



Zoning Board of Adjustment

July 21, 2010

Hearing
(Minutes)

Prepared by:

Paul Demarest

Chairman Knee called the Regular Monthly Hearing of the Zoning Board of Adjustment for the Borough of Closter, New Jersey being held Wednesday, July 21, 2010 in the Council Chambers of the Borough Hall to order at 8:08pm. He stated the meeting was being held in accordance with the provisions in the Open Public Meetings Act of the State of New Jersey and had been advertised in the Borough's officially-designed newspaper as required by statute. He advised that the Board adheres to an 11:00pm adjournment and no new matters would be considered after such time.

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



The following Board members and/or 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.
- Mark Crisafulli- Alternate #2
- Arthur Dolson- Council Liaison
- Leonard Sinowitz- Zoning Officer
- Joel Ellis, Esq.- Board Attorney
- Kevin Tichacek, PE- Board Engineer
- Paul Demarest- Board Coordinator

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

- Theodore West, DDS
- Thomas Hennessey- Alternate #1
- VACANT- Alternate #3
- Marie Hartwell- Alternate #4



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.



A motion was made by Mr. Crisafulli and seconded by Ms. Rothschild, to approve the minutes of the May 3, 2010 (Special) Hearing. All eligible members present voted in favor. A motion was made by Mr. Bianco and seconded by Mr. Crisafulli, to approve the minutes of the May 19, 2010 Hearing. All eligible members present voted in favor. A motion was made by Vice Chairman Sonenshine and seconded by Ms. Rothschild, to approve the minutes of the June 16, 2010 Hearing. All eligible members present voted in favor.



Chairman Knee requested that 3 Board members serve on the Subcommittee for the July 28, 2010 Work Session. The following were assigned: Vice Chairman Sonenshine, Mr. Bianco and Mr. Crisafulli.



The Board discussed the possibility of holding a (Special) Hearing on August 30, 2010 for the following cases in hopes of clearing up its agenda: #Z-2010-08 (95 Robinhood Avenue), #Z-2010-09 (251 Parsells Lane) and #Z-2010-10 (1 Ruckman Road). Being that 4 Board members present indicated they could attend, thereby establishing a quorum, Chairman Knee announced to the public that said meeting would take place.



Chairman Knee opened the meeting to the public for anyone wishing to comment on matters not related to a case on the Board's agenda.

Inga Grossman-Savitsky, 3 Lindemann Avenue, expressed frustration over the ramifications caused by the Board's approval of her application to construct an addition to her residence approximately 19 years ago (Case #Z-1991-08). She stated a condition of the Resolution involved a deed restriction to plant a living fence along the northerly side of her property to appease the adjacent neighbors located at 61 Taillon Terrace, who objected to her application; she said she has made several attempts to do so over the years, however, any vegetation that has been planted does not survive due to several factors. Ms. Grossman-Savitsky indicated that the Borough's Code Enforcement Bureau had recently issued her a Notice of Violation for not maintaining the living fence. She stated the Borough's Certified Tree Expert visited her property and concluded that no plantings could thrive along the subject property line because of bamboo originating from 61 Taillon Terrace that has overgrown onto her property. Mr. Ellis informed that she had been in touch with his office regarding the matter and was advised to consult with the Borough Attorney if she felt the Code Enforcement Bureau was treating her unfairly. He further stated that while the Board cannot get involved in issues of enforcement, she may apply to the Board again to have it revisit the deed restriction. The Board suggested that she bring her concerns to the Governing Body to see if it can take some action.



Vice Chairman Sonenshine mentioned that the Board was still awaiting guidance, in writing, from the Board Attorney on public noticing procedures, specifically regarding cases remaining on the Board's agenda for months on-end. He added that the issue over deadlines for fulfillment of conditions stipulated in Resolutions should also be addressed in writing. Mr. Ellis mentioned the 2008 Permit Extension Act, signed in law by Governor Jon Corzine, would play a part in deciding how much time is extended to an applicant; he reiterated that his office would provide a report answering their questions and that the Board has the option of updating its by-laws if it so pleased.



Item #1

Case #Z-2008-13
49 John Street
(Block 1203/Lot 5)

Applicant(s): James Crimmins
Representation: Stuart Liebman, Esq.

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

Stuart Liebman, Esq., Wells, Jaworski & Liebman, LLP, 12 Route 17 North, Paramus, New Jersey, stated revisions were filed with the Board as stipulated at the May 19, 2010 Hearing. Exhibit #A-3, a site plan by Eid Associates, dated March 15, 2010 and last revised June 2, 2010, was presented.

Stephen Eid, PE, Eid Associates, Inc., 555 Goffle Road, Ridgewood, New Jersey, was called to testify again as Witness #1. He stated the following changes were made to the site plan: 1.) brick paver sidewalk to be installed along entire curb line; 2.) brick paver driveway to be installed up to proposed front gate at house line; 3.) 2 residential tenant parking spaces to be reserved in front of gate; 4.) 2 sheds (wood shed with open front and metal container) to be removed; 5.) 3 bins with open tops (for orderly storage of landscaping material), consisting of 4 block walls that are 2' wide and 6' high with a distance of 10' between each, to be installed in northeast corner of property; 6.) 6' chain link fence with a 10' wide gate, set at western end so not to interfere with bins, to be installed along Westminster Avenue (paper street). Vice Chairman Sonenshine felt that the proposed bins, designed as 4 block walls in a row using an existing 7' high block located on the neighboring property for their rear wall, was not preferable; he believed a 5th wall, serving as the bins' rear wall, should be constructed on the applicant's own property. Mr. Liebman stated his client would agree to condition an approval requiring him to install a new rear wall for the bins, to be situated on his own property, in the event that the existing 7' high block off-site is removed by its owner. Vice Chairman Sonenshine said he was struggling with how the location of the residential tenant parking spaces would not interfere with the commercial activity in the rear yard. Mr. Liebman said such a layout has functioned, without any problems on the subject property, for at least 15 years since Mr. Crimmins purchased it; he continued to say the applicant is in control of his tenant by determining the terms of the lease through an enforceable provision with regards to parking. He believed it is in the landlord's best interest to assure there are no such problems on-site since they would only be detrimental to him. Mr. Crisafulli pressed for the bins' rear wall to be installed on the applicant's property as soon as possible rather than waiting for if and when the existing wall were to be removed by the neighbor (as previously agreed to); Mr. Liebman agreed to the change. Mr. Bianco asked why the revised site plan still showed a block wall, part of which is in line with 49 John Street, going down the middle of Westminster Avenue. Mr. Liebman indicated his client removed the wall he put up and the wall being referred to was installed by the owner of 63 John Street, who extended it to the subject property. Mr. Eid added the wall is made of step block and the applicant could not remove the entire wall on Westminster Avenue, including the portion installed by his neighbor, without the "T" wall collapsing. Mr. Bianco asked if the witness agreed that "opening up" Westminster Avenue would improve traffic flow in the area to which Mr. Eid answered in the affirmative. Mr. Bianco asked if the witness thought the paper street could be utilized in the same fashion as another paper street (Wellington Avenue) just north of it since both are in the same unimproved state. Mr. Crisafulli interjected and revealed he had walked along Westminster Avenue from West Street down through the trees earlier in the evening. He said near the manhole on the paper street is a "sort of road" that has been cleared out and nearby is a 20' high mound of dirt; he stated at the opposite end of Westminster Avenue along Railroad Avenue is an actual driveway and curb cut. Mr. Eid said that a lot of engineering needs to take

place on the paper street since wetlands are in proximity where the stream empties out and the New Jersey Department of Environmental Protection (NJDEP) would require special permits for buffering of vegetation. With regards to Mr. Bianco's question, the witness said since there are obstructions on the paper street and being that the beginning and end of the Borough's right-of-way is not known, it would not be possible to answer if it could be utilized like Wellington Avenue. Mr. Bianco asked since the applicant testified that the subject property has increased activity on-site by 5 or 6 times since he took title, should not the sight triangle at the corner of William Street and John Street have to be maintained. Mr. Eid said he did not see any reason for that since a vehicle coming out of William Street can only make a right turn onto John Street and the driver would not need to look for traffic traveling west since John Street is one-way at that point. Mr. Bianco countered by saying there are engineering standards for safety at intersections (be it cross or "T") and obstructions higher than 2' at a corner could affect the sight triangle. Mr. Liebman interjected saying there are no figures as to the prior owner's activity on-site and that there could have been the same amount of truck trips in and out of 49 John Street as the applicant has (6 leaving and 6 returning) even if the number of trucks on-site was less than present day. Vice Chairman Sonenshine believed the Board had no jurisdiction over the corner of William Street and John Street, especially since it was not part of the application. Mr. Bianco disagreed and said the Board could call for off-tract improvements. Vice Chairman Sonenshine felt any violations of the Borough's sight triangle regulations should be handled by the Code Enforcement Bureau. Mr. Tichacek stated the Borough Code allows for the Board to require off-tract improvements within the right-of-way, not private property unrelated to the application, if it can prove they are legitimate and reasonable.

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

Jesse Rosenblum, 65 Knickerbocker Road, asked if the new bins to be installed on-site for landscaping material will "shadow" what was removed from Westminster Avenue by the applicant; the witness stated they would except that they would not be as large and the material, usually stone or stone dust, would be touching the ground (no flooring). Mr. Rosenblum asked if the new storage area in the rear yard would be paved; Mr. Eid said the existing gravel and pavement surfaces would remain as is keeping the property's impervious coverage at 79.53%.

Steven Lydon, PP, Burgis Associates, Inc., 25 Westwood Avenue, Westwood, New Jersey, was sworn in as Witness #2. Exhibit #A-4, a series of photographs taken by Mr. Lydon, depicting the subject property and dated July 21, 2010, was presented. He stated the subject property is a "thru lot" fronting on both John Street and Westminster Avenue; he felt the exhibit showed that dense vegetation hid the rear yard activities on-site. Exhibit #A-5, a land use map of the subject neighborhood prepared by Burgis Associates, was presented. He stated the Borough's Planning Board, in its 1981 Land Use Element of the Master Plan, recommended that the north side of John Street be placed in a limited industrial zone and that it would be "inappropriate to continue a residential pattern in this environment." He further stated the Borough's 1996 Master Plan Reexamination found present conditions of the area were consistent with those found in 1981. Mr. Lydon said there were a couple of intervening Reexaminations with the most recent coming in 2008, which rejected some of the earlier policy decisions made in prior Reexaminations; he said it sought to retain industrial properties and their users rather than trying to force them from the Borough since they provide necessary services to the citizenry as well as enhance industrial operators' ability to function and provide incentives for them to bring about improvements both beneficial to themselves and protective to the residents. The witness said it also stated the Borough should relax zoning restrictions. Mr. Lydon said the area in question is a small "finger" of 3 property owners (35 John Street, 49 John Street and 63 John

Street) wedged between District #4 (Commercial) and District #5 (Industrial); he felt such a layout was a unique planning response to conditions on the ground. He said that being the applicant is seeking a Use Variance, "special reasons" (aka positive criteria) must be demonstrated as per the New Jersey Municipal Land Use Law (MLUL) including that the proposed site is particularly suitable for that use and the granting of a use variance will further the purpose and intent of the MLUL as well as advance the goals and objectives of the local master plan; Mr. Lydon believed the application furthered several purposes of the MLUL including the goals mentioned in New Jersey Statutes Annotated (NJSA) 40:55D-2a, c, e, g, i. He continued saying that the applicant must show that the granting of such a variance would not substantially impair the intent and purpose of the Master Plan, Zoning Ordinance or public good (aka negative criteria); he felt his prior testimony on the 1981 and 2008 Reexaminations demonstrated so as do the proposed modifications to enhance the aesthetics of the site and improve pedestrian safety. The witness felt that keeping the existing gravel on-site helped drainage in the rear yard and the Borough requirement to have curbing around parking areas would not be beneficial since the public does not visit the site. Mr. Lydon stated the Borough's planning documents have consistently identified 49 John Street and its uses as well as recommended studies and community meetings be held, evaluation of paper streets take place and have the uses reconciled so they may be integrated into the community; however, he pointed out, the Governing Body has made no changes to the Zoning Ordinance since 1981 so as to affect the area thereby leaving land owners to seek Use Variances from the Board. He believed Mr. Crimmins has simply elected to be consistent with the Master Plan and status quo has been retained by having his mixed-use property continue to serve as a buffer/transition between the residences to the west and the commercial/industrial operators to the east, north and south. Ms. Rothschild asked if the Governing Body withheld from acting upon the recommendations of the 2008 Master Plan Reexamination for the subject area since 3 John Street applications were on the Board agenda at the time. Mr. Lydon felt the better approach is to have the Mayor & Council and Board act independently of each other; furthermore, he said the Governing Body may have wished to let the process to take its course and keep any recommendations at bay until then. Mr. Bianco asked if the witness read anything into the Planning Board, the members of which are appointed by 1 person (the Mayor) making the recommendations and the Governing Body (elected from a potential voter base of 4,800) doing nothing in response; Mr. Lydon said he did not, especially since the Mayor & Council may have more pressing concerns due to the current financial crisis. He pointed out there are no statutory requirements that it act upon the Planning Board's recommendations within a certain timeframe. Mr. Bianco said 1 could surmise that the Governing Body did not want to give such "illegal" uses as of right therefore, by default, making property owners design a site plan and seek relief from the Board. Mr. Bianco asked if it were proper to allow the applicant's trucks exit the site and go onto William Street, a residential area; Mr Lydon said the optimal route would be through an improved Westminster Avenue. Mr. Liebman disagreed with Mr. Bianco's characterization of William Street as being a residential street, noting its depiction in Exhibit #A-5. Mr. Bianco asked why the witness did not discuss the goal mentioned in NJSA 40:55D-2k; Mr. Lydon stated because it deals with planned unit developments. Mr. Crisafulli believed the witness' statement that his client's business on-site is a smaller operation than the 1 conducted out of 35 John Street was inaccurate; he said the applicant has more truck trips and employees working out of a lot similar in size and, unlike his neighbor to the west, Mr. Crimmins does not reside in the house on-site. Mr. Crisafulli asked where the boundaries were for the often-mentioned buffer zone in the subject area. Mr. Lydon said the Borough's planning documents specifically state the buffer zone is a stretch of 381' starting from Railroad Avenue and ending at Lot #7 (35 John Street); he believed any further west on John Street would become a tougher argument for those properties to be considered part of the buffer since they

lose the immediacy that the “finger” has. Chairman Knee said the subject lot is still further away from the homes on John Street than the contractor’s yard located at 35 John Street, though the use may be more intense. Councilman Dolson stated he would withhold speaking about Mr. Liebman and Mr. Lydon’s comments on the Governing Body’s response to the Planning Board’s past Reexaminations until later in the proceedings. Mr. Bianco stated another difference between this application and the previous 1 is that Mr. Crimmins is not proposing any landscape buffering between contractor’s yard and residence on-site. Mr. Liebman stated the Master Plan does not address creating a buffer between residential and commercial activities situated on the same lot; he stated Robert Armaniaco, owner-in-fee of 35 John Street, was compelled to do so by the Board. Mr. Lydon stated planning literature normally talks of only buffering a subject lot from surrounding areas. Mr. Bianco asked the witness if the main issue is that the applicant does not live on-site and therefore does not see any need for buffering between the house and rear yard activities; Mr. Lydon responded in the negative and felt it was more of a function of lot configuration (the 35 John Street property is much wider). Mr. Bianco asked if the witness realized that the subject property and 40 John Street work in conjunction with each other with the latter being a service area for the trucks stored at 49 John Street; the witness said he did not, however, felt that if that were the case, then 49 John Street would function in a more efficient manner. Mr. Bianco inquired about Chapter 200-63D(4) of the Borough Code; Mr. Sinowitz believed that section to be discretionary as to whether or not it applies to the application since it pertains to the outdoor sale of power equipment.

Chairman Knee opened the meeting to the public for questioning of Witness #2 only.

Jesse Rosenblum, 65 Knickerbocker Road, asked if the term “mixed-use” is mentioned in any of the Borough’s planning documents; Mr. Lydon said he probably came across it. Mr. Rosenblum asked if such a term was a new planning concept to which the witness said it was not. Mr. Rosenblum asked if there were other areas in the Borough where a mixed-use would be beneficial; Mr. Lydon answered that the purpose of the MLUL is to be applied across New Jersey, but each municipality is able to choose which elements to focus on when writing its Master Plan and Zoning Ordinance. Mr. Rosenblum asked what 49 John Street would look like in the winter; the witness said a substantial amount of buffering to the west is provided by buildings, thereby not dependent upon foliage. He continued saying a large area of bamboo exists along John Street and a 6’ to 8’ high pile of firewood sits on the property to the east (63 John Street). Mr. Rosenblum asked how much area would be allocated strictly for the residential use; Mr. Lydon stated his client would follow the latest revised site plan.

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

Jesse Rosenblum, 65 Knickerbocker Road, was sworn in as Witness #3. Exhibit #O-1, a location survey prepared by Stephen Eid, PE and dated May 19, 2008, was presented. Exhibit #O-2, a property tax card of the subject property prepared by the Tax Assessor and dated June 2007, was presented. The witness indicated he wished to put said items into the record since he would be filing suit against the applicant.

Diane Larsen, 49 John Street, spoke in favor of the application.

Mr. Liebman summated.

Outcome

Vice Chairman Sonenshine believed the subject property serves as part of a transitional zone and since he sees few residents mowing their own lawns, felt the applicant provided a much-desired service within the Borough. He also said that at any point where 2 zoning districts meet, a degree of buffering, landscaping, reflection, etc. is needed; Ms. Rothschild and Chairman Knee concurred. Mr. Bianco stated he had severe problems with the way the applicant's site plan was being implemented. He proposed the following conditions to a possible Board approval: 1.) upgrading facade of residence on-site; 2.) only those commercial vehicles/equipment listed within manifest provided to be stored on-site (with similar replacements in kind); 3.) fuel tanks to be mounted/stored on trucks only; 4.) front fence with gate to be installed; 5.) fencing along Westminster Avenue to be installed; 6.) brick paver sidewalk to be installed/brick paver driveway to be installed up to house line; 7.) applicant to pay pro rata share if Westminster Avenue were to be improved (NOTE: Mr. Bianco thought, in such an event, the municipal standards for curbing should be waived to reduce the cost for improvement of a right-of-way that need only be of a lower-intensity design (alley way/access way); 8.) no cutting, grinding, mulching, processing, stacking or outdoor storage of any bulk landscaping/construction materials on-site; 9.) application to made to Borough Engineer for Zero Increase in Storm Water Runoff Permit; 10.) buffering/tenant protection to be provided between residence and contractor's yard on-site; 11.) off-tract improvements (landscaping) to be made along border of 40 John Street for safety purposes.

Chairman Knee said mulch and lawn clippings being stored on-site was already testified to; Mr. Bianco asked that the outdoor storage of said materials be limited to the proposed 3 bins. Mr. Liebman reminded that rocks and pavers would be on-site as well but felt he and Mr. Ellis could "work on the language." Mr. Bianco reiterated that trucks are too close in proximity to the residence and wanted a fence or hedges to serve as a buffer. Vice Chairman Sonenshine felt the issue of buffering between the residential and commercial activities on-site should have been brought up during Mr. Eid's testimony. Chairman Knee believed the site plan called for a 20' space between the house and the parked trucks. Mr. Tichacek felt the problem with buffering on-site was lack of space; Mr. Bianco said by eliminating the proposed employee parking space, an area for buffering would be available. Mr. Bianco felt off-tract improvements were imperative to prevent the viewing of commercial activity on 40 John Street. Vice Chairman Sonenshine reiterated his opposition to buffering 40 John Street. Mr. Liebman stated that while the commercial activity occurring at 40 John Street is legal, since the property is located in District #4 (Commercial), his client would prefer to relocate most of the equipment there back to 49 John Street, assuming he was granted Board approval. He further stated that since 40 John Street is mostly covered by building and maneuvering of vehicles is necessary, buffering of the site was not an option. Mr. Bianco felt the applicant's heavy equipment (dump trucks, excavators, etc.) could be stored at 49 John Street while the lighter items could go to 40 John Street, allowing for space and buffering alike. Mr. Sinowitz felt the applicant should not be restricted by buffering at 40 John Street, which would affect possible future tenants and uses permitted in District #4 (Commercial). Mr. Monaco reminded that Mr. Crimmins only testified he sometimes "cuts across" 40 John Street and onto William Street with his personal pick-up truck; Mr. Bianco said Mr. Eid stated it was possible for the applicant's commercial trucks to do so as well. Mr. Liebman suggested that a condition be recorded with the Bergen County Clerk's Office. Mr. Bianco responded that would be simply a piece of paper and that physical prevention was needed. Mr. Tichacek, with regards to the concern over buffering on 49 John Street, felt that he and Mr. Eid could come up with a solution to which Mr. Liebman agreed. With regards to the fuel tanks on the subject property, Mr. Liebman said that because they are portable and can come off the trucks at times, it was feasible to say they cannot be stored underground, but not that they can never touch the ground; the Board reiterated that the tanks

can only move from truck to truck on-site. Mr. Liebman stated the suggestion to have the existing driveway on 40 John Street completely eliminated to allow for buffering (resulting in 1 means of ingress/egress) would be illegal. Ms. Rothschild asked why the Board was attempting to restrict truck traffic to William Street, where it is permitted. Mr. Crisafulli asked Mr. Ellis if the Board's suggestions to buffer along 40 John Street are legal; the Board Attorney stated he has serious reservations about requiring these conditions on a property not part of the application.

The Board recessed at 11:48pm.

The Board reconvened at 11:59pm.

Mr. Tichacek informed that he and Mr. Eid had come with a proposal for buffering along 40 John Street. He said that at the corner of William Street and John Street, commencing at the property line (a few feet in from the curb) some visibility would be preserved for making a right turn onto John Street; he continued saying that at the property line, approximately 12' to 15' along both William Street and John Street, potentially 5 to 7 arborvitae, depending on their size, would be planted. The Board Engineer believed such a triangle of vegetation would provide both a visual screen and preserve the parking situation on 40 John Street; Mr. Eid pointed out that there was existing grass at the corner to the curb. Mr. Bianco suggested a berm be installed for 5' starting at the corner to the property line.

A motion was made by Ms. Rothschild and seconded by Vice Chairman Sonenshine to approve the application, including all requested variances and design waivers, with the 11 previously-mentioned conditions in their agreed-upon language; in addition, Mr. Bianco suggested a memorialized Resolution be recorded with the Bergen County Clerk's Office and that a revised site plan would be filed with the Land Use Office. The motion passed (**6-1: YES-** Rothschild/ Monaco/ Bianco/ Freesman/ Sonenshine/ Knee; **NO-** Crisafulli).



A motion was made by Ms. Rothschild and seconded by Mr. Bianco, to memorialize the Resolution for 161 Columbus Avenue (Case #Z-2010-06). All eligible members present voted in favor.



There being no further items to discuss, a motion to adjourn the meeting was made by Secretary Freesman and seconded by Mr. Monaco. All members present voted in favor. The hearing adjourned at 12:09am.