

Present: Hartmann, Peterson, Connors, Walsh, DeNofa
Forrester (Attorney)
Absent: Canonico, Stambaugh, Betesh, Dodge

The Chairman, Mr. Hartmann, called the meeting to order at 7:30 p.m.
All saluted the flag, and the presiding officer's statement was read.

Minutes:

A motion was made by, Mr. Connors, seconded by, Mrs. Peterson to adopt the minutes of the March 5, 2008, 2008 meeting. All approved.

Planning Board Representative:

Mr. DeNofa reported that the Fee Ordinance was reviewed and forwarded to Mayor & Council.

Correspondence:

- Disclosure Forms must be turned in as soon as possible
- Mr. Zager requested that the Farrell Mgmt application be adjourned to a date uncertain and they will renote when they are ready to return to the board

Unfinished Business:

Mrs. Evelyn Bonanno:

Bl: 28, Lot: 45

Adoption of Resolution

expansion for a 2nd residential use

A motion was made by Mr. Connors, seconded by Mrs. Peterson to adopt & memorialize the resolution of approval to Mrs. Evelyn Bonanno as amended to allow the expansion of the non conforming use to 1,800 sq. ft.

Roll Call:

Affirmative: Hartmann, Peterson, Connors

Negative: None

New Business:

Robert & Judith Bakos:

49 North Park Ave

Bl: 58, Lot: 1

Bulk variances for 1 story addition

Mr. Forrester announced that he has reviewed service and finds it adequate and the board has jurisdiction to hear this matter.

Mr. Jay Bakos 49 N Park Ave was sworn, he testified that Robert & Judith Bakos are the owners of the property and Mrs. Bakos was present.

Mr. Bakos testified that he is seeking permission to construct a 1 story addition for a master bedroom/bathroom. He explained that he will be replacing 1 bedroom which will be converted into a family room. The house will remain a 3 bedroom room.

Mr. Forrester marked the following into evidence:

- A-1: Architect plans dated 2/25/08 – with the proposed addition
- A-2: Survey dated 8/31/05 by Charles Surmonte without a garage
- A-3: Survey dated 2/29/08 by Charles Surmonte with a garage
- A-4: 7 Photos of existing house

Mr. Bakos testified that the addition would consist of a master bedroom & bathroom, which he needs a side yard set back of 7'.7" where 15' is required; and a maximum building coverage of 16.8% where 15% allowed.

Mr. Hartmann asked Mr. Bakos what the distance is from the property to the neighbor's house? Mr. Bakos said that it is a driveway & garage and there is still room for his trash cans, he feels that it is approximately 15'.

Mr. Forrester asked Mr. Bakos if there is any location for the addition on the property that would not intrude into the side yard set back? Mr. Bakos explained that if he were to slide the addition over he would be in violation of his rear & front yard set back.

Mrs. Peterson asked if the addition could be located in the rear of the house? Mr. Bakos explained that his house backs up to the rail road and he would like to eliminate some of the noise, and his neighbor has a pool on his side of the house. He feels that with his neighbor's fence that would give him some additional privacy. In addition there is a large tree that he would like to maintain in his back yard.

A motion was made by Mr. Connors, seconded by Mrs. Peterson to open the meeting to the public. All approved

There were no comments/questions.

A motion was made by Mrs. Peterson, seconded by Mr. Connors to close the meeting to the public. All approved.

All board members agreed that this application is approval and the variances could be granted.

A motion was made by Mr. DeNofa, seconded by Mrs. Peterson to grant the variances as requested by Mr. & Mrs. Robert Bakos, for a side yard set back & building coverage.

Roll Call:

Affirmative: Hartmann, Peterson, Connors, Walsh, DeNofa

Negative: None

Resolution:

A motion was made by Mrs. Peterson, seconded by Mr. Connor to adopt & memorialize the resolution of approval to Mr. & Mrs. Robert Bakos with minor amendments &

- adding an additional finding of fact with reference to the location of the addition being next to the garage area of the neighbor to the south and moving the addition to the rear would impact the rear yard use of the property to the south.

Roll Call:

Affirmative: Hartmann, Peterson, Connors, Walsh, DeNofa

Negative: None

Mr. & Mrs. Dennis Pryzwara

Bulk variances for the addition of a

49 N. Park

Bl: 39, Lot: 17

Mr. Forrester announced that he has reviewed service and finds it to be in order and the board has jurisdiction to hear this matter.

Mr. Dennis Pryzwara & Mrs. Pryzwara were both sworn.

Mr. Forrester stated that the following variances are being requested:

- side yard set back for 2 story addition of 7' 3" where 10' required (west)
- side yard for 1 story garage addition 18'.8 exist 4.0' (east)
- side yard set back for parking area of 5' for driveway setback
- building coverage of 27.1% where 20% permitted
- impervious coverage of 40.6% where 25% permitted
- garage door facing the street

Mr. Forrester marked the following into evidence:

- **A-1**: Survey, prepared by Yorkanis Land Surveying – 1986
- **A-2**: Copy of Survey with proposed changes
- **A-3**: Floor Plans
- **A-4a,b,c,d**: Photos of 83 White from the east & west neighbors properties
- **A-5**: Proposed superimposed elevations from front, left, rear views
- **A-6**: Neighboring properties of existing conditions 71-75, 79, 91-95 White St

Mr. Przywara testified that he is seeking permission to construct a 2 story addition off the back of his single family home. The first floor would extend the existing kitchen; add a dining room & family room. They will be removing the existing garage and replace it with a new 1 car garage facing the street.

Mr. Hartmann asked Mr. Pryzwara why he needs to pave the driveway all the way to the property line? Mr. Pryzwara explained that he will soon have 3 teenagers driving and with the “no street parking” he will need some place to park additional cars during the winter. There were a brief discussion on the use of crushed stone vs. asphalt, but it was explained that it is still considered impervious.

Mr. Pryzwara stated that he did receive the review letter from the board engineer dated 3/28/08 and he will comply with the recommendation of a dry well system, as long as it is cost prohibited. Mr. Pryzwara referred to the comment of the grass strip along the driveway and he would be willing to replace the 2 proposed walkways with grass and decrease the asphalt driveway by 2' ½" and replace with a grass strip, which will decrease the impervious coverage.

Mr. Forrester stated that the applicant must supply the engineer with the grading plan and the shop drawings and calculations.

Mr. Forrester asked if the property to the east is developed? Mr. Pryzwara said yes, and it is very similar to his home, and there is a small strip of grass and driveway then the house or approximately 18' between his house (#87) and the property line. Mr. Pryzwara explained that the front of the western neighbors (#79) is equal to the front of his but not as deep as his. Mr. Forrester asked if there is any land to purchase

Mr. Pryzwara testified that if he does put the patio in it will be constructed from patio blocks, he also advised the board that the house will be resided to blend together?

A motion was made by Mrs. Peterson, seconded by Mr. Walsh to open the meeting to the public. All approved.

There were no comments/questions.

A motion was made by Mrs. Peterson, seconded by Mr. Walsh to close to close the meeting to the public. All approved.

Review of variances being requested:

- Side yard set back of 7.3' on the eastern property line where 10' required
- Building coverage of 27.1% where 20% allowed
- Impervious coverage of approximately 37% after the new grassed areas are added where 25% is permitted
- Side yard set of 4' on the western property line where 10' is required
- 4' set back from the driveway where 5' is required
- garage door facing the street

Mrs. Peterson stated that the board should request the applicant that when they do construct the patio that concrete not be used. Mr. Pryzwara stated that he will not use concrete, and he will comply with the request of the 2 ½ ' of grass along the driveway and replace the concrete walkway with grass on both areas around the new garage. Mr. Hartmann explained that the applicant will be dropping approximately 200 sq. ft. of impervious coverage or 3% less.

Mrs. Peterson feels that due to the size and location of the property the proposed location is the only place for the applicant, she explained that the board doesn't usually favorably

upon such a large impervious coverage but this is the only solution which does include the new grass areas and the mitigation as agreed to by the applicant.

Mr. Forrester stated that the lot size is 6,900 sq. ft. where 10,000 sq. ft is required in the R3 zone, and the applicant cannot purchase any additional property since the surrounding properties are currently developed.

A motion was made by Mr. Walsh, seconded by Mrs. Peterson to approve the application of Mr. & Mrs. Pryzwara, based on the reduction of the driveway by 2 ½ 'x 30' (275 sq. ft.) and the removal of the 2 walkways adjacent & behind the garage. Compliance with the mitigation of impervious coverage by supplying a grading plan & shop drawings of the design.

Roll Call:

Affirmative: Hartmann, Peterson, Connors, Walsh, DeNofa

Negative: None

Resolution 5/7/08.....

Fidelity Investments:

2nd façade sign

Grove West

Bl: 21, Lot: 1

Mr. Forrester announced that he has reviewed service in this matter and finds that it is adequate and the board has jurisdiction.

Mr. Scott L. Carlson, Esq. represented the applicant.

Mr. Carlson explained that the application before the board is for a façade sign at the location of 530 Broad St, Bl: 21, Lot: 1 Grove West. A permit was denied for a 2nd façade sign on the northern side of the building, where only 1 façade is permitted, and a variance would be required.

Mr. Michael Markiewicz, Site Enhancement Services

Mr. Kenneth Ochab, Planner

Mr. Michael Markiewicz, South Bend Indiana, Senior Zoning Specialist, Site Enhancement Services was sworn. He testified that he has processed other applications for Fidelity Investments and is familiar with their operations.

Mr. Markiewicz testified that the purpose of the 2nd sign is to gain visibility for the new ingress/egress along Patterson Ave into the center. This will make up for some of the loss visibility to Broad Street due to the construction of the 2nd building.

Mr. Markiewicz stated that currently Fidelity Investments only has 1 façade on the front elevation of 63.03 sq. ft. and the proposed 2nd sign will be a 33” logo channel letter set on the north elevation facing Patterson for a total of 37.23 sq. ft. He explained the sign is now blocked by the new building which now sits between Broad St. & Fidelity Investments and obstructs south bound traffic on Broad Street. He also testified that the multi tenant sign which was on Broad Street has been replaced with a center identification sign which only indicates “Grove West”, the identification also has been lost on the multi tenant sign.

Mr. Markiewicz stated that the north elevation of the building is now fully exposed to Patterson Ave without any identification, and now they have lost the exposure of the ingress/egress from Broad Street. He feels that a motorist heading toward Broad Street and passed the ingress/egress on Patterson Ave, and headed south on Broad Street the Fidelity building is now obstructed by the new bank and the new building. He also feels that there would not be enough time for the motorists to stop and enter the shopping center. They are trying to making up for lost visibility from the obstruction of the front elevation and losing the multi-tenant sign.

Mr. Walsh asked if they knew about the development of the property prior to them leasing the space? Mr. Markiewicz could not answer that, he doesn’t know if this development was “added on” or if it was part of the original development plan.

Mr. Markiewicz explained that Fidelity Investments caterers to a lot of out of town business travelers, and they have kiosks set up at all of their branches, and a lot of the business travelers don’t necessarily use the primary branch and they are not familiar with the area and that is where the signs become extremely important.

Mr. Hartmann feels that if a motorist passes the ingress/egress on Broad Street they could go to Meadow Drive and go through to the Fidelity Investment building since they are all connected.

Mr. DeNofa asked if the sign will be illuminated? Mr. Markiewicz explained that only the letters & logo will be internally illuminated with l.e.d. lighting and they will meet the Lighting Ordinance requirements.

Mr. Forrester marked the following into evidence:

- **A-1**: 4 photos of proposed of sign & aerial site conditions pre & post construction of the new parking area on Patterson Ave

Mr. Kenneth Ochab, Planner, Fair Lawn NJ was sworn & gave his educational/professional background and was accepted as an expert witness in Planning.

Mr. Ochab testified that he reviewed the Ordinances and visited the site, and described the site and surrounding area. He testified that there is 1 façade sign which faces Broad Street and they are now requesting a Fidelity Logo sign on the north side of the building which requires a “C” variance for the 2nd wall sign?

Mr. Ochab explained the statutory criteria for a “C1” variance, and how they are meeting the criteria. The hardship of the property or buildings on the property creates an unreasonable situation for the applicant, creating a hardship. A “C2” variance or planning variance, the applicant must prove that the benefits to the public outweigh the detriments, the board could grant the variance. The negative criteria, the board must be determined as to whether or not the detriment to the public good i.e.: are any of the surrounding properties impacted by the variance request, and whether there is any substantial impairment to the zone plan.

Mr. Carlson presented the following to be marked into evidence:

- A-2: 10 photos of the existing & neighboring properties, taken by Mr. Ochab
- A-3: Board with 4 enlarged photos

Mr. Ochab described each photo of A-2 & A-3 and explained the changes since the new building was constructed and the new parking area which has been constructed. He explained that the new “Bill a Bong” store now impedes the view of the Fidelity sign to south bound traffic. He feels that this is the hardship argument since a motorist can pass the entrance once he passes the new building. Prior to the new building the existing sign plan was good for Fidelity, but from a planning standpoint they no longer have a good clear visibility for this tenant or business.

Mrs. Peterson feels that the rest of the tenants in the shopping center could claim the same thing with reference to their visibility? Mr. Ochab said to a certain extent as you move toward the south the visibility becomes better, since the distance between where you see the building and the sign becomes better as you move toward the south. He feels that Fidelity is under the worse law since they are the most northern tenant and get the least exposure with the building. Mrs. Peterson feels that the other stores west of Bil a Bong will have no visibility going south.

Mr. DeNofa doesn't feel that the sign on the northern end of the building will help the visibility on Rt 35 only Patterson Ave, and he doesn't feel that it will assist the applicant. Mr. Ochab explained that the visibility on Patterson Ave will give Fidelity another way of being noticed and another way for the public to clearly identify where they are located, since Patterson Ave is a connector road to Broad St., and it will give a clear identification as to where the facility is and a way to get to the facility without going back onto Broad St. Mrs. Peterson again stated that the same would apply for Elegant Lighting and The Loft which is located in the shopping center. Mr. Ochab stated that Fidelity is the only tenant space at the northern edge of the building.

Mr. Hartmann referred to exhibit A2: photo 3 and stated that there is a tree which is going to obscure the visibility for 6 months out of the year. Mr. Ochab said that the same could be said for the Broad Street sign.

Mr. Forrester asked Mr. Ochab if the reason for the C1 variance is that the hardship is the existence of the new rental space that was constructed after Fidelity moved in? He asked if that situation is created by the land owner? Mr. Ochab said yes. Mr. Forrester said that the hardship is for the tenant and not the landowner. Mr. Ochab said that the tenant is the applicant here. Mr. Forrester stated that the variance will run with the land, not the tenancy. Mr. Carlson said that is the case, but this is similar to the "Lang Case" where you have a lawfully existing structure, which it is the structure that creates the hardship upon the property owner, and so long as the structure is lawfully Mr. Forrester said that the hardship here is not on the property owner, the hardship is on the tenant, not the property owner. Mr. Carlson said that the hardship is actually on the land as a result of this now lawfully constructed..... Mr. Forrester said that it was created by the land owner, he built the building. Mr. Carlson said that may or may not be, but it is a lawfully existing structure, but he doesn't know if that is a relevant inquiry. Mr. Forrester said it is, because it is a self created hardship. Mr. Carlson said that it wasn't self created by Fidelity, and secondly it is now a lawfully existing structure, and when you have an existing structure existing on a land that structure, as the Lang case points out can operate to create the hardship. Mr. Forrester asked why wasn't that raised at the time of the site plan application to build the building? Mr. Carlson said that he cannot speak for the developer of the property. Mr. Forrester said because it deals with the ownership of the land not the tenancy. What Mr. Ochab is addressing is the hardship of tenant, not the hardship of the property owner. The property owner created that situation, and that is what a "C" variance addresses is ownership not tenancy. Mr. Carlson said that it is actually it is not the ownership it's the hardship that is existing on the land. The hardship is a physical feature or existing structure on the land itself, which is what we have here. The hardship must be a hardship to the property, which is what we have here, a lawfully existing structure which blocks visibility of a portion of the property. Mr. Forrester said that it was created by the "person" who owns the land. Mr. Carlson said that may be, but it is now a lawfully existing structure. He is now here as a representative of tenant. Mr. Forrester said that the burden here is the landlord created this problem, and the Land Use Law doesn't address the tenant's rights, your Lease should address the tenant's rights. Mr. Carlson said that he understands that this may or may not be addressed in a Lease, but if it is Fidelity will handle that as a separate matter all together. None the less... Mr. Forrester again stated that this is a hardship of a tenant not a hardship of an owner, which is addressed under C1 under the MLUL.

Mr. Ochab gave the reasons for granting of a C2 variance. He feels that since the building is now exposed to Patterson Ave it would be a benefit to the public to have clear identification of businesses, a clear identification of how to get to that business and exposure to the northern parking area, which is where the Fidelity customers are now parking. It is clearly a benefit to the public to clearly locate where the business is and get to the business in an efficient manner, a safe manner without any confusion as to where the business is located. It is his opinion that there wouldn't be any detriment to placing the sign on the northern wall since it is a very small sign of less than 3% of the building façade, and would give a clear identification of the business location.

Mrs. Peterson asked if there was a temporary sign on Patterson Ave listing the stores in the shopping center. Mr. Ochab said there was but it is now gone.

Mr. Ochab stated that the pictures that were presented show that there are other businesses in the Borough which have signs on more than one wall. They are mostly corner buildings like Fidelity; they normally face out or into parking lots. In fact, Bil a Bong has 2 signs one in the parking lot and one toward Broad Street. He feels this request would be consistent with the signage pattern that has developed in the Borough.

Mr. Carlson asked Mr. Ochab to address the negative criteria. He stated that there wouldn't be any significant impact areas from the location of the sign. He doesn't feel that the public good would be affected, at least not substantially from the location of the sign where it is proposed. The sign is consistent with other signs on commercial buildings. They are consistent with the pattern of development; and it is his opinion that there would not be any substantial impairment to the Zone Plan if the board were to look favorably on the variance application.

Mr. Ochab pointed out that Section 12, under the Sign Ordinance does allow a 2nd façade sign, permissive in terms of the municipal agency granting approval for it. The applicant did review it and felt that there should be some flexibility in terms of how they are proceeding because of that particular clause.

Mr. Forrester asked if there as any reason that this variance was not made at the time of the site plan application, because the Planning Board could have granted the variance? Mr. Carlson said that would be a question for the developer and not the tenant.

Mr. Carlson stated that the applicant would accept a condition of approval that the 2nd façade sign would only apply to Fidelity Investment and would not run with the land to another tenant. Mr. Forrester doesn't think that it would be enforceable.

Mr. Carlson stated that a finding of fact is that the nature of Fidelity's business and that they service travelers, which needs a high visibility and therefore the sign would run with Fidelity's tenancy. Mr. Forrester said that the applicant did present testimony that the "users" are not familiar with the area and is not necessarily where they go

A motion was made by Mr. Connors, seconded by Mr. Walsh to open the meeting to the public. All approved.

Mr. Carlson asked for a brief adjournment to meet with his client.

A motion was made by Mrs. Peterson seconded by Mr. DeNofa to close the meeting to the public. All approved.

Break 9:20pm to 9:35pm. All present at roll call.

Mr. Carlson stated that his client will stipulate that the signage rights would run only with Fidelity's tenancy, and they will make specific findings to back the condition up to make it forcible.

Straw Poll:

Mr. Walsh stated that he would not be in favor of the variance request. He feels that keeping the parking area quiet and simple as it has been maintained. He would have a hard time approving the request.

Mr. DeNofa agreed with Mr. Walsh's comments. He feels that having another sign is too much with the playground and the children.

Mrs. Peterson feels that the sign will impact the residents on Glorney Street, especially the resident on the corner of Glorney & Patterson Ave. She doesn't see any difference in the lack of visibility traveling south than any of the other tenants, since she feels that all of the tenants are equal with the visibility coming south, and she doesn't feel that Fidelity is any more or less affective by the placement of the Bil a Bong store, and can see the other tenants following suit for additional signs as well. Too much of an impact on the residents is too great.

Mr. Connors feels that Fidelity has been operating for a long period of time, and most of the customers do travel south/north on Rt. 35 and there won't be a great number of customers traveling down Patterson Ave, and he is not in favor of placing the additional sign on the building.

Mr. Hartmann stated that the board is trying to discourage additional signs, he doesn't even know if all of the other "2nd signs" on other buildings are legal, but he doesn't feel that any will come out of the 2nd sign facing Patterson Ave, since Patterson is a 25mph and is strictly enforced, and he doesn't feel that there will be much traffic on Patterson Ave and it would disturb the neighborhood, therefore, he would be against the application.

Mr. Carlson feels that they have met the criteria for a hardship variance under C1 and there is a hardship that was created upon Fidelity as tenant. The hardship was created as required by law upon specific piece of property, which is the case law for a C1 variance. With regard to the C2 variance they believe that there would be several purposes to the MLUL that would be served by this application, safety & convenience to the motoring public. There would be no detriment to the public good. There would be an adequate buffer to the residents of Glorney St.

Mr. Carlson stated that after the straw poll vote he would like to have the application adjourned in order to return to the board with additional information or a revision to the application.

Mr. Forrester announced that this application would be adjourned to the **May 7, 2007 meeting** without further notice.

A motion was made by Mrs. Peterson, seconded by Mr. Walsh to adjourn the meeting at 9:40 pm. All approved.