



Zoning Board of Adjustment

August 17, 2011

Hearing
(Minutes)

Prepared by:

Paul Demarest

Mr. Bianco called to order, at 8:03pm, the Regular Monthly Hearing of the Zoning Board of Adjustment for the Borough of Closter, New Jersey, convening Wednesday, August 17, 2011 in the Council Chambers of the Borough Hall. He stated the meeting was being held in compliance with the provisions set forth in the New Jersey Open Public Meetings Act and had been advertised in the Borough's officially-designated newspaper. 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.



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

- Steven Freesman, Esq.- Secretary
- Joseph Bianco, RA/PP
- Theodore West, DDS
- Antranig Ouzoonian, PE
- Thomas Hennessey- Alternate #1
- Andrew Shyong, DDS- Alternate #3
- Arthur Dolson- Council Liaison
- Leonard Sinowitz- Zoning Officer
- Michael Kates, Esq.- *in lieu of Alysia Smickley, Esq.- Board Attorney*
- Jeffrey Morris, PE- Board Engineer
- Paul Demarest- Board Coordinator

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

- Robert Knee- Chairman
- Lorin Sonenshine, RA/PP- Vice Chairman
- Mitchell Monaco
- Mark Crisafulli- Alternate #2
- Marie Hartwell- Alternate #4
- Alysia Smickley, Esq.- Board Attorney



Due to the absence of both Chairman Knee and Vice Chairman Sonenshine, Mr. Bianco, with the consent of Secretary Freesman, chaired the meeting.



Prior to the meeting, the Board obtained 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. Ouzoonian and seconded by Dr. West, to approve the minutes for the July 20, 2011 Hearing; all eligible members present voted in favor.



Since no new Board applications were filed by the deadline, the August 24, 2011 Work Session was cancelled.

Mr. Bianco 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.

Mr. Kates distributed an amended partial judgment order by the Superior Court of New Jersey-Bergen County Law Division with respect to a prior Board approval for 170 & 176 Closter Dock Road (Case #Z-2008-06). He explained that, in conjunction with an appeal of said Board approval filed by DR Schmidt Realty, LLC, the Court remanded the case to the Board, which must hear a re-filed application from the owner-in-fee, Desan Enterprises, Inc., no later than December 15, 2011; he noted the originally-mandated start date was October 19th.

A motion was made by Dr. West and seconded by Mr. Hennessey, to memorialize the Resolution for 237-241 Closter Dock Road (Case #Z-2010-12); Mr. Kates informed that said Resolution, based on feedback from several Board members, is conditioned upon a Developer's Agreement being entered into. All eligible members present voted in favor. Reading from the Spring 2011 edition of the Northern Valley Historical Society newsletter, Mr. Bianco stated that the structure on-site once served as the Borough's 1st hotel establishment ("Closter City Hotel"); he expressed his gratitude in both the applicant and Board's efforts on an important landmark project.

The Board tabled a vote on memorialization of the Resolution for 551 Closter Dock Road (Case #Z-2011-070), to the September 21, 2011 Hearing, because the applicant failed to file requested item(s) by the deadline.

Item #1

Case #Z-2011-10
219 Cedar Lane
(Block 705/Lot 9)

Applicant(s):
Representation:

Tito & Adoracion Temporosa
Douglas Radick, RA

The applicants are seeking Bulk Variance Relief for the construction of an addition, deck, front porch (2-tiered) and front steps/walkway to their residence; though the Board approved the application at the July 20, 2011 Hearing, the applicants requested to have their case reopened in order to clarify the record prior to the Resolution being memorialized.

Mr. Demarest confirmed that public *re-noticing* requirements were fulfilled by the applicants.

Douglas Radick, RA, 243 West Street, Closter, New Jersey, introduced himself and was sworn in as Witness #1. He explained he wanted to address 3 of the Board's conditions placed within its approval from the July 20, 2011 Hearing. First, he stated the subject house's existing and

proposed layouts have been clarified on the architectural drawings via use of darkened markings for new areas. In addition, the witness said the proposed basement plan is in concert with Mrs. Temporosa's previous testimony, which included her wish for a music room, gym, storage area, bathroom and laundry area; he noted the revised architectural drawings reflect the applicants' subsequent requests to have both the imperial staircase instead be stacked in a "scissors" fashion and a slight rearrangement of space on the 1st floor (having no change in room size). Mr. Radick, lastly, testified the Board required the proposed pitch of the roofline be diminished from 9/12 to 7/12. Exhibit #A-6, a set of architectural drawings prepared by the witness, dated April 3, 2011 and last revised August 3, 2011, was presented.

A motion was made by Mr. Hennessey and seconded by Dr. West, to re-open the case for clarification; the motion passed by acclamation.

Mr. Radick said that during the initial design phase, a surveyor was retained to calculate the subject property's front yard setback; he stated the Zoning Officer advised that the elevation at the front curbing, which is composed of a 4x4 piece of lumber, be determined relative to the finished floor at the center of the house. The witness reported the 1st floor's finished elevation would be 50.0' and the elevation at curb level is 45.9', resulting in 4.10' deviation. Referring to the Borough's Code for definition of "story" (Chapter 200-5), the witness summarized the site's existing basement could be construed as a story, making for a total of 3.5 (when including the proposed 2nd floor addition and attic); he noted the maximum allowance of stories in District #2 (Residential) is 2.5. He informed that, at the May 25, 2011 Work Session, the applicants contemplated lowering the entire structure, but after reconsideration, it was estimated such a feat would cost \$15,000.00 to \$20,000.00; the witness believed the expense to be unwarranted since, due to the reduction in the roof's slope, the building height would remain unchanged. Mr. Bianco clarified that the 1st floor elevation would be rising while the roof pitch would be diminished; Mr. Radick concurred, saying the result is an additional variance for 1', 2", the amount needed to have a 3' difference from grade to the 1st floor (as per the Borough's definition of "story"). Mr. West said he did not understand the witness' explanation. Mr. Radick estimated 1/3 of the residences in the Borough would not meet the 3' rule as defined in "story" since it is a minor technicality. Mr. Kates asked that said technicality be articulated for the Board; the witness explained a variance is being sought for the technicality that considers the applicants' basement (which is 4.1' above curb level) a story being it is 1', 2" higher than 3' above curb level, which is the maximum allowed in order for it not to be considered a story. Dr. West asked if the basement would be lowered; Mr. Radick said such would still take place but noted that part of the project does not affect the 1st floor. He stated the reason for the re-opening of the case this evening is to avert the applicants from having to lower the entire structure on the grounds on a technicality.

Secretary Freesman recused himself from this case.

Dr. West noted the revised basement floor plan still contains aspects that allow for it to be illegally converted to an apartment, especially with the remaining exterior basement door; the witness reminded that the bathroom and laundry area pre-existed and felt such a layout is not unusual for such a small house.

Mr. Bianco opened the meeting to the public for both questioning of Witness #1 and general comments. No one wished to be heard.

Mr. Radick summated.

Outcome

A motion was made by Dr. West and seconded by Dr. Shyong, to approve the application with the following condition: basement shall not be utilized as dwelling unit. The motion passed (5-0: YES- Shyong/ Hennessey/ Ouzoonian/ West/ Bianco).



Item #2

Case #Z-2011-13
66 Poplar Street
(Block 507/Lot 5)

Applicant(s):
Representation:

Anthony & Lucille Austria
Selves

The applicants are seeking Bulk Variance Relief for the installation of a patio (on-grade) at their residence.

Dr. Shyong recused himself from this case.

Anthony and Lucille Austria, applicants and owners-in-fee of the subject property, were sworn in as Witness #'s 1 and 2.

Mr. Austria testified the proposal, which consists of a 20'x30' patio, would put the site's impervious coverage 4.5% above the 30% maximum allowance in District #1 (Residential). Mr. Bianco, referring to the photographs pre-filed with the Board, asked if construction on the patio had begun without authorization; Mr. Austria replied in the negative, saying an existing patch of gravel is depicted. Mr. Bianco asked what the need is for such a large patio; the witness stated he wished to have a place for his family to congregate. He pointed out, however, that his contractor believed there would be no issue in reducing both the patio's length and width by a few feet. Councilman Dolson asked for the proposed patio's rear yard setback; Mr. Hennessey responded the submitted survey, with the proposal to scale, indicates the dimension to be 13.20'. Dr. West asked about the material to be used for the patio; Mr. Austria believed it would have a semi-porous, bluestone surface with a gravel and sand base. Mr. Bianco suggested that a minimum of 2' be removed from the proposed depth to create a 15' setback from the rear yard line. Dr. West inquired about the ownership of the fencing noted on the applicants' survey; Mr. Austria replied it belonged to the neighboring properties adjacent to his, which front on both Poplar Street and Forest Street. Mr. Bianco questioned if there was shrubbery in the vicinity of the proposed patio; the witness stated there is 1 tree and some flowers nearby, noting he and his wife took ownership a mere 2 years ago. Mr. Hennessey pointed out that the reduction of the patio's width would bring its area to 540 sf, down from 600 sf; he noted the existing gravel base appears to extend beyond the back of the house in the southerly direction. Mr. Ouzoonian inquired if the patio would have an overhang or roof above it; Mr. Austria answered in the negative.

Mr. Bianco opened the meeting to the public for both questioning of Witness #1 and general comments. No one wished to be heard.

Outcome

Dr. West felt comfortable with approving an 18'x30' patio; Mr. Morris calculated such a reduction would equate to the impervious coverage being lessened by 0.48%. Mr. Ouzoonian asked if the patio's length could be restricted to stop at the southern end of the existing bay window; Mr. Morris informed such would remove 3' from the patio's length and, thus, an 18'x27' dimension and a proposed impervious coverage of 33.63%, down from the originally-conceived 34.50%. A motion was made by Dr. West and seconded by Secretary Freesman, to approve the application with the following conditions: 1.) dimension of patio to be 18'x27'; 2.) "Final As-Built" survey to be filed with Zoning Officer. The motion passed (5-0: YES- Hennessey/ Ouzoonian/ West/ Bianco/ Freesman).



Item #3

Case #Z-2011-02
17 Bogert Street
(Block 1710/Lot 7)

Applicant(s): Robert & Dolores Witko
Representation: Richard Abrahamsen, Esq.

The applicants are seeking Bulk Variance Relief for an as-built parking area, which is separate from the driveway and located in the front yard of their residence; NOTE: the application stems from action taken by the Code Enforcement Bureau (charged with assuring the Board's Resolutions are adhered to), which ascertained a prior Board decision (Case #Z-1999-25) denying Bulk Variance Relief, for a similar parking area at the subject property, was not complied with.

Richard Abrahamsen, Esq., Sekas & Abrahamsen, LLC, 530 Sylvan Avenue, Englewood, New Jersey, introduced himself. He revealed the applicants were compelled to file with the Board in response to a summons issued by the Zoning Officer for an as-built improvement in their front yard consisting of brick pavers. He stated the site is an older, sub-standard lot which, in the past, had a macadam driveway and several other blacktop surfaces, including the front parking area, scattered throughout the property; he explained said surfaces were replaced with brick pavers 2 years after his clients' application to the Board in 1999. He said the applicants' decision to do such improvements in the front yard should not be construed as their disregard of the Board's 1999 denial. Mr. Abrahamsen stated the property, located in District #2 (Residential), is in close proximity to District #4 (Commercial); he noted the following non-residential establishments are fronting on the opposite side of Bogert Street, which experiences heavy truck traffic: 1.) *D'Amico Nursery*; 2.) *Gary Wiggers Construction*; 3.) *Pasvalco*. Mr. Kates asked to focus on the 1999 Board denial; Mr. Abrahamsen believed, upon reviewing said Resolution, the Witkos' request was have designated front yard parking spaces for the household's occupants, which brought about the need for a front yard setback, not impervious coverage, variance. He felt neither res judicata nor any other doctrine applied to the case; Mr. Kates replied that since 12 years have elapsed since the Board's decision, he concurred with counsel.

Frank O'Leary, PE, 272 Knickerbocker Road, Closter, New Jersey, was sworn in as Witness #1. Exhibit #A-1, an "As-Built" survey prepared by the witness and dated March 24, 2011, was presented. Mr. Abrahamsen informed that said exhibit shows the Borough's right-of-way along both sides of Bogert Street, as requested at the February 23, 2011 Work Session. Mr. O'Leary testified that the improvements made within the Borough's right-of-way seem to be normal in nature with the exception that the sidewalk areas are often grassed where there is no driveway

protruding into the curb line. He reported that the property to the immediate right of the subject lot (23 Bogert Street) is covered with pea gravel in lieu of an actual driveway; the witness noted there are 3 driveways on the opposite side of Bogert Street, 1 of which has a fence partially extending into the Borough's right-of-way. Mr. O'Leary stated there is concrete curbing towards Closter Dock Road and Demarest Avenue and it changes to granite block towards the cul-de-sac, where there appeared to be a somewhat recent development of new homes. The witness stated that the western side of Bogert Street is commercially-zoned. Exhibit #A-2, a survey prepared by the witness and dated December 8, 1999, was presented. Exhibit #A-3, a series of photographs taken by Mrs. Witko and depicting the subject site and surrounding lots, was presented. The witness testified that the subject parcel, consisting of 8,111.65 sf, has an existing impervious coverage of 71.74%. Councilman Dolson inquired if there are any lawn areas on-site; the witness responded that those areas on Exhibit #A-1, which are not labeled with impervious surface notations, contain grass. Mr. Sinowitz asked how the current case before the Board differs from the 1999 application; the witness stated he was not retained for the prior case. Mr. Bianco asked for the pre-existing, non-conforming bulk items on-site; Mr. O'Leary stating the following: 1.) lot size <8,111.65 sf/12,500 sf required>; 2.) lot width <49.94'/100' required>; 3.) street frontage <50'/75' required>; 4.) building coverage <25.46%/20% maximum>; 5.) impervious coverage <71.74%/30% maximum>; 6.) side yard setback (left-facing) <1.14'/15' required>; 7.) side yard setback aggregate <21.21'/30' required>; 8.) rear yard setback <63.77'/20' required>; 9.) front yard setback <23.39'/31.5' required>. Mr. Bianco questioned how the impervious coverage could be reduced; the witness replied that, while he did not research such possibilities, the removal of patios, walkways and a portion of the front parking area could be adjusted. Mr. Bianco felt the history of the Board has been to work with applicants, especially involving cases that are not commercial, income-producing properties. Mr. O'Leary testified the front parking area, not including the brick pavers located in the Borough's right-of-way, is roughly 179.41 sf (running 18' north-south and 9.5' running east-west), which makes up 2.21% of the total impervious coverage on-site. Dr. West inquired if landscape/retaining walls are counted by the Borough as impervious surfaces; Mr. Sinowitz stated they are.

Mr. Bianco opened the meeting to the public for questioning of Witness #1 only.

Jesse Rosenblum, 65 Knickerbocker Road, asked for the distance between the applicants' shared side yard (left-facing) line and the house situated at 15 Bogert Street; the witness said he did not know. Mr. Rosenblum asked if the subject property is used as either a 1- or 2-family; the witness deferred to the applicants.

Dolores Witko, applicant and owner-in-fee of the subject property, was sworn in as Witness #2. She testified she and her husband have owned 17 Bogert Street for close to 28 years and that the driveway, a concrete walkway leading to a metal shed in the rear yard (which did not exist at the time) and gravel in the front yard were all in existence at the time of title transfer. The witness revealed that Patricia Di Luzio, prior owner of the subject property, is now the current owner of 15 Bogert Street, which was previously owned by her father; the witness said there is an in-ground swimming pool near the chain link fence running along the side yard (right-facing) line on 15 Bogert Street. Mrs. Witko surmised that when Ms. Di Luzio owned 17 Bogert Street and her father resided at 15 Bogert Street, there was likely an arrangement to allow for access to the pool from either property. She informed that, in 1985, she and her husband also received a variance for a 2nd story deck (with a patio underneath) from the Board; she stated she did not have an available copy of said Resolution. Mr. Kates questioned if the crushed stone, previously in the front yard, had been considered as impervious coverage by the Board in 1999; Mr.

Abrahamsen replied he was told, by Mr. O'Leary, that it was not though it does not have the same characteristics as fine aggregate, bituminous concrete. Mrs. Witko explained the reason for the 1985 variance request was because she resides in the upper floor residence of the subject house. She further explained that the installation of brick pavers on-site was the result of having to replace damaged macadam throughout the lot; she testified such was spawned when it was discovered, in 2002, that 17 Bogert Street was not completely tied into the Borough's sewer system and still partially-hooked into a septic system. The witness stated she only wished to beautify her property with the brick pavers and said her husband, who installed them, did not know a zoning permit was required.

Mr. Sinowitz was sworn in as Witness #3. He testified that he issued a summons for the unauthorized installation of brick pavers on October 14, 2010, an act that was brought to his attention by the Code Enforcement Bureau; he said if the driveway had only been resealed with blacktop, it would have been considered a repair with no permit required. Mrs. Witko interjected, saying the summons indicated her driveway was in violation, not the front parking area, which was a different issue; she stated her driveway's layout has not changed since she and her husband purchased the home. Mr. Kates noted that the current application before the Board does not indicate a request for a front parking area, separate from the driveway; Mr. Abrahamsen explained his clients are not seeking to park vehicles in the Borough's right-of-way nor elsewhere on-site other than their driveway despite the notation on Exhibit #A-1, which was added by Mr. O'Leary in error. Mr. Kates asked if the applicants are offering to remove the brick pavers installed on Borough land; Mr. Abrahamsen said they are not being it looks attractive. Mr. Kates replied the Board has no jurisdiction over Borough property, but he said it can ask to have the brick pavers removed. Mr. Bianco asked for the function of the area in the front yard consisting of brick pavers; Mr. Abrahamsen answered it serves as a sidewalk and Mrs. Witko testified a vehicle may have been parked there a few times during previous month. Mr. Kates asked if any other property on the same side of Bogert Street had a similar front yard encroachment into the Borough's right-of-way; Mrs. Witko said none do. Mr. Kates responded that Exhibit #A-1 shows 23 Bogert Street as having a gravel parking area on Borough land; Mrs. Witko stated that said lot faces Closter Dock Road, but its curb cut does extend into Bogert Street. She noted that going south beyond 23 Bogert Street is where there are 5 newer homes (built in the late 1980's) with different front yard layouts as well as sidewalks. Dr. West noted that Exhibit #A-3 shows there is a stone wall extending into and blocking that portion of the Borough's right-of-way covered with brick pavers, making the statement that said area is being used as a sidewalk seem illogical; Mrs. Witko testified that said wall was present in 1983. Mr. Abrahamsen suggested the stone wall be removed to allow for the brick pavers to serve as a legitimate sidewalk; Mr. Bianco disagreed, saying the so-called "sidewalk" is, in essence, 20' wide and believed pedestrian safety is being compromised. He felt the only way to ensure there are no vehicles parked in the front yard area is by removing those surfaces not connected to the driveway on-site.

The Board recessed at 9:40pm.

The Board reconvened at 9:41pm.

Mr. Sinowitz asked why there is a need for such a large amount of parking on-site; Mrs. Witko stated she would not be able to answer said question at this time. Mr. Sinowitz asked if such a response could be construed as meaning the detached garage is not utilized for on-site parking but rather storage of the applicants' collection of vehicles. Mrs. Witko inquired why the garage was of any relevance; the Zoning Officer replied that the current Board application is

a self-imposed hardship because the applicant is causing the issue of a front parking area by not using the garage for temporary parking. Mrs. Witko stated that her husband uses the structure as his workshop.

Mr. Bianco asked if the front parking area, as well as the detached garage, have been altered in size since 1983; Mrs. Witko answered in the negative. Mr. Bianco questioned when the house was built; she estimated it be constructed between 1920 and 1925 and noted that its footprint has remained unchanged. Mr. Bianco asked for the primary use of the subject site; Mrs. Witko replied it is used as a 2-family, and explained that an application to the Zoning Officer is forthcoming to have said use deemed legal via a grandfather clause. Mr. Bianco inquired about the house's layout; she explained that there is a 2-bedroom unit on the 1st floor and the other is a 3-bedroom unit consisting of the 2nd and 3rd floors. Dr. West asked if the house has a second means of ingress/egress; she responded there is access from the rear of the home, both at the 1st floor as well as the 2nd story deck. Dr. West felt Exhibit #A-3 shows the rear portion of the 2nd and 3rd floors to have been extended at some point after the home's original construction; she replied that the shell of the house has remained in tact since 1983. Mrs. Witko noted that the area of vegetation enclosed with a retaining wall (dividing the front parking area and driveway) was installed by her husband in 2002 as well. Mr. Kates asked if the applicants were aware that they were "going off survey" when making improvements in 2002, noting Exhibit #A-3 confirms there are permanent property monuments (iron pipe/rod) at the front corners of the subject property; she answered in the negative. Mr. Bianco asked for any options in reducing the impervious coverage on-site by means other than the front parking area situated on private land; Mrs. Witko stated the walkway leading to the shed, a front walkway as well as a concrete pad adjacent to 15 Bogert Street (not depicted on Exhibit #A-3) could be removed; she informed, however, the patio must remain since it supports the 2nd story deck. Mr. Kates asked how long the Municipal Court has postponed, due to the Board's heavy caseload, dealing with the summons from Mr. Sinowitz; the Zoning Officer revealed that the Code Enforcement Bureau issued a Warning Notice to the Witkos on August 12, 2010, followed by a December 6, 2010 appearance before a judge to address the October 14th ticket. He stated the applicants pleaded guilty, paid a monetary penalty and were ordered to file for variance relief. Mr. Kates asked if an attempt was made by the applicants to appear before the Governing Body to gain approval for working in the Borough's right-of-way; Mrs. Witko testified she had prior dealings with the Mayor and Council regarding her property's sewage problems and was disillusioned with the experience because she felt they were non-responsive, in part, due to a bias member.

Mr. Bianco opened the meeting to the public for questioning of Witness #2 only.

Jesse Rosenblum, 65 Knickerbocker, asked what the base of the brick paver installation in the front yard was made of; Mrs. Witko guessed it to be of crushed stone.

Outcome

Pending its receipt of both a revised engineering design with significant reductions in the existing impervious coverage and photographs of 15 Bogert Street, the Board adjourned the case to the September 21, 2011 Hearing.



A motion was made by Mr. Ouzoonian and seconded by Dr. West, to require that all professionally-designed revisions include “clouding” and triangular marks (both are industry standards) so the Board can easily ascertain what portion(s) of a plan have changed since the original submission; the motion passed by acclamation.

Mr. Bianco expressed concern that the monitoring of memorialized Resolutions is lacking; he believed the disconnect between the Board Engineer, Zoning Officer and Building Department could be solved by implementing a procedure to ensure applicants abide by stipulations post-Board vote. Mr. Hennessey pointed out that the Construction Official is concerned primarily with any structures involved, not site work; he said the latter could be overseen by the Board Engineer but such would require additional funding. Mr. Ouzoonian assumed “Final As-Built” surveys, along with the Code Enforcement Bureau enforcing Resolutions, handled such matters; Mr. Bianco disagreed, saying there should be a more proactive measure taken. The Board agreed that all future Board applications, involving non-residential properties with proposed site improvements, would necessitate a Developer’s Agreement; such would mandate posted escrow, allowing for staged inspections by Mr. Morris.

There being no further items to discuss, a motion to adjourn the meeting was made by Secretary Freeman and seconded by Dr. West. All members present voted in favor. The meeting adjourned at 10:10pm.