



Zoning Board of Adjustment

November 15, 2010

Hearing
(Minutes)

Prepared by:

Paul Demarest

Chairman Knee called to order, at 8:02pm, the Regular Monthly Hearing of the Zoning Board of Adjustment for the Borough of Closter, New Jersey, being held Monday, November 20, 2010 in the Council Chambers of the Borough Hall. 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 Borough's officially-designated 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.

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

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Oath of Office

Alternate #3 (Term Expiring December 31, 2010): Andrew Shyong, DDS

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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
- Mitchell Monaco
- Thomas Hennessey- Alternate #1
- Mark Crisafulli- Alternate #2
- Andrew Shyong, DDS- Alternate #3
- Leonard Sinowitz- Zoning Officer
- Arthur Dolson- Council Liaison
- Alysia Smickley, Esq.- *in lieu of Joel Ellis, Esq.- Board Attorney*
- Nick De Nicola, PE- *in lieu of Kevin Tichacek, PE- Board Engineer*
- Paul Demarest- Board Coordinator

The following Board members and professionals were absent from the meeting.

- Theodore West, DDS
- Jennifer Rothschild, Esq.
- Marie Hartwell- Alternate #4
- Joel Ellis, Esq.- Board Attorney
- Kevin Tichacek, PE- Board Engineer

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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.

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A motion was made by Vice Chairman Sonenshine and seconded by Mr. Bianco, to approve the minutes of the August 18, 2010 Hearing. All eligible members present voted in favor. A motion was made by Mr. Bianco and seconded by Mr. Monaco, to approve the minutes of the August 30, 2010 (Special) Hearing. All eligible members present voted in favor. A motion was made by Mr. Bianco and seconded by Vice Chairman Sonenshine, to approve the minutes of the September 15, 2010 Hearing. All eligible members present voted in favor.

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Chairman Knee requested 3 volunteers from the Board to serve on the Subcommittee for the November 22, 2010 Work Session. The following were assigned: Secretary Freesman, Mr. Bianco and Mr. Crisafulli.

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Chairman Knee opened the meeting to the public for anyone wishing to comment on matters not related to a case on the evening's agenda. No one wished to be heard.

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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 Mr. Bianco and seconded by Mr. Monaco, to memorialize the Resolution for 9 First Street (Case #Z-2009-15), with no corrections. All eligible members present voted in favor.

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Mr. Bianco asked Councilman Dolson about progress by the Governing Body on its review of the Board's request for changes to its Escrow Deposit Schedule; Councilman Dolson said the proposal is currently being considered by the Ordinance Committee.

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Item #1

Case #Z-2009-14
63 John Street
(Block 1203/Lot 2)

Applicant(s): Dennis Wiggers
Representation: Donna Vellekamp, Esq.

The applicant is seeking Use Variance and Site Plan (Major) Approvals for the continuation of an existing contractor's yard located in District #2 (Residential).

Donna Vellekamp, Esq., 161 Mc Kinley Street, Closter, New Jersey, introduced herself. She informed that she received, earlier in the day, the Board Engineer's review letter of the latest revisions as requested by the Board at the September 15, 2010 Hearing.

Dennis Wiggers, 387 Paramus Road, Paramus, New Jersey, was sworn in as Witness #1. He began to speak of the changes presented in his engineer's revised site plan that were critiqued by Mr. Tichacek in his November 15, 2010 report. The applicant stated his business on-site operates between 7:15am and 5:30pm (6:00pm during the warmer months) on weekdays and until 1:00pm to 2:00pm on Saturdays. He said the property, along with the land he leases (76 Railroad Avenue), has 5 to 6 pieces of equipment on them at any 1 time. He pointed out his trucks are both driven in and backed into the site depending on the time of year and the amount of equipment and merchandise on the property. Mr. Wiggers stated that while his business is currently in its busy season, the wood piles have been reduced by 1/2 since the last Board meeting and will be completely gone by the end of the year (allowing for more space on-site for equipment). Exhibit #A-1a, a revised site plan by Frank O'Leary, PE dated November 2, 2010, was presented. Mr. Wiggers stated the trailers labeled "#2", "#3" and "#4" store general landscape items (tools, seed, hay, pipe, sprinkler heads, etc.) but not chemicals. He testified the trailer labeled "#1" houses tires, a floor jack and miscellaneous mechanical tools. He reiterated that there are 2 principal structures on-site (1-family residence and garage mechanical repair shop); he noted there is no office nor a secretarial staff at the subject property but rather a phone and fax machine only for business purposes. Exhibit #A-13, a series of photographs taken earlier in the day, by the applicant, showing appurtenances/materials on-site, was presented. The witness testified the wood pile along the John Street portion of the property is roughly 20' from the roadway; he informed that Mr. O'Leary installed 5 pins in the ground along the south side lot line shared with the paper street (Westminster Avenue) and that he, himself, used flags and paint for their identification, as per the Board's request. Vice Chairman Sonenshine asked who is selling piles of rock and pallets of wood along the north side of Westminster Avenue; the witness said those items were his and that they were located on the 76 Railroad Avenue property. Vice Chairman Sonenshine stated the dirt mound on-site has been reduced to about 10' in width; Mr. Wiggers confirmed such and said the soil that had previously been on the paper street has been removed. Vice Chairman Sonenshine said he measured both the berm (having shrubs/trees on it for screening) to be approximately 4' off the curb on John Street and the wood pile (exposed to view) to be 23' high; the witness said those calculations could be accurate. Vice Chairman Sonenshine asked what would be done to screen the trailer labeled "#4", which he felt looked unsightly; the witness said was planning to add more evergreens to the area. Vice Chairman Sonenshine questioned why there was selling of material at 76 Railroad Avenue, as testified to; Mr. Wiggers answered there is no retail operation there and that the rock and wood are being brought to his Paramus location for retail sales. Vice Chairman Sonenshine asked how often the soil separator, located at 76 Railroad Avenue, runs; Mr. Wiggers said usually it starts after 8:00am and is shut off around 4:00pm or 5:00pm during the week and 1:00pm to 2:00pm on Saturdays. Mr. Bianco asked of any other machines being operated on-site; the witness said there are 3 log-splitters powered by gas motor (1 being hydraulic and the others being spring-loaded). Mr. Crisafulli asked if any approval at the state level had been given for the 3 tanks on-site (2 diesel fuel and 1 waste oil), being he felt Exhibit #A-13 showed how dangerous their condition was; the witness said no state approval has been received and that there is no drainage or concrete installed in case of leakage. Councilman Dolson said the latest revised site plan indicated there to be trees and other screening along the entire length of John Street, but in reality, there are split wood piles; the witness said that is correct and the piles would be gone, via firewood customer deliveries, in 6 to 8 weeks. Vice Chairman Sonenshine said, based on a Fire Prevention Bureau report by Kevin Whitney dated September 25, 2010, the tanks on-site still have not been approved, though the report says some efforts to correct have been made. Ms. Vellekamp countered saying she felt the report revealed that all noted violations from Mr. Whitney's 2 prior inspections had been abated and that none have been issued since the 2007 citation; she believed the Bureau was taking no further action

and asked the Building Department for its review of the site's conditions, of which none was conducted. Vice Chairman Sonenshine disagreed with her conclusions. Mr. Hennessey asked, being there are 2 tanks on-site (1 for off-road vehicles and 1 for on-road), could not the diesel fuel for the on-road vehicles be purchased from a gas service station, thus negating the need for 1 of the 500-gallon tanks currently on-site; the witness said that is possible. Vice Chairman Sonenshine asked if the applicant was open, as a possible Board condition of approval, to having his usage of the soil separator regulated to alleviate noise concerns; Ms. Vellekamp said her client would entertain such. Mr. Monaco asked if the excavator located at the end of the paper street belonged to the applicant; Mr. Wiggers answered that machine belonged to either the owner of 35 John Street or 49 John Street. Mr. Hennessey asked how many cords of manufactured firewood the applicant sold annually; the witness answered 300 to 400. Mr. Bianco asked if 20' to 40' long logs get processed into firewood on-site; Mr. Wiggers said that was true, in the past, but now 90% of his logs are very small (to avoid using labor to cut up large, in-coming logs).

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

Jesse Rosenblum, 65 Knickerbocker Road, asked if pavers have been installed on Westminster Avenue with Borough permission; the applicant said a permit was not given for their installation.

John Kilduff, 180 Herbert Avenue, asked if he could present a complete set of the Borough's Police and Health Department complaint forms (as requested by the Board at the September 15, 2010 Hearing) that document his grievances about the subject site, particularly the illegal tub-grinding that took place in the recent past; Ms. Vellekamp objected to their admittance. Ms. Smickley advised that Mr. Kilduff can only question the witness at this point, and that he could present his paperwork during the general comments portion of the proceedings.

Frank O'Leary, PE, PO Box 778, Closter, New Jersey, was sworn in as Witness #2. He stated the majority of the site's drainage from the residential area to the smaller framed garage flows to the inlet at the corner of Railroad Avenue and John Street; he said the drainage along the tree/shrub screening embankment goes to the John Street right-of-way and enters an inlet at the southwesterly corner of the site. He testified that based on using "clear ground" (no material stored above), the overall drainage of the site flows in a easterly to westerly direction, but pointed out that it appears that some attempt has been made to direct water to yard drains located, according to Mr. Wiggers, on the southerly line of the site; since Mr. O'Leary cannot presently verify Mr. Wiggers' information on existing yard drains, the witness said he would show them in a revised site plan once he finds them and determines inverts and grade elevations to know whether or not they are operating properly. Mr. O'Leary said there was no ponding of water on the site and his client stated the yard drains collect all water on the site rather than it flowing through the 49 John Street property. He described the 1st page of Exhibit #A-1a, entitled "Minimum Commercial Use" (based on data collected in August 2009); the witness pointed out the originally-filed survey contained no spot elevations other than a few around the existing house on-site. Mr. O'Leary said the exhibit's 1st page depicts the site as it would look during its least-concentrated usage when the firewood is gone. He testified that the exhibit's 2nd page, entitled "Maximum Commercial Use", is how the site would have looked approximately 6 weeks ago; the witness said he "shot" elevations along the edges of wood piles and on any areas clear of material. Mr. O'Leary testified that the wood-burning exterior furnace and drum mulcher along with the gates across the entrance at Westminster Avenue and the advertising of material have all been removed from the site; he said the revised site plan has the previously-filed vehicle

manifest incorporated on it. The witness said the revision shows more detail on the fuel tank area and indicates a pre-existing iron rod at the corner of the paper street and Railroad Avenue. He believed that if the 2' high concrete block retaining wall, located along the end of Westminster Avenue, were to be removed, the bank/earth behind it would begin to slough off and create an embankment down towards the rear of the 49 John Street property; he also felt some of the drainage (now being directed into the yard drains) would then flow onto the properties west of 63 John Street. Mr. Crisafulli questioned the need for keeping the retaining wall there, being it is partly on Borough property; the witness said as that end of both the subject property and paper street are lowered, some of the water being captured off the 2 properties would then begin to slough off down the road. Mr. Crisafulli asked if the applicant had not installed impervious areas on Westminster Avenue illegally and it had been left natural, would then there be the concern of sloughing; the witness responded he could not answer since he does not know what was on the paper street before and if it was at the same elevation. He believed fill had been brought into Westminster Avenue and piled up behind the 2' high retaining wall; he also felt the earth to the west of the wall had not been excavated. Mr. Crisafulli asked if there would have been better drainage had the paper street not been paved; Mr. O'Leary answered it would not because drainage from Westminster Avenue (if traveling west) would go into the rear yards west of the subject site and south of the paper street. Mr. Crisafulli, based on a site visit, felt excavation has taken place being that on the other end of the paper street, through the trees during, there is a creek downhill and, from that point, the grade goes up; Mr. O'Leary believed Mr. Crisafulli, when at the other end of Westminster Avenue, was probably standing on fill that was introduced to the area when new home construction took place. Mr. Crisafulli asked when the yard drains (located on Lot #'s 2 and 4) were connected into the Borough's storm drain and if permission was granted for such; the witness did not know and said the only evidence he has was a 12" reinforced concrete pipe coming into the back of the inlet on John Street and the applicant's word that 2 yard drains were underneath the wood piles. Vice Chairman Sonenshine asked what measures were being taken to protect the yard drains from debris infiltration, even though they are supposedly buried; the witness did not know. Vice Chairman Sonenshine asked if the applicant would agree to having, as a condition of approval, the installation of preventative measures for keeping the yard drains clear; Ms. Vellekamp said that would be acceptable. Mr. De Nicola mimicked the Board's concerns about the yard drains, especially since they are on a commercially-used property and chemicals, fuels, oil, etc. could get into the Borough's drainage system; he also pointed out that a reservoir is only 300 yards away from the site. Mr. Bianco asked what the impervious coverage was on-site and if that amount changed when the property was being used at its minimum and maximum capacities. The witness said it was 71.6% and that figure remains in both conditions. Mr. Bianco pointed out that 30% is the maximum allowed in District #2 (Residential). He asked if an interceptor drain could be installed near the 2" high retaining wall overlapping the paper street so to rectify water run-off concerns; Mr. O'Leary said it was not his concern and that if the wall (support for the bank) were removed, the 2' drop would try to find a natural angle of repose. Mr. Bianco asked if the road could be re-graded in order to blend in; the witness said 1/2 of Westminster Avenue's length (approximately 100' running from the westerly line to the borderline between Lot #'s 2 and 3) would need to be lowered from 2' down to nothing. Mr. De Nicola interjected saying that if the wall in question is only 2' high (2%), grading 2' over 100' is not necessary; he believed a 3:1 grade in 6' would easily be obtainable. Mr. Bianco said the bottom line is the wall can be removed and the area re-engineered so the paper street could be improved. Mr. De Nicola reminded that today a permit is needed to "tap" into the Borough's storm drain, however, 20 years ago, that requirement did not exist (the on-site condition may pre-date the regulation).

Chairman Knee opened the meeting to the public for questioning of Witness #2 only. No one wished to be heard.

Steven Lydon, PP, Burgis Associates, Inc., 25 Westwood Avenue, Westwood, New Jersey, was sworn in as Witness #3. He said the house on-site was built in the 1800's and is located close to the John Street and Railroad Avenue intersection; he testified the sole means of access to the home is via Railroad Avenue. The witness said the residential and commercial uses have co-existed for 3 decades. Exhibit #A-14, a colorized land use map prepared by Burgis Associates, Inc., was presented. Mr. Lydon said the exhibit shows a dichotomy: the subject site is part of a residential area separating a commercial zone from an industrial zone. He felt a more efficient buffer would be to extend either District #4 (Commercial) or District #5 (Industrial) instead; he believed that since William Street already forms a buffer in the neighborhood for District #4 (Commercial), it would make sense to have the subject property re-zoned into that district. The witness said the Borough's Master Plan, specifically the 1981 Land Use Element, identifies and comments that the Borough's land use patterns are fairly stable and reaffirms development patterns, but where those patterns are not desirable, he said the document makes recommendations because of changed circumstances; he testified it states the "north side of John Street, west of Railroad Avenue, for a distance of approximately 315', is proposed for limited industrial uses instead of the present residential zoning", which would include 35 John Street, 49 John Street and the subject property. Mr. Lydon said the 1981 Land Use Element also stated that those properties "have front and rear yard areas abutting industrial land uses...it would be inappropriate to continue a residential pattern in this environment." The witness stated the 2008 Master Plan Reexamination made significant changes to some of the 1981 document. For instance, he pointed out 1981's Goal #10 said to "reduce the amount of industrial-zoned land in the community and to more adequately provide additional lands for business and professional office use." The witness revealed that the 2008 Report, however, reads the Borough must "improve the condition and compatibility of industrial-zoned land in the community" and that the Borough is a "community that accommodates many small businesses, landscapers and construction-related contractors and does not wish to drive them out of the community...the key is compromise...allowing their presence but with improvements to their sites and yards through the site plan approval process..." He summarized those quotations saying the 1981 approach was to eliminate industrial uses if possible where as the 2008 version sought to make the uses compatible so not to get rid of them. Mr. Lydon referenced the 1996 Master Plan Reexamination, saying "the use of these properties along John Street and Railroad Avenue functioned as an important buffer to residential properties further north and further south and west..."; he believed the only way to relax zoning standards where there is a prohibited use is to make that use permissible. In terms of the Municipal Land Use Law (MLUL), the witness believed the application met both positive criteria (specifically, goals A, C, E, and G listed under New Jersey Statutes Annotated (NJSA) 40:55D-2) and negative criteria (no negative impact on the Master Plan and no substantial detriment to the neighborhood pattern of development) needed for variance relief. Mr. Bianco asked if there is a safety hazard created by having diesel fuel tanks concentrated near a residence; Mr. Lydon answered Class #2 fuel is being used at 63 John Street, which is equivalent to home-heating oil and not nearly as combustible as gasoline. The witness further stated that it would not be unusual for a residence to have a couple of 500 gallon heating oil tanks in the ground. Mr. Bianco countered saying the applicant is moving his fuel components above-ground where they can be inhaled or spilled into the ground; the witness responded that it used to be very common for oil tanks to be installed in a home's basement. Mr. Bianco stated that the operations on-site equate to a repair shop and sawmill; Mr. Lydon did not believe "sawmill" accurately described

the firewood business on-site. Mr. Bianco asked if the 70+% impervious coverage on-site was extreme for a residential property; the witness stated that while it may seem high, 60% is the threshold for a residential zone in the Borough of Westwood. Mr. Bianco asked where in the area could a similar landscaper's operation be found; Mr. Lydon answered there is a business located in the Borough of Alpine on Closter Dock Road and thought his client's was superior to that since his firewood pile served as a natural buffer for John Street; he continued to say that the applicant does not do lawn maintenance, which has negative connotations. Mr. Crisafulli asked the witness to decipher the operations being operated from 35 John Street, 49 John Street and 63 John Street. He answered that while all 3 are similar, 35 John Street deals primarily with dumpster service and the construction of retaining walls and driveways while 49 John Street does the same along with lawn maintenance; he did concede that his client is the only 1 of the 3 that sifts soil and splits wood. Councilman Dolson pointed out that the Governing Body has purposely not acted upon Master Plan recommendations made by the Planning Board in previous years and felt Mr. Lydon's quoting of those documents was misleading; the witness believed, to the contrary, that it is a planner's statutory criteria to show what a master plan calls for. Mr. Bianco asked if the witness supported converting Westminster Avenue from a non-channelized stretch of 200' to a marked road for vehicular safety; he agreed so long as the paper street is not opened all the way through to West Street. Ms. Smickley asked for an explanation why the subject lots cannot be used for residential purposes only. Mr. Lydon said the 1981, 1996 and 2008 Master Plan documents recognize that these sites are not appropriate as stand-alone residential development, and so by approving his client's application with reasonable conditions, the Board would be implementing the Borough's vision; he also mentioned the subject property is a both a corner and through lot, which are not part of a desirable residential design. Mr. Crisafulli questioned the location of the residence on-site being situated "in the middle of nowhere" on Lot #1; the witness answered that both 35 John Street and 49 John Street have residential components as well as the 2 properties directly across John Street from the subject site, thus the house on the corner of the property (which is very well-maintained) reinforces the residential streetscape in the area. Vice Chairman Sonenshine felt the home on-site did not have sufficient green space, especially since debris (from the contractor's yard) is stored in its vicinity. Ms. Vellekamp noted that the same family has rented the home from Mr. Wiggers for the past 10 years. Vice Chairman Sonenshine reminded that the Board has, in the past, approved other John Street applications conditioned upon enlarging the rear yards via reorganization of storage areas.

Chairman Knee opened the meeting to the public for questioning of Witness #3 only.

Jesse Rosenblum, 65 Knickerbocker Road, asked if the Master Plan distinguishes between contractor's yards that store equipment and those that process material; the witness did not believe so. Mr. Rosenblum asked what prevented the applicant from doing his processing of material indoors; Mr. Lydon responded that he was not aware of any landscapers that split wood or conduct other activities indoors. Mr. Rosenblum asked if the definition of "contractor's yard" includes splitting wood and other operations that create noise and, if so, where else in Bergen County does such an enterprise exist; the witness answered in the affirmative (believing that the word "yard" implied outdoors) and said there are multiple yards in the region. Mr. Rosenblum asked if any Master Plan documents mentioned "lack of zoning enforcement" as applied to the John Street properties; the witness remembered it probably was in the 2002 Master Plan Reexamination. Mr. Rosenblum wondered about the term "mixed use"; Mr. Lydon answered no, but said the 1981 report clearly talked about allowing the subject area to maintain their operations by not prohibiting residential uses and allowing non-residential uses, thus implying mixed uses.

The Board recessed at 10:16pm.

The Board reconvened at 10:21pm.

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

Jesse Rosenblum, 65 Knickerbocker Road, was sworn in as Objector #1. Exhibit #'s O-2 and O-3, aerial photographs of the subject area dated June 10, 2007, were presented. He expressed his opposition to the application.

John Kilduff, 180 Herbert Avenue, was sworn in as Objector #2. Exhibit #O-4, a Borough police report (supported by Health Department comments with regards to noise readings) dated August 7, 2008, was presented. He testified that he called the police on the applicant due to his illegal tub-grinding operation along with the environmental issues that it spawned (noise, odor, sawdust, etc.). He revealed that the operation was shut down due to him and the neighbors' vigilance and not, as testified to by Mr. Wiggers, because of the applicant's concern for the community. Mr. Kilduff said his complaint led to the issuance of 2 summonses. Exhibit #O-5, a letter from the New Jersey Department of Environmental Protection (NJDEP) dated August 24, 2009 citing violations for 63 John Street, was presented. Mr. Kilduff said the NJDEP visited the site 5 times and that the applicant is still in violation. He summarized that this evidence goes to the character of the applicant and that he cannot be trusted.

Outcome

Chairman Knee stated that Mr. Kilduff's submittals had to be carefully considered before the Board contemplated a vote. Mr. De Nicola guided the Board on Exhibit #O-5, saying the NJDEP informed Mr. Wiggers that mixing of both mulch and manure, mulching, tub-grinding, etc. were prohibited; he further stated that the applicant would need a Class "B" permit for the operation of a solid waste facility. Chairman Knee said the last thing he wanted to do was put a man out of business, however, the applicant's use of the subject property is substantially different from previous Board applications and without considerable alterations to the presented application, he would not vote in favor of the applicant; Secretary Freesman, Mr. Bianco and Mr. Crisafulli concurred. Ms. Smickley advised that a "yes" or "no" vote from the Board would mean just that; she said "with or without prejudice" is not an issue in this case and that the applicant can re-file or ask for a continuance and make modifications to the existing application (without the need to return to a Work Session again for perfection).

The Board recessed at 10:54pm.

The Board reconvened at 10:56pm.

Ms. Vellekamp informed that her client wished to have a continuance and would have changes to his application filed with the Board in time for the December 15, 2010 Hearing. The Board noted some of the concerns that should be addressed in the modifications: 1.) fencing along Westminster Avenue; 2.) drainage concerns; 3.) resolution of fuel tank area; 4.) screening along John Street; 5.) abatement of NJDEP violations; 6.) resolution of processing of material on-site; 7.) resolution of mechanical repair shop on-site; 8.) removal of retaining wall located partially on paper street; 9.) clarification on existing yard drains' condition. Mr. Bianco hoped that the Board could require the applicant to improve the portion of the paper street that abuts his site

(regardless of whether or not the Governing Body has approved such a project) to deny encroachment upon Borough property. Vice Chairman Sonenshine reminded that the 35 John Street and 49 John Street applications were approved conditioned on only the applicant's agreeing to petition the Governing Body to "open up" Westminster Avenue and pay their pro rata share if the project ever came to be. Mr. Bianco believed an assessment commission could be convened to determine the cost for such improvements and establish it towards the frontage of the 3 properties involved (35, 49 and 63 John Street). Ms. Smickley advised that the Mayor and Council's permission is a prerequisite to any paper street improvement.



There being no further items to discuss, a motion to adjourn the meeting was made by Mr. Crisafulli and seconded by Vice Chairman Sonenshine. All members present voted in favor. The meeting adjourned at 11:10pm.