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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)*

June 17, 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, June 17, 2009 in the Council Chambers of the Borough Hall to order at 8:06pm. 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
- Leonard Sinowitz- Zoning Officer
- Michael Kates, Esq.- Board Attorney
- Paul Demarest- Board Coordinator

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

- Denise Mattes, CLA
- Steven Iafrate- Alternate #3
- 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. Secretary Freesman read said mailings into the record.



A motion was made by Mr. Bianco and seconded by Vice Chairman Sonenshine, to approve the minutes of the May 20, 2009 Hearing. The motion passed. A motion was made by Mr. Bianco and seconded by Mr. Monaco, to approve the minutes of the May 27, 2009 (Special) Hearing. The motion passed.



Being that no new applications were filed with the Board prior to the monthly deadline, the June 24, 2009 Work Session was cancelled.



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.



A motion was made by Mr. Bianco and seconded by Dr. West, to dismiss without prejudice the 63 John Street application (Case #Z-2008-21); the applicant failed to return to the Subcommittee for Site Plan Review completeness verification within (120) days as requested by the full Board at the January 21, 2009 Hearing. The motion passed **(7-0: YES- Knee/ Sonenshine/ Freesman/ Bianco/ West/ Monaco/ Rothschild)**.



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, was sworn in as Witness #1; he gave a brief introduction.

Richard Wostbrock, PE, Lan Associates, 445 Godwin Avenue, Midland Park, New Jersey, was sworn in as Witness #2. He said the applicant was seeking a variance for impervious coverage which with the proposed improvements would climb to 40.3%. He stated the property was somewhat of a pie-shaped lot with the land sloping in a north to south direction. He testified his firm collaborated with the applicant's pool company and landscape architect on grading and drainage issues. The witness said soil logs were performed and the soil was found to be suitable for percolation; subsequent drainage calculations for zero increase in water runoff were prepared. He stated the subject property's current impervious coverage was at 36% and that he looked at how to minimize the improvements other than the pool itself, for example, the proposed patio. Vice Chairman Sonenshine asked when the 36% impervious coverage condition came into being. Mr. Cushmaro indicated probably when the existing patio was extended about 4 years ago. Vice Chairman Sonenshine asked whether or not said patio project occurred before or after the Borough's Zoning Code was amended for maximum impervious coverage from 40% to 30%. Mr. Sinowitz answered that the Code changed more than 4 years ago. Vice Chairman Sonenshine asked if other means of impervious surface reduction had been explored. Mr. Wostbrock said the existing driveway could be narrowed in width, not length, along with reducing the size of the existing patio. He continued to say that the reason why the subject property had a larger impervious coverage calculation than most of the other properties on the block was due to the layout of the garage in relation to the rest of the house. He said while the

other nearby houses had their garage doors situated in the front of the home, the Cushmaros' are located on the side leading to an additional 40' of driveway; thus, he said the longer the driveway, the more impervious coverage. Mr. Sinowitz stated he denied the original application based on the landscape architect's plan received by his office on August 28, 2008, which put the impervious coverage at 42.82%; he questioned where Mr. Wostbrock's figure of 40.3% came from. The witness said he could not speak for the landscape architect's figures, but indicated the discrepancy could have come from a previously-designated impervious area, located between the driveway and rear patio, which turned out to be landscaping; the other possible explanation was that an existing concrete walkway was being changed to a stepping stone walk. Mr. Bianco stated that since a subsequent landscape plan, last revised March 30, 2009 and absent of any engineering calculations, had been filed, the Board should rely on Mr. Wostbrock's professionally-engineered rendering instead. Mr. Kates said that it should be understood the Board was dealing with a landscaped plan last revised March 30, 2009 and an engineering plan last revised April 2, 2009. Mr. Bianco expressed his concern for the neighbors going down the hill from the subject property and asked the witness to give detail on his drainage report. Mr. Wostbrock said an analysis of existing and proposed impervious coverages was conducted using a methodology of rationale and non-rationale calculations; he continued to say in order to determine the change in water runoff via design storms (the standard used by engineers), a 10-year/60-minute model (minor storm water development) was deemed sufficient. He said the difference in flow (volume) was analyzed and compensated for with an infiltration structure; he said a plastic *Cultech* unit was being proposed rather than a concrete seepage pit. The witness stated the soil testing showed the rate to be 6"/hour at the uphill side (where the chambers are proposed) which he deemed to be an extremely good percolation rate. Mr. Wostbrock said that on the downhill side, there was a retaining wall that then dropped to a neighbor. He stated the hope was to infiltrate the water as far away from the retaining wall and neighbor as possible. Mr. Bianco asked if the structure is on the opposite end of the property and away from the neighbor on the downhill side. Mr. Wostbrock confirmed and said the existing conditions had a landscaped berm located at the rear corner of the subject property. Exhibit #'s A-1, a drainage report, and A-2, a series of photographs depicting the existing landscaped berm, were presented. Vice Chairman Sonenshine stated the applicant indicated on the Board's questionnaire that there were severe existing water conditions and asked for elaboration and how that was addressed. Mr. Wostbrock said that prior to the project proposal, the homeowner had issues in the rear yard and reacted by installing a retaining wall, berm and trench drain; currently, he said, water is still flowing in the rear property indicating those improvements had not solved the water concerns. Mr. Kates asked what in the proposal would abate the existing water issues. Mr. Wostbrock said the existing wall and berm diverted water along the property line from the rear yard that would have gone to the neighbor and ultimately, to the street. Mr. Kates followed by asking why, in the Board's questionnaire dated March 10, 2009, did the applicant answer he "had" severe water problems in the rear yard which, by installing the pool, could be corrected; he said such a statement suggested the water conditions had no been abated. Mr. Cushmaro said that prior to building the wall, his neighbor would get water runoff onto his property; following discussions with said neighbor, Mr. Cushmaro built it between their properties at the time the patio was installed about 4 years ago. He further stated that construction permits were received, the work was inspected and the runoff ceased; he concluded, perhaps, the Board's questionnaire was filled in wrong by mistake. Mr. Kates said the Board's questionnaire also stated, however, that if a variance were not granted, the drainage issue would persist; now, he said, the applicant was implying the runoff problem was corrected 4 years ago due to the wall and berm. Mr. Cushmaro answered that the new issue was that since the wall was added, the soil in the area becomes "mushy" during significant storms. Mr. Wostbrock said the *Cultech* unit would solve the increase in water runoff from the pool and the other proposed

improvements, but because the storm water management design is conservative, it would not correct water cascading from neighbor to neighbor that presently occurs. Dr. West said the lot shape makes for a hardship and asked if the applicant considered purchasing some land from the neighboring large lot. Mr. Cushmaro said it was discussed but nothing materialized. Dr. West asked if the pool's size could be reduced. The applicant said the pool was already reduced to 656 s.f. with a maximum depth of only 6'. Ms. Rothschild asked how water would enter the *Cultech* unit. Mr. Wostbrock said through a trench drain via a perforated PVC pipe and the overflow outlet ("bubbler") located on the unit itself; he further explained that when the unit was full, the pressure within it would pop up and allow for water to "bubble out" into the vicinity and flow, in this case, down the driveway. Ms. Rothschild said she was amazed by the engineer's percolation tests. Mr. Wostbrock said he was too, but explained sometimes there is a poor layer on the surface which traps the water and right below it are some very good conditions. Ms. Rothschild asked if aquifers below ground would be disturbed; the witness said the pool would be much too shallow for that to happen. Mr. Crisafulli asked when the photographs in Exhibit #A-2 were taken; Mr. Wostbrock answered August 28, 2008. Vice Chairman Sonenshine asked if the pool equipment could be relocated away from the property line to avoid sound issues. Mr. Bianco pointed out that if a center point was taken of where the equipment was now, it would be the maximum radius away from the neighbor's house. Vice Chairman Sonenshine suggested that the drainage piping be extended around the pool at a minimum; he further stated a wish to see the impervious below the 10% excess.

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

Kenneth Cooper, 19 Church Court, stated he had a cordial relationship with the applicant and had no objection to his installation of a swimming pool; however, he said, being the only neighbor contiguous to the subject property as well as below it in elevation, there were some concerns. He stated his residence never had water issues prior to the house at 13 Church Court being constructed, which altered the topography; he said Mr. Cushmaro's retaining wall helped the matter, but that water still comes over the wall and to his property during a large rainfall. Mr. Cooper was concerned the pool would take away the land that now absorbed rainwater. He felt the berm had not alleviated the problem and water comes to his side of the wall and "pools" in the vicinity; Mr. Cooper indicated that his property had no drainage system. Mr. Wostbrock pointed out that the applicant receives water from the neighbor above him as well and stated there is a 6" freeboard for rainwater to be collected within the pool itself. Chairman Knee interjected that would not be the case for 6 to 8 months when the pool is closed. Ms. Rothschild pondered what kind of pool cover would be used and if it's material, preferably mesh, could be stipulated in a Resolution.

Leonard Di Tomaso, CLA, 130 Ryerson Avenue, Wayne, New Jersey, was sworn in as Witness #3. He said he designed the subject property's rear yard landscaping and the location of the pool. Exhibit #A-3, a colorized version of a landscaping plan last revised March 30, 2009, was presented. The witness stated some of the existing evergreens would be extended by the retaining wall on the west side and he incorporated new plantings along the back side of the pool; he indicated a small waterfall would be installed in the back end of the pool requiring a 3' high mound consisting of mulch and boulders. He said the waterfall would go into the pool and that the east side had new landscaping only with no change in elevations. Mr. Di Tomaso testified that grass would be replaced with mulch and water would spill off boulders and soak into the mulch; he did not consider the boulders to be impervious but acknowledged the Board may. Mr. Crisafulli asked about the slope of the mound by the waterfall. The witness said there

would be a slight slope downwards to the rear of the property but emphasized he was being sensitive about the proximity of the pool equipment. Ms. Rothschild asked if a rain garden was contemplated. The witness said the yard was too small to consider the possibility. Exhibit #A-4, an aerial photograph of the surrounding neighborhood with proposal included, was presented. Mr. Bianco asked about the effect of landscaping on the property's water absorption. Mr. Di Tomaso said the new plantings would need water to survive and therefore, help with the water concerns. The witness said the block wall, when constructed, had 12" of crushed stone along with a perforated pipe that shot to the street; he felt minimal maintenance (silting) of the mulch build-up on the gravel would help the neighbor's situation; he pointed out the gravel's purpose is to act as a drain for the water to go down and not over the wall. Vice Chairman Sonenshine questioned the probability that a homeowner would actually take the time to regularly maintain the gravel. The witness felt it could be a reality if the owners were educated on its necessity and benefit. Mr. Bianco asked where the proposed pool fit into the "hierarchy" of pool sizes. Mr. Di Tomaso said it is very small being the average is 800 s.f.; he testified there was no lighting plan. Ms. Rothschild asked where the excavated soil would end up. The witness said, other than needing some to build up the waterfall, most of it would be trucked off-site. The witness said there would not be a diving board. Vice Chairman Sonenshine wanted to see more of a berm to protect the neighbor. The witness said he could go another 18" to 2' starting from the existing evergreens. Mr. Monaco asked how large the boulders would be; the witness indicated 18" to 2', with some coming from below on-site; he said they would have to be machine-maneuvered.

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

Mr. Cushmaro summated and said he would be willing to get the impervious coverage under 40% but not by sacrificing the pool size. Vice Chairman Sonenshine asked how many garage doors there were. The applicant said there were 2, each different in size but both only being able to fit 1 car each. Mr. Bianco suggested that 1' could be shaved off the driveway for a length of 80'. The applicant stated the driveway was already narrow. Mr. Westbrock calculated that the removal of 80 s.f. of existing driveway would put the proposed impervious coverage at 39.8%. Dr. West asked what the applicant's hardship was; he indicated the shape of the lot being irregular.

Outcome

A motion was made by Ms. Rothschild and seconded by Mr. Bianco, to approve Variance Relief with the following conditions: 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.) 1' of impervious paver to be taken from of existing driveway for a length of 80' to reduce 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)**.



Item #2

Case #Z-2009-02
38 Fairview Avenue
(Block 704/Lot 10)

Applicant: Viray I, LLC
Representation: David Bole, Esq.

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

The applicant is seeking Use Variance (Floor Area Ratio) and Bulk Variance Relief for the construction of an as-built single-family residence.

David Bole, Esq., Winne, Dooley & Bole, PC, 240 Frisch Court, Paramus, New Jersey, introduced himself and highlighted the May 27, 2009 (Special) Hearing which resulted in an adjournment to this evening.

Wayne Gushkind, RA, 26 Central Avenue, Hillsdale, New Jersey, continued testimony as Witness #1. Vice Chairman Sonenshine asked if any architectural alternatives had been conceived since the last meeting. The witness said reconstructing some of the bedrooms upstairs and/or material portions of the house would cause the existing configuration to be compromised in terms of size; he stated a bathroom would possibly need to be eliminated as well. He further stated that to remove signature items, such as the overhang or side porch, would turn the home into an unattractive structure. Mr. Crisafulli said the removal of the window was not a big issue but the doorway with the stairs going down into a grass patch was because, inevitably, a patio would end up there; he reminded that the Board talked about putting the door in the knot corner by the garage and installing a window in its place. Mr. Bole said that is why the suggestion for a fence and landscaping was made, keeping in mind, that a fence would not solve the coverage issues; he further stated that there was a light and air concern coming from the family room where the sliding door and steps are located. Vice Chairman Sonenshine asked if the subject property's contract purchaser was aware of all the possible limitations the Board could request in the Resolution due to the as-built conditions being larger than what was originally-approved. Mr. Kates asked if the applicant would object to being required to recite that the property is "maxed out" by way of a deed restriction when title is conveyed. Mr. Bole was concerned that a successor in title would not then be able to put other appurtenances on the property. Mr. Kates informed it would only be a fair warning of excesses and it could not preclude an applicant coming before the Board; Mr. Bole did not object. Vice Chairman Sonenshine asked about a possible rear entrance to the back property of which there is none; he stated the house was not situated so to be friendly to the back yard and if a garage door had to be relocated/eliminated, then so be it. The witness agreed that certainly could be done but would result in it being next to air conditioning condensing units when entering/exiting the new door location; he continued to say that a patio could "pop up" in such a configuration as well. Mr. Crisafulli felt it was much more likely to have a future patio appear off a door with steps leading to grass rather than going down into air conditioning condensing units. Vice Chairman Sonenshine said condensing units could easily be relocated. Mr. Bianco asked if the landing could be increased while eliminating the stairs going down (front loader) and installing a side loaded staircase going towards the back; in other words, reconstruct the stairway to be parallel, not perpendicular, to the house. The witness said that was previously-conceived but it resulted in the landing being considered building coverage, thus triggering a side yard variance (exceeding 18" allowance). Mr. Bianco felt that to be di minimous.

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

Michael Hubschman, PE, 263A South Washington Avenue, Bergenfield, New Jersey, continued testimony as Witness #2. The witness referenced Exhibit #A-19, a landscape plan last revised June 3, 2009, depicting a 2nd 4" red oak shade tree in the front, a decorative dogwood in the front center and a 6' high PVC fence along the north side of the house. He suggested a white pine, if planted when 6' to 8' in height, would take 2 to 3 years to grow 12' to 14' and provide privacy to the neighbor from the window. Mr. Hubschman said such a taller tree would root better and that 7 cherry laurels would be put up against the fence.

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

Felixbert Viray, 113 Johnson Avenue, Hackensack, New Jersey, applicant and owner in fee of the subject property, continued testimony as Witness #3. He indicated that he discussed the revisions with the neighbor who now had no complaints with the steps once the fence were to be installed; he stated the window, which is 22' from the property line, is no longer a concern. Mr. Bianco asked if a variance could be granted for the steps to be reconstructed as a side loader with a platform which exceeded the projection allowance; Mr. Kates said yes because the applicant's public notice included the phrase "and other variances." Dr. West felt the proposed white PVC fence would be blinding and loud; the witness said the neighbor approved of such. Mr. Monaco asked how many homes the applicant had built prior to this; Mr. Viray said 38 Fairview Avenue was his 8th. Mr. Monaco asked how many were "teardowns" and how many required variances; the witness said 3 were demolished and no other projects needed variances. Mr. Monaco asked how much of the design was his idea; Mr. Viray stated he hired an architect to guide him on the planning and admitted that he approved of such a proposal being "maxed out." Secretary Freesman expressed his frustration about builders coming to the Board with an as-built and needing post-variances. Vice Chairman Sonenshine felt there was a non-malicious mistake committed on the part of the architect. Mr. Bianco stated that in the Board's file, the foundation location survey showed that only 2 points were measured rather than all 4 corners of the foundation; he implied that a borough official conducting zoning verification "dropped the ball" and if such occurred again, he/she should be held accountable. Vice Chairman Sonenshine said the overhang (cantilevered roof) was the issue, not necessarily the foundation. Mr. Bianco said a house cannot be squared on 2 points.

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

Outcome

A motion was made by Mr. Bianco and seconded by Vice Chairman Sonenshine, to approve Use (Floor Area Ratio) and Bulk Variance Relief with the following conditions: 1.) staircase to be turned (parallel to house) keeping it where it currently is; 2.) landscaping and fence to be installed along north property line to add buffering to neighbor; 3.) deed recitation; 4.) additional tree (white pine: 6' to 8') to be planted by rear window on north side of house. The motion passed **(5-2: YES- Sonenshine/ Freesman/ Bianco/ West/ Noh; NO- Monaco/ Crisafulli)**.



A motion was made by Dr. West and seconded by Ms. Rothschild, to memorialize the Resolution for 170 & 176 Closter Dock Road (Case #Z-2008-06). The motion passed.



A motion was made by Dr. West and seconded by Ms. Rothschild, to memorialize the Resolution for 9 Ranch Lane (Case #Z-2008-17). The motion passed.



There being no further items to discuss, a motion to adjourn the hearing was made by Mr. Bianco and seconded by Ms. Rothschild. The motion passed. The hearing adjourned at 11:34pm.