



Zoning Board of Adjustment

March 16, 2011

Hearing
(Minutes)

Prepared by:

Paul Demarest

Chairman Knee called to order, at 8:08pm, the Regular Monthly Hearing of the Zoning Board of Adjustment for the Borough of Closter, New Jersey, convening Wednesday, March 16, 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
- Leonard Sinowitz- Zoning Officer
- Alysia Smickley, Esq.- Board Attorney
- Paul Demarest- Board Coordinator

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

- Mark Crisafulli- Alternate #2
- Arthur Dolson- Council Liaison
- Jeffrey Morris, PE- Board Engineer



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 Vice Chairman Sonenshine and seconded by Mr. Bianco, to approve the minutes for the February 16, 2011 Hearing. All eligible members present voted in favor. A motion was made by Mr. Bianco and seconded by Mr. Ouzoonian, to approve the minutes for the March 7, 2011 (Special) Hearing. All eligible members present voted in favor.



Chairman Knee requested 3 volunteers from the Board to serve on the Subcommittee for the March 23, 2011 Work Session. The following were assigned: Vice Chairman Sonenshine, Mr. Monaco and Dr. Shyong.



Being several Board members were not satisfied with the current draft of the 2010 Annual Report to the Governing Body, Chairman Knee tabled a Board vote until the April 20, 2011 Hearing.



Mr. Bianco started a discussion on amending the Board’s (Special) Hearing fee policy and asked for details on its current form; Mr. Demarest answered the standard fee is \$1,000.00, which the Board has the authority to waive. He said the Board tends to do such when it, and not the applicant(s), request a date. He noted that if it is waived, an administrative fee of \$100.00 is still charged and its payment is divided between the number of applicants scheduled to appear. The Board agreed that an administrative fee is necessary to cover the Borough’s extra expense of compensating the Board’s staff; however, Mr. Bianco felt that each applicant should be responsible for paying an administrative fee of at least \$100.00 to counteract any last-minute cancellations, which could result in the Borough not receiving enough money to cover Mr. Demarest’s compensation. Mr. Hennessey inquired about additional escrow for the Board’s professionals; Mr. Demarest stated the escrow accounts (funded by the applicant’s deposits) are used to pay for Ms. Smickley and Mr. Morris’ time spent on the individual case and their appearance fees are taken from the Borough’s treasury (funded by application fees). Not sure of how to improve the policy, Chairman Knee tabled a Board vote until the April 20, 2011 Hearing.



Being several Board members were not satisfied with the current draft of the Board’s 2011 By-Laws Revision, Chairman Knee tabled a Board vote until the April 20, 2011 Hearing. Mr. Ouzoonian pointed out that the Board Engineer’s title should be indicated as “Professional Engineer (PE)” since not all in the field, such as those who operate trains, have that distinction. Vice Chairman Sonenshine mentioned that he previously forwarded his comments to Ms. Smickley for consideration.



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-2011-04	Applicant(s):	John Yuder
8 Wainwright Court	Representation:	Self
(Block 2208/Lot 12)		

The applicant is seeking Bulk Variance Relief for the installation of an in-ground swimming pool (spa and waterfall inclusive) at his residence.

Chairman Knee asked for confirmation of those Board members eligible to vote on the case; Mr. Demarest stated that, based on both attendance at the March 7, 2011 (Special) Hearing and signed affidavits that attest to the listening of the proceedings via compact disc, the following would be eligible: Messrs. Knee, Bianco, West, Monaco, Ouzoonian, Hennessey and Shyong. Chairman Knee reminded that the rest of the Board's voting members may participate in the discussion but not vote.

John Yuder, applicant and owner-in-fee of the subject property, introduced himself and was sworn in as Witness #1. Chairman Knee stated the purpose of adjourning the case at the March 7, 2011 (Special) Hearing was to allow for expert testimony as to the feasibility of a smaller swimming pool with an apron/patio. Exhibit #A-2, a "trendy" graphic design of a pool with 12" coping, was presented. Chairman Knee asked if 12" coping was the pool standard even when no decking is part of the layout; the witness stated as long as the coping is 12", such a concern is more design than safety in nature. Exhibit #A-3, a site plan prepared by DJ Egarian & Associates, Inc. dated January 7, 2011 and last revised March 15, 2011, was presented. Mr. Yuder informed that said exhibit reveals he is now proposing to reduce the impervious coverage 1% (36.1%) by decreasing the pool's size and eliminating an existing shed on-site. Dr. West questioned the witness' testimony that a pool surrounded only by lawn is the new standard; the witness clarified his statement by saying he could produce a plethora of pictures showing pool designs having no decking or patio. He also felt a child would be less prone to injury by having a grass surface surrounding the pool; Dr. West disagreed. Mr. Sinowitz stated Exhibit #A-3 should be corrected to show that the impervious coverage (currently labeled as "Existing, Non-Conforming") requires a variance because the proposed reduction does not bring it down to the maximum allowance (30%).

Chairman Knee opened the meeting to the public for questions of Witness #1 only. No one wished to be heard.

David Egarian, PE, DJ Egarian & Associates, Inc., 2 Sylvan Way, Parsippany, New Jersey, was sworn in as Witness #2. He said the subject house (situated on a 12,104 sf lot) was built in conformance with all bulk requirements when it received its Certificate of Occupancy in 1999; he said the main reason for the need of a variance for the pool is because the Borough has since increased the minimum lot size in District #1 (Residential) to 15,000 sf. He testified that the property is located on a cul-de-sac; he explained that, typically, zoning codes require that the side yards are taken perpendicular to the curvature of the cul-de-sac so their radial lines flow backwards, thereby creating a pie-shaped lot and future zoning difficulties. The witness said the rear yard is very shallow (30') and the side yards are limited; Mr. Egarian noted that the original site plan called for an unchanged 37.1% impervious coverage by removing a raised patio and 246 sf of the driveway. Exhibit #A-4, an enlarged version of the originally-filed site plan prepared by the witness, was presented. He testified that due to the shallow side and rear yards, placing the pool in the back yard would completely isolate both rear corners and cramp its center; hence, he said, the applicant chose a corner of his property. The witness noted that in order to meet the 15' side yard requirement, the pool could only be 400 sf (having a 12" coping and a nearest point of 6.9' to the house). To avoid such problems, the witness said the design goes beyond the limits of a conforming, triangular area by roughly 3' and wraps around the pool's free-form shape while maintaining 10' side and rear yard setbacks. Mr. Egarian said that if the Borough Code regulated swimming pools as accessory structures, the design would meet the 5' or 10' setback requirement, however, pools must be at least 15' from property lines when measured to the edge of coping. Chairman Knee interjected and asked which edge of the coping the witness was referring to; he answered he meant to the outside, not inside, edge. Chairman Knee felt that

assumption may not be correct and to his client's disadvantage because, for example, his own pool has a "cantilever coping" design in which the patio goes right to the edge of the water; Mr. Sinowitz concurred saying the setback for swimming pools is measured to the water's edge making the issue of coping moot. Chairman Knee stated the applicant, thus, has a setback of 11', not 10', at its closest point to a property line. The witness continued saying the pool has now been reduced by an average of 9" around its perimeter; he stated the new pool design calls for it to be 600 sf, with the spa being 78 sf, and the dimensions are generally 40'x12'. He pointed out to bring the site within the 30% impervious coverage requirement, the existing driveway would have to be reduced by an inconceivable 740 sf. Chairman Knee applauded the applicant's latest design. Mr. Monaco asked what percentage of the witness' business dealt with swimming pools; he answered it to be between 10% and 15%, equating to roughly 300 in the past 3 to 4 years. Vice Chairman Sonenshine asked the witness why the Borough felt the need to reduce its impervious coverage allowance from 40% to 30%; he replied, typically, such is done to alleviate drainage concerns. Vice Chairman Sonenshine countered saying it is normally to control over-building. Mr. Bianco corrected earlier testimony by Mr. Egarian and said District #1's (Residential) lot size requirement has been 15,000 sf for at least 4 decades; he added it was the impervious coverage allowance that changed in 2002. Mr. Bianco asked what the smallest pool the witness has designed; he responded it was 500 sf to 600 sf. Mr. Bianco asked if a pool, with nothing but grass in its vicinity, is a credible design; the witness said that is his client's choice. Mr. Bianco said he was thinking long-term when subsequent owners would require variances as well; he felt a 1% reduction in impervious coverage was not sufficient and that, operationally, the home could not survive in the future without some sort of patio in the rear yard. Chairman Knee inquired about the building coverage calculation on the filed site plan, which shows it to remain unchanged even with the removal of the shed (40 sf); he asked because the addition of a deck in the future, which would add to the building coverage, could resolve some Board members' concern about the non-existence of an apron/patio on-site. Mr. Egarian said such figures were correct and the building coverage is still 19.3%; Mr. Sinowitz noted that a deck would lead to setback deficiencies in both the side and rear yards. Mr. Bianco felt the pool's extreme dimension of 40' could be reduced; the witness said such would negatively impact its length-to-width ratio. Mr. Bianco thought the originally-filed site plan called for the extreme width dimension to be 19'; the witness clarified, saying the 19' width included the spa. Mr. Bianco asked if a bonding grid would be installed; the witness said it was required as per the National Electrical Code (2008 Edition) to curtail short-circuiting and shock. Mr. Egarian explained that the grid would surround the pool, extending 2' to 3' and be buried 6" to 8" underground. Mr. Bianco asked if it would be safer to have the bonding wires below a bituminous surface rather than earth; the witness said he was not qualified to answer. Mr. Hennessey asked, out of the 300 pools the applicant has designed, how many did not come with an apron/patio; the witness said none were without, but added that did not negate the fact there are always new trends coming onto the evolving swimming pool market. Secretary Freesman asked if there was concern of the basement flooding in a severe rainstorm being the pool is only 6.9' from the house's foundation; Mr. Egarian said there is no regulation governing such and felt the distance was adequate. Dr. West noted that residents are lucky to live in a community that provides a swim club and, thus, he asked for further reasoning of the applicant's hardship; the witness repeated the issues concerning the lot's shape and the Borough's reduced impervious coverage allowance. Mr. Egarian felt, conversely, that the benefit of a swimming pool on-site would be less storm water runoff; he explained that 678 sf of surface area would now include the pool's 6" freeboard acting as a catchment rather than the rainwater draining off the property in its current state. Dr. West asked if there is a drainage problem on-site to which the witness replied he was not aware of such. Chairman Knee believed that Mr. Egarian's belief of a pool being a benefit only holds true when it is open and not covered during the winter months. Dr. West asked

about the topography onsite; the witness stated the drainage flows towards the property's right, rear corner. Dr. West asked if Mr. Yuder purchased the property before or after the Borough's impervious coverage allowance was reduced to 30%; Mr. Egarian said he became owner beforehand. Mr. Ouzoonian asked how many pools designed by the witness have had a spa incorporated into them; the witness said in the past, the answer would have been 20% to 30%, however, in the past 1 to 2 years, it is more like 50% to 60%. Mr. Ouzoonian asked if he has ever received feedback from customers as to which (pool or spa) is utilized more; the witness answered in the negative. Dr. West asked for the distance between the proposed pool and the nearest neighbor's house; Mr. Demarest pointed out the filed Board application, which only asks for distances between principal structures, was answered by the applicant as such: 1.) north- 46'; 2.) south- 39', 8"; 3.) rear north- 54', 6"; 4.) rear south- 60', 7". Mr. Yuder elaborated by saying the northern house has a garage and bathroom on the 2nd floor that would face the proposed pool; he noted said house is buffered substantially with shrubbery and a patio is on the opposite end of the home. He further noted that the rear northern house is rented out and vacant several months out of the year. Mr. Ouzoonian asked if the existing driveway's width could be reduced and still allow for maneuvering; the witness did not see that as possible. Mr. Yuder informed that his family owns 4 vehicles and such would not allow for a single-lane driveway.

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

Marc Nissim, CLA, Harmony Design Group, 1520 Pine Grove Avenue, Westfield, New Jersey, was sworn in as Witness #3. Exhibit #A-5, a photograph of the subject site's existing conditions, was presented. Exhibit #A-6, a graphic design of the proposal, was presented. Exhibit #A-7, a landscape plan prepared by the witness dated February 7, 2011, was presented. The witness testified that his involvement in the project was from the beginning. He mentioned that his client wished to keep the impervious coverage as low as possible, which led to numerous design changes before he settled on a layout that included a spa and waterfall, but not an apron/patio. Mr. Nissim stated that if the pool's width were reduced to 7' or 8', the potential danger of children jumping from 1 side to the other will greatly increase; he noted any further reduction of the pool's size would lessen the shallow end as well. He said a hedge of arborvitae (upright-growing evergreens that will be planted at 5' to 8' in height and grow to 25' tall) would be planted and integrated into the applicant's existing hedge to buffer the pool from the nearest neighbor. Mr. Nissim noted that the remainder of the plantings will be ornamental in value (flowering shrubs to be enjoyed during the summer months). The witness said that, in order to rectify the Board's concern about access to the pool's deep end in an emergency, an opening of some shrubs to create a foot path (consisting of mulch within the flower beds) would be provided. Exhibit #A-8, a landscape plan prepared by the witness dated March 16, 2011, was presented. Dr. Shyong asked if there was any concern about the shrubbery's root system affecting the pool structure's integrity; the witness said such would pose no threat to the pool's 12" thick walls. Mr. Monaco questioned if mulch, in the absence of an apron/patio, would constantly end up in the pool; Mr. Nissim stated that if the lot is graded properly so that storm water runoff is pitched away from the pool, there would be need for concern. Vice Chairman Sonenshine noted the dense landscaping could lead to inadequate sunlight in the vicinity; Mr. Yuder said that portion of his property is an anomaly because there is constant sunlight from 10:00am until 4:00pm during the summer. Mr. Nissim added that the house would affect the amount of shade the pool receives more so than the proposed plantings, noting arborvitae are not shade trees. Vice Chairman Sonenshine asked how a pool cover would typically be installed/anchored around a 12" coping; the witness believed that spikes (screw-down pins) are put into the ground and reinforced with concrete. Mr. Monaco asked how the grass grows where

the pool is to be situated; the witness said it grows plentiful. Mr. Sinowitz informed that the hedge of arborvitae would constitute a "living fence" and, thus, the Borough Code requires it to be set back a minimum of 3' from property lines. Mr. Nissim stated the hedge would be planted 3.5' inside the property line and noted that the arborvitae will only get to be 4' wide. Mr. Hennessey, trying to give a perspective, pointed out that the Council Chambers, where the meeting is taking place, is 38' in length, as opposed to 40' for the proposed pool. Mr. Bianco asked if the witness had previously designed pool layouts that did not include an apron/patio; the witness replied he has done some, and he pointed out that some customers see a swimming pool more as a water feature providing a pleasant view and sound. Mr. Bianco asked what will happen with the items (barbecue grill, tables, chairs, etc.) depicted in Exhibit #A-5 that are presently situated on the rear yard's patio; Mr. Nissim suggested they would be placed on the applicant's lawn, which he felt would not be atypical. Mr. Bianco asked for the smallest pool that the witness has worked on; he responded it was in the 500 sf range. Exhibit #A-9, a generic graphic design portraying a pool layout without an apron/patio, was presented. Mr. Hennessey had concern about a mulch path, through flower beds, being the only means to access the pool's deep end. Dr. West asked how the pool and waterfall's proximity to the neighboring homes would affect their resale value; Mr. Nissim felt such would enhance their value by adding charm and drowning out the sound of cars.

Chairman Knee opened the meeting to the public for questions of Witness #3 only. No one wished to be heard.

Chairman Knee opened the meeting to the public for general comments only. No one wished to be heard.

Outcome

Chairman Knee, while pleased with the applicant's concessions, was concerned about the site's need for variances in the future; Mr. Bianco and Mr. Ouzoonian concurred. Mr. Sinowitz suggested the property's excessive impervious coverage be made part of the deed as a condition of the Board's approval. Mr. Hennessey was adamant that an apron/patio was important to have around 1/3 of the pool's perimeter. Mr. Yuder stated that a standard, 40'x20' rectangular pool is approximately 30,000 gallons, while his free-form design will only be 23,500 gallons. Mr. Bianco reiterated the pool's width should be reduced; the applicant said to do so would make the shallow end too small an area because a certain grade for transition into the deep end is needed. Chairman Knee understood the applicant's concern, revealing that his own pool drops off quickly in order to get an 8.5' depth. Mr. Bianco reminded that the applicant would not be installing a diving board because, as the applicant said, such was illegal in New Jersey; Mr. Nissim corrected his client, saying diving boards are permitted in the state. Mr. Hennessey felt the pool could be shrunk 4' to 5' at its width. Mr. Yuder inquired about permeable paving material being used if an apron/patio is desirable in the future; Mr. Hennessey informed that the Borough does not recognize its use. Ms. Smickley noted that the applicant indicated in the filed Board application that he was seeking a use variance, to which Mr. Yuder acknowledged the correction needed to reflect a variance based on hardship.

The Board recessed at 10:01pm.

The Board reconvened at 10:07pm.

Mr. Yuder informed that he would be willing to further reduce the pool by 50' to accommodate for a 3'x16' walkway; Mr. Nissim said such would equate to the length being decreased 3.5', to 36.5'. Mr. Bianco suggested 100 sf be taken from the current design; Mr. Yuder made a counteroffer of 75 sf being removed. The Board and the applicant agreed on a further reduction of 80 sf, to which Mr. Nissim said a reconfiguration, which would not create the need for additional variances, would be filed with the Board in a timely fashion. Ms. Smickley said the Board should decide on whether to have a vote based on merit this evening and condition an approval on receipt of a revised plan prior to the Resolution's memorialization. A motion was made by Mr. Hennessey and seconded by Mr. Monaco, to approve the application with the following conditions: 1.) reduction of swimming pool (reconfiguration not stipulated) by 80 sf; 2.) 80 sf patio (configuration not stipulated) to be installed so to abut swimming pool's free-form shape; 3.) filing of revised site plan with Board by April 10, 2011. The motion passed (**6-1: YES**- Shyong/ Hennessey/ Monaco/ West/ Bianco/ Knee; **NO**- Ouzoonian).



Item #2

Case #Z-2010-11
531 Durie Avenue
(Block 1312/Lot 23)

Applicant(s):	Steven Panagi
Representation:	Donna Vellekamp, Esq.

The applicant is seeking a Use Variance for the continuation of a 2-family use at the subject property.

Donna Vellekamp, Esq., 161 Mc Kinley Street, Closter, New Jersey, introduced herself. She stated that although the subject residence was built in 1924 and is located in District #2 (Residential), its pre-existing use as a 2-family dating back prior to December 19, 1940 (inception date of the Borough's Zoning Code) cannot be established. She said her client bought the property in August 2006 and a Residential Certificate of Continued Occupancy (RCCO) from the Building Department was obtained prior to closing; she added that soon after, the applicant filed an RCCO to rent out 1 of the units and the Zoning Officer notified him that he had to seek a Use Variance.

Steven Panagi, applicant and owner-in-fee of the subject property, 3 Lorraine Drive, Park Ridge, New Jersey, was sworn in as Witness #1. He said the property was bought as an investment and that he has never resided there. He stated the 1990 and 2009 property tax cards were filed with the Board to show the site's 2-family use classification. Exhibit #A-1, 7 photographs (pre-filed with the Board) showing exterior conditions of the house and surrounding properties and 6 photographs of the basement, utilities and mechanicals, was presented. The witness informed that there are 1-family, 2-family and commercial properties in the vicinity of the subject site. Exhibit #A-2, floor plans prepared by the applicant, was presented. He said the exhibit was scaled out on graph paper with each box equaling 12". Mr. Panagi stated that the 1st and 2nd floor units are separate, yet identical in size, except that they have 1 and 2 bedrooms, respectively. He said the front entrance leads to the 1st floor unit which consists of a living room, bedroom, bathroom and kitchen (with direct access to the basement); he noted there is also a rear door that exits to the rear yard, but does not allow for access to the 2nd floor. To access the 2nd floor unit, the witness testified, one must use the front entrance, which leads to a staircase; he said the apartment has an entrance door at the top of the landing and inside there is a living

room, bathroom, 2 bedrooms, laundry room (for 2nd floor tenant only) and kitchen. Mr. Panagi said the 2nd floor tenant can only directly access the basement via a side door entrance that is followed by 5 to 6 steps downward. The witness noted that the basement is unfinished but has a laundry area for the 1st floor tenant's use only; he added that the ceiling height is 74" and both apartments have separate mechanical equipment. Mr. Panagi stated the house also has an open, front porch. Mr. Sinowitz asked for the area of both dwelling units; Ms. Vellekamp stated they were 925 sf. Mr. Sinowitz and Mr. Bianco disagreed with her answer; she said the applicant's planner would calculate the square footage in time for his testimony at the next hearing date. Chairman Knee pointed out that the applicant wrongly indicated in the filed Board application that a "D (1)" variance, for a restricted use, was being sought and that it should have reflected a "D (3)" variance, for a conditional use; Ms. Vellekamp said such would be corrected, but pointed out her advertisement for the evening's meeting was worded sufficiently. Mr. Bianco felt Exhibit #A-2 was a poor example of what the Board expects of homeowners who prepare their own floor plans; Vice Chairman Sonenshine concurred, saying such is to be addressed in the Board's revised By-Laws. Mr. Bianco said the filed sketches would work to the applicant's disadvantage; he informed that he scaled out the floor plans of both dwelling units and found them to be well below 925 sf each, based on the filed survey which shows there to be a "bump out" in the rear yard as opposed to a purely rectangular footprint as implied by the exhibit. Mr. Bianco and Vice Chairman Sonenshine stated Mr. Panagi should get professional assistance and indicate the staircase, entrances/exits, room sizes, etc. Chairman Knee said the inadequacies should have been addressed by the Subcommittee at the September 22, 2010 Work Session; Mr. Demarest stated the applicant was perfected, pending receipt of floor plans, however, he filed them on the day of the deadline, allowing for no time to correct without canceling their appearance this evening altogether. Vice Chairman Sonenshine inquired about an investor, who does not occupy the subject residence, being allowed to prepare drawings; Ms. Smickley said that if the owner was a partnership or corporation, it could not do so, but in this case, Mr. Panagi is an individual and so he is permitted. Ms. Smickley asked about parking on-site; the applicant replied there is only 1 driveway, but that there was additional space in the rear yard to fit 4 to 5 vehicles. Ms. Smickley requested a rendering of the on-site parking layout be submitted; the witness agreed to do so. Mr. Bianco asked if the site was in its current condition when the applicant purchased it; Mr. Panagi said, except for some minor work done in the 1st floor unit that was non-structural in nature, nothing has changed. Mr. Bianco asked about earlier testimony that the gas meters are located outside; the applicant corrected himself and said he meant the electric meters and he added that the gas and water meters are inside with remote meters on the outside. Mr. Hennessey asked if he received permits from the Building Department for the work he did; he answered he did not.

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

Jesse Rosenblum, 65 Knickerbocker Road, asked if the applicant hired a realtor to handle his purchase of the subject property; he responded he did; Mr. Rosenblum asked if he was given documents verifying the property's 2-family use was legal; the witness said he did and that the site was represented as such. Mr. Rosenblum asked for the age of the kitchens and bathrooms; the applicant said they all were modern and in good condition.

Outcome

The Board adjourned the case to the April 20, 2011 Hearing.



There being no further items to discuss, a motion to adjourn the meeting was made by Vice Chairman Sonenshine and seconded by Mr. Monaco. All members present voted in favor. The meeting adjourned at 10:54pm.