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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)*

March 18, 2009

Prepared by:

Paul Demarest
Coordinator

Chairman Knee called the Regular Monthly Hearing of the Zoning Board of Adjustment of the Borough of Closter, New Jersey being held Wednesday, March 18, 2009 in the Council Chambers of the Borough Hall to order at 8:02pm. 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
- Steven Freesman, Esq.- Secretary
- Joseph Bianco, RA/PP
- Theodore West, DDS
- Denise Mattes, CLA
- Mitchell Monaco
- Jennifer Rothschild, Esq.- Alternate #1
- Francis Noh- Alternate #2
- Steven Iafrate- Alternate #3
- 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:

- Lorin Sonenshine, RA/PP- Vice Chairman



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



A motion was made by Mr. Bianco and seconded by Ms. Rothschild, to approve the revised minutes of the January 21, 2009 Reorganization & Regular Monthly Hearing. All members present voted in favor (Ms. Mattes abstained).



Chairman Knee requested 3 volunteers from the Board to serve on the Subcommittee for the next Work Session to be held on March 25, 2009. The following were assigned: Chairman Knee, Mr. Bianco and Ms. Rothschild.

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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.

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Item #1

Case #Z-2008-26
1 Railroad Avenue
(Block 1104/Lot 18)

Applicant: Vantage Health System, Inc.
Representation: Matthew Capizzi, Esq.

The applicant is seeking Use Variance and Site Plan Approvals for the construction of affordable housing residential apartments. Matthew Capizzi, Esq. of Law Offices of Elliot Urdang, 19 Engle Street, Tenafly, New Jersey, stated that testimony had begun at the March 9, 2009 (Special) Hearing, at which time it was adjourned to this evening due to outstanding items pertaining to drainage and landscaping; Mr. Capizzi said follow-up testimony by the applicant's site engineer was requested by the Board.

Richard Adelson, PE, of Frank Lehr Associates, 101 South Harrison Street, East Orange, New Jersey, continued his adjourned testimony as Witness #1 for the evening. Exhibit #A-7, a site/engineering plan last revised March 18, 2009, was presented into evidence. The witness stated the following modifications were reflected in said exhibit: realignment of certain curbs and adjustment of corresponding sidewalk location, inclusion of a 2nd means of egress with a sidewalk connecting the west side of the structure to the front portico, enlargement of the mechanical room due to the addition of a standpipe, notation of air conditioning condenser units' locations, a possible layout of future parking lot spaces, changes to the rain garden and drainage design/capabilities, accommodation of sewer flow from the structure and lastly, extension of the sewer by providing for a lateral connection via a gravity line, not by pump (sewer line service has been confirmed to be available from Van Sciver Street). Exhibit #BD-5, a commentary report by Mr. Pacholek dated March 18, 2009, was presented in evidence. Mr. Pacholek stated all drainage items have been addressed except for a few "house-keeping items." Mr. Adelson said those "house-keeping items" were as follows: assurance to regularly vacuum the porous pavement, awaiting Uniter Water's pressure test, clarity on the unlabeled water line (Fire Department connection) to be done by the mechanical engineer and lastly, clarity on the driveway's slope. Mr. Bianco suggested having the exterior light pole moved to the north side of the dumpster clearing the way for the possible need to expand the parking lot in the future. The witness agreed to do so assuming the light distribution would work in the new location. Mr. Bianco said the air conditioning condenser units are located in the front and on the side of the structure where the residents' windows are, leading to, he feels, a quality of life concern with respect to the units giving off heat and sound; he said they should only be located in the side and rear. Mr. Capizzi stated that a possible reorganization of the units would have to be verified by the architect via phone during a possible recess in the evening's proceedings. Mr. Crisafulli asked if there was any contingency plan for the porous pavement if it were to fail in any way. The witness said a depression would have to be created along the side and in the front yard to surface water into said depression. Mr. Kates asked when such a problem would manifest itself. Mr. Adelson stated a problem would usually occur because of installation flaws, which would be evident immediately after being installed. Mr. Crisafulli asked if the witness foresaw a

problem being that the area is only 1' above the seasonal high groundwater table rather the 2' to 5' recommended. The witness concurred that is not the ideal level but that it is viable and if problems arose, a grading fix would be required.

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

Jesse Rosenblum, 65 Knickerbocker Road, Closter, New Jersey, asked the witness if he gave any consideration to ground vibration or sound-proofing due to the property's proximity to an active railroad track. Mr. Capizzi stated that question required an answer from the architect who was not present. Mr. Rosenblum asked why there were no sidewalks at the bottom of the ramps. The witness said the ramps were for emergency vehicles only. Mr. Rosenblum asked if the witness considered using a larger pipe schedule for the sewer line; the witness said it was not necessary. Mr. Rosenblum asked why there were no outdoor quality of life appurtenances like a patio or barbecue; the witness said such items were never in the requested design.

Jan Saltiel, CLA, of Edgewater Design, 327 Millburn Avenue, Millburn, New Jersey, was sworn as Witness #2. She said she had become involved with the project within the last week and explained that her plan was a work in progress; however, she said it was very far along with only a need to tweak the rain garden and outlining exterior areas like the air conditioning units and sidewalks. The witness said the rain garden plantings will handle soaking rainfalls as well as dry periods; it also, she said, provides a buffer with growth being from 1' to 5' in height for the perennials (most will die back in winter) while being grouped together in organic form. The witness felt the mix of species would absorb rainwater very well. Ms. Saltiel said that while some trees were removed along Railroad Avenue to prevent the view of the building from being completely obstructed, there remained sufficient buffering. She said there would be no maintenance on the rain garden required except for temporary fencing, initially, until the plantings are established. Ms. Rothschild asked what type of temporary fencing would be proposed while being sensitive to the height requirement. The witness said a 4' high, 50% open fence, installed for 1 year, would be sufficient provided it would be non-intrusive by allowing for sunlight and air to pass through, while at the same time, preventing deer from damaging the plantings. Mr. Sinowitz said the Borough code does not address temporary fencing, thus the Board could look at such fencing as part of the whole application negating the need for separate variances. Dr. West asked if pine trees along Railroad Avenue would survive under the proposed shade trees. Ms. Mattes interjected and stated partial evergreens being planted in the bed would help with screening. Mr. Bianco asked if the lessened screening from the original plan would also lessen the buffering from the noise given off by the heavy traffic flow on Railroad Avenue. Ms. Saltiel felt there was a fair amount of plantings with different heights in addition to them being located on a slope. Mr. Bianco asked if there was any irrigation proposed. The witness said that since the project is LEED-certified (Leadership in Energy and Environmental Design), no irrigation was needed. Mr. Bianco asked if there would be additional buffering along the railroad track; the witness said buffering would be in the rain garden. Mr. Sinowitz stated that with regards to sound-proofing and buffering of Railroad Avenue, a 4' solid fence should be considered along the street with a waiver being incorporated into the Resolution. Mr. Bianco responded by saying such a fence should be installed behind the shrubs, thus not visible from the street. Ms. Saitel stated all the plantings in her initial scheme would be on the final plan and that all major required changes have been made to the proposed landscaping except for some "house-keeping" items. Ms. Mattes asked that a detail be provided on the barrier at the base of the ornamentals to protect from deer grazing along with a plan for the temporary fencing; she further stated that the mature height of the species to be planted around the condenser units would be necessary, although not too high due to the windows

nearby. Mr. Bianco asked how do the original and Ms. Saltiel's version of the planting schedules "stack up" against each other. The witness said her version is superior because more plantings were added to the rain garden, the species of which are more deer resistant.

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

Mr. Adelson informed that he had just spoken via phone to the architect who said the location of the air conditioning condenser units is controlled by the system's refrigerant lines, thereby maintaining high efficiency and low noise levels. Mr. Bianco stated he disagreed with such a professional analysis reiterating the units are under the windows, not between them, especially in the front and rear of the building. Mr. Adelson said the elevations pages on the architectural show the units to be between the windows. Mr. Bianco responded by saying since they were dealing with "ganged" windows, the units are in fact partially underneath them. Mr. Kates believed the Resolution stating "to the extent possible" when speaking of the condenser units' locations, should be sufficient enough. Chairman Knee said that when the units are not being used, the residents' windows would probably be closed, thus making it a non-issue. Mr. Bianco said the building proposed is symmetrical and the relocation of the condenser units would be necessary to keep the scheme uniform. Mr. Capizzi stated that anything was possible and that applicant would make an effort to adhere to Mr. Bianco's request, but that such an item cannot be made mandatory.

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

David Spatz, PP, of Community Housing and Planning Associates, 185 Bridge Plaza North, Fort Lee, New Jersey, was sworn in as Witness #3. He stated the subject property was in the Affordable Housing Zone, which allows for townhouses along with senior and group homes for people with disabilities; he said, however, the application does not technically meet the criteria, necessitating a Use Variance. The witness said all of the bulk variances needed are subsumed into the Use Variance as per New Jersey case law. He said the parking layout meets the minimum requirements prescribed in the Residential Site Improvement Standards (RSIS). The proposed use, he believed, is inherently beneficial to the community based on the following: public interest, no detrimental/adverse effects being made by granting such variances, it fitting into the Master Plan of the borough, reasonable conditions that would help to mitigate any adverse effects and lastly, both positive and negative criteria being weighed to see if granting such variances would cause detriment to the public good. Mr. Kates asked how many Council of Affordable Housing (COAH) units are involved with the project. The witness stated 16. Mr. Kates asked about COAH credits. Mr. Spatz said he could only say that his client's project, Village School Condominiums (511 Durie Avenue) and some rentals in the Commercial Zone would make for a total of 48 gross share credits based on those 3 properties. Mr. Kates stated that based on the witness' testimony, while the project is not a group home or care facility with full-time staff, it seems to be inherently beneficial based on combining affordable housing with a disabled population and the fact it has manufactured and green elements. Mr. Hennessey asked who determines the number of COAH credits for the project. Mr. Spatz said the number and percentage are determined by COAH and the Borough's Fair Share Plan contains calculations. Mr. Kates further explained that the Borough has a planner (Hakim Associates) who submits rounds which make the determination provided COAH agrees with them.

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



The Board recessed from 9:34pm to 9:40pm.



Mr. Capizzi summated his client’s application by stating the land involved is being donated by the Borough to the applicant, thus putting the Borough in a better position to fulfill affordable housing requirements. He further stated even with the high water table, the project is still in compliance with RSIS. He said porous pavement has been in use since the early 1990’s and that it would perform well with this project provided it is maintained (vacuumed). Mr. Capizzi said there was concern about the use of a crawl space being affected by the high water table; thus, the applicant, he said, is taking measures to keep moisture out, along with having a pumping system. He continued to say that the entire project is being funded by several state agencies which will lead to greater oversight by having many stages of review. He reiterated that the project is LEED-certified and is using proven material and equipment to construct an environmentally-friendly structure. The method to gain access to the sewer line was accepted by the Borough, said Mr. Capizzi. He said the applicant provided for extra parking even though there is not a high demand for it. He finalized with saying the rain garden and drainage has been addressed satisfactorily.

Outcome

Mr. Bianco suggested splitting the vote with the Use Variance being decided on first followed by the Site Plan Review. A motion was made by Mr. Bianco and seconded by Mr. Crisafulli, to grant Use Variance Approval with the following conditions: 1.) the housing complex be age-restricted (18 years old+), 2.) criminal background screening of all prospective residents, 3.) sweeper company being contracted to keep the porous pavement clean, 4.) adherence of the Fire Department’s request for a sprinkler connection, 5.) datum on the site plan to be corrected, 6.) sump pumps to connect to the drainage system so the water will not go on the property, 7.) planting of drought resistant/tolerate landscaping, 8.) internal sewer lines to have primer traps while the building is to have backflow preventers in the main sewer line, 9.) 2 sump pumps are to be alarmed in case of power failure, 10.) exterior mechanical equipment to be located on the side of the building and not adjacent to windows (*language in the Resolution to be modified*), 11.) the crawl space shall be sealed space with conditioned air (temperature uniform throughout all of the building) to cut down on mold and prevent health concerns for the residents (*language in the Resolution to reflect the intent as stated in the court reporter’s transcript*), 12.) the floor access hatchway is to be in the manager’s office, 13.) the entire building is to be powered by electricity (not natural gas), 14.) laundry/meeting/office room doors are to have vision panels, 15.) cone elevator is to be installed (not hydraulic), 16.) the specified size and number of parking spaces requested should be granted 17.) the official name of the finalized project should not include the words “apartment” or “complex”. Mr. Kates stated that a developer’s agreement, performance and maintenance guarantees will also be a part of the Resolution. All members present voted in favor (7-0). A motion was made by Dr. West and seconded by Ms. Rothschild, to grant Site Plan Approval with the same conditions previously-stipulated. All members present voted in favor (7-0).



Item #2

Case #Z-2008-06
170 & 176 Closter Dock Road
(Block 1301/Lots 10 & 11)

Applicant:
Representation:

Desan Enterprises, Inc.
David Watkins, Esq.

The applicant is seeking Conditional Use Variance and Site Plan Approvals for the conversion of office space to residential apartment units. David Watkins, Esq., 285 Closter Dock Road, Closter, New Jersey, counsel for the applicant and Elliot Urdang, Esq., 19 Engle Street, Tenafly, New Jersey, counsel for the objector (DR Schmidt Realty) introduced themselves.

Michael Hubschman, PE, 263 South Washington Avenue, Bergenfield, New Jersey, was sworn in as Witness #1. Exhibit #SP-1, a site plan last revised January 28, 2009, was presented in evidence. The witness stated his revised plan shows the reconfiguring of the parking lot on Lot #11, the addition of 2 curbed islands, 2 shade trees (the location of which is not in the line of sight), a dumpster located in the rear and a board-on-board fence is now proposed. He stated there will be new pavement and striping with bumper stops in the proposed parking lot on Lot #11; the existing fence across the site and the trailer in the rear, he said, will be removed. The witness specified that there would be no re-grading. Mr. Hubschman mentioned that an approximately 20' x 40' portion of gravel, which has been there for many years, will remain. He testified that the water run-off drains to the street with a catch basin in front. The witness reviewed for the Board comments by Mr. Pacholek in a letter dated February 23, 2009. Mr. Hubschman said that with the latest revision, all vehicles should be able to back out of their parking space while remaining inside the lot. The witness said Mr. Pacholek approved of the lighting scheme, the increase of green areas and the details added to the handicap spaces thereby "signing off" on the application. Mr. Sinowitz asked if the storage container located left-side facing at the rear will remain; Mr. Watkins answered in the affirmative. Ms. Mattes asked that the shade trees be pruned up 6' when installed so no branching issues will occur in the future, being they are adjacent to a parking area. Mr. Kates asked if the latest changes to the site plan introduced any new variances; the witness answered in the negative. Mr. Sinowitz felt it may be advantageous for the applicant to seek a variance for the storage container, which he deemed a permanent structure. Mr. Watkins responded by saying even though he felt the container is pre-existing, the applicant would amend his application to request such a variance.

Mr. Urdang cross-examined the witness. He asked Mr. Hubschman how he came up with 12+% of green area for Lot #10 in the latest revision; Mr. Urdang calculated 7%. The witness stated that the small strip on the left side brought the figure to 12+%. Mr. Urdang asked the witness about his identifying one of the uses as "Retail" on the plan. Mr. Hubschman said the auto parts sales operation was subordinate to the auto repair shop. Mr. Urdang asked if he meant that the auto repair shop is not exclusive to the property but that it includes retail as well; the witness stated 95% of the property's use falls under the auto repair shop. Mr. Urdang asked why the parking calculations do not reflect that area for retail purposes. The witness answered that is because the retail aspect generates 1 person daily according to the applicant. Mr. Urdang asked if treating that portion as retail would increase the number of parking spaces

required for the property. The witness agreed with Mr. Urdang that the parking standard for retail is different from that of repair; the witness said such an aspect of the business was not considered retail. Mr. Hubschman further stated that if the Board deemed that the retail use was separate and not subordinate to the auto repair shop, the parking space requirement would increase by 1 to 2. Mr. Urdang said the witness is counting bays as parking spaces. How, he asked, could the bays be used as a parking remedy if they themselves generate a need for parking in the first place. The witness stated bays have always been counted as parking spaces. Mr. Urdang asked if cars are currently being stored on both Lot #'s 10 and 11. Mr. Hubschman said they will be removed. He said those cars being repaired will be parked in the back and side yards. Mr. Urdang asked if the witness had any allowance for storage in his parking calculations; the witness answered in the affirmative. Mr. Urdang asked how residents will get to the apartments once they parked on Lot #11. The witness said they could walk up the driveway and underneath the overhang on stilts. Mr. Urdang said that would be the same path through which the applicant would bring back and forth vehicles being repaired. He asked if the exterior lighting was sufficient for the residents who would travel such a route. Mr. Bianco interjected and stated that the main entrance to the building is in the front by the street; he did not understand the witness' testimony that the residents would enter at night through the rear portion. Mr. Urdang asked what the site triangle for Lot #11 is. The witness said it is not shown on the site plan but that it was not affected by the latest revision. He stated the rearrangement of the existing parking meets all the provisions of the Borough code. Mr. Urdang said not a single parking spot is at least 5' from the property line. He asked how does one access the dumpster on Lot #11. The witness said the garbage truck would need to back up into it but first, the dumpster would have to be rolled out into the middle of the lot. Mr. Urdang asked if any drainage appurtenances were provided for on the property. Mr. Hubschman stated no drains are proposed and that run-off flows down to Closter Dock Road. Mr. Urdang said the parking in the front yard is listed on the plan as pre-existing and non-conforming but that reconfiguring the lot leads to another variance. Mr. Urdang asked if the entire surface of Lot#11 would be impervious; the witness answered in the affirmative but also said that a small portion is remaining gravel which is very compacted.

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

Outcome

Not wishing to start questioning of his sole witness so late in the evening, Mr. Urdang agreed to an adjournment to the April 15, 2009 Hearing.



Item #3

Case #Z-2009-01
432 Homans Avenue
(Block 2306/Lot 10)

Applicant: Oded Tal
Representation: David Watkins, Esq.

The applicant is seeking approval of amendments/revisions to a plan, which was part of a prior Board-approved application (Case #Z-2007-24) to construct an addition. David Watkins, Esq., 285 Closter Dock Road, Closter, New Jersey 07624, summarized the case by stating his client

appeared before the Board in 2007 to seek 3 pre-existing variances in order to construct an add-a-level to his residence. A provision in the Resolution stated that if more than 50% of the structure was demolished, then the applicant would need the Board to approve an amended plan. Mr. Watkins pointed out that the same items requested previously are exactly the same with this application; he said nothing new has been introduced.

Conrad Roncati, RA, 935 River Road, Edgewater, New Jersey, was sworn in as Witness #1. The witness said he prepared the architectural originally-approved by the Board in 2007 and well as the amended plan currently before the Board. He stated that the 3 variances granted previously were for depth of the front yard, a side yard, and the rear yard; the proposed footprint is exactly the same. Mr. Roncati stated that during the course of construction, the applicant and his general contractor realized there were issues with the existing framing from the floor plate up. The witness stated there was water damage, not so much to the studs as with the sill plates. He said this led to the destabilization of the exterior walls. Mr. Roncati explained that there was no way of knowing the condition of the structure because there was no pre-construction analysis of the structure's condition. The witness said the Building Department inspected the site and determined that more than 1/2 of the structure was demolished. Mr. Roncati stated the only change from the original drawings is some window rearrangement. Mr. Bianco stated the amended plan shows the house to be lower in height than the original plan. Mr. Noh asked for clarity on what exactly was demolished. The witness said the existing foundation and entire wood floor platform is remaining and only those few 8' walls are missing. Mr. Kates speculated that the reason for the 50% provision in the Resolution was to see if the house could be relocated on the site. Mr. Watkins said such action would be impossible because there is a stream in proximity and the existing foundation would not be movable. The witness reiterated the existing foundation is sound along with the floor deck and that the footprint is being extended with new foundations as permitted in the 2007 Resolution. Ms. Mattes questioned if the existing portion's strength was weakened by the cold winter months. Mr. Roncati said it has been covered by a tarp since the beginning. Mr. Bianco asked if any trees will be removed; the witness answered in the negative.

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 Ms. Mattes to approve the amended plan without conditions. All members present voted in favor (7-0)



A motion was made by Mr. Bianco, and seconded by Ms. Rothschild, to memorialize the Resolution for 1 Ruckman Road, an approved application for Conditional Use Variance and Site Plan Approvals to construct an office building and renovate an existing warehouse and office building. All members present voted in favor. Mr. Kates informed that a Developer's Agreement would need to be added to the Resolution due to the improvements being undertaken.

A motion was made by Dr. West and seconded by Mr. Bianco, to memorialize the Resolution for 14 Church Court, an approved application for Variance Relief for an as-built barbecue pit, outdoor fireplace and patio. All members present voted in favor.

A motion was made by Dr. West and seconded by Ms. Rothschild, to memorialize the Resolution for 21 Bergenline Avenue, an approved application for Variance Relief for an as-built patio and for the proposed increase of the existing roofline to accommodate an attic for storage purposes only. All members present voted in favor.



There being no further items to discuss, a motion to adjourn the hearing was made by Ms. Rothschild and seconded by Dr. West. All members present voted in favor. The hearing adjourned at 11:21pm.