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

ZONING BOARD OF ADJUSTMENT

Reorganization & Regular Monthly Hearing (Minutes)

January 21, 2009

Prepared by:

Paul Demarest
Coordinator

Chairman Knee called the Reorganization & Regular Monthly Hearing of the Zoning Board of Adjustment of the Borough of Closter, New Jersey being held Wednesday, January 21, 2009 in the Council Chambers of the Borough Hall to order at 8:11pm. 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. Chairman Knee advised that the Board adheres to an 11:00pm adjournment and no new matters would be considered after such time.

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



Reorganization

Oaths of Office

Full Member Appointees (Term Expiring December 31, 2012): Mitchell Monaco
Theodore West, DDS

Alternate Appointees (Term Expiring December 31, 2010): (#1) Jennifer Rothschild, Esq.
(#3) Steven Iafrate

Officers

A motion was made by Mr. Bianco, and seconded by Mr. Sonenshine, to nominate Mr. Knee as Chairman of the Board. Being there were no other nominees, his selection was affirmed by acclamation.

A motion was made by Mr. Bianco, and seconded by Chairman Knee, to nominate Mr. Sonenshine as Vice Chairman of the Board. Being there were no other nominees, his selection was affirmed by acclamation.

A motion was made by Mr. Bianco, and seconded by Chairman Knee, to nominate Mr. Freesman as Secretary of the Board. Being there were no other nominees, his selection was affirmed by acclamation.

Professional Services

A motion was made by Mr. Bianco, and seconded by Secretary Freesman, to nominate Michael Kates, Esq. as Attorney of the Board. Being there were no other nominees, his selection was affirmed by acclamation.

A motion was made by Mr. Bianco, and seconded by Mr. Monaco, to nominate Boswell Mc Clave Engineering, represented by John Pacholek, PE, as Engineer of the Board. Being there were no other nominees, the selection was affirmed by acclamation.

Adoption of Calendar

A motion was made by Ms. Mattes, and seconded by Vice Chairman Sonenshine, to adopt the proposed 2009 Hearing/Work Session and Special Hearing Schedules. The adoptions were affirmed by acclamation.

Adoption of Fee & Escrow Deposit Schedules

A motion was made by Mr. Bianco, and seconded by Vice Chairman Sonenshine, to adopt the proposed 2009 Application Fee, Miscellaneous Fee and Escrow Deposit Fee Schedules. The adoptions were affirmed by acclamation.

Adoption of Official Newspapers

A motion was made by Mr. Bianco, and seconded by Vice Chairman Sonenshine, to adopt *Press Journal* and *The Record* as the Official Newspapers of the Board to be used for public noticing. The adoptions were affirmed by acclamation.



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

- Robert Knee- Chairman
- Lorin Sonenshine, RA/PP- Vice Chairman
- Steven Freesman, Esq.- Secretary
- Joseph Bianco, RA/PP
- Denise Mattes, CLA
- Mitchell Monaco
- Jennifer Rothschild, Esq.- Alternate #1
- Francis Noh- Alternate #2
- Steven Iafrate- Alternate #3
- Thomas Hennessey- Council Liaison
- Leonard Sinowitz- Zoning Officer
- Michael Kates, Esq.- Board Attorney
- John Pacholek, PE- Board Engineer
- Paul Demarest- Board Coordinator

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

- Theodore West, DDS



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



A motion was made by Vice Chairman Sonenshine, and seconded by Ms. Mattes, to approve the minutes of the April 16, 2008 Hearing. Mr. Kates requested that all relevant Resolutions be attached to said minutes since there was such a long period of time between the meeting itself and the preparation of minutes. All members present voted in favor. A motion

was made by Mr. Bianco, and seconded by Vice Chairman Sonenshine, to approve the minutes of the August 20, 2008 Hearing, provided relevant Resolutions would be attached to them. All members present voted in favor. A motion was made by Mr. Bianco, and seconded by Vice Chairman Sonenshine, to approve the minutes of the September 17, 2008 Hearing. All members present voted in favor. A motion was made by Mr. Bianco, and seconded by Vice Chairman Sonenshine, to approve the minutes of the December 17, 2008 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 January 28, 2009. The following were assigned: Vice Chairman Sonenshine, Mr. Bianco and Mr. Monaco. Due to the subject matter of one of the applications to be heard (1 Railroad Avenue), Mr. Pacholek agreed to attend as well.



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-2008-21
63 John Street
(Block 1203/Lot 2)

Applicant: Dennis Wiggers
Representation: Donna Vellekamp, Esq.

The applicant is seeking Use Variance Relief to continue utilizing a residential property to conduct a commercial enterprise (contractor's yard). Donna Vellekamp, 161 Mc Kinley Street, Closter, New Jersey, continued with Witness #1, Steven Lydon, PP of Burgess Associates, 25 Westwood Avenue, Westwood, New Jersey, whose testimony was adjourned at the October 15, 2008 Hearing. Exhibit #A-7, a revised area layout previously submitted (Exhibit #A-4), was presented. Mr. Lydon explained that said exhibit showed corrections to the block and lot numbers of the Miele Sanitation property (previously marked as the Borough's transfer station). Exhibit #A-8, a series of 8 photographs depicting property conditions since the October 15, 2008 Hearing, was presented. The witness stated that he reviewed the 2008 Master Plan Reexamination Report recently adopted by the Planning Board on January 7, 2009. He said it essentially reaffirms, strengthens and clarifies long-standing Borough policy. Exhibit #A-9, copies of the 2008 Master Plan Reexamination Report and the 1981 Land Use Plan, was presented. Mr. Lydon testified that the 1981 Plan discusses the physical portion of the Borough in which the property in question is located, specifically stating that the north side of John Street, west of Railroad Avenue for a distance of 315', was proposed for limited industrial uses rather than the present residential classification. He continued by saying the 1981 Plan reasoned such a proposal because there are presently residences adjacent to industrial properties and it would be inappropriate to continue such a pattern. Mr. Lydon said that subsequent Planning Board Reports and Plans since 1981 have tried to reduce the amount of industrial areas and provide land for business and professional uses, including the John Street area; he stated one of the more recent Reports suggested the area should not be residential even

though one of the Land Use Elements said that it should. Mr. Lydon testified that the 2008 Report talks of improving conditions and compatibility of the industrial-zoned lands in the community, specifically mentioning Railroad Avenue, West Street and John Street. The Report, he said, suggests the long-term goal of the area is to provide incentives to owners/operators of industrial lands to do improvements on their properties which would be beneficial to them and protective to residents in the area; such actions would allow the industrial owners/operators to function in a manner which would strengthen the feasibility of their industries and protect residents from the impact of their operations. The witness said the 2008 Report's goal was not to "drive" such industrial enterprises out of the Borough but rather provide for them to remain and exist with conditions. He further stated that the Report says certain zoning regulations should be "relaxed," but said there is no way to ease a standard for a use that is not permitted in the first place, as is the case with 63 John Street. Thus, Mr. Lydon said, the granting of Use Variance Relief, which is supported by the Planning Board's 1981 and 2008 documents, can create a transition of uses between residences and industries. He said transition elements, such as berms and trees, have long been present at 63 John Street and that the equipment illegally-stored on Westminster Avenue (paper street) have been removed since the October 15, 2008 Hearing. Mr. Lydon believed that the positive criteria supported a Use Variance and that the 2008 Report helps his client's case and the negative criteria does not amount to major detriment to the neighborhood or Master Plan; he said the industrial uses benefit the public as well. He stated a height limitation on material piles is being adhered to and that tub grinding had ceased. Mr. Kates asked if other commercial entities are targeted in the 2008 Report. Mr. Lydon said that the 49 John Street (Crimmins) and 35 John Street (Armaniaco) cases are very relevant. He said the single-family house on Lot #1 acts as a good transition and said without the dwelling, Mr. Wiggers' landscaping yard would probably expand and create a more intense industrial use. Mr. Bianco stated he was a member of the Planning Board in 1981 and said the Land Use Plan was to reduce the industrial use of land in the area. Mr. Lydon countered by saying the Plan's goal was to eliminate the residential zone covering 63 John Street and reclassify it as industrial. Mr. Bianco asked if such a goal was ever implemented by the Mayor and Council; the witness said that the Governing Body did not act on either that recommendation or 12 others out the 15 stated goals. Mr. Bianco inquired about the 2002 Master Plan Reexamination Report to which the witness said the Planning Board recognized the properties acted as a buffer zone and suggested the lots remain residential. Mr. Lydon said the 2008 Report superseded the 2002 Report. Mr. Bianco believed the witness selectively pointed out only those parts of the 2008 Report that enhanced his argument and that the Report also stated that a subcommittee consisting of residents and owners/operators be formed to come up with fair ways to institute improvements that would benefit both sides. Ms. Vellekamp said the 2008 Report says to make the areas compatible but not to reduce or eliminate the industrial lands as hinted at by Mr. Bianco when referring to the 2002 Report; she further stated the 1981 Land Use Plan's goals were more important than the recommendation for a long-term plan. Mr. Bianco asked that rather than the Board and the applicant conducting a 2-way conversation, that the decision-making should involve the residents being affected in the area along with the parties involved with 49 John Street and 35 John Street. Mr. Lydon suggested that a subcommittee would not fit into the forum required by the Board's procedures; he believed the residents' recommendations should be weighed in the Board's decision and stipulated in any approval if so desired. Ms. Vellekamp reiterated that the 2008 Report stated, along with cooperating with the owners/operators and residents, that the Borough should attempt to improve off-site conditions and relax zoning regulations. Mr. Kates questioned why Site Plan Approval was not being sought by the applicant along with Use Variance Relief. Mr. Bianco said a Use Variance should not be considered by the Board until a subcommittee, as earlier mentioned, is convened so to transform the entire area and not just 63 John Street along with Site Plan Review being applied

for by the applicant. Mr. Kates believed a Use Variance could be approved by the Board conditioned upon Site Plan Approval later on without the Board losing its “clout.” Mr. Kates asked counsel if she’d be willing to come back for Site Plan Review prior to a Board vote on Use Variance Relief. Ms. Vellekamp said her client’s property is different from those of 49 John Street and 35 John Street in that 63 John Street is further away from residential properties on the street, it fronts on Railroad Avenue and that Mr. Wiggers’ property is maintained at a higher level; “tying” all 3 cases together would make it impossible for her as an attorney to “force” the other 2 parties to do anything. She suggested portions of Westminster Avenue (paper street) could be purchased by Mr. Wiggers along with a neighboring property owner, thus keeping the industrial enterprises and their truck routes confined to their current areas. Mr. Bianco suggested any purchase of the paper street should also involve Mr. Crimmins and Mr. Armaniaco. Vice Chairman Sonenshine requested that a permanent layout and site plan be professionally-designed to enhance the necessary buffer zone and alleviate any issues that could arise from the sale of the property in the future. Mr. Monaco asked what the applicant’s long term goals were for the property. Mr. Wiggers said that while he would probably be scaling back on expanding his business due to the current economic conditions, he hoped to remain at 63 John Street for many years to come. Mr. Iafrate suggested that due to the plethora of noise and odor complaints from neighboring residents, the issue should not be how to buffer or hide the business’ operations but rather eliminate those operations causing the nuisances. Ms. Vellekamp believed Site Plan Review could be fruitless due to the large amount of buffering already existing on the property and the fact that 63 John Street borders with 49 John Street and no other residence on John Street. Mr. Iafrate asked that since the property comprises of several lots, would a possible Site Plan Review be conducted as a whole or separate. Mr. Kates informed that, technically, residential properties do not need Site Plan Review but that there is a commercial element involved with the case; thus, all of the lots making up the property would be reviewed as a whole. He reiterated that the applicant, however, must decide whether or not he wishes to seek Site Plan Approval. Ms. Rothschild asked if the single-family house being rented out would contribute to the positive criteria. Mr. Lydon said it would since it produces an increase in the diversity of housing in the community.

Chairman Knee opened the meeting to the public for questioning of the witnesses.

Lidia Auriti, 36 John Street, questioned if the additional buffering would make the current noise and odor problems any better. Mr. Wiggers hoped that it would.

Mary Ellen Brusto, 19 John Street, questioned what could be done about the smells and commercial vehicles driving along John Street on weekends. Mr. Wiggers said that his trucks do not travel on John Street and that they only enter his property from Railroad Avenue; he pointed out that there are numerous landscaping businesses in the area. The applicant expressed his wanting to reach a compromise with the residents.

Rita Ciancio, 15 John Street, asked how the noise issues would be quelled. Mr. Lydon said that the 2008 Report recommends that decibel level limitations be adhered to.

Joseph Chamay, 31 John Street stated that a film/residue is constantly appearing on the surfaces of his house and deck which derives from Mr. Wiggers’ operations. Mr. Lydon stated a Site Plan Review would address such an issue.

Mark Maddaloni, 163 Closter Dock Road, questioned the statement by Mr. Lydon that the 2008 Report reaffirmed the 1981 Land Use Plan’s recommendations and asked where in the document

it specifically said that. Mr. Lydon reiterated that the “relaxing” in his client’s case would mean the Board granting a Use Variance.

Elaine Mahmarian, 191 West Street, asked what specifically would be done in terms of Mr. Wiggers compromising with the residents. Mr. Wiggers stated he did not have an answer.

Jesse Rosenblum, 65 Knickerbocker Road, asked whether the applicant’s type of business would be permitted in the Commercial or Industrial Zones. Mr. Lydon said the operation would fall into the manufacturing, converting and altering categories along with warehousing, although most of the storage is outside; thus, he felt it would be allowed in the Industrial Zone. He also said that being a contractor’s yard, allowance in the Commercial Zone is feasible. Mr. Sinowitz said that prior to 1992, such a use would have been permitted in District #5 (Industrial). Mr. Kates felt the language in the 2008 Report was “sloppy” because it did not recognize zone distinction. Ms. Rothschild stated that such missing clarification could lead to future misinterpretation between commercial and industrial permitted uses. Mr. Sinowitz clarified that a contractor’s yard, as an exterior operation, is not permitted in District #5 as per current zoning codes.

Robert Friedman, 155 Closter Dock Road, complained about tub-grinding that continued the previous summer after the procedure was ceased by order of the Police Department. He also expressed concern about landscaping trucks, weighing more than the maximum allowed between William Street and West Street (4,000 pounds), traveling on Closter Dock Road.

Diane Larsen, 49 John Street, asked if the applicant’s business operation could be considered “grandfathered” since Mr. Sinowitz stated that contractors’ yards were permitted prior to 1992. Mr. Sinowitz corrected her and said such a use was never allowed in residential districts; he did say, however, that if the property were deemed an industrial zone, in theory, it could be “grandfathered.”

Jack Kelly, 132 Herbert Avenue, questioned whether commercial vehicle parking, mentioning Miele Sanitation and Rinaldi Transportation, was permitted in the industrial zone. Mr. Lydon stated that he was not prepared to answer such a question.

Outcome

The applicant decided to return to the Work Session Subcommittee to initiate Site Plan Review along with submitting requisite paperwork and fees along with public noticing requirements. A potential Work Session date was not decided on due to outstanding items and the need for the applicant to retain professional engineering services.



Item #2

Case #Z-2007-11
1 Ruckman Road
(Block 1306/Lots 1 & 2)

Applicant: Joong Kim
Representation: David Watkins, Esq.

The applicant is seeking Conditional Use Variance and Site Plan Approvals for the construction of a 2-story office building and renovation to the remaining portion of an existing warehouse/office building. Chairman Knee and Mr. Iafrate recused themselves from the case and Vice Chairman Sonenshine chaired this portion of the meeting. David Watkins, Esq., 285 Closter Dock Road, Closter, New Jersey, commenced by expressing his wish to proceed with an immediate vote on the application. Vice Chairman Sonenshine stated that being a revised site plan had produced a new report from Mr. Pacholek, new questions had arisen. He further stated that at the December 17, 2008 Hearing, Mr. Kates' substitute, Richard Rapone, Esq., was to consult with him on whether or not the case could be reopened due to the new site plan and subsequent comments. On a side note, he suggested to the professionals present, that "bubbling" be depicted on all revised plans so the Board members can easily follow changes to resubmitted plans. Thomas Skrable, PE, 65 Ramapo Valley Road, Mahwah, New Jersey, previously sworn-in, presented Exhibit #A-11, a revised site plan dated December 29, 2008, and referred to Mr. Pacholek's report dated January 19, 2009. The witness said the guard rail detail for Endres Street along with the proposed parking area had been addressed. He said the area between parking stalls and the main aisle in front of the building had been addressed. He stated the curb stops at the end of the handicap spaces located at the northwest portion of the structure would be addressed. Mr. Skrable said the Board's suggestion to move the drop curb closer to the handicap spaces would be corrected on the site plan along with depicting roof leader connections. In regards to the latest Lighting Review report by the Board Engineer dated January 15, 2009, Mr. Bianco felt the current lighting scheme facing Ruckman Road should remain so the Borough could get "free lighting" for one of the darkest areas in town; he hoped the intensity of the lighting facing Herbert Avenue would be addressed by keeping in mind the presence of homes. Mr. Bianco suggested the use of schedule "40" drainage pipe (white) rather than schedule "35" piping (green) to avoid possible crimping in an industrial area. Ms. Mattes suggested the removal of the Cherry tree, marked as "24" on the site plan, due to line of sight concerns. Vice Chairman Sonenshine pointed out that the application is deficient by 10 parking spaces and that a fee to the Parking Authority could be suggested by the Board in its decision.

Vice Chairman Sonenshine opened the meeting to the public for questioning of the witness.

Steven Iafrate, 26 Whitney Street, asked how the proposed development would affect the current drainage problem on Herbert Avenue being that the drainage of the culvert on Ruckman Road is connected to the property in question as well as Herbert Avenue. Mr. Skrable said that the proposal would mean less water runoff issues because of less impervious coverage and roof surface area than what is currently on site; he pointed out the existing problem is regional. Mr. Pacholek stated that the storm water on Ruckman Road eventually ends up downstream in a ditch in front of the Department of Public Works (DPW) building northeast of the site. Mr. Iafrate submitted Exhibit #O-3, a drainage layout of the Herbert Avenue connection to Homans Avenue going along Ruckman Road. Mr. Pacholek said that even if the direction of flow is uphill due to topography, that the drainage piping could be pitched so that it would flow towards the DPW building. Vice Chairman Sonenshine stated that since the architecturals propose 2 different elevations (1 each for new construction and renovation), there must be a method of preventing a future connection of the 2 buildings and providing for separation; such a link would bring exits, elevators, etc. into the discussion.

Outcome

A motion was made by Mr. Bianco, and seconded by Ms. Rothschild, to grant Conditional Use Variance Relief contingent upon the following stipulations: 1.) payment of fees to the Parking Authority for a deficiency of 10 spaces 2.) prevention of a future link between the 2 separate structures 3.) removal of said Cherry tree 4.) usage of schedule "40" drainage piping 5.) having the wood guardrail be flush with said property line 6.) having the handicap curb cut be relocated 7.) having the lighting scheme remain as proposed. All members present voted in favor (5-0). A motion to grant Site Plan Approval for all applicable variances/waivers was made by Mr. Bianco, and seconded by Ms. Rothschild. All members present voted in favor (5-0).



Item #3

Case #Z-2008-12
35 John Street
(Block 1203/Lot 7)

Applicant: Robert Armaniaco
Representation: Stuart Liebman, Esq.

The applicant is appealing the determination of the Zoning Officer that the existing outdoor commercial storage on said residential property is not permitted; in the alternative, the applicant would seek Use Variance Relief.

Outcome

Stuart Liebman, Esq. of Wells, Jaworski & Liebman, LLP, 12 Route 17 North, Paramus, New Jersey, stated that, considering the current status of the 63 John Street application, it would be logical to follow Mr. Wiggers and get direction from his case. The Board suggested that, as in the 63 John Street application, the possible Work Session or Hearing date remain unannounced so that renoticing, which could possibly include Site Plan Review, be coordinated between the applications for 35 John Street, 49 John Street and 63 John Street. The Board wished to avoid having concerned residents be inconvenienced by attending 3 separate hearings.



Item #4

Case #Z-2008-13
49 John Street
(Block 1203/Lot 5)

Applicant: James Crimmins
Representation: Stuart Liebman, Esq.

The applicant is appealing the determination of the Zoning Officer that the existing outdoor commercial storage on said residential property is not permitted; in the alternative, the applicant would seek Use Variance Relief.

Outcome

Stuart Liebman, Esq. of Wells, Jaworski & Liebman, LLP, 12 Route 17 North, Paramus, New Jersey, stated that, considering the current status of the 63 John Street application, it would be logical to follow Mr. Wiggers and get direction from his case. The Board suggested that, as in the 63 John Street application, the possible Work Session or Hearing date remain unannounced

so that renoticing, which could possibly include Site Plan Review, be coordinated between the applications for 35 John Street, 49 John Street and 63 John Street. The Board wished to avoid having concerned residents be inconvenienced by attending 3 separate hearings.



A motion was made by Ms. Rothschild, and seconded by Ms. Mattes, to memorialize the Resolution for 14 Piermont Road, an approved application for Use and Bulk Variance Relief to construct an addition to a residence. All members present voted in favor (6-0).



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 11:14pm.