

ZONING BOARD OF ADJUSTMENT

MINUTES OF THE MEETING

FEBRUARY 7, 2013

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

Absent: Mr. Khoury, Mr. Badenhausen

OLD BUSINESS

Cal.#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:

<u>TYPE</u>	<u>REQUIRED</u>	<u>EXISTING</u>	<u>PROPOSED</u>	<u>VARIANCE</u>	<u>CODE</u>
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'	300-107.E.
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)
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

THIS APPLICATION WAS CARRIED FROM 1-3-13 TO THIS DATE.

HAVE REVISED PLANS

MR. WHITAKER HAS GIVEN THE BOARD AN EXTENSION TO 2-12-13.

Bruce Whitaker, attorney for the applicant, recalled that at the last meeting a set of plans was presented on behalf of his client, The Learning Experience. These plans included the overall site plan and topographic conditions and the meeting included testimony from the architect, the engineer and the traffic consultant. The Board requested addition plans which were subsequently revised again based on the concerns of a neighbor. Mr. Whitaker noted that these revised plans depict a two-story building resulting in less disturbance and impervious coverage. The building has been moved forward into the commercial zone; however, one 5 foot by 5 foot corner remains in the residential zone. The playground area remains in the residential zone. Mr. Whitaker recalled that the building is located in two zones which is one reason for the variance requests. Mr. Whitaker reminded Board Members that the Municipal Land Use Law which deems this use as inherently beneficial. He referred to the Letter of Interpretation (LOI) from the Department of Environmental Protection which was received on October 12, 2012, and is listed as an Exhibit A-26.

Mr. Whitaker referred to the existing height limitation in Franklin Lakes and stated that the maximum allowable height in a residential zone is 40 feet and 30 feet in a commercial zone. The applicant meets the height criteria for a residential building but not for a commercial building. The proposed height exceeds what is allowed in the Borough due to topographical conditions and the fact that the applicant is trying to hide the mechanicals from sight by means of the roof line. Mr. Whitaker indicated that all of the stipulations made at the prior meeting regarding hours of operation, etc. remain the same. Based on the proposed square footage, 175 students are allowed at this facility which is different from the previous number of 171.

Matthew Clark, Engineer, MCB Engineering Associates, 11 Furher Street, came forward. Mr. Clark testified regarding the modifications made to the plan and he compared the earlier variances to those that are being requested now. He also took into account the concerns of the neighbors when revising the plans. He referred to Exhibit A-46, Footprint Comparison, which shows the footprint of the building previously proposed and the building proposed at this time. He pointed out that the earlier proposal showed the building width at 125 feet deep and the proposed building is now 69 feet deep. The old play area was 5,000 square feet in size and the new play area is 3,700 sq. ft. in size. Only 25 square feet of the new building and 2,400 square feet of the playground area are located in the residential zone. Most of the parking area has been maintained and the back area of the playground has been aligned and an improved buffer area has been added. Mr. Clark confirmed that there is less overall disturbance on the site which helps with stormwater management. The variance for the larger wall that wrapped around the play area has been eliminated by virtue of this new design. Building coverage has decreased from 23.9% to 13.5% and impervious coverage has decreased from 61.3% to 47.6%. The magnitude of infringement into the buffers by the rear yard playground has also decreased.

Mr. Clark stated that he met with the Fire Official relative to the parking lot. The Fire Department had recommended a concrete island outside the main entry which has been added. Thirty-six parking spaces are being maintained. They have complied with the Fire Official's request for a four foot fence along the sidewalk areas. Mr. Clark stated that all of the comments and requests of the Fire Official have been

accommodated. He added that the reduction of the construction to the rear of the site has resulted in less tree removal.

Mr. Clark met with members of the Bergen County Planning Board who took no exception relative to the location of the driveways or the movements proposed at each driveway. At the location of the two-way driveway, the Bergen County Planning Board requested that the radius be dropped from 20 feet to 15 feet which is typical on a County road. They were comfortable with the proposed site distances.

The Board had asked for an alternative to the fencing and Mr. Clark explained that the applicant feels that a solid 6 foot high fence is best for security reasons. This is only required at the rear of the facility and a 4 feet high fence is allowable along the sides. Mr. Whitaker referred to Exhibit A-47 which is a photo of a solid white PVC fence and Exhibit A-48 which is a photo of a tan and white colored PVC fence that is proposed. The Board had questioned the number of parking spaces and Mr. Clark said that he visited ten locations of The Learning Experience and found that the average parking ratio seems to be one parking stall for every four to five students. All drop off and pick up of students takes place on a staggered basis.

Mr. Clark referred to the comments from Boswell Engineering regarding drainage and said there are no issues involved in complying with these recommendations. Two steep slope variances have been eliminated and the third variance relative to steep slopes has been modified. He reviewed the changes made to the list of variances that had been initially requested. Mr. Clark reiterated that the neighbor had requested that as much of this facility as possible be taken out of the residential area since it would impact his yard and his lifestyle. Several Board Members indicated that they disagreed with the choice of fencing and landscaping. Ms. Tiberi said that there is space around the site to plant approximately eight shade trees. Mr. Whitaker stated that the applicant would stipulate that the tree inventory would be reviewed by the Shade Tree Director, the Borough Engineer and the applicant's engineer who together would calculate the number of trees that are needed and their locations. The applicant agrees to abide by their findings.

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

Mr. Sethi, 729 Mardinly Avenue, questioned the number of trees to be removed at the rear of the property. Mr. Clark said that this area is not being touched and trees will actually be planted in this area. When questioned about birthday parties, Mr. Whitaker stipulated that there would be no birthday parties or weekend activities at this facility; however, there will be times when the center holds parent/teacher conferences and hosts an open house for the parents.

No one else came forward at this time and Mr. Frankel made a motion to close the public portion of the meeting, seconded by Mr. Toronto, all ayes.

James P. Cutillo, of James P. Cutillo and Associates, 21 Mountain Avenue, Pompton Lakes, architect for the applicant, was sworn by Mr. Davies. Mr. Cutillo stated that red brick and beige siding which are residential in nature and style will be used on the outside of the building. He noted that the color of the fence is not important to the applicant; however, The Learning Experience would prefer a vinyl fence. The roofing will be a dimensional roof. Mr. Cutillo stated that the plans have been revised to two stories which has resulted in a building that grew by 10%. This facility can now accommodate four additional students. Younger children will be located on the first floor with older children on the second floor which is specified by State law. He described the architectural changes including the roof plan and the area for the elevator which protrudes slightly above the roof. Mr. Cutillo presented three drawings of the mechanical units dated February 7, 2013, which were marked A-49 – Architectural Plan of Mansard Roof dated 2/7/13; A-50 – Architectural Plan of Mansard Roof showing mechanicals and various heights of Mansard Roof; and A-51 – Architectural Plan showing railing above Mansard Roof. The units are located as close as possible to the middle of the building so that they are less noticeable. Mr. Cutillo stated that it was not possible to reduce the roof height below 30 feet; however, they decided on a 2 foot parapet. The mechanical units protrude but it brings the building height closer to the conforming height and only 10% over the allowable building height. He added that you would need to be 125 feet away from the building to notice anything higher than the roof itself. Decorative railings are another option proposed to hide the mechanicals. After some discussion, Board Members agreed that proportionately the mansard roof is an improvement. Mr. Cutillo stated that the duct work will be located in the ceiling cavity and exhaust fans will be lower than or equal to the height of roof top. There is one 35 square foot sign over the entry way of the building along with the signature columns and the ABCs. The illuminated signs turn off several hours

after the operation closes down at 6:30. Police requirements will govern the lighting of the parking lot. The variance for the size of the sign was discussed and there was some disagreement as to whether the size of the sign was allowable. It was determined that the applicant would include the size of the sign as a variance request. Mr. Cutillo agreed to replace the stucco material on the building with hardy plank and the remainder of the building will be brick.

Mrs. Gerber made a motion to open the public portion of the meeting for questions of Mr. Cutillo only. Mr. Frankel seconded the motion, all ayes.

No one came forward at this time and Mr. Toronto made a motion to close the public portion of the meeting, seconded by Mr. Bavagnoli, all ayes.

Kulib Sethi, 729 Mardingly Avenue, the neighbor referred to earlier, stated that the day care center is beneficial to the area. The building is consistent with the residential feel of the neighborhood and he is satisfied with the proposal. He was aware that he was living next door to an LB-1 area when he purchased his property and the day care center is one of the best uses he could think of for this area. The building blends in well with the neighborhood and Mr. Sethi confirmed that he prefers this building over the prior proposal. He has no objection to the building height and he finds the fencing proposal to be satisfactory.

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

No one came forward at this time and Mr. Badenhausen made a motion to close the public portion of the meeting, seconded by Mr. Bavagnoli, all ayes.

Bridgette Bogart, 366 Harvey Court, Wyckoff, N.J., planner for the applicant, was sworn in by Mr. Davies. Ms. Bogart testified that she is part of the Learning Experience team who has provided her experience and input into the development of the plan that has been submitted to the Board. Ms. Bogart referred to two photo boards which were marked as Exhibit A-52 depicting photos of the site itself and the area of the site. She described the various photos and noted several important features including the unique buildable area of the site, and the fact that two areas of the property consist of steep slopes which are limited per the ordinance. The site is located in a transitional area and a split zone and is the only lot located on a street that is split zoned thus creating a use variance application no matter what is proposed here. Day care facilities are permitted in any non-residential district; however, the use variance comes into play at the small rear corner portion of the building located in the residential zone. Ms. Bogart stated that this proposal is the most compatible for the site and a better use than some type of retail. She pointed out that only the playground is located in the residential district.

Regarding the protection of steep slopes, Ms. Bogart referred to the 2004 Master Plan findings relative to the buffer and setback requirements. The Borough seeks to limit development of steep slopes greater than 15% in the flood plain which is being maintained in this area. Franklin Lakes has been concerned with the redevelopment of the Central Business District (CBD). This proposal would redevelop a vacant site with architectural features that would improve the aesthetics of the area and it is consistent with the residential areas and commercial structures. Multiple rows of planted materials and fencing provide buffers and the site provides a gateway to the CBD area. Without the granting of a variance, strict adherence to the buffer requirements would render the site as undevelopable. Ms. Bogart stated that bulk variances are necessary because there are two sets of criteria and two zones on one lot. She added that five of the eleven variances being requested are created as a result of split zone lot, some of which include minimum side yard requirements; maximum building coverage and fence design. Compliance with residential height requirements, buffer requirements and parking setbacks requirements cannot be met. Ms. Bogart commented that there will be no negative impact with the granting of these variances.

Ms. Bogart stated that the uniqueness of this property and the topographic conditions constitute the type of hardship that would fall under the C-1 criteria. Regarding the C-2 criteria, she concluded that the benefit would outweigh any detriment to the upgrading and development of this site. The rear of the property is basically being kept vacant. She reiterated that day care centers have been deemed an inherently beneficial use that promotes the public welfare and negative impacts have been addressed through the site design. The higher mansard roof will ensure that the mechanicals are not visible and the increased height is complimentary to the 40 foot height requirement in the residential district. Ms. Bogart concluded that the bulk and use variances can be granted because the benefits of the site design and proposed use outweigh any detriments.

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Mrs. Gerber made a motion to open the public portion of the meeting for questions of Ms. Bogart only. Mr. Bavagnoli seconded the motion, all ayes.

No one came forward at this time and Mr. Toronto made a motion to close the public portion of the meeting, seconded by Mr. Bavagnoli, all ayes.

After a short discussion, Mr. Whitaker stated that the applicant would agree to change the color of the roof to gray.

Mrs. Gerber made a motion to open the meeting for public comment, seconded by Mr. Messaros, all ayes. No one came forward and Mr. Toronto made a motion to close the public portion of the meeting, seconded by Mr. Frankel, all ayes.

Mr. Davies summarized the findings of the Board as follows:

1. The Borough Engineer and applicant's engineer will review and calculate the number and location of replacement trees to the satisfaction of the Shade Tree Director. The ratio is 2 ½ caliper replacement for each 6 inches removed.
2. No parties, camps or weekend activities would be allowed outside of the operating hours except for open house for the parents or special activities.
3. Roofing – Residential type material that is predominantly gray. Hardy plank siding in the front and side color to be beige. Brick is standard red brick. No stucco exteriors at all.
4. The fence will be two-tone beige and white PVC as shown in Exhibit A-48. Building will be surrounded by arborvitae except for parking areas,
5. Revise architectural drawing Sheet A-5 to cross hatch the entire mansard roof. Revise architectural drawings to accurately represent the clapboard siding on A-3 and A-4.
6. Arborvitae around the entire fence except parking area.
7. Revise the drawing to show that the height is 37 feet total and no more than 32 feet from finished grade.
8. The exhaust fans will be lower than the roof top units. The roof top units will be no higher than the top of the mansard roof.
9. The sign over the doorway is internally lit and will be darkened at 7:30 P.M. at the latest. The column features will not be lighted. Building lights will operate during nighttime hours, dusk to dawn, but only for the hours agreed to by the Borough Engineer and the Police Department after a review of the safety requirements.
10. Revise the plans to show brick and not split face block.
11. Revise the plans to show that the line between the hardy plank and brick will be lowered by one foot to two feet and will be aligned with an appropriate architectural feature of the building to the satisfaction of the Borough Engineer.
12. The pitch on the mansard roof will be the same pitch as shown on the existing drawings.
13. Revise the plans to accurately show the materials chart.
14. Approval of overall drainage plan by the Borough Engineer.
15. Variance to be granted for the monument sign as shown.

Mr. Frankel made a motion to grant the variance application based on the above conditions, seconded by Mr. Bavagnoli.

Roll Call Vote

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

Nays: None

NEW BUSINESS

Cal.#2013-1 Application for Kayal, 1044 Dogwood Trail, Block 1209, Lot 7, Dimensional Variances, which are in violation of the following Sections of the Ordinance:

<u>TYPE</u>	<u>REQUIRED</u>	<u>EXISTING</u>	<u>PROPOSED</u>	<u>VARIANCE</u>	<u>CODE</u>
Side Yard Setback (Driveway)	15'		10.1'	4.9'	300-71.B.(4)(j)
Wall in No Disturbance Area	15'	16.1'	10'	5'	300-124.B.(1)

PREVIOUS APPLICATION TO THE BOARD FOR HEIGHT VARIANCE Cal.#2011-13

SLFLK-2599

DATE DEEMED COMPLETE: December 27, 2012 DETERMINATION DATE: 4-26-13

MR. PETE DI MARCO, THE ATTORNEY FOR THIS APPLICATION HAS ASKED TO HAVE THIS CARRIED TO THE 3-7-13 MEETING.

MINUTES

The minutes of January 3, 2013 were presented for approval.

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

Roll Call Vote

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

Nays: None

Mr. Frankel made a motion to adjourn the meeting at 10:54 P.M., seconded by Mr. Toronto, all ayes.