

Borough of River Edge/ Municipal Land Use Board

Meeting Minutes
November 9, 2017

PRESENT:

Chair	James Arakelian
Vice-Chair	Richard Mehrman
Mayor	Edward J. Mignone
Board Member	Eileen Boland
Board Member	Lou Grasso
Alt. Board Member	Chris Caslin
Attorney	Kara A. Kaczynski (For Brian Chewcaskie)
Zoning Official	Mark Skerbetz

ABSENT:

Board Member	Councilman Vito Acquafredda - Excused
Secretary	Dr. Jeffrey Gewirtz - Excused
Board Member	John Monroe - Excused
Alt. Board Member	Michael Krey - Excused
Engineer	Robert Costa - Excused
Planner	Tom Behrens - Excused

Opening

The Work Session Meeting of the Borough of River Edge/ Municipal Land Use Board was called to order at 7:35PM on November 9, 2017 by Chair James Arakelian.

Salute to Flag – Board Member Lou Grasso

Sunshine Law (Open Public Meetings Act)

Adequate notice of this meeting has been provided by sending notices on December 23, 2016 to The Record and The Ridgewood News, by posting on the bulletin board in the lobby of the Borough Hall, and filing a notice of the same with the Municipal Clerk.

Roll Call by Attorney Kara Kaczynski - A quorum was established.

Work Session

Approve the Historical Resolution – Motion by Mr. Caslin, second by Mayor Mignone.

All in favor 5-0 (Mr. Mehrman was unable to vote, he abstained on this application).

Completion Review:

A. Tarikbin OK - 364 Lee Avenue – Block 1002, Lot 54 Application for a 6' high fence

Mr. OK stepped forward along with his attorney Jaclyn D'Arminio with Rubin & Dombeck. (141 Ayers Ct., Suite B., Teaneck, NJ 07666).

Attorney D'Arminio apologized for being late, but said that she didn't know where the error happened - they were noticed for 8:00PM.

Attorney Kaczynski stated that they would need to wait until 8:00PM to hear the application.

Attorney D'Arminio said she agrees with Council.

Chair Arakelian asked if they could move forward with the completeness of this application.

Attorney Kaczynski stated that was correct.

Mr. OK stated his name - Tarikbin OK and he lives at 364 Lee Ave, in River Edge, NJ. He moved in 2 years ago.

Attorney D'Arminio stated that Mr. OK lives on a very unusual piece of property that has 3 front yards, (like a peninsula). It is located on Lee Ave., The Fenway & Howland Ave. Because of this he has very limited space to fence in for his children to play and a private area for his family to entertain that is within the ordinance. Therefore; he is looking to fence in a portion of the Lee Ave. (technically) front yard for his children to play and be safe. The fence would be 6' high and it would also be a solid fence.

Zoning Official Skerbetz asked for clarification as to where Mr. OK wants the 6' fence - the plans that he approved were color coded.

Attorney D'Arminio stated that she had a color copy and handed it out to the Board.

Chair Arakelian asked Zoning Official Skerbetz if what is marked in yellow is what he deemed to be in accordance.

Zoning Official Skerbetz stated that this was not the plan he approved; however, he asked Attorney D'Arminio if the yellow represents the 6' fence they want to put up.

Attorney D'Arminio said yes.

Zoning Official Skerbetz said that almost all of it needs a variance. About 15-20' towards the rear does not need a variance, but the remainder of the yellow does (which is about 80-85%).

Attorney D'Arminio said that it was her understanding that the ordinance stated that a 6' fence can exist beyond the front line of the structure in the front yard.

Zoning Official Skerbetz stated that is correct.

Chair Arakelian asked Zoning Official Skerbetz if he was satisfied that the application is complete and can be heard at 8:00PM.

Zoning Official Skerbetz said yes and thinks it is an accurate representation.

Mayor Mignone stated that the configuration on the new survey is very different than the one they had last week and that this one has sections of 3' and sections of 6'. He asked Zoning Official Skerbetz if he was clear as to what is there and what they are proposing.

Zoning Official Skerbetz stated that it is different and asked if what is there now is 2 portions of the fence that is existing.

Attorney D'Arminio said yes. She also said that when Mr. OK first moved in he erected a fully conforming fence that surrounds the area - a portion is going to be removed and then used to extend the fence to the proposed condition.

Zoning Official Skerbetz said so your plan does not show a current fence, it just shows a portion of a stockade or chain link fence, not a solid fence.

Attorney D'Arminio said that is correct.

Zoning Official Skerbetz asked if Mr. OK was planning on taking down the fence that was erected by approval.

Mr. OK said that he was keeping what was approved and will just take down two on the side. He stood up with the drawing and showed the Board what he is planning on doing. He is removing the side fence and extending towards the yellow line.

Vice-Chair Mehrman said that according to the drawing that was handed out, it looks like the yellow line comes down Mr. OK's property line on Lee Avenue, over to the front building line. It is going to meet the northwest corner of the building.

Mr. OK said yes, even though the address says Lee Ave.

Vice-Chair Mehrman said he was aware of that and asked if the handout they were given tonight was what they are proposing and the other drawings are meaningless.

Attorney D'Arminio said that yes that was her understanding.

Mayor Mignone stated that he wanted to go back to the original submission and what did the question mark represent.

Zoning Official Skerbetz stated that it was either his or Nicole's markup, because at the time they did not know how high Mr. OK wanted the fence.

Mayor Mignone asked when a permit is issued isn't there a very clear representation.

Zoning Official Skerbetz said yes and it is the colored mark-up one that he originally approved.

Mayor Mignone said that maybe they should coordinate with the Building Department because that would have been helpful.

Mr. Mehrman stated that the front door is on The Fenway and that this is an unusual lot because it has three frontages. He asked looking at what was handed out tonight there is a 6' high currently erected and in the rear yard facing Howland on the hand out what happens to that piece.

Mayor Mignone said they are going to keep that piece.

Chair Arakelian said let's not get too far ahead of ourselves we just want to make sure that we can hear this tonight.

Mayor Mignone stated that they are trying to figure out what is going on.

Attorney D'Arminio said that the existing fence comes to the southeast corner of the house and out to the rear lot line and encloses what is permitted in that rear area. The new configuration will go from the southeast corner of the house to the rear lot line across and continue around onto the property of Lee Ave. and jogging back in so it doesn't come any more forward than the northwest corner of the existing structure which would put it in front of the house so it is not coming in front of the house on that end.

Vice-Chair Mehrman asked if that was the only fencing they were discussing tonight.

Both Attorney D'Arminio and Mr. OK said yes.

Vice-Chair Mehrman said so no front yard on The Fenway.

Attorney D'Arminio and Mr. OK said correct no front yard on The Fenway.

Attorney Kaczynski asked about the question mark on the old drawing, it says approved height and it looks like it's pointing at a hard line going all the way around Howland and The Fenway that is not a fence that is just a question.

Zoning Official Skerbetz said it is not a fence. He also said the survey with the representation of what they want to do tonight predates the fence installation they approved in June.

Mayor Mignone asked what was approved in June because it is still unclear, and asked if the chain link fence was still there.

Zoning Official Skerbetz said he approved the boxed in area in the rear yard. He also approved the 3' in front where he wants to put the 6', and that the chain link fence is no longer there.

Attorney D'Arminio asked Mr. OK if the only thing there now was the 6' fence behind the house.

Mr. OK said yes.

Attorney D'Arminio asked Mr. OK if the only thing there right now is a completely conforming 6' fence that boxes in their rear portion of the house and was approved by the Building Department because it was completely conforming.

Vice-Chair Mehrman said that was dated 6/9/16. He asked if there was any action taken on a 3' on the front yard.

Zoning Official Skerbetz said he approved the 3' almost square section on the north of the house and apparently they did not install that. Zoning Official Skerbetz then showed the Board on the drawing what he approved.

Mayor Mignone asked what was happening on the corner – there was a 3' along the curb line and then another 3' piece coming north and then east they are not connected.

Zoning Official Skerbetz said it was an option for him and he didn't erect the 3' section.

Attorney D'Arminio asked Mr. OK if he had a 3' fence on his property.

Mr. OK said no.

Chair Arakelian asked to be clear the yellow line on this drawing is what we are looking at.

Mr. OK said yes.

Attorney Kaczynski said that what they can do is the Board can have them agree to testify that they will forgo any prior approvals, permits, etc., for any existing fencing starting from scratch and this is what they are proposing to do.

Chair Arakelian said this is what he wants and this is what the Board will discuss during the meeting.

Attorney D'Arminio said the southern portion and the eastern portion of the fence is to remain he isn't knocking it down, he is just adding.

Chair Arakelian said if it was 3' he wouldn't be here, but because it is 6' that is why he is here.

Chair Arakelian said ok let's go for completeness.

Vice-Chair Mehrman said providing this handout tonight represents officially what is proposed.

Chair Arakelian said yes.

Vice-Chair Mehrman said ok so this drawing has to be marked as an exhibit.

Attorney Kaczynski said she would do it during the Regular Meeting

Motion for completeness – Motion by Mr. Caslin, second by Mr. Mehrman.

All in favor 6-0

Chair Arakelian asked for a motion to close the Work Session – Motion by Mr. Caslin, second by Mr. Grasso.

All in favor 6-0

Chair Arakelian called to order the Regular Meeting of the Municipal Land Use Board at 8:00PM.

PRESENT:

Chair	James Arakelian
Vice-Chair	Richard Mehrman
Mayor	Edward J. Mignone
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Board Member	Lou Grasso
Alt. Board Member	Chris Caslin
Attorney	Kara A. Kaczynski (For Brian Chewcaskie)
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ABSENT:

Board Member	Councilman Vito Acquafredda - Excused
Secretary	Dr. Jeffrey Gewirtz - Excused
Board Member	John Monroe - Excused
Alt. Board Member	Michael Krey - Excused
Engineer	Robert Costa - Excused
Planner	Tom Behrens - Excused

Roll Call by Attorney Kaczynski - A quorum was established.

**A. Tarikbin OK - 364 Lee Avenue – Block 1002, Lot 54
Application for a 6’ high fence**

Mr. OK stepped forward along with his attorney Jaclyn D’Arminio with Rubin & Dombeck. (141 Ayers Ct., Suite B., Teaneck, NJ 07666).

Attorney D’Arminio said that this application involves a very unique and unusual property in River Edge. This property has 3 front yards and as a result of this Mr. OK has a very limited space in the rear to provide a safe and private space for this family to enjoy. They are here to expand that space and to utilize that property that is the front on Lee Ave. He is looking to erect a 6’ fence in the front of the yard, which is currently open to anyone driving down the three roads that surround it. She said she has Mr. OK, the property owner, and he is the only person she has to testify.

Attorney Kaczynski swore in the witness, Mr. Tarikbin OK (who lives at 364 Lee Ave., River Edge, NJ 07661).

Attorney D’Arminio asked Mr. OK if 364 Lee Ave. was the subject property.

Mr. OK said yes.

Attorney D'Arminio asked what his relationship with the property is.

Mr. OK said he owns the property.

Attorney D'Arminio asked who with.

Mr. OK said his wife and 3 three children.

Attorney D'Arminio asked what the ages of his children were.

Mr. OK said he has twin girls (5 years of age) and a son (6 years of age).

Attorney D'Arminio asked how long he has lived there.

Mr. OK said almost 2 years.

Attorney D'Arminio asked Mr. OK to tell the Board about the property.

Mr. OK said they fell in love with the house, and originally they weren't thinking about buying a corner house, but they just fell in love with this house. They also fell in love with the town.

Attorney D'Arminio asked how many streets does it front on.

Mr. OK said three.

Attorney D'Arminio asked if he can name them for the Board.

Mr. OK said Lee, The Fenway & Howland.

Attorney D'Arminio asked Mr. OK to explain why they are here today.

Mr. OK said because as discussed earlier he wants to put a fence up for the privacy and safety of his children. When he first moved in he tried to put up the fence and they told him he needed a permit (he never owned a home before). He went to the Building Department and Zoning Official Skerbetz was very helpful and he said you can do this and that, but not this (that is why all the markups on the original plan). He didn't want to delay the privacy and use of the land for his kids that is why he put up the 6' fence where it is now, and he said maybe in the future he would get a variance.

Attorney D'Arminio handed Mr. OK a document and asked him to identify it.

Mr. OK said it was his property survey.

Attorney D'Arminio asked Mr. OK what the date of the survey was.

Mr. OK said it was 1/26/2016.

Attorney D'Arminio asked Mr. OK if there was a revision date on the survey.

Mr. OK said yes, it was 5/27/16.

Attorney D'Arminio asked Mr. OK, if to the best of his understanding, does this survey accurately reflect the location of the structures on his property and the location of the proposed fence.

Mr. OK said yes.

Attorney D'Arminio stated that she would like to have this survey entered into evidence as Exhibit A-1.

Attorney D'Arminio asked Mr. OK if this was his intended configuration for the proposed fence.

Mr. OK said yes.

Attorney D'Arminio asked Mr. OK what the color, on the survey, was the intended color.

Mr. OK said the line is yellow.

Attorney D'Arminio presented Mr. OK with another document and asked him if he recognized this document.

Mr. OK said yes, it is the fence that he has on the back of his property.

Attorney D'Arminio asked Mr. OK to point out which fence on the piece of paper is the fence that he is proposing.

Mr. OK said it was on page 4 the upper left picture.

Attorney D'Arminio asked Mr. OK if the document was in color.

Mr. OK said yes.

Attorney D'Arminio handed out a copy to each of the Board members.

Attorney D'Arminio asked Mr. OK if the fence he pointed out in the document represented the fence that he had on his property now, and also what he was proposing.

Mr. OK said yes.

Attorney D'Arminio asked that this document be marked as Exhibit A-2.

Attorney Kaczynski asked for clarification - the fence they are talking about (on the top left of Exhibit A-2) is called Oklahoma.

Mr. OK said yes.

Attorney D'Arminio asked Mr. OK to describe what he is proposing.

Mr. OK said that he wants a safe space for his children and they are very active. Even though he and his wife are out there with them, because there are 3 children he is afraid if he doesn't put up a fence they may leave the property, or with the cars passing by it can be dangerous. That is why he wants a 6' around his property so they can play safely.

Attorney D'Arminio asked Mr. OK to explain why a 3' fence would be insufficient to meet his goal.

Mr. OK said he is afraid they may throw something over it, or they may even try to climb it. So rather than worry that a 3' isn't tall enough, he decided to go with a 6' fence.

Attorney D'Arminio asked Mr. OK if the space he has boxed in right now is sufficient enough for his family.

Mr. OK said no because they have one umbrella, a table and a few chairs and that's it, and sometimes his children go crashing into it. He said he is not trying to be greedy, but he wants a little area for his kids to play and he feels that this is the best spot. He feels that Howland and The Fenway are main roads so Lee Ave. would be the best spot for the fence.

Vice-Chair Mehrman stated that he wanted to get some clarification on the record. He said currently there is a 6' high solid vinyl fence enclosed on three sides in the rear of the yard now. He said briefly describing that it goes along the east property line and returns to the northeast corner of the building and it also returns to the southeast corner of the dwelling. He said that was approved by the Building Dept. last June (6/9/2016). That was installed and it was approved by the Borough. He said now Mr. OK is proposing to alter and extend that installation and the alteration would be the removal of the portion that returns from the rear yard to the northeast corner. From that northeast corner that exists he is proposing to extend a 6' high fence that follows the rear property line which makes a jog to the east and then returns to the Lee Ave. frontage at which point according to Exhibit A-1 they are proposing to extend the same 6' solid vinyl fence along the Lee Ave. property line to a point where it will turn south and intersect near the dwelling at roughly a corner of the driveway and the dwelling. He further stated for record purposes Howland Ave. is going to remain the way it is currently. That is what Mr. OK is

proposing and requesting from the Board, the 6' vinyl, which is described in Exhibit A-2. Mr. Mehrman said that Mr. OK's property along the east boundary line enjoys very dense and high evergreens – He asked Mr. OK if he would really need 6' high there. He said the whole rear yard has some of the tallest evergreens in the area, and they are very dense as well. He explained that it is along the rear yard currently where the 6' high is if you went straight out to Lee Ave., there is a large evergreen buffer there.

Mr. OK said yes they are tall, but they are also old and the deer go in there.

Vice-Chair Mehrman asked if a 3' fence would be more appropriate to keep the children safe.

Attorney D'Arminio asked Mr. OK how big a fence he would need to keep his children from going through there.

Mr. OK asked what your saying is between the fence and the trees that would prevent the children from going over.

Vice-Chair Mehrman said yes.

Mr. OK said originally they might not even be thinking about going over the 3' fence, but he was thinking they might. He further stated that it is for cosmetic reasons – the look of going from a 6' to a 3' and then going around 6' again.

Vice-Chair Mehrman said that they will get to that point. He said his whole point is that at least along the east property line he doesn't think they need a 6' high fence for retaining the children.

Attorney D'Arminio said a 6' high fence may not be appropriate for retaining the children, but again in terms of impact on the neighbor and the aesthetics of having a fence that jogs, she believes that Mr. OK has a point.

Vice-Chair Mehrman said that to him the jog is meaningless. He is looking at the practicality of what is being proposed along the east line.

Attorney D'Arminio asked Mr. OK if the evergreens were on his property.

Mr. OK said the big trees are.

Mayor Mignone said that he is looking at the survey and there seems to be a boundary dispute because Lot 53 is claiming it's here and their deed says the line is here so there is a disputed area in the middle.

Mr. OK said yes it is a weird shape and that he and his neighbor talked about it. She planted a tree on the corner and it is actually on his property and he promised her that he would not take it down and that he would go around it.

Attorney D'Arminio said that the property is showing the hard boundary lines are the boundary lines that are understood to be the existing boundary - there does appear that there may still be a gore in between the two properties. She said that she believes that it has been resolved with Mr. OK's neighbor, but the one to the left is his recognized property line.

Chair Arakelian stated that they are not using any of the prior drawings, they are only going off the one that was presented as Exhibit A-1.

Vice-Chair Mehrman said that as the Mayor pointed out the survey that is presented as Exhibit A-1 has been amended 2 times.

Attorney D'Arminio said yes.

Mr. Grasso asked if the proposed fence that runs along Lee Ave. how close is that going to be to the edge of the property line.

Attorney D'Arminio said that it is going to be on the property line, and she believes under the code it has to be, which is within a foot of the property line.

Zoning Official Skerbetz said just the 12".

Mr. Grasso asked if there was a sidewalk there.

Attorney D'Arminio said yes there is a spacing of grass and then a sidewalk that does not belong to the property.

Mayor Mignone said that it looks like 10' from the property line to the curb line.

Vice-Chair Mehrman said that they didn't clear up his question about the fence height along the east.

Attorney D'Arminio said that she understands what Vice-Chair is saying that trees will stop children, but there is a legit argument that it would actually be more harmful for the neighbors visually to drop to a 3' fence at that point and part of the negative criteria is to consider the impact that it has on the neighbor and continuing a 6' fence would have more of a positive impact than dropping to a 3' fence.

Vice-Chair Mehrman asked Attorney D'Arminio if she was concerned about the look of the fence with the neighbors.

Attorney D'Arminio said that it is something to consider. It is not only something that her client would prefer but for the neighbor you are looking at the negative impact and at that point - allowing the variance provides a better impact for the neighbor than dropping 3' at that point.

Mr. OK stated that another safety issue would be that the children climb on the 3' fence to get to the tree.

Vice-Chair Mehrman said based on that they are really asking for a 6' high fence all over.

Mr. OK said you mean the entire yellow line – yes, if it is possible.

Vice-Chair Mehrman said for their information he lives in the neighborhood beyond 200' and has been there since 1984 and so he knows the area and considers himself a neighbor and a 6' fence along Lee Ave., is not conducive to his thinking from a visual and esthetic standpoint. If Mr. OK wants to maintain a 6' high fence for the reasons he stated, he would ask, as a neighbor, that the setback line that is shown on his drawing along Lee Ave. be more appropriate.

Attorney Kaczynski asked Mr. Mehrman for the record he doesn't live within 200' of the property.

Vice-Chair Mehrman stated that he does live more than 200' feet away.

Attorney Kaczynski asked Mr. Mehrman if he could review the application impartially.

Vice-Chair Mehrman said that is correct.

Vice-Chair Mehrman said if Mr. OK really wants a 6' high fence he thinks a more appropriate location along the Lee Ave. side would be where the setback is.

Attorney D'Arminio asked for a minute with her client, but before she did that she would like to know if the Board had any other comments.

Mayor Mignone said he had a few questions and wanted to know if they were putting a gate on the front where the walkway is.

Mr. OK said yes.

Mayor Mignone asked if there would be a gate on the other side.

Mr. OK said no but next to the gate on the front where the walkway is there would be a two door gate in case a lawn mower was going through.

Mayor Mignone said if you're looking at the front of the house the fence being proposed to the left there will be a gate and then there is a double gate next to that and there is no gate on the other side of the house.

Mr. OK said that is correct.

Mayor Mignone asked about the overhang that is shown, is that just an overhang or is there a door coming out that side of the house.

Mr. OK said that it is a door that goes into the kitchen – that's the reason for the fence going there. This way the kids can go out that door and then back around the house.

Mayor Mignone asked if there was a front door, a side door and then a back door.

Mr. OK said yes.

Mayor Mignone asked if Mr. OK had any intention of adding any more impervious coverage (i.e., patio, pool).

Mr. OK said no, he has spent a lot of money on the lawn and trying to make it look nice, so no.

Mayor Mignone stated that he had no further questions.

Attorney Kaczynski said that she wanted to clarify what the Mayor said and that was that the gates would be on the portion of the proposed fence facing The Fenway.

Mr. Ok said yes.

Eileen Boland said that she sympathizes with the three front yards but she was going to make the same suggestion that was made and that was that the fence needs to be pushed back to the setback line if it is going to be at 6'.

Mr. Grasso stated that he thinks it is going to look very unusual driving by and seeing a 6' fence.

Attorney D'Arminio said it is an unusual lot.

Mr. Grasso said it is an unusual lot but people are going to be driving by and comment, and it will be almost ridiculous, in his opinion.

Attorney D'Arminio asked if it would be possible to stretch it a little if Mr. OK put landscaping in front. It would break up the visual.

Vice-Chair Mehrman said he was going to get to that, and it would immensely soften the high fence and he would suggest evergreens, minimum 4' high.

Mayor Mignone asked where are you moving the fence line.

Vice-Chair Mehrman said at the setback line.

Attorney D'Arminio said that was not her question. Her question was would it be possible to earn Mr. OK some additional space if they broke up the line half way with some evergreens. She said she would have to talk to her client about it.

Mayor Mignone asked Zoning Official Skerbetz if there was something like this on Howland Ave. and it does not look appealing. If you're heading west and there is one lot with a house and a big high fence and then a house. He asked if that was because it was a through lot.

Zoning Official Skerbetz said yes.

Mayor Mignone asked if they needed a variance.

Zoning Official Skerbetz said no, he had a legal interpretation several years ago because there are several properties that are through lots on Kinderkamack where the front of the house faces away from Kinderkamack and a 6' fence would not be in violation of the ordinance because they treated it as a backyard because it is a through lot. It is different than a corner lot, and Howland Ave. was the same, and that was about 10 years ago.

Mayor Mignone said that it is not appealing, and he suggests maybe having something that is more open – like the one that is under the Oklahoma – the one with the lattice. It will look more open and he would be more comfortable with that and maybe let them go a little closer. He agrees with the Board, that if there was a 6' fence along the property line when you're coming down the street it would be a little imposing.

Chair Arakelian asked if they agreed to do the lattice could the Board give them a little bit more.

Mayor Mignone said the lattice and maybe if they do a little landscaping and sort of push it back.

Vice-Chair Mehrman said what is a little bit.

Chair Arakelian said that it's 36' from –

Attorney D'Arminio said that it's a 38' setback to the house.

Vice-Chair Mehrman said it's a 25' building setback.

Chair Arakelian said if they gave them from the 25' line - to split the difference.

Vice-Chair Mehrman said no.

Chair Arakelian said maybe 8' more feet.

Mayor Mignone said that they don't want to make it impractical for Mr. OK.

Chair Arakelian said yes you want to give him a little bit.

Mayor Mignone said if you put him on the setback line he really isn't getting any more space than what he has now.

Chair Arakelian said maybe give him another 7' or 8' he could come across, he would still have the buffer where he can put some "green" in front of it which would screen it a little and then have the lattice on top to give it a little more open feel. It will then give him the backyard that he needs, which is what he is trying to achieve – a backyard for his kids because he doesn't have one. Chair Arakelian asked Attorney D'Arminio if her client would be willing to change the fence.

Attorney D'Arminio said that she would have to ask him. She doesn't know what the price difference is, or if he knows what the price difference is.

Vice-Chair Mehrman said that he has an alternative. He said right now they are showing a 25' setback along Lee Ave. in his previous comment they discussed locating the fence along the setback line. The alternate would be instead of being 25' they come 20' - they run that along Lee to what is the intersection of The Fenway take that same 20' back until they hit the corner point of the property and then go over to that corner.

Attorney D'Arminio said you are suggesting 5' in front of the setback line.

Vice-Chair Mehrman said correct.

Chair Arakelian said and then just draw completely across to where the yellow line is now so at 5' you are losing 20'.

Attorney D'Arminio said that before she goes with her client she is trying to understand. There was talk of landscaping, and changing up the fence. If they do that, would it be possible to keep the original fence and put up landscaping.

Vice-Chair Mehrman said from the location standpoint just discussed a 20' back from Lee Ave., paralleling Lee Ave., intersecting The Fenway where it was proposed and then

intersecting the rear yard (clip off the little triangular corner for practical purposes might be a good consideration). From the landscaping standpoint (he is speaking for himself, not the Board) he wants to see 3 ½' – 4' evergreens along the fence. If for some reason it is agreed to do the Oklahoma one (below the one originally picked out). The Oklahoma mini lattice topper, he believes the evergreens could be lower.

Attorney D'Arminio said in white, not the tan as shown.

Mayor Mignone said they could pick whatever color they wanted.

Attorney Kaczynski asked Zoning Official Skerbetz about ordinance provision 416-29b(2) that talks about fences within a radius of 25' from the corner of any intersection of two or more roads, in those situations it can't exceed 2 ½'. Is that the issue on the intersection of Lee and The Fenway.

Zoning Official Skerbetz stated that he would not enforce it on the intersection of Lee and The Fenway as an intersection. It has to be 25' from the intersection of the two property lines. It is one variance - it's a fence that is 6' in the front yard.

Attorney Kaczynski asked so it would require a variance for both of those requirements. She couldn't tell what the radius measurement would be.

Vice-Chair Mehrman said he is showing a 30' setback line from The Fenway to the corner of the building so if they look at that he will be ok.

Attorney D'Arminio stated that the 25' building setback line is there.

Vice-Chair Mehrman asked since they are looking at landscaping the 6' high that is existing along Howland currently that is going to remain in the proposal.

Mr. OK said yes.

Vice-Chair Mehrman said that a couple of evergreens right there would be nice, it doesn't look good and originally the builder took down the evergreens that were there.

Mr. OK said yes, but they were trees.

Chair Arakelian asked Zoning Official Skerbetz if he had any questions.

Zoning Official Skerbetz said no.

Chair Arakelian asked if anyone on the Board had anything else to add.

Mayor Mignone asked if everyone was in general agreement with what was said and/or did anyone else have anything else to add. There is a consensus that the Board wants to pull it back, and screen it a little better and the type of fencing. Those are three variables looking to be changed.

Mr. Grasso asked if the 2 ½' fence at the intersection of two roads does that have to do with the line of site.

Attorney Kaczynski said she didn't know what the intention was when the ordinance was drafted.

Mayor Mignone said he didn't think that would be an issue at that corner.

Vice-Chair Mehrman said in his opinion not at that corner, the real issue would be at The Fenway and Howland, but they are not touching that.

Chair Arakelian asked if there were any questions, concerns or comments. He said his personal opinion would be that he would give them a couple of more feet. 5' off the line is ok, he thinks maybe 8' off the line would be ok, but that's his opinion. He asked that Attorney D'Arminio and Mr. OK discuss what they want to do and they will reconvene.

Chair Arakelian asked for a motion to open the meeting to the Public – motion by Mayor Mignone, second by Vice-Chair Mehrman.

All in favor 6-0

Since there was no one in the Public -

Chair Arakelian asked for a motion to close the meeting to the Public – motion by Mayor Mignone, second by Vice-Chair Mehrman.

All in favor 6-0

Chair Arakelian asked for a motion to allow for a 5 minute recess – motion by Mr. Caslin, second by Vice-Chair Mehrman.

All in favor 6-0

Chair Arakelian asked for a motion to re-open the meeting – motion by Vice-Chair Mehrman, second by Mr. Caslin.

All in favor 6-0

Chair Arakelian said we are now back open and it is 8:50PM and he wanted to let Mr. OK know that he does not have to go along with anything that was said, he can bring forward a final plan of whatever he wishes and let the Board vote on it on its merit. They talked about some modifications that he may want to consider, but he certainly doesn't have to go along with it. It is not mandatory.

Attorney D'Arminio said that her client is looking to create a space for his children to play in and is safe and private for his family. He would be most comfortable to meet half way. He is proposing to bring back the fence line that is on Lee Ave. that is still the same line facing The Fenway. On Lee Ave halfway between the setback line and the front line providing 4' for planting evergreens in front of it. That is what he is comfortable with and he feels that the planting of the evergreens will continue to grow and provide that visual barrier and still provide ample space for his children to play. Again this is a very unusual lot. This is not like a corner lot where there is a second side that they can fence and provide a space for their children to play. They don't have a side yard at all and it is not a small lot there is ample space on the property for his children to play but because this property is surrounded by roads it is not safe, and what he is permitted to do by law really squanders the potential of his property and the potential enjoyment of his property. They think that this application with the modifications is reasonable - it satisfies both the C1 and C2 criteria. This property is a hardship and that's what variances are created for. Situations when you have lots where having to conform to the ordinance would result in a hardship because the ordinance isn't designed to deal with a lot like this. This lot is simply not in the Borough's ordinance, there is nothing in the ordinance with a lot with three front yards. It deals with through lots, it deals with corner lots, it deals with conventional lots, but it does not deal with lots with three front yards. Once you establish that hardship you look for the negative criteria and that negative criteria is the impact on the neighbor and that impact on the neighbor has to be substantially detrimental. Her client understands that the fence on the lot line can be undesirable that is why he is willing to pull it back, and why he is willing to break it up with landscaping and he is ready to commit to that, but he wants to be able to provide ample space for his very active children. To make use of the property safely and that satisfies the C2 criteria where you are dealing with a public welfare situation. It won't be just with the children on the lot who might run into the street, but the cars and the people coming through that neighborhood who have to worry about children coming off this lot utilizing an open front yard and running into the street. Fencing the lot in and putting landscaping in. They will leave it to the Engineering Department or the Zoning Officer, or the Board can dictate it now, but 4' high planting will continue to grow. In the end that fence is not going to be the eyesore that the Board is concerned about. That is what her client is proposing and Mr. OK would like the opportunity to have a response to that because the most important thing is that his children have a safe place to play.

Mayor Mignone said that Attorney D'Arminio is arguing that this qualifies for a C1 and a C2.

Attorney D'Arminio said or.

Mayor Mignone asked which one are you arguing.

Attorney D'Arminio said she argues that it satisfies both criteria - You are satisfying the hardship criteria clearly.

Mayor Mignone said you are not a Planner so you shouldn't be arguing criteria.

Attorney D'Arminio said that she is an Attorney.

Mayor Mignone said he doesn't know if she is giving testimony or an opinion.

Attorney D'Arminio said that she is giving a "summing" at this point. She believes it is not an either/or situation and that it does satisfy both criteria.

Chair Arakelian said that before they go on he would like to go to Zoning Official Skerbetz to see if he has anything to add.

Zoning Official Skerbetz said that the attorney asked his opinion on the arborvitae and he would recommend 3-6', it will grow and mesh. It will take a couple of years for this to work. He asked about the part of the fence along The Fenway where are they going to move it back to.

Attorney D'Arminio said right now it is touching that corner of the house and they will keep it and keep pulling the Lee Ave. in tighter but meeting up with that line. If for some reason it is slightly within that 25' radius they would be willing to pull it back so they wouldn't have to drop suddenly to a 2.5' fence.

Zoning Official Skerbetz stated that he would like to make a request of the applicant should this application be approved with the conditions and changes he wants to see a copy of the survey, the changes and a copy of the resolution mailed to him before any permits are issued.

Mayor Mignone said you are proposing going completely parallel to Lee Ave.

Attorney D'Arminio they are going parallel to Lee so that it incorporates the jag.

Chair Arakelian asked Attorney D'Arminio to hold up the survey and show it to the Board – she did – Vice-Chair Mehrman drew on it and asked Attorney D'Arminio to go around and show it to each of the Board members.

Vice-Chair Mehrman said that the distance they are proposing at 12 ½' they still have to discuss - what style of fence are they coming back with.

Attorney D'Arminio said they would continue the existing fence on the side with the higher plants as opposed to lower bushes in front of an open style fence.

Chair Arakelian asked if there was a reason why they wouldn't go to an open style fence.

Attorney D'Arminio said it was for privacy concerns.

Chair Arakelian said that those open style fences are pretty private, and you really can't look in through the lattice.

Mr. OK said if it came down to it he would go with the lattice.

Mayor Mignone said he is not talking about big lattice.

Chair Arakelian said that they can go with the one on top – the tight lattice.

Mayor Mignone said it would give it a little more visual breakup.

Vice-Chair Mehrman said that for the new fencing along The Fenway and Lee Ave. it would be the Oklahoma Lattice, but for the rear yard extension it could be the solid. He stated again on the rear yard it could be 6' solid. But along the Lee Ave. and The Fenway return 6' high Oklahoma Lattice. The Board originally proposed 20' and 5' from the setback and they are coming back with 12 ½' and 12 ½'. He asked about a compromise with 15' from Lee Ave. and 10'.

Chair Arakelian said you are losing 2 ½'.

Attorney D'Arminio said that the purpose of protecting that corner is to protect the lot lines because there had been confusion in the past.

Vice-Chair Mehrman said that the northeast corner - new fence intersection along Lee Ave., the intersection with the rear fence, that corner, whichever you figure out, that corner geometrically is up to Mr. OK and the installer because he is dealing with some sharp angles. He also said a compromise of 15' from Lee Ave. to the fence line which gives him 10' to the setback which is a 2 ½' difference – using the Oklahoma Diagonal Mini Lattice.

Mayor Mignone said to let them select which one they want – something open. The Board shouldn't be telling them what to get.

Vice-Chair Mehrman said that there would be landscaping and it should be along Lee Ave., and The Fenway. He would like to see three bushes along Howland.

Mr. OK said that he really wanted to do it, but there are tree roots there. He said that one of them would cost around \$500-\$600 to remove - So instead he put some mulch.

Vice-Chair Mehrman said that the other option would be to place it forward closer to Howland to avoid the roots.

Mr. OK said he would love to do it, but it would look weird.

Vice-Chair Mehrman said he could stagger them.

Mr. OK said maybe two of them in between the roots.

Chair Arakelian said he is not comfortable with the Board asking for roots to be removed, if a tree comes down.

Vice-Chair Mehrman said that they are old roots and are only roots.

Mayor Mignone said only if it's practical on the Howland side he can do it.

Zoning Official Skerbetz said that when submitting the final plan he wants to see the landscaping on the plan.

Chair Arakelian wanted to summarize it – the setback will be 15' on Lee Ave. He wants to get it on the record what they are asking – 15' from the lot line; going to screen with the lattice fence; and screen it as requested by the Zoning Officer.

Attorney Kaczynski said she has (1) survey to be submitted with changes and a copy of the resolution also showing the landscaping to Zoning Official Skerbetz (2) 4' high evergreens was something Zoning Official Skerbetz said 3-6' center along Lee Ave. and The Fenway (3) evergreens along Howland as per Zoning Official Skerbetz (where practical) (4) they will be permitted to put the solid Oklahoma fencing where the property line abuts lots 53 and 55.

Chair Arakelian asked the rest of the Board if they had any questions or comments.

Mayor Mignone told Zoning Official Skerbetz to clearly delineate the subject to the variance - because if he moves or takes it down the variance stays.

Attorney Kaczynski added (1) the fence is going to be constructed at a minimum of 6"-12" from the property lines along lots 55 and 53 (the new fencing) (2) do they want to address the prior approvals. Her suggestion would be that any prior approvals or permits

are relinquished because they are inconsistent with this proposal being approved by the Board.

Mayor Mignone stated that he would throw in there that it is more of a C1 because of the shape of the lot.

Chair Arakelian said that it will all be in accordance with Zoning Official Skerbetz and that he asked for an updated plan and so forth and it should be delivered before the granting of a permit.

Chair Arakelian asked for a motion to approve with the items that Attorney Kaczynski mentioned (relating to style of fence, the location and the screening on Lee Ave., The Fenway and Howland Ave. and to be approved by the Zoning Officer) – Motion by Vice-Chair Mehrman, second by Mr. Caslin.

All in favor 6-0

Mayor Mignone told Mr. OK that the Board appreciated his willingness to work with them.

Mr. OK said that he appreciates the Board and what they do.

Chair Arakelian stated that the Board wants what's best for the homeowner and the town and it was a pleasure to meet him.

Chair Arakelian asked about the carries.

Attorney Kaczynski said that the only one she had was the original on hearing on ILBJ which was adjourned to the November 30th meeting and new notice was going to be required, but that was done at the last meeting. Kang was adjourned to this meeting, but now it is adjourned again, and she doesn't know when.

Mayor Mignone stated that he recommended it goes back to the Historic Commission to update their disposition.

Chair Arakelian asked Attorney Kaczynski if she could ask Brian if he could send it to the Historic Commission. He also asked for a motion to table the Kang application.

Motion to table the Kang application to the December meeting – Attorney Kaczynski stated the said matter is tabled until the December meeting unless otherwise adjourned-motion by Mayor Mignone, second by Vice-Chair Mehrman. (December 14, 2017)

All in favor 6-0

Vice-Chair Mehrman asked about 620 Kinderkamack – he said what if the Board asked the applicant to submit a letter asking that it be extended to carry otherwise –

Mayor Mignone said that they may be doing a different application.

Vice-Chair Mehrman said that it was a public meeting because Attorney Scott Lorie gave testimony.

Attorney Kaczynski said that they will carry it without further notice to the December 14th meeting – **motion by Mr. Caslin, second by Vice-Chair Mehrman.**

All in favor 6-0

Vice-Chair Mehrman asked if they needed a letter from him.

Attorney Kaczynski said he is not here, and we are giving him the benefit of adjourning it without additional public notice until the December meeting unless it is otherwise determined prior.

Vice-Chair Mehrman asked if they were going to notify him of that.

Attorney Kaczynski said yes.

Vice-Chair Mehrman asked about Johnson Ave.

Chair Arakelian said that they haven't even come back.

Vice-Chair Mehrman asked if there is a need for the November 30, 2017 meeting.

Chair Arakelian said only if they come back before then.

Mayor Mignone said that perhaps Mr. Chewcaskie could call Mr. DeVito to see what the status of the revisions are and then take a poll to see if there is going to be a quorum.

Attorney Kaczynski said that was when they wanted to come back and then the Board said he could carry it and announced that it would be carried to November 30. If there is no meeting, maybe it could be posted on the door. The argument could be that they may have to re-notice, because you're not having the meeting and that was when the notice was carried to.

Mayor Mignone said that someone has to make the determination when they reply if it really is a reapplication because it might have to be withdrawn and redone depending on what they do.

Chair Arakelian said he would speak to Brian. He also asked if anyone had anything else.

No one did.

Chair Arakelian asked for a motion to adjourn – motion by Mayor Mignone, second by Eileen Boland.

All in favor 6-0

Meeting was adjourned at 9:20PM

Minutes submitted by: Carol Byrne

Approved on: Thursday, December 14, 2017