



Zoning Board of Adjustment

March 17, 2010

Hearing
(Minutes)

Prepared by:

Paul Demarest

Vice Chairman Sonenshine chaired the hearing.

Vice Chairman Sonenshine called the Regular Monthly Hearing of the Zoning Board of Adjustment for the Borough of Closter, New Jersey being held Wednesday, March 17, 2010 in the Council Chambers of the Borough Hall to order at 8:05pm. 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.

Vice Chairman Sonenshine invited all those present to join in reciting the Pledge of Allegiance.



The following Board members and/or professionals were present at the meeting:

- Lorin Sonenshine, RA/PP- Vice Chairman
- Steven Freesman, Esq.- Secretary
- Joseph Bianco, RA/PP
- Theodore West, DDS
- Mitchell Monaco
- Thomas Hennessey- Alternate #1
- 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:

- Robert Knee- Chairman
- Jennifer Rothschild, Esq.
- Mark Crisafulli- Alternate #2
- Steven Iafrate- Alternate #3
- Kevin Tichacek, PE- Board Engineer



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 Dr. West and seconded by Mr. Bianco, to approve the minutes of the January 20, 2010 Reorganization & Hearing. All eligible members present voted in favor. A motion was made by Mr. Bianco and seconded by Dr. West, to approve the minutes of the February 17, 2010 Hearing. All eligible members present voted in favor.

.....

Vice Chairman Sonenshine requested that 3 Board members serve on the Subcommittee for the March 24, 2010 Work Session. The following were assigned: Mr. Bianco, Mr. Hennessey and Ms. Hartwell. Since 2 of the applications to be reviewed involve Site Plan Review, Mr. Demarest agreed to ask Mr. Tichacek for his attendance as well.

.....

Vice Chairman Sonenshine 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.

.....

Vice Chairman Sonenshine informed that the Board would postpone, to the April 21, 2010 Hearing, a vote on the proposed 2008/2009 Annual Report to the Governing Body since revisions to the document had not been thoroughly reviewed by the entire Board.

.....

Going out of order procedurally, the Board took up the "Memorialization of Resolution(s)" portion of the agenda at this time.

A motion was made by Dr. West and seconded by Mr. Bianco, to memorialize the Resolution for 35 John Street (Case #Z-2008-12), with noted corrections agreed upon by the Board and a member of the law firm representing the subject applicant (Andrew Kohut, Esq., Wells, Jaworski & Liebman, LLP, 12 Route 17 North, Paramus, New Jersey), who was present at the evening's proceedings. All eligible members present voted in favor.

A motion was made by Mr. Bianco and seconded by Dr. West, to memorialize the Resolution for 79 Chestnut Avenue (Case #Z-2009-13). All eligible members present voted in favor.

.....

The Board decided to hear several non-use variance residential applications at the tentatively-scheduled May 3, 2010 (Special) Hearing in order to clear up its heavy calendar. At this time, the specific applications to be placed on the agenda were unknown.

.....

Item #1

Case #Z-2009-09	Applicant(s):	Robert Wermert
254 Demarest Avenue	Representation:	Joseph Mecca, Esq.
(Block 913/Lot 3)		

The applicant is seeking a Use Variance for the continuation of a 2-family use at his property. Joseph Mecca, Esq., 87 South Farview Avenue, Paramus, New Jersey, introduced himself. He

said his client has owned the subject property since 1999 and prior to that, he and his wife rented the 2nd floor apartment of the residence for an estimated 10 years while their landlords (Peter & Eileen Downes) occupied the first floor; thus, he said, Mr. Wermert had first-hand knowledge that the property had been used as a 2-family residence for at least 2 decades. His client recalled that during his time as a tenant, the Downes had cosmetic work done to the home, and while the footprint of the house was not altered, he stated that the existing front porch was enclosed in 1990 and the 2nd floor dwelling unit renovated in 1997; counsel informed that permits were obtained and inspections passed. Mr. Mecca said his client was compelled to apply to the Board for a Use Variance when, in April 2008, his 2nd floor tenants decided to buy their own house rather than renew their lease; he said his realtor then began advertising for the available 2nd floor rental unit, at which time, Mr. Wermert was informed by the Zoning Officer of his predicament. Mr. Mecca indicated that his client's approach to the Board application was two-fold: he would seek approval via pre-existing, non-conformity prior to December 19, 1940 (inception date of Borough's Zoning Code) or, in the alternative, a Use Variance. Vice Chairman Sonenshine indicated that the tax records filed with the Board application showed, in 1990, there had been the installation of an exterior egress staircase in the rear yard; Mr. Mecca said he was not aware of such work done but that it would be addressed during testimony. Exhibit #A-1, a series of photographs taken in 2009 by the applicant of the exterior property, was presented.

Robert Wermert, applicant and owner in fee of the subject property, was sworn in as Witness #1. He confirmed the facts detailed in his attorney's introduction. He stated that the 1st floor kitchen was upgraded in 1990 as well as mechanical/heating equipment, siding and egress windows (2nd floor only) being replaced during the course of the mid-1990's; he believed the rear outdoor staircase was installed prior to 1988 or 1989, when he and his family were first tenants of the house. The applicant said that after acquiring title from the Downes in 1999, he relocated his family to the 1st floor and rented out the upstairs dwelling unit to an estimated 2 or 3 different tenants since. He stated there is a detached garage in the rear yard and that the property is adjacent to the Tenakill Brook, with considerable shrubbery separating each. He said Demarest Avenue was a fairly quiet residential street and that sole access to the property was from it; he testified to having a large driveway area which eliminated any concerns of jockeying the several personal vehicles on the lot. The applicant said he was employed at a certified-*Honda* small engine repair shop and verified that no such work was conducted at the subject property, other than personal possession upkeep; his wife, an accountant, worked off-site at an office. Mr. Mecca, acknowledging his next statement to be hearsay, said that as an officer of the court, he had spoken on several occasions to the owner of 278 Demarest Avenue (Anne Stephanick) and she believed the subject home had been of 2-family usage since at least the 1950's; the Board struck said statement from the record disagreeing with Mr. Mecca's belief that such rules of evidence can be somewhat modified in this type of proceedings. Mr. Wermert said he depended on the 2nd story tenant's rent money for mortgage and tax payments; the Board reiterated its approval cannot be based upon monetary issues. Secretary Freesman asked if the applicant was aware of the upstairs tenancy prior to being tenant there himself; Mr. Wermert was not certain of such but stated the quarters' layout was indicative of a separate residence. Mr. Sinowitz asked what evidence there was for counsel's pre-existing, non-conforming approach to the application. Mr. Mecca responded that it would be based strictly on circumstantial evidence by way of tax records showing the property as a 2-family residence today and the house having been constructed in 1915 as well as the applicant's planner testifying to other facts. Vice Chairman Sonenshine asked if a Residential Certificate of Continued Occupancy (RCCO) had been obtained for the upstairs residence; Mr. Wermert said a temporary one was granted in 2008, contingent upon a Use Variance being granted by the Board. Mr. Monaco asked how many meters the house had; the applicant said there were 2 gas

and 2 electric meters but only 1 water meter, indicating he, as the landlord, paid for all water bills. Mr. Monaco asked for clarity on entrances that access the 2nd floor unit; the witness said that the only means of access to the 2nd floor was via the rear outside staircase and that the 1st floor could be entered from either the front door or a rear door. Mr. Wermert did point out that the inside of the house contained a staircase located in the middle connecting the 1st and 2nd floors, which he remembered still being in existence when the 2nd floor renovation was underway in the 1990's. Mr. Bianco inquired if the middle interior staircase was still present or "buried"; the applicant said it was no longer there. Vice Chairman Sonenshine said by looking at the submitted floor plans, the subject staircase is gone and asked Mr. Wermert when it was removed. The witness said he did not know since he was only a tenant at the time of the 2nd floor renovations, and during construction, he and his family as well as the Downes, temporarily moved out until all the work was completed; he also stated he never actually used the interior staircase as a tenant and said it was always closed off at the top, which is how he has always known it to be. Mr. Bianco felt that the subject house could have originally been a center hall colonial-style home, leading it to have been, at one time, a single-family house. Mr. Mecca disagreed with Mr. Bianco's assumption and said the interior staircase could have been a 2nd access to the 2nd floor apartment. Mr. Bianco disagreed, wondering both how someone could get to the staircase and the distance from the front door to it. Mr. Wermert reminded the Board that the front porch was enclosed to increase the living space of the 1st floor residence, resulting in less of an area from the front door to the staircase. Secretary Freesman asked when the Downes purchased the property; Mr. Mecca revealed the following title search results: 1.) Peter & Eileen Downes (purchased in 1989); 2.) Joseph & Barbara Tafuri (purchased in 1981); 3.) Martha Publisky (purchased in 1946). Mr. Mecca said the title search relieved no data on the property's use and that no communication with any the prior owners mentioned was established. Mr. Bianco said, being an architect, he concluded that to make the house an operable 2-family residence, the 1st floor would have had to have been expanded into the front porch; he believed, originally, the home was set up with the living area on the 1st floor and the bedrooms located upstairs and then there was an expansion of usable space on the 1st floor allowing for a 2-family use.

Vice Chairman Sonenshine opened the meeting to the public for questions and/or comments.

Jesse Rosenblum, 65 Knickerbocker Road, asked if the witness' attorney handling his closing attempted to confirm the legality of the property's use; Mr. Wermert did not know but said the Downes inquired with the Borough, the result of which he also did not know. Mr. Rosenblum asked if the closing attorney informed him that by not having evidence of the use's legality that an illegal conversion could be presumed; the witness answered in the negative. Mr. Rosenblum asked if the applicant was aware that the Bergen County Board of Taxation possesses records dating back to the early 1940's; Mr. Wermert indicated he did peruse through the agency's records and did not find any documentation of his property dating back that far.

Kenneth Ochab, PP, 12-16 Fairlawn Avenue, Fair Lawn, New Jersey, was sworn in as Witness #2. Exhibit #A-2, a site plan by GB Engineering, LLC, dated May 15, 2008, was presented. Mr. Ochab described the subject property as being 2 lots that are L-shaped as well as fronting on 2 thoroughfares (Demarest Avenue and Brook Street); he said the home is in the center of the land with a 2-story detached garage and shed towards the Brook Street side in the rear. He said there were a number of easements along Tenakill Brook on the eastern end, thus resulting in the property beyond the easement line essentially being unusable; he stated a fence runs along said easement line. He said the only access to the property is from Demarest Avenue. He also stated the property is located in District #2, which permitted 2-family use conversions so long as all

bulk requirements are met, of which this property does not. He summarized the following zoning deficiencies that are existing: 1.) lot width: 100' required (78' on Demarest Avenue/83' on Brook Street); 2.) lot frontage: 75' required (57' on Demarest Avenue); 3.) impervious coverage: 30% required (35.67%); 4.) side yard setback <each>: 15' required (12.62' on right-facing). Exhibit #A-3, a series of photographs taken in 2009 by the planner of the exterior property, was presented. Mr. Sinowitz pointed out that the witness did not mention additional variances were needed for total accessory structures equating to >30% in area of the principal structure as well as there being a shed in the front yard; the witness apologized for forgetting those variances. Mr. Ochab felt Exhibit #A-3 clearly showed the property to be well-maintained and planned efficiently. He said he researched *Sanborn* maps for information on the property; he told how *Sanborn* was a company that produced a series of maps dating back to at least the 1800's used primarily for fire ratings on buildings and data on fire equipment and water lines. He said they were never intended for planning purposes, however, in recent years, they became a vital tool for planners since they offered detailed building information. Exhibit #A-4, a *Sanborn* map dated July 1930, was presented. The planner said the exhibit, which pre-dated the inception of the Borough's Zoning Code, showed the subject house labeled as "D" and "2" signifying it was a 2-story dwelling and it also labeled the front portion of the house as "1" indicating the existence of the 1-story front porch area. Essentially, he said that was all the evidence to present towards the pre-existing, non-conforming approach to his client's application. He indicated that to be granted a Use Variance, one must show special reasons, specifically why the property is suitable for a 2-family home (positive criteria) and showing there is no substantial detriment to the public good nor substantial impairment the Zoning Code by allowing such Variance (negative criteria). With regards to the positive criteria, the witness said the property was oversized (existing: 16,700 sf/required: 12,500 sf). Mr. Ochab felt the 2 optimum bulk items for determining the intensity of the use for the site and neighborhood should be building coverage (existing: 8.8%/required: 20%) and Floor Area Ratio <FAR> (existing: 18%/required: 35%); both, he showed, are well below the maximum allowed. He felt most of the remaining bulk deficiencies result from the shape of the lot and their only means of mitigation would be to enlarge an already oversized lot; in terms of the impervious coverage, he believed the overage was a function of the macadam parking area and not indicative of roofed areas. Mr. Ochab said the house appears to be a 1-family dwelling from the street, is very subdued and fits into the surrounding neighborhood. He stated the goals of the Borough's Master Plan are met by the house containing a small apartment suitable for 50+ year old parents with adult children still living at home; also, he said sufficient space is provided and to the east are a brook and woods. Mr. Mecca mentioned that while the Downes owned the property, Bergen County did work on the bridge spanning over Tenakill Brook, which resulted in the reduction of their usable property when they relinquished a 10' to 15' wide strip of land to easements. Vice Chairman Sonenshine believed, based on Exhibit #A-2, the applicant's fence along Brook Street was in the Borough's right-of-way. Mr. Ochab said he found that 2 homes on Eckerson Avenue near the intersection with Brook Street seemed to be 2-families based on tax records and site inspections. Vice Chairman asked if the applicant would be willing to reduce the existing impervious surface overage via the driveway. Mr. Ochab believed it would be bad planning to lessen the driveway since it would force vehicles to back out of the site on Demarest Avenue; Mr. Bianco concurred. Mr. Sinowitz asked what the detached garage was used for; the applicant answered it was for storage since the house lacked an attic. Mr. Sinowitz asked if Mr. Wermert would consider registering the residence with the Council of Affordable Housing (COAH); the planner responded saying it would not be feasible for a single owner with 1 apartment to be COAH-registered since there would be too many regulations to understand and implement. Mr. Bianco asked the witness to testify to the submitted floor plans. Mr. Ochab said the 1st floor, 2nd floor and basement areas of the home were 950 sf, 775 sf and 775 sf respectively,

and based on such, felt it to be a very small and modest home. Mr. Bianco agreed and pointed out that such dimensions met United States Department of Housing & Urban Development senior, low-income and affordable housing standards. Councilman Dolson brought attention to the satellite dish on top of the detached garage and inquired whether it was used for recreational purposes in addition to storage. Mr. Wermert said both floors were used for storage but that television-viewing took place inside as well; he informed, however, there was no plumbing. Vice Chairman Sonenshine had no objection to the application, especially with the fact he has passed the site many times over the years and the only evidence of a 2-family use is a view of the rear exterior staircase from Brook Street. Mr. Sinowitz asked how high the fence on Brook Street was; the planner said it was 4' and solid. Mr. Sinowitz asked if it could be brought into compliance; Mr. Ochab answered since the Brook Street portion of the lot served as the site's rear yard that the fence should be kept for privacy. Mr. Bianco said it should remain solid but that it must be removed from the Borough's right-of-way. Secretary Freesman said, based the proofs presented, the applicant show forgo the pre-existing, non-conforming approach to the application and seek a Use Variance.

Vice Chairman Sonenshine opened the meeting to the public for questions and/or comments.

Jesse Rosenblum, 65 Knickerbocker Road, asked the planner if he reviewed files at the Bergen County Board of Taxation for the subject case; Mr. Ochab replied he did not, but the applicant did. Exhibit #'s O-1 through O-3, listings of Bergen County Board of Taxation records dated 1942, were presented. Mr. Rosenblum said that said exhibits provided certainty that the "2F" notation in such records meant a property was a 2-family use; that issue, he said, had arisen in several prior Board applications but was never resolved definitively. He continued to say that the subject property was described as "Fr. Dwelling" indicating a single-family framed dwelling. He was against the application since its approval would lead to greater burdens on the neighborhood and school system while giving the owners an additional \$70,000 to their potential selling price; he felt there could be no benefit to such a use if it was based on an illegal conversion.

Outcome

A motion was made by Mr. Bianco and seconded by Ms. Hartwell, to deny the pre-existing, non-conforming approach to the applicant's case. The motion passed (**7-0: YES-** Hartwell/ Hennessey/ Monaco/ West/ Bianco/ Freesman/ Sonenshine). A motion was made by Mr. Bianco and seconded by Ms. Hartwell to approve the Use Variance request with the following conditions: 1.) existing fence along Brook Street to relocated away from the Borough's right-of-way and onto the applicant's property; 2.) previously-mentioned existing bulk variance requests be granted. Mr. Bianco reiterated that he felt the subject property met the following criteria: 1.) it is located in District #2; 2.) house was built prior to December 19, 1940; 3.) it is in compliance with bulk requirements except where noted; 4.) the size of dwelling units is within federal government standards; 5.) density and occupant load is acceptable since if the site housed a single-family home, it would contain 4+ bedrooms in all likelihood; 6.) it has adequate on-site parking; 7.) fire codes are met via the rear exterior staircase; 8.) it has landscaping and curb appeal; 9.) the architecture is compatible with the neighborhood. The motion passed (**7-0: YES-** Hartwell/ Hennessey/ Monaco/ West/ Bianco/ Freesman/ Sonenshine).



Item #2

Case #Z-2010-02
31 Carlson Court
(Block 1407/Lot 8)

Applicant(s): Christiano & Bianca Pereira
Representation: Selves

The applicants are seeking Bulk Variance Relief for the construction of an addition, in-ground swimming pool and other appurtenances to their residence.

Christiano Pereira, applicant and owner in fee of the subject property, was sworn in as Witness #1. He said he purchased the site in 2001, which contained a ranch-style house with an attached garage. He said the essence of his proposal was to add a 2nd level to the existing house along with a swimming pool; he pointed out the existing property would require 4 variances regardless of the proposal. He pointed out that while he had a degree in Architecture and prepared the submitted plans, he would be testifying as a homeowner since he had not yet obtained his license. The witness said he wished to enlarge the existing garage for storage space and expand the garage door width while keeping it as a 1-car type; he also planned to upgrade the 1st floor and provide access from the kitchen to the outdoor barbecue area which would compromise of a series of decks and patios. The existing finished basement, he said, would become a “walk-out” version. Exhibit #A-1, a site plan prepared by the applicant dated October 30, 2009 as well as Exhibit #'s A-2 and A-3, construction drawings prepared by the applicant depicting elevations, were presented. Mr. Pereira summarized the following zoning deficiencies that are pre-existing: 1.) lot size: 12,500 sf required (12,068 sf); 2.) lot width @ building setback line: 100' required (90'); 3.) side yard setback <each>: 15' required (12.5' on left-facing); 4.) front yard setback: 43.81' <average> required (40.58'). He then advised his proposal would create the following additional deficiencies: 1.) building coverage: 20% required (20.6%); 2.) impervious coverage: 30% required (32.4%). Mr. Pereira said he wished to update his 50 to 60 year-old home, the oldest on his street, which would increase the value of the neighborhood as well as taxes to the Borough. He informed the Board that his plan was a “green” design, which he hoped would be gold-certified by the Leadership in Energy and Environmental Design (LEED) Green Building Rating System; it would, he believed, make his home the 1st of its kind in the Borough. The LEED system evaluated builders' and designers' approach to insulation, windows, heating/ventilation/air-conditioning, renewable materials, air quality, etc. Mr. Monaco asked what the age of the other homes on the street were; the applicant said his house was the 1st built on a parcel of land that used to be part of a rose plantation adjacent to the Borough's Nature Center. Mr. Pereira said there have been several “knock-downs” in the neighborhood and he wanted to try and save the existing shell of his home while improving upon it. Mr. Hennessey complimented the applicant's design but asked what his plans were for landscaping and utility layouts. Mr. Bianco interjected by saying the existing overhead electrical service would detract from the beauty of the newly-designed home; he pointed out the utility pole was on the applicant's side of the road, which could be turned into a “riser” pole, allowing for underground electrical service. Mr. Pereira said that could be an option. With regards to landscaping, he did not provide much detail on the plans submitted since a portion of the LEED system dealt with landscaping that would not require irrigation a couple of years following planting; he guaranteed the “finished product” would have at least what was shown on his filed drawings. Councilman Dolson questioned the driveway setbacks between the subject site and that of his neighbor's; the applicant said his own would be 2'. Vice Chairman Sonenshine expressed his pleasure with the design concept but felt the site plan was lacking a plethora of basic and vital information like driveway width, location of steps and landscaping, walkway detail, driveway

material, deck detail, patio detail and swimming pool depth; he continued to say that the soil movement figures provided in the Board application packet seemed low and wished to know the applicant's plan for the existing shed and playground on-site. He said he could only assume the patio around the pool would be a raised type having the same elevation as the home's first floor. Mr. Bianco concurred and asked that the site plan be enlarged for easier reading; he felt the proposed impervious coverage was actually closer to 50% based on all the appurtenances to be introduced to the property. Vice Chairman Sonenshine asked how drainage would be dealt with since the existing roof surface area seemed not to be increasing by 1/3+, thereby negating the Borough requirement for a storm water management system. Mr. Bianco felt that since the applicant wanted to bring the impervious coverage from an existing 20.6% to 32.4%, such a large increase would justify seepage pits. Vice Chairman Sonenshine asked the applicant to check the odd scale (3/16) he was using in some portions of his plan prior to submitting revisions; he also asked that the existing topographical map be superimposed on the proposed site plan and have the spot elevations adjusted accordingly.

Outcome

The Board adjourned the case to the May 3, 2010 (Special) Hearing and asked the applicant to have the items requested filed by the deadline.



There being no further items to discuss, a motion to adjourn the meeting was made by Mr. Bianco and seconded by Dr. West. All members present voted in favor. The hearing adjourned at 11:21pm.