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Borough of Closter

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

Zoning Board of Adjustment

Regular Monthly Hearing *(Minutes)*

August 19, 2009

Prepared by:

Paul Demarest
Coordinator

Chairman Knee called the Regular Monthly Hearing of the Zoning Board of Adjustment for the Borough of Closter, New Jersey being held Wednesday, August 19, 2009 in the Council Chambers of the Borough Hall to order at 8:12pm. He stated 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 statute. Chairman Knee advised that the Board adhered to an 11:00pm adjournment and no new matters would be considered after such time.

Chairman Knee invited all present in reciting the Pledge of Allegiance.



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

- Robert Knee- Chairman
- Lorin Sonenshine, RA/PP- Vice Chairman
- Joseph Bianco, RA/PP
- Theodore West, DDS
- Mitchell Monaco
- Francis Noh- Alternate #2
- Leonard Sinowitz- Zoning Officer
- Michael Kates, Esq.- Board Attorney
- Paul Demarest- Board Coordinator

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

- Steven Freesman, Esq.- Secretary
- Jennifer Rothschild, Esq.- Alternate #1
- Steven Iafrate- Alternate #3
- Mark Crisafulli- Alternate #4
- Thomas Hennessey- Council Liaison
- John Pacholek, PE- Board Engineer



Prior to the meeting, the Board received copies of the mail correspondence received by the Land Use Office on its behalf. Vice Chairman Sonenshine read said mailings into the record.



A motion was made by Mr. Bianco and seconded by Dr. West, to approve the minutes for the June 17, 2009 Hearing. All members present voted in favor.



Chairman Knee requested 3 volunteers from the Board to serve on the Subcommittee for the next Work Session to be held on August 26, 2009. The following were assigned: Mr. Bianco, Dr. West and Mr. Monaco.



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



Item #1

Case #Z-2008-28
249 Knickerbocker Road
(Block 908/Lot 1)

Applicant: Karen Seagaard
Representation: Victor Brown, Esq.

Vice Chairman Sonenshine recused himself from this case.

The applicant is appealing the determination of the Zoning Officer which denied an application for 2-family use ratification; in the alternative, the applicant would seek a Use Variance.

Victor Brown, Esq., 16 West Quackenbush Avenue, Dumont, New Jersey, introduced himself. Karen Seagaard, applicant and owner in fee of the subject property, was sworn in as Witness #1. She testified to owning as well as living in the subject property's main house since 1991; she said she had bought the home with her now-deceased husband and currently resided there with her 2 children. The witness said the lot is located in District #2 (Residential Area B) and she acquired title from the Estate of Agnes Bournique; she said the house was vacant at the time of closing. Ms. Seagaard stated the seller had owned the subject property since 1929, the year it was built; she testified that Ms. Bournique had revealed to her in conversation that the house was constructed during the Great Depression. The witness said the house was a 2-story, brick facade structure located at the corner of Demarest Avenue and Knickerbocker Road and situated on a 1/3 acre of land; she said the primary entrance of the home faces Knickerbocker Road, hence the address. The witness stated the total living space of the main residence was 2,600 s.f., exclusive from the rental unit in question; she continued to say that, aside from 3 bathrooms, there were 10 additional rooms (a living room, dining room, kitchen, sunroom, breakfast room, 3 bedrooms and 2 other rooms downstairs). Mr. Kates asked who prepared the floor plans submitted with the Board application. Mr. Brown answered that the preparer was Richard Strepparava, a friend of the applicant's. Exhibit #A-1, an unprofessionalized rendering of floor plans dated February 20, 2009, was presented. Mr. Brown further stated that a revision of Exhibit #A-1, drawn by Mr. Strepparava, had been subsequently filed with the Board as an alternative to the existing apartment area if the Board were to request any additional square footage. Exhibit #A-2, a revision to the existing studio apartment, was presented. Ms. Seagaard testified that the apartment was located on the lower level of the house and situated at the back portion of the structure facing Demarest Avenue. The witness said since her purchase of the subject property, no renovations had occurred. She continued to say the studio apartment was about 400 s.f. and consisted of a kitchen, bathroom and studio room. Ms. Seagaard stated the main house and apartment each had 2 entrances/exits and that the subject property had a total of 3 curb cuts at Knickerbocker Road and Demarest Avenue as well as a "back" driveway behind the house which led to the garage and apartment. Exhibit #A-3, a survey dated February 26, 1991, was presented. Mr. Kates interjected by saying that Exhibit #A-3 showed the property to have only 1 driveway and not 3 curb cuts. The witness said she had no recollection of installing a 2nd driveway at any time and believed both, including the stone driveway, were there when she became the owner. Mr. Kates stated, to confirm, that the driveway on the submitted survey is for apartment use and the driveway not depicted was for the main home. Ms. Seagaard

continued to say that the apartment was in existence when she moved into the residence and had remained unchanged ever since; she felt the house had been originally designed and built with the lower level apartment incorporated into it. She stated both the main residence and apartment were vacant when she acquired title, at which time, a tenant immediately began occupying the studio apartment. The witness said her attorney at closing, Mr. Brown, did not certify the validity of a 2-family use. She further testified that she believed 71 Whitney Street, 56 Julia Street, 254 Demarest Avenue and possibly others were 2-family residences located in the vicinity. Ms. Seagaard said she was compelled to the Board after a disgruntled acquaintance, Kate Wade, complained to the Building Department that her home had safety violations; the Zoning Officer denied a subsequent application for 2-family use ratification, the only reason being a 6.75' front yard setback deficiency facing Knickerbocker Road (corner lot).

Mr. Sinowitz was sworn in as Witness #2. He confirmed Ms. Seagaard's testimony regarding his Denial and that she must seek a Use Variance as per the Municipal Land Use Law. Mr. Kates said the Board characteristically does not design for an applicant and asked why she would expect Exhibit #A-1 to need improvement as shown in Exhibit #A-2. Mr. Brown said his client was informed of the possibility that the apartment (400 s.f.) may be undersized by code standards. The applicant wished to withdraw the original plan filed with the Board, which she said, was filed in error and replace it with the subsequent plan which should read "Existing" rather than "Proposed".

Richard Strepparava, 263 Harrington Avenue, was sworn in as Witness #3. He stated he prepared all floor plans submitted to the Board and apologized for any errors. He said the alternate plan was to increase the apartment's area from 388 s.f. if required; he reiterated Ms. Seagaard wished to keep the apartment as is if possible. The witness said the existing apartment had 1 bathroom, a kitchen, a closet and 2 entrances; he stated the 2nd bathroom downstairs was used by the occupants of the main house but that the laundry room was shared by those in both dwelling units. He continued to say that the alternative was originally-calculated to be 1,050 s.f.; however, omitting the garage area, the area would be approximately 800 s.f. Mr. Kates asked what the need was for partitioning out the existing den used for the main house to the tenant as shown on the alternate plan. Mr. Brown answered, again, that Ms. Seagaard thought the apartment may be deemed too small to inhabit. Dr. West asked what borough agencies had inspected the premises; the applicant said only the Construction Official had done so. Mr. Bianco said he had visited the interior and exterior of the subject residence and based on the following United States Department of Housing & Urban Development (HUD) standards, minimum code requirements are met: 1.) senior citizens apartment/studio/<O> bedrooms requires 415 s.f.; 2.) low-income housing requires 500 s.f.; 3.) affordable housing studio requires 300 to 400 s.f. Mr. Kates asked if the unit was being pledged as affordable housing; Mr. Brown answered no. Mr. Kates concluded that the applicant is collecting at market rate for 1 tenant. Mr. Sinowitz mentioned there had been allegations that the downstairs unit housed not 1 but 2 tenants; he asked where the 2nd tenant would have lived. Mr. Brown interjected and said Ms. Wade, an evicted tenant, approached the Building Department and stated she was living in an illegal apartment; he stated that there was never a 2nd tenant living in the basement area. Dr. West asked how many tenants presently live in the apartment; the applicant said 1. Dr. West felt that if the den were to be incorporated into the apartment space, the space would turn into a family apartment and lead to, among other things, children putting additional burden on the school system. Reading from a statement that was taken pursuant to a municipal court case,

Mr. Kates summarized that Kate Wade wrote an affidavit stating that there were illegal tenants in the basement, including her and a woman named "Ellie", a current resident. Ms. Seagaard explained that she took Ms. Wade into her home and provided her shelter in the main house; she said Ms. Wade then accused her of being a "bad landlord" and she ended up paying Ms. Wade 6 months' rent to remove her from the home. The witness said Ms. Wade has since then been threatening her family. Mr. Kates said that, without asking for the applicant's age, the Municipal Land Use Law allowed for someone at least 55 years of age to take a boarder into a single-family house. He surmised that Ms. Wade could have been seen as a boarder who was legitimately in the household because, in theory, that was how as a society, we allow for senior citizens to maintain their homes; he said independent of that, a separate tenant occupied the apartment. Mr. Sinowitz informed that the subject property was currently being taxed as a single-family dwelling. Mr. Kates pointed out that the Zoning Officer's denial was based on a calculation of average front yard setback by Mr. Strepparava, done unprofessionally and not "under seal"; Mr. Sinowitz said he would swear under oath that the submitted measurements were accurate. Mr. Strepparava, a sheet metal contractor by trade, explained that he used a tape measurer from the curb to each applicable house; he acknowledged he did not know where the front yard property line was. Mr. Sinowitz said that as long as the presumed 10' Borough right-of-way was subtracted, the measurements would be within reason; Mr. Bianco stated that if 10' was taken away from each of the properties' front yard calculations, the average would be 45', leaving the applicant's property short by 7' and vindicating Mr. Sinowitz. Dr. West pondered if the Board should be addressing the fact that the single-family house was being illegally-used as a 2-family. Mr. Brown said the applicant was already found guilty in municipal court and paid fines.

Chairman Knee opened the meeting to the public for questions and/or comments.

Jesse Rosenblum, 65 Knickerbocker Road, asked if the original owner ever renovated the house; Ms. Seagaard answered no. He asked how many children/relatives the original owner had living in the home to which the applicant said she was unsure. Mr. Rosenblum asked what the condition of the apartment's kitchen was when she acquired the home. She said it was usable but was unaware of the age of the appliances. Mr. Kates said the applicant was not trying to prove that there was tenancy in 1940 that continued to present day nor is she looking for the exemption under the statute; but rather, she was seeking a Use Variance. Mr. Rosenblum pointed out that from the applicant's testimony it was learned that Mr. Brown did not look for proofs that Ms. Seagaard's purchase was a 2-family dwelling and therefore, did not protect her interests; Mr. Brown said he would stipulate to that and that he did not assure his client of such. Mr. Rosenblum asked if the current tenant was the same person living in the apartment when the Construction Official visited the site in August 2008; the applicant answered yes.

Joseph Yammarino, 116 Demarest Avenue, was sworn in as Witness #4. He testified to living at his present home since 1997 and prior to that, he resided at 148 Demarest Avenue from when he was born 46 years ago until the early 1980's. He said he was familiar with the Seagaard property and had prior knowledge of the previous/original owners. Based on his recollection, the witness remembered there being numerous cars and much activity on the property leading him to believe there were tenants living downstairs throughout the 1970's and into the early 1980's. He informed that his mother currently lived with him but that her poor health prevented her from appearing before the Board.

Chairman Knee opened the meeting to the public for questions and/or comments.

Jesse Rosenblum, 65 Knickerbocker Road, asked if Mr. Yammarino's parents could verify if the Bourniques had relatives/tenants living in the home; the witness answered they could not. Mr. Rosenblum asked the witness if he had ever been in the home; the witness answered in the affirmative.

Katherine Gregory, PP, 96 Linwood Plaza, Fort Lee, New Jersey, was sworn in as Witness #5. She stated that she visited the site in April 2009; Exhibit #A-4, a series of photographs depicting the surrounding properties, was presented. She stated that based on said exhibit, the subject home predated most of the homes in the area. The witness stated that if not for the front yard deficiency, all bulk requirements would be satisfied; she pointed out that if that were the case, her client could have legally-converted her home to a 2-family use without needing the Board's approval. The witness reviewed the positive and negative criteria as per the Municipal Land Use Law; she felt the lot was suitable for such a use because: 1.) it was on a corner with numerous access driveways; 2.) it had separate entrances to each of the units; 3.) it provided for adequate light, air and space (oversized lot) as well as aged foliage which added character to the site. As to the negative aspects, Ms. Gregory saw no substantial detriment to the public good; she said the property had existed with its lone deficiency since 1929, which predates the Borough's Zoning Code inception. The witness said the rest of the homes on the same side of Knickerbocker Road were constructed after 1929 and so the applicant had been affected by such; she summarized by saying the property became a non-conforming use without trying to become one. She concluded that there was no substantial impairment of the Zoning Ordinance because the use is permitted in District #2 with certain conditions and there were no odor, noise or visual issues by allowing for a 2nd tenant space. Mr. Bianco said the unit in question had a kitchen in the basement most likely because the concrete walls would make for a much cooler and comfortable environment, a construction feature prevalent with certain immigrant populations in the 1920's; he also felt that by having 2 bathrooms in the basement, an entire family could temporarily move into the basement during the warm months based on such a preponderance of facilities. Mr. Kates pointed out that the planning theory in part was to preserve older homes on bigger lots, a practice common with historic preservation and adaptive reuse.

Chairman Knee opened the meeting to the public for questions/comments.

Jesse Rosenblum, 65 Knickerbocker Road, asked if Ms. Gregory's client qualified for senior status as Mr. Kates previously outlined. Mr. Kates explained that such a point had to do with the interior of the house and not the separate tenancy; he continued to say that the statute was talking about a 55+ year-old person having a boarder, not creating separate entries and spaces for tenants.

Mary Carley, 67 Whitney Street, stated she has lived in her residence for 16 years and felt as long as the subject structure remained as is, she saw no negative impact on the neighborhood in the past, present or future.

James Crimmins, 517 High Street, stated his wife grew up next door to the subject property and he admired the beauty of the home's design; he pointed out his father-in-law told him in 1982 that the subject property was a 2-family house.

Jesse Rosenblum, 65 Knickerbocker Road, said the applicant, if granted a Use Variance, would be given, according to his calculations, an additional \$75,000 because by selling her home in the future, such a feature would be income-producing; he felt this case was not like whether or not

to grant a larger deck but rather the Use Variance would become a valuable commodity. He said the Board should not be in the business of granting 2-family status unless all strict qualifications are met because, otherwise, a pattern of multi-family housing with absentee landlords could follow as well as transient dwellers, deterioration of neighborhoods and the increase of Board of Education costs. Mr. Rosenblum felt a better alternative would be to register the 2nd unit for Council of Affordable Housing (COAH) status so that the Borough benefits as well. Finally, he stated the granting of a 2-family use adds money to a home's selling price but not the taxable rate for the Borough because of the fact one only pays taxes on "what one's got". Dr. West felt an additional bedroom to the unit would be a mistake since the property is located at an extremely busy intersection; he ultimately believed allowing for a 2nd dwelling unit is a good way to preserve the home assuming it remains a studio apartment fit for 1 person only.

Outcome

A motion was made by Mr. Bianco and seconded by Dr. West, to grant a Use Variance with the following conditions: 1.) the subject area must remain 388 s.f. in area; 2.) the occupancy load must remain at 1; 3.) compliance with building and fire codes. The motion passed (**5-0: YES: Knee/ Bianco/ West/ Monaco/ Noh**).

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A motion was made by Mr. Bianco and seconded by Dr. West, to memorialize the Resolution for 14 Maplewood Road (Case #Z-2009-06). The motion passed.

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The Board conducted a "round-table discussion" about the re-designing of the existing Board application packet as undertaken by Mr. Demarest.

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There being no further items to discuss, a motion was made by Mr. Bianco and seconded by Dr. West, to adjourn the hearing at 11:01pm. The motion passed.