



Zoning Board of Adjustment

January 19, 2011

Reorganization & *Hearing* (Minutes)

Prepared by:

Paul Demarest

Chairman Knee called to order, at 8:03pm, the 2011 Reorganization and Regular Monthly Hearing of the Zoning Board of Adjustment for the Borough of Closter, New Jersey, convening Wednesday, January 19, 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.



Reorganization

Oaths of Office

Full Member Appointees (Term Expiring December 31, 2014): Steven Freesman, Esq.
Antranig Ouzoonian, PE

Alternate Appointees (Term Expiring December 31, 2012): (#1) Thomas Hennessey
(#3) Andrew Shyong, DDS

Council Liaison (Term Expiring December 31, 2011): Arthur Dolson

Election of Officers

A motion was made by Mr. Bianco and seconded by Mr. Monaco, to nominate Mr. Knee as Chairman of the Board. All eligible members present voted in favor.

A motion was made by Mr. Bianco and seconded by Ms. Hartwell, to nominate Mr. Sonenshine as Vice Chairman of the Board. All eligible members present voted in favor.

A motion was made by Mr. Bianco and seconded by Dr. West, to nominate Mr. Freesman as Secretary of the Board. All eligible members present voted in favor.

Professional Services

A motion was made by Mr. Bianco and seconded by Ms. Hartwell, to nominate the law firm, Kates, Nussman, Rapone, Ellis and Farhi, LLP, (represented by Alysia Smickley, Esq.) as Attorney for the Board. All eligible members present voted in favor.

A motion was made by Mr. Bianco and seconded by Vice Chairman Sonenshine, to nominate the engineering firm, Boswell Engineering, Inc., (represented by Kevin Tichacek, PE) as Engineer for the Board. All eligible members present voted in favor.

Adoption of Calendar

Mr. Demarest noted that due to the Board's current and anticipated heavy caseload in the coming year, there would now be monthly dates reserved for potential (Special) Hearing dates. Mr. Kates asked the Board to activate the April 7, 2011 (Special) Hearing date to allow for the re-visiting of the "unofficially-dismissed" 170 & 176 Closter Dock Road application (Case #Z-2009-10), a filing by an objector (DR Schmidt Realty, LLC) to the Board's approval of said case. Mr. Kates explained that the subject case has resurfaced following his own opinion, during the objector's initial appearance before the Board, that the appeal should be dealt with in a different forum (namely the Superior Court of New Jersey- Bergen County Law Division). He revealed that at a case management conference, the Court determined that the objector's case (since not related to his other cases pending before the Court) should be returned to the Board. Mr. Kates further noted that the Borough Attorney's presence would be required to provide legal counsel on behalf of the Zoning Officer, whose determination is the "heart" of the objector's case. Mr. Demarest stated that if the case required completeness review, the application would have to be filed in time for the February 23, 2011 Work Session to allow for public noticing of the potential April 7, 2011 Hearing date. Mr. Kates said he would relay the information to the objector's attorney as well as remind him of the \$1,000.00 appearance fee for a (Special) Hearing date. A motion was made by Vice Chairman Sonenshine and seconded by Dr. West, to adopt the 2011 Calendar. All eligible members present voted in favor.

Adoption of Fee Schedule

A motion was made by Vice Chairman Sonenshine and seconded by Dr. West, to adopt the 2011 Application Fee Schedule. All eligible members present voted in favor.

Adoption of Escrow Deposit Schedule

With regards to legal escrow deposits, Mr. Kates explained that his firm's hourly rate, unchanged since 2007, would now be as follows: 1.) \$250.00 per meeting appearance; 2.) \$125.00 per hour for litigation; 3.) \$200.00 per hour for services chargeable to applicants' escrow accounts. In terms of engineering escrow, Mr. Demarest confirmed that the Governing Body had recently adopted the Board's request to allow for a \$300.00 minimum deposit to be required of residential applicants by a Subcommittee during Work Session, if it deemed it necessary, to allow for Mr. Tichacek review a case. A motion was made by Dr. West and seconded by Secretary Freesman, to adopt the 2011 Escrow Deposit Schedule. All eligible members present voted in favor.

Adoption of Official Newspaper Designations

A motion was made by Dr. West and seconded by Vice Chairman Sonenshine, to adopt *The Press Journal* and *The Record* as the Board's Official Newspapers to be used for public noticing. All eligible members present voted in favor.



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

Theodore West, DDS
Mitchell Monaco
Antranig Ouzoonian, PE
Thomas Hennessey- Alternate #1
Mark Crisafulli- Alternate #2
Andrew Shyong, DDS- Alternate #3
Marie Hartwell- Alternate #4
Arthur Dolson- Council Liaison
Leonard Sinowitz- Zoning Officer
Michael Kates, Esq.- *in lieu of Alysia Smickley, Esq.- Board Attorney*
Kevin Tichacek, PE- Board Engineer
Paul Demarest- Board Coordinator

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

Alysia Smickley, Esq.- Board Attorney

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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.

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A motion was made by Mr. Bianco and seconded by Dr. West, to approve the minutes for the December 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 January 26, 2011 Work Session. The following were assigned: Mr. Bianco, Dr. West and Dr. Shyong. Since 2 of the applications to be reviewed involve Site Plan Review, Mr. Tichacek agreed to attend as well.

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Mr. Demarest informed that, at the direction of the Mayor's office, the Borough would be convening its bi-annual Joint Meeting on a Saturday morning sometime in February; he stated an agenda for topics of discussion is forthcoming and that members' input is welcome. The Board felt that the Joint Meeting should be held in March being schools are closed in February for winter recess and Vice Chairman Sonenshine wished to have a proposed agenda before having members confirm their attendance. Mr. Demarest stated he would prepare a summary of the Board's activity for 2011 as well as an update to the 2008 and 2009 editions to reflect recent dispositions; Mr. Kates said Ms. Smickley would then prepare the Annual Report, a draft of which would be ready for a Board vote at the February 16, 2011 Hearing. He hoped that such stream-lining would enable the Annual Reports to be discussed at the Joint Meeting. As a possible topic, Vice Chairman Sonenshine felt the Borough's front yard setback ordinance should be revised to include a minimum requirement for all projects (in its current wording, only new developments are held to such a standard). Mr. Sinowitz suggested the issue of

allowing those uses permitted in District #5 (Industrial) to be so in District #4 (Commercial) as well, should be addressed.



The Board discussed the necessity of having 1 or more (Special) Hearing dates activated to clear up the agenda's backlog, specifically those cases involving non-use variance, residential requests. Assuming they are deemed complete, it decided that the 49 Colgate Street (Case #Z-2011-01) and 8 Wainwright Court (Case #Z-2011-04) applications would be scheduled for the March 7, 2011 (Special) Hearing and the 17 Bogert Street (Case #Z-2011-02) application would be added to the already-discussed April 7, 2011 (Special) Hearing. Vice Chairman Sonenshine expressed frustration that the Board has to gather for meetings outside of the normal schedule when, often, the applicant is responsible for delaying their own appearance before the Board. Mr. Sinowitz inquired if there was a law regulating how far in advance an applicant must request a postponement; Mr. Kates answered the New Jersey Municipal Land Use Law (MLUL) does not speak of such and said the only option the Board has is to "penalize" by placing them at the end of the Board agenda. Chairman Knee felt such a "penalty" is not a uniform rule and that the Board cannot relocate a case on the agenda arbitrarily.



Mr. Demarest pointed out a change to the format of the Board's agenda: dates of the applicants' tax certification and public noticing (deciphered by "Newspaper" and "200' List" captions) are now indicated. Mr. Bianco asked for an update to the Board's inquiry as to the rules for having applicants re-notice due to long stints on the agenda without presentation. Mr. Demarest reminded that at the December 15, 2010 Hearing, the Board decided, as an internal policy, to have applicants both re-notice following 6 months of inactivity and re-certify taxes after 2 tax quarters have passed. Mr. Kates suggested the Board adopt a revision of its By-Laws reflecting such a requirement (he felt 90 days should be the cut-off for re-noticing) since the MLUL only speaks of initial public noticing and tax certification; he pointed out that the "stale" provision should not take into account the reasoning for delay of presentation, be it the applicant's or Board's doing. Mr. Demarest said he would circulate the Board Attorney's updated draft of the By-Laws in time for a vote at the February 16, 2011 Hearing.



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.



Item #1

Case #Z-2010-05
85 Chestnut Avenue
(Block 2401/Lot 1)

Applicant(s): Woo Kum Kang
Representation: Rose Tubito, Esq.

The applicant is seeking Bulk Variance Relief for the construction of an addition and deck to 1 of the 2 existing single-family houses situated on her property; NOTE: due to a decision by the

Superior Court of New Jersey- Bergen County Law Division (see Docket #BER-L-7807-05) reversing a prior Board decision to uphold an Appeal of the Zoning Officer's determination of said project, the applicant is entitled, as per the Court's order, to pursue a new application to the Board strictly for Bulk Variance Relief (a Use Variance, the Court has determined, is not required).

Rose Tubito, Esq., 239 Old Tappan Road, Old Tappan, New Jersey, introduced herself. She stated her client filed for a zoning permit in 2005 for a 2nd story addition to 1 of the 2 existing homes on the subject property, which was denied by Mr. Sinowitz; she said, thereafter, an application was filed with the Board and it decided a Use Variance (for expansion of a non-conforming structure) was not required, and it upheld the appeal of the Zoning Officer's determination. Ms. Tubito said that Board approval was followed by an appeal filed with Superior Court by an objector (Jesse Rosenblum); she informed that a trial resulted in the judge siding with the Board in that a Use Variance was unnecessary, but ordered the applicant back to the Board for Bulk Variance Relief, leading to tonight's appearance. Mr. Kates distributed copies of the Court's 2006 decision, pointing out that he felt it to be quite unusual for a "C" variance to be applied in such a situation; he referenced page 13 of the Court order which cited case law (*Conselice v. Borough of Seaside Park*) in arguing that where there is an expansion of a non-conforming structure (he noted that "structure" and "use" are interchangeable in the language of deed), it should be scrutinized since the MLUL favors the ultimate elimination of non-conforming structures and/or uses. Mr. Kates said the Court, therefore, determined the negative criteria, as per NJSA 40:55D-70c(1) & (2), must be applied to answer whether or not the proposal substantially, negatively impacts the Zoning Map and Ordinance in terms of light, air, intolerable densities, etc. Ms. Tubito concurred with Mr. Kates' synopsis.

Matthew Neuls, PE, Hubschman Engineering, PA, 263A South Washington Avenue, Bergenfield, New Jersey, was sworn in as Witness #1. Exhibit #A-1, a colorized version of a previously-filed site plan prepared by the witness' firm dated November 9, 2004 and last revised October 6, 2010, was presented. Mr. Neuls testified the subject site is located at the northeastern side of Chestnut Avenue and consists of the following appurtenances: 1.) a 2 1/2-story framed dwelling approximately 25' to 30' in from the curb line; 2.) a driveway leading into the site to the right; 3.) a gravel area expanded out behind said house; 4.) a 2-car detached garage; 5.) a 1-story dwelling on the right side of the site (difficult to view from the curb line due to the site's topography; 6.) a shed located to the east. The witness stated the 2 1/2-story house is not involved in the proposal, but rather the 1-story residence is to have a 2nd level added to it; he noted construction would not result in deficiencies for any bulk requirements and he pointed out that the subject house is 85' from the nearest residence (located on Lot #3). He reminded that the project does not change the existing footprint of the home; Mr. Kates interjected and cited page 14 of the Court order ("The so-called building envelope will be affected by Kang's proposal simply by raising the roof and almost doubling floor area."). He explained that the judge's concept of "envelope" was 3-dimensional, not just the footprint. Mr. Kates asked if a floor area ratio (FAR) calculation, including both houses on-site, had been done; Mr. Neuls said no. Mr. Sinowitz said that based on the site's lot size of 33,231 sf, the FAR cannot exceed 30%, which it clearly does not. Mr. Neuls stated the existing rear house's floor area is 599 sf; Ms. Tubito said FAR figures would be submitted to the Board. The witness testified that, as per Chapter 200-10 of the Borough Code, 1- and 2-story, single-family residences must encompass a minimum floor area of 900 sf and 1,200 sf, respectively; he pointed out that the 2nd floor construction would result in the subject home's total floor area becoming 1,290 sf. With regards to emergency vehicle access to the subject house, the witness stated no changes are proposed to the existing parking layout; he informed that the gravel area behind the front house allows for at

least 3 parking spaces in addition to the 2-car detached garage. Mr. Neuls said that once a fire truck, for example, enters the driveway, the firefighters could access the subject house via the existing walkway that traverses the site with several steps (the rear house is located on a slight hill). Mr. Ouzoonian questioned exactly how the subject house would get serviced by emergency vehicles; the witness answered the vehicle would go to the edge of the driveway surface but not right up to the home due to grass and other impediments. Mr. Ouzoonian believed such a response was not reasonable. Chairman Knee asked for the distance between the driveway's edge closest to the home and the house itself; the witness said using the walkway, it is roughly 90' and if one were to cut across the lawn, it is approximately 65'. Mr. Ouzoonian asked if the Fire Department had reviewed the application; Mr. Demarest answered that administrative reports were not received from Borough agencies since the application does not involve Site Plan Review. Mr. Kates informed the applicant should seek an opinion by the Fire Prevention Bureau ahead of her next Board appearance. Mr. Sinowitz reiterated the FAR to be a non-issue since it seems to be less than 20% (both houses inclusive). Mr. Demarest said, at the time of the applicant's original filing with the Board, Ms. Kang, herself, had completed the "Limiting Schedule" form (Ms. Tubito had yet to be retained as legal counsel). Exhibit #A-2, the Board's single-sheet "Limiting Schedule" form prepared by Ms. Kang, was presented. Chairman Knee asked for the current impervious coverage on-site; Mr. Neuls answered it to be 17.74%. Chairman Knee felt that a substantial driveway expansion could resolve the Board's concern over emergency vehicle access to the site, especially since the property is well below the 30% maximum allowance for impervious coverage. Mr. Neuls said, while it would involve some difficulties due to the 6' to 8' slope of the land, that an extended driveway would solve the problem. Mr. Tichacek suggested a turnabout (bulb) should be installed as well so a fire truck would not have to reverse out of a "dead-end" driveway; Ms. Tubito state her client would concede to such a condition. Mr. Bianco stated that, in the past, instances where 2 houses have existed on 1 lot, the compromise has been to subdivide the property. He asked how many bedrooms would be added to the subject house with the new 2nd floor. Ms. Tubito answered, although the architect would not be part of the proceedings, she felt that limited testimony on the basic construction could be given by Mr. Neuls. Vice Chairman Sonenshine stated the applicant could testify on her architect's plans but another professional could not. Mr. Neuls answered the subject house would be going from a 1- to 2-bedroom residence; he continued saying that based on the Residential Site Improvement Standards (RSIS), 1.8 parking spaces are required for a 2-bedroom unit (3.6 or 4 spaces are required when including both houses on-site) and the property has 5. Mr. Bianco pointed out that the subject property/house could be converted to a legal 2-family use, without the need of a Use Variance, since it is located in District #2 and meets all current bulk requirements. Mr. Kates disagreed, saying the "hold-up" for such would be that the parking delimited only permits 2 single-family houses according to the RSIS. Mr. Sinowitz interjected saying when he reviews an application for a 2-family use, parking requirements do not come into play because the Zoning Code does not call for it. Mr. Kates asked if Ms. Kang would be open to a Board approval being conditioned upon both houses remaining as 1-family uses; Ms. Tubito replied that she always advises her clients against deed restrictions and said that the question of a 2-family use on-site is not before the Board with this case. Looking at the key map on the filed site plan, Mr. Kates questioned the ownership and use of the following properties: Block #1703, Lot #'s 2, 4, 14 and 15; he was concerned that owners of said properties were not given notice since they do not appear on the applicant's 200' list. Ms. Tubito reiterated that her public noticing was based on a 200' list certified by the Tax Assessor. Mr. Kates said he felt the confusion lay with the fact that the key map has an old block # designation with wrong lot # delineations; he believed the 200' list should have included the 9.92 acre property owned by Joseph and Gloria Miele. Ms. Tubito asked what needed to be done to resolve the issue. Vice Chairman Sonenshine felt that, in light of a recent court decision

“throwing out” the Planning Board’s approval of the Closter Plaza redevelopment due to improper noticing, the applicant must re-notice to avoid future legal challenges. Mr. Crisafulli asked if the site could be subdivided; Mr. Neuls said it could not because that would create several variance conditions; Chairman Knee said at least 1 acre is required for subdivision as well. Vice Chairman Sonenshine questioned a portion of the driveway that seemed to extend beyond the applicant’s property line; he said the site plan indicated such condition was a “right of easement per deed” but that he did see any reference in the deed filed with the Board. Ms. Tubito said she would follow-up on the issue in time for their next Board appearance. Vice Chairman Sonenshine asked if the rear fence to the east is that of the applicant’s; Mr. Neuls said it belonged to the neighbor. He noted that a photograph filed with the Board, entitled “east” and showing the fence in question, actually depicts the southwest corner of the house. Mr. Monaco asked when the subject house was built; Ms. Tubito said it was constructed in the 1920’s based on proofs submitted for trial. Mr. Kates asked that such evidence be filed with the Board; Ms. Tubito acknowledged. Mr. Monaco inquired whether or not the existing structure could withstand a 2nd floor above; he was reminded of the 37 Oak Street application (Case #Z-2004-10) where, following the Board’s approval of a 2nd story addition, 2”x6” lumber was found to be supporting the existing structure, resulting in a re-filing with the Board (Case #Z-2005-12) for new construction; Ms. Tubito said a witness would address the concern at their next Board appearance. Mr. Monaco asked if a storm water management system would be required for the project; Mr. Sinowitz answered no since there would not be a 1/3 increase in the existing roof surface area. Vice Chairman Sonenshine mentioned that the site plan shows a seepage pit would be installed voluntarily; Mr. Bianco asked if that seepage pit would function within the flood plain of “Anderson Brook.” The witness said it would not be in the flood plain and, regardless, that soil analysis and percolation testing, based on Federal Emergency Management Agency (FEMA) flood insurance rate maps and the state’s studies of brooks and streams in the area, would be conducted beforehand. Mr. Bianco asked for the flood hazard line to be included on the site plan being “Anderson Brook” is deemed a Category-1 waterway by the New Jersey Department of Environmental Protection (NJDEP); he also asked that the rear yard setback requirement be corrected on the site plan from 30’ to 20’ (site is located in District #2). Mr. Neuls agreed. Mr. Kates summarized the Board’s requests for the applicant’s next Board appearance: 1.) FAR calculations; 2.) Fire Prevention Bureau review; 3.) public re-noticing; 4.) driveway easement clarification; 5.) proofs for original date of construction; 6.) flood hazard line inclusion on site plan; 7.) correction of rear yard setback requirement on site plan. Mr. Bianco followed by requesting that the gas line from the street to the subject house be shown on the site plan (gas meter is indicated but the line is not traced back to the street); Ms. Tubito agreed to all requests.

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

Jesse Rosenblum, 65 Knickerbocker Road, asked if the front house is occupied and, if so, for how long under the current ownership; Ms. Tubito said it is but was not sure for what length of time. Mr. Rosenblum asked for the street address #’s for both houses on-site; Mr. Neuls answered, based on utility records, they are known as #’s 85 and 89.

Vice Chairman Sonenshine pointed out that the filed architecturals have an original date that is roughly 7 years old; Ms. Tubito stated they are the same plans filed with the prior Board application (Case #Z-2005-10), and that essentially none of the initial design has changed since. Vice Chairman Sonenshine asked that vertical dimensions be shown on the architecturals’ elevations page to verify building height compliance; Ms. Tubito said it would be done.

Outcome

The Board adjourned the application to the February 16, 2011 Hearing pending its receipt of requested items.



A motion was made by Mr. Bianco and seconded by Ms. Hartwell, to memorialize the Resolution for 63 John Street (Case #Z-2009-14), with noted corrections. All eligible members present voted in favor.



In order to avoid future problems, Mr. Bianco suggested the Borough Engineer, using proper instruments, provides 200' lists to applicants for public noticing. Mr. Demarest pointed out that the Tax Assessor generates 200' lists from computer software and felt Mr. Bianco's suggestion would require the 200' list fee to be heavily-increased based on the Borough Engineer's \$150.00 hourly rate. Chairman Knee concurred.



There being no further items to discuss, a motion to adjourn the meeting was made by Secretary Freesman and seconded by Ms. Hartwell. All members present voted in favor. The meeting adjourned at 10:40pm.