



Zoning Board of Adjustment

September 28, 2011

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

Prepared by:

Paul Demarest

Mr. Bianco called to order, at 8:17pm, a (Special) Hearing of the Zoning Board of Adjustment for the Borough of Closter, New Jersey, convening Wednesday, September 28, 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:

- Joseph Bianco, RA/PP
- Antranig Ouzoonian, PE
- Thomas Hennessey- Alternate #1
- Andrew Shyong, DDS- Alternate #3
- Alysia Smickley, Esq.- Board Attorney
- Paul Demarest- Board Coordinator

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

- Robert Knee- Chairman
- Lorin Sonenshine, RA/PP- Vice Chairman
- Steven Freesman, Esq.- Secretary
- Theodore West, DDS
- Mitchell Monaco
- Mark Crisafulli- Alternate #2
- Marie Hartwell- Alternate #4
- Arthur Dolson- Council Liaison
- Leonard Sinowitz- Zoning Officer
- Jeffrey Morris, PE- Board Engineer



Due to the absences of Chairman Knee, Vice Chairman Sonenshine and Secretary Freesman, Mr. Bianco chaired the meeting.



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. No one wished to be heard.



Item #1

Case #Z-2011-06
358 Ruckman Road
(Block 2101/Lot 1)

Applicant(s): Chong Kook & Jae Hun Park
Representation: Jung-Ho Yae, Esq.

The applicants are seeking Bulk Variance Relief for the as-built construction of their new single-family house; NOTE: the application stems from the "Final As-Built Survey" being denied by the Zoning Officer.

Jung-Ho Yae, Esq., 1 Kinderkamack Road, Hackensack, New Jersey, introduced himself. He said the case is centered on a 6.55% excess of impervious coverage on the subject property located in District #1 (Residential), which permits a maximum of 30%. Mr. Yae said, when preparing the presentation of his clients' application, he remembered the veil of ignorance concept and questioned what would be the fair and just outcome of the difficult situation the applicants are in. He said the Parks were the victims of fraud. Following emigration from South Korea, he said they purchased the subject property and retained the necessary professionals to develop the site into a home they would reside in for the rest of their lives. Unfortunately, he said their general contractor, Michael Petersen (Timber Ridge Developers, LLC) was a criminal. Mr. Yae explained that subsequent to the Parks receiving a loan to build, Mr. Petersen started construction on-site in 2005; Mr. Yae noted that following 2 years of Mr. Petersen finishing certain benchmarks and requesting more funds from the Parks to continue construction, he stopped showing up at the jobsite altogether and was nowhere to be found. With the project only half complete, the applicants' son, Yul Soo Park, began overseeing construction. Mr. Yae informed that the Parks eventually could not afford both the rental property they were staying at during construction as well as the mortgage for 358 Ruckman Road; as a result, he said his clients moved into the subject house, which has yet to receive a Certificate of Occupancy. He further commented that, as of 16 months ago, the applicants could no longer make mortgage payments, resulting in a foreclosure. He said \$1,400,000.00 was borrowed for construction and the Parks' bank has agreed to let them short sell the property for a potential \$1,000,050.00; however, he revealed, it would not forgive the remaining \$350,000.00 left on the loan plus accruing interest nor would it authorize the release of any funds received from the sale. Ultimately, he said his clients have little income and would still owe after any sale. Mr. Yae said the contract purchasers have indicated they would not take title to the property unless Variance Relief was granted for the as-built conditions on-site. He informed that the 6.55% excess equates to 1,018 sf of impervious surface and that the Parks have no funds to remove portions of the driveway, walkways and/or patio. He revealed that Mr. Petersen was arrested 2009 and charged by the Office of the Bergen County Prosecutor with theft by deception and forgery in connection with falsely presenting himself as owner-in-fee of properties, which he then used as collateral to illegally-secure loans. Mr. Yae noted that the project's subcontractors have not been paid-in-full, even after the Parks' son put all of the money received from the sale of his own residence (\$129,000.00) towards their invoices; he added the subject property has several liens on it. Mr. Yae stated that being the Parks are in their 60's, their situation is dire. He acknowledged the Board's distaste for cases involving as-built projects, but he said the applicants truly have innocent hands. Mr. Yae stated they have nothing to gain from the property's sale other than to avoid declaring bankruptcy. He believed Mr. Petersen did not follow the construction plans approved by the Building Department because he had no intention of finishing the project since he was stealing money all along. He informed that Mr. Petersen was arrested again in 2010 and charged with check fraud; he noted that several Borough residents have also been the victims of Mr. Petersen's crimes. Exhibit #A-1, a series of on-line articles of *The Record* detailing Mr. Petersen's 2009 and 2010 arrests, was presented. Mr.

Bianco believed there are some open areas on-site where the planting of trees could reduce water saturation of the land by absorbing some groundwater.

Being no testimony was provided by witnesses, Mr. Bianco opened the meeting to the public for general comments only. No one wished to be heard.

Outcome

Ms. Smickley noted that there is a drainage easement on-site while brainstorming possible legal reasons for granting Variance Relief, other than financial; she also stated that there are 2 existing seepage pits on the subject property to help with storm water runoff. Mr. Ouzoonian said the project received Major Soil Movement Approval from the Planning Board in 2006. Mr. Bianco believed plantings should be made in both front yards of the corner lot rather than in the rear yard by the drainage easement. He reasoned that, at some point in the past, trees in the Borough's right-of-way along Ruckman Road were removed; he suggested that 2 to 3 4" caliper trees would, when at full growth, would help significantly in alleviating the excessive impervious surfaces on-site. Mr. Yae believed that, although the Borough Code states brick pavers on-site are to be considered impervious coverage, the sand used in their installation allows for rainwater to percolate between the pavers; Mr. Bianco disagreed, saying after 1 year or so of foot and vehicle traffic on top of the pavers, they become so compacted that they are, in effect, acting as concrete. He mentioned there is pervious pavement on the market but in order to have a long-lasting effect, it must be maintained via power washing/vacuuming. A motion was made by Mr. Hennessey and seconded by Dr. Shyong to approve the application with the following conditions: 1.) planting of 2, 4" caliper trees in front yard facing Ruckman Road 2.) planting of 1, 4" caliper tree in front yard facing Susan Drive south of driveway; 3.) all stipulations to be completed within 2 months after Resolution is memorialized. Mr. Demarest informed that the Borough's Certified Tree Expert, Raymond Cywinski, had issued a permit for tree removal at the onset of construction; he explained that, as per the conditions of said permit, the applicants agreed to either mitigate or, in lieu of planting shrubbery, pay \$300.00 per tree to the Shade Tree Commission. Mr. Bianco replied that while he hoped the Board's condition of tree plantings would suffice Mr. Cywinski's requirements, he felt the Board's demands should supercede being Variance Relief is being sought. The motion passed (**4-0: YES-** Shyong/ Hennessey/ Ouzoonian/ Bianco).



There being no further items to discuss, a motion to adjourn the meeting was made by Dr. Shyong and seconded by Mr. Ouzoonian. All members present voted in favor. The meeting adjourned at 8:42pm.