

Paul Demarest
Secretary



(201) 784-0600 ext. 491
Fax (201) 905-3420

Borough of Closter
Zoning Board of Adjustment
295 Closter Dock Road
Closter, NJ 07624

ZONING BOARD OF ADJUSTMENT

Regular Monthly Hearing *(Minutes)*

October 15th, 2008

Prepared by:

Paul Demarest
Secretary

Chairman Robert Knee called the Regular Monthly Hearing of the Zoning Board of Adjustment of the Borough of Closter, New Jersey held Wednesday, October 15th, 2008 in the Council Chambers of the Borough Hall to order at 8:07pm. He stated that the meeting was being held in compliance with the provisions set forth in the Open Public Meetings Act of the State of New Jersey and had been advertised in the newspaper according to law. Chairman Knee advised that the Board adheres to an eleven o'clock adjournment and no new matters would be considered after such time.

Chairman Knee invited all persons present to join the Board members in reciting the Pledge of Allegiance.

The following Board members and professionals were present at the meeting:

- Steven Iafrate- Alternate #4
- Mitchell Monaco- Alternate #3
- Lorin Sonenshine, RA/PP- Vice Chairman
- Francis Noh- Alternate #2
- John Pacholek, PE- Board Engineer
- Robert Knee- Chairman
- Michael Kates, Esq- Board Attorney
- Leonard Sinowitz- Zoning Officer
- Joseph Bianco, RA/PP
- Steven Freesman, Esq.- Board Secretary
- Theodore West, DDS
- Alan Maretic
- Jennifer Rothschild, Esq.- Alternate #1
- Paul Demarest- Secretary

The following Board members and professionals were absent from the meeting:

- Denise Mates, CLA
- Thomas Hennessey- Council Liaison



Prior to the meeting, the Board members and professionals received copies of the correspondence for their review and comments.



Due to the new Secretary of the Zoning Board of Adjustment, Paul Demarest, being appointed by the Mayor and Council on October 16th, 2008, minutes have not been prepared for the September 17th, 2008 Regular Monthly Hearing. Chairman Knee informed the public that minutes for a Work Session do not require the approval of the Board.



Chairman Knee asked all those present to observe a moment of silence in recognition of the recent passing of Mr. Kates' mother.



Chairman Knee requested three volunteers from the Board to serve on the Subcommittee for the next Work Session to be held on October 22nd, 2008. The following were assigned: Dr. West, Mr. Bianco and Mr. Noh.



Chairman Knee opened the meeting to the public comment for anyone wishing to comment on matters not related to a case on tonight's agenda. No one wished to be heard.



Case #1

Case #Z-2008-23
21 Julia Street
Block 912/Lot 9

Applicant: Ruth Watson
Representation: Rafael Jacobs, Esq.

The applicant is appealing the determination of the Zoning Officer that her property does not meet all the requirements necessary to be deemed a legal two-family use. Raphael Jacobs, Esq. of Law Offices of Jacobs & Bell, 26 Franklin Street, Tenafly, New Jersey, stated that his client is seeking a legal non-conforming use approval and if not granted by the Board following the presentation of proofs, he would pursue a use variance.

Ms. Watson, 21 Julia Street, was sworn in as Witness #1. She testified that she bought the subject property in 1999 and currently lives in one of the units while renting out the second unit. She said that when she went to sell her property, she was informed that she would have to receive two-family use ratification prior to transfer of title. She stated that her municipal tax card indicates the dwelling was built in 1929 and that it is the only non-single-family property on Julia Street. Mr. Jacobs presented five exhibits: 1) photographs taken in 2008 showing that each unit has its own mailbox and electrical meter; 2) floor plans of the first and second floors prepared by the applicant and an acquaintance of hers; 3) municipal tax card showing the property's use as a two-family since 1999 along with the room count of both floors; 4) Bergen County Board of Taxation-certified records for 1939 and 1940 listing the property as "2F"; 5) title search. Mr. Kates stated that this application was the first to present official records dating so far back in time verifying tax status. Ms. Watson and Mr. Jacobs explained in detail the process of viewing such records at the Bergen County Board of Taxation. They stated that each municipality's records are received from the local tax collector, bound by book in chronological order, indexed by block and lot and can be viewed via a microfilm machine connected to a copier. The Board expressed appreciation to Ms. Watson for making it aware of a resource that can be quite beneficial to future applicants. Mr. Bianco inquired about whether addresses were stated on prior deeds. Mr. Jacobs stated that the 1978 deed has a metes and bounds description referencing blocks and lots along with a "19 Julia Street" address. Prior deeds, he stated, do not indicate an address. Mr. Freesman questioned if tenants were living at the home when she purchased it. Ms. Watson replied in the affirmative. Jesse Rosenblum, 65 Knickerbocker Road, questioned the interpretation of the label "2-F" as listed on the County's certified tax records saying that the legend in the County tax books lists it as meaning "2-story frame" rather than "2-family." Mr. Rosenblum asked how hired professionals handling her purchase of 21 Julia Street described the home's use; Ms. Watson stated that the real estate broker called the property a "two-family" as did the seller, but her attorney did not.

Richard Stewart, 80 Bay Willow Court, Hendersonville, North Carolina, was sworn in as Witness #2. He testified that he moved to Closter in 1942 (specifically to 522 High Street) at the age of thirteen and the first person he met would be his future wife, Veronica Smith. Smith resided at 21 Julia Street at the time with her family on the first floor along with the Pearson family who

lived on the second floor; all the while, both families shared expenses. The two families were not related, but the patriarchs were co-workers. From 1958 to 1967, Mr. Stewart stated that he and his wife resided at 21 Julia Street with his in-laws. Once moving out, he testified having no direct knowledge of the property's use. Mr. Stewart testified that having a career in construction consulting enabled him to opine that the dwelling at 21 Julia Street was built as a two-family; he stated that a special aspect to the structure is that there is access to the basement from both units due to a common area rear hallway. Ms. Rothschild inquired if the basement was used as common space; Mr. Stewart answered in the affirmative. Mr. Bianco pointed out that Mr. Stewart is a former borough councilman and board of education member. Mr. Rosenblum questioned about there being no proof confirming a two-family use since 1986 after citing a 1978 deed detailing purchase of the property by a Parker/Rizzo party from the Smiths. Mr. Bianco commented that there is a single common entrance. Mr. Sonenshine suggested that the construction seems to show that it was always a two-family; Mr. Bianco questioned whether it could have been built as a one-family and converted later on; he mentioned the Sanborn Maps housed at the county seat as a possible reference. Mr. Kates clarified that the Sanborn Maps were originally an insurance entity's series of maps that usually identified the use of a property. Ms. Rothschild stated such maps were not required at the Work Session and they were not put into evidence by either the objector or applicant, thus making their consideration null.

Outcome

A vote to decide whether or not to uphold the applicant's appeal of the Zoning Officer's decision denying two-family use ratification was motioned by Mr. Freesman and seconded by Dr. West. The Board voted 7-0 in the applicant's favor ratifying 21 Julia Street as a legal, non-conforming two-family use, negating the need for a use variance (Mr. Sonenshine, Chairman Knee, Mr. Bianco, Mr. Freesman, Dr. West, Mr. Maretic and Ms. Rothschild voted "YES").



At this time, David Watkins, Esq., 285 Closter Dock Road, Closter, New Jersey, asked the Board whether or not it was wise for his clients and their hired professionals to remain at the hearing if it was probable their cases would not be heard. The Board decided the Regular Monthly Hearing scheduled for November 17th, 2008 would begin at 7:00pm, one hour earlier than usual to accommodate Mr. Watkins' three cases: 1 Ruckman Road, 170 Closter Dock Road and 14 Piermont Road.



Case #2

Case #Z-2008-21
63 John Street
Block 1203/Lot 2

Applicant: Dennis Wiggers
Representation: Donna J. Vellekamp, Esq.

The applicant is seeking a use variance to continue operating a commercial enterprise on a residential property as summarized by his attorney, Donna J. Vellekamp, Esq., 161 Mc Kinley Street, Closter, New Jersey.

Dennis Wiggers, giving his business address as 387 Paramus Road, Paramus, New Jersey, was sworn in as Witness #1. He explained that he was recently cited by the Borough for operating his landscaping business out of a residential property owned by his father, Donald. He applied to the Zoning Officer for said use and was denied, thus leading him to seek a use variance, not an interpretation, from the Board sanctioning the existing contractor's yard located on a property in District #2. He stated that his business has been present on the property since 1981 and has

grown in size over the years. Mr. Wiggers testified that he is a landscape designer who uses 63 John Street for storage of firewood, mulch, top soil and gravel along with some associated commercial trucks and equipment. There is no retail operation on the property and since John Street is a one-way street, the property is only accessed from Railroad Avenue. Ms. Vellekamp presented three initial exhibits: 1) site plan; 2) & 3) pictures of different viewpoints of property such as employee vehicles' street parking and depiction of related equipment and appurtenances; Mr. Bianco inquired about the size of the mulch and soil piles to which Mr. Wiggers stated they averaged 30'x30' and 60'x40' in area respectively with both having a height of 10-15'. Mr. Wiggers stated that there is an excavating machine (Caterpillar-type) on the property. Mr. Kates questioned how many individual lots make up the 63 John Street property; Ms. Vellekamp responded that there were actually 4 lots with all being on one tax bill in the same title. Mr. Wiggers acknowledged that there is also a single-family house (rental) on the property to which Mr. Sinowitz stated that such a condition is illegal because two principal uses are not permitted on a one property. Mr. Wiggers acknowledged that he has trucks parked and a gated enclosure installed on Westminster Avenue, which is a paper street (Borough property). He is also leasing the property adjacent to Wellington Avenue (Tax Lots 9 and 10) on which he has a garage; said property is in District #5. Dr. West questioned about rodent control with regards to the mulch pile; Mr. Wiggers stated that an exterminator is called in only when a problem arises. Mr. Sonenshine inquired about the use of the trailers and garage; Mr. Wiggers said that they were used for storage of equipment and mechanical spare parts. He uses a 500 gallon above-ground storage tank for containment of diesel fuel. There is occasionally nursery stock housed on the property, however, Mr. Wiggers stated his business does not comprise of lawn maintenance negating the need for chemical storage; he reiterated that there was only delivery, not sale, of firewood out of the property in question. Mr. Kates asked about any noise and/or pollution issues that have arisen; Mr. Wiggers stated that a log splitter, backhoe and screening machine (for sifting of soil) are used regularly on the property; however, tub grinding (for churning of branches to produce mulch) has been dramatically scaled back. He noted that he occasionally rents a portable mill to produce timber on the property. Mr. Freesman asked if business was conducted on weekends to which Mr. Wiggers indicated Saturdays only. Mr. Wiggers informed the Board that over the years he has planted buffers by way of trees and shrubs to lessen the noise factor following complaints to him by neighboring property owners. It was mentioned by Mr. Sinowitz that he issued a Notice of Violation earlier in the year following one sent out by Keith Sager, Borough Construction Official. Mr. Sinowitz informed the Board that the New Jersey Department of Environmental Protection had recently cited and ceased Mr. Wiggers from receiving manure shipments which was causing harsh odor conditions. Mr. Wiggers stated that there are ten landscape businesses in the vicinity of 63 John Street. The witness stated that his father has owned the property since 1979 at which time, 3 of the lots making up the address were untouched and empty while the fourth had the single-family dwelling located on it. Mr. Sinowitz testified and submitted exhibits showing that Mr. Wiggers was cited in 1999 for illegal storage of top soil, supplies and equipment on Westminster Avenue, not John Street. Mr. Wiggers clarified that a verbal agreement between he and David Berrian, Borough Police Chief, was recently reached to remove said items within a few months. Mr. Kates questioned why the Borough has tolerated the violation for almost a decade. Ms. Rothschild asked if "adverse possession" applied to a municipality; Mr. Kates responded in the affirmative and followed by explaining "adverse possession" refers to a 1999 court case in a neighboring municipality dealing with the "cracking down" of encroachment onto borough property by private entities. Rita Ciancio, 15 John Street, inquired about the limited on-street parking available on John Street due to Mr. Wiggers' employees having their vehicles parked there; she spoke about the height of the firewood pile and odors coming from his property which make outdoor activities unpleasant for neighbors. Jesse Rosenblum, 65 Knickerbocker Road, asked for the reason why the NJDEP issued a violation for 63 John Street; Mr. Wiggers stated it was because he did not meet recycling standards; he pointed out that he received an exemption for tub grinding. Maribel De La Torre, 28 John Street, wished to be heard regarding the fairness of having noise and air

pollution concerns to which Mr. Kates deemed the questioning inappropriate at this stage of the proceedings.

Steven Lydon, PP of Burgess Associates, 25 Westwood Avenue, Westwood, New Jersey, was sworn in as Witness #2. He presented three exhibits: 1) photographs serializing the presence of both single-family homes and contractor-type businesses along with a lumber yard in the vicinity; 2) aerial digital view of surrounding area depicting commercial outdoor storage; 3) graphic showing the breakdown of the zoning districts for the surrounding area. Mr. Lydon stated that the residential property on John Street essentially acts as a buffer for the commercial properties to the south and the industrial ones to the north. The board pointed out the error in Mr. Lydon's exhibit comprising of the graphic with the zoning districts indicated: the "gray area" labeled as borough property and referred to by Mr. Lydon as the Borough DPW Recycling Center was actually land dedicated as Green Acres and a privately-owned garbage transfer station (Miele Sanitation). Mr. Lydon apologized for the error and withdrew the exhibit promising it would be corrected. Dr. West asked Mr. Lydon for his professional opinion if he thought the Borough, when last examining the Master Plan, kept the area in question zoned as residential because of the presence of five homes on William Street. Mr. Lydon stated that the last time the Borough adopted a land use element of the Master Plan was in 1981 at which time the recommendation was made to change the area to the industrial district; the proposal was never acted upon. The Planning Board, as per its land use element, has recommended the property be zoned as industrial, he stated. Mr. Lydon continued by saying recent reexamination reports have been completed without any land use elements. Summarizing, he said that 63 John Street was zoned residential and so it predated the last land use element. Mr. Sinowitz asked why the recommendation was not implemented. Mr. Lydon stated that the 1996 reexamination concluded the area acted as a buffer and he followed with, "but a buffer for what, to whom?" Mr. Sinowitz stated that he was serving on the Planning Board in 2003 and was asked by its members to use his knowledge as Zoning Officer and offer recommendations for Railroad Avenue. He remembered informing the Board that a contractor's yard is permitted only in District #4 (commercial) and no other district, including #5 (industrial). Thus, he stated, the Planning Board recommended the residential district is not appropriate for said portion of John Street. Mr. Bianco inquired about the current streetscape along John Street to which Mr. Lydon referred to it as residential. Mr. Bianco suggested that after Donald Wiggers purchased the property, the area was forever changed due to the introduction of his son's contractor's yard. Mr. Wiggers reacted by saying he felt he has beautified the area. Mr. Lydon felt that the single-family house at 63 John Street beautifies the lot and the contractor's yard continues the streetscape along Railroad Avenue. Mr. Lydon continued by stating Westminster Avenue provided an additional buffer for the contractor's yard and that the existing nearby outdoor storage and railroad tracks "cannot be ignored." He further stated that the home on 63 John Street is the "nicest" on that side of John Street and when his client was made aware of complaints regarding noise and odors, Mr. Wiggers provided solutions every time. Ms. Rothschild stated that from a historical viewpoint, the surrounding houses seemed to have been built in the late nineteenth or early twentieth century; their location to the railroad tracks was logical. The railroad track was a passenger line dating back to 1859; in 1965, she stated, it ceased carrying passengers.

Outcome

With the evening's proceedings moving at a slower pace than expected, Mr. Kates welcomed Mr. Lydon back to continue his testimony at the next available hearing. Chairman Knee adjourned the case to the December 17th, 2008 Regular Monthly Hearing.



Due to its heavy case load, the Board settled on calling for a Special Meeting to be held on October 29th, 2008, pending public noticing requirements, to hear the 1 Ruckman Road, 14 Piermont Road, 170 Closter Dock Road and possibly 14 Church Court cases.



Mr. Kates informed the Board that the Resolution for 69 West Street was not completed; however, the one for 163 Closter Dock Road was. Mr. Bianco motioned, and Ms. Rothschild seconded, to vote to memorialize the Resolution for Case #Z-2008-14. All members present voted in favor.



Mr. Freesman suggested to Chairman Knee that the Board make it a point to keep applicants waiting in the audience abreast of unanticipated time delays and offer them the options of remaining or leaving for the evening.



There being no further items to discuss, a motion to adjourn the hearing was made by Dr. West and seconded by Mr. Sonenshine. The hearing adjourned at 11:27pm.