

ZONING BOARD OF ADJUSTMENT

MINUTES OF THE MEETING

OCTOBER 3, 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. Badenhausen, Mr. Frankel, Ms. Schoenberg, Board Attorney Davies, Board Engineer Tiberi
Absent: Mr. Khoury, Mr. Toronto

ORAL COMMUNICATIONS

No one from the public came forward during this portion of tonight’s meeting

OLD BUSINESS

Cal.#2013-8 Application of AB JC Investments, LLC (Applicant) Estate of Frank E. Weidanz & Yvonne M. Weidanz (Owners), 724 Franklin Avenue, Block 1424.01, Lot 2, Use Variance which is in violation of the following Section of the Ordinance:

<u>TYPE</u>	<u>REQUIRED</u>	<u>EXISTING</u>	<u>PROPOSED</u>	<u>VARIANCE</u>	<u>CODE</u>
Use Variance	Multi-Family Dwellings are not permitted in the Residential Zone. Code Section 300-107				

DATE DEEMED COMPLETE: June 4, 2013 DETERMINATION DATE: 10-2-13

7-10-13 Absent Mr. Khoury, Mr. Toronto
8-1-13 Absent Mrs. Gerber (HAVE AFFIDAVIT), Mr. Khoury

As per the request of Mr. Kasuba, the attorney, this application was carried from the 9-5-13 meeting to this meeting.
An extension has been given to 10-3-13.

Mr. Kasuba , attorney for the applicant, noted that a revised site plan and landscaping plan had been submitted to the Board in addition to a letter which he addressed to the Board dated August 6, 2013. The revised site plan dated August 14, 2013, was marked as Exhibit A-30. The revised landscaping plan, dated August 14, 2013, was marked as Exhibit A-31. Mr. Kasuba’s letter of 8/6/13 was marked as Exhibit A-32.

Joseph Burgis, of Burgis Associates, 25 Westwood Avenue, Westwood, N.J. was introduced and stated that he is a professional planner testifying on behalf of the applicant. Mr. Kasuba asked to have the following exhibits marked by Mr. Davies:

- Exhibit A-33: Aerial photograph of the site and surrounding area dated October 3, 2013
- Exhibit A-34: April 2, 2001 report by the Special Master relative to litigation filed against Franklin Lakes concerning Affordable Housing
- Exhibit A-35: Report from Special Master dated October 4, 2001
- Exhibit A-36: Franklin Lakes’ Housing Element and Fair Share Plan adopted November 19, 2008
- Exhibit A-37: Cover letter and COAH pre-mediation report dated July 20, 2010

Mr. Burgis listed the various documents he reviewed in order to prepare for tonight’s meeting. The lists includes the Master Plan for the Borough of Franklin Lakes, the COAH Pre-Mediation report and census information relative to housing issues and school enrollment projections. He also examined the property as it pertains to development potential. He has concluded that there is enough documentation to conclude

that there are special reasons that would support the use variance request. Mr. Burgis provided a brief overview of the property and the development patterns. He stated that there is an existing single family house on the lot along with approximately one acre of wetlands at the rear portion of the site. A 50 foot buffer must be maintained around this wetland area. There is a stream in the rear portion of the site. There is a variety of commercial, residential and semi-public uses around this property. Mr. Burgis referred to Exhibit A-33 and explained the development pattern and the relation to the nursery and gas station across the street. The proposed development calls for a total of 24 dwellings with five units set aside for affordable housing. There are two buildings proposed for the property. Mr. Burgis stated that a family of four with an income of \$80,000 would qualify for the affordable units. The building height is 40 feet or two stories and parking is consistent with the Residential Site Improvement Standard (RSIS). Mr. Burgis stated that the site cannot be developed for single family housing because of the current zoning pertaining to width dimensions and wetland concerns. Ms. Tiberi said that there are different permits which are obtainable that would allow for a buffer using transition averaging in order to provide a road or combination of road and road type spur in a subdivision. Upon questioning from Ms. Tiberi, Mr. Burgis stated that four larger than necessary conforming lots could be built on this property.

Mr. Burgis stated that this application is responsive to the environmental features of the site. The wetlands are being preserved along with the 50 foot buffer. The plan recognizes the relationship of the site to the nearby central business district and the Borough's effort to comply with its affordable housing obligation. Mr. Burgis said that the plan is designed to be consistent with the intent and purpose of the Municipal Land Use Law as well as the goals and objectives of the Master Plan. The Master Plan contains five goals that are pertinent to this application which include the preservation of the residential character and densities of the community. Mr. Burgis pointed out that this plan addresses the Borough's shortfall of affordable housing units. Mr. Davies said that this proposal only provides 5 units; however, Mr. Burgis said that where there is an unmet need, consideration should be given to a use variance provided there are 20% of proposed units set aside for affordable units.

Mr. Burgis said that this property is located in the A-22.5 zone. He referred to regulations for affordable housing in this zone and stated that all the indices are met in this proposal including regulations relative to height, number of units per acre, and the Floor Area Ratio.

Mr. Burgis spoke about the positive criteria or special reasons as they pertain to this application. He added that the plan must pose no substantial detriment to the public good or to the zone plan or Master Plan of the community. There is a different test for bulk variances which are known as C-1 and C-2 variances. Mr. Burgis said that this is an inherently beneficial use that promotes the public good per the Fair Housing Act and would be an asset to the community. Mr. Kasuba referred to Exhibit A-38: Estelle Commons vs. Borough of Haddonfield, Camden County, Docket # L-2473-10, decision dated 6/16/2011.

Mr. Burgis contended that the proposed use is inherently beneficial due to the additional affordable housing units. There is also a regional need for affordable housing units which meets the public interest. At peak traffic hours, only 13 trips an hour in and out of the development are estimated which is a relatively small amount. Mr. Burgis pointed out that there would be only three or four public school attendees anticipated as a result of the development and he noted the ongoing enrollment drop taking place in Franklin Lakes' schools. He said that certain conditions, such as the prohibition of left hand turn out of the site at peak traffic times, could be imposed. Mr. Burgis concluded that the applicant addresses the statutory burden for the special reasons in terms of an inherently beneficial use. He added that multi-family development is usually located close to a commercial district which is the case with this proposal. Mr. Burgis stated that this application affirms the statutory burden and the Board should approve the application.

Elizabeth McManus, Planner for the Borough, questioned Mr. Burgis. She asked about the buffering between single family housing and the nursery and she said that this would require the granting of multiple variances. Several Board Members were concerned about the impact of lighting, impervious coverage and other things on the neighboring homes on Shirley Avenue. Mr. Kasuba referred to the Exhibits that were provided and identified and stated that this application is fully consistent with the Borough submission to COAH which mentions the Borough's unmet need of affordable housing units. There is an overwhelming need for affordable housing in the State which has not been addressed and Mr. Kasuba asked the Board to consider this opportunity for more affordable housing.

Ms. McManus stated that this property was not identified as one of the properties that would be suitable for re-zoning. The Board would need to find that this application meets all of the criteria that a normal

application would and Ms. McManus added that this lot was never identified as a site that would be suitable for affordable housing. The report lists other properties suited for affordable housing units.

SPEAKERS WERE NOT ASKED TO SPELL THEIR NAMES

Mr. DiFlora asked if there were any questions only of Mr. Burgis from the public. Tom McKean, 493 Cherry St., asked if the applicant was aware of the potential development of the High Mountain Golf Course. Mr. Burgis said that he was aware of that property and he commented that even with affordable units built at the golf course site, the Borough would still be unable to meet the number of affordable housing units required by COAH in the Borough.

Robert Kohl, 532 Shirley Avenue, asked about lot coverage for driveways and parking lots, etc. Mr. Burgis said that there is a 10% coverage for building and 24% coverage for impervious coverage including the wetlands.

Mr. Brunke, 550 Shirley Avenue, questioned how the number of trips (13) was determined. Mr. Burgis said that data from the Institute of Transportation Engineers was used to determine traffic at peak hours.

Unidentified speaker, questioned the recycling and dumpster area. Mr. Burgis said that the site would contain a commercial dumpster. Mr. Kasuba said that the applicant would be agreeable to restrictions relative to times for garbage pick-up such as after 7 A.M.

Mr. Palus, 535 Shirley Avenue, questioned the increased school enrollment of three students. Mr. Burgis explained that there will probably be preschool age children on site. Parents of school age children usually move when their children become school age in order to provide back yard play space. Typically, people in this type of a development are empty-nesters. Upon further questioning, Mr. Burgis explained how the number of school children coming from townhouse developments is determined in northern New Jersey. He said that the number is consistent even in the top rated school systems.

Mr. Doenges, 542 Shirley Avenue, asked about the number of parking spaces. Mr. Burgis said that there are 46 spaces. Mr. Doenges said that this is a high traffic area at all times. Mr. Burgis referred to traffic counts mentioned previously by the Traffic Engineer who indicated that there are 716 cars travelling eastbound and 472 cars travelling westbound during the morning rush hour. Mr. Doenges disagreed and said there is much more traffic in this area than was counted by the engineer.

Mr. Lebaron, 525 Shirley Avenue, commented that between 12 and 14 children could be added to the school system if four single family homes were constructed. Mr. Burgis thought that number was high but stressed the importance of his application meeting the Borough's COAH obligations and serving the general welfare of the community. Mr. Lebaron was concerned about the view that the residents of Shirley Avenue would have if this development was built. Mr. Burgis said that there is a minimum 26 feet of landscaped area along Mr. Lebaron's side of the property as well as other enhancements.

I COULD NOT HEAR THE FOLLOWING SPEAKER'S ADDRESS DUE TO PLANS BEING SHUFFLED.

Inaudible speaker from Shirley Avenue asked about the possibility of five affordable housing type homes being built on the property. Mr. Burgis said that a 100% affordable project can only be built through governmental subsidies. These types of developments are normally high density which would not be possible under present zoning.

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

At this time, the Board adjourned the meeting for a five minute break.

The meeting resumed after five minutes and Mr. Burgis was asked if there was room for the proposed swale, landscaping and berm. Mr. Burgis indicated that this is an engineering question and although he may not be qualified to answer, in his opinion, there is adequate room. The applicant was asked to consider building two identical buildings and eliminating the side of the building that faces Shirley Avenue. This would result in two buildings that are 80 feet away from the back most property lines of the Shirley Avenue residences. Lot coverage and parking would diminish the intensity of the use. Joseph

Commorata, the developer, said that he would not consider this option because it would not be economically feasible. He could build smaller buildings but he would have to make them three stories high rather than two. There was a discussion of further options for the site and Mr. Kasuba reminded the Board that this is a bifurcated application. If approved, the site plan would have to be fully engineered and at that time the Board would have the opportunity to reconsider the negative criteria. Mr. Kasuba stated that the applicant would work to amend the plan based on recommendations resulting from the Board's deliberations. The Board and the applicant's professionals discussed changes to the plan that might make it more acceptable. Mr. DiFlora suggested breaking the plan into two small buildings and staggering them on the site. Ms. McManus stated that the Board can grant the approval subject to conditions such as site design.

Ms. McManus reviewed her memo dated July 9, 2013. She commented that the nursery will always retain part of its agricultural character because it is noted as farmland conservation. The question for consideration is whether or not the proposed use is inherently beneficial and Ms. McManus concluded that it is not. The five affordable housing units are beneficial to the Borough; however, the remaining units are not inherently beneficial. She reminded Board Members that they must make the appropriate findings when deciding whether the application is, or is not, inherently beneficial. Ms. McManus discussed how this application relates to the goals of the Master Plan. She was concerned with the number of trees to be removed in connection with encroachment into the wetlands buffer as well as the cluster of trees in front of the site. Ms. McManus pointed out that at the moment the Borough is compliant with COAH's rule and in the near future the Housing Plan will be revised as necessary. She summed up the negative criteria as visibility of the buildings, lighting, noise and general site activity resulting from 24 multi-family units. This would be significantly different from the activity generated from 3 or 4 single family units. Ms. McManus commented that the Board could mitigate the negative impacts through limiting the number of units. The Board must determine how many units need to be omitted to make less of an impact to neighboring residents. Ms. McManus said that this application presents a detriment to the Master Plan and Zone Plan because the proposal is inconsistent with the approved zoning calling for single family, detached housing. The site is small and is not appropriate to be developed for affordable housing.

Due to the lateness of the hour, Mr. DiFlora recommended that the application be carried to next month and a roll call vote was taken in favor of this recommendation. Mr. Messaros commented that he would be willing to stay until midnight in order to conclude the application and another roll call vote was taken rescinding the previous vote.

Mr. Commorata referred to some of Ms. McManus' comments. She had indicated in a report that Franklin Avenue could be made more appealing than it is now and she suggested reviewing the language contained in the zoning regulations to promote a more walkable environment. He said that this area is unique because the value of this location could be elevated especially now that sewers have come into the Borough. Mr. Kasuba asked that the Franklin Avenue Corridor Study dated July 1, 2013, which is a draft study done by Ms. McManus be marked as Exhibit A-39.

Mr. Bavagnoli made a motion to open the public portion of the meeting for comments from the public. Mr. Messaros seconded the motion, all ayes. Robert last name inaudible, no address, stated that he doesn't like the idea of satisfying a COAH requirement for four affordable housing units at the expense of his neighborhood.

William Cerelli, 511 Shirley Avenue, said that he is completely against the development and asked that the Board deny the application. It is very dangerous to make a left turn onto Franklin Avenue and he is concerned about the water table and runoff.

Peter Koulikourdis, 525 Shirley Avenue, agreed with the Borough Planner that the reasons to deny the application are noise and traffic. This is not a residential project but a commercial project to make money.

Andy Palus, 535 Shirley Avenue, is against the proposal for 24 units. The property is zoned residential and should remain residential. He also expressed concern about water runoff and the fact that pipes could clog resulting in flooding.

Richard Brunke, 550 Shirley Avenue, indicated concern about the traffic.

An unidentified resident said that people in the Borough want to downsize and this would be an ideal opportunity to build cluster type homes to accommodate these people.

An unidentified resident stated that there is no hardship here and the applicant wants to make money. Ms. McManus clarified the definition of hardship as it applies to a zoning application. She pointed out that the applicant did not mention any hardship reasons relative to this application.

An inaudible resident asked if the project fits in with the Master Plan. Ms. McManus said that neither the Master Plan nor the Housing Plan calls for this type of project in this area of the Borough. The resident asked if approval of this application would set a precedent and Mr. DiFlora said that it would not.

Tom Remy, 492 Shirley Avenue, said that the golf course is a much better place for this type of development instead of cramming it into a little spot. It will be easy to place affordable units on such a big area. He was also concerned about noise and garbage collection.

Rick Nellis ???, 535 Shirley Avenue, asked Board Members if they would want this development in their back yard. Mr. DiFlora said he would not.

An unidentified woman said she is concerned about traffic and safety issues if the application were approved. This is not beneficial for the Borough.

Gail Cerelli, 511 Shirley Avenue, asked the Board Members to use microphones. She said she would be repeating things that have already been said but she appreciated the chance to express her opinions. She and her husband strongly object to the Board granting this variance.

No one else from the public came forward and Mr. Bavagnoli made a motion to close the public portion of the meeting, seconded by Mr. Messaros, all ayes.

Mr. Davies advised the Board to consider whether or not the applicant has established that this is an inherently beneficial use. Mr. DiFlora indicated his agreement with Ms. McManus' findings that this is not an inherently beneficial use that would benefit the community at large. Mr. Davies asked the Board to consider whether or not this proposed use is well suited for the site. Mr. DiFlora and Mrs. Gerber indicated that because of the many negative effects on surrounding property owners the proposal is not suitable for this site.

Mr. Messaros made a motion to deny the application for multi-family dwellings in the A-22.5 residential zone. Mr. Badenhausen seconded the motion.

Roll Call Vote

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

NAYS: None

RESOLUTION

Van Orden Block 2602.07, Lot 4

Mr. Bavagnoli made a motion to memorialize the resolution as modified, seconded by Ms. Schoenberg.

Roll Call Vote

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

NAYS: None

MINUTES

The minutes of September 5, 2013 were presented for approval.

Mr. Bavagnoli made a motion to approve the Minutes seconded by Ms. Schoenberg.

Roll Call Vote

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

NAYS: None

The Meeting was adjourned at 11:50 P.M., on a motion by Mr. Frankel that was seconded by Mr. Bavagnoli.