



Zoning Board of Adjustment

November 22, 2011

Hearing
(Minutes)

Prepared by:

Paul Demarest

Vice Chairman Sonenshine called to order, at 8:07pm, the Regular Monthly Hearing of the Zoning Board of Adjustment for the Borough of Closter, New Jersey, convening Tuesday, November 22, 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.

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

- Lorin Sonenshine, RA/PP- Vice Chairman
- 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
- Leonard Sinowitz- Zoning Officer
- Michael Kates, Esq.- Board Attorney
- Paul Demarest- Board Coordinator

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

- VACANT*- Chairperson
- Steven Freesman, Esq.- Secretary
- Mark Crisafulli- Alternate #2
- Jeffrey Morris, PE- Board Engineer

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Due to the vacancy left by former Chairman Robert Knee, Vice Chairman Sonenshine chaired the meeting.

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Prior to the meeting, the Board obtained mail correspondence received by the Land Use Department on its behalf. In lieu of the absent Secretary Freesman, Mr. Bianco read said mailings into the record.

In response to Mr. Knee's letter of resignation, the Board decided to commemorate his service to the body by presenting him with a plaque at the January 18, 2012 Reorganization & Hearing; Mr. Demarest agreed to make arrangements for the presentation and reminded that Mr. Knee's resignation would not be considered official until the Governing Body has been notified in writing via the Borough Clerk's office.

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A motion was made by Mr. Bianco and seconded by Dr. West, to approve the minutes for the October 19, 2011 Hearing; all eligible members present voted in favor.

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Mr. Bianco requested 3 volunteers from the Board to serve on the Subcommittee for the November 28, 2011 Work Session. The following were assigned: Mr. Bianco, Mr. Hennessey and Dr. Shyong. Mr. Demarest reminded that a (Special) Hearing, in which 8 O'Shaughnessy Lane (#Z-2011-14) is the sole application scheduled, would convene immediately following the adjournment of said Work Session.

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Regarding a pending request by counsel for 597 Piermont Road (Case #Z-2011-17) to present its application at a (Special) Hearing, Mr. Bianco inquired about the timeframe in which the Board must hear a case following perfection at a Work Session so to avoid an applicant from being approved by default; Mr. Kates replied that, in this particular instance, a meeting date would be set at the applicant's request and so there is no applied consent yet to extend the time in which the Board must act on the case. Because there are 4 Board members up for reappointment at the end of 2011 (Knee/Sonenshine/Crisafulli/Hartwell) as well as due to the scale of the proposal (new construction of a commercial/retail bank <TD Bank, NA>), the Board indicated it would refrain from scheduling a (Special) Hearing date for said case until after the Reorganization.

Mr. Demarest stated the Board's 2012 schedule of meeting dates and deadlines would be prepared in time for adoption at the December 19, 2011 Hearing; he stated that each month would have a (Special) Hearing date available, in reserve, following each Work Session as a means to alleviate the Board's heavy caseload. He cautioned, however, that with such a schedule, the Council Chambers (which houses the Borough's recording system) would not be available for the Board's use outside of its regular hearing dates and, thus, a handheld digital recorder would be utilized. Recognizing such not to be the optimal approach, the Board asked Councilman Dolson to investigate a better means of recording the Board's proceedings when the Council Chambers is not available to it.

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

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With respect to the pending memorialization of 551 Closter Dock Road (Case #Z-2011-07), Vice Chairman Sonenshine revealed that the revised "Final As-Built" survey submitted by the applicant, Marc Votto, indicated not all conditions as prescribed by the Board were met, specifically the impervious coverage was only reduced to 37.0%, not 36.2%. Mr. Votto introduced himself and explained that since the Board's vote in favor of Bulk Variance Relief (for the as-built construction of his new single-family house) at the July 20, 2011 Hearing, he has

spent \$3,800.00+ trying, unsuccessfully, to reduce his property's impervious coverage to 36.2%. He informed that his surveyor stated no additional impervious surfaces could be removed due to logistical and safety reasons concerning entering/exiting both the garage and the property as a whole. Mr. Votto noted that all other stipulations in the Resolution have been adhered to. Vice Chairman Sonenshine stated that the Board cannot consider financial issues and that, at this juncture, it is legally constrained from memorializing the Resolution in its current text because its stated conditions have not all been met. Mr. Kates stated the applicant would have to return to the Board on public notice to amend and produce any witnesses under oath at a later date and explain why such conditions are not feasible; he clarified that a new application filing is not necessary but merely a petition for the Board to reopen the case. Mr. Demarest asked about a timeframe in which Mr. Votto would have to petition the Board; Mr. Sinowitz informed that while there is no municipal court action pending, the subject site has an expired Temporary Certificate of Occupancy. Mr. Kates declared that because the case came to the Board for an as-built, non-conforming structure, the applicant should petition the Board within 30 days to avoid prosecution.



Item #1

Case #Z-2010-16
3-5 Harvey Street
(Block 801/Lot 18)

Applicant(s): Lawrence Berler
Representation: Michael Goodman, Esq.

The applicant is appealing the determination of the Zoning Officer as to the legality of the continuation of a 2-family use at the subject property; in the alternative, he would seek a Use Variance.

Michael Goodman, Esq., Goodman & Leopold, LLP, 3 University Plaza, Hackensack, New Jersey, introduced himself. He stated it is his client's position that his duplex has been in existence since 1954, although various Borough records put its date of construction as either 1954, 1955, 1956 or 1957; he noted, however, that all parties involved, including Mr. Sinowitz, acknowledge it is as old as at least 1957. He understood that the property's use cannot be given pre-existing status because the Borough's Zoning Code was adopted December 19, 1940. Therefore, Mr. Goodman explained that the issue is whether the property violates Ordinance #1955:13, which provided conditional use status for a 2-family residence located in District #2 (Residential) provided it originates from the conversion of an existing building and it meets all bulk standards in place at the time of said ordinance's adoption. He stated an Open Public Records Act (OPRA) request to the Borough in search of pertinent information on the subject property turned up no new documentation. Mr. Goodman believed 3-5 Harvey Street was built originally as a 2-family house, not converted at a later date. He felt the case to be an *a fortiori* ("even more so"/"with even stronger reason") argument because if said ordinance permitted the conversion of a 1- to 2-family house, all the more would the ordinance permit a 2-family house to be newly constructed with the requisite Building Department approval.

Lawrence Berler, owner-in-fee of the subject property, 253 Engle Street, Tenafly, New Jersey, was sworn in as Witness #1. He testified he bought the subject property in March 2006 and he was represented by counsel (Edward Gibbons, Esq.) for both the purchase and mortgage; he

stated he does not reside at the property and considers it an investment. He stated the property was advertised and purchased having 2 dwelling units and noted that prior to the transfer of title, a Residential Certificate of Continued Occupancy (RCCO) was obtained by the seller confirming it as a 2-family use. Exhibit #A-1, an RCCO issued by former Code Enforcement Officer David Donnarumma for the subject property and dated February 13, 2006, was presented. Mr. Berler said since acquiring the deed, he has leased both dwelling units, which are separate entities with their own utilities; he informed no major/structural changes have been made to the site under his ownership. He believed that for the Board to prevent the property's 2-family use would result in him defaulting on his mortgage and the property being acquired "on the cheap" leading the surrounding properties to their lose value as well. Mr. Berler stated he would not have bought the property if the legality of its use was in question and he relied on retained professionals to guide him through the real estate transaction. He explained that in 2009, the Borough informed him that his property's use was not validated. Exhibit #A-2, a tax data sheet of the subject property dated February 5, 2009, was presented. Mr. Berler said the exhibit shows the house to have been built in 1954. Exhibit #A-3, a 2009 property record card of the subject property issued by the Tax Assessor, was presented; he stated said exhibit shows the house to date back to 1954. Exhibit #A-4, a memo prepared by the Tax Assessor dated January 1, 2006 indicating the subject property to have 2-family status since the Borough's 1990-1991 revaluation, was presented. Mr. Berler said he does not have personal knowledge as to when the house was built. Exhibit #A-5, a homeowner's insurance policy issued to the applicant for 3-5 Harvey Street and indicating both its date of construction to be 1955 as well as its use to be 2-family, was presented. The applicant informed he has never received any complaints from neighbors about the site's maintenance or usage. Exhibit #A-6, a series of 18 photographs (both pre-filed with the Board and new) prepared by the applicant in 2010 and depicting the subject house's interior/exterior as well as properties in its vicinity, was presented. He indicated the house has both separate front and rear access for each unit along with a 2-car attached garage to be shared by both tenants. He said the basement is divided by a wall to allow for separate storage space for each unit. Mr. Berler stated there are several 2-family houses in the surrounding neighborhood, though he did not know their addresses. Mr. Ouzoonian expressed confusion as to the electrical services depicted in Exhibit #A-6; he asked that if each tenant space has its own basement, why then does it appear that both services are located in 1 basement. The witness replied that each unit has its own meter and electric bill. Mr. Ouzoonian stated the electrical meters look as though they were installed several years apart, pointing out that 1 consists of conduit while the other includes *Romex*. Dr. West revealed errors in the labeling of the photographs within Exhibit #A-6, noting certain shots of "3 Harvey Street" are shown to have a washer and dryer in its laundry room while others do not. Mr. Goodman stated new photographs will be filed with the Board having correct labels. Mr. Bianco inquired about the electrical meter setup; the witness said the conduit was storm-damaged when a tree fell on the utility pole wires and removed it from the house. He said an electrician was hired to repair it. Mr. Bianco stated the meter pans are different in shape and size; Councilman Dolson noted the aluminum siding is different behind each meter as well. Mr. Bianco stated that if the service mast was detached from the house during said storm, he believed both services would have sustained damage; he, therefore, felt 1 electrical service originally existed and a 2nd was installed at a later date. Mr. Berler stated that while the meters may be situated on the same side of the house, the service is split. Mr. Bianco questioned where the service panels are for each unit; the witness responded there is 1 in each basement. Mr. Goodman stated copies of separate utility bills would be filed with the Board to ease its concerns. Mr. Bianco asked for the number of water meters on-site; Mr. Berler said he did not know but that he, as the landlord, paid the bill. He indicated there are 2 gas meters. Mr. Bianco requested that the applicant contact the Department of Public Works (DPW) and view its "triangulation maps" to learn the number of

sewer connections on-site. Mr. Kates asked if the applicant received an affidavit of title from the seller at closing that made 2-family use representation; Mr. Berler said he did not know but would find out for the next meeting date. Mr. Kates inquired if the applicant sought a binding statement/certification from the Zoning Officer (afforded to him under NJSA 40:55D-68 of the New Jersey Municipal Land Use Law) confirming the house had an existing 2-family use in 2006; the applicant replied he was not aware he could request such at the time. Mr. Kates asked when the hyphenated street address was assigned to the subject property; Mr. Berler stated the United States Postal Service had no records on the matter, but he stated each tenant space has their own mailboxes. Mr. Kates inquired if any existing tenant(s) at the time of his acquisition of 3-5 Harvey Street remain today; the applicant said either 1 or both of the sellers (Vincent Assogna and Lisa Mancusi) resided in 1 of the units for approximately 7 years while the 2nd unit was vacant at the time of the resale. Mr. Hennessey said Exhibit #A-6 appears to show there to have been 1 electrical service leading into a disconnect switch, which was later split into 2 services. Councilman Dolson questioned if a title search had been performed to answer what the property's prior uses were; he noted that when receiving a title bond, all exceptions to the subject property are listed. Mr. Berler replied he would furnish the Board with the title search in time for the next meeting date. Mr. Monaco asked if there was access to the living quarters via the garage; the applicant answered in the negative and further added that there are no common areas other than the rear yard. Mr. Berler stated the wall separating the basement consisted of concrete. Vice Chairman Sonenshine asked if any improvements had been made to the house's exterior since the applicant has been the owner-in-fee; the witness replied only the portion of storm-damaged aluminum siding near the electrical meters has needed replacement. Vice Chairman Sonenshine questioned why Mr. Sinowitz' Zoning Application Denial states 3-5 Harvey Street was constructed in 1957; Mr. Berler answered that the his supplementary research at the Bergen County Board of Taxation found record(s) listing the year built as 1957.

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

Jesse Rosenblum, 65 Knickerbocker Road, asked what the applicant's attorney did to verify the site's 2-family use prior to the closing; the applicant said he did not know. Mr. Rosenblum asked if the witness knew that in 1955, the owner-in-fee of the subject property purchased a 50'x100' parcel from the Borough; Mr. Berler said he was not aware of such. Mr. Rosenblum asked what proofs were supplied to the applicant's homeowner's insurance company; the applicant replied he only knew it inspected the house beforehand. Mr. Rosenblum asked for the distance between each unit's mechanical systems; the witness responded each is at the extreme opposite ends of their respective basements. Mr. Rosenblum asked for the number of chimneys; the applicant stated he did not know if there was 1 or 2. Dr. West interjected, saying Exhibit #A-6 shows there to be 1 located in the center of the house.

Michael Brown, a member of the Borough's Chamber of Commerce, 24 Arcadia Court, Harrington Park, New Jersey, had his inquiries objected to by Mr. Goodman and sustained by Mr. Kates as irrelevant.

Going out of order, procedurally, Vice Chairman Sonenshine allowed the following party to give general comments:

Maria Skoufas, 151 Knickerbocker Road, stated she has resided in her home on the corner of Harvey Street and Knickerbocker Road since 1998 and applauded the applicant's upkeep of the subject property as well as stating she had no objection to its 2-family use.

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The Board recessed at 10:09pm.

The Board reconvened at 10:17pm.

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Mr. Kates explained that the Zoning Officer would need to give testimony because the applicant is appealing his decision; Mr. Kates noted that if the Board were to grant the appeal, testimony from the applicant's engineer would not be necessary because a Use Variance would not be sought.

Mr. Sinowitz was sworn in as Witness #2. He said the basis for his denial of the applicant's request for 2-family use ratification was that the proofs submitted were contradictory to each other; he noted that if evidence showed the house was constructed after December 19, 1940 but prior to December 28, 1955 (the adoption date of Ordinance #1955:13), the "Zoning Permit Application" would have been approved because the Borough's Zoning Code permitted the new construction of 2-family houses in District #2 until the passage of said ordinance. Mr. Goodman clarified that while the exact date of publication for said ordinance is not known, it can be assumed that the adoption was noticed in 1956 making the new construction of a 2-family house legal through the end of 1955. Mr. Bianco inquired about the bulk standards at the time of said ordinance's adoption. Exhibit #BD-1, a copy of Ordinance #1955:13, was presented. Mr. Kates and Mr. Bianco revealed that the Limiting Schedule incorporated into said ordinance proves the house's front yard setback would not have met the Borough requirement for 1954 or 1955. Mr. Sinowitz questioned how the house got built if it did not meet such criteria.

Michael Hubschman, PE, Hubschman Engineering, PA, 263(A) South Washington Avenue, Bergenfield, New Jersey, was sworn in as Witness #3. He clarified that 3-5 Harvey Street has a front yard setback of 24.7' and that Ordinance 1955:13 states that said bulk standard shall be a minimum of 25' where no building exists on the same side of the street between intersecting streets; he said the ordinance goes on to say that in no case shall more than 40' be required. The witness said the problem is that the average front yard setback based on existing relevant buildings, if there were any at the time, is not known.

Mr. Kates informed that no proofs have been submitted to the Board showing the construction date of 3-5 Harvey Street to be 1957; Mr. Sinowitz said he would supply both the Board and applicant with said documents in time for the next meeting date. In the absence of any architectural, Mr. Kates requested that the applicant contact the Bergen County Department of Planning and Economic Development to find out if know if any of the agency's applications regarding Knickerbocker Road, a county thoroughfare, can be traced back to 3-5 Harvey Street, which is only a short distance away. Mr. Bianco added that *Sanborn* maps should be researched to see if the property shows any improvements during the suggested period of time. Mr. Goodman pointed out that tax records and assessments often lag behind actual construction so it is quite possible that 3-5 Harvey Street was built in 1954 and not fully accessed until a few years later. He further pointed out that all documents in the record indicating 1954 as the year of construction were received from the Borough, not the applicant; he believed such records should not be interpreted against the taxpayer.

Vice Chairman Sonenshine opened the meeting to the public for questions of Witness #'s 2 and 3 only. No one wished to be heard.

Exhibit #A-7, a letter prepared by Jungkeun Cha, RA, Palisades Design Group Architects, PC, 5 Palisade Avenue, Englewood, New Jersey and dated July 6, 2009, was presented. Mr. Goodman explained the exhibit states, based on a site visit, the subject house was built in the 1950's and the electric services are very aged. Exhibit #A-8, a statement prepared by Jerry Harison, Brook Electric Co., 500 Burgess Drive, Saddle Brook, New Jersey and dated July 6, 2009, was presented. Mr. Goodman noted said exhibit indicates the subject house is wired as 2 separate residences.

Outcome

The Board requested that all outstanding documentation mentioned throughout the proceedings be furnished prior to starting the Use Variance portion of the application, which may prove to be unnecessary if the Board approves the applicant's Appeal. The case was adjourned to the December 19, 2011 Hearing.



A motion was made by Mr. Bianco and seconded by Mr. Hennessey, to have the Board go into closed session at 10:50pm. All eligible members present voted in favor.

Mr. Kates reported that a request made by the Superior Court of New Jersey- Bergen County Law Division, concerning the Board's denial of 63 John Street (Case #Z-2009-14), to have the Board and applicant discuss whether or to what extent a conditional approval or "fairness hearing" would be acceptable, resulted in no agreement being reached. Mr. Kates explained that 11 stipulations were forwarded to the applicant, whose counteroffer was rejected by a majority of Board members. He stated, therefore, the release of the judge's reserved decision is imminent.

Vice Chairman Sonenshine reopened the meeting at 11:01pm.



There being no further items to discuss, a motion to adjourn the meeting was made by Mr. Bianco and seconded by Ms. Hartwell. All members present voted in favor. The meeting adjourned at 11:02pm.