



# **Zoning Board of Adjustment**

September 21, 2011

***Hearing***  
***(Minutes)***

Prepared by:

**Paul Demarest**

Vice Chairman Sonenshine called to order, at 8:02pm, the Regular Monthly Hearing of the Zoning Board of Adjustment for the Borough of Closter, New Jersey, convening Wednesday, September 21, 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:

- Lorin Sonenshine, RA/PP- Vice Chairman
- Joseph Bianco, RA/PP
- Theodore West, DDS
- Mitchell Monaco
- Antranig Ouzoonian, PE
- Thomas Hennessey- Alternate #1
- Mark Crisafulli- Alternate #2
- Andrew Shyong, DDS- Alternate #3
- Arthur Dolson- Council Liaison
- Leonard Sinowitz- Zoning Officer
- Alysia Smickley, Esq.- Board Attorney
- Paul Demarest- Board Coordinator

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

- Robert Knee- Chairman
- Steven Freesman, Esq.- Secretary
- Marie Hartwell- Alternate #4
- Jeffrey Morris, PE- Board Engineer



Due to the absence of Chairman Knee, Vice Chairman Sonenshine chaired the meeting.



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

Dr. West started a discussion on 1 piece of correspondence regarding a Resolution recently memorialized by the Board for 3 Lindemann Avenue (Case #Z-2010-14); he asked, as did George Heise (owner-in-fee and resident of 61 Taillon Terrace as well as an objector of said Board approval) in his email, if the Board must amend the Resolution being it cannot be enforced by the Code Enforcement Bureau in its present form since it lacks a timeframe in which the applicant must complete its stipulations, specifically installing a 10' trellis with

English ivy. Ms. Smickley responded she has been in communication with the Borough Attorney, Edward Rogan, Esq., and that because the subject case dealt with an as-built project, it is possible the Resolution can be enforced immediately since the applicant is obtaining the benefit of variances; she stressed, however, that until she and Mr. Rogan resolved the issue, a definitive answer cannot be given as to when and if the Borough will enforce the Resolution, though she opined it is enforceable in its current language.

Councilman Dolson inquired if another condition of said Resolution, the removal of a deed restriction by the applicant (dealing with a “living fence”), has been completed; Ms. Smickley replied she did not know. Councilman Dolson expressed frustration, saying the applicant requested and received relief from a deed restriction, which she had not abided by since 1991 when the Board granted variance relief for an addition (Case #Z-1991-08); he noted the Board, which initially-imposed the deed restriction, permitted its removal contingent upon certain improvements and the applicant has ignored those as well. He asked if the Governing Body involves itself in deed restrictions; Ms. Smickley responded it does not but rather the property owner must file for its removal with the Office of the Bergen County Clerk. Vice Chairman Sonenshine deduced that, in theory, if the applicant failed to have the deed restriction removed, it would have no negative impact on the Borough or Mr. Heise. Dr. Shyong asked if it was of any consequence that the Board voted on separate motions involving the deed restriction’s removal and the requirement of a 10’ trellis with English ivy; Ms. Smickley replied that both issues were voted on at the same Hearing date and are mentioned in the same Resolution, thus, there is a significant argument to be made that 1 issue is contingent upon the other, especially considering the case’s record. She reiterated that the Board is not an enforcement agency. Councilman Dolson questioned which Borough agency would have jurisdiction in deciding the outcome; Ms. Smickley answered she would discuss such with Mr. Rogan. She noted that, for future applications pertaining to as-built conditions, the Board should put on the record exact specifications it wishes to be reflected in its decisions.

Turning to another piece of correspondence, Mr. Bianco, referring to an inspection report by Mr. Morris concerning a recent Board approval for 208 Piermont Road (Case #Z-2011-09), expressed concern that the Board Engineer found several requirements have not yet been fulfilled; Vice Chairman Sonenshine interjected, saying such enforcement matters are not of the Board’s concern. Mr. Bianco replied that he has contacted the New Jersey Department of Community Affairs (DCA) and it concurred Temporary Certificates of Occupancy (TCO’s) issued by the Building Department, 1 of which was issued for said project (outdoor café/dining area) and expires on October 26, 2011, must have both conditions and time constraints placed upon them. He said the construction plans approved by the Board were not followed and there are several conditions precedent that are outstanding; Mr. Bianco felt said Board approval should have required a Developer’s Agreement, which would have given the Borough leverage to force compliance by the applicant. Mr. Hennessey believed the Building Department, not Mr. Morris, should be conducting inspections for said project; Mr. Demarest revealed that subsequent to the Resolution being memorialized, engineering escrow was requested by the Building Department to be posted to allow for Mr. Morris to handle the majority of inspections, being the project deals primarily with site work, not construction, which is limited to retaining walls with relation to a raised patio. Vice Chairman Sonenshine stated he is in favor of deadlines being put into Resolutions so long as such is done on a case-by-case basis because each project has different circumstances. Mr. Sinowitz pointed out that the TCO was issued because the applicant did not finish the project and until both Mr. Morris and the Construction Official, Michael Sartori, verify compliance, a permanent Certificate of Occupancy will be withheld.

Speaking from the audience, David Watkins, Esq., counsel for the subject applicant, Locale Restaurant & Bar, informed that the Board's discussion is a moot point because his client, prior to being issued a TCO, posted a bond in an amount determined, by Mr. Morris, to be necessary to complete all unfinished requirements.



A motion was made by Mr. Bianco and seconded by Mr. Crisafulli, to approve the minutes for the August 17, 2011 Hearing; all eligible members present voted in favor.



Vice Chairman Sonenshine requested 3 volunteers from the Board to serve on the Subcommittee for the September 28, 2011 Work Session. The following were assigned: Mr. Bianco, Mr. Ouzoonian and Dr. Shyong.



Mr. Bianco opened the meeting to the public for anyone wishing to comment on matters not related to a case on the evening's agenda.

Thomas Martin, 47 Susan Drive, said he wished to inquire about an application on the Board agenda, specifically 358 Ruckman Road (Case #Z-2011-06). Vice Chairman Sonenshine replied that while Mr. Martin was forbidden to make such an inquiry at this juncture, he may question any witnesses and comment on the case when it is heard at the September 28, 2011 (Special) Hearing, which would immediately follow the regularly-scheduled Work Session.



**Item #1**

Case #Z-2010-13  
268 West Street  
(Block 904/Lot 9)

Applicant(s): Rita Dalto  
Representation: David Watkins, Esq.

The applicant is seeking a Use Variance for the continuation of a 2-family use at the subject property; NOTE: the application stems from a decision by the Superior Court of New Jersey-Bergen County Law Division (see Docket #BER-L-9257-07), which vacated a prior Board decision (Case #Z-2007-09) approving a Use Variance for the continuation of a 3-family use at the subject property.

David Watkins, Esq., 285 Closter Dock Road, Closter, New Jersey, introduced himself. He pointed out the application is not a remand required by the Court order but rather a new request for a 2-family use; he said there is essentially market differences between 2- and 3-family use Board applications. He explained that under the enhanced proofs of *Medici v. BPR Co.*, the applicant must demonstrate that there is some compatibility or consistency with the application and the Borough's Zoning Ordinance and Master Plan, which he believed she can do. He stated the subject property meets most of the bulk standards to be deemed a 2-family use, but because the lot size is deficient by 500 sf, the Zoning Officer could not issue a permit for

such. He reminded that in District #2, a 3-family use is not permitted, which the Court's decision addressed. He explained that during Ms. Dalto's prior Board approval in 2007 for 3-family use ratification, the Board placed too much emphasis on the fact that the subject house is designated by the Borough as a historic landmark; he revealed that since then, the neighborhood in which the subject site is situated, has been deemed by the Borough as a historic district, which has difference connotations. Mr. Watkins said the house was built around 1876 and the proposal is for 1 unit to be located on the 1<sup>st</sup> floor while a 2<sup>nd</sup> would encompass both the 2<sup>nd</sup> and 3<sup>rd</sup> floors.

Michael Hubschman, PE/PP, 263(A) South Washington Avenue, Bergenfield, New Jersey, was sworn in as Witness #1. Exhibit #A-1, a colorized version of a site plan pre-filed with Board, prepared by the witness, dated September 7, 2010 and last revised February 1, 2011, was presented. The witness testified the subject site is a corner lot and fronts on both West Street and Harrington Avenue; he stated the lot is 120' wide and 100' deep and has a 2.5 story framed dwelling situated on the left side of the property along with a paved area to the right, which allows for 6 parking spaces. He explained the following zoning tabulations as they exist on-site: 1.) lot size- 12,000 sf (12,500 sf required); 2.) lot width- 100' (100' required); 3.) street frontage- 120'/100' (75' required); 4.) front yard setback(s)- <witness did not indicate what is existing but reiterated house was built in 1876> (14.7' required); 5.) side yard setback- 69.50' (15' required); 6.) side yard setback aggregate- corner lot (n/a); 7.) rear yard setback- 34.58' (20' required); 8.) building height- <30' (30' maximum allowance); 9.) building coverage- 9.30% (20% maximum allowance); 10.) impervious coverage- 40.48% (30% maximum allowance); 11.) floor area ratio- 22.66% (35% maximum allowance). Mr. Hubschman stated there is a 2-bedroom apartment on the 1<sup>st</sup> floor which is accessed from a stairway on the south side of the structure; he said it consists of a living room, kitchen and dining room. The witness stated a staircase leads to the 2<sup>nd</sup> floor apartment which contains 2 bedrooms; he noted the 3<sup>rd</sup> floor has an existing 1-bedroom unit, which is to be renovated and its kitchen removed. Mr. Hubschman believed the 3<sup>rd</sup> floor to be part of the home's original construction. Exhibit #A-2, a property report from the Historic Preservation Office of the New Jersey Department of Environmental Protection dated April 28, 2004 and indicating the subject house was built between 1865 and 1876, was presented. Exhibit #A-3, a 1958 property record card from the Bergen County Board of Taxation listing the subject site as "2F", was presented. Exhibit #A-4, a 1959 property record card from the Bergen County Board of Taxation listing the subject site as "2F", was presented. Exhibit #A-5, a 1979 Planning Board Resolution denying Minor Subdivision Approval of the subject lot and noting its use as a 2-family, was presented. Exhibit #A-6, a 1992 construction permit issued by the Building Department indicating the subject site's 2-family use, was presented. Exhibit #A-7, a 1999 contract of sale entered into between Ms. Dalto and Richard Strepparava listing the property as a 2-family use, was presented. Exhibit #A-8, an administrative report by the Historic Preservation Commission dated May 23, 2011 supporting the subject application, was presented. The witness felt the site is particularly suited for a 2-family use and noted that the limited bulk standard deficiencies essentially make the application a bulk variance request. He stated 2-family houses are permitted in District #2 (Residential). The witness believed that the subject case meets "Special Reasons" (Sections E and G) of the New Jersey Municipal Land Use Law (MLUL) in that the site is an appropriate population density for its neighborhood as well as it provides a varied housing element; as far as an adverse impact on the Borough's zoning scheme, plan or intent, he concluded there is none. He explained 4 on-site parking spaces are required for the subject property as per the New Jersey Residential Site Improvement Standards (RSIS); he noted there are 6 on-site as well as safe and wide lanes for both ingress and egress; he believed there to be adequate sight distance and no obstructions for the corner lot, which abuts a level thoroughfare (West Street). The witness felt the application advances the objectives of the

Borough's Master Plan in that the site's historic nature is recognized and preserved on West Street. Mr. Ouzoonian questioned if the impervious coverage can be reduced via elimination of 1 or more parking spaces on-site; the witness replied he did not think so because the nearby intersection is quite busy and 6 spaces would accommodate visitors. Mr. Bianco pointed out that, besides lot size, there are other zoning deficiencies; Mr. Hubschman agreed, saying the impervious coverage is in excess by 10.40% and the front yard setback(s), based on averages between intersecting streets on the same side, are existing, non-conforming conditions. Mr. Bianco believed that Exhibit #A-1 should be revised since the building height maximum allowance indicated (30') is wrong; Mr. Sinowitz interjected, saying the notation is correct because only structures in District #2 (Residential) built after 1920 must comply with a 28' building height. Mr. Bianco said he preferred to have the existing fire escape removed since the 3-family use is to be discontinued; Vice Chairman Sonenshine, Mr. Crisafulli and Mr. Watkins disagreed, saying from a safety standpoint, it should remain. Mr. Hubschman added that the fire escape is not obtrusive (as with those found at apartment complexes) and is merely a metal ladder leading to the lower-tiered roof. Mr. Bianco asked for the number of gas, water and electric meters; the witness stated there are 3 of each. Mr. Bianco wished to have both the 3<sup>rd</sup> meter of each utility as well the associated mechanical equipment for the 3<sup>rd</sup> gas meter removed; Mr. Watkins interjected, saying such would require extensive plumbing throughout the house. Mr. Crisafulli stated if the 2<sup>nd</sup> floor apartment is now supporting the 3<sup>rd</sup> floor as well, the re-piping to allow for 2 zones would be quite simple. Mr. Hennessey said the gas services could be combined so that 1 is serving 2 boilers and 2 hot water heaters. Mr. Crisafulli continued, saying a 2<sup>nd</sup> approach would be to have the 2<sup>nd</sup> gas meter piped to the 2 boilers and 2 hot water heaters so long as there is enough gas flow coming in from the main line under the thoroughfare to supply them; he felt the applicant should be able to choose the most cost-effective approach. Mr. Watkins pointed out that his client would need to have a professional evaluate the feasibility of such and asked that, if the Board approved the application, sufficient time be given to complete such plumbing being the gas utility, Public Service Enterprise Group (PSEG), is not known for its quick response to such requests. Vice Chairman Sonenshine, while agreeing the 3<sup>rd</sup> meters should be eliminated, believed it to be nonsensical to remove working mechanical equipment; he noted, however, the Board should not consider financial hardship in its decision-making. Mr. Bianco stated the only way to prevent the structure from being reverted to a 3-family use is by removing the 3<sup>rd</sup> gas meter and its associated mechanical equipment; he pointed out that the 3<sup>rd</sup> floor is small in size and little additional heat would need to be generated, especially since it benefits from the heat gain via the 2 floors below it. Vice Chairman Sonenshine asked if the landscaping in Exhibit #A-1 is existing or proposed; the witness answered no landscaping is being proposed. Vice Chairman Sonenshine inquired if parking space striping is in existence; the witness stated it is proposed. Vice Chairman Sonenshine revealed that the questionnaire in the filed Board application stated there to be 10 existing and proposed parking spaces; Mr. Watkins acknowledged the error and said it should indicate 6. Vice Chairman Sonenshine wished to have the impervious coverage reduced and asked for the layout of the basement; Mr. Hubschman replied there is nothing in it but a utility room. Mr. Bianco believed there should be no reduction in the 6 parking spaces because the nearby intersection would make additional on-street parking a potential safety issue. Mr. Bianco asked that the 2 diagonally-striped areas on either end of the 6 parking spaces be landscaped, especially since the 1 closest to the house could become an impediment if a vehicle is parked there at the time of an emergency; Vice Chairman Sonenshine added that the suggested landscaped areas should have curbing as well. Mr. Watkins agreed to such conditions. Mr. Crisafulli asked what would be done to remove the interior capability for a 3-family layout (hallway staircase); to address such a matter, Mr. Watkins suggested a deed restriction is the best approach since nothing can prevent a future owner-in-fee or tenant from illegally reverting to a 3-family use. The Board concurred. Mr.

Hubschman informed that the 3 gas meters are being fed by 1 pipe (manifold) and, so, he concluded the current gas flow is adequate.

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

Jesse Rosenblum, 65 Knickerbocker Road, asked if there are many residences in the Borough that pre-date the inception of its Zoning Code (December 19, 1940); the witness said he did not know but noted there are several such houses on West Street. Mr. Rosenblum asked why the Borough Code does not allow 2-family use in District #1 (Residential); Mr. Hubschman replied it is a lower density zoning district and that is how the Borough planned it. Mr. Rosenblum stated District #1 (Residential) requires a greater lot size than in District #2 (Residential) and said 1 would think such would be more accommodating to a multiple-family use; the witness disagreed, saying busy thoroughfares and smaller lots are more beneficial to a multiple-family use. Mr. Rosenblum asked if the MLUL states a Borough should “do use variances by ordinance rather than variance...”; the witness answered it does not.

Vice Chairman Sonenshine opened the meeting to the public for general comments only.

Jesse Rosenblum, 65 Knickerbocker Road, noted that in the past 3 to 4 years the Board has approved every 2-family use application presented to it, except for 69 West Street (Case #Z-2008-07) which is located in District #1 (Residential); he asked what is the point of having Chapter 200-9B of the Borough Code if the Board consistently disregards it. He stated case law dictates that if a Borough wishes to change its zoning ordinance, it must be done by the Governing Body and not through variance.

Douglas Radick, RA, 243 West Street, informed he has occupied his residence since 1989 and, while he does not personally know the applicant, he stated she has been a good neighbor who maintains her property better than any other multiple-family site on West Street. He noted the site, which had a barn situated partially on the current parking area until the 1970's or 1980's, is 1 of the largest in the neighborhood; he noted the void created by the removal of the barn must have been attractive to potential developers and, thus, he is grateful the lot was never permitted to be subdivided.

Mr. Watkins waived summation.

In response to Mr. Rosenblum's questioning, Mr. Bianco informed the reason why District #1 (Residential) has a greater lot size requirement (15,000 sf) than District #2 (Residential) is because the Borough's development pattern was such that its center, near the rail line, was commercial in nature; he said that fact is why the lots in the western section of the Borough are smaller. He explained the eastern portion of the Borough consisted mostly of farms at 1 point and there was concern about drainage (septic systems) due to the water courses throughout the municipality; thus, he said, larger properties were required to curtail worries about drainage.

## **Outcome**

The Board conducted a non-binding straw poll, specifically, as to whether the applicant should be required to remove only the 3<sup>rd</sup> meter of the gas and water utility, not including the mechanical equipment associated with the 3<sup>rd</sup> gas meter (**6-1: YES**- Crisafulli/ Hennessey/ Ouzoonian/ Monaco/ West/ Sonenshine; **NO**- Bianco). A motion was made by Mr. Crisafulli

and seconded by Dr. West, to approve the application with the following conditions: 1.) removal of 3<sup>rd</sup> gas and water utility meters only (electric to remain for common areas); 2.) removal of kitchen on 3<sup>rd</sup> floor; 3.) deed restriction for 2-family use to be filed with Office of Bergen County Clerk; 4.) 2 diagonally-stripped areas indicated on Exhibit #A-1 to be landscaped and given curbing; 5.) all stipulations to be completed within 6 months after Resolution is memorialized. The motion passed (**7-0: YES**- Crisafulli/ Hennessey/ Ouzoonian/ Monaco/ West/ Bianco/ Sonenshine).



The Board, again, tabled a vote on memorialization of the Resolution for 551 Closter Dock Road (Case #Z-2011-07), to the October 19, 2011 Hearing, because the applicant failed to file requested item(s) by the deadline; the Board concluded a letter, to be drafted by Ms. Smickley, is to be sent to the applicant, with the Construction Official being copied, informing him that all required submissions must be received within 30 days to avoid having the subject property's TCO revoked.

A motion was made by Mr. Bianco and seconded by Mr. Ouzoonian, to memorialize the Resolution for 219 Cedar Lane (Case #Z-2011-10). All eligible members present voted in favor. A motion was made by Mr. Bianco and seconded by Mr. Crisafulli, to memorialize the Resolution for 66 Poplar Street (Case #Z-2011-13). All eligible members present voted in favor.

There being no further items to discuss, a motion to adjourn the meeting was made by Dr. West and seconded by Mr. Crisafulli. All members present voted in favor. The meeting adjourned at 9:42pm.