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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)*

February 18, 2009

Prepared by:

Paul Demarest
Coordinator

Vice Chairman Sonenshine called the Regular Monthly Hearing of the Zoning Board of Adjustment of the Borough of Closter, New Jersey being held Wednesday, February 18, 2009 in the Council Chambers of the Borough Hall to order at 8:00pm. 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 law. Vice Chairman Sonenshine advised that the Board adheres to an 11:00pm adjournment and no new matters would be considered after such time.

Vice Chairman Sonenshine invited all present in reciting the Pledge of Allegiance.



Reorganization (Continued from January 21, 2009)

Oaths of Office

Full Member Appointee (Term Expiring December 31, 2012): Theodore West, DDS



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

- Lorin Sonenshine, RA/PP- Vice Chairman
- Steven Freesman, Esq.- Secretary
- Joseph Bianco, RA/PP
- Theodore West, DDS
- Mitchell Monaco
- Jennifer Rothschild, Esq.- Alternate #1
- Francis Noh- Alternate #2
- Thomas Hennessey- Council Liaison
- Leonard Sinowitz- Zoning Officer
- Michael Kates, Esq.- Board Attorney
- Paul Demarest- Board Coordinator

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

- Robert Knee- Chairman
- Denise Mattes, CLA
- Steven Iafrate- Alternate #3
- John Pacholek, PE- Board Engineer



Prior to the meeting, the Board received copies of the mail correspondence for review and comments.



Vice Chairman Sonenshine and Mr. Sinowitz each requested that 1 item be changed in the proposed minutes of the January 21, 2009 Reorganization and Regular Monthly Hearing. Mr. Demarest agreed to do so and vote for approval of said minutes would take place at the next Hearing date.



Vice Chairman Sonenshine requested 3 volunteers from the Board to serve on the Subcommittee for the next Work Session to be held on February 25, 2009. The following were assigned: Mr. Bianco, Dr. West and Mr. Monaco.



Vice Chairman Sonenshine 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-2008-25
14 Church Court
(Block 2202/Lot 3)

Applicant: Lisa Weber
Representation: Self

Ms. Rothschild recused herself from this case.

The applicant is seeking Variance Relief for an as-built barbecue pit, outdoor fireplace and patio constructed prior to receiving permits.

Lisa Weber, owner-in-fee of the subject property and representing herself, was sworn in as Witness #1. Ms. Weber summarized her application and expressed that she was unaware of the permit process required for the construction done. She stated that she had relied on the builder who constructed her house, who in turn, contracted out to a landscape contractor with whom he collaborates frequently. The work completed without prior approvals, she said, brought her property's impervious coverage to 3.1% over the maximum allowed. Vice Chairman Sonenshine asked her to elaborate on the supposed "hardship" that she is seeking relief from. The witness said she was naïve to the fact that permits were needed and that the reason she did not feel the need to be represented by an attorney was because "there was nothing more to the story." She felt that if the as-built appurtenances were up to building code standards and there were no complaints from her neighbors, that to have the Board make her remove any of the completed work would be senseless. Mr. Kates asked if her swimming pool was built at a different time from when the home was constructed. Ms. Weber answered in the affirmative. Mr. Kates asked if she was informed by her contractor(s) about the miniscule impervious coverage available to her before she set out to do the outdoor appurtenances. She stated that Diamond Engineering (builder) and "his" landscaper told her that they would "take care of it."

Mr. Sinowitz was sworn in as Witness #2 and stated the illegal work was caught in the final stages by a Code Enforcement Officer who made a "spot check." Exhibit #A-1, a site plan dated February 28, 2006, was presented in evidence. Following the issuance of a stop work order, Mr.

Sinowitz said an application to his office was made and denied leading to Ms. Weber's appearance before the Board. Dr. West expressed concern with the possible water runoff towards the neighboring properties since Ms. Weber's land is on a slope; he asked if the extra impervious surfaces would affect the properties below. Ms. Weber said that reports from both her engineer and the Borough's concurred that the additional patio and outdoor fireplace would not pose a concern for surrounding properties because the 4 existing dry wells would handle a 2" rain fall. Exhibit #'s A-2, a report dated September 29, 2008 by Ms. Weber's engineer, and A-3, a report dated January 21, 2009 by the Borough Engineer, were presented in evidence. Dr. West said the existing seepage pits are above much of the swimming pool and that drainage will run down to the neighbors. Mr. Bianco interjected by saying the retaining wall was in the vicinity so runoff would "bounce" back towards the pits. Vice Chairman Sonenshine agreed that the wall in question would hold back much of the storm water on the left side of the Weber property. Mr. Bianco elaborated that the retaining wall allowed for 1/2 of the runoff to go to the rear pit, and the pit in the front yard would receive the other 1/2; he stated the "interceptor wall" along with the swale will direct the flow eliminating the possibility of the rear pit being overwhelmed. Dr. West asked the applicant if she has had any flooding in her basement to which she responded in the negative. Mr. Kates stated that this is the 3rd application coming before the Board as a result of the firm, Diamond Engineering, "victimizing" the buyer of a new home it has built; by not getting the proper permits and due to its deviation from complying with the necessary codes, it has put the new owner in a predicament. He felt some action may be warranted by the Board. Vice Chairman Sonenshine suggested there be notification to the Better Business Bureau. Secretary Freesman inquired if Ms. Weber confronted her builder. Ms. Weber said she did and that the builder thought there would be no problems. She said she only found out about her property being in violation when red stickers were posted on her home by the Code Enforcement Bureau. Secretary Freesman said a letter from the Board's attorney should be issued and felt the applicant's testimony has been credible.

Vice Chairman Sonenshine opened the meeting to the public for questions and comments. No one wished to be heard.

Secretary Freesman asked if it were appropriate to state in a Resolution that a certificate from the Building Department be issued for the illegal work so that if the applicant sells the property in the future, no problems shall arise. Mr. Kates said such a request could be put in the document's commentary.

Outcome

A motion was made by Mr. Bianco and seconded by Dr. West, to approve Variance Relief with the condition that all applicable building permits and certificates be received for the as-built work, thus making the currently-illegal project legal. All members present voted in favor (6-0).



Item #2

Case #Z-2008-19
21 Bergenline Avenue
(Block 205/Lot 7)

Applicant:
Representation:

Edgar & Hariclea Pena
Self

The applicants are seeking Variance Relief for an as-built patio constructed prior to receiving permits as well as an increase of their home's roof line to accommodate an attic for storage purposes only.

Edgar and Hariclea Pena, owners-in-fee of the subject property and representing themselves, were sworn in as Witness #'s 1 and 2. Mr. Pena summarized their application by stating in June 2008, he personally installed an on-grade patio. A week later, he went to the Building Department to apply for permits to increase his home's building height to accommodate for attic space. At that time, he was informed by the Department staff that his patio project required prior Zoning Officer approval and that he was in violation; he subsequently applied for said permit and was denied for excessive impervious coverage, leading to his appearance before the Board. Vice Chairman Sonenshine asked how the land in question slopes. Mr. Pena said the pictures submitted to the Board show it to be "pretty level" and that the patio was installed on sand. Vice Chairman Sonenshine recollected that the applicants had previously been before the Board. Mr. Pena confirmed by saying he needed Variance Relief a few years ago in order to build an addition to his house. Vice Chairman Sonenshine asked what the attic space would be used for. Mr. Pena said it was for storage purposes only and no habitation would take place. Mr. Hennessey asked where the leader pipes coming off the gutters in the rear yard terminated. Mr. Pena stated they are existing and go out to the curb and street. Mr. Hennessey asked if the gutters overflow; Mr. Pena answered in the negative. Vice Chairman Sonenshine said that with the proposed change in the roof's slope/pitch, storm water could run down with a greater velocity; he asked if the applicants would consider installing a seepage pit. Mr. Pena said he would have to confer with his general contractor on the specifics. Dr. West said that overflow from the gutters into the street is illegal even if it were an existing condition. Mr. Bianco asked why permits were not sought prior to installing the patio. Mr. Pena said that since no structural elements were involved, he assumed no permit was required. Secretary Freesman stated he felt the applicant's testimony was credible. Dr. West questioned the witness' statement that the property is flat; Mr. Pena elaborated by saying there is a slope near the garage. Dr. West felt installing a seepage pit would be a good compromise. Mr. Sinowitz stated the bulk of the increased impervious coverage stems from the illegal patio and not the "raising of the roof." Vice Chairman Sonenshine felt that since the roof pitch change is for a ranch-style home and not a 2-story building, the runoff velocity would be less significant. Ms. Rothschild said installation of seepage pits is not mandatory because the roof area is not increasing by one-third of the existing. Mr. Kates said the Board can suggest conditions in its decision but that they must be reasonable. Mr. Pena said a seepage pit would be quite an expense and that being forced to install one in order to get approval for his project is putting his family in a difficult predicament. Vice Chairman Sonenshine said the applicants can choose to have the Board vote on their case as is or say they are willing to compromise and install a pit. Mr. Pena said he does not know the financial impact of such a compromise. Mr. Kates interjected and said that there was a discrepancy between the original site plan submitted and the revisions; he asked which one the Board should be considering. Mr. Bianco said that it appeared the architect had removed all previous revision comments when preparing the last revision, thus erasing the plan's whole history. Mr. Kates confirmed that the Board is working with a "clean" site plan with no revisions; Exhibit #A-1, a site plan dated May 28, 2008, was presented in evidence. Mr. Bianco said that he realized money should have no bearing on an applicant's hardship, however, with the current global financial times, he felt the applicant should not be "pushed into a corner" by not knowing how such a stipulation would affect his wallet; he asked Mr. Hennessey how much the total cost would be for installing a seepage pit. Mr. Hennessey said between \$5,000 and \$7,000. Secretary Freesman asked if the case were to be voted down having no pit proposed,

could the applicant change their proposal right there and then have the Board vote again immediately. Mr. Kates said that would be allowed.

Vice Chairman Sonenshine opened the meeting to the public for questions and comments. Victoria Papazian, 73 Forest Street, complimented the character and work ethic of the applicants along with their volunteerism; she expressed her hope that the Board would consider such personality traits.

Outcome

A motion was made by Ms. Rothschild and seconded by Mr. Bianco, to approve Variance Relief without conditions. All members present voted in favor (7-0).



The Board recessed from 9:35pm to 9:40pm.



Item #3

Case #Z-2008-24	Applicant:	George Futterknecht
185 Closter Dock Road	Representation:	Gail Price, Esq.
(Block 1302/Lot 28)		

The applicant is seeking Use Variance Relief to continue conducting a commercial enterprise (landscaping business/storage) on a property which is located in District #3 (Business) and also used for residential purposes. Jennifer Knarich, Esq., of Price, Meese, Shulman & D’Arminio, 50 Tice Boulevard, Woodcliff Lake, New Jersey, stated she was representing the applicant in the absence of Gail Price, Esq. She summarized her client’s application by saying he is seeking to continue the subject property’s residential use as well as conducting his landscaping business (“Wood Landscapes”). Ms. Knarich said all items regarding the business are stored in the rear portion of the property and are not readily visible from Closter Dock Road; the property, she said, abuts a municipal parking lot in the rear. She said the applicant is before the Board as a result of a Notice of Violation being issued by the Zoning Officer for conducting a landscaping business which is not permitted in District #3; the applicant, she stated, has never received any other complaints or Notices prior to Mr. Sinowitz’. Ms. Knarich said that the application is for Use Variance Relief only and Site Plan Review was not requested because no existing conditions are proposed to be altered; however, her client, she said, is open to the possibility of adding to his current application. Mr. Bianco said that Site Plan Review should be required before proceedings commence on this case and stated there appears to be changes to the subject property; he noted a prior Resolution was issued by the Board for an expansion to the property’s residence. Mr. Sinowitz said changes have been made to the site without prior approvals since said Resolution was memorialized back in 1984; even though, he said, no construction is now being proposed, such prior discretions cannot be ignored by the Board. Mr. Kates said that under both the law back in 1984 and current law, 1- and 2-family dwellings do not undergo Site Plan Review; however, he said, there is a commercial enterprise located on the property. Vice Chairman Sonenshine stated the applicant should continue his presentation and history of the subject property but will need to eventually return to the Board for Site Plan Review.

William Vogt, PE of L2A Land Design, 60 Grand Avenue, Englewood, New Jersey, was sworn in as Witness #1. The witness testified to preparing the site plan dated August 14, 2008 <see applicant's packet: "Exhibit J">. He stated the site plan verified that all bulk requirements are in compliance and that only the use requires a variance. He summarized that the property has an existing 2-story residence and access to the site is via a single-car gravel driveway. Mr. Vogt said the applicant/owner-in-fee lives in said residence, which morphed from a previously 2-family use to the current single-family dwelling; the property owner's private and business vehicles are stored on the site. The witness believed the property in question is very well kept and landscaped. He stated the site is located in District #3 (Business) and is closely situated near District #2 (Residential- B) and District #4 (Commercial). He stated the topography is basically flat with a pitch from front to back and that there has never been a ponding or flooding issue because of the amount of impervious surfaces; he felt the gravel driveway allows for much storm water to soak into the ground. Vice Chairman Sonenshine pointed out that the Zoning Code deems gravel as an impervious surface and asked if contours were prepared by the applicant's surveyor. The witness answered in the negative and said he would inquire if spot checks were done. Vice Chairman Sonenshine requested that contours and spot elevations be submitted to better understand the drainage conditions; the witness obliged. Vice Chairman Sonenshine asked what the sheds and overhangs look like. Mr. Vogt said they were situated in such a way that made them one continuous structure with some of the sheds being open in the front and back while others have sides with gabled roofs. Mr. Bianco asked what the sheds housed. Mr. Vogt said 2 small *Caterpillar* machines (bobcats) along with landscaping tools and equipment were stored in them. Mr. Bianco asked if there were multiple entrances/exits to and from the property. The witness replied that there is a gate in the rear that leads to a municipal parking lot. Mr. Bianco asked why there were no commercial vehicles depicted in the pictures submitted to the Board. The witness said the pictures were taken after 8:30am, the time when such vehicles had already left for job sites leaving only private cars on the site; Mr. Bianco requested a manifest of business vehicles. Ms. Knarich said the applicant would address the issue in his testimony. Mr. Bianco requested that slots for the commercial vehicles be shown on the site plan depicting how they and private cars would fit on the property so to avoid a traffic flow problem; Mr. Vogt obliged. Vice Chairman Sonenshine asked that depictions of on- and off-peak parking hours on the site be submitted as well. Ms. Rothschild asked what the surface material of the municipal lot abutting the site is made of; Mr. Vogt said it was blacktop. The witness was not aware of any seepage pits existing on the property. Mr. Bianco asked about the span of the curb line from the subject property to the municipal lot as well as the possibility of a catch basin being in that area to take in storm water; the witness said he would follow up. Vice Chairman Sonenshine asked who owned the fence located on the southern portion of the site being that the site plan showed it to be overlapping property lines; Mr. Hennessey inquired about the composition of said fence. Mr. Vogt was not sure of ownership but believed it was made of wood with some of it being chain link. Mr. Hennessey asked to describe the site's exterior lighting. The witness said there is 1 light pole and that the sheds do not have lighting. Mr. Hennessey pointed out that the existing sheds are on the property line and Mr. Sinowitz agreed, saying they were in violation and had no prior approval. Mr. Kates said that a Site Plan Review application would have to be filed, which would lead to various Borough departments giving their assessment of the property's current conditions; he said re-noticing would also be required.

Vice Chairman opened the meeting to the public for questions and comments. No one wished to be heard.

George Futterknecht, owner-in-fee of the subject property, was sworn in as Witness #2. He testified to purchasing the property in 1982 and residing there since. He stated he has been on the Shade Tree Commission for 12 years and that his business contributes material to the Improvement Commission. He said the residence sits in the front of the property and that it dates back to 1905. He said he tries to maintain the home's historic character. Mr. Futterknecht said the house was a 2-family dwelling until March 2005, the time at which he decided to "take over" the entire house and convert it to a 1-family use by opening up partitions. Vice Chairman Sonenshine asked if building permits were received for stated work and if the property's use got officially re-classified as a single-family house. The witness said permits were issued but was not certain about re-classification; he said 1 of the 2 entrances were closed off and that there was a gas meter each for the 1st and 2nd floors as well as for the boiler at the prior landlord's request; the witness stated there was, however, only 1 water meter. The witness continued by saying his landscaping business, situated in the rear portion, consists of 6 trucks and trailers, all of which are less than 25,900 lbs. He said his trucks are 20-22' long with the trailer being another 20' in length; the trucks, he said, have 2 axels with the back axel holding 4 wheels. The witness said that each truck has its own space and there is never a problem with entering or exiting the property, thus rarely requiring the use of Closter Dock Road for parking. Mr. Futterknecht said he also owned 2 jeeps for personal use along with his wife's car. He stated he has 1 tree chipper, which is used only at job sites and no tub-grinding occurs on the site nor is there any recycling equipment; he said there is no stacking of material, pavers, wood, etc. except occasionally when a small amount of material is staged for a job scheduled to be done that particular day. He stated there was no landscaping, storing, manufacturing or processing conducted on his property and that there are no retail transactions with customers. Mr. Futterknecht stated that most of the material collected from job sites is organic (clippings) and it remains in the trucks until being brought to a recycling center in Orangeburg, New York. He said he has operated his business from the site since 1985. He said on a typical day he would have a quick meeting with his employees followed by the trucks leaving for job sites between 7:30am and 8:30am; the yard remains vacant until the trucks return any time between 4:30pm and 7:30pm. He said his laborers, totaling 12, either park their personal vehicles in both nearby municipal lots or they travel by bus. He stated the rear fence is his own and that the gate can open in either direction. The witness confirmed that the exterior light pole is centered on the site and felt it illuminates at least the center portion of the property but might not reach the municipal lot. He stated that the business trucks cannot be seen from Closter Dock Road due to the house and landscaping unless one were to look directly down the driveway. Mr. Futterknecht said he has never received neighbor complaints regarding noise or odor. Mr. Sinowitz asked how he would characterize the condition of the sheds. The witness said they were in good shape and water-tight. Mr. Bianco inquired about the presence of chemicals on site. The witness said fertilizer is kept on-site and that he was certified with the New Jersey Department of Environmental Protection (NJDEP). Mr. Bianco asked if any vehicles were on tank-like tracks; the witness said all trucks were on wheels. Mr. Futterknecht said there were no bulldozers and that for snow-plowing, he used the 2 bobcats primarily. Mr. Kates asked what the applicant's reaction was when he was cited by the Borough for the first time after so many years of conducting his business on-site. The witness said he had a conversation with Mr. Sinowitz back in 2005 and was told his property conditions/use was not legal. Dr. West asked if there was any flow of trucks traveling through the rear gate to the municipal lot; the witness said it was impossible due to the curb. Dr. West recollected that the Planning Board had some supervision over said municipal lot when it was being designed and asked if the witness knew how the gate came about. Mr. Futterknecht was not sure but remembered that the gate opened up to a wooded area before the municipal lot was installed. Secretary Freesman asked if the site had any drums/pumps of oil/gas. The witness said there was one 55 gallon drum for fresh oil but none for waste oil or gas; he stated that the

trucks were sent to a mechanic's shop for oil changes. Mr. Bianco asked what was "going on at the property" before the witness purchased it. Mr. Futterknecht said the property consisted of the then 2-family house with no commercial activity; he said there was a lot of brush in the rear yard resulting in the rear property line not being visible. Vice Chairman Sonenshine asked when the sheds were installed and if permits were received for them. The witness said they were put up in the mid to late 1980's and that no permits were issued. He said the sheds sit directly on the ground with a stone base around the perimeter; there are no footings and they are not permanent, he said. Vice Chairman Sonenshine asked why the employees do not use the site for parking their personal cars during the work day rather than the municipal lots; the witness said it was more convenient to have the area empty for the trucks returning from job sites. Ms. Rothschild believed that the Board should clarify any discrepancy between man-made sheds and ones bought at a store. Vice Chairman Sonenshine said that if the item has a roof, it must count towards building and impervious coverage.

Vice Chairman Sonenshine opened the meeting to the public for questions and comments. No one wished to be heard.

Outcome

The case was adjourned and the applicant was instructed to return to a Work Session for Site Plan Completeness Review only. The applicant hoped to submit all applicable paperwork in time so be heard by the Subcommittee at the March 25, 2009 Work Session.



A motion was made by Mr. Bianco and seconded by Mr. Noh, to memorialize the Resolution for 69 West Street, an denied application for Use Variance Relief to convert a residence from 1-family to 2-family. All members present voted in favor (4-0).



There being no further items to discuss, a motion to adjourn the hearing was made by Ms. Rothschild and seconded by Mr. Bianco. All members present voted in favor. The hearing adjourned at 11:00pm.