



# Village of Lincolnwood Zoning Board of Appeals

*Special Meeting*  
**Monday, December 21, 2020**  
**7:00 P.M.**

In accordance with the recently adopted amendments to the Illinois Open Meetings Act permitting the Zoning Board of Appeals to conduct a virtual Zoning Board of Appeals meeting, members of the public are allowed to be physically present in the Village Board meeting room in Village Hall at 6900 North Lincoln Avenue, subject to room capacity and social distancing requirements. Accordingly, the opportunity to view the virtual meeting at Village Hall is available on a “first come, first served” basis. Those members of the public present at Village Hall will be able to provide real-time comments in person on the computer available in the Council Chambers. Anyone who does not desire, or who is not able, to be physically present at Village Hall can watch the Zoning Board of Appeals meeting live by visiting the Village website or by clicking [www.lincolnwoodil.org/live-cable-channel/](http://www.lincolnwoodil.org/live-cable-channel/).

Those wishing to submit public comments in writing may do so by emailing comments to [dhammel@lwd.org](mailto:dhammel@lwd.org) prior to the commencement of the meeting. Emails received will be read aloud during the appropriate Public Comment period for each matter on the agenda. We ask that you keep your emailed comments to under 200 words to allow time for others to be heard and for the Board to progress through the public meeting agenda. Thank you for your understanding of these guidelines.

Those unwilling or unable to appear in person but wishing to provide real-time comments to the Zoning Board of Appeals may do so by participating from a remote location through GoTo Meeting. Login information for participating in this manner is as follows:

- WEB-BASED VIDEO PARTICIPATION: <https://global.gotomeeting.com/join/723549189>
- AUDIO-ONLY DIAL-IN: (646) 749-3122, ACCESS CODE: 723-549-189

## Meeting Agenda

1. **Call to Order/Roll Call**
2. **Pledge of Allegiance**
3. **Introduction of ZBA Commissioner Robert Jordan**
4. **Approval of Minutes**  
November 18, 2020 Meeting Minutes
5. **Case #ZB-06-20: 3300-3310 West Devon Avenue – Approval of Variations Related to Building Façade Materials**  
**Request:** Consideration of a request by 3300 W. Devon, LLC, Property Owner, to approve Variations to allow 1) a commercial façade incorporating high-quality materials on less than 75% of the façade area, and 2) allowing the use of an exterior insulation finishing system as a façade material at 3300-3310 West Devon Avenue. During this Hearing, the Zoning Board of Appeals may consider any additional relief that may be discovered during the review of this case.
6. **Next Meeting: January 20, 2021**
7. **Public Comment**
8. **Adjournment**

Posted: December 17, 2020



**DRAFT MEETING MINUTES**  
**OF THE**  
**November 18, 2020**  
**ZONING BOARD OF APPEALS**  
**LINCOLNWOOD VILLAGE HALL AND**  
**VIRTUALLY VIA GOTOMEETING**

**MEMBERS PRESENT:**

Chairman Bruce Heller  
Rizwan Hussain  
Syed Mudassir  
Teodor Strat  
Peter Theodore

**MEMBERS ABSENT:**

Martin Youkhanna

**STAFF PRESENT:**

Doug Hammel, AICP, Community Development Manager

**I. Call to Order/Roll Call**

Chairman Heller noted a quorum of five members, with Commissioners being present at the Council Chambers in Village Hall and/or virtually via GoToMeeting, and called the meeting to order at 7:05 p.m. Development Manager notified the group that Commissioner Chris Nickell resigned from the ZBA earlier in the week.

**II. Pledge of Allegiance**

**III. Approval of August 19, 2020 ZBA Meeting Minutes**

Chairman Heller asked if any Commissioners had any comments regarding the August 19, 2020 meeting minutes. Hearing none, Commissioner Theodore made a motion to approve the minutes as revised, and that motion was seconded by Commissioner Hussain.

**Aye:** Mudassir, Theodore, Hussain, Strat, and Heller

**Nay:** None

**Motion Approved:** 5-0

**IV. Case #ZB-05-20: 6421 & 6425 North Longmeadow Avenue – Special Fence and Variation Approvals for Fences Along Devon Avenue**

Prior to his presentation on the Case, Development Manager Hammel noted the ways by which the public can provide comment to the ZBA as part of this public hearing. He then provided an overview of Case #ZB-05-20. He outlined the subject properties and detailed the non-compliant

fences. He then overviewed the relevant sections of the code (section 3.13) relating to fences. Two ZBA approvals were required to make these fences compliant; 1) approval of special fences on through lots and 2) approval of a variation to allow for a solid fence. Various considerations were then discussed, including other locations in the Village where solid fences abut public streets, and potential conditions of approval based on the location of the fence. Staff recommended that, if the ZBA is inclined to recommend approval of the requested relief, that the Petitioner be required to either relocate fence to the Petitioners' respective properties, or seek approval from IDOT to allow the fences to remain in that location. Such approval should also include a request to remove the existing chain link fence, and an easement agreement to allow the Village to maintain a light pole enclosed by the fence. Development Manager Hammel discussed prior similar cases, variation standards, and stated that staff had not received public comment regarding this request.

Development Manager Hammel reiterated staff's official recommendation as follows, that a recommendation for approval include the conditions presented by staff related to either 1) relocation of the fence or 2) approval from IDOT to place the fence in its current location, removal of the existing chain link fence, and the recording of an access easement to allow the Village to maintain the existing light pole.

The Petitioners, Neil Machaya and Zamir Kothawala, were sworn in. Mr. Machaya stated that the previous fence was in poor condition and this new fence was necessary to keep out debris as well as passersby. The petitioner presented evidence and photos of the old fence and new fence. Commissioners noted that the new fence is similar in size and opacity to the fence that previously existed in the same location. Chairman Heller reiterated the facts of the case and opened the discussion for comment from other Commissioners. Commissioner Hussain said staff's proposal was a fair compromise. Commissioner Theodore asked how frequently the light pole needs to be accessed. Staff was currently unaware of that level of frequency. Chairman Heller asked if there was any additional comments from the public. There were none.

Commissioner Hussain made a motion to approve the requested relief with the conditions presented by staff with the additional condition that IDOT denial would result in the relocation of the fence. The motion was seconded by Commissioner Strat.

**Aye:** Mudassir, Theodore, Hussain, Strat, and Heller

**Nay:** None

**Motion Approved:** 5-0

#### **V. 2021 Zoning Board of Appeals Meeting Dates**

The proposed 2021 ZBA meeting dates were presented by Development Manager Hammel. Commissioner Theodore made a motion to approve the 2021 ZBA meeting dates. The motion was seconded by Commissioner Hussain.

**Aye:** Mudassir, Theodore, Hussain, Strat, and Heller

**Nay:** None

**Motion Approved:** 5-0

**VI. Next Meeting**

The next meeting of the Zoning Board of Appeals is scheduled for Wednesday, December 16, 2020. Chairman Heller noted Commissioner Nickell's resignation and thanked him for his service.

**VII. Public Comment**

The public was asked if anyone participating in the meeting would like to address the Zoning Board of Appeals. Let the record state that no one came forward.

**VIII. Adjournment**

**Motion to recommend adjournment** was made by Commissioner Theodore and seconded by Commissioner Hussain. Meeting adjourned at 7:59 p.m.

**Aye:** Mudassir, Theodore, Hussain, Strat, and Heller

**Nay:** None

**Motion Approved:** 5-0

Respectfully submitted,

Jake Litz  
Management Analyst  
Fire Department/Community Development



## Zoning Board of Appeals Staff Report

### Case #ZB-06-20

December 21, 2020

**Subject Property:**  
3300-3310 West Devon Avenue

**Zoning District:** B-2 General  
Business

**Petitioner:** 3300 West Devon, LLC,  
Property Owner

**Requested Action:** Variation to allow  
the use of an exterior insulation  
finishing system (“EIFS”) as an exterior  
building material.



**Nature of Request:** The Petitioner seeks a Variation to allow for the use of an exterior insulation finishing system (“EIFS”) as an exterior building material on a structure being renovated as an event space/dining hall.

**Notification:** Notice was published in the Chicago Tribune on December 3, 2020, a Public Hearing sign was installed at the subject property at 3300-3310 West Devon Avenue, and mailed notices dated December 3, 2020 were sent to properties within 250 feet.

### **Summary of Request**

Eddie Kheneiser, on behalf of 3300 West Devon, LLC, Property Owner, seeks approval of a Variation to allow for the use of an exterior insulation finishing system (“EIFS”) as an exterior building material on a structure being renovated as an event space/dining hall. The on-going renovation is related to the expansion of an existing restaurant at 3300 West Devon Avenue. The expansion will accommodate an event space/dining hall in a commercial building located at 3310 West Devon Avenue. The existing restaurant and future event space/dining hall will be complimentary uses under the management of the same entity.

As part of the on-going renovation, the Petitioner submitted plans showing the use of new synthetic stucco on the south and east elevations of the structure that will host the new event space/dining hall. Those elevations note that such a material would match the existing synthetic stucco on the existing restaurant building.

### **Required Approval**

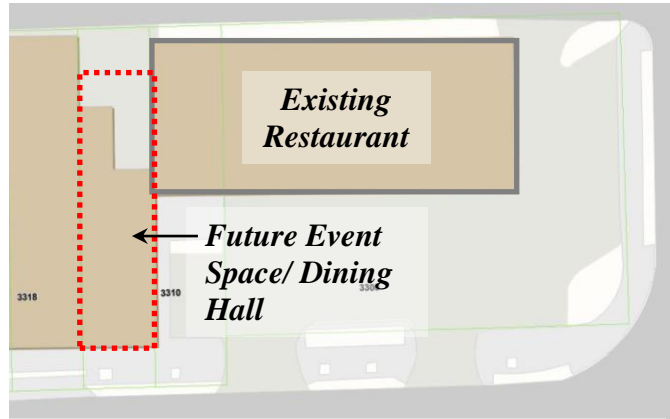
Sections 6.04(3) and 6.04(4) establish requirements related to the use of certain façade materials for commercial development in the Village. Specifically, Section 6.04(4) states that “the use of concrete block, precast panels, and/or masonry stucco is permitted as a minor or accent building material, but is not permitted for use as a predominant building material.... The use of exterior insulation finishing systems (“EIFS”) and metal and vinyl lap board siding is prohibited.” For the purposes of this zoning provision, the proposed synthetic stucco material is considered an “exterior insulation finishing system”. Therefore, a Variation from Section 6.04(4) is required.

### **Considerations**

As part of its consideration of the requested Variation, the ZBA may consider the following factors that were identified in the Petitioner’s application:

#### **Materials on the Existing Restaurant Façade**

As noted in the elevations provided by the Petitioner, the façade of the existing restaurant is covered largely in an EIFA material. Based on Village records, that façade appears to have been installed in 2013. The Zoning Code was subsequently amended in 2014 to include the current language that prohibits the use of EIFS.



***Location of Existing Restaurant and Future Event Space/Dining Hall***



***Façade Areas Being Improved as Part of Ongoing Renovation***





### **Previous Use of EIFS on the Subject Façade**

The portion of the property being renovated for use as the event space/dining hall has EIFS as its façade material until it was recently removed as part of the renovation. That pre-existing EIFS material was installed prior to the 2014 code amendment that prohibited the use of that material.



### **Public Comment**

Staff received one comment from an adjacent property owner objecting to the Petitioner's request. He is concerned with potential impacts to his property based on the fact that his building directly abuts the building on the subject property. The email and supporting documents provided by the concerned property owner are attached to this report.

### **Variation Standards**

Section 5.15(7) of the Zoning Ordinance establishes standards against that are to be used by the Zoning Board of Appeals when determining the appropriateness of a Variation request. These standards are included as an attachment to this report.

### **Prior Similar Cases**

The most recent Variation requests related to on-site parking capacity have been heard by the Plan Commission as part of larger zoning requests. Those cases are summarized below.

#### **7101 North Lincoln Avenue (2019)**

The Petitioner sought a Variation regarding exterior façade materials as part of the redevelopment of an auto dealership building. The Plan Commission supported the use of decorative aluminum panels based on the Petitioner's testimony that such materials are consistent with requirements for a specific auto brand and are durable. The Village Board approved the use of these materials as part of a more comprehensive amendment to an existing Planned Unit Development.

#### **6900 North McCormick Boulevard (2019)**

The Petitioner sought a Variation regarding exterior façade materials as part of the exterior renovation of an existing auto dealership building. The Plan Commission supported the use of decorative aluminum panels based on the Petitioner's testimony that such materials are consistent with requirements for a specific auto brand and are durable. The Village Board approved the use of these materials as part of an amendment to an existing Planned Unit Development.

#### **7373 North Cicero Avenue (2019)**

The Petitioner sought a Variation regarding exterior façade materials as part of the development of a new auto dealership. The Plan Commission supported the use of decorative aluminum panels based on the Petitioner's testimony that such materials are consistent with requirements for a specific auto brand and are durable. The Village Board approved the use of these materials as part of an overall development plan.

**3333 West Touhy Avenue (2019)**

The Petitioner sought a Variation regarding exterior façade as part of the renovation of an anchor space in the Town Center Mall. The Plan Commission supported the use of decorative aluminum panels based on the Petitioner’s desire to modernize the exterior of the space and make it consistent with the tenant’s brand. A portion proposed as EIFS was revised to be cementitious stucco prior to consideration by the Village Board. The Village Board ultimately approved the request.

**6755 North Cicero Avenue (2017)**

The Petitioner sought a Variation related to building materials so allow a portion of the commercial façade to be masonry stucco. The Petitioner testified that masonry stucco is a durable material and is an appropriate complement to the other portions of the façade that include brick or granite. The Plan Commission supported the request, and the Village Board approved the Variation in conjunction with several other Special Uses and Variations.

**Conclusion**

The Petitioner seeks a Variation from Section 6.04(4) to allow for the use of an exterior insulation finishing system (“EIFS”) as an exterior building material on a structure being renovated as an event space/dining hall.

**Documents Attached**

1. Zoning Variation Application
2. Relevant Building Plans
3. Public Comment
4. Relevant Regulations





**VILLAGE OF LINCOLNWOOD**  
**Community Development Department**

**Public Hearing Application**  
**Variations**

**SUBJECT PROPERTY**

Property Address: 3310 Devon Ave.

Permanent Real Estate Index Number(s): 10-35-423-029-0000

Zoning District: \_\_\_\_\_ Lot Area: \_\_\_\_\_

List all existing structures on the property. Include fencing, sheds, garages, pools, etc.  
2-Store building with an approved 2-story addition in rear.

Are there existing development restrictions affecting the property? ☒ Yes ☐ No  
(Examples: previous Variations, conditions, easements, covenants) If yes, describe: Approved site plan variation.

**REQUESTED ACTION**

- |  |  |
|--|--|
| <input type="checkbox"/> Variation - Residential                 | <input type="checkbox"/> Variation - Signs/Special Signs |
| <input type="checkbox"/> Variation - Non-Residential             | <input type="checkbox"/> Minor Variation                 |
| <input type="checkbox"/> Variation - Off-Street Parking          | <input type="checkbox"/> Other                           |
| <input checked="" type="checkbox"/> Variation - Design Standards |  |

**PROJECT DESCRIPTION**

Describe the Request and Project: Replace and maintain the use of EFIS on our approved project.  
Per drawings submitted to the village.

**PROPERTY OWNER/PETITIONER INFORMATION**

**Property Owner(s):** (List all Beneficiaries if Trust)

Name: 3300 W. DEVON, LLC. / ELIAS KHANASER

Address: 7500 E. PRAIRIE RD, SKOKIE, IL 60076

Telephone: (847) 877-7437 Fax: (\_\_\_\_) \_\_\_\_\_ E-mail: EDDIE@KHANEISER.COM

**Petitioner:** (if Different from Owner)

Name: \_\_\_\_\_ Relationship to Property: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_ E-mail: \_\_\_\_\_





**NOTICE OF REASONABLE ACCOMMODATION PROCESS**

An alternate process is provided by the Village for persons with disabilities or handicaps who seek a Reasonable Accommodation from the Zoning Code regulations in order to gain equal access to housing. If you seek a Reasonable Accommodation from the Zoning Code based on disability or handicap, do not complete this application form, but rather a separate application for Reasonable Accommodation. For more information on this process, consult Section 4.06(3) of the Zoning Code, or contact the Community Development Department at 847.673.7402.



## REQUIRED ATTACHMENTS \*

Check all Documents that are Attached:

	Plat of Survey	<input checked="" type="checkbox"/>		Applicable Zoning Worksheet	<input type="checkbox"/>
A-2	Site Plan	<input checked="" type="checkbox"/>		Photos of the Property	<input type="checkbox"/>
	Proof of Ownership	<input checked="" type="checkbox"/>	—	PDF Files of all Drawings	<input checked="" type="checkbox"/>
—	Floor Plans	<input checked="" type="checkbox"/>	A-10	Elevations	<input checked="" type="checkbox"/>

*\*The above documents are required for all applications. The Zoning Officer may release an applicant from specific required documents or may require additional documents as deemed necessary.*

## COST REIMBURSEMENT REQUIREMENT

The Village requires reimbursement of certain out-of-pocket costs incurred by the Village in connection with applications for zoning approvals and relief. These costs include, but are not limited to, mailing costs, attorney and engineer costs, and other out-of-pocket costs incurred by the Village in connection with this application. In accordance with Section 5.02 of the Village of Lincolnwood Zoning Ordinance, both the petitioner and the property owner shall be jointly and severally liable for the payment of such out-of-pocket costs. Out-of-pocket costs incurred shall be first applied against any hearing deposit held by the Village, with any additional sums incurred to be billed at the conclusion of the hearing process.

Invoices in connection with this application shall be directed to:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_

## ATTESTMENT AND SIGNATURE

I hereby state that I have read and understand the Village cost reimbursement requirement, as well as the requirements and procedures outlined in Article V of the Village Zoning Ordinance, and I agree to reimburse the Village within 30 days after receipt of an invoice therefor. I also understand that if I desire a Reasonable Accommodation from the Zoning Code based on disability or handicap, that I must complete and submit a different application for consideration and by submitting this application for a Variation, I am attesting that I am not seeking a Reasonable Accommodation. I further attest that all statements and information provided in this application are true and correct to the best of my knowledge and that I have vested in me the authority to execute this application.

**PROPERTY OWNER:**

**PETITIONER:** (if Different than Property Owner)

  
Signature

\_\_\_\_\_  
Signature

ELIAS KHNASER  
Print Name

\_\_\_\_\_  
Print Name

12-2-2020  
Date

\_\_\_\_\_  
Date

## VARIATION STANDARDS

*To be approved, each Variation request must meet certain specific standards. These standards are listed below. After each listed standard, explain how your Variation request satisfies the listed standard. Use additional paper if necessary.*

1. The requested Variation is consistent with the stated intent and purposes of the Zoning Ordinance and the Comprehensive Plan.

2. The particular physical surroundings, shape or topographical conditions of the subject property would bring a particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of this Zoning Ordinance is enforced.

3. The conditions upon which the petition for the Variation is based would not be applicable generally to other property within the same Zoning District.

4. The Variation is not solely and exclusively for the purpose of enhancing the value of or increasing the revenue from the property.

## VARIATION STANDARDS (Continued)

5. The alleged difficulty or hardship has not been created by any person presently having an interest in the property.

6. The granting of the Variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.

7. The Variation granted is the minimum change to the Zoning Ordinance standards necessary to alleviate the practical hardship on the subject property.

8. The proposed Variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the danger of fire, or otherwise endanger the public safety, or substantially diminish or impair property values within the neighborhood.





# VILLAGE OF LINCOLNWOOD

## COMMUNITY DEVELOPMENT DEPARTMENT

### SIGN VARIATION STANDARDS

*For all Sign Variation and/or Special Sign requests, the Applicant shall also complete Questions 9 through 12.*

9. The proposed Variation is consistent with the statement of purpose set forth in Section 11.01 of the Zoning Ordinance.

10. The proposed sign complies with any additional standards or conditions set forth in Article XI of the Zoning Ordinance.

11. The proposed sign will substantially enhance the architectural integrity of the building or other structure to which it will be attached, if any.

12. The proposed sign conforms with the design and appearance of nearby structures and signs.





**1 EXISTING FRONT BUILDING ELEVATION**  
SCALE: 3/16"=1'-0"



**2 EXISTING SIDE BUILDING ELEVATION**  
SCALE: 3/16"=1'-0"

EXPANSION OF EXISTING  
RESTAURANT TO ADJACENT  
COMMERCIAL SPACE  
WIREAR BUILDING ADDITION  
3307 W. DEVON AVE.  
LINCOLNWOOD, IL 60460

**NK ARCHITECT**  
NATHAN KRISKA  
PROJECT ARCHITECT  
NORTHFIELD, IL 60069  
TEL. 847.468.0000

I HEREBY CERTIFY THAT THESE DOCUMENTS  
WERE PREPARED UNDER MY DIRECT SUPERVISION  
AND THAT TO THE BEST OF MY KNOWLEDGE AND  
BELIEF THEY COMPLY WITH THE PROVISIONS OF  
THE BUILDING CODE OF THE LINCOLNWOOD  
AND THE LAWS OF THE STATE OF ILLINOIS

ARCHITECT/ENGINEER OF RECORD DATE



PROJECT CONSULTANTS

NO.	DESCRIPTION	DATE
1	REVISION	
2		
3		
4		
5		
6		
7		
8		
9		
10		

SHEET TITLE  
EXISTING FRONT BUILDING ELEVATIONS

PROJECT NUMBER: 20-000  
PRINCIPAL IN CHARGE: N. KRISKA  
PROJECT ARCHITECT/ENGINEER  
DRAWN BY: K.G.  
CHECKED BY: N. KRISKA  
SHEET NUMBER





## Attachment #3. Public Comment

Email received on December 16, 2020

Doug,

I have attached one of many articles about EFIS.

My concerns about the product are echoed by millions of dollars in lawsuits.

There is a reason that many municipalities, including Lincolnwood, do not allow the product to be used.

Additionally, the address in question wants to use the product over an existing substrate of a building that is attached in some locations to mine.

I strongly object to the approval of the use of this product on any application, let alone where it effects my property.

There are many panel systems that would be appropriate and safe for this application.

Please include this information in packet circulation.

Steve Siegel

*(subsequent pages include documentation provided as part of this public comment)*

# What's Wrong With the Stucco on Our Buildings?

By **Donald B. Brenner** on May 27, 2020

Stucco is a product that has been in use as an exterior building cladding since the early 1800's. It is made from Portland cement, sand and water. When installed correctly, stucco has been a reliable building material that looks good and allows incidental moisture infiltrating behind the stucco to be safely and efficiently evacuated from the building. Once stucco dries it is as hard as concrete.

Buildings expand as temperatures rise in summer and contract as temperatures approach or exceed the freeze point for water in the Winter. As a result, since stucco cannot expand and contract with the expansion and contraction of the building over time, stucco has a history of cracking. If the stucco was installed correctly, water that gets behind the stucco weeps harmlessly out through flashings and weep screeds at the bottom of the stucco. Unfortunately, that is not always the case. The resulting damages can be quite substantial—in the hundreds of thousands or millions of dollars.



Installation of stucco on exterior grade sheathing, like wood, oriented strand board ("OSB"), or gypsum, is typically done as follows:

1. Before installing stucco, the stucco applicator needs to ensure that:
  - I. kick out flashings have been or are installed at roof/wall intersections and other appropriate interfaces;
  - II. head and sill flashings have been installed at windows and doors as required by the construction drawings and manufacturer's instructions; and
  - III. weather resistant barrier ("WRB") such as Tyvek or felt paper has been properly integrated with the flashings to allow water to be evacuated out of the wall cavity.
2. Wire mesh is then stapled through the WRB into the sheathing.
3. A weep screed is typically installed at the bottom of the system. The weep screed is a piece of plastic with weep holes in it. The purpose is to allow moisture that has rolled down the WRB to evacuate out at the bottom of the wall.
4. The base (or "scratch") coat of the stucco is applied over the wire mesh with a trowel.
5. Once that dries, a second (or sometimes a third) coating called a "finish" coat is applied.

After WWII, a material called exterior insulation and finish system ("EIFS") was developed as an improvement and alternative to stucco. It is made from Portland cement, sand, water, a polymer, and a resin that allow the EIFS to expand and contract enough to avoid the cracking characteristic of stucco. Unlike stucco, which has a secondary drainage capability consisting of a drainage plane, flashings, and weep screeds, EIFS was designed to be a face-sealed barrier to water penetration and is known as "barrier EIFS". If any water got inside the wall cavity, there was no way for it to escape.

In Europe after WWII, homes were (and still are) typically built with masonry

substrates, such as cement or stone. If the EIFS leaked, it would not cause any damage to the masonry substrate. In the 1980's the EIFS manufacturers brought EIFS to America and marketed it for use as safe and effective cladding material. Homes in America are not usually built with masonry substrates. In America we typically build homes with a wood or OSB or gypsum substrate. The installers of barrier EIFS could not install it with the degree of perfection required by the EIFS manufacturers' installation instructions. As a result, thousands of homes across the country were damaged. Multiple class action lawsuits were filed against the EIFS manufacturers in the 1990's and early 2000's.

In New Jersey, hundreds of lawsuits were filed arising from these damages. Eventually, New Jersey outlawed use of barrier EIFS in one and two story wood framed buildings. In response, the EIFS manufacturers developed drainable EIFS with features such as flashings and weep screeds like those required in installing stucco.

Unfortunately, installers of stucco and drainable EIFS often do a very poor job of installing the stucco and EIFS. A very large number of construction defect cases have involved severe damages caused by water infiltration that gets behind EIFS and damages sheathing and framing. The damages typically stem from the following non-exclusive list of deficiencies:

- WRB applied improperly, such that it directs the water behind the flashings instead of on top;
- Kick-out flashings at roof/wall interfaces and balcony/wall interfaces are missing or improperly installed;
- Weep screeds are missing or blocked; and
- Through-wall flashings are missing or improperly applied at intersections of EIFS or stucco and other building materials like brick, vinyl, stone PVC panels, or manufactured stone veneer.

Surprisingly, damages cannot usually be seen by just visually examining the building.



Condominium buildings covered with stucco or EIFS therefore require careful, skilled inspections to determine if they are damaged. It is imperative that the Association have moisture probes done on its buildings to determine if excessive moisture is damaging the sheathing or framing under the stucco or EIFS.

In numerous cases in New Jersey, damages from deficient installation of EIFS or stucco have totaled in the tens of millions of dollars. We have handled multiple cases on a contingent fee basis in which we have recovered between \$7 million and \$20 million. The insurance industry lost hundreds of millions of dollars funding settlements and paying verdicts in EIFS cases. As a result, ISO changed the standard language contained in commercial general liability insurance policies to exclude coverage for damage caused by or to buildings that have EIFS. Thus, when doing the cost-benefit analysis for the Association, counsel must take into consideration whether there will be insurance coverage available to pay for any verdict the Association may obtain. There is nothing more frustrating than winning the case and finding out after long and expensive litigation that there is no insurance coverage.

## Attachment #4. Relevant Regulations

### 6.04 Commercial, institutional and civic building design standards.

(1) Creative layout and design of the buildings within commercial, institutional, or civic development is encouraged. The architectural quality should be expressed on all four sides of a building and the utilization of a campus-style layout is encouraged in large scale developments. Creative layout and design will help decrease the overall mass of the development, to prevent monotony, and to improve the aesthetic quality of the development.

(2) To improve the future use and adaptability of the commercial, institutional, and civic structures, buildings should not be designed in a manner that limits the ability of the building to be reused for other users.

(3) All commercial, institutional and civic buildings shall be designed in accordance with the following:

a. Buildings must consist of solid and durable facades on all sides of a building facing a public street and shall be compatible with the character and scale of the surrounding area.

b. Not less than 75% of each exterior building elevation shall incorporate high-quality materials from the following list:

i. Brick with a minimum thickness of 2.25 inches;

ii. Natural stone;

iii. Sandstone;

iv. Other native stone;

v. Pre-cast decorative stone;

vi. Glass; or

vii. Precast stone or precast concrete, but only if the building is located in the M-B Light Manufacturing/Business District. Notwithstanding any provision of this Zoning Ordinance to the contrary, precast stone and precast concrete will not be permitted on a building elevation facing a residential district except upon issuance of a special use permit issued pursuant to Section 5.17 of this Zoning Ordinance.

The required high-quality materials shall at a minimum extend from ground level to the top of the first floor windows with minor accents allowed. The use of materials not included in the list of high-quality materials set forth in this Section 6.04(3)b on more than 25% of a building elevation will be allowed only upon issuance of a special use permit issued pursuant to Section 5.17 of this Zoning Ordinance.

(4) The use of concrete block, precast panels, and/or masonry stucco is permitted as a minor or accent building material, but is not permitted for use as a predominant building material. The exterior surface of a masonry wall shall consist of a textured finished surface, shall not have a flat surface, and shall not be constructed of concrete block or cinder block having a plain, flat surface.



The use of exterior insulation finishing systems ("EIFS") and metal and vinyl lap board siding is prohibited.

### 5.15 Major variations.

(7) Standards. In determining whether in a specific case there are practical difficulties or particular hardships in the way of carrying out the strict letter of this Zoning Ordinance, there shall be taken into consideration the extent to which the following facts are established:

- a. The requested major variation is consistent with the stated intent and purposes of this Zoning Ordinance and the Comprehensive Plan;
- b. The particular physical surroundings, shape or topographical conditions of the subject property would bring a particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of this Zoning Ordinance is enforced;
- c. The conditions upon which the petition for the variation is based would not be applicable generally to other property within the same zoning district;
- d. The variation is not solely and exclusively for the purpose of enhancing the value of or increasing the revenue from the property;
- e. The alleged difficulty or hardship has not been created by any person presently having an interest in the property;
- f. The granting of the variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located;
- g. The variation granted is the minimum change to the Zoning Ordinance standards necessary to alleviate the practical hardship on the subject property; and
- h. The proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the danger of fire, or otherwise endanger the public safety, or substantially diminish or impair property values within the neighborhood.