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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)*

July 15, 2009

Prepared by:

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Chairman Knee called the Regular Monthly Hearing of the Zoning Board of Adjustment for the Borough of Closter, New Jersey being held Wednesday, July 15, 2009 in the Council Chambers of the Borough Hall to order at 8:03pm. 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 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
- Steven Freesman, Esq.- Secretary
- Joseph Bianco, RA/PP
- Theodore West, DDS
- Mitchell Monaco
- Jennifer Rothschild, Esq.- Alternate #1
- Francis Noh- Alternate #2
- Mark Crisafulli- Alternate #4
- 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:

- Steven Iafrate- Alternate #3



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



There were no minutes of previous Hearings for the Board to consider.



Chairman Knee requested 3 volunteers from the Board to serve on the Subcommittee for the next Work Session to be held on Wednesday July 22, 2009. The following were assigned: Chairman Knee, Mr. Bianco and Ms. Rothschild.



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.

Diane Larsen, 49 John Street, questioned the case order of the evening's agenda, specifically with regards to the 35 John Street (Case #Z-2008-12) and 49 John Street (Case #Z-2008-13) applications. Mr. Kates said both applications were being carried because a tentatively-scheduled (Special) Hearing was not convened; he continued to say that the cases were initially set for this evening by default and that the Board was then advised by counsel that a professional witness was unavailable leading to their appearance tonight requesting a new Hearing date.



Item #1

Case #Z-2009-05
13 Church Court
(Block 2203/Lot 2)

Applicant: Philip & Amy Cushmaro
Representation: Selves

The applicants are seeking Variance Relief for the construction of an in-ground swimming pool and on-grade patio.

Philip Cushmaro, applicant and owner in fee of the subject property, continued testimony as Witness #1. He thanked the Board for approving his application at the June 17, 2009 Hearing; however, prior to the memorialization of any Resolution, he wished to modify one of the Board's stipulations he now felt would, if implemented, create a new hardship. Exhibit #'s A-5, a plot plan last revised July 2, 2009, and A-6, a landscape plan last revised July 1, 2009, were presented. The witness said he originally-agreed to reducing the width of the existing driveway to lessen the lot's proposed impervious coverage; he felt, though, such an act would cause problems with entering/exiting the driveway with a car. Although it would be more expensive, the witness explained that he was proposing to reduce the impervious coverage to the agreed upon amount of 39.8% via a reduction in the patio(s) layout. Mr. Cushmaro proposed to decrease the size of the patio overall but extend it towards the pool where the previous plan called for "almost none" in that area; the prior plan, he said, would have someone exiting the pool and encountering grass immediately rather than an impervious surface. He was also proposing more grass/sod towards the neighbor at 19 Church Court, who had no objection to the revisions. Furthermore, Mr. Cushmaro said the retaining wall would be removed as well to reduce coverage; it would be replaced with grass. He testified that the pool's size and location would remain the same and the hot tub would be closer to the pool due to the lessening of the patio area. Mr. Kates reminded the Board of the 2 previously-agreed upon stipulations, specifically geared towards the concerns of the neighbor located at 19 Church Court: the control of soil erosion during construction and the submittal of a "Final As-Built" survey (drainage and berming inclusive) to the Zoning Officer.

Chairman Knee opened the meeting to the public for questions and comments; no one wished to be heard.

Outcome

A motion was made by Ms. Rothschild and seconded by Mr. Bianco, to approve the applicants' modifications to their previously-granted Variance Relief which had the following conditions (still mandatory) attached to it: 1.) drainage to be installed all around pool; 2.) mesh cover to be used over pool during off-season to allow for rainfall to drain into it; 3.) lighting to be restrictive so not to impose upon neighbors; 4.) 18" to 24" berm to be installed in new landscaped area; 5.) silt fencing to be installed on remaining soil to prevent silt from going to neighboring properties; 6.) reduction of impervious coverage to 39.8%; 7.) "Final As-Built" survey to be submitted to Mr. Sinowitz. The motion passed (**7-0: YES: Knee/ Sonenshine/ Freesman/ Bianco/ West/ Monaco/ Rothschild**). Furthermore, a motion was made by Ms. Rothschild and seconded by Mr. Bianco, to memorialize the Resolution for 13 Church Court (Case #Z-2009-05). The motion passed (**7-0: YES: Knee/ Sonenshine/ Freesman/ Bianco/ West/ Monaco/ Rothschild**). Note: For expediency, Mr. Kates had previously-prepared said Resolution in anticipation of the applicant's proposed modifications.



Item #2

Case #Z-2008-24
185 Closter Dock Road
(Block 704/Lot 10)

Applicant: George Futterknecht
Representation: Jennifer Knarich, Esq.

*Chairman Knee recused himself from this case.
Vice Chairman Sonenshine chaired this portion of the meeting.*

The applicant is seeking both Use Variance and Site Plan Approvals to continue conducting a commercial enterprise (contractor's yard) on a property also used as a residence and located in District #3 (Business).

Jennifer Knarich, Esq., Price, Meese, Shulman & D'Arminio, 50 Tice Boulevard, Woodcliff Lake, New Jersey, re-introduced herself and highlighted the February 18, and May 20, 2009 Hearings, in which the latter resulted in an adjournment to this evening.

William Vogt, PE, L2A Land Design, LLC, 60 Grand Avenue, Englewood, New Jersey, continued testimony as Witness #1. Exhibit S (*using applicant's labeling system within application*), a demolition plan last revised July 1, 2009, was presented. Mr. Vogt said the revision showed the existing conditions of the site. He reiterated the 3 bulk variances being requested from the applicant, all of which deal with the existing sheds: 1.) excessive # of accessory structures; 2.) setback deficiency for accessory structures; 3.) excess of percentage ratio allowed for accessory structure(s) building area to total building area. Exhibit T, a colorized version of a site plan last revised July 1, 2009, was presented. The witness said it showed the improvements which would bring the existing sheds into compliance by way of limiting the # of sheds to 2, moving the sheds to 3' away from the property line and lessening the sheds' building area to less than 30% than that of the property's total building area. He said other revisions included: 1.) a revised vehicle manifest now depicting all commercial and residential vehicles to be on-site (6 trucks, 6 trailers, 2 *Bobcats* and 2 personal automobiles); 2.) a 5' concrete apron at the driveway to prevent any crushed stone from entering the walkway; 3.) additional curbing along the side and rear of the subject property; 4.) the elimination of some crushed stone area near the driveway to gain more lawn area, thereby reducing # of residential parking spaces from 5 to 4. Mr. Vogt said all

modifications to the proposal now brought the total impervious coverage from 73% down to 63% (80% is permitted). He continued to say that Mr. Pacholek's latest report found no objections to the revisions and that no new storm water management was necessary. Mr. Bianco asked where the wood chipper was on the plan. The witness said it was not shown on the plan but that it was the same size as the *Bobcats* and could be easily stored behind the trucks. Mr. Bianco asked if there was any landscaping proposed for the green triangular area. Mr. Vogt explained that everything seen in green on the plan would be lawn with no trees being proposed. Mr. Crisafulli asked how many trees were currently on site; the witness said 5 to 6. Mr. Bianco asked for clarity on the sheds' height. Mr. Vogt said they would be 8', 10" to the peak having a wood frame (pre-fabricated) and floors being on-grade or slab. Vice Chairman Sonenshine expressed concern about the shed floors being able to withstand the weight of heavy equipment. Mr. Hennessey asked why the site plan (page 3) showed an option for an asphalt driveway; the witness that since the Borough Code deemed gravel as impervious, that option was put in the proposal to let the Board know the applicant was willing to install blacktop. Vice Chairman Sonenshine said there was no curb detail on the plan; the witness said it would be Belgian block with 3" reveal. Mr. Pacholek said the Borough Code called for 6" reveal. Mr. Bianco stated that a 3" reveal would allow for trucks to "jump" the curb. Vice Chairman Sonenshine said such stipulations should be in a Resolution and marked on the site plan.

Vice Chairman Sonenshine opened the meeting to the public for questions and comments.

Donald Schmidt, 162 Closter Dock Road, asked if the witness had re-visited the drainage issues concerning the Borough's North Lot, specifically drainage to the municipal property originating from the applicant's property. Mr. Vogt stated the subject property currently sloped from front to back and reiterated that the impervious surface was being reduced by the proposal; he concluded most of the storm water would now infiltrate into the ground on-site. Mr. Schmidt asked if there were drainage pits on the subject property going into the North Lot; Mr. Vogt answered not to his knowledge. Mr. Schmidt asked if the witness investigated the grading of the North Lot's storm drain; Mr. Vogt said a survey had been prepared but it did not state such information. Mr. Schmidt indicated he would be presenting photographs to the Board later on depicting his areas of concern. Mr. Schmidt asked what the truck flow entering and exiting the subject property was and questioned the site plan's portrayal of them backing in; the witness said the proposed layout was, to the best of his knowledge, what the applicant would follow. Mr. Schmidt asked if it would be possible for 1 truck to be entering and 1 to be exiting at the same time with a 15' curb cut; the witness felt the applicant's experience would dictate such maneuvering. Mr. Kates stated that the only Administrative Reports received by the Board that questioned traffic flow were 2 from the Construction Official. Vice Chairman Sonenshine asked where the rainwater would be going if it drained to the rear and remained stagnant against Belgian block curbing; the witness said the water would generally drain towards the back property and, for the most part, be absorbed into the ground. Mr. Vogt stated further that the Board requested curbing in the rear to keep rainwater on the subject property for a greater period of time; ultimately, he said, if "ponding" formed, the water would go to the inlet as it does now. Vice Chairman Sonenshine understood that drainage flowing onto the North Lot had been addressed in the engineer's design, however, he felt "ponding" within the subject property was not solved. The witness stated the installation of a drywell system was not feasible because the water table, based on a test pit dug by the applicant, was too high; he said ground water had been found at 3' to 4' deep and tying into the system would be required since it would have to be a subsurface design. He also pointed out that the Board never requested a storm water management system from the applicant. Mr. Bianco asked what would happen if the curbing was slotted on the subject property and North Lot; Mr. Pacholek said it would alleviate it coming

into the North Lot. Ms. Knarich said that based on Mr. Pacholek's report, the applicant saw no need to go beyond the curbing proposal, however, she said her client would be willing to have the engineers work out the specifics.

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

George Futterknecht, applicant and owner in fee of the subject property, continued testimony as Witness #2. He briefly talked of his business, "Wood Landscapes, Inc." and its day-to-day operations. The witness stated the easiest way to maneuver traffic flow in and out of his property was to have the trucks back out in the morning and pull straight in at night; he pointed out that the trucks' on-site parking layout depicted on the site plan was actually opposite of what the reality was. He said he has never received complaints or had accidents with regards to traffic in and out of his property; he continued to say he has never had issues with flooding or drainage before. He acknowledged that his property's grading flows towards the North Lot but pointed out other properties' storm water runs onto his. Ms. Rothschild asked if the applicant's variance request include a "re-instated" 2-family use for the existing residence on-site. Ms. Knarich answered no and said the use variance being sought is strictly for the contractor's yard, which is not permitted in District #3 (Business). Dr. West stated he had read that illegal immigrants made up a significant portion of the labor force within the landscaping sector; he asked how changing from potentially illegal workers to legal employees would affect the number of vehicles parked on-site during the business day. The witness said both municipal parking lots nearby have plenty of available space; Mr. Futterknecht pointed out he acquires annual temporary visas for all of his employees and he is taxed accordingly. Secretary Freesman asked about storage of the trucks during the winter months; the witness said they were stored on-site except when in use for snowplowing. Mr. Bianco asked how long it took for the applicant's trucks to back out each morning; Mr. Futterknecht said about 60 to 90 seconds per truck. Mr. Bianco asked if that portion of Closter Dock Road was deemed a county road. Ms. Knarich said it was and that her client's request to the Bergen County Planning Board for its review was determined to be not applicable. Mr. Bianco asked if any construction vehicles, like backhoes or excavators, were on-site; the witness said only the 2 mini-loaders (*Bobcats*) were there. Mr. Bianco asked if any cutting, processing or separating of material would take place on-site; the witness answered in the negative. Vice Chairman Sonenshine asked if all the trailers would be going out daily with the 6 trucks; the witness answered at least 5 of the 6 trailers would do so. Vice Chairman Sonenshine asked how the 6 trucks were scattered during a typical day. Mr. Futterknecht said 3 maintenance trucks had their own routes, 1 enhancement truck took care of perennial beds, 1 was used for care of lawn sprinkler systems and the remaining 1 was used for pruning; he pointed out that all 6 were usually at different job sites. Vice Chairman Sonenshine felt an alternate storage area for the snowplowing blades should be found to avoid killing a portion of the grass area; the applicant said he would try to consolidate the area behind the sheds. Mr. Monaco asked how the hazardous material was stored on-site. Mr. Futterknecht said he bought oil by the case in plastic quarts (keeping 1 to 2 at a time on the yard); he said the recycled oil, once 2.5 gallons was collected, would be sent over to the recycling dumpster at *Alpine Valley Service Center* across the street. Mr. Monaco suggested that the snowplowing blades could be stacked with the *Bobcats* to prevent killing grass areas. Mr. Kates stated the point was well taken that part of this was a clean-up operation but asked if the storage of equipment was feasible. Mr. Futterknecht said he thought the sheds would have to be used for small power equipment, wheelbarrows, etc. Mr. Kates followed-up and asked where the *Bobcats*, snowplow blades, pesticides, etc. could be stored. The witness said the pesticides are put in 1 of the sheds and that they do not meet local or state reporting thresholds. Vice

Chairman Sonenshine asked if ventilation was provided for in the sheds; the witness said no but that all the sheds' eaves were open. Vice Chairman Sonenshine asked how often the Borough inspected his operation's pesticide and oil storage facilities; the applicant said never because he did not exceed the limit threshold. Mr. Hennessey asked if a *port-a-san* was kept on-site; the witness said no. Mr. Bianco asked if there was a locker room for his employees; Mr. Futterknecht said 1 of the sheds was used as such and in order to relieve themselves, seldom would they use his private residence but rather go elsewhere. Vice Chairman Sonenshine asked if the only material stored on-site was grass clippings until a trailer was "peaked out." The applicant said that was true except for mulch left over from that day's jobs. Mr. Iafrate asked about the exterior lighting; the witness said there was currently only 1 light post located in the center of the yard for any evening activity and that it, along with the North Lot's lighting, provided sufficient exposure. Mr. Iafrate asked about the snow storage on-site; the witness said snow is piled up between the paver patio and driveway. Mr. Iafrate stated concern over odors given off by wet grass clippings; Mr. Futterknecht said that was the "trick" in that if it rained, dumping would need to occur often and wet grass clippings are never kept on-site over the weekend. Dr. West asked if the applicant would consider installing toilet facilities; he answered yes. Dr. West said his personal landscaper's "latino" laborers would defecate on his property and his installing chicken wire did not alleviate the issue. Mr. Futterknecht said he would be willing to install something in his home's basement.

Vice Chairman Sonenshine opened the meeting to the public for questions and comments.

Alexander Guerra, 45 Storig Avenue, said he found Dr. West's most recent remark very offensive; Dr. West apologized.

Donald Schmidt, 162 Closter Dock Road, questioned the drainage as well as the applicant's trucks pulling in from and backing out onto Closter Dock Road; he further inquired about County approval of the subject application. Ms. Knarich said the filing to the County was in the submitted Board application and such showed that Michael Varner, PE, (Principal Planner) deemed it irrelevant and not within his agency's jurisdiction. Mr. Schmidt asked if the County had received a copy of the latest revised site plan depicting the lengths of the trucks and trailers. Ms. Knarich said she would have to check on that. Mr. Schmidt asked if the applicant had any drainage piping from his property that was connected to the North Lot's catch basin; Mr. Futterknecht said he had sump pumps from his home that went there which, he said, were installed 10 years ago when the North Lot was improved.

Gerard Haizel, PP, Nishuane Group, 49 Nishuane Avenue, Montclair, New Jersey, was sworn in as Witness #3. He testified to reviewing the Borough's Master Plan Re-examination Reports of 1996, 2002 and 2008, the Municipal Land Use Law as well as visiting the subject site on several occasions; he also reviewed plans along with departmental and engineering reports. He said the applicant's purpose was to bring the subject property into compliance with current property development standards. Exhibit U, a series of 4 photographs depicting the mixed-use nature of the area dated July 12, and August 22, 2008, was presented. It was his opinion that the application is consistent with the Borough's 3 previous Re-examination Reports in that, while not specifically mentioning the subject property, they stated over time, non-conforming sites will become compliant via improvements. Mr. Haizel said Mr. Sinowitz' denial mentioned the rear yard as being a contractor's yard but that the Borough Code does not mention such a term. He said the applicant wished to continue his residential and landscape business uses as he has for nearly 20 years; he said while his operation is not permitted in District #3 (Business), there was no construction being contemplated. The witness reviewed the positive and negative

criteria as per the Municipal Land Use Law and it was of his opinion that the Board could approve the application without detriment occurring to the Master Plan and community. Mr. Bianco asked how he would describe the streetscape in front of the subject property; the witness said it was residentially-landscaped and was adequately-buffered so much so that there was not a discernable sense of the landscaping activity happening in the rear yard.

Vice Chairman Sonenshine opened the meeting to the public for questions and comments.

Donald Schmidt, 162 Closter Dock Road, asked if Mr. Haizel was a traffic expert; the witness answered no. Mr. Schmidt questioned if research was done on the types of Certificates of Occupancy issued for the property, specifically with regards to 2 primary uses being on a single lot; Mr. Schmidt did not believe a landscaper's business was ever mentioned in the Board's 1984 memorialized Resolution pertaining to the subject property and its 2-family use approval. The Board agreed with Mr. Schmidt's statement. Mr. Schmidt presented Exhibit #'s O-1 through O-11, a series of photographs portraying his concerns about drainage, flooding and traffic congestion within the vicinity of the subject property, which he felt were exacerbated by the existing site conditions at 185 Closter Dock Road. Ms. Knarich objected to such pictures being presented into evidence without being provided copies beforehand; Mr. Kates ruled to let Mr. Schmidt testify to them and whatever surprise she had, could be reflected in cross-examination.

Mark Maddaloni, 163 Closter Dock Road, said he routinely walked past the subject property and saw it to always be meticulously-maintained; he never noticed irritating odors or sounds. He felt the lot set an example of how a business could peacefully co-exist with neighbors in an area of mixed zoning.

Outcome

Ms. Knarich stated that in light of the late hour and because she did not have the benefit of viewing Mr. Schmidt's photographs prior to his presentation, she requested that the case be adjourned to the September 16, 2009 Hearing so she could properly-prepare her cross-examination along with a summation. Vice Chairman Sonenshine reminded that the Board Engineer and Mr. Vogt would need to work out the drainage issues prior to the next hearing date. The Board obliged and stated the application was to be Item #1 on its next agenda.



Item #3

Case #Z-2009-06
14 Maplewood Road
(Block 2407/Lot 4)

Applicant: Augustine Lancellotti
Representation: Self

Chairman Knee resumed to chairing the meeting.

The applicant is seeking Variance Relief for the installation of an on-grade patio.

Augustine Lancellotti, applicant and owner in fee of the subject property, was sworn in as Witness #1. He gave a brief introduction.

Because of confusion on the part of both the applicant and the Board with regards to the subject property's history before the Board, Mr. Kates gave a synopsis of the property. He said the builder of the lot, Izak Construction, LLC, applied to the Board and was denied Variance Relief for a side yard encroachment. He said, historically, this was a case of the developer allegedly mistakenly misreading, or his professional furnishing Mr. Sinowitz with a misreading of the Zone District and, on the basis of that misreading, a rear yard deficiency was allowed which was discovered after the new single-family house was put up. He stated the rear yard neighbors, John & Carol Murawski, complained, contributing to the Board's denial on the basis of self-created hardship excusing the municipal agencies for the mislead. The case, Mr. Kates continued, went to Bergen County Superior Court, with the developer, Izak Construction, LLC, saying the consequence would have been to essentially demolish the house; before the Court could decide the case, a stipulation was entered into, principally because the Borough Attorney at the time, believed that estoppel would work against the Borough. Mr. Kates said the Borough Attorney filed a brief supporting the developer in opposition to his own brief defending the Board's denial. He said the stipulation of settlement was to allow the encroachment with substantial screening of the rear yard via a living fence. Mr. Kates said Mr. Lancellotti was caught in the middle of the legal battle because, at the time, he was the contract purchaser and not yet residing in the home; he would not close title until the court case was resolved. Mr. Kates said, subsequently, in 2003, the applicant came before the Board for a driveway side yard encroachment which was granted by the Board unceremoniously. Mr. Kates asked if the living fence existed today. The witness said it did that the plantings it consisted of were now greater than 8' high. Ms. Rothschild asked if an actual fence was installed behind the trees so that now they were shielded from the neighbor's property, and if so, would that not constitute a violation of the living fence stipulation. Mr. Lancellotti said an actual fence was installed and that its installation was found by the Bergen County Superior Court not to be a violation of the living fence stipulation. Ms. Rothschild expressed frustration that previous Court and Board decisions were not supplied by the applicant to the Board. Mr. Kates felt the case currently before the Board, dealing with an on-grade patio, was a separate issue from those prior. Ms. Rothschild questioned whether or not the applicant had respect for conditions of approval. Mr. Kates said that was resolved by the Court a decade ago. Mr. Lancellotti asked if he was going to continue to feel the pain of the mistakes made by the Borough and his builder. Mr. Kates said he should cease and desist from that kind of language because the Borough was not at fault. The applicant said it seemed he constantly had to make cases around trying to improve his property while, at the same time, receive pushback whenever he comes before the Board; he said, at the end of the day, he was completely innocent of any wrongdoing. Mr. Knee reminded him that the Board approved the previous application he brought to it. Ms. Rothschild said the Board asks every applicant to look at the history of their properties. Mr. Kates felt the Board was only expressing the fact that copies of prior Resolutions were not provided in Mr. Lancellotti's application and the Board questionnaire regarding prior applications to the Board was not answered properly. The applicant said at the completion of his home's construction, the impervious coverage was 33%, keeping in mind that the maximum allowed at the time was 40%. Mr. Lancellotti said the original plan for the new house included the installation of an on-grade patio; his family decided to "shelf" the patio idea, and instead, took the credit from the developer instead. He said that after years of litigation with his builder and the resulting financial hardship from that, the absence of a patio has created a hardship for his family; thus, he is requesting to follow through with the patio now and with that, a variance for the proposed 36% impervious coverage. Mr. Kates said the deed filed in the Board application showed that the applicant took title in 2003, 2 years after the Zoning Code's maximum allowance for impervious coverage was reduced from 40% to 30%; he also stated Mr. Lancellotti had just testified to deferring on the patio back then when he could have constructed it. Mr. Lancellotti responded by saying that after finding out

there were unfulfilled Building Department requirements that could delay the issuance of a permanent Certificate of Occupancy, he went into a rental agreement with Izak Construction, LLC from 2001 to 2003. Chairman Knee asked if the applicant's selling price was reduced as a result of all these issues. Mr. Lancellotti answered no but said there was some reward for defects in the house as well as credit to compensate for the replacement of trees if maintenance was required; he pointed out the financial gain was not nearly enough to cover his legal costs. Mr. Kates asked how close his house was to the property line on the north side; the applicant answered 20' to 25'. Mr. Kates asked what kind of buffering was present along the rear property line. Mr. Lancellotti said there was a fence that went from the rear yard line and came in about 15' along with there being a block wall, which ranges from on-grade to 2' in height and went pretty much the length of the property line. Ms. Rothschild asked about the material to be used for the patio. The applicant said the brick paver patio would be laid in crushed rock and sand, not concrete. Dr. West asked about the increase in water runoff. The witness said the property's pitch is not being changed, thus the runoff would go slightly off the patio to the grass; he pointed out that there were existing seepage pits in the ground, with 1 being located just west of the proposed patio. Also, the applicant said the trees in the rear yard were bermed. Mr. Kates determined that although the dimensions of the proposed patio were incorrect within the public noticing requirements, the proposed impervious coverage was accurate and therefore, presented no problems. Mr. Sinowitz stated that he found no argument with the coverage calculations prepared by the applicant himself. Secretary Freesman wished to hear more testimony to satisfy the statute on hardship. The applicant said he was trying to fully use the property, which without the patio, would prevent his family from enjoying outdoor activities; he continued to say that the proposal was scaled back in size as much as possible and to do more so, would create an eyesore. Mr. Sinowitz interjected and said that the hardship could be that due to the specifics of the property's history, which included the applicant having to go through the court system, the retained engineer's mistakes with zoning calculations and the fact that the then-new house was not "maxed out" at the time. Vice Chairman Sonenshine said he disagreed and that the Borough changed and re-evaluated the Master Plan and Zoning Code for a reason; he said it is not what was once a hardship but rather that the maximum coverage allowance was now 30%. Secretary Freesman felt that the Board had, in effect, "rewritten" the Zoning Code and returned to the 40% threshold being acceptable for the asking as long as the request was less than a 10% infraction. Mr. Kates said there was nothing inherently wrong with the Board granting a variance as long as the applicant could prove it.

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

Jesse Rosenblum, 65 Knickerbocker Road, expressed his support for the application and felt the applicant had all along been a victim of circumstance.



Outcome

A motion was made by Ms. Rothschild and seconded by Vice Chairman Sonenshine, to approve Variance Relief for impervious coverage totaling 36%. The motion passed **(7-0: YES- Knee/ Sonenshine/ Freesman/ Bianco/ West/ Monaco/ Rothschild)**.



A motion was made by Mr. Bianco and seconded by Mr. Crisafulli, to memorialize the Resolution for 23 Storig Avenue (Case #Z-2008-27). The motion passed.

A motion was made by Dr. West and seconded by Secretary Freesman, to memorialize the Resolution for 38 Fairview Avenue (Case #Z-2009-02). The motion passed.



There being no further items to discuss, a motion was made by Mr. Bianco and seconded by Dr. West, to adjourn the hearing at 11:40pm. The motion passed.