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

ZONING BOARD OF ADJUSTMENT

Reorganization & Hearing (Minutes)

January 20, 2010

Prepared by:

Paul Demarest
Coordinator

Chairman Knee called the Reorganization & Regular Monthly Hearing of the Zoning Board of Adjustment for the Borough of Closter, New Jersey being held Wednesday, January 21, 2010 in the Council Chambers of the Borough Hall to order at 8:07pm. 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.



Reorganization

Oaths of Office

Full Member Appointees (Term Expiring December 31, 2013):	Joseph Bianco, RA/PP
(Term Expiring December 31, 2010):	Jennifer Rothschild, Esq.

Alternate Appointees (Term Expiring December 31, 2010):	(#1) Thomas Hennessey
(Term Expiring December 31, 2011):	(#2) Mark Crisafulli
	(#4) Marie Hartwell

Council Liaison (Term Expiring December 31, 2010):	Arthur Dolson
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Officers

A motion was made by Mr. Sonenshine and seconded by Mr. Hennessey, to nominate Mr. Knee as Chairman of the Board. Being there were no other nominees, his selection was affirmed by acclamation.

A motion was made by Mr. Bianco and seconded by Dr. West, to nominate Mr. Sonenshine as Vice Chairman of the Board. Being there were no other nominees, his selection was affirmed by acclamation.

A motion was made by Mr. Bianco and seconded by Dr. West, to nominate Mr. Freesman as Secretary of the Board. Being there were no other nominees, his selection was affirmed by acclamation.

Professional Services

Chairman Knee indicated that due to a scheduling conflict recently arising between the long-serving Board Attorney, Michael Kates, Esq., and the Board's current meeting schedule, there was a need to discuss which of the following would best suite the Board: 1.) remain with Mr. Kates' firm, Nashel, Kates, Nussman, Rapone & Ellis, LLP and be represented by one of his partners, Joel Ellis, Esq.; 2.) in order to keep Mr. Kates as the Board Attorney, change the Board's meeting schedule to accommodate him; 3.) retain a different law firm, altogether, to represent the Board. Chairman Knee felt the best option was to keep Mr. Kates' firm and utilize

Mr. Ellis; Vice Chairman Sonenshine asked Mr. Ellis to give a brief synopsis of his qualifications. Mr. Ellis indicated that he has practiced law for 40+ years and served as Borough Attorney of Fort Lee and Waldwick as well as represented their Planning Boards. A motion was made by Ms. Rothschild and seconded by Secretary Freesman, to nominate Joel Ellis, Esq. as Board Attorney. Being there were no other nominees, his selection was affirmed by acclamation.

A motion was made by Mr. Bianco and seconded by Ms. Rothschild, to nominate Kevin Tichacek, PE, of Boswell Mc Clave Engineering, to serve as Board Engineer. Being there were no other nominees, the selection was affirmed by acclamation.

Adoption of Calendar

A motion was made by Dr. West and seconded by Vice Chairman Sonenshine, to adopt the 2010 Hearing/Work Session/ (Special) Hearing Schedule. The motion was affirmed by acclamation.

Adoption of Fee Schedule

A motion was made by Dr. West and seconded by Vice Chairman Sonenshine, to adopt the 2010 Application Fee Schedule. The motion was affirmed by acclamation.

Adoption of Escrow Deposit Schedule

A motion was made by Mr. Bianco and seconded by Ms. Rothschild, to adopt the 2010 Escrow Deposit Schedule. The motion was affirmed by acclamation.

Adoption of Official Newspaper Designations

A motion was made by Vice Chairman Sonenshine and seconded by Ms. Rothschild, to adopt *The Press Journal* and *The Record* as the Official Newspapers of the Board to be used for public noticing. The adoptions were affirmed by acclamation.



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.
- Thomas Hennessey- Alternate #1
- Mark Crisafulli- Alternate #2
- Steven Iafrate- Alternate #3
- Marie Hartwell- Alternate #4
- Arthur Dolson- Council Liaison
- Leonard Sinowitz- Zoning Officer
- Joel Ellis, Esq.- Board Attorney
- Kevin Tichacek, PE- Board Engineer

Paul Demarest- Board Coordinator

There were no Board members and/or professionals absent from the meeting.

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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.

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A motion was made by Ms. Rothschild and seconded by Mr. Crisafulli, to approve the minutes of the December 16, 2009 Hearing. All members present voted in favor.

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Chairman Knee requested 3 volunteers from the Board to serve on the Subcommittee for the January 27, 2010 Work Session. The following were assigned: Mr. Bianco, Ms. Rothschild and Mr. Hennessey. Since one of the applications to be reviewed involves Site Plan Review, Mr. Tichacek agreed to attend as well.

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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.

Jack Kelly, 132 Herbert Avenue, asked if certain items were still going to be discussed in closed session as indicated on the Board agenda; Chairman Knee said those items were already resolved in open session.

Denise Mattes, 72 Primrose Lane, stated the proposed agenda for the Borough's upcoming bi-annual Joint Meeting of Boards and Commissions had as one of its topics of discussion the enforcement of illegally-used John Street properties; she felt since there were pending applications of John Street properties currently before the Board that such items should not be discussed at the March 6, 2010 Joint Meeting. Mr. Bianco said he believed that agenda item had subsequently been removed for that very reason.

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Chairman Knee informed that the Board would be postponing a vote indefinitely on the proposed 2008/2009 Annual Report to the Governing Body since participating Subcommittee members that voiced concerns about the wording of the document.

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In order to accommodate Vice Chairman Sonenshine and Mr. Monaco, who were ineligible to vote on and recused from "Item #1" on the agenda respectively and who would be departing early for the evening, the Board agreed to complete the "Memorialization of Resolutions" portion of the agenda at this time.

Chairman Knee recused himself from this portion of the Hearing.

Vice Chairman Sonenshine chaired this portion of the Hearing.

A motion was made by Mr. Bianco and seconded by Ms. Rothschild, to memorialize the Resolution for 185 Closter Dock Road (Case #Z-2008-24). All members present voted in favor.

Chairman Knee resumed chairing the Hearing.



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).

Hugh Johnson, 107 Demarest Avenue, was sworn in as an objector to Mr. Bianco being allowed to sit on the Board while it hears and votes on the 35 John Street application (Case #Z-2008-12). Furthermore, he felt the Federal Bureau of Investigation (FBI) commendation letter presented by Mr. Bianco to the Board at a recent Hearing was a fraudulent document and should cause his permanent removal from the Board. Mr. Ellis reminded that the matter had already been previously discussed and it was determined that Mr. Bianco should retain his Board membership; he reiterated that the FBI letter concerns were not relevant to the Board since it was an extraneous issue that was separate from the merits of the Armaniaco case.

Stuart Liebman, Wells, Jaworski & Liebman, LLP, 12 Route 17 North, Paramus, New Jersey, reintroduced himself and summarized the case developments from the December 16, 2010 Hearing which included the completion of direct testimony and public questioning and comments; he said additional information was requested by the Board. Exhibit #A-12, a conceptual site plan by Eid Associates dated December 3, 2009 and last revised January 7, 2010, was presented. Mr. Liebman said the exhibit showed equipment storage locations and reflected the maximum potential placement of such; he said the revision depicts the same footprint of the equipment as the original plan only now they are shown “divided up”. Mr. Liebman said the revision included the truck/equipment manifest, a correction to the tree planting legend to show the species (12-14’ Norway spruces), a change in distance of the proposed front gate and pillars from the curb to 15’, the reduction of both curb cuts to a compliant 21’ as well as a detail on the “board on board” fence and gate. Exhibit #A-13, a “traffic report” with existing conditions (copy of Borough tax map with arrows indicating flow) by Burgess Associates, was presented. Exhibit #A-14, Option #1 for traffic flow calling for the improvement of and 2-way traffic for Westminster Avenue from Railroad Avenue to 35 John Street (Lot #6), was presented. Exhibit #A-15, Option #2 for traffic flow calling for 2-way traffic on John Street from William Street to Railroad Avenue, was presented. Mr. Liebman reiterated that the traffic flow design options were not being proposed by his client nor was he suggesting that they were feasible but rather their submittal was to merely fulfill the Board’s request; he clarified that Mr. Armaniaco wished

for a Board approval based on existing conditions and that the traffic flow design options were outside the scope of his Board application. Exhibit #A-16, Option #3 for traffic flow calling for 2-way traffic on John Street from West Street to Railroad Avenue with street signs prohibiting commercial traffic on John Street from William Street to West Street, was presented. Exhibit #A-17, a copy of a 10' drainage and 15' sanitary sewer combined easement dated May 27, 1952, was presented. Exhibit #'s A-18 and 19, copies of the same easements in Exhibit #A-17 (only now they were separate easements from when the subject property became 2 separate lots) dated October 31, 1970, were presented. Mr. Liebman stated that after reviewing the easement documents, he found no restrictions as to the use of the area located above where the easements run, which is north and south and side by side each other cutting Mr. Armaniaco's land almost in half, thereby impacting and limiting certain activities on his property. Mr. Crisafulli questioned the applicant's previous testimony that debris would not be stored on the site which contradicted photographs, dated June 10, 2007 and presented to the Board by a member of the public, clearly showing concrete debris. Mr. Liebman said those photographs submitted had not been authenticated as to the date they were taken as well as who financed and produced the aerials. He said Mr. Armaniaco testified that there was some rock construction material, left over from a customer's job site, to eventually be used for some improvements on his own property. Mr. Liebman said his client had, for instance, some brick pavers, outside of a container, on palettes to be installed if and when the Board approves his application. He reminded that the Board application is for a construction storage yard and the material onsite would be clean, dry and non-odorous in nature; he said the storage of such on the property would be a rare occurrence and visible, ultimately, only from the air. Mr. Crisafulli acknowledged the applicant's planner testified that the property served part of a buffer zone and was neighbor-friendly but questioned why then had several property owners in the surrounding area publicly come out against his application. Mr. Liebman countered by saying several members of the public had also stated their support for Mr. Armaniaco; he stated the planner provided facts and his professional opinion based on his studying of the site and the Borough's master plan recommendations including both benefits and detriments. He said the subject property's use was transitional and buffered the residential activities from the commercial ones in the neighborhood by having a single-family home in the front portion of the site which blocks out what is going on around the area. Ms. Rothschild felt that Mr. Crisafulli's questions should not be asked of the applicant's attorney, who cannot give testimony; rather she said the professional witness should give the responses. The Board concurred with her observation. Mr. Liebman said both the applicant and the professional planner who prepared the revisions requested were present and available for questions. Mr. Sinowitz assumed the applicant would hold the Borough harmless with regards to any structures placed on the easements; Mr. Liebman agreed assuming the Borough restored conditions to what they were and said the structures would be non-permanent and movable. Mr. Bianco asked if there were any manholes on the site.

Robert Armaniaco, applicant and owner in fee of the subject property, still sworn under oath from the previous Hearings, said there was 1 sanitary manhole in the front yard that had been buried since he bought the property; he indicated the Department of Public Works (DPW) was aware of such. Mr. Bianco said he asked the question because he was looking for the invert. He asked Mr. Tichacek if there was a minimum amount of cover necessary over a sanitary line to prevent the crushing of pipes below via compression (surcharge); Mr. Tichacek said without knowing the type and material of pipe being used, he could not figure out the minimum cover required. Mr. Bianco felt the issue to be very important and the manhole cover would indicate how low the pipe is below the ground. Mr. Armaniaco believed he read the manhole in John Street to be 22'; Mr. Bianco felt that figure may refer to a datum point, thus, if the downtown

area of the Borough had a grade elevation of 30', the sanitary depth would be 8'. He asked, if approved, how trucks would enter the subject property; the applicant said he would come down William Street, turn right onto John Street and reverse in (the trucks are equipped with a required back-up audible alarm). Mr. Bianco said he thought the Borough had a code that prohibited the use of a public street to back into a property. Mr. Liebman said if such a code were not a site plan or zoning ordinance, then the Board would not have jurisdiction. Dr. West asked how wide the area was at Railroad Avenue where Westminster Avenue tapers down as well as behind the subject property; Mr. Liebman believed it was 24' and 40' respectively. Mr. Bianco believed that Exhibit #A-16 was the least desirable of the traffic flow design options provided since the road is downhill and on a curve as well as having a 45' right of way.

Steven Lydon, PP, Burgess Associates, Inc., 25 Westwood Avenue, Westwood, New Jersey, still sworn under oath from the previous Hearings, said the Residential Site Improvement Standards (RSIS) spoke of the narrower than traditional 30' curb to curb roadway and that depending on daily traffic, there could be a 2-way road as narrow as 20' before you start getting into specified road widths; he continued to say that today typical residential roads have 28' pavement width (parking inclusive). Mr. Bianco said he measured the portion of John Street from William Street to West Street to be 27' curb to curb. He asked if it was safe to back trucks into the subject property; Mr. Lydon said it was preferable to enter front first but felt both ways were safe due to the trucks' audible devices and the applicant's driving skills.

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

Pansy Lo, 23 John Street, questioned if the new traffic flow sketches took intensified noise factors into consideration. Mr. Lydon said the applicant was not a proponent of the traffic flow design options submitted and that their production was an exercise requested by the Board; he felt, however, that the most beneficial version to both residents and the applicant would be Exhibit #A-14, which would open up the easterly end of Westminster Avenue only to allow for commercial traffic to and from the subject property.

Mr. Bianco wished to present to the Board a three-dimensional model he produced of the subject property and the surrounding areas to help the public better understand the situation. Ms. Rothschild felt to allow the admittance of the model into the record would break procedural rules of the Board since that portion of the case had already been closed. Secretary Freesman felt the closing and opening of proceedings should be at the Board's discretion.

The Board went into recess at 9:54pm so that Mr. Ellis and Mr. Liebman could discuss the legal ramifications of allowing Mr. Bianco's model into the record.

The Board returned to session at 10:00pm.

Mr. Ellis indicated the Board had decided that to let Mr. Bianco's model become an exhibit would compromise his impartiality in judging the application since he could then be asked to testify; also, procedurally, the time had passed for the admittance of new evidence. Therefore, the model was not admissible.

Jack Kelly, 132 Herbert Avenue, informed that prior to Railroad Avenue being opened up 10 years ago, John Street was a 2-way road. He also felt to making the use of a public road to back into a property an issue in this case was not fair. Ultimately, he felt that if the Board could

approve the 185 Closter Dock Road application (Case #Z-2008-24), then the Armaniaco application has to be approved as well.

Lidia Auriti, 36 John Street, said that when she recently considered selling her home, her realtor and prospective buyers alike said her house was very appealing but that its surroundings had too much of a negative impact. She also said that following a rainstorm last summer and after the subsequent flooding in her back yard subsided, there was oil covering her lawn; she wondered where it came from.

Rita Ciancio, 15 John Street, expressed her hope that the Board denies the applicant's request because not to would allow for other John Street applications, currently on the Board agenda, to presumably be signed off on as well. She also said that she recently read a newspaper advertisement for the applicant's business which indicated it provided, among other things, garbage collection services.

Elaine Mahmarian, 191 West Street, said her realtor had informed her that because of the illegal businesses in her neighborhood, she would not be able to sell her home, which she informed may go into foreclosure. She revealed that she was recently diagnosed with cancer and with no family history to speak of, her doctor said that it could be traced back to environmental factors. She continued to say that if the application is approved, their illegal acts will now be legal and was concerned how much worse the area would get, being Mr. Armaniaco had no regard for the law while breaking it for the past 10 years.

Jesse Rosenblum, 65 Knickerbocker Road, said he had information requested by the Board in regards to the aerial photographs he presented at a prior Hearing. Exhibit #JR-3, an invoice for service by an aerial surveying company and Mr. Rosenblum's bank statement indicating payment for aerial services, was presented and put into the record over the objection of Mr. Liebman. Mr. Rosenblum said it was unfortunate that Borough agencies had not enforced zoning ordinances in the John Street area over the last 10+ years. He said there are other areas in the Borough, like Herbert Avenue and Bogert Street, where a mixed use area abuts a residential neighborhood; the difference, he said, was that the applicant wanted to become commercially-zoned since it would raise the selling price of his property if he went that route.

Jong Soon Shin, 48 Westminster Avenue, said that "temporary" storage of items, as specified by the applicant, could mean 6 hours or 6 months and therefore, felt the issue to be too open for interpretation. She said to approve the application would set a terrible precedent.

Mildred Iafrate, 288 Herbert Avenue, said she knew the previous owners of 35 John Street and that they kept their property meticulous; she informed that the husband had a hobby of fixing antique cars and that the garage in which he did so was built with Borough approval. Ms. Rothschild asked what her relation was to the Board's Mr. Iafrate; she indicated he was her son. Mr. Iafrate said he did not feel the need to recuse himself since his mother's home was not within 200' of the subject property. Mr. Liebman said that the vote of the Board's Alternate #3, as luck would have it, would not be needed if there were to be a Board determination on the case this evening; however, he said, there was substantial case law that stated relatives, in particular a parent, of Board members who had interest in opposing an application would cause a conflict. Mr. Ellis felt that this recent development had to be resolved prior to a Board vote. Mr. Liebman wished to continue with the public's questions and comments portion of the meeting and then have the Board go into recess to consider Mr. Iafrate's situation.

Denise Matte, 72 Primrose Lane, speaking as a former Board member, felt the Armaniaco application had gone on long enough. She said the applicant's planner testified clearly pointing out the subject property's constraints. She thought the neighbors contesting the application were mistaking Mr. Armaniaco's business with other illegal operations actually causing the problems. She spoke positive of the applicant's character and willingness to work with the Board in bettering the situation.

Tom Brueck, 27 John Street, felt the commercial traffic essentially comes from the businesses legally-zoned on Railroad Avenue and so, regardless of the applicant's fate, the traffic and parking issues on John Street would remain. He believed the concerned neighbors have never approached Mr. Armaniaco with their concerns prior to this meeting.

Jack Kelly, 132 Herbert Avenue, in response to Ms. Auriti's comments, said John Street in front of the applicant's property, is the lowest point in the Borough and, thus, water comes from all directions to the catch basin at Mr. Armaniaco's driveway entrance. He continued to say that, awhile back, the transfer station on Railroad Avenue was investigated for potential dumping of oil into a nearby brook; the findings were that the oil had actually originated from all the leaking vehicles in the center of town via the drains leading to the front of 35 John Street.

Pansy Lo, 23 John Street, said she was told at the last Hearing that she could present before and after pictures to the Board depicting the demise of the area since the Armaniacos bought 35 John Street. Mr. Liebman objected to the pictures' admittance since his client was applying for current existing conditions only. Mr. Ellis ruled that only those photographs that could be positively identified by someone present at the Hearing would be put into the record. Exhibit #'s PL-1A through H, a series of photographs taken with the past 3 months of the John Street area, were presented.

Diane Larsen, 49 John Street, said with regards to prior comments on real estate values, that it was currently a buyer's market and no one produced a realtor to substantiate their claims. She also said that Ms. Iafrate's other son received a Use Variance for his own contractor's yard on Herbert Avenue and so she did not understand the reasoning behind her opposition to the application. Ms. Larsen stated she went around the Borough and identified approximately 30 existing contractor's yards with an additional 5 to 6 that have been legally classified by the Board; she felt Borough enforcement was not being applied fairly throughout.

Marguerite Pallatta, 40 Westminster Avenue, said while she does not want to put a neighbor out of business, she also does not want illegal activity in her back yard. She echoed other neighbors' concerns that the Board approval of the application would cause a ripple effect for other illegal contractor's yards; she said the applicant knew he was buying a home in a residential zone 10 years ago.

Hugh Johnson, 107 Demarest Avenue, speaking as a former Board member, felt that the Body had a duty to grant reasonable Variances with reasonable conditions attached.

Vincent Lo, 23 John Street, expressed his objection to the application while reiterating his wife's comments.

The Board went into recess at 11:18pm so that Mr. Ellis and Mr. Liebman could discuss the legal ramifications of allowing Mr. Iafrate to participate in the proceedings of the case.

The Board returned to session at 11:29pm.

Mr. Ellis said the Board decided that to the extent of Mr. Iafate's participation and even though there was no financial concern or issue with respect to the location of his mother's home in relation to the subject property, and as an exercise of caution, he had been compelled to recuse himself from the case.

Outcome

Given the late hour and due to the extensive commentary from the public, the Board and Mr. Liebman agreed that the application be adjourned to the February 17, 2010 Hearing, at which time, there would be summations and Board deliberations preceding its vote.



There being no further items to discuss, a motion to adjourn the meeting was made by Mr. Bianco and seconded by Ms. Rothschild. All members present voted in favor. The hearing adjourned at 11:39pm.