



# **Zoning Board of Adjustment**

December 15, 2010

***Hearing***  
***(Minutes)***

Prepared by:

**Paul Demarest**

Chairman Knee called to order, at 8:07pm, the Regular Monthly Hearing of the Zoning Board of Adjustment for the Borough of Closter, New Jersey, being held Wednesday, December 15, 2010 in the Council Chambers of the Borough Hall. 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 Borough's officially-designated newspaper according to law. He advised that the Board adheres to an 11:00pm adjournment and no new matters would be considered after such time.

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

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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
- Mitchell Monaco
- Andrew Shyong, DDS- Alternate #3
- Marie Hartwell- Alternate #4
- Leonard Sinowitz- Zoning Officer
- Arthur Dolson- Council Liaison
- Alysia Smickley, Esq.- *in lieu of Joel Ellis, Esq.- Board Attorney*
- Kevin Tichacek, PE- Board Engineer
- Paul Demarest- Board Coordinator

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

- Lorin Sonenshine, RA/PP- Vice Chairman
- Jennifer Rothschild, Esq.
- Thomas Hennessey- Alternate #1
- Mark Crisafulli- Alternate #2
- Joel Ellis, Esq.- Board Attorney

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

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Chairman Knee stated that the Governing Body should be informed that the Board believes those members whose terms are expiring at the end of 2010 should be reappointed and that the Board's current roster works well together and has performed at a high level. A motion was made by Mr. Bianco and seconded by Dr. West, to allow for Mr. Demarest to transmit a communiqué to the Mayor and Council stating such sentiments. All eligible members present voted in favor.

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A motion was made by Dr. West and seconded by Mr. Bianco, to approve the minutes of the October 20, 2010 Hearing. All eligible members present voted in favor. A motion was made by Mr. Bianco and seconded by Secretary Freesman, to approve the minutes of the November 15, 2010 Hearing. All eligible members present voted in favor.



Since the applicants filing new applications have requested later dates, the December 20, 2010 Work Session was cancelled.



The Board discussed the possibility of having more than the usual (Special) Hearing dates reserved in 2011, especially since 8 cases from 2010 will be carried over to the new year; Mr. Demarest stated he would find out the Council Chambers' availability, which is necessary so that the meeting can be digitally recorded, and incorporate more meeting dates into the 2011 calendar.



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.



As a new internal policy, the Board decided to require applicants, whose cases have been on the Board agenda for at least 6 months, to re-notice the public and re-certify payment of property taxes before appearing before the full Board at a Hearing date; Mr. Demarest stated he would track such and indicate the applicants' noticing and tax status on the Board agenda.



**Item #1**

Case #Z-2009-14  
63 John Street  
(Block 1203/Lot 2)

Applicant(s): Dennis Wiggers  
Representation: Donna Vellekamp, Esq.

The applicant is seeking Use Variance and Site Plan (Major) Approvals for the continuation of an existing contractor's yard located in District #2 (Residential).

Chairman Knee informed that Dr. West, Dr. Shyong and Ms. Hartwell had, earlier in the evening, signed affidavits stating they listened to the digital recordings of those Hearing dates involving 63 John Street, from which they were absent; therefore, Chairman Knee said all 3 were eligible to partake in a possible Board vote.

Donna Vellekamp, Esq., 161 Mc Kinley Street, Closter, New Jersey, introduced herself. She informed that the applicant's engineer, Frank O'Leary, PE, was not present and neither she nor the applicant have had any communication regarding his whereabouts; in lieu of Mr. O'Leary,

she suggested that Mr. Wiggers give testimony about the changes to the site plan made by his engineer, which she felt were conceptual, not technical in nature. Chairman Knee agreed there was no other option considering the situation; however, he said Mr. O'Leary's testimony would eventually be necessary prior to a Board vote on the case. Mr. Bianco suggested that, under the circumstances, the applicant may wish to bifurcate his application so that the Board could vote on the Use Variance portion only, and if approved, deal with the Site Plan Review at a later time. Chairman Knee felt that since several changes were made to the site plan, Mr. O'Leary's input may be necessary prior to a vote on a Use Variance; Secretary Freesman concurred, adding that he did not feel comfortable voting without knowing the site plan's final version since he believed both go "hand in hand". Mr. Tichacek felt no technical engineering changes were reflected in Mr. O'Leary's latest revised site plan, and, thus, he saw no reason why the Board could not vote on at least the Use Variance. Chairman Knee reversed his earlier statement following the Board Engineer's comments, while Secretary Freesman said he would prefer to vote on the application as a whole rather than bifurcating.

Dennis Wiggers, 387 Paramus Road, Paramus, New Jersey, was sworn in as Witness #1. Exhibit #A-14, a site plan by Frank O'Leary, PE dated November 29, 2010, was presented. He stated the existing side yard/green space of the residence on-site would be increased approximately 22' to 25' in width with the shifting of the containers (labeled "Trailer #'s 2, 3, 4" on said exhibit) from Lot #1 to the west of the property, thus allowing for the creation of a buffer (wood fencing and evergreen plantings) between the contractor's yard and the house. The witness stated all fuel tanks on-site (supply and waste inclusive) would be removed and fuel would now originate from the local service station. He testified he would install curbing along the entire length of the paper street (Westminster Avenue) and have a 30' curb cut leading from the paper street into 63 John Street. He said a 4' high chain link fence would be installed along the border of Westminster Avenue and the subject property. Mr. Wiggers continued saying the block wall in the corner of the property that sits partially within the paper street would be eliminated; he said such would allow the operators at 35 John Street and 49 John Street to access the paper street (if improved) via the creation of a driveway. The applicant noted that a 2' x 2' drain would be installed at the western end of the paper street to catch any water runoff going toward the "lower properties" (35 John Street and 49 John Street). He said a 6' shadow board fence would be installed along the property line shared with 49 John Street and continue along John Street (inside of the existing concrete pavers and shrubbery), which would greatly enhance the screening of the commercial activity on-site. Mr. Wiggers informed that the existing remains of a concrete foundation, acting as bins for gravel storage, would be removed to allow for access from the paper street through the proposed 30' depressed curb. He revealed that processing of material, mulching and tub-grinding would not occur on-site. He said that a "silent" electric motor-powered log splitter would replace the noisy gas-powered versions currently on-site. As far as the firewood piles, Mr. Wiggers stated the maximum height at any time would be 20'. Finally, in terms of concessions to the Board, the applicant said, once the 2 "missing" drains on-site are located by Mr. O'Leary, filters would be installed to prevent debris infiltration. Ms. Hartwell asked for the current height of the firewood pile; the witness answered 22' and pointed out that its width is 1/2 of what it was a month ago. Ms. Hartwell asked what would happen to the piles of stone currently on-site; the applicant replied that the proposed 6' stockade fence along with the firewood pile would create a formidable buffer from the contractor's yard. Ms. Hartwell disagreed, saying the firewood pile was an "eyesore" and that his idea to have an electric-run log splitter on-site would not solve the noise and sawdust concerns; Mr. Wiggers repeated that the log splitter would be virtually silent and that no sawdust is generated. Dr. West said all of the uses conducted at the site that were of concern to the Board in prior meetings were addressed by Mr. Wiggers' testimony this evening, except for the mechanical

repair shop; he asked if the witness had intentions of outsourcing the repairs. Ms. Vellekamp said the proposal is to keep the large-framed garage and its use, strictly for the maintenance of the applicant's equipment, intact. Secretary Freemasn asked if there would be any storage of mulch on the subject site; the applicant said such storage would only take place for daily jobs orders, not to be confused with having a depot for processing. Secretary Freesman asked about outstanding violations cited in a New Jersey Department of Environmental Protection (NJDEP) letter dated August 24, 2009 (Exhibit #O-5); the witness said he had subsequently received an exemption from the NJDEP for tub-grinding but that he opted to discontinue such and as for the other violations, all were abated. Mr. Sinowtiz believed NJDEP abatement was subject to 4 inspections per year. Mr. Bianco asked for detail on the equipment used for mechanical repairs on-site; Mr. Wiggers said the large-framed garage contained an air compressor, a welding machine, etc., and he further stated that 80% of such work is done inside the garage. Mr. Bianco inquired about the disassembled backhoe outside the garage, whose parts are scattered throughout the yard; the witness said it has since been put back together and that, in the future, all major repairs would be outsourced. Mr. Bianco asked about the large stones currently on-site; the applicant said they are stored materials for job sites involving waterfall installations, gardening, etc., and that they are transported via a *Bobcat* and never cut/split on-site. Mr. Bianco asked for the size of the curb cut for accessing the paper street from Railroad Avenue; the witness answered 27'. Mr. Bianco disagreed, saying Exhibit #A-14 showed it to be 10.5' and he asked the Board Engineer if such width was safe for traffic flow. Mr. Tichacek stated that, as per Chapter 173-53B(2) of the Borough Code, an applicant seeking Site Plan Approval shall dedicate land to allow for adequate right-of-way space if the subject site adjoins a roadway that is deficient in right-of-way width; he noted in this case, Westminster Avenue ranges from 40' down to 24' at Railroad Avenue. Mr. Bianco asked that if the applicant were to retract 5' on each side, would then the 30' "throat" be sufficient; Mr. Tichacek said that should be the minimum. Ms. Vellekamp stated moving the curb line more into her client's property would be acceptable. Mr. Sinowitz noted that in order to create the 30' "throat", the existing small-framed garage would need to be eliminated and he pointed out that a design waiver would be needed for the curb cut accessing the property from Westminster Avenue (the maximum allowance in District #2 is 21' and 30' is proposed). Mr. Bianco expressed frustration that the site plan still did not show the equipment (as noted on the vehicle manifest) and their parking arrangement on-site. Mr. Tichacek suggested the applicant and the owner of 76 Railroad Avenue (where the applicant rents space) work together to remove the concrete wall that sits on both of their properties allowing for the 30' "throat" into the paper street from Railroad Avenue; Mr. Wiggers agreed. Mr. Sinowitz stated a design waiver is necessary for the proposed fencing along John Street (the maximum allowance in District #2 is 4' high and at least 50% open and 6' high and solid is proposed). Councilman Dolson expressed concern that the applicant seems to be relocating material from 63 John Street to 76 Railroad Avenue and it is being stored in a disorderly fashion; he informed that in October 2009, he witnessed the mixing of manure and mulch on-site, which he said discredits the witness' statement that he abated all violations noted in Exhibit #O-5. Mr. Monaco asked at what capacity would the property's commercial use be at if all the newly-proposed changes were implemented; the applicant felt it would be at 66% when considering all the clean-up and material consolidation that would take place. Mr. Monaco asked that manufacturer's specifications be submitted for the proposed electric-motored log splitter. Dr. Shyong asked how much noise the mechanical repairs produce; the witness said very little and they only occur during daytime hours. Mr. Sinowitz asked if any changes to the residence were proposed; the witness answered no, other than the enlargement of its green space. Mr. Sinowitz reiterated that the small-framed garage would need to be demolished to allow for a 30' "throat" into the paper street; Mr. Tichacek concurred. Mr. Bianco said since this access would potentially be used by the operators at 35 John Street and 49 John Street as well as

the applicant, the assurance of “sight distance”/“cone of vision” for the truck flow entering and exiting Railroad Avenue is of utmost importance; Mr. Wiggers said that while he had hoped to keep said garage and felt the existing evergreens in the vicinity would need to be cut down, he, nevertheless, would agree to do so. Councilman Dolson asked whether those activities being conducted at 63 John Street would be permitted at 76 Railroad Avenue; Mr. Sinowitz said that the latter is located in District #5 (Industrial), which until 1992, allowed for contractor’s yards and so any documented as pre-existing would be considered “grandfathered”. Mr. Bianco suggested the fencing that is to be along the shared border with 49 John Street be moved 15’ back and “jogged” so that any material at 63 John Street is setback from the neighbor’s house and out of harm’s way (via collapse or fire); Ms. Vellekamp agreed to do so.

Chairman Knee opened the meeting to the public for questions of Witness #1 only.

Jesse Rosenblum, 65 Knickerbocker Road, asked, hypothetically, how a gate installed across the 30’ “throat” be operated; Mr. Wiggers said it would operate by manual or rail-type sections. Mr. Rosenblum asked what would happen to the brick pavers illegally-installed on Westminster Avenue; the witness said he would prefer to keep them (except for the area tapering into the “lower properties”) because they make for an exceptional road way material. Mr. Rosenblum asked for the amount of space the witness leases at 76 Railroad Avenue; the witness believed it is 19,500 sf. Mr. Rosenblum asked for the amount of additional green space to be added next to the residence on-site; Mr. Wiggers said it would be roughly 22’ x 70’.

John Kilduff, 180 Herbert Avenue, asked for clarity on the the site’s block and lot #’s since the listing on the Board agenda differs from the site plan notations; Mr. Demarest said the Borough’s tax records recognize Lot # 2 only, meaning that the 4 separate lots that originally made up the site were administratively merged by the Borough.

Mr. Bianco pointed out that another reason he was a proponent of bifurcation in this case was due to the fact the proposal does not include lighting/landscape plans and final geometrics of street layouts. Ms. Hartwell reiterated concerns about drains on-site that have yet to be located as well as the “so-called” quiet electric log splitter. Mr. Monaco thought the applicant would “burn” through an electric log splitter quickly due to the intensity of his firewood operation. Dr. Shyong pointed out that he believed an electric version of such equipment could actually produce very little sound; he said hybrid automobile manufacturers are now installing an artificial motor noise into electric cars just so drivers can hear it. Secretary Freesman continued to be uncomfortable voting on the Use Variance without having more information regarding the site plan.

The Board went into recess at 9:46pm.

The Board reconvened at 9:50pm.

Chairman Knee opened the meeting to the public for general comments only.

Jesse Rosenblum, 65 Knickerbocker Road, was sworn in as Objector #1. He expressed his objection to the application.

John Kilduff, 180 Herbert Avenue, was sworn in as Objector #2. He said that while he appreciated the proposed changes made to the application by Mr. Wiggers, he remained concerned about the environmental harm being inflicted upon the neighborhood by way of the

mechanical repairs and the resulting grease, chemicals, etc. Mr. Kilduff expressed frustration about the possible long period of time that could be given to the applicant to fulfill the conditions stipulated in a potential Board approval. He also felt access to the eventually-improved paper street would not be sufficient for all of the commercial operations located on John Street.

Ms. Vellekamp summated.

### **Outcome**

A motion was made by Mr. Bianco and seconded by Ms. Hartwell, to bifurcate the application. The motion passed (7-0: **YES**- Hartwell/ Shyong/ Monaco/ West/ Bianco/ Freesman/ Knee). A motion was made by Dr. Shyong and seconded by Ms. Hartwell, to approve the Use Variance portion of the application. Mr. Bianco felt the applicant has shown complete disregard for the rule of law by the way he has not only used 63 John Street but the Borough's property as well (both the paper street and along Railroad Avenue). Mr. Sinowitz believed the applicant has "heard" the Board's plethora of concerns over the property's use and its maintenance and pointed out that the Board's vote on this case would directly affect the success of prior Board approvals (35 John Street and 49 John Street). An amendment was made by Dr. West and seconded by Dr. Shyong to amend the pending motion to approve the Use Variance by conditioning it with the elimination of the mechanical repair operation on-site. The amendment passed (7-0: **YES**- Hartwell/ Shyong/ Monaco/ West/ Bianco/ Freesman/ Knee). The motion failed (4-3: **YES**- Shyong/ Monaco/ West/ Knee; **NO**- Hartwell/ Bianco/ Freesman).



There being no further items to discuss, a motion to adjourn the meeting was made by Mr. Bianco and seconded by Ms. Hartwell. All members present voted in favor. The meeting adjourned at 10:18pm.