.F.(1)
Opaque Fence					
Front Yard Setback	25'		5'	20'	300-121.F.(7)
Opaque Fence					
Side Yard Setback	25'		5'	20'	300-121.F.(7)
Buffer Area	35'		5'	30'	300-124.A.(1)
Planting in Buffer Area	Yes				300-124.A.(8)
Disturbance Within Steep Slope Areas					
Category 1 (15% to 19.99% Areas)	50%		50.8%	.8%	300-132.A.(1)
Category 2 (20% to 24.99% Areas)	45%		62.9%	17.9%	300-132.A.(1)
Category 3 (25% or Greater)	35%		47.4%	12.4%	300-132.A.(1)
Off Street Parking from Front Yard Lot Line	10'		3'	7'	300-71.B.(1)
Parking Prohibited from Site Triangle	No Parking		Parking	Yes	300-71.B.(1)
Off Street Parking from Residential Zone	30'		5'	25'	300-71.B.(1)

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Off Street Parking

Space Size	10' x 20'	9' x 18'	Yes	300-71.D.(2)
Sight Distance	325'	72'	250'	300-71>D(4)(b)[1]
Driveway Offset to Intersecting Streets	50'	12.3'	37.5'	300-71.D.(4)(c)
Curb Return Radius (One-Way)	35'	20'	15'	300-71.D.(4)(f)[3]
Driveway Width (Two-Way)	30'	24'	6'	300-71.D.(4)(f)[3]
Curb Return Radius (Two-Way)	35'	20'	15'	300-71.D.(4)(f)[3]
Number of Loading Spaces	1	0	Yes	300-72.A.
Number of Signs in LB-1 Zone	1	2	1	300-128.C.(2)(d)[2]
Wall Not Tiered	4' Tiered	7' Not Tiered	Yes	300-121.F.(3)

Use Variance and Dimensional Variances

Bruce Whitaker, of McDonnell & Whitaker, stated that he is representing applicant Stephen Lombardi, 861 Franklin Avenue, LLC, who has entered into a contract with The Learning Experience, a national company which operates child care centers. The applicant is the contract purchaser of 861 Franklin Avenue and he proposes to demolish the retail shop that exists on the premises at this time and construct a new building with parking and other improvements which would upgrade the site. Children from six weeks to five years old will be housed in the building that will have a dwelling unit look. The maximum amount of children allowed in the structure would be 17 based on licensing requirements and the maximum number of employees would be 24.

Mr. Whitaker stated that the property is slightly over an acre and is located in two different zones. The front of the property is in a commercial zone (LB-1) and the rear is in a residential zone (A-22.5). It is highly unusual to have a split lot and this is the only lot of its kind in the Borough. Mr. Whitaker explained the AMG Landmark case in the Township of Springfield which detailed how a Board should look at split zoning. The applicant is seeking a use variance in the Borough to allow this use in the commercial zone which would then flow into the residential zone. The New Jersey Supreme Court ruled that an owner cannot be deprived of reasonable utilization of any portions of his property for the benefit of another private landowner due to the inability to meet the requirements of the zone in which it is situated. The Board must look at the entire site and determine the best use of the property. Mr. Whitaker said that the building is proposed to be constructed in both zones; however, the major issue is the parking and the ingress and egress. Due to the triangular shape of the property, the parking is located in the front which is the commercial zone. Mr. Whitaker commented that this style of building fits well in the commercial zone and flows well into the residential zone. The required playground area for the day care center will be located in the rear of the building. He noted that some commercial zones experience activity seven days a week; however, there will only be activity at this location Monday through Friday and this building is used exclusively for The Learning Experience.

Mr. Whitaker reviewed his list of exhibits and referred specifically to Exhibit A-1: NJS A 40:55D.66.6. This exhibit points out that the legislature amended the Municipal Land Use Law (MLUL) relative to child care centers. The amendment states that child care centers shall be a permitted use in all non-residential districts of the municipality and usurps the commercial district ordinance. The law also states that no parking variances are required for this type of application; however, proposed parking is based on the traffic studies and past experience. Upon questioning by Mr. Davies, Mr. Whitaker reiterated that a child care center is considered to be an inherently beneficial use per the MLUL and therefore permitted in any commercial zone. He added that this application will require eleven variances.

Susan Johnsen, area manager for The Learning Experience, was sworn by Mr. Davies and she indicated that the corporate office is located in Florida. She is responsible for fourteen different centers in New York and New Jersey and she must ensure compliance with State law. Ms. Johnsen stated that a center is needed in Franklin Lakes and she feels that it will flourish in the community. She described the various programs offered at the facility and the professional and educational backgrounds of the staff. Hours of operation are 6:30 A.M. to 6:30 P.M., Monday through Friday. From time to time an Open House is held on a Saturday.

Ms. Johnsen stipulated that the maximum number of children allowed in the center to be 171 and the maximum number of staff would be 24. There is normally a 13% absentee rate in the center. She stated that the parking provided is adequate for the maximum number of employees and parents who are dropping off and picking up children at the center. Ms. Johnsen stated that the outdoor play area is divided into two areas for older and younger children. There are approximately 28 to 30 children outside at one time. She concluded that the site proposed for The Learning Experience is satisfactory and sufficient and will accommodate the services expected by the area parents.

Ms. Johnsen was asked about traffic and parking issues and she said that most centers are 75% occupied with many children who are siblings being dropped off at the same time. She reiterated the 13% absentee rate and added that not all children are dropped off at the same time which is the case in a regular school setting.

Mr. DiFlora asked that the applicant take the thirty closest Learning Experience facilities and provide details relative to the square footage of the building itself, the square footage of the site, the number of parking spaces and the number of children enrolled. There was a discussion of the ingress and egress at this location and Mr. Whitaker reminded the Board that Bergen County Planning Board has jurisdiction over ingress and egress at this site as it is located on a County road.

Mr. Bavagnoli made a motion to open the public portion of the meeting for questions of Ms. Johnsen, seconded by Mr. Frankel. No one from the public came forward and a motion was made by Mr. Toronto to close the public portion of the meeting, seconded by Mr. Bavagnoli.

Matthew Clark, MCB Engineering Associates, 11 Furher St, Totowa, N.J., was sworn by Mr. Davies. Mr. Clark stated that he was part of the team of experts involved in reviewing the needs of The Learning Experience. He evaluated whether or not this site would work and assisted in formulating the application. Mr. Clark described the existing conditions noted in Exhibit A-6: Existing Conditions Map prepared by Diaz Land Surveying dated 5/1/12. The site was formerly occupied by the Wyckoff Peddler with a single point of access from Franklin Avenue. Mr. DiFlora asked why Mr. Whitaker had provided Board Members with drawings on half scale. It appears there had been a miscommunication and Mr. Whitaker will distribute inch to 20 drawings to Board Members before the next meeting. Mr. Clark testified that 64.1% of the lot is located in the commercial zone. Activities including parking, refuse, mechanicals, and entrance and exits are located in the commercial zone. Only a small portion of the building and the play areas are located in the residential zone. Two driveways are proposed, one with full movements in and out of the property, and the other driveway being exit only on the west side. This will help with circulation on the property. The County indicated that they would consider restricting movements but at present they have made no verbal exceptions to these proposals. Mr. Clark referred to site distance on Exhibit A-15 which is Sheet 8 of 8: Sight Distance Details prepared by MCB Engineering Associates, dated 7/31/12. He testified that the drawing illustrates that there is sufficient site distance to comply with ASHTO Site Standard which is a technical waiver or variance. This is based on the configuration of the property line versus the location of the roadway and these requirements can be met by extending the throats of driveways into County land.

Mr. Clark stated that the footprint of the proposed building is 10,000 square feet. The building is 80 feet wide and 125 feet long with 5,000 square foot play area. The refuse enclosure is fenced in the rear with mechanicals that are also fenced. The building height is 28.87 feet. The playground area is also fenced with a 6 foot high PVC opaque fence. Mr. Clark referred to Exhibit A-10 which is Sheet 3 of 8: Grading and Utility Plan prepared by MCB Engineering Associates, dated 7/23/12. He spoke about the playground area which features several small retaining walls along the side property lines. The applicant is seeking a variance for one portion of the 7 foot wall which is located by the play area. The wall is not being tiered due to the triangular shape of the property. Mr. Clark described the playground area as being tucked into the hill.

Mr. Clark referred to Exhibit A-11 which is Sheet 4 of 8 Lighting & Landscaping Plan prepared by MCB Engineering Associates, dated 7/31/12. He said that they are willing to incorporate recommendations of the Shade Tree Commission into this plan. The lights range from 19 feet to 20 feet high and will not operate all night with the exception of those lights required by the police for safety and security purposes. Lights bordering residential areas will have the appropriate lighting shields. The applicant would make the necessary adjustments to the lighting after a year has passed. Mr. DiFlora asked for the addition of several 12 foot light fixtures and Mr. Clark said he will revise his plan and present the Board with a revised drawing depicting the request by Mr. DiFlora.

Mr. Clark moved to Exhibit A-10: Sheet 3 of 8: Grading and Utility Plan prepared by MCB Engineering Associates dated 7/31/12. Mr. Clark stated that the site slopes from the back corner of the triangle from the west to the east. The proposed design attempts to maintain this pattern to minimize fill. He added that the drainage patterns have not been altered. The site was designed to be classified as a major development; however, less than 1 acre is proposed to be disturbed. Mr. Clark concluded that there will be less runoff post condition than pre-condition.

Mr. Clark reviewed a series of variances in connection with the bulk requirements that are being requested. Parking variances have been listed even though Mr. Clark maintains that no parking variances are necessary. He referred to Exhibit A-9: Sheet 2 of 8 Site Plan prepared by MCB Engineering Associates, dated 7/31/12. Mr. Toronto was wary of having 171 children in a facility with only 24 parking spaces; however, Mr. Clark said that this number of spaces is more than sufficient. He added that the lot is unique due to the topographical conditions, the shape, the location in a split zone, and its proximity to a County roadway. He added that the applicant can comply with all of the requests made in the Boswell Engineering letter of September 13, 2012. Mr. Clark indicated the improvements will not adversely impact soil erosion or drainage and he did not foresee any safety concerns based on the amount of proposed soil movement.

Mr. DiFlora referred to the fire report and the question of whether or not a fire truck could access the northwest corner. Mr. Whitaker said that he will review and address this question at a later meeting. There was some discussion regarding ingress and egress but Mr. Whitaker reminded Board Members that the County has final jurisdiction over this aspect of the plan.

Mr. DiFlora asked about the possibility of providing a fencing type other than PVC. Mr. Whitaker said they will explore other options such as board on board rather than the 6 foot opaque fencing. Mr. DiFlora stated that there is a requirement for a no disturbance buffer which doesn't appear on the list of variances. Mr. Clark said that he would relocate this information to the dimensional table.

Mrs. Gerber made a motion to open the public portion of the meeting for questions of Mr. Badenhausen. No one from the public came forward and a motion was made by Mr. Toronto to close the public portion of the meeting, seconded by Mr. Bavagnoli.

James P. Cutillo, of James P. Cutillo and Associates, architects for the project, was sworn by Mr. Davies. He stated that his office is located at 21 Mountain Avenue, Pompton Plains, New Jersey and he added that he has worked on other projects for The Learning Experience. Mr. Cutillo is also a member of the team working on the project and is familiar with the unusual circumstances relative to the shape and the topography of the property. Mr. Cutillo testified regarding Exhibit A-24: Architectural Plan of Lima Architects/James Cutillo Associates, Sheet A-4: Building Elevations dated 7/20/12. Mr. Cutillo testified that this is a residential style building. All four sides of the building consist of glass doors, double hung windows, residential style slopped roof and hardy plank siding with brick in the lower area of the building. Mr. Cutillo said that he is familiar with State requirements and codes and he stipulated that all of these requirements will be complied with in order to receive a State license. Mr. DiFlora said that the building must be ventilated by code and Mr. Cutillo said that this is a standard drawing. Roof top vents will be provided. Mr. DiFlora asked that all outside air intake movers be provided as well as all exhaust fans, exhaust and intake louvers and any fans, roof mounted or otherwise. He asked that each one be labeled with the exact size.

Mr. Messaros asked if The Learning Experience employs a nurse. Mr. Whitaker said that he didn't think they did but he will provide an accurate answer at the subsequent meeting. He added that there are a series of requirements by the State for licensing purposes and a municipality cannot require additional items over and above what is required for licensing purposes.

Mr. Cutillo described the interior of the building including the entrance or foyer of the building and its ten different rooms. The number of children that can be housed in each room is based on State requirements. Mr. Toronto questioned kitchen facilities and Mr. Cutillo said that nothing is cooked and snacks are brought into the building. The ISO Room is used for sick children awaiting pick-up by a parent. Mr. DiFlora questioned the air handling units and Mr. Cutillo said they will be located in the attic even though this is a truss roof. The mechanicals have not yet been designed for this building and Mr. Cutillo will present examples of the mechanicals from other buildings. Mr. DiFlora again asked for preliminary calculations which would include the location of the louvers on both the elevation of the building and on the roof, projections relative to the sizes and any fans. Regarding the fence, Mr. Cutillo said that it needs to

be vinyl because it is more practical, however, a wood look is a possibility. Mr. DiFlora said that his concern is that the fence is cheap looking.

Mrs. Gerber made a motion to open the public portion of the meeting for questions of Mr. Cutillo, seconded by Mr. Badenhausen. No one from the public came forward and a motion was made to close the public portion of the meeting.

Craig Peregoy, Steiger & Peregoy, 17 Treemont Drive, East Hanover, New Jersey was sworn by Mr. Davies. Mr. Peregoy stated that he was also part of the project team and is familiar with child care centers since he has worked on other Learning Experience projects. He has prepared a Traffic Impact Study dated 7/24/12 which was marked as Exhibit A-25, dated 7/24/12. Mr. Peregoy explained how he prepares the plan and his analysis of this particular site. The busiest traffic times on Circle Avenue and Franklin Avenue which occur between 7 A.M. and 9 A.M. and 4 P.M. and 6 P.M. were studied. The level of service coming out of Circle Avenue operates at a Level B in the morning and a Level C in the evening. The left turn into Circle Avenue operates at Level A which indicates that more traffic can be handled at this intersection. The question is the amount of traffic generated by a day care center with 171 children. This is calculated using a trip generation manual and Mr. Peregoy concluded that the previous levels of service will remain the same based upon his calculations. This means that there is enough capacity to handle the additional traffic generated by the day care center.

Mr. Peregoy referred to the ingress and egress driveways and said that two driveways would be preferable in this type of configuration. He pointed out that one parking space could turn over 12 times an hour. Mr. Peregoy concluded that The Learning Experience has had experience in New Jersey for 10 years and they are very familiar with the both parking needs and requirements. Mr. Peregoy concluded that there is plenty of capacity to accommodate the traffic generated by this use and parking is more than sufficient.

Mr. DiFlora stated that the Board had received a report from the Traffic Officer for the Borough. Mr. Peregoy indicated that he disagreed with many of the findings of the Traffic Officer and he added that the County will have the final decision because Franklin Avenue is a County road. Mr. Whitaker pointed out that the staff members at The Learning Center are not all full time employees and the entire school population is not present at the center until 10:00 or 10:30 A.M. The size of parking spaces was discussed and Mr. Peregoy noted that proposed space size is requested at 9 ft. by 18 ft. rather than the required 10 ft. by 20 ft. Mr. Badenhausen asked Mr. Peregoy to provide the Board with traffic counts at an established day care center in Florham Park which he had referred to earlier. Mr. Peregoy agreed to provide the information on the two day care centers he recently studied. Mr. Whitaker reiterated that the Board must be cognizant of State law referred to Exhibit A-1 NJSA 40:55D.66.6. This statute indicates that the floor area occupied in any building considered to be a child care center shall be excluded when calculating parking requirements. He added that the parking, based on the applicant's analysis, will work on this site and the parents may decide to go somewhere else if they are not satisfied with the parking.

Mr. DiFlora asked if any thought has been given to making the building smaller. Mr. Whitaker said that a 10,000 square foot building is a requirement in order to move forward and a smaller building would not be feasible. Mr. DiFlora again asked for examples of similar separate freestanding (one use on-site) child care centers so that the Board can get an idea of onsite parking among other things. Several Board Members thought that a building of a different shape might work better on this site; however, Mr. Whitaker disagreed.

Mrs. Schoenberg made a motion to open the public portion of the meeting for questions of Mr. Peregoy, seconded by Mr. Bavagnoli. Mrs. Gerber made a motion to close the public portion of the meeting, seconded by Mr. Badenhausen.

Mr. Whitaker said that he will not have the Planner testify until the other information requested by the Board has been provided. He will meet with the Police Department and Fire Official before the next meeting.

Mr. Bavagnoli made a motion to carry the application to the meeting of November 1st, 2012, seconded by Mrs. Gerber.

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Roll Call Vote

AYES: Mr. DiFlora, Mrs. Gerber, Mr. Badenhausen, Mr. Messaros, Mr. Bavagnoli,  
Mr. Toronto, Mr. Schoenberg

NAYS: None

**MINUTES**

The minutes of September 6, 2012 were presented for approval.

Mr. Bavagnoli made a motion to approve the Minutes, as presented, seconded by Mrs. Schoenberg.

Roll Call Vote

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

Nays: None

**VOUCHER**

Robert Davies, Esq. MEET. ATTEND. 9-6-12 \$300.00

Mr. Bavagnoli made a motion to approve the voucher, seconded by Mrs. Gerber.

Roll Call Vote

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

Nays: None

Mr. Badenhausen made a motion to adjourn the meeting was adjourned at 11:00 P.M.