

BOARD OF ADJUSTMENT
MINUTES OF THE MEETING

MAY 5, 2016

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: Mrs. Gerber, Mr. Messaros, Mr. Bavagnoli, Mr. Frankel, Mr. DeLorenzo,
Mr. Saracino, Mr. Hunter, Board Attorney Davies, Board Engineer Tiberi

Absent: Mr. Badenhausen

ORAL COMMUNICATIONS

Robert and Kerry Mederos, 889 Roberts Court, spoke regarding the application of Glaser at 881 Roberts Court, which was considered and approved by the Board several months ago. During the meeting, Mr. DiLorenzo drafted a sketch of what would be a suitable compromise relative to the trees. Mr. Mederos said that on the day the trees were planted he approached his neighbor and said it was his understanding that four trees would be planted along the driveway, four feet apart, with three trees inside the fence. The trees have been planted close to the border, with six trees located outside the fence and one inside the fence. Mr. Mederos presented a sketch of the location of the trees. Mr. Bavagnoli recalled that the trees were to be planted even with the house line, four feet apart. Ms. Tiberi interjected that the applicant was supposed to submit a revised plan to the Engineering Office for review and approval. No plan was ever received and the Board Attorney indicated to Ms. Tiberi that he would be sending Mr. and Mrs. Glaser a letter outlining what was required and asking if they intended to proceed. Ms. Tiberi suggested that this matter be deferred to the Zoning Official, and if what the Glasers have planted is not what was approved they will have to remove and replant the trees in the correct location.

A motion was made and seconded to close the Oral Communications portion of the meeting which was unanimously approved.

MINUTES

The Minutes of March 3, 2016 were presented for approval. Mr. Saracino made a motion to approve the minutes as submitted, seconded by Mr. Messaros.

Roll Call Vote

AYES: Mr. Bavagnoli, Mrs. Gerber, Mr. Messaros, Mr. DeLorenzo, Mr. Hunter

NAYS: None

NEW BUSINESS

Cal.#2016-2 Application for Investors Group of New Jersey, LLC, 635 Kuliana Court (was 625 High Mountain Road), Block 3102, Lot 2.01, 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> |
|--------------------|------------------------|------------------------|------------------------|------------------------|--------------------|
| Total Coverage | 25% | 26.95% | 27.79% | 2.79% | 300-102 |
| Rear Yard Setback | | | | | |
| Pool Patio | 25' | 21.4' | 21.4' | 3.6' | 300-102 |

Play Set 8' from front property line along High Mountain Road and 3' from the side property line. Variance required 300-102

DEEMED COMPLETE: 4-14-16 DETERMINATION DATE 9-12-16

Mr. DeLorenzo recused himself from hearing the application. John Barbarula stated that he is the attorney representing Investors Group of New Jersey. He introduced Robert Weissman, engineer, who was sworn by Mr. Davies. Mr. Barbarula stated that all of the improvements were installed prior to the purchase of the property by his client. He said that there were drainage problems on this property, which were problematic to neighboring dwellings. In order to get a temporary Certificate of Occupancy his client, Investors Group, posted \$20,000 with the municipality, and agreed to take immediate steps to correct the drainage issues. The work to alleviate and correct the drainage problems was supervised by Boswell Engineering. While this work was being done, it was discovered that the previous owner did not obtain the necessary variances relative to total coverage. There are various issues that need to be addressed including the relocation of a fence and a swing set as well as the violation of the total coverage requirement. Mr. Barbarula said that the swing set and the fence will be removed.

Mr. Weissman testified that the prior owner installed a circular driveway connection into Kuliana Court. Everything else was built in accordance with what was approved with the exception of the driveway. The original approved plot plan entitled "Plot Plan Soil Erosion and Sediment Control Plan for Lt 2.01, Block 3102, dated December 13, 2005, prepared by Robert Weissman with revisions through December 16, 2008", was marked as Exhibit A-1. Mr. Barbarula said that the applicant purchased the property in July 2015.

Mr. Weissman described a drainage issue, which occurred from High Mountain Road off the roadway, traversing through the southwest corner of the property running to the neighboring lot to the southwest (Lot 4.04). This issue was discussed with the Borough Engineer who requested the construction of a berm down High Mountain Road within the right-of-way to an existing inlet on High Mountain Road. This was done, inspected and approved and is functioning in accordance with the original design. Mr. Weissman said that the major difference is the location of the circular driveway, which exits onto Kuliana Court and predates the present owner. There is a patio within the drainage easement in the setback of the rear of the property towards the southeast, which is part of the variance request. The variance request is for the coverage and is primarily related to the driveway entrance. The total coverage is approximately 2.8% over the total coverage guidelines. This is a modest variance request, and the new owner has made every attempt to clean up what was done by the previous owner. Mr. Weissman stated that everything else on the property is conforming.

Mr. Barbarula added that the present owner also paid the back taxes owed on the property. All of the other zoning issues requiring immediate attention were taken care of and this appears to be a de minimis application.

Upon questioning by Ms. Tiberi, Mr. Weissman did indicate that a small portion of the fence will be located in the drainage and the pond easement. Mr. Barbarula said that as part of the bond the Mayor and Council wanted that drainage issue addressed as soon as possible and that the fence had to be moved. After a short discussion about a conflict with the Mayor and Council, Mr. Davies said that if approved the Zoning Board resolution will indicate that the fence will be relocated onto the applicant's property. The precise location of the fence will be determined by the Mayor and Council. Ms. Tiberi noted that the patio is also located within the setback and encroaches slightly into the easement. The Hold Harmless Agreement by the Mayor and Council would include the fence and a small triangular portion of the patio. There is no encroachment by the pool. Ms. Tiberi said that 8 square feet of the patio would have to be removed if the variance is not granted, and if approved, the Mayor and Council may allow the applicant to keep the patio intact. Ms. Tiberi said it is important to remember that there is no piping in the drainage easement where a tiny portion of the patio is located. This is a good reason to justify allowing the patio to remain.

Mr. Davies stated that the applicant will require a Hold Harmless Agreement from the Mayor and Council for the patio and fence to be located in the drainage easement. A portion of the fence only is located in the pond easement.

A motion was made and seconded to open the public portion of the meeting. No one from the public came forward and the public portion of the meeting was closed.

Mr. Davies noted the following to be included in a resolution of approval:

1. The applicant will move the fence onto applicant's property.
2. Applicant must obtain a Hold Harmless Agreement from the Mayor and Council for the pool patio and fence to be located partly in the drainage easement and partly in the pond easement.
3. Swing set will be removed.

Mr. Frankel made a motion to approve the variance request based on the conditions recited by Mr. Davies. Mr. Messaros seconded the motion.

Roll Call Vote

AYES: Mrs. Gerber, Mr. Messaros, Mr. Bavagnoli, Mr. Frankel, Mr. Saracino, Mr. Hunter
 NAYS: None

Cal.#2016-3 Application for Eltaki & Abdulla, Contract Purchasers, De Marco, Owner, 892 Franklin Avenue, Block 1404, Lot 12, Use Variance and 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> |
|--|-------------------------|-----------------|-----------------|-----------------|----------------------------|
| Use Variance Property in Residential zone | Medical office proposed | Variance Needed | | | |
| Lot Area | 22,500 s.f. | 22,481.6 s.f. | 22,481.6 s.f. | 18.4 s.f. | 300-102 |
| Lot Width | 150' | 149.87' | 149.97' | 0.03' | 300-102 |
| Residential zone requirements | | | | | |
| Front Yard Setback | | | | | |
| Off Franklin Avenue | 50' | | 21.9' | 28.1' | 300-102 |
| Total Coverage | 20% | | 59.6% | 39.6% | 300-102 |
| Wall in Front Yard | | | | | |
| Setback Off Franklin Avenue | 50' | | | | 300-102 |
| Retaining Wall | | | | | |
| Non-Tiered | 4' | | 12.5' | 8.5' | 300-121.F.(3) |
| Tiered Retaining Walls | | | | | |
| In Setback | 15' | | | | 300-124. |
| Commercial zone requirements | | | | | |
| Parking stall dimensions | 10' by 20' | | 9' by 18' | Needed | 300-71.D.(2) |
| Parking Front Yard Franklin Ave. & Commerce Street | | | | | |
| | 10' | | 2' | 8' | 300-71.B.(1) |
| Parking within buffer | | | | | |
| | 30' | | | | |
| Two-Way Driveway | | | | | |
| Width | 30' | | 24' | 6' | 300-71.D.(f)[3] Table 5 |
| Curb Return Radii | | | | | |
| Two-Way Access | 35' | | | | 300-71.D.(f)[3] Table 5 |

DEEMED COMPLETE: 4-14-16

DETERMINATION DATE 9-12-16

Mr. Frankel recused himself from this portion of the meeting. Ben Cascio, attorney for the applicants Drs. Eltaki and Abdulla, introduced himself. He said that this is an application for a property located at the corner of Commerce Street and Franklin Avenue to allow the property to be used as a medical office. There is a residential dwelling on the property presently, and the applicants are proposing a transitional use from a mostly commercial area. Mr. Cascio said that this is an excellent transitional use from the industrial commercial area to the residential area because the building will look like a house but has been designed to be utilized as an office.

Kareem Eltaki, 103 Knob Hill Court, Franklin Lakes, and Heba Abdulla, 103 Knob Hill Court, were sworn by Mr. Davies. Dr. Abdulla said that she lives with her husband and three children in Franklin Lakes. She has a growing medical practice in Franklin Lakes and would like to be able to relocate. Her specialty is skin cancer and she does not have adequate space in her office presently to accommodate all of the equipment to properly treat her patients. She hopes to have an additional physician who compliments her practice who would locate on the second floor.

Dr. Eltaki testified that he is an anesthesiologist who will maintain an office in the building. He presently works out of Good Samaritan Hospital in Suffern, N.Y., but serves several surrounding hospitals as well. Dr. Eltaki said he grew up in Franklin Lakes. When he and his wife had children they decided to move back to Franklin Lakes.

Dr. Abdulla said that her office is currently open Monday, Tuesday, Thursday and Friday between 9:00 A.M. and 5:00 P.M. and one Saturday morning a month from 8:00 A.M. to 12:00 P.M. except for the summer. She would expect to be open five days a week in the new facility and would be open until 6:00 P.M. or 6:30 P.M. one night a week. She has four employees and would like to have several more if she is able to relocate. She would like to lease the second floor of the building to a doctor in a similar field. Dr. Abdulla stated that she sees about 20 to 25 patients on average during the day. Dr. Abdulla spoke about MOSE which is a special procedure pertaining to skin cancer. She would like to have the room for a MOSE specialist to set up their equipment to help her patients.

A motion was made and seconded to open the meeting for questions of Dr. Eltaki and Dr. Abdulla. Elliott Cook, 510 Commerce Street, said that he is also pastor of Grace Community Church. He asked if this is a use variance limited to the doctor and her practice only or would it be permanent. Mr. Davies explained said that this is permanent and the variance runs with the property. A resident on Franklin Avenue asked about medical waste. Dr. Abdulla said that a company is hired to come into the building and collect medical waste.

No one else from the public came forward and the public portion of the meeting was closed by a unanimous vote.

Robert Weissman, 686 Godwin Avenue, engineer, was sworn by Mr. Davies. Mr. Davies marked "Site Plan, Block 1404, Lot 12, 892 Franklin Avenue, Borough of Franklin Lakes, Bergen County, New Jersey", dated February 10, 2016, revised April 7, 2016, as Exhibit A-1. Mr. Weissman testified that the property is located in the A-22.5 zone. The proposal calls for the demolition of the current dwelling to be replaced with a two story medical office building requiring a number of variances. A 21.8 foot setback is proposed from the right-of-way or 36 feet from the curb line of the road for the building and to accommodate parking. The proposed driveway is located at the southeasterly side of the property coming out onto Commerce Street. The parking requirement for a medical office is one space for 150 square feet resulting in 32 spaces, which are provided and is well below the actual usage for the property. Two handicapped spaces are provided along with a handicapped entrance. A new septic system will be located in the northeast corner of the property. An extensive drainage system will be provided, with a controlled outlet, which will flow to an inlet on Commerce Street. There will be a substantial decrease in the rate of runoff that presently runs off of this site because the runoff will be let out at a controlled rate so as not to over burden the drainage system in the road. This system adequately meets the requirements of the requisite reductions. There are a series of walls which will accommodate the change in grade and screening will shield the building and parking lot from neighboring properties.

Mr. Weissman said that several existing nonconformities will be eliminated with the removal of the existing structure including the front yard setback off Commerce Street. Several waivers are requested including the parking

space size; driveway width entrance proposed at 24 feet rather than the 30 feet required; and the minimum curb return radii for two-way access which is proposed at less than the required 35 feet..

Mr. Weissman described the variances which include the side yard setback, parking lot stall size, total coverage, two tiered retaining walls located in the setback, parking in the front yard, parking in the buffer zone at two locations, two-way driveway width and curb radius. There are several existing nonconformities including lot area and lot width. Mr. Weissman stated that the purpose of the design is to maintain a residential feel by means of substantial landscaping so that the building will be difficult to see from Franklin Avenue. There are two tiered walls proposed along the westerly property line, which will be landscaped to screen the parking lot from neighbors. Mr. Weissman pointed out that the building is 35 feet high which is 5 feet less than the allowable height for a residential dwelling. He pointed out that an entrance way with storage in the lower level is proposed. He was asked about reducing the total coverage and said that this is a modest sized building less than 2,500 square feet per floor. Mr. Weissman said that two AC units are proposed on the southwesterly side of the building, which complies with the 25 foot setback. Any medical waste is securely stored within the building as per regulations.

Mr. Weissmann reviewed and commented on the issues raised in the Boswell Engineering letter of April 14, 2016, which had not already been addressed. He noted that the shed will be removed. The applicant will comply with the comments on drainage. The revised plan dated May 4, 2016, was marked as A-3 and shows the refuse container pad on the northerly side of the parking area. A four foot fence is proposed along the entire westerly property line and southerly property line. The fence requires a variance because it is solid and located in the setback. He noted that the white plastic material proposed for the fence could be changed. Applicants are requesting an identification sign and a four foot square monument sign is shown on the plans. Board Members indicated that they would like to see a drawing of the proposed sign.

Exhibit A-4 was marked by Mr. Davies. Mr. Weissman said this is a rendering by William G. Brown, architect, of the south side of the proposed building. This plan gives details of the lighting depicting three poles, which are all the same height, located behind the 14 parking spaces. Additional variances for the light poles are needed because this is a residential zone. Mr. Weissman said that the poles could be lowered and he will look into this further; however, there may not be adequate lighting for the area if the pole size is decreased. Mr. Bavagnoli stated that if the application is approved he wants the Borough to have the right to require a change in the lighting intensity onsite for a period of six months after the issuance of a final Certificate of Occupancy.

A motion was made and seconded to open the meeting to the public for questions of Mr. Weissman only. A resident came forward and spoke about a sewer system on Commerce Street. She said that her neighbor received a letter stating that the sewer system was being extended to Commerce Street and the neighbor would have the opportunity to be connected to the system. She said that her septic is located in the rear of the property and asked for more details on the proposed sewer system. Mr. Weissman said that he is not aware of any plans to extend the sewer lines so far along Franklin Avenue. There had been some talk about getting an easement further down Commerce Street but it would be difficult to connect to the pumping station behind the shopping center.

The resident said that she is very concerned about lighting due to the proximity of the bedrooms in her home to the poles. Mr. Weissman said that the rear yard at her home is approximately 8 feet higher than the parking lot. The applicant's property will be extremely well screened and the lights are down lit meaning that virtually no light would be detected on her property. She said that there will be a problem with wildlife being hit because there are a lot of deer in this area. She indicated that garbage cans have to be carefully secured. She was also concerned about the speed of trucks that make deliveries on Commerce Street, and the additional traffic that will be entering and exiting at the applicant's parking lot. Mr. Weissman said that this would be better addressed by the traffic expert.

Dr. Abdulla said that she had reached out to the neighbors and she is willing to incorporate their suggestions.

A motion was made and seconded to close the public portion of the meeting relative to Mr. Weissman.

William Brown, architect, 241 Madison Avenue, Wyckoff, N.J., was sworn by Mr. Davies. Mr. Davies marked the renderings by Mr. Brown as Exhibit A-4 showing the rear of the building; A-5 showing the front of the building and A-6 which is the most current plan revised through April 19, 2016. Mr. Brown testified that this is a classic Dutch colonial style house which is small for this lot. The rear of the house has a walkout entrance with storage on the lower level. He described the inside of the building which includes room for storage and medical waste, and the lower level is unfinished. The doctor's level is 50 feet by 48 feet which contains a nurse's station, private exam room and a private office. The front door makes the building appear more residential and serves as an emergency exit. Mr. Brown said that the second floor will remain unfinished at this time. There is an elevator and stairs and another reception area could be accommodated upstairs. This space is smaller than the main floor due to the dormers and roof line. Mr. Brown commented that the walkway to the street could be eliminated. He stated that there will be a significant amount of plantings on the property and the walls to the west and the east are quite similar. There will be very few windows facing the neighbor and the structure will look very much like a single family dwelling. The first floor of the building is approximately 2,000 sq. ft. Upon questioning by Ms. Tiberi about medical waste, Dr. Abdulla said that no medical waste will be left outside. The basement will serve as storage space for medical records.

The public portion of the meeting was opened and seconded for questions of the architect only.

Mr. Cook, 510 Commerce Street, asked about the height of the building from the basement to the roof line. Mr. Brown said the height is 35 ft. which is 5 ft. less than what is allowed if the building were a private residence. Mr. Cook said that from his vantage point the building would appear to be 45 ft. high and the fence and greenery will make this a massive structure which is uncharacteristic of the neighborhood. It was pointed out that the maximum height for a commercial building is 30 feet.

Morgan Friedman, of the McBride Agency, 834 Franklin Lake Road, said that she is the buyer's agent and the listing agent on this transaction. She said that most of the people who were interested in purchasing the property wanted to build a two story residence. She anticipated that a much larger structure with higher roof lines would be most likely to be built on this lot. The front elevation of the building is 24 feet 6 inches from the lower grade, and Mr. Brown said it will look like most of the residential homes on Franklin Avenue. He added that it is the perfect design for the buffer area between Franklin Avenue, the residential buildings and the commercial buildings on Commerce Street. He noted that there would be issues building a residential spec house on this lot because of traffic issues. A comment was made by a resident that the barrier between Commerce Street and residential area is the church and this building encroaches into the neighborhood.

There were no further questions of Mr. Brown and a motion was made and seconded to close the public portion of the meeting.

Richard Zimmer, 7 Argyle Street, Haskell, of Tapestry Landscape Architecture, was sworn by Mr. Davies. Mr. Zimmer stated that he has revised his plan to comply with comments made by the Borough Engineer. Mr. Davies marked "Planting Plan, 4/11/16", as Exhibit A-8. Mr. Zimmer said the buffering is very important and he suggested maintaining the existing trees along the southern portion of the property as well as the trees on the northern end of the property along Franklin Avenue. Thirty evergreens are proposed on both the western and southern property side along the perimeter. This would include a mix of spruces and green arbor vitae and dense evergreens that would be placed among the existing trees to form the buffer. As a result of the comments from the Engineer, five additional evergreen trees were added to improve the buffer from the adjacent property. Several more evergreens were added near the parking area and in the southwest corner of the property. The two tiered wall is located between the evergreens, which is softened by a long cascading shrub. The parking area is suppressed in elevation from Franklin Avenue and a hedge is proposed around the majority of the parking lot. This area is somewhat restricted by the septic field and a wall by the entry into the parking lot.

Mr. Zimmer noted a number of flowering trees located in the refuse area. He pointed out the list of plants on the plan noting the proposed plant and shrub species and size. There is effective buffering by means of evergreens, which will grow quickly and create a significant buffer on the property lines. Mr. Zimmer stated that there have

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been some unfavorable comments about the 5 ft. fence along the westerly property line, and in his opinion, the vegetation would be a sufficient buffer without the fence. Ms. Tiberi commented that the parking lot is high and somewhat exposed. Mr. Zimmer said he could work with the engineer to carry the hedge further to modify the look of this area.

Mr. Zimmer was asked how the plantings would affect the site lines when exiting Commerce Street to Franklin Avenue. Mr. Zimmer said that the site triangle appears to be sufficient and he wouldn't expect any impact from the trees. Ms. Tiberi confirmed that the right-of-way in this area of Franklin Avenue is quite wide. Mr. Zimmer said that almost all of the trees and shrubbery proposed are deer resistant.

A motion was made and seconded to open the public portion of the meeting for questions of Mr. Zimmer only. A resident asked what existing vegetation would be removed from the west sides of the property. Mr. Zimmer said that there are no plans to remove any existing vegetation, and he reiterated that additional evergreens will be planted.

Mr. Cascio stated that Dr. Abdulla would be happy to work with the neighbors on landscaping and fencing to make the plan more acceptable and pleasing. A question was raised about the garbage area and it was noted that Mr. Weissman's revised plan shows a fence screen around the garbage area with a hedge around the fence. Mr. Weissman commented that due to the bear problem it might make sense to keep the garbage in the basement storage area. Most of the garbage will consist of paper, which is recyclable and can be kept inside. Dr. Abdulla indicated that she is willing to amend the application and keep the garbage cans in the basement. Upon questioning about sound mitigation, Mr. Zimmer said that this amount of vegetation would have only a small impact on sound. A motion was made and seconded to close the public portion of the meeting.

The application will be carried to the meeting of June 2, 2016 where the Planner and Traffic Expert will testify.

A motion was made and seconded to adjourn the meeting at 10:40 P.M.