

**BOARD OF ADJUSTMENT**  
**MINUTES OF THE MEETING**

**JUNE 2, 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. Badenhausen, Mr. Frankel,  
 Mr. DeLorenzo, Mr. Saracino, Mr. Hunter, Board Attorney Davies, Board Engineer Tiberi  
**Absent:** None

**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.**

**MINUTES**

The Minutes of the meeting of May 5, 2016, were presented for approval. Mr. Messaros made a motion to approve the minutes as submitted, seconded by Mr. Saracino.

Roll Call Vote

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

**ORAL COMMUNICATIONS**

There were no oral communications this evening.

**OLD BUSINESS**

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:

<b>TYPE</b>	<b>REQUIRED</b>	<b>EXISTING</b>	<b>PROPOSED</b>	<b>VARIANCE</b>	<b>CODE</b>
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

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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 8-11-16**

Mr. Frankel recused himself from this portion of the meeting. Ben Cascio, attorney for the applicant, stated that this is a continuation of a use variance application for a medical office. There was testimony from the engineer, architect and landscape architect at the previous meeting and tonight a traffic expert and a planner will testify. Mr. Davies stated that the Board Chairman had requested him to put together a summary of the Basics of Land Use Law to give the Board guidance as to the legal standards that apply in this instance. Mr. Davies referred to a review from the Borough Planner, which Mr. Cascio has received, along with a traffic report and a report from the Fire Official on the requirement for a sprinkler system in the building.

Craig Perego, Dynamic Traffic, 245 Main Street, Chester, N.J. was sworn by Mr. Davies. Mr. Perego stated that he prepared a traffic impact analysis for the site on the southwest corner of Franklin Avenue and Commerce Street. The proposal would eliminate all access to Franklin Avenue from the building. Mr. Perego reviewed traffic counts from the morning rush hour (7 A.M. to 9 A.M.) and the evening rush hour (4 P.M. to 6:30 P.M.) on weekdays. A determination was made relative to the level of service at the intersection which is calculated using the delay per vehicle at the stop sign on Commerce Street. Commerce Street is a low volume street with 75 vehicles per hour on average during the peak hours and a level of service "B" which is very good. Mr. Perego projects a traffic number for a medical office using information from the Institute of Traffic Engineers Trip Generation rates. Eleven trips would be generated in the morning and seventeen trips would be generated in the evening. There is cause for concern when the number of trips exceeds one hundred. This traffic volume is added to the number of trips that already exist as well as a background growth rate for additional development in the area published by NJDOT. Based on this analysis Mr. Perego stated that the level of service remains at Level B or one second per vehicle, and he concluded that the roadway can clearly handle any traffic generated by the proposed medical office.

Upon questioning, Mr. Perego stated that the traffic counts were conducted on Wednesday, April 20, 2016 in the evening and Thursday, April 21, 2016 in the morning. Mr. Perego stated that he was quite sure school was in session that week; however, there is usually a 5% to 6% decrease in traffic if school is out.

Mr. Davies marked the Traffic Impact Study submitted by Mr. Perego, dated April 27, 2016, as Exhibit A-9.

Mr. Perego testified that the proposed parking meets the requirements of the ordinance at thirty-two. The average peak parking demand at medical offices is 3.2 spaces per thousand square feet or 16 spaces in this instance. The amount of required parking is actually doubled at this location. A waiver is requested for the size of the parking spaces proposed at 9 feet by 18 feet rather than the 10 feet by 20 feet required by ordinance. The access driveway is required to be 30 feet wide and 24 feet is proposed. Mr. Perego said that this is a transition area between the industrial area which is a low speed, low volume roadway that does not require a wide curb cut. Mr. Perego noted

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that his calculations, including parking, are based on an occupation of the second floor which will not be the case initially.

Mr. Peregoy has reviewed the Franklin Lakes Police Department report dated June 1, 2016, which indicated a concern relative to site visibility. He said that the vehicles entering Commerce Street are turning and will not be travelling at 25 mph when 80 feet of traffic visibility is required. The plan shows 130 feet of visibility which is not an issue. The police review letter also had concerns relative to the number of parking spaces; however, Mr. Peregoy said there are adequate spaces provided and the applicant had stated previously that only ten spaces would be needed.

Mr. Bavagnoli opened the public portion of the meeting and invited members of the public with questions of Mr. Peregoy to come forward. Donna Robinson, 896 Franklin Avenue, asked how excess speed of drivers on Franklin Avenue would affect the traffic situation. Mr. Peregoy said that the entrance to the proposed parking area is on Commerce Street where speeds of 25 mph are anticipated. No one else came forward with questions for Mr. Peregoy and a motion was made and seconded to close the public portion of the meeting.

Ken Oschab, 1216 Fair Lawn Avenue, Fair Lawn, New Jersey, Planner, was sworn by Mr. Davies. Mr. Oschab stated that the proposed medical building is located in the A 22.5 residential zone, which means that this is a use variance application or a D1 variance. Several bulk variances are applicable relative to parking calculations and design criteria but are considered as part of the use variance process. The positive and negative criteria are used in this case meaning that the applicant has to show special reasons why the variance should be granted including a demonstration of the use and its relationship to the Master Plan and how it relates to the zoning ordinances. Under the negative criteria, the applicant has to show that there should be no substantial detriment to the public good and that there should be no substantial impairment to the zone plan. Mr. Oschab has researched the area and prepared Exhibit A-10, which is an aerial photograph from Google maps, showing the site in question that is marked by an orange star. The Exhibit was marked by Mr. Davies. He referred to the Commerce Street area extending from Franklin Avenue to its end point. The information shown includes eighteen industrial lots on Commerce Street which feed their traffic through the intersection of Commerce Street and Franklin Avenue. The only house belongs to the Pastor of the Methodist Church. Mr. Oschab commented that this is not a typical residential area due to its relationship to an industrial area and is inappropriate from a land use planning perspective. He noted that the Master Plan refers to an upgrade of the uses in the industrial park by adding more up to date uses such as gyms and health clubs and these uses do not relate well to residential properties. Mr. Oschab stated that this use provides adequate parking and is not impactful relative to traffic. Therefore, from a land use perspective, there is a sufficient basis to look favorably at this variance. Mr. Oschab described the other land uses along Franklin Avenue stating that there is only one residential property to the north and the Pastor's home to the west on Commerce Street. The retail business zone was expanded on Franklin Avenue to the church property as per the 2010 Master Plan revision.

Mr. Oschab stated that a medical office building is probably not an inherently beneficial use; however they do provide a service to the community. A business operation with no evening and weekend hours is the type of use which would be acceptable in this environment due to the two residential lots that border the property in question. Traffic generated from the site will be minor which not a substantial detriment is and there is no access to the building from Franklin Avenue. There are two buffers one 14 feet and the other 15 feet with substantial vegetation to provide effective screening to mitigate any impact on the adjoining properties. Parking is six feet below grade which will also mitigate impact on neighbors. Mr. Oschab described the building as resembling a two story home from the front which fits well into the pattern of development along Franklin Avenue and there is 40 feet between the road and the structure. Mr. Oschab stated that the impervious coverage is 59% where 20% is required due to the parking lot. The applicant is willing to convert some of the parking area into landscaping if required by the Board.

Mr. Oschab said that this is a unique situation with a residential property as the main entrance to an industrial park. There will be continued demand on this property to change into a non-residential use and if this variance passes it would not be detriment to the area and will be a positive transition.

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A motion was made by Mr. Messaros, seconded by Mr. Badenhause to open the meeting to questions of Mr. Oschab from the public. Donna Robinson, 896 Franklin Avenue, stated that there is a lot of empty space on Commerce Street and she asked why the applicant would consider demolishing a building in order to construct a new commercial building. Mr. Oschab said that a medical building would not be appropriate in the middle of these industrial uses. He reiterated that this is a good transition use. Ms. Robinson asked Mr. Oschab if he was aware of the new building located at Colonial Road and Franklin Avenue. Mr. Oschab indicated he thought this building was for retail.

Jeffrey Shepard, 829 Scioto Drive, mentioned the sidewalk that runs from Franklin Crossing to the church which promotes walkability in the Borough. He stated that buffers as low as 5 feet and fencing to shield against trucks have been approved by the Borough in some situations. Mr. Oschab said he was aware of this and it is not the width of the buffer but what can be done with fencing, landscaping, heavy vegetation and berming. Mr. Shepard stated that Parisi's Gym will be moving to Commerce Street in the future and Mr. Oschab said that bolsters the fact that a medical office would be an appropriate use at this location.

There were no further questions from the public and a motion to close the public portion of the meeting was made by Mrs. Gerber, seconded by Mr. DeLorenzo.

Elizabeth McManus, Borough Planner, from the firm Clarke Caton Hintz, 100 Barrack St, Trenton, New Jersey, was sworn by Mr. Davies. Ms. McManus summarized stating that the Board is being asked to consider whether or not to grant a D-1 use variance along with several other variances relating to design. The Board must consider whether the two story medical building and the 32 parking spaces being proposed are appropriate for the site given the variance relief requested and the character of the area. The Board also needs to consider whether this site serves as a transitional area and must keep in mind that the conversion of this site will not eliminate residential use in this area. There are other areas for sale and rent in this area that would be suitable for a medical office. Ms. McManus pointed out that municipalities have the right to identify a boundary between zone districts to determine where a zone district begins and ends. The number of variance requests speak to the intensity of development and the Board has to consider what is appropriate for this site. She added that all of the nonconformities will have some impact on the public good; however, substantial buffering is proposed to provide screening and she has suggestions that could enhance this screening.

Ms. McManus was asked if there are other nonconforming uses in this area. She replied that there are three nonconforming uses in the immediate area including the gas station to the west, the substation and the day care on Circle Avenue. She identified the substantial negative impacts to the one remaining residential use on Commerce Street which include visual impact along with noise, lighting and the viability of the sale of the existing house in the future. There are things the applicant can do to minimize the impact such as additional screening through the removal of parking spaces on the western boundary and a reduction in the size of the retaining wall. She recommended the elimination of a portion of parking spaces on the southern-most area of the lot in addition to two spaces along the western property line for a total of 18 parking spaces. When the second floor of the building takes place additional parking if needed could be reclaimed from a portion of the buffer area.

Mr. Davies asked Ms. McManus if this lot is suited for the development of a medical office. Ms. McManus stated that the transition use argument is legitimate; however, the site will continue to be surrounded by a residential use and the church to the east which is consistent with the residential district. She said that the Board needs to weigh the factors of surrounding uses to make a determination. The applicant has put adequate testimony on the record supporting various aspects of the positive and negative criteria. The current Master Plan Re-Examination report does not recommend a zoning change for this area although changes were recommended in the 2010 plan. Ms. McManus reiterated that there would be a negative impact relative to the future viability of the sale of the house on the adjacent residences. She stressed the importance of enforcing the ordinance relative to lighting at this property and suggested that a lighting expert address the issues at the time of site plan approval. The engineer had previously indicated the applicant would comply with all lighting requirements imposed by the Borough.

Ms. McManus concluded that this is a light use that would lead into a primarily industrial street, but it is not a complete transition due to the residential use to the west and a residentially zoned lot to the east. Ms. Tiberi cautioned the Board against giving away parking spaces.

Mr. Bavagnoli stated that the public portion of the meeting would be open for any questions of Ms. McManus. Jeffrey Shepard, 829 Scioto Drive, asked if it is unusual to place a residential lot at the head of an industrial strip. Ms. McManus said it is unusual to place residential zone adjacent to an industrial zone and the uses do have some incompatibility. Ms. McManus recommended that the Planning Board should look at whether or not the zoning here continues to be appropriate. There were no further questions from the public and the public portion of the meeting was closed.

Mr. Bavagnoli opened the meeting to the public for comments. Dr. Abdula, 103Knob Hill Court, said that this building is a good fit with her practice and her style. Donna Robinson, 896 Franklin Avenue, said she wanted to install an above ground pool in her backyard but could not due to septic issues. Now she faces the prospect of a three story commercial building in the residential neighborhood and she doesn't understand why a commercial building would be allowed in a residential neighborhood. The parking lot would adjoin her back yard and she would hear the cars entering and exiting. No one else came forward and Mr. DeLorenzo made a motion to close the public portion of the meeting, seconded by Mr. Messaros.

Mr. Cascio stated that this application, if approved, would provide the ideal transitional use between residential and commercial zones. Concerns raised by Ms. McManus will be addressed so that the building will not appear to be an office. The applicants have lived in the Borough for quite some time and have raised their children in Franklin Lakes and intend to remain. The lights will be modified to comply with municipal requirements and lights and noise from vehicles will be buffered. Mr. Cascio said that this application is beneficial because of the transition area it provides for the Borough. The Board has been given an opportunity by the architect, landscape architects and engineer to make recommendations concerning the design of this site. The applicant will return for site plan approval which will ensure that all Borough requirements have been met and he asked that the Board approve the application.

Board members discussed the application. Mr. Bavagnoli stated that it was not in their jurisdiction to re-write the zoning code by initiating a transition zone. Mrs. Gerber thought that the building was too large for the lot. Mr. Hunter echoed Mr. Bavagnoli's statements. Mr. Messaros said he did not support a commercial use in a residential zone. Mr. DeLorenzo commented that even though this is a commercial use the structure resembles a home. Mr. Saracino said he has concerns about making this a transitional property along with the fact that it would become a commercial use sandwiched between two residential properties.

Mr. Davies reviewed conditions that would be part of a resolution to approve the application. The conditions discussed include: ground floor remains as storage only, upstairs would not contain retail, trash and medical waste must be contained inside the building, banking of the parking, light poles and the assurance that lighting is as low down as possible to comply with zoning ordinance, 5 foot high solid fence along the west and southern property lines, fencing materials to be determined by the Board, no resolution relative to the need to install fence along west and southern property lines, and lighting only during office hours with a transitional time to be determined.

Mr. DeLorenzo made a motion to approve the variance application with the conditions noted above, seconded by Mr. Bavagnoli.

Roll Call Vote

AYES: Mr. DeLorenzo, Mr. Saracino

NAYS: Mrs. Gerber, Mr. Messaros, Mr. Bavagnoli, Mr. Hunter

The application is **denied**.

**NEW BUSINESS**

Cal.#2016-4 Application for Mahmood, 895 Scioto Drive, Block 2101.08, Lot 24, Dimensional Variances, which are 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>
Total Coverage	25%	26.10%	27.82%	2.82%	300-102
Steep Slopes Category 2	45%		51.2%	6.2%	300-132.A.

**DEEMED COMPLETE: 4-27-16**                      **DETERMINATION DATE: 8-24-16**

Bruce Whitaker, attorney for the applicants, stated that a new single family home is proposed at 895 Scioto Drive to replace an older home which has been demolished. The total improved coverage on the lot of the former home exceeded 25% and the house predated the present buffer requirements calling for a no disturbance buffer. Some disturbance remains from the old home including walls and a set of stairs installed to alleviate difficult topographical conditions. The applicant is proposing some soil movement involving slopes necessary for construction of the previous home. The pool house shown on the plan as non-conforming will now conform to the 300 square foot requirement for accessory structures.

Douglas Dolittle, engineer, 169 Ramapo Valley Road, Oakland, N.J. was sworn by Mr. Davies. Mr. Davies marked an plan entitled, "Site Plan/Septic System Plot Plan, Lot 24, Block 2101.08, 895 Scioto Drive, Borough of Franklin Lakes, Bergen County, New Jersey", dated February 10, 2016, revised through April 13, 2016 prepared by McNally Engineering, LLC as Exhibit A-1. Mr. Davies marked "Topographical Map dated 11/11/2015" prepared by Douglas Dolittle as Exhibit A-2. Mr. Dolittle stated that total coverage includes the extensive driveway, walls and stairways. The stairways provide access to various areas of the property. Mr. Dolittle described the topographic conditions including a 40 foot change in grade. The pool house will be conforming at 300 sq. ft. or less and a new pool will be constructed in the area of the former pool. New and extensive drainage is proposed along with a terrace off the rear yard and a retaining wall. The walls and stairs that currently exist will remain. The septic system was removed and will be replaced. The driveway will be substantially altered from the previous driveway. Mr. Dolittle said that total coverage is proposed at 27.32% which is slightly less than what had previously existed. He added that the lot size is 59,336 square feet. There is a strip of land between the property in question and the lake and although it is not owned by the property owner it makes the lot appear even larger than it actually is. Mr. Dolittle has filed a storm drainage report outlining the stormwater requirements and notes that the land running to the lake remains as is except for existing stairways giving access to the lake. He indicated that there is a 40 ft. change in grade on the property from the front to the rear. Mr. Dolittle described a total of 777 cubic yards of soil proposed to be moved including 637 cubic feet of soil to be removed. There is an area of soil in a sloped area that exceeds the ordinance requirements in an area that was previously disturbed. A waiver is requested relative to the infringement on this slope.

Mr. Davies questioned the hardship to the property owner relative to compliance with the zoning requirement for maximum total coverage of 25%. Mr. Whitaker referred to the provisions under the municipal land use law which states that a Board can consider granting a variance due to unusual topographic conditions on the site. He explained that the circular driveway is needed for safety reasons and there is a grade change of 40 feet on the property which both add to the excessive total coverage.

A question was raised about an encroachment of retaining walls onto property owned by ITC Holdings and there was a question of whether the variance request could be approved if these encroachments were pending and not resolved. Mr. Whittaker stated that this existing encroachment is a private issue that needs to be resolved but is not within the jurisdiction of the Board of Adjustment. Mr. Bavagnoli said that the Board is only responsible for the approval of the plan within the boundary and any encroachment questions must be resolved between the two

property owners. Mr. Whitaker has done research and he indicated that there were no prior approvals or resolutions regarding retaining walls on this property.

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

Mr. Whitaker asked that several residents be given the opportunity to speak at this time and Board Members agreed.

Steven Levin, 903 Scioto Drive, lives next door to the applicant. Mr. Levin said that he supports the applicant and the application. The amount of overage is nominal. Mr. Levin said his property is similar and terraced walls are definitely needed to safely access the pool and the lake. It would be extremely difficult to remove these retaining walls.

Ciro Rendazzo, 1000 Scioto Drive, said that the previous home was an eyesore and the subject of a Federal Marshall sale. It has since been demolished which will be an improvement to the neighborhood. Mr. Rendazzo, who favors the proposal, has known the applicant for some time and said that the applicant will be an asset to the community.

John Liggero, architect, was sworn by Mr. Davies. Mr. Liggero referred to drawing A1 of 3 dated 2/2/2016. Drawings A2 and A3 were also dated 2/2/2016 and all were marked as Exhibit A-3. Mr. Liggero described the dwelling including the garages with balconies above and a wrap-around porch. Ms. Tiberi cautioned that there is no leeway relative to the height of both the house and pool house. She added that the house appears to be three and a half stories which would require an additional variance. Mr. Liggero said that these are design drawings only and he will revise the design to ensure compliance. He noted that Board of Health approval has been received.

Mr. Messaros made a motion to open the public portion of the meeting to the public for questions of the architect. Mr. Badenhause seconded the motion, all ayes. No one came forward and Mr. Messaros made a motion to close the public portion of the meeting, seconded by Mr. Frankel.

Mr. Bavagnoli invited the public to comment on the application; however, no one from the public came forward.

Mrs. Gerber asked that the Board consider voting on a final plan by the architect since it appears that there will be some changes made to comply with height requirements. Mr. Whitaker said the applicant is stipulating as to the style of the house, but variance relief is only being sought regarding total coverage and a waiver for steep slopes. Mr. Bavagnoli said that if the final plans show that the house exceeds Borough height requirements the applicant will have to return to the Board for an additional variance. The Board is not approving the architectural plans at this time and the architect stated that the footprint of the house will not change. Mr. Dolittle said that he would work with the engineer to satisfy all of the conditions. Ms. Tiberi noted that if the grading changes, there will be modifications and the site plan will change which means that if the plan doesn't comply the applicant will have to return to the Board.

Mr. Davies listed the following conditions of approval:

1. The pool house will be conforming at 300 square feet or less.
2. The applicant will comply with the ordinance on the number of stories permitted.
3. Applicant is cautioned on the height of the building not to exceed what is permitted. If this is exceeded applicant is in violation.
4. Total coverage not to exceed 27.5%.

Mr. Saracino made a motion to approve the application based on the conditions noted, seconded by Mr. Messaros.

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Roll Call Vote

AYES: Mrs. Gerber, Mr. Badenhausen, Mr. Messaros, Mr. Bavagnoli, Mr. Frankel, Mr. DeLorenzo,  
Mr. Saracino, Mr. Hunter

NAYS: None

The meeting was adjourned at 11:20 P.M. on a motion made by Mr. Hunter, seconded by Mr. Frankel.