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***Borough of Closter***

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

# **Zoning Board of Adjustment**

## **Special Hearing** *(Minutes)*

*October 5, 2009*

Prepared by:

**Paul Demarest**  
*Coordinator*

Chairman Knee called the Special Hearing of the Zoning Board of Adjustment for the Borough of Closter, New Jersey being held on Monday, October 5, 2009 in the Council Chambers of Borough Hall to order at 8:05pm. 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 statute. He advised that the Board adhered 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
- Mitchell Monaco
- Jennifer Rothschild, Esq.- Alternate #1
- Mark Crisafulli- Alternate #4
- Thomas Hennessey- Council Liaison
- Leonard Sinowitz- Zoning Officer
- Michael Kates, Esq.- Board Attorney
- Paul Demarest- Board Coordinator

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

- Theodore West, DDS
- Francis Noh- Alternate #2
- Steven Iafrate- Alternate #3
- Kevin Tichacek, PE- Board Engineer



To expedite the evening's proceedings, the Board did not read mail correspondence into the record.



To expedite the evening's proceedings, the Board did not approve minutes.



Chairman Knee requested 3 volunteers from the Board to serve on the Annual Report Subcommittee, which recommends policy changes to the Mayor & Council, to be held on October 21, 2009. The following were assigned: Chairman Knee, Mr. Bianco and Mr. Crisafulli.



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-2009-08  
186 Harrington Avenue  
(Block 803/Lot 12)

Applicant: Alexander Guerra  
Representation: Self

The applicant is seeking Variance Relief (building height only) for the construction of a new single-family house *already in progress*.

Alexander Guerra, 45 Storig Avenue, applicant and owner-in-fee of the subject property, was sworn in as Witness #1.

John De Grace, PE, PO Box 2311, Wayne, New Jersey, was sworn in as Witness #2. Mr. Kates indicated that the applicant had originally filed a 2-pronged application: an appeal of the Zoning Officer's determination as well as a "C" Variance. Mr. Guerra stated the appeal had since been withdrawn because he acknowledged that his new house, under construction, was currently over the permitted building height allowance (due to the introduction of a 18'x18' cupola on top of its flat roof); thus, he re-noticed indicating a request for a "C" Variance only, not a Use Variance, since the building height overage was less than 10' and/or 10% over the maximum allowed. The applicant also informed that when his project was originally approved by the Zoning Officer, the maximum building height allowed for residences was 30' to the midpoint (*it has since been reduced to 28*'). Mr. Kates asked how the building height differential came about. Mr. De Grace said the in-progress construction apparently had an additional portion put on top of the flat-roofed structure that was never approved by the Borough. He believed the project's architect, Gary Segal, RA, was aware of such facts but stressed he, himself, was not since he was only recently retained by the applicant. Mr. De Grace stated that if one measures the midpoint between the peak and soffit of the 18'x18' cupola only, the area of height overage is much smaller in reality because the peak comes to a point. Exhibit #A-1, a series of photographs showing the as-built cupola/new house, was presented. Mr. De Grace stated that in August 2009, he took extensive measurements to determine the actual height and based on such, he came up with 31.9' whereas the architect calculated a few inches more; in either case, he felt the height fell way short of being 10' and/or 10% over the maximum allowed (constituting a "D" Variance) which would have equated to 33'.

Mr. Sinowitz was sworn in as Witness #3. The Zoning Officer stated that in reviewing the August 25, 2009 letter by Mr. De Grace, in which his height determination was explained, he kept in mind that there was no authorization given to build the cupola and the applicant's previous application to the Board for the same project (Case #Z-2006-11), which was subsequently approved, depicted a completely different version in configuration and size. Exhibit #A-2, a site plan by Marc Remo, PE, dated January 14, 2005 and last revised March 3, 2006, was presented. Mr. Sinowitz said Exhibit #A-2 established the existing average elevation to be 25.69' and the proposed elevation to be 25.97' based on the figures submitted to his office when Mr. Guerra was applying for his 1<sup>st</sup> Board approval in 2006. Exhibit #A-3, a letter by Gary Segal, RA dated November 30, 2005 stating the existing average elevation as 25.96', was

presented. Mr. Bianco stated that the applicant's engineer and architect had 2 different viewpoints of finished floor elevations; Mr. Kates disagreed and felt both figures were consistent. Exhibit #A-4, page M-1 of architectural drawings by Gary Segal, RA dated August 18, 2008 and last revised June 12, 2009, was presented. Mr. Sinowitz said Exhibit #A-4 was filed with his office after the applicant was issued a Stop Work Order by the Building Department for the cupola. Vice Chairman Sonenshine believed said exhibit, which depicted a structure on top of the flat roof, was never presented to the Board, of which he was then a member, during Mr. Guerra's 2006 application for variance relief. Mr. Sinowitz believed that, ultimately, the applicant was in excess of the 30' maximum allowance for building height by more than 10%. Mr. Guerra said that prior to his 1<sup>st</sup> Board application in 2006, his house was proposed to face Harrington Avenue (parallel to street); he said the New Jersey Department of Environmental Protection (NJDEP) then informed him that his new house could not be within 50' of a brook, which forced him to relocate the house to a perpendicular alignment with Harrington Avenue. It was that latest plan, he said, that was eventually signed-off by the Building Department. Vice Chairman Sonenshine felt that statement was inaccurate because once the house was to be rotated, the Building Department would have to review revised plans. Mr. Bianco asked the applicant's engineer what the grade plane elevation was for the house as per the National Geodetic Vertical Datum of 1929; Mr. De Grace stated it to be 28.1' above sea level for the house and its surroundings based on the benchmark he used via the Bergen County Sewer Authority. He did point out that it did not matter whether the elevation of sea level was at 100' or 200' because all measurements were relative to the bottom of the structure; he also said even if one wanted to know the elevation prior to construction, his client was still way under the 3' height overage. Mr. Bianco reiterated he was only concerned with the current elevation figure; Mr. De Grace said it is 31.9' based on the cupola's elevation at midpoint being 60.0' less the grade plane elevation of 28.1'. He continued to say that the applicant's architect came up with a figure of 32' 4". Mr. Sinowitz stated the Borough Code's definition of "building height" is based on the 4 corner points and 4 intermediary points of the finished or existing grade, whichever is lower. Mr. Guerra said he had proof that the elevation prior to construction was 27.6'; Exhibit #A-5, a NJDEP map dated August 1980, was presented. Mr. Kates asked the engineer why he was not relying on Exhibit #A-2, which is engineered, site-specific and more current, instead of Exhibit #A-5. Mr. De Grace said the elevation since 1980 may have changed +/-1" due to growth or settling, but pointed out no matter which map is used, the house is still  $\leq 33'$ . Mr. Crisafulli asked what the purpose of the 18'x18' is; the applicant referred to it as his reading room with access to the roof. Mr. De Grace said using Exhibit #A-5, the elevation that is indicated in the center of the subject lot is 28.7'; he calculated it to be 28.1'. Mr. Kates stated that may be so, but taking only the center spot elevation neglects the 8 point average required in the Borough Code; he said Exhibit #A-2 did follow such a formula. Mr. De Grace agreed but further stated that the spot elevation is slightly off towards the brook from the house and if one were to consider the next contour, it goes closer to the 28' line meaning it is somewhere between 28' and 28.7'. Mr. Bianco asked what the best and worst case scenarios were for the applicant based on all the figures mentioned; Mr. Kates said Mr. De Grace's measurements come to a 1.9' overage while the Zoning Officer's denial stated a 3', 11 1/4" excess. Mr. Sinowitz indicated that the applicant's 2006 Board case was regarding setbacks only (due to violation of NJDEP regulations) and had nothing to do with building height. Exhibit #A-6, a letter by John De Grace, PE dated August 25, 2009, was presented; the engineer confirmed the exhibit documented the height as being 31.9', thus requiring a variance of 1.9'. Mr. Kates summarized that the difference between the applicant's best and worst case scenarios is roughly 2'; he followed by asking the applicant what his hardship was. Mr. Guerra said it was to keep the structure as is; Mr. Kates said that was not a reason. The applicant said the cupola's configuration changed because the original plan, which called for the reading room to be all-glass, would have had cost and energy efficiency

ramifications; he further stated that construction is not a perfect science, therefore, the steel work may have been off by a little. Mr. Guerra concluded he ultimately did not have a hardship. Mr. Bianco asked what would result if the top peak of the cupola was “chopped off” and made flat; the engineer said the structure would then be 2’, 4” less and thus, within the 30’ height requirement. Mr. Bianco stated that the cupola is around 400 s.f. on top of a 3,200 s.f. roof and wondered if the Board would want to make Mr. Guerra remove an important architectural element in exchange for a flat roof. The applicant felt to start over and expose the structure to winter would not be acceptable especially being he is about ready to move into the home. Chairman Knee asked whose figures the Board should use in making its decision; Mr. Kates said it should rely on Mr. De Grace’s, the expert witness who physically measured the structure. Mr. Sinowitz reiterated that Exhibit #A-5, which is being utilized by the engineer, does not take into consideration pre-construction elevations. Mr. De Grace responded by reiterating that the pre-construction grades are only 6” or 7” lower than the elevations he used from the NJDEP map; he felt said exhibit supported his argument by showing that the grade of the subject property was higher than 28.1’, the figure he used for the 1<sup>st</sup> floor. Mr. Guerra said the problem with the Zoning Officer using the site plan by Mr. Remo is that he fired the engineer before the house was to be rotated as per NJDEP regulations. Mr. De Grace said Mr. Remo’s site plan indicated an average elevation of 25.96’ while his own letter (Exhibit #A-6) put that number at 27.68’; he said 28.1’ was the grade of the lowest floor (garage) and that was to be the proposed grade around the structure as well, according to his own calculations. The engineer could not explain how Mr. Remo got his figures but pointed out that Mr. Sinowitz was correct in his testimony.

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

Mr. Bianco said there was no public opposition in attendance against the application; he said the applicant’s engineer is the only person to have measured the house and so he found no harm in granting the approval. Secretary Freesman felt that, again, this was a case of “oops, I sorry...it was a mistake...”; Chairman Knee felt any mistake made was not malicious and said the applicant had been delayed more than once because of changes in the laws since breaking ground years ago.

### **Outcome**

A motion was made by Mr. Crisafulli and seconded by Mr. Bianco, to grant Variance Relief with no conditions. The motion passed (**5-2: YES:** Knee/ Bianco/ West/ Monaco/ Rothschild; **NO:** Sonenshine/ Freesman).



### **Item #2**

Case #Z-2009-11  
11 Smith Street  
(Block 303/Lot 9)

Applicants: Ethan Cowan & Betty Chang  
Representation: Howard Cohen, RA

The applicants are seeking Variance Relief for the construction of an addition to their residence.

Ethan Cowan and Betty Chang, applicants and owners-in-fee of the subject property, were sworn in as Witness #'s 1 and 2 respectively.

Howard Cohen, RA, 22 Dorset Road, Scarsdale, NY, was sworn in as Witness #3.

Mr. Cohen said the subject property was an existing, non-conforming lot of 10,349 s.f. since the minimum lot size required in District #2 (Residential) is 12,500 s.f. His clients wish to put a 1-story, family room addition on the right rear side of their split-level house, which would not be visible from the street; the addition would open up onto an existing swimming pool patio. Mr. Cohen said they are requesting a variance for impervious coverage; he said the lot is currently at 41.82% and with the proposal, it climbed to 44.53%. The architect stated the reason for the high number is because it is a smaller lot having an existing pool; he pointed out the existing impervious figure had been lowered by reducing the size of the existing pool patio and walkway. Mr. Cohen said the 2<sup>nd</sup> variance request was for side yard setback aggregate; he pointed out that the right side, where the addition would be, meets the 15' minimum but the left side had an existing setback <15'. The architect said the proposal could not be located in any other area so as to maintain a certain distance from the pool; he said the room is in scale with the rest of the house and to reduce it would make it the addition useless. Mr. Cohen thought the property reached its 12% excess in impervious coverage when the previous owner did a kitchen addition in 1997 (*the maximum allowed was 40% at the time*). He said that after recently talking with his clients, they came to realize they could lower the proposed impervious coverage by reducing the size of the driveway where it widens at the house to fit a 2<sup>nd</sup> car; by converting that portion to grass/sod and essentially straightening out the driveway, the coverage would be reduced to around 38%. Exhibit #A-1, an illustrative exemplary site plan by Howard Cohen, RA with hand-drawn proposals not related to the submitted site plan, was presented. Chairman Knee felt that since an exact figure incorporating the latest proposal in reducing the impervious coverage could not be verified right there and then, that any Resolution should simply require the coverage to be <40%. Exhibit #A-2, a revised draft of the Limiting Schedule showing new calculations via the driveway reduction, was presented.

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

### **Outcome**

A motion was made by Mr. Bianco and seconded by Secretary Freesman, to grant Variance Relief with the following condition: 1.) a revised site plan and Limiting Schedule to be submitted indicating final calculations of <40% impervious coverage. The motion passed (**7-0: YES:** Knee/ Sonenshine/ Freesman/ Bianco/ Monaco/ Rothschild/ Crisafulli).



### **Item #3**

Case #Z-2009-12  
55 Forest Street  
(Block 514/Lots 3 & 10)

Applicant: Anthony Vouvalides  
Representation: Thomas Cusanelli, RA

The applicant is seeking Variance Relief for the construction of an addition to his residence.

Anthony Vouvalides, applicant and owner-in-fee of the subject property, was sworn in as Witness #1.

Thomas Cusanelli, RA, 143 Terrace Street, Haworth, New Jersey, was sworn in as Witness #2.

Vice Chairman Sonenshine asked for future reference that Mr. Cusanelli have a title block indicating his license # on submitted plans; the architect obliged. Mr. Cusanelli said the existing house is an expanded "Cape" with a continuous dormer in the rear; he said the existing 1-car garage is setback approximately 17' from the front of the building. The architect said a variance is being requested for the side yard setback aggregate since the existing 30.65' (minimum required is 30') would be reduced to 24.9'; he noted that while the south side would maintain the required 15' minimum, the existing, non-conforming north side will become more deficient. Mr. Cusanelli explained the proposal called for a 2-story addition extending to the south side and bringing the existing garage forward with a 2-car version on the 1<sup>st</sup> floor along with a family room, extended kitchen/breakfast area and mud room; he continued to say that 2 existing small bedrooms on the 2<sup>nd</sup> floor would become a master suite and bathroom along with additional closet space. The architect revealed that the applicant also owned Lot #3, a 75'x100' parcel of land located behind the subject property; the addition would be built on Lot #3 while the existing dwelling sits on Lot #10. Mr. Cusanelli pointed out that in figuring his zoning tabulations, he assumed both Lot #'s 3 and 10 as a single lot, thereby assuring all other dimensional requirements were met; he indicated there was a deed restriction on Lot #3 that prevented it from being developed. He further explained that Lot #3 backs up to Poplar Street and while the applicant's 2 lots are contiguous, they are technically separate lots. Mr. Kates said that since there are 2 separate tax bills, they are separate properties; however, he said the deed restriction is a de facto merger because it states the 1 lot cannot be built on. Chairman Knee asked what would happen if Lot #3 were to be sold; Mr. Kates, after reading the deed filed with the Board application, said that re-subdividing would not be necessary since he felt it could be done administratively as a response to the application. He explained the Board could ask the Tax Assessor to merge the lots; he said the fact is that both lots are inextricably connected because any use would have to be in conjunction with the house, thus leading to 1 tax bill. Mr. Cusanelli continued with stating the 2<sup>nd</sup> variance being requested is for the front yard setback; the existing average is 26.94' and the proposed is deficient by 2.04'. Exhibit #A-2, a series of photographs taken in July 2009, was presented. Mr. Crisafulli asked what the purpose of the addition was; Mr. Vouvalides said additional family members would be moving into his home. Vice Chairman Sonenshine and Mr. Bianco both pointed out there were missing architectural design elements on Mr. Cusanelli's 2<sup>nd</sup> floor plan; the architect verified that no work was being proposed on the south façade. Vice Chairman Sonenshine felt the proposal was quite tasteful and had character. Mr. Bianco stated the site plan's depiction of the driveway's proposed left and right hand lines was inaccurate and could affect coverage calculations; Mr. Cusanelli stated the driveway would remain essentially the same as it exists and that the total impervious coverage proposed is only 20% while the proposed building coverage is only 14%.

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

### **Outcome**

A motion was made by Mr. Bianco and seconded by Ms. Rothschild, to grant Variance Relief with the following conditions: 1.) a revised site plan omitting the lot line between Lot #'s 3 and 10 as well as depicting the correct driveway and walkway configurations to be submitted; 2.) an amended page A-3 of the architectural drawings with a revised Limiting Schedule referencing both Lot

#’s 3 and 10 to be submitted. The motion passed (7-0: YES: Knee/ Sonenshine/ Freesman/ Bianco/ Monaco/ Rothschild/ Crisafulli).



**Item #4**

Case #Z-2009-16	Applicants:	Toros & Elis Tossounian
88(A) Knickerbocker Road	Representation:	Selves
(Block 701/Lot 16)		

The applicants are seeking Variance Relief for the restoration of their storm-damaged deck and patio (on-grade).

Toros & Elis Tossounian, applicants and owners-in-fee of the subject property, were sworn in as Witness #’s 1 and 2 respectively. Ms. Tossounian stated that on or about July 8, 2009, a hail storm caused a neighbor’s tree to fall on 2 other trees which landed on her deck, patio and a portion of her roof; she said the deck was not repairable and so her contractor removed it from the site. She said she was informed that she required application to the Zoning Officer for their replacements and when she did so, it was denied because the original deck was deficient in the rear yard by 13’. She said the property backs into a neighbor’s property and that because the neighbor was traveling abroad, she could not be the meeting to testify in support of the application. Mr. Sinowitz pointed out that since the damaged deck was completely removed, he was required to deny the application; otherwise, he said, if it remained, it could have been approved as a repair job. Exhibit #A-1, a series of photographs, was presented. Mr. Crisafulli felt said exhibit clearly showed that the deck, especially, could not be repaired since the trees literally split it into 2 pieces.

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

**Outcome**

A motion was made by Secretary Freesman and seconded by Mr. Monaco, to grant Variance Relief with no conditions. The motion passed (7-0: YES: Knee/ Sonenshine/ Freesman/ Bianco/ Monaco/ Rothschild/ Crisafulli).



There being no further items to discuss, a motion was made by Mr. Crisafulli and seconded by Vice Chairman Sonenshine, to adjourn the meeting at 10:27pm. The motion passed.