



# **Zoning Board of Adjustment**

June 2, 2011

**\*\*\*Special\*\*\***  
***Hearing***  
***(Minutes)***

Prepared by:

**Paul Demarest**

Chairman Knee called to order, at 8:04pm, a (Special) Hearing of the Zoning Board of Adjustment for the Borough of Closter, New Jersey, convening Thursday, June 2, 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:

- 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
- Andrew Shyong, DDS- Alternate #3
- Marie Hartwell- Alternate #4
- Arthur Dolson- Council Liaison
- 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:

- Mark Crisafulli- Alternate #2
- Leonard Sinowitz- Zoning Officer



Although mail correspondence received by the Land Use Department was not read into the record, Mr. Demarest noted that both Mr. Morris' review letter for "Item #1" and a memo from counsel representing the applicant in "Item #2" were received earlier in the day.



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-2011-09  
208 Piermont Road  
(Block 1901/Lot 47)

Applicant(s):                   Locale Restaurant & Bar  
Representation:                 David Watkins, Esq.

The applicant is seeking Use Variance and Site Plan Approvals for the construction of an outdoor café/dining area (patio, fountain and light posts inclusive) to complement the subject establishment.

David Watkins, Esq., 285 Closter Dock Road, Closter, New Jersey, introduced himself. He stated a “D(2)” variance (expansion of non-conforming use) is being sought and that the question is whether the proposal is an expansion of either a non-conforming use or structure, to which he felt it was a combination of both. He explained that if the project dealt only with the expansion of a structure, the Planning Board would have jurisdiction. Mr. Watkins informed that the applicant would not be increasing the existing seating capacity of his restaurant, but rather he wishes to relocate existing seats from inside the building, during clement weather, to a patio for outdoor dining; he said the proposed outdoor arrangement would equate to 60 seats (4 each for 15 tables).

Robert Kaplan, RA, 52 Chestnut Avenue, Closter, New Jersey, was sworn in as Witness #1. Exhibit #A-1, a set of architectural drawings prepared by the witness dated May 12, 2011 and last revised May 31, 2011, was presented. He stated the subject site had situated on it both a restaurant and outbuilding, the latter of which is used for residential purposes. He said the proposal includes an approximately 50’x40’ paver stone patio with a roughly 3’ high stone pedestal handrail (with lantern lighting) around its perimeter; he stated there would also be a walking area that leads to stone benches and pedestals (with lantern lighting) encircling a now-defunct fountain (to be reactivated). The witness explained that the original concept called for tall light posts but the stone pedestals, with lantern lights sitting atop them, was agreed upon; he informed that, in addition to the handrail, 4 more such pedestals would be placed in the center of the patio. He continued saying a retaining wall would be built to pick up changes in grade resulting from the installed patio. Mr. Kaplan testified that the proposed patio would abut the existing residential building, which he estimated to have been built in the 1930’s; he said the “house”, occupied by several employees of the restaurant who are not charged rent, includes 1 kitchen and bedroom on the 1<sup>st</sup> floor and 3 bedrooms on the 2<sup>nd</sup>. The Board halted the witness from testifying as to the nature of the “house” on-site. Mr. Watkins stated the applicant would give such details during his testimony. Chairman Knee asked if the outdoor dining area is to be located where there an existing impervious surface; counsel replied it would be. Ms. Hartwell asked how many seats are currently in the restaurant; the witness answered the occupancy load placard posted inside the building indicates 220 seats are permitted. Chairman Knee asked for the procedure in relocating the outdoor seating during different types of weather. Mr. Watkins stated, in his experience with these types of applications, that management keeps seating/tables outdoors (without daily relocation to inside) for the length of the season and, if bad weather arises, umbrellas are utilized. Chairman Knee inquired how no increase in the total amount of seating could be ensured; Mr. Watkins felt that the normal activity of a restaurant, not including fast-food chains, is that they are never fully-occupied and he added that the outdoor café is a seasonal use only. Mr. Ouzonian felt such a response did not satisfy his skepticism about the proposed seating arrangement; Mr. Watkins said the applicant would testify to such. Mr. Ouzonian asked how the patio would be serviced from the restaurant’s kitchen; the witness

replied there is an approximately 25' path of travel from the kitchen, through a hallway and door leading down a stepped entrance to the patio. Mr. Ouzoonian asked why Exhibit #A-1 shows 2 down arrows on the staircase off the patio; the witness stated the steps provided egress from the patio with 1 going west and the other going south. Mr. Ouzoonian asked if screening has been considered for the existing mechanical equipment adjacent to the restaurant; Mr. Watkins answered that any ductwork exposed above the top of proposed screening would be painted (matching the restaurant's stucco) to further hide it. Mr. Ouzoonian asked that such approach be reflected in the architectural; the witness obliged. Dr. West, citing 10 lights around the patio's perimeter and 4 in the center of the patio, was concerned that certain diners, depending on their seating, would not have sufficient illumination; the witness stated there would be candles supplied for each table and wished not to have too powerful of a light source. Mr. Bianco concurred, saying a "romantic" setting was desired. Dr. West asked if the lantern lighting would be gas-fired; Mr. Kaplan stated they would be electric-powered but did not know what their output would be. Mr. Watkins said such a detail would be a balancing act and believed both the applicant and Board's engineers should come to a compromise. Vice Chairman Sonenshine asked that isometric projections be filed with the Board to know how many foot-candles there would be; the witness agreed. Mr. Bianco asked how high the originally-conceived light posts would have been; Mr. Kaplan said they were 8' and Mr. Bianco added that the proposed 3' high pedestal lanterns greatly reduces any light impact. Mr. Bianco asked how the outer portion of the patio would be utilized being the 15 tables are concentrated in the center surrounded by 4 pedestals; the witness felt that no matter the arrangement of seating/tables, the patio's size would easily accommodate 60 occupants. Mr. Watkins informed that the outer portion of the patio, measuring 11' in width, would be reduced to detract additional customers from being seated there. Mr. Bianco asked if dancing and/or music would take place on the patio; Mr. Watkins said there would be neither and that only 1 mobile waiter station would be placed on it. Mr. Bianco asked about the minimum square footage per occupant required for such a use group ("A-2"/Assembly) as per the New Jersey Uniform Construction Code (UCC); Mr. Watkins said it is 15sf. Mr. Bianco stated the patio is to be 2,000 sf with 15 tables and Mr. Hennessey revealed that equated to approximately 125 occupants being permitted on it at 1 time; Mr. Ouzoonian felt such a formula applied to exiting and fire escapes only to which Vice Chairman Sonenshine confirmed it determines the number of persons allowed in a certain space. Based on such calculations, Mr. Bianco believed the patio should be reduced in size to lessen its occupancy load; Mr. Watkins replied the applicant would agree to such merely to ensure a 60 person maximum. Councilman Dolson said he assumed 1 of the down-marked set of steps located between the residence and restaurant led to a basement; the witness said it did. Councilman Dolson asked about security provisions for departing customers both in the parking lot and the building (he pointed out the depressed stair well has no barrier); Mr. Kaplan said he did not know and Mr. Watkins said the stair well would be gated. Vice Chairman Sonenshine asked that the architectural, which indicate gas-fired lantern lights, be corrected to reflect the intended power source (electric) and he asked if the tables are drawn as a 3' diameter; the witness replied in the affirmative. Vice Chairman Sonenshine felt the patio's layout was too congested to allow for diners to maneuver and also believed it could be too dark for customers seated in the center. He asked how umbrellas would be oriented and if they would have a heat source for cold weather dining; Mr. Watkins said such had not been determined. Vice Chairman Sonenshine asked about drainage of the patio immediately after a sudden downpour; the witness said there is existing pavement below the proposed patio and that weep holes would be installed in the retaining wall. Vice Chairman Sonenshine stated that there would still be puddling because there are would only be sand joints and the Borough Code considers paver stones to be impervious. He asked for clarity on the existing fountain, which he said looked merely like a pile of rocks; the witness said the once-active fountain would be

cleaned up and reactivated. Vice Chairman Sonenshine inquired about the acoustics and sound to be generated against the property line shared with residences (Heaton Court); Mr. Kaplan said nothing is planned to address the issue. Mr. Monaco asked about the existing vegetable garden on-site; Mr. Watkins said it would remain. Mr. Monaco asked if the patio's surface material would match that of the restaurant's front entrance; the witness said he did not know. Mr. Monaco asked if loudspeakers would be installed outside in lieu of live music; Mr. Watkins said no music has been contemplated. Mr. Monaco asked if a customer would be able to use the outdoor café for drinking only without ordering a meal; Mr. Watkins said such would be allowed. Dr. Shyong asked if the outdoor tables would be permanent in nature; Mr. Watkins stated they would be brought inside the restaurant at the end of the season. Chairman Knee pointed out a berm is proposed to block out sound from the residential neighbors and Mr. Watkins reminded that there is no sound barrier at Ruckman Park. Mr. Ouzoonian asked if the restaurant's exterior lighting would intermingle with the outdoor café's in terms of safety for the parking lot, etc.; Mr. Watkins said the applicant's engineer would speak to that. Mr. Bianco asked if the patio's lantern lights would be equipped with hoods; the witness said the hoods are made of glass or metal. Mr. Bianco hoped that metal hoods would be used so that light would be directed downward only.

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

Jesse Rosenblum, 65 Knickerbocker Road, asked how flying insect control would be handled; the witness said normal measures would be taken. Mr. Rosenblum asked if there are any steps in the path of travel from the restaurant's kitchen to the patio; the witness said while there are not, there are 3 sets of egress stairs elsewhere throughout the perimeter of the patio. Mr. Rosenblum asked if the proposed tables are to be both round- and square-shaped; Mr. Watkins said such was not decided on.

Michael Hubschman, PE, 263(A) South Washington Avenue, Bergenfield, New Jersey, was sworn in as Witness #2. Exhibit #A-2, a colorized version of a pre-filed site plan prepared by the witness dated March 9, 2011 and last revised May 3, 2011, was presented. Mr. Bianco asked in what capacity the witness would be testifying; Mr. Hubschman said he would be serving as both an engineer and planner. The witness said the patio, measured 50'x42' if taken from the ramp, would be 2.0' to 2.5' above the existing grade, resulting in the need for steps to and from the raised patio. Exhibit #A-3, a set of 2 plates prepared by the witness dated June 2, 2011, was presented. Mr. Hubschman stated that in response to a post-Work Session memo from Mr. Demarest, the following design changes were made: 1.) reduction of proposed impervious coverage increase to net zero change (remaining at existing 51.78%) via removal of macadam southwest of residence, triangular-shaped portion of parking lot in rear yard and installation of 4' wide, 2' high boxed hedge (serving as barrier protection); 2.) 2 additional parking spaces to be added via readjustment of striping; 3.) grate installed over existing inlet in rear yard; 4.) slope of 6' wide, "L"-shaped, landscape berm (serving as sound barrier to west and south) changed from 1:1 to 2:1; 5.) 6' high refuse container to match restaurant's façade (block with stucco face), have polyvinyl chloride (PVC) gate and be large enough to house 2 dumpsters; 6.) 8' high PVC fence and paint (color of restaurant's stucco facade) to screen view of existing mechanical equipment from Ruckman Road. Mr. Hubschman said under a "D(2)" variance, the New Jersey Municipal Land Use Law (MLUL) requires the applicant to increase the compatibility with the neighborhood as well as meet both positive and negative criteria; he felt the positive was met by promoting general welfare and making aesthetic improvements to the site. As to the negative, the witness stated the following: 1.) no increase in site's use or traffic; 2.) sound buffering for residential lots on Heaton Court that are roughly 230' deep (300+' away from proposal); 3.) no

increase in storm water runoff (floor drains to be installed and connected to existing seepage pit, thereby alleviating any change to drainage); 4.) 52 parking spaces on-site, along with public parking lot at Ruckman Park, to provide adequate off-street parking. Vice Chairman Sonenshine pointed to a discrepancy between the site plan and architectural drawings in which the retaining wall and ramp is not indicated on the latter; the witness said the ramp is part of the proposal since it provides the only access to both the fountain and residence. Vice Chairman Sonenshine asked how a handicapped person would get to the fountain if there is only grass at the bottom of the ramp; Mr. Watkins stated the ramp would be eliminated. Vice Chairman Sonenshine inquired about the 2 existing handicap parking spaces on-site that seem not to comply with aisle and striping standards; Mr. Morris informed that a lot, with parking spaces in excess of 50, must provide for 3 handicap spaces. Mr. Hubschman answered that 2 additional handicap spaces would be added; Vice Chairman Sonenshine suggested that by putting the 2 next to each other, the same aisle space could be shared. He felt the refuse container may not be large enough to hold 2 dumpsters; the witness said he would see if a 12' wide version, rather than the 10', is necessary. Ms. Smickley asked if there is substantial detriment to the Borough's Master Plan; the witness replied there is not. She inquired, under the positive criteria, about light, air and open space; Mr. Hubschman responded that all 3 elements are provided for. Mr. Morris said the proposed pitch of the patio is very minimal and suggested lowering the elevation at the steps to 46.0', resulting in a 1.0% pitch; the witness agreed. Mr. Bianco asked if the patio's elevation would be that of the restaurant's (46.61'); the witness said it would be 46.50'. Mr. Bianco asked for the elevation of the landscape buffer in front of the patio; the witness replied it is 46.0'. Being the patio's front portion would be 6" higher, Mr. Bianco asked how much of the 2' high stucco wall (part of the boxed hedge) in the front of the patio would block the balustrade surrounding it; the witness replied possibly 1' would be hidden. Mr. Bianco felt more would be covered (18" or 1/2 of the balustrade) and he noted that the Board had suggested a "bumper curb" in front of the patio rather than a boxed hedge, which would end up hiding the architectural beauty of the patio's design; Mr. Morris remembered suggesting a 10" "bumper curb" in his phone conversations with the witness, who agreed to lower the boxed hedge. Mr. Bianco asked that the site plan show that the existing pillars (located at the parking lot's entrances) would no longer be encroaching into the Borough's right-of-way; the witness said the pillars (indicated as bollards) would be relocated and Mr. Watkins said an exemption from the Bergen County Planning Board would be sought for any encroachment onto Piermont Road. Mr. Hennessey pointed out the site plan calls for an outdoor fireplace while the architectural drawings do not; Mr. Hubschman said there would be none and that the site plan would be corrected. Dr. West asked for the proposed total occupancy for the restaurant and outdoor café combined; Mr. Kaplan corrected himself, saying the occupancy load placard posted inside the building indicates 210 (not 220 as previously testified to) seats are permitted and Mr. Watkins reiterated that the interior seating capacity would merely be relocated during clement weather to allow for outdoor dining. Both Dr. West and Mr. Ouzoonian were uneasy about how such shifting of seating could be supervised so that the occupancy load does not exceed 210 persons. Ms. Hartwell asked why 60 actual chairs from inside the restaurants could not be moved to the patio when needed; Mr. Watkins replied that the outdoor café's motif will differ from the restaurant. Dr. West stated the site's use requires 122 parking spaces and only 52 are provided; he asked what would occur if both the restaurant and Ruckman Park's parking lots were full. Mr. Watkins believed the Board needed to decide if the Borough's benefit of an outdoor café outweighs an infrequently-occurring parking shortage. He further stated that Temple Emanuel of Closter (180 Piermont Road) uses Ruckman Road for its excessive parking needs. Chairman Knee interjected saying that, from personal experience, valet parking would allow for vehicles to be "stacked", fitting several into a small area. Mr. Hubschman pointed out that based on a 210 occupancy load, the site's parking space requirement would be 120, not 122. Mr. Bianco asked how many vehicles could be parked

on-site with the use of valet parking; Mr. Hubschman believed 75 to 80. Mr. Bianco informed that Ruckman Park's parking lot consisted of 38 spaces (conceivably 113 to 118 total parking spaces are available if need be). Mr. Ouzoonian inquired about the 2' high wall to the south and east of the proposed "L"-shaped berm. The witness said such was existing and that it does not pose a threat to drainage, noting there is a ditch running along the nearby property line along with a seepage pit in the rear yard; he noted that removal of said wall would involve a large amount of soil movement. Mr. Ouzoonian asked if there was currently any exterior lighting on the restaurant; the witness said there are 2 fixtures at the front canopy, 2 under the front porch and a few street lights lining the perimeter of the corner lot. Mr. Ouzoonian asked what the proposed increase in light intensity would be for the project; the witness said the forthcoming isometric projections would include both the patio and street lights. Mr. Bianco expressed concern about light spillage coming from both the existing parking lot and proposed outdoor café due to an overabundance of foot-candles; Mr. Watkins assured such would be addressed by the witness and Mr. Morris. Mr. Ouzoonian asked for clarity on the structure hugging the property line of the adjacent lot to the south; Chairman Knee said it is a detached garage. Dr. West asked if an arborist would be testifying on the proposed landscape berm; Mr. Watkins replied in the negative. Dr. West asked if the spruces and firs would thrive on the berm; the witness said such is a standard berm detail submitted as part of several prior Board cases and Mr. Watkins promised to deal with the Shade Tree Commission on such.

Chairman Knee opened the meeting to the public for questioning of Witness #2 only.

Jesse Rosenblum, 65 Knickerbocker Road, asked for proof in the record that supports the restaurant as being a pre-existing, non-conforming use; the witness replied that while there are no records of such, his firm surveyed the site 25 years ago. Mr. Rosenblum asked if there is any proof legalizing the outbuilding's use for restaurant employees to reside in; the witness deferred to the applicant.

Enver Gashi, applicant and owner of Locale Restaurant & Bar, 208 Piermont Road, Closter, New Jersey, was sworn in as Witness #3. He testified that there has not been any issue with on-site parking since his business opened in 2010 and said that even on Fridays and Saturdays, his establishment is doing only 100 to 120 covers. He stated his valet service (consisting of 2 workers on Fridays and Saturdays) has never had to utilize Ruckman Park's lot. He acknowledged that 2 of his employees reside in the house on-site. He noted that a recent elderly customer spoke of living in said residence when she was 18 years old; he also cited an untitled publication that spoke of his restaurant building doing business as *Red Coach Inn* as far back as 1938. The witness said the purpose of the project is to please his customers and give them more of a choice in dining. He informed that the restaurant has 3 dining rooms, 1 of which (private room) seats 35 and is usually empty; he said those seats would simply be shifted to the outdoor café. Mr. Ouzoonian asked what the hours of operations would be for the outside dining; the witness replied that the kitchen closes at 10:30pm. Mr. Ouzoonian asked if any Borough ordinance regulated business hours; Mr. Watkins stated there was none. Mr. Bianco asked for the restaurant's current hours of operation; Mr. Gashi said the restaurant is open 7 days a week (lunch- 11:30am - 3:00pm/dinner- 4:00pm - 10:30pm). The Board questioned if it could put a time limit on the patio's use; in lieu of the Zoning Officer's absence, Vice Chairman Sonenshine believed the Borough Code only regulates outdoor lighting, not this type of issue. Ms. Smickley asked if the applicant would agree to a time limit on the outdoor café; Mr. Watkins said he would and suggested that 11:30pm would be an appropriate time to shut down for the evening. Mr. Bianco inquired if the subject liquor license addresses such an issue; Mr. Watkins

responded it does not and informed that the applicant has the right to keep the restaurant (indoors only) open 24 hours if he so chose to. Mr. Bianco asked for the maximum amount of parking spaces the applicant has filled since opening for business; Mr. Gashi estimated to be 35 to 49 of the 52-space lot.

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

Jesse Rosenblum, 65 Knickerbocker Road, asked if customers can bring their own liquor and consume it at the restaurant; the witness said they cannot.

Mikelle Schifter, 22 Garry Road, expressed her support for the application and stated that she can view the subject property from the rear yard of her residence and had no concerns whatsoever.

Mr. Watkins waived his summation.

### **Outcome**

Mr. Bianco believed a reduction in the patio’s size was needed to ensure the agreed-upon occupancy load would not be exceeded; Chairman Knee, Vice Chairman Sonenshine and Secretary Freesman disagreed saying such would hinder seating comfort and negatively-affect maneuverability of waiters serving the customers. A motion was made by Mr. Bianco and seconded by Mr. Monaco, to approve the application with the following conditions: 1.) live music prohibited in outdoor café only (stereo system/loudspeakers are permitted); 2.) revised site plan and architectural to be in sync with each other and filed with Board prior to memorialization of Resolution; 3.) boxed hedge to be changed to more of a “bumper curb”; 4.) elimination of outdoor fireplace and ramp/walkway; 5.) refuse enclosure to be enlarged to house 2 dumpsters; 6.) patio’s lighting design to be coordinated between applicant’s engineer and Mr. Morris; 7.) screening of existing mechanical equipment via 8’ high fence and paint; 8.) total of 3 handicap parking spaces installed; 9.) patio to have 1% pitch and drainage installed; 10.) size of patio to be 50’x38’ with both its length continuing line of parking lot and covered porch and its depth continuing line of residence; 11.) dead vegetation to be removed from vicinity of Heaton Court; 12.) outdoor café to close at 11:30pm with stereo system/loudspeakers being shut off at 11:00pm. The motion passed (7-0: YES- Ouzoonian/ Monaco/ West/ Bianco/ Freesman/ Sonenshine/ Knee).



### **Item #2**

Case #Z-2010-14  
3 Lindemann Avenue  
(Block 608/Lot 7)

Applicant(s): Inga Grossman-Savitsky  
Representation: Thomas Izzard, Esq.

The applicant is seeking Amendment Approval for the removal of a deed restriction, specifically a “living fence” consisting of evergreen trees, that was stipulated in a previously-approved Board application (Case #Z-1991-08), whereby Bulk Variance Relief was granted for the construction of an addition to her residence.

Mr. Demarest stated that Mr. Ouzoonian (absent from the May 18, 2011 Hearing when the presentation of "Item #1" commenced) has signed an affidavit attesting that he listened to the proceedings via compact disc and, thus, is eligible to vote on the case.

Councilman Dolson interjected saying that, as per Chapter 18 of the Borough Code, employees of the Borough are not allowed to represent a party, other than the Borough, at a public meeting; he said the Borough's Code of Ethics applies to the subject case since Raymond Cywinski, the Borough's Certified Tree Expert (hired under the title "Code Enforcement Official (Trees)") and possibly James Whitney, 1 of the Borough's Code Enforcement Officers, may be called to testify by the applicant's attorney. Ms. Smickley informed that it is not the Board's decision whether an individual employee wishes to comply with or violate the Borough's Code of Ethics, though it is prudent to make those involved aware of such.

Thomas Izzard, Esq., Fierro, Fierro & Izzard, PC, 230 Main Street, Fort Lee, New Jersey, introduced himself. He clarified that Mr. Cywinski is not being paid for his testimony nor is he an advocate of his client but merely a fact witness; he felt his appearance was essential being his findings, which support Ms. Grossman-Savitsky's belief that a living fence cannot thrive in the subject area, are referenced in much of Mr. Whitney's correspondence with her. Mr. Bianco asked if an administrative report was filed by Mr. Cywinski; Mr. Demarest replied that being the case did not involve Site Plan Review, 1 was not requested of him. Chairman Knee believed there was no conflict of interest, especially since Mr. Sinowitz is often sworn in as a witness by the Board. Ms. Smickley felt that both Mr. Cywinski and the Zoning Officer are able to testify due to the Board's power to subpoena, thus making them fact witnesses and not representatives of the Board. She added that an applicant calling them to testify may or may not be considered representation. She felt Mr. Izzard should present his case and, afterward, the Board can decide if it feels Mr. Cywinski's testimony is relevant. Chairman Knee asked Mr. Cywinski (sitting in the audience) if he agreed to such an approach to which he replied he would defer to Ms. Smickley's opinion; she revealed that she could not give him legal advice since she only represents the Board. Secretary Freesman suggested that he go on record saying he would be testifying as if he were subpoenaed; Mr. Cywinski agreed to remain and await being called to testify.

Anthony Lupardi, Lupardi's Nursery, Inc., 75 Blanch Avenue, Closter, New Jersey, was sworn in as Witness #1. He stated that, over time, he has planted items at 3 Lindemann Avenue on 3 to 4 separate occasions. He said that approximately 20 years ago, he initially planted native rhododendrons because they are specific to shaded areas; he said such was the case in the northern side yard of the subject site. Mr. Lupardi said the area has hemlocks to the north, a garage wall to the south, 1 mature oak tree to the west and mature bamboo to the east; he stated his most recent visit to the property was on May 16, 2011. He believed the relevant side yard setback to the property line shared with 61 Taillon Terrace measured about 6'. The witness revealed there are remnants of only 1 rhododendron left from the original planting; he believed the reason was the lack of sunlight and water due to the mature hemlocks and fence located on 61 Taillon Terrace and the mature oak and garage wall on the applicant's land. He noted that he advised the applicant, initially, that plant life would not thrive in the area, but she was adamant that she must adhere to having a living fence as part of her 1991 Board approval. In 2006, he said the 2<sup>nd</sup> planting was of 2 Serbian spruces, which can handle some shade but, nonetheless, died for the same reasons. During his latest inspection of the site, he viewed bamboo encroaching from the neighbor's land onto the applicant's; he stated bamboo is invasive, spreads rapidly, is difficult to control and most plant life cannot survive in its presence. Mr. Lupardi testified that the root ball of any new plantings should be at least 3' from the applicant's garage

wall and the root ball of a matured, 10' high plant would be roughly 2' wide; thus, in this case, most if not all of the side yard setback would be utilized. The witness felt that if an evergreen's branches were to touch the garage wall, they would die; even if spaced apart 6" to 1', he said they may not thrive depending on the amount of sunlight. He testified that, with current soil and sunlight conditions, another planting of rhododendrons or Serbian spruces would die within 2 to 3 years; given that, he felt the bamboo is the only species that could serve as a decent buffer between 61 Taillon Terrace and the subject lot. Mr. Monaco asked how long it would take the bamboo to take over the entire subject area if left unchecked; the witness replied only shielding could thwart the bamboo, which can grow to heights of 20+'. Councilman Dolson asked if bamboo is part of the evergreen family; Mr. Lupardi said while it is deciduous, its stalk is so thick that one cannot see through it. Councilman Dolson asked if any existing vegetation had to be removed prior the 1<sup>st</sup> planting of rhododendrons; the witness replied none had to. Councilman Dolson inquired if arborvitae could survive in the subject area; the witness responded it could not. Mr. Bianco asked what bamboo shielding is; the witness explained it is a metal plate that must be installed at least 3' into the ground to block the bamboo, which has an underground stem that continues laterally and uproots constantly. He stated that the shielding depth may need to be increased because bamboo often redirects itself around any impediments. Mr. Bianco asked if shielding is an expensive item to which Mr. Lupardi stated he has never installed it; he stated he would never recommend planting bamboo in a confined area. Vice Chairman Sonenshine asked if the bamboo could eventually bypass the fence at 61 Taillon Terrace and onto 3 Lindemann Avenue; Mr. Lupardi revealed it already has. Secretary Freesman asked if the bamboo originating from 61 Taillon Terrace, inadvertently, has served as a "living fence"; the witness felt such could be said from the neighbors' standpoint, but that it would take another 5 years for his customer to have the same affect from her property. Dr. West stated that near his residence on Mc Cain Court, there is very dense and invasive bamboo reaching 30' to 40' into the air; he asked if additional bamboo planting is needed to provide a more-full buffer between the 2 properties. Mr. Lupardi said he was not sure, but noted that too much would affect the maintenance of the applicant's air conditioning unit. Mr. Ouzoonian asked if bamboo could compromise a house's foundation; the witness replied he has seen such occur, whereby it went through the wall and water seeped into the basement. Ms. Hartwell said, through 1<sup>st</sup> hand experience, that bamboo grows quickly, damages everything in its path and its restriction (shielding) is a very involved procedure.

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

Doris Heise, 61 Taillon Terrace, asked how many times the witness has planted in the subject area over the past 20 years; he responded 2 times. She asked what the 2<sup>nd</sup> planting consisted of; Mr. Lupardi stated 2, 6' to 7' high Serbian spruces were planted. Ms. Heise asked about the evergreens that the witness had planted, at 1 time, on her own property to hide the applicant's garage wall; he replied that he had selected Norway spruces to the west of the subject area, which have doubled in size and thrived in spite of the hemlocks and oak tree in the vicinity. Exhibit #A-2, a photograph showing the Norway spruces on Ms. Heise's side of the shared property line, was presented.

Jesse Rosenblum, 65 Knickerbocker Road, asked what happens to a plant growing in the subject area, in terms of light; the witness said light is taken away from the bottom of the plant since it seeks light from the top but, if enough light, it should become more established as it gets taller. Mr. Rosenblum asked if it was problematic to put a plant's root ball up against the existing fence; the witness said the part of the foliage up against the fence would die while the other parts

would continue to grow despite the unsightly dieback at the plant's bottom. Mr. Rosenblum asked if rosebay rhododendrons are in the native category; the witness said they are; Mr. Rosenblum inquired about Mount-Laurel and Mahonia as possible plants that could thrive in the subject area; Mr. Lupardi replied that the former takes the same amount of light as rosebay rhododendrons while the latter is also a low light plant but that a 10' version of it is not available. Mr. Rosenblum asked if he was a paid witness; he answered that while he initially told the applicant that there would be a fee for his Board appearance, he decided against requesting payment. Mr. Rosenblum asked what the recommended spacing would be for 10' tall evergreens in the subject area; the witness stated that if screening was their sole purpose (without regard for them to thrive on all sides), their root balls could be right next to each other. Mr. Rosenblum asked what watering regimen should be followed for such a planting sequence; the witness said for the 1<sup>st</sup> 2 weeks, a minimum of 1x per day is required, followed by every 2<sup>nd</sup> to 3<sup>rd</sup> day and, finally, whenever they become dry. Mr. Rosenblum asked how far away such plantings should be from an air conditioning unit; Mr. Lupardi stated that only if the condenser is blowing air sideways (not upwards), they should be planted 3' away. Mr. Rosenblum asked if the witness had evidence that the applicant properly watered during all attempts at maintaining a "living fence"; the witness answered he did not. Mr. Rosenblum asked if, 20 years ago, the subject area was prepared before planting or holes were simply dug beforehand; Mr. Lupardi said he could not remember, but that such depended on the soil and he stated the root balls would have been planted close to the surface.

Inga Grossman-Savitsky, applicant and owner-in-fee of the subject property, was sworn in as Witness #2. Exhibit #A-3, a survey by F. William Koestner, PLS, dated July 19, 1985, was presented. She stated said exhibit was given to her when she purchased the home and showed that the subject side yard setback was 5.1' prior to her 1991 construction project and has remained unchanged. Exhibit #A-4, a photograph taken on June 1, 2010 indicating bamboo growth beyond the fence and onto 3 Lindemann Avenue, was presented. The witness stated she did not know who originally planted the bamboo or when such was done, though she said, since 1991, the subject area has become very shaded due to the bamboo, tree growth and, now, the fence; she noted that white pines she had planted by her patio and away from the subject area, have begun to succumb to the shade. The witness said she always used a soaker hose to irrigate her plantings to no avail. She informed that her neighbor's house has 2 windows facing the subject area, a 1<sup>st</sup> floor kitchen which is beyond the direct view of the garage and a 2<sup>nd</sup> floor bedroom.

Chairman Knee opened the meeting to the public for questioning of Witness #2 only.

Jesse Rosenblum, 65 Knickerbocker Road, asked when applicant installed her central air conditioning system (condenser); the witness replied it was part of her renovation in 1991.

Richard Jones, 46 Route 23, Montague, New Jersey, was sworn in as a representative speaking on behalf of George and Doris Heise, 61 Taillon Terrace, Closter, New Jersey (Objector #'s 1 and 2). Mr. Jones informed that he is the son-in-law of the objectors and gave a brief opening statement.

Kenneth Barber, CTE, Ken's Tree Care Co., 401 Paulding Avenue, Northvale, New Jersey, was sworn in as Witness #1. He testified to have examining the subject site at 8:00am, 10:00am, 12:00pm and 2:00pm to establish the possible growth potential of certain plants. He believed that, with some proper pruning on both sides of his customers' fence to lessen the shade, 10'

high evergreens, such as taxus baccata (yew) and hemlock, could be planted to abide by the court order imposed upon the applicant in 2003; he informed that both species are very low light plants and that both are already thriving only a short distance from the subject area. The witness believed the existing soil and moisture is adequate to allow plant growth to thrive, assuming a maintenance plan is followed. Chairman Knee asked if Mr. Barber was a paid witness; he revealed that he was. Dr. Shyong asked if the maintenance program that Mr. Barber spoke of would include having the Heises prune their own vegetation to allow for more sunlight in the area; the witness replied that he was referring to the applicant's ability to water, mulch and keep the trees disease- and insect-free. He pointed out, however, that a fairly significant pruning now would last for 5 to 10 years before it is needed again. Mr. Hennessey asked if the fence would have to be removed; Mr. Barber said that although it would impact the lower branches of the "living fence", the portion of the trees above serving as the main buffer of the applicant's garage wall would thrive in spite of it. Dr. West inquired if a berm being installed would help in providing more substantial buffering; the witness felt such was not necessary and would only complicate matters by potentially creating drainage problems. Dr. West asked about native rhododendrons; Mr. Barber stated since they are a broad leaf evergreen, they would be more susceptible to winter damage and, therefore, a needled evergreen (conifer) would be heartier. Mr. Ouzoonian expressed his concern about the bamboo; the witness explained it multiplies through "riser morphs"/root production and, thus, the following are the only 2 defenses against bamboo spreading: 1.) coil/stainless steel sheets; 2.) *Biobarrier* (fabric). Mr. Ouzoonian asked if the Heises were willing to take such measures; the witness said he did not know. The witness felt that if an established evergreen hedge was planted, it would be difficult for bamboo to overtake that area; Ms. Hartwell interjected saying such is already occurring. Mr. Barber responded the reason for such is that is there currently nothing in the area competing against the bamboo. Dr. West asked about the blight afflicting the Heises' hemlocks; the witness said they are infected with woolly aphids, which can be eradicated if the trees are sprayed bi-annually with horticultural oil. Councilman Dolson asked if any live planting can be construed as permanent; the witness said there is no permanency to any live thing.

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

Mr. Izzard asked if the witness' livelihood involved tree planting as well as removal; Mr. Barber stated his tree care service dealt with both. Mr. Izzard asked for the age of his clients' hemlocks; the witness estimated them to be 30 years old. Mr. Izzard believed such age would imply they had several years of growth prior to the applicant's 1991 construction project as opposed to newly-planted trees in an area with garage wall and other sources of shade; the witness said he could not concur without more research. Mr. Izzard asked how many hemlocks were on the Heises' side of the shared property line; Mr. Barber answered that there are 2 plumps, each having 4 to 5 stems but no branches from the ground up to roughly 15' to 20'. Mr. Izzard asked what other vegetation is growing at 61 Taillon Terrace; the witness replied there is bamboo, spruces, lawn, and other low plants. Mr. Izzard inquired what additional benefit would be derived from having additional evergreens planted in an area with so much plantings; Mr. Barber stated they would shield his clients' view of the applicant's blank, garage wall from their window(s). Exhibit #O-1, a series of photographs taken by the Heises showing views of the subject area via their window, front and side yards, was presented. Mr. Izzard asked for the height of the dogwood in the Heises' front yard; Mr. Barber answered it was about 15'. Mr. Izzard asked what the Heises' side yard setback is from the subject area and if it could handle additional plantings; the witness replied he did not know but that it was larger than the applicant's and spacious enough for more plantings.

Jesse Rosenblum, 65 Knickerbocker Road, asked if Mount-Laurel grew to 10' high; the witness said it does. Mr. Rosenblum asked the same about both rosebay rhododendrons and Mahonia; the witness replied he was not familiar with the former, a cultivar which he did not know would be conducive to this part of New Jersey (designated as Hardiness Zone #5 by the United States Department of Agriculture (USDA)); as for the latter, the witness said it was not indigenous to the area. Mr. Rosenblum asked if a "wall" of shrubbery would convey a better "feeling" than simply looking at a blank garage wall; Mr. Barber felt it would definitely soften the view's impact.

The Board affirmed by acclamation to compel the testimony of Mr. Cywinski, who agreed to appear in lieu of a subpoena.

Raymond Cywinski, CTE, 295 Closter Dock Road, Closter, New Jersey, was sworn in as Witness #1. The witness explained that such issues generally result in civil litigation and, unfortunately with this case, the Borough is somewhat involved because of a court decision. He noted that at White Beeches Golf & Country (Borough of Haworth), a stand of bamboo was recently removed; he informed that within 3 days, there were 3' tall bamboo shoots in its place. The witness stated that while it can be shielded, the species is very smart and he believed a shield, 3' deep, would easily be bypassed. He informed that Mr. Whitney, following several complaints being filed by the Heises, had requested that he visit the subject site in 2010 to give his professional opinion. He felt the applicant's 4.66' setback from her garage wall would prohibit any plant life from thriving. Mr. Cywinski said her house's foundation could be damaged by roots; he believed evergreens' vitality is based on its northern exposure and, from personal experience, about the only thing that would thrive below the Heises' fence is English ivy, which he recommended be planted onto a 10' high trellis in the subject area rather than the 10' high evergreens prescribed in the court order. He further explained that the soil near the applicant's foundation is probably very acidic from leeching of the concrete plus the fact that builders tend not to respect the soil during construction (items get buried). He believed the area in question to be too dry and attempting to plant 10' high yew, which deer feed on, or hemlock would be ineffective. Mr. Cywinski noted that 10' high trees would be at least 3' to 5' wide unless they are continually sheered every year; he said such would possibly lead to the applicant's house (siding and roof shingles) being damaged from rubbing and wind action. With regards to his recommendation, he believed as long as the English ivy is watered properly (since the established oak tree and hemlocks taking up much of the moisture), it will prosper. Ultimately, he stated that by planting 10' high trees, there is not the same ability of the root structure, as there would be with using seed/young plants, to go into the native soil; he said, in deference to the court decision, the judge was probably not an expert in horticulture. Chairman Knee asked if evergreens planted on the Heises' side of their fence would be a good idea; Mr. Cywinski said they would more than likely thrive if placed far enough from the fence. He mentioned, however, that if the trees died off from the top of the fence down while their tops continue to grow, wind throw (especially during spring and winter when the ground is saturated) becomes a concern because the trees are top heavy. Vice Chairman Sonenshine informed that any trellis over 6' in height would require a variance; the witness understood and believed 10' high posts with chicken wire would enable the English ivy to become established. He stated the only means of curtailing bamboo is via herbicides and joked that the introduction of pandas could work as well. Ms. Smickley reminded the Board that its only decision to be made is not mediating private issues but rather whether or not the 1991 Resolution's condition needs to be amended, relieved or left unchanged. Vice Chairman Sonenshine asked if deer can eclipse a 4' high fence; the witness said a minimum of 8' is necessary to hinder them.

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

Jesse Rosenblum, 65 Knickerbocker Road, asked if the trees' root balls could be planted next to the fence; the witness said they could. Mr. Rosenblum asked if there was any evidence that 10' high plantings, with suitable spacing, were ever attempted; the witness could not confirm or deny such. Mr. Rosenblum inquired if the subject area's soil would need to be specially-prepared beforehand; Mr. Cywinski felt extensive excavation of the existing soil and introduction of top soil would probably be needed. Mr. Rosenblum asked if Mahonia was available 10' high; the witness did not believe so.

Doris Heise, 61 Taillon Terrace, asked if the witness has ever been on her own property; Mr. Cywinski said he has not. Ms. Heise questioned how long it would take for English ivy to grow on a 10' high trellis; the witness replied that wild-growing, 6' lengths could be found and grow to 10' within a few years, but acknowledged that if a 6" vine is planted, it would take 5 to 6 years to establish.

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

Jesse Rosenblum, 65 Knickerbocker Road, was sworn in as Objector #3. Exhibit #J-1, a copy of the Borough's 1940 Limiting Schedule, was presented. He stated that said exhibit shows the side yard setback and aggregate requirements at that time was 8' and 18', respectively; he said it shows how egregious the applicant's setback of 4.66' is. Exhibit #J-2, a copy of the case management order dated May 27, 2003 regarding *Rosenblum v. Savitsky, Zoning Board of Adjustment and Borough of Closter*, was presented. He said in 1991, the Board gave the applicant many concessions as part of its variance relief and the only benefit given to the Heises was a 10' high "living fence" consisting of evergreens with appropriate spacing; he felt the applicant has never put in the proper effort to assure such screening was established.

Mr. Izzard summated.

### **Outcome**

Dr. West stated the applicant never planted 10' high evergreens and, instead, made 2 lesser attempts on the cheap; as a result, he said the Heises spend 20 years trying to make up for that via bamboo, trees, fencing, etc. Vice Chairman Sonenshine agreed with Dr. West in that the applicant's initial attempts were lacking, but with the passing of so much time since the 1991 Board approval (with which he disagreed), it may be time to relieve the applicant of the condition. Mr. Hennessey believed the applicant should not be held to planting a "living fence" and was also against the idea of a wooden trellis since it would rot in 10 to 15 years; Secretary Freesman concurred. A motion was made by Vice Chairman Sonenshine and seconded by Dr. West, to remove the deed restriction imposed upon the applicant in her 1991 Board approval. The motion passed (**5-2: YES-** Ouzoonian/ West/ Freesman/ Sonenshine/Knee; **NO-** Monaco/ Bianco). A motion was made by Mr. Bianco and seconded by Dr. West, to require the applicant to install a 10' high trellis, accompanied with English ivy, for the length of the applicant's residence along the northerly boundary line shared with 61 Taillon Terrace. The motion passed (**4-3: YES-** Ouzoonian/ Monaco/ West/ Bianco; **NO-** Freesman/ Sonenshine/ Knee).



There being no further items to discuss, a motion to adjourn the meeting was made by Mr. Bianco and seconded by Vice Chairman Sonehsine. All members present voted in favor. The meeting adjourned at 12:25am.