



Zoning Board of Adjustment

May 19, 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, May 19, 2010 in the Council Chambers of the Borough Hall to order at 8:06pm. 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
- Steven Freesman, Esq.- Secretary
- Joseph Bianco, RA/PP
- Theodore West, DDS
- Mitchell Monaco
- Jennifer Rothschild, Esq.
- Thomas Hennessey- Alternate #1
- Mark Crisafulli- Alternate #2
- Marie Hartwell- Alternate #4
- 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:

- Lorin Sonenshine, RA/PP- Vice Chairman
- VACANT- Alternate #3
- Arthur Dolson- Council Liaison



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. Bianco and seconded by Dr. West, to approve the minutes of the April 21, 2010 Hearing. All eligible members present voted in favor.



Chairman Knee requested that 3 Board members serve on the Subcommittee for the May 26, 2010 Work Session. The following were assigned: Mr. Bianco, Mr. Crisafulli and Ms. Rothschild.

.....

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. No one wished to be heard.

.....

Mr. Bianco initiated a Board discussion regarding residential applicants who choose to prepare their own plans rather than retain a design professional to do so; he expressed frustration that, at times, such plans filed with the Board are substandard and incomplete on several levels. Ms. Rothschild felt that the Subcommittees should be more critical to prevent applications with inadequate plans from being allowed to proceed to the full Board. To curtail such occurrences, the Board requested that Mr. Demarest give direction to such applicants by way of making available previous plans filed and deemed satisfactory by the Board. Mr. Demarest agreed.

.....

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, introduced himself. He stated his client has been a long-time resident of the Borough and is the owner and commercial tenant of the subject property. He stated a Use Variance for a contractor's yard with outdoor storage as well as Site Plan (Major) Approval was being sought from the Board. He said the subject lot, 9,068 sf in size, also had a single-family house situated on it. He noted that there were no proposed changes to the existing use or structures on-site; he said the only modifications would be to address some of the Borough's Site Plan Review requirements. Mr. Liebman stated the lot was located in District #2 (Residential), where contractor's yards are not permitted, but pointed out that the applicant has conducted his business out of the property for 15+ years and the prior owner operated his own business there as well for several years. He said only 2 years ago did the applicant become aware of his "illegal acts" when he was served with a Notice of Violation from the Zoning Officer. Mr. Liebman stated that while every Board application is based on its own merits, he wished to incorporate by reference transcripts of the following Board hearing dates that pertain to Case #Z-2008-12 (35 John Street), an application, he believed, had several relevant facts: 1.) September 16, 2009; 2.) November 2, 2009; 3.) December 12, 2009. Mr. Ellis cautioned counsel that separate testimony and evidence must be presented since the public may not have been present for proceedings where the 35 John Street case was heard and it would be unfair since it did not have the opportunity to evaluate and respond to them. Mr. Liebman assured he would do so.

James Crimmins, 517 High Street, applicant and owner in fee of the subject property, was sworn in as Witness #1. He stated he and his family have resided in the Borough for 20 years and that his landscape/construction enterprise is operated from 49 John Street. He believed he had done

projects on nearly every in street in the Borough during his 25 years in business. He testified that approximately 15 years ago he bought the subject property from Anna Pellegrin, whose son-in-law, a landscaper, apparently stored 1 to 2 machines/trucks and repaired equipment in the rear yard; he said he has essentially continued that use since purchasing the land. He said the tenant in the house on-site is not a relative or employee of his. Mr. Crimmins said he stores heavy equipment, trucks, trailers, pipes, brick pavers, fabrics, etc. behind the dwelling. He informed the Board that over the years that has provided material and/or labor for several Borough projects at no charge. He said in addition to a few office workers located off-site, he employees 10 to 11 laborers, 4 to 5 of which are drivers. The witness explained that a couple of trucks are usually prepared for particular jobsites while others, with trailers, are normally used strictly for maintenance accounts. He testified that a normal business day started at 7:30am, with the workers heading out with all necessary equipment by 7:45am; he stated that the site usually remains quiet during the day (other than the occasional need for tools, etc.) until the trucks return generally between 5:30pm and 7:00pm. Mr. Crimmins stated his business is open weekdays, sometimes on Saturdays (when operating hours are between 8:00am and 4:00pm) but never on Sundays. He said, occasionally, trees/live vegetation are stored on-site, but grass clippings are taken to a dump 2x per week and, while on-site, they are stored in the trucks with covers; he mentioned he subcontracts a lot of his lawn maintenance business out to others. The applicant stated there are no chemicals, pesticides or any regulated material stored on the property. He felt the only noise coming from the lot would be his 6 trucks entering and exiting the property, which amount to an average of 12 total trips during a typical 12-hour work day. The witness said exiting trucks turn left onto John Street, a one-way road at that point, and go to Railroad Avenue. He indicated he sometimes exits his personal pick-up truck to across the street through the parking lot at 40 John Street (which he owns as well) to enter onto William Street; he assured that none of the business trucks take such a route. Exhibit #A-1, a site plan by Eid Associates dated March 15, 2010 and last revised April 6, 2010, was presented. Mr. Crimmins said that 2 years ago, out of consideration of his residential neighbors, he changed his business trucks' route so that they now come in through the center of town past the lumber yard on Naugle Street and turn right onto William Street, thereby avoiding John Street's residential area from William Street to West Street. He acknowledged previously using the paper street (Westminster Avenue) to the rear of his property for storage purposes as well as building a few cinderblock walls to act not only as storage bins but also to retain huge piles of soil (placed on the Borough right-of-way by another neighboring entity) from spilling onto his 49 John Street property. He said he removed all of his items from Westminster Avenue following his receipt of a Notice of Violation from the Borough. He let the Board know that numerous contractors of all types are operating in the immediate area and several have used Westminster Avenue for storage of material and equipment, most notably the operation located at an adjacent lot (63 John Street) which has huge piles of soil, mulch and firewood spread throughout the area. Because of all the commercial and industrial activity in the neighborhood, and the fact that Sunday is the only day when John Street is not busy with traffic, the applicant said a typical residential use would not be ideal for his 49 John Street property. He stated he would install fencing along his border with the paper street. He said he was willing to work with his residential neighbors to come to an agreement about their concerns; he also would adhere to any changes to traffic patterns implemented by the Borough as well as pay his pro rata share of the costs to improve Westminster Avenue. Dr. West asked where his employees park their personal vehicles during the day; the witness said a total of 4 are parked on William Street. Dr. West asked what he uses his 40 John Street property for; Mr. Crimmins answered he had an office and workshop there. Mr. Hennessey asked if any fuel was stored at the subject property; the witness stated none was stored underground, but that he had a 275 gallon removable diesel tank that is mounted on a truck and taken to jobsites and another that is not currently operable

located in the back of a pick-up truck. Mr. Bianco asked if the applicant, based on his own testimony, would say he had expanded the commercial use on-site since buying the property; the witness supposed so. Mr. Bianco asked why the cinderblock wall was installed in the middle of Westminster Avenue rather than at the property line abutting the paper street; the applicant answered that since several contractors were using the Borough land, he thought he could do the same. Mr. Bianco asked if there were any drop curbs along the 40 John Street to allow for truck passage; he replied there had been drop curbing all along the property when he bought it. Mr. Bianco asked, if approved by the Board, how soon improvements could be made to the subject property; the witness said as soon as possible. Mr. Crisafulli asked if, when donating his time and material to Borough projects, any official knew of his illegal operation at 49 John Street and agreed to “look the other way”; Mr. Crimmins categorically denied any knowledge of such. Mr. Monaco asked if he would be renovating the single-family house on the property; the applicant said he has wanted to fix the front and side porches along with installing new siding, but he has been preoccupied with the Board. Secretary Freesman asked if 40 John Street, which is located in District 4 (Commercial) and allows for contractor yards, had enough space to store all of the items currently at 49 John Street; Mr. Crimmins replied that while he could probably fit the equipment onto 40 John Street, the items would then be totally visible to the public and, furthermore, he would have to remove his existing business tenants so that he could store the remainder inside the building on-site. The witness testified he bought 40 John Street a decade ago in order to protect the neighborhood and keep the area neat; he said he preferred to use 49 John Street for his business because it would be hidden from public view. Mr. Ellis asked if there was any buffering on 40 John Street to which the witness said he had planted 15 to 20 trees along William Street. Ms. Hartwell asked if he would plant additional landscaping at the corner on 40 John Street; Mr. Crimmins answered in the negative since doing so would hurt the future value of his building by restricting parking options for tenants. Mr. Liebman said that a separate entity owns 40 John Street (James Crimmins Land, LLC) and is separate from the application before the Board. Mr. Ellis informed that the applicant would need to show, legally, that he has no other alternative, in this case the 40 John Street property, to avoid the need for such a variance. Mr. Ellis asked for the size comparison between the two properties; Mr. Liebman stated that while 49 John Street’s lot size is roughly 9,000 sf, the building alone at 40 John Street is 8,000 sf.

Chairman Knee opened the meeting to the public for questioning of the witness only.

Jesse Rosenblum, 65 Knickerbocker Road, asked if the applicant hired an attorney when purchasing 49 John Street; he answered yes. Mr. Rosenblum asked if Anna Pellegrin utilized the residence on-site; the witness said yes. Mr. Rosenblum asked if the Construction Official at the time, Harold Benel, knew of the property’s use when it was purchased by the applicant; Mr. Crimmins replied that he would not have known, especially since a Certificate of Occupancy was not required at the time. Mr. Rosenblum inquired about the prior business at 40 John Street; the witness said prior to it being a print shop, a heating/ventilation/air-conditioning (HVAC) company was there, which would later move to 15 William Street. Mr. Rosenblum asked what the length of his largest truck was and for the weight of his “roll-offs”; the applicant said the longest was 22’ and the weight was 26,000 lbs loaded and 16,000 lbs empty. Mr. Rosenblum inquired about the current business tenant at 40 John Street; the witness said there was now a martial arts gym operating out of only a portion (known as 19 William Street) of the building at 40 John Street. Mr. Rosenblum asked if the illegal use of Westminster Avenue by the applicant could have lead to any contamination; the applicant replied no since he only put clean stone and stone dust, originating from a quarry, onto the paper street.

Stephen Eid, PE, Eid Associates, Inc., 555 Goffle Road, Ridgewood, New Jersey, was sworn in as Witness #2. Exhibit #A-1, a site plan prepared by the witness dated March 15, 2010 and last revised April 6, 2010, was presented; Mr. Eid noted that the latest revision contained a 2nd page entitled "Details". He testified the site was situated on the north side of John Street and the 1 1/2 story house has a covered front porch, the staircase of which leads to a slate walkway extending to the curb; he said, to the east of the dwelling, is a concrete patio. Mr. Eid said the front yard consisted of grass and a few trees; he stated, to the west, is the driveway which continues to the rear yard. The engineer testified that directly behind the home are 3 sheds along the easterly property line (2 metal containers and 1 open-faced wooden shed). The witness said the rear yard consisted of both gravel (1/3 of the rear's total surface) and pavement (2/3 of the rear's total surface). He said there is also an enclosed porch on the western side of the house as well as a cellar entrance directly behind it. Mr. Eid continued to say the easterly side yard line has a 6' chain link fence with a 3' railroad tie wall behind it; he said, on the westerly side yard line, there are bamboo plantings approximately 25' tall along with pine trees, and abutting those is a 2' railroad tie wall, with pine trees on top of that, thus, providing a prominent buffer along the driveway. Mr. Eid stated the northwestern corner of the property has a stockade fence as well; he informed that the mentioned cinderblock wall in the middle of Westminster Avenue is 7' high. The witness stated he visited the site earlier in the day and found several piles of fill ranging from 5' to 20' high scattered all around the paper street as well as an enormous pile of fire wood at 63 John Street. Mr. Eid stated the only proposed change to the site is to install a 6' shadow board fence in the front, with a 16' wide gate, running from the corner of the house to the edge of the driveway; he stated that proposed fence would result in there being no view of the commercial activity in the rear yard from John Street, completing the total isolation of 49 John Street from the outside. In response to Mr. Tichacek's report dated March 22, 2010, Mr. Liebman provided Exhibit #A-2, a sheet entitled "Crimmins: Variances, Waivers & Existing Non-Conformities", to synthesize the zoning tabulations and itemize the following variances and waivers being sought: 1.) use variance for contractor's yard; 2.) use variance for 2 principal uses on single lot; 3.) waiver for 6' solid fence in front yard; 4.) waiver for gravel parking lot; 5.) waiver for no curbing along edge of parking area. Mr. Eid felt to add curbs to the subject property would be adverse rather than helpful since the land is relatively flat, sloping gradually in a northeast direction from John Street to Westminster Avenue (dropping only 1' in grade); he noted that water runoff leads to the northeastern corner of 35 John Street where there is a storm drain running into a stream. Mr. Eid also pointed out the plethora of existing variances that were also being sought; he noted 1 of them, # of parking spaces, was addressed on the site plan by providing a space behind the house for the employee, other than Mr. Crimmins, who has a company truck. He testified the residential tenant parks her car in the street during the day and only after the commercial trucks return at night, does she park in the driveway. As per one of the conditions for perfection, the witness indicated on his revision movement and path of the trucks along with their turning radii, which he felt shows the safest way of leaving and entering the site considering the location. He informed that since no impervious surface would be added to the site, the applicant proposed no drainage improvements; he said, though, as per Mr. Tichacek's report, Mr. Crimmins would obtain a storm water runoff permit from the Borough Engineer if the application is approved. Finally, with regards to lighting, he said there was 1 flood light, with a motion sensor, at the northwestern corner of the house behind the cellar entrance; he felt it was adequate for conducting business in the rear yard, while at the same time, inoffensive to neighbors. Mr. Monaco asked what the width of John Street was from curb to curb; the witness said it was 30'. Mr. Tichacek stated the Residential Site Improvement Standards (RSIS) called for at least 2 parking spaces for a single-family house alone (even without knowing the # of bedrooms), but the witness' site plan only provided for 2 in total for both the residential and commercial entities on-site; the Board Engineer also expressed concern

over the trucks' turning radii in connecting with the parking patterns of the residential tenant. Mr. Bianco stated he has witnessed the applicant's trucks trying to enter and exit the subject property and also expressed concern about the turning radius and noted the drivers have go onto 40 John Street in order to perform a "K-turn". Mr. Eid said the only way to prevent that would be to have the Borough open Westminster Avenue to traffic. Mr. Bianco asked if sidewalks would be installed, especially since both 35 John Street and 63 John Street have them; Mr. Liebman said he would discuss that with his client. Mr. Eid stated that while no fencing at the rear yard line along Westminster Avenue was shown on the site plan, the applicant has testified that he would install a 6' chain link there to define the boundaries. Dr. West stated he was concerned about water runoff due to the existing, but excessive, impervious coverage, especially if Westminster Avenue is improved in the future; Mr. Eid said that due to the size and pitch of the subject property, there is no need for concern, and in all likelihood, storm drains would be installed along the curb line of an improved Westminster Avenue. Ms. Rothschild asked if the residence pre-dated the Borough's Zoning Code, which was implemented on December 19, 1940; the witness did not know. Ms. Rothschild, knowing that the property's main use to be a commercial operation on a parcel of land located in District #2 where the maximum impervious coverage allowed is 30%, asked how the existing 79.53% on-site, which looks "harsh" on paper, would measure up against the zoning district where a contractor's yard is permitted; Mr. Sinowitz answered the maximum impervious coverage allowed in District #4 (Commercial) is 80%.

Chairman Knee opened the meeting to the public for questioning of the witness only.

Jesse Rosenblum, 65 Knickerbocker Road, stated the existing sheds and patio seemed very close to the property lines. Mr. Sinowitz informed that there was no setback requirement for patios and, as for the sheds, they can be no closer than 3', assuming they are at least 72' from the street curb line. Mr. Liebman stated his client would, if necessary, request a variance for the sheds' setbacks rather than propose to relocate or demolish them.

Outcome

The Board adjourned the case to the June 16, 2010 Hearing, at which time, the applicant's planner would testify. Mr. Liebman informed the Board that he would submit revisions, as requested, within the deadline for the next meeting.



A motion was made by Mr. Bianco and seconded by Dr. West, to memorialize the Resolution for 35 John Street (Case #Z-2008-12), with noted corrections agreed upon by the Board. All eligible members present voted in favor.

A motion was made by Ms. Rothschild and seconded by Mr. Crisafulli, to memorialize the Resolution for 61 Crescent Street (Case #Z-2010-03), with noted corrections agreed upon by the Board. All eligible members present voted in favor.

A motion was made by Ms. Rothschild and seconded by Mr. Bianco, to memorialize the Resolution for 128 O'Shaughnessy Lane (Case #Z-2010-04). All eligible members present voted in favor.

A motion was made by Ms. Rothschild and seconded by Secretary Freesman, to memorialize the Resolution for 31 Carlson Court (Case #Z-2010-02). All eligible members present voted in favor.



There being no further items to discuss, a motion to adjourn the meeting was made by Ms. Rothschild and seconded by Mr. Monaco. All members present voted in favor. The hearing adjourned at 10:59pm.