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

ZONING BOARD OF ADJUSTMENT

Hearing
(Minutes)

February 17, 2010

Prepared by:

Paul Demarest
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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, February 17, 2010 in the Council Chambers of the Borough Hall to order at 8:03pm. He stated the meeting was being held in compliance with the provisions set forth in the Open Public Meetings Act of the State of New Jersey and had been advertised in the newspaper according to law. He advised that the Board adheres to an 11:00pm adjournment and no new matters would be considered after such time.

Chairman Knee invited all persons present to join the Board 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
- Jennifer Rothschild, Esq.
- Thomas Hennessey- Alternate #1
- Mark Crisafulli- Alternate #2
- Marie Hartwell- Alternate #4
- Arthur Dolson- Council Liaison
- Leonard Sinowitz- Zoning Officer
- Joel Ellis, Esq.- Board Attorney
- Paul Demarest- Board Coordinator

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

- Mitchell Monaco
- Steven Iafrate- Alternate #3
- Kevin Tichacek, PE- Board Engineer



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



Being the minutes for the January 20, 2010 Reorganization and Hearing were not complete as of yet, a Board vote on their approval was postponed to the March 17, 2010 Hearing.



Chairman Knee requested 3 volunteers from the Board to serve on the Subcommittee for the February 24, 2010 Work Session. The following were assigned: Dr. West, Mr. Hennessey and Ms. Hartwell.

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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 (NOTE: Jack Kelly, 132 Herbert Avenue, and Hugh Johnson, 107 Demarest Avenue, had their comments stricken from the record).

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Item #1

Case #Z-2008-12
35 John Street
(Block 1203/Lot 7)

Applicant: Robert Armaniaco
Representation: Stuart Liebman, Esq.

The applicant is seeking a Use Variance for the continuation of his existing contractor's yard operation located in District #2 (Residential).

Vice Chairman Sonenshine recused himself from this case.

Mr. Ellis informed that he had recently been contacted by an attorney retained to represent and summate objections to the application on behalf of several residents in the vicinity of the subject property. He believed the attorney should be permitted to speak just as an individual from the public would be; he stressed, however, no new evidence or testimony was allowed to be injected into the summation. Ms. Rothschild disagreed with the opinion of the Board Attorney.

Stuart Liebman, Esq., Wells, Jaworski & Liebman, LLP, 12 Route 17 North, Paramus, New Jersey, reintroduced himself and indicated, he too, had only a few days ago received word that some neighboring residents had retained an attorney for purposes of summation. He felt that since the public question and comment portion of the Hearing was closed after ample time had been allotted to it at the January 20, 2010 Hearing, and at that time, it was declared the applicant's attorney would summate followed by a Board vote only this evening, there was no basis to allow for it. Mr. Ellis asked counsel if his opinion would be the same if an official objector wanted to be heard in response to his own summation to which Mr. Liebman answered in the affirmative. Mr. Ellis believed that point of view equated to the case being over and only 1 of the attorneys being allowed to sum up and comment on the existing record while the other is restricted from doing the same. He further stated that it was 1 thing to have the case closed but that, in his view, would not preclude a summation by way of the other side; he stressed that, especially with the subject case, that there should be nothing in the record that could form the basis for reversible error if the Board went 1 way and then it got set aside because, procedurally, there was determined to be lack of fairness or due process. Chairman Knee stated that the only reason Mr. Liebman did not summate and the Board postponed a vote at the last Hearing was because of the late hour and the Board members would have been rushing deliberation to contemplate a vote; now, he said, certain members of the public were using that development to their advantage. Mr. Ellis reiterated his concerns if a summation were not allowed that the record could be tainted and said that no one contemplated what happened but it was an unforeseen situation that came up; ultimately, he said the Board had the right to decide which way to go. Ms. Rothschild concurred with Chairman Knee and reminded that she opted to finish the case at the last Hearing but she did not anticipate the "maneuver" from the public this

evening; she believed such tactics would cause adverse effects to the applicant by delaying and causing more cost to him.

A motion was made by Mr. Bianco and seconded by Mr. Crisafulli, to allow an attorney retained by certain members of the public to summate with no new evidence or testimony being introduced. The motion passed (**5-2: YES**- Freesman/ Bianco/ West/ Hennessey/ Crisafulli; **NO**- Knee/ Rothschild).

Richard Kilstein, Esq., Kilstein & Kilstein Attorneys, 669 River Drive, Elmwood Park, New Jersey, introduced himself and revealed the following residents as his clients: 1.) Vincent & Pansy Lo (23 John Street); 2.) Lidia Auriti (36 John Street); 3.) Elaine Mahmarian (191 West Street); 4.) Mary Elen Brusco (19 John Street); 5.) Maribel De La Torre (28 John Street); 6.) Elizabeth Oh (20 John Street); 7.) Rita Ciancio (15 John Street). He stated he had reviewed the transcripts for the first 3 Hearings and the recording of the last pertaining to the 35 John Street application. He said he simply wanted to focus on the applicable law. Mr. Kilstein believed the subject case to be unlike the normal Use Variance application since rather than the contractor's yard being proposed and having many unknowns surrounding it, his clients have been putting up with the illegal conditions of the applicant's property since 1999. Based on case law interpreted, he stated there were 3 categories under which special reasons (extraordinary circumstances) can validate a Use Variance along with satisfying both positive and negative criteria; he believed the subject case did not meet any of those requirements because, among other reasons, no traffic expert was presented by Mr. Armaniaco. Mr. Kilstein felt the following categories were not met: 1.) inherently beneficial uses (hospitals, schools, child daycare, etc.) did not describe a contractor's yard; 2.) undue hardship was not applicable since compelling the applicant to continue the residential use only would not create any hardship; 3.) serving the general welfare because a proposed site is particularly suitable for a proposed use is not pertaining to the subject property since common sense and case law says that making the property residential only would not hinder it from still serving as a buffer and transitional zone. He stated the Borough's 1981 Master Plan recommended to re-zone the John Street area, yet the Governing Body had not acted upon that nor had such a recommendation been mentioned in any subsequent Reexamination; on the contrary, Mr. Kilstein said, the 2008 Master Plan Reexamination called for the Borough to press industrial properties to become more conforming and create more workable situations with residential neighborhoods as well as to prohibit commercial parking/storage overnight on residential sites. Ms. Rothschild felt the member of the public, Ms. Auriti, who said her property values were diminished because of the applicant, was hearsay and that no professional witness was presented to verify her statement. Mr. Kilstein believed his client's first-hand testimony would suffice; he continued to say that, besides, the applicant had the burden of proving there was no negative impact attached to granting a Use Variance.

Mr. Liebman, in response to Mr. Kilstein's remarks, believed that if the Board were to deny his client's application, reversible error would have been committed so he suggested that his summation be disregarded. Mr. Liebman stated that case law clearly mandated that the Board could not disregard professional credible evidence so easily in favor of lay testimony. With that, he gave his summation stating that the Borough's planning documents dating back to 1981 had dealt with the John Street area in a way that his client's planner did not agree with; however, he said, those were the parameters the applicant's professional witness had to work with. Mr. Liebman said those same planning documents indicated that contractors in the subject area should work together with the Borough to come to a compromise since the Borough did not wish

to drive them out of town. He indicated his client would agree to the following conditions being stipulated within a Resolution of Board approval: 1.) property would remain a mixed use (residential dwelling inclusive); 2.) non-residential component of mixed use shall be limited to contractor's yard for outdoor storage of contractor's equipment and material; 3.) material to be stored shall be non-odorous; 4.) said material shall be neat and orderly at all times and limited to area north of front yard fence as depicted on plans and survey filed by applicant; 5.) non-residential activity shall be limited to area shown on latest revision of landscape plan request by Board; 6.) applicant agrees to maintain and replace, if necessary, existing fence and landscape material to keep effective visual buffer; 7.) applicant agrees to direct all truck traffic to and from his site utilizing Westminster Avenue if and when the Borough decided to improve that portion of said paper street (regardless of outcome of this case); 8.) applicant shall, within 60 days of approval of Resolution granting Use Variance, petition Governing Body to allow for 2-way traffic on John Street between William Street and Railroad Avenue; 9.) applicant shall, upon implementation of Condition #8, direct truck traffic to and from his site to utilize John Street east of William Street. Mr. Ellis asked if Mr. Armaniaco would agree to pay his pro rata share of all improvements to Westminster Avenue to which Mr. Liebman said that would be reasonable. Mr. Ellis questioned if the applicant would agree to the right of operating the commercial activity on-site as being limited to only the property owner occupying the residence; Mr. Liebman answered that such a condition had no been previously discussed and he would need to talk with Mr. Armaniaco.

A motion was made by Secretary Freesman and seconded by Dr. West, to go into closed session to discuss legal matters with Mr. Ellis regarding the subject case; counsel clarified that Board deliberation would not occur in closed session. The motion passed (**5-2: YES-** Freesman/ Bianco/ West/ Hennessey/ Crisafulli; **NO-** Knee/ Rothschild).

The Board went into closed session at 9:21pm.

The Board returned to open session at 9:30pm.

Mr. Liebman acknowledged that, since bifurcation of the application had previously been agreed to, if the Board granted a Use Variance, his client would return for Site Plan Review.

A motion was made by Mr. Bianco and seconded by Ms. Rothschild, to approve the application with the following conditions (he noted that he rejected all conditions put forth by Mr. Liebman in his summation): 1.) approval is for specific use of parking those items listed on vehicle manifest filed by applicant <NOTE: Condition #'s 2 through 10 to be included in eventual Site Plan Review application>; 2.) minor subdivision of residence from contractor's yard, specifically Lot #7 from Lot #6 respectively; 3.) creation of 10' buffer strip between Lot #'s 6 and 7 with trees and solid fence to run in north/south direction so to screen commercial vehicles; 4.) fence along north property line to run concurrent with Westminster Avenue street line; 5.) engineer's report on drainage/sanitary sewer easements to be filed (pipe material, ground coverage, weight surcharge, manhole accessibility for maintenance/repair of lines inclusive); 6.) installation of double "DO NOT ENTER" sign with 1-way traffic arrows at intersection of John Street and William Street, a 1-way traffic arrow sign at intersection of John Street and Railroad Avenue as well as sign indicating trucks prohibited on John Street from West Street; 7.) installation of "DO NOT ENTER" barrel sign in front of 35 John Street preventing traffic to West Street; 8.) applicant to increase entrance gate setback to 25' so eliminate view into back lot; 9.) empty dumpsters only permitted in contractor's yard; 10.) applicant agrees to his pro rata share of costs attached to Westminster Avenue improvement regardless of whether it became a service

road or substandard alley way eliminating traffic congestion (John Street would remain 1-way eastbound). Ms. Rothschild said she disagreed with all of Mr. Bianco's conditions and inquired what that meant procedurally for her seconding his motion to approve the application. Mr. Hennessey believed most of Mr. Bianco's conditions could be discussed during Site Plan Review. Mr. Bianco responded that one of the failings of the bifurcation is that the Board does not know what they are going to get for a site plan prior to voting on the use. Ms. Rothschild said Mr. Bianco's Condition #'s 6 and 7 dealing with street signage are the sole responsibility of the Borough; Mr. Bianco said, as per the Borough Code's Site Plan chapters, such would be permitted as off-tract improvements. The Board members disagreed about whether or not Mr. Bianco's suggestion of subdivision was within the Board's jurisdiction. Chairman Knee believes that if subdivided, the property would no longer have a mixed use and lose its buffer element; he felt the mixed use component supported the application while separating Lot #'s 6 and 7 did not. Ms. Rothschild felt Mr. Bianco's conditions were being requested without any concurrence or discussion from the Board and to permit them could put a Board member in the position where he/she may want to approve the Use Variance but not with such conditions attached, thereby forcing he/she to vote against the application altogether; Mr. Bianco responded by saying the Board has always conditioned applications before them within reason and that he wanted all parties involved to know upfront what the future held for the pending Site Plan Review. Mr. Ellis suggested the Board evaluate the conditions presented by both Mr. Liebman and Mr. Bianco and see which are agreed upon and which items cancel each other out.

Outcome

With regards to Mr. Liebman's conditions put forth, the Board decided the following: 1.) should be revised to indicate as depicted on last revised plan and be worded to say "as long as there is commercial activity going on, it must be a mixed use..." unless there was a wish to make property residential altogether; 2.) owner-occupancy required for both contractor's yard and residence as well as being revised to say "as shown on plan including vehicle manifest..."; 3.) NOTE: Board disagreement as to whether or not dumpsters are to be empty at all times; 4.) wording to be determined within Resolution; 5.) agreed to as is; 6.) buffer strip to be 10' between Lot #'s 6 and 7, but unlike along Westminster Avenue, it would not have to follow property line; 7.) removal of "suitable improved municipal" because Westminster Avenue is substandard though it must be able to allow for Mr. Armaniaco's equipment; 8.) to be eliminated because John Street is too narrow; 9.) to be eliminated because John Street is too narrow.

With regards to Mr. Bianco's conditions put forth, the Board decided the following: 1.) already stipulated by Mr. Liebman; 2.) request for subdivision to be eliminated; 3.) agreed to as is; 4.) agreed to as is; 5.) agreed to as is; 6.) authority given to Borough only; 7.) agreed to be discussed further during Site Plan Review; 8.) agreed to be discussed further during Site Plan Review; 9.) applicant would make effort to keep dumpsters empty, otherwise, material to be limited to non-demolition and non-construction debris as well as non-organic and non-odorous material; 10.) agreed to as is.

Secretary Freesman pointed out that, if approved, the Resolution should be recorded with Bergen County as a deed restriction. The motion passed (**6-1: YES**- Knee/ Freesman/ Bianco/ West/ Rothschild/ Hennessey; **NO**- Crisafulli).



Item #2

Case #Z-2009-13
79 Chestnut Avenue
(Block 1703/Lot 19)

Applicant: James & Nancy Dillon
Representation: Selves

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

Vice Chairman Sonenshine resumed his participation in the Hearing.

James and Nancy Dillon, applicants and owners in fee of the subject property, were sworn in as Witness #'s 1 and 2. Mr. Dillon stated they wish to put an addition over their existing garage which would consist of a master bathroom and walk-in closet; they also wish to install a front portico and foyer. He said the application was denied by the Zoning Officer because of an existing 6.2' side yard setback which would be further exacerbated by the proposed work. Chairman Knee asked what the distance was from the applicants' side exterior wall to the adjacent neighbor's house; the applicants were not sure. Mr. Bianco said filed photographs gave an idea as to the distance of such. Vice Chairman Sonenshine asked what the hardship was to the applicants. They concurred with the Board that their lot was very narrow and long, thus it was not feasible to put the addition in the rear; they also felt the home's existing layout dictated where the addition ought to go so to avoid having to go down the hallway to go to their master bathroom. Vice Chairman Sonenshine asked if there was any consideration to eliminating the bay window/window seat or at least bringing in line with the house or setting it in so to avoid increasing the Variance required. Mr. Dillon felt it to be an architectural feature that broke up the straight line of the side wall. Vice Chairman Sonenshine, otherwise, felt the proposal would fit in with the streetscape of the neighborhood especially since the property is located on the curve on Chestnut Avenue. Mr. Bianco said the average existing setback of the side yard was actually 12' (3' deficiency) if calculating the mean of the entire side wall of the house; he said looking at it as simply a "point variance", the setback would be 8.8', hence the 6.2' deficiency. He further stated that due to the angle of the property line in question, the variance is needed but revealed that the back of the addition would have a setback of almost 15'. He said he scaled out the distance of the applicants' side exterior wall to the adjacent home to be 30'; he felt the "bump out" of the window added interest to the addition. Chairman Knee also felt a hardship was that the house was originally built on an angle, not parallel, to the side yard property line. Ms. Rothschild felt the addition would be beneficial to the neighborhood and consistent with its upgrades over the past decade.

Chairman Knee 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 the application without any conditions. The motion passed (**7-0: YES-** Knee/ Freesman/ Bianco/ West/ Rothschild/ Hennessey/ Crisafulli).



There being no further items to discuss, a motion to adjourn the meeting was made by Dr. West and seconded by Vice Chairman Sonenshine. All members present voted in favor. The hearing adjourned at 10:46pm.