



Zoning Board of Adjustment

August 15, 2012

Hearing
(Minutes)

Prepared by:

Paul Demarest

◇ **OPENING REMARKS** (Commenced at 8:02pm) ◇

◇ **PLEDGE OF ALLEGIANCE** ◇

◇ **ATTENDANCE** ◇

Present

Joseph Bianco, RA/PP- Chairman
Steven Freesman, Esq.- Vice Chairman
Theodore West, DDS- Secretary
Mitchell Monaco
Antranig Ouzoonian, PE
Thomas Hennessey
Heena Dhorajia, EIT
Andrew Shyong, DDS- Alternate #1
Evan Elias- Alternate #2
Joan Marks- Alternate #3
Arthur Dolson- Council Liaison
Leonard Sinowitz- Zoning Officer
Michael Kates, Esq.- Board Attorney
Jeffrey Morris, PE- Board Engineer
Paul Demarest- Board Coordinator

Absent

John Galluccio, Esq.- Alternate #4

◇ **CORRESPONDENCE** ◇

Secretary West and Mr. Demarest read mail received by the Land Use Department into the record. Mr. Kates questioned if any announced postponement requests involve applicants that have pending cases in Municipal Court. Mr. Sinowitz replied that while some have been subject to code enforcement, all relevant court cases have resulted in the accused pleading guilty and paying a penalty; he noted that the Court order never stipulates a timeframe in which the Board must render a decision, only a deadline in which an application must be filed.

◇ **MINUTES** ◇

A motion was made by Secretary West and seconded by Mr. Hennessey, to approve the minutes for the July 25, 2012 (Special) Hearing. The motion passed (7-0-0).

YES- Shyong/Dhorajia/Hennessey/Ouzoonian/West/Freesman/Bianco;

NO- n/a;

ABSTAIN- n/a;

◇ **SUBCOMMITTEE ASSIGNMENTS** ◇

◇ **MISCELLANEOUS** ◇

Chairman Bianco started a discussion on the proposed amendment to the Board's By-Laws with respect to expediting the Board's caseload. Mr. Kates explained there would be a provision for the dismissal (without prejudice) of a case postponed by the applicant for 3 consecutive hearing dates without good reason as determined by the Board; he noted that it is to the advantage of the Board to decide what a reasonable exception is without actually defining such in the By-Laws. He further noted that he preferred using the By-Laws, not a directive, as a tool to expedite the caseload because the former empowers the Board to enforce a rule. Mr. Demarest suggested the Board choose the "Correspondence" portion of its meetings (when requested postponements are read into the record) as when to review each request on its own merits. Mr. Kates stated an applicant controls the time in which a case is heard, but if there is a postponement request the Board deems illegitimate, then dismissal is necessary to avoid going beyond the 120 day-period in which the Board must hear an application (to do so would result in an automatic approval of the case as per statute). He noted that postponement requests are accompanied by consent to an extension of time in which the Board must act. Mr. Kates believed the Board should give more leeway to pro se applicants than those represented by legal counsel. Chairman Bianco asked if the properties relevant to postponed cases with a history of code enforcement violations can have their Certificates of Occupancy revoked for non-compliance; Mr. Kates answered such action is not permitted. He believed the Board could suggest that the Zoning Officer re-issue a summons each time it feels an applicant is abusing the conditions of the settlement agreed upon with the Municipal Court. Chairman Bianco believed 2-family use applications (in which there is no owner-occupancy) should be compelled to present to the Board expeditiously because the applicant is a landlord collecting rent from an illegal condition. Mr. Kates responded that such instances should be handled with the Court suspending the case pending Board approval, and the Zoning Officer would notify it of an applicant's unexcused absences.

Mr. Kates informed that the proposed By-Laws amendment includes 2 additional changes: 1.) correction to Board's roster count (4, not 2, alternate members); 2.) reduction of time in which public noticing becomes stale (from 180 days to 90 days).

Secretary West inquired if the Board can fine an applicant who does not cancel an appearance at least 48 hours prior to the scheduled hearing date; Mr. Kates said he would research such before advising the Board.

A motion was made by Mr. Ouzoonian and seconded by Ms. Dhorajia, to adopt the By-Laws amendment as written. The motion passed (6-0-1).

YES- Shyong/Dhorajia/Hennessey/Ouzoonian/West/Bianco;

NO- n/a;

ABSTAIN- Freesman;

◇ **OPEN TO THE PUBLIC** ◇

Jesse Rosenblum, 65 Knickerbocker Road, Closter, New Jersey, asked if the Board has completed its 2011 Annual Report to the Governing Body and Planning Board; Mr. Kates informed the Drafting Subcommittee is finalizing on the document.

◇ **CASELOAD** ◇

<p>Case #Z-2011-16 Desan Enterprises, Inc. 170 & 176 Closter Dock Road (Block 1301/Lots 1 & 2) District #3- Business Area</p>
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Case History

The applicant is seeking Site Plan Approval for the conversion of existing office space to 2 residential units, resulting in a total of 4 within a mixed-use building at the subject property; **NOTE #1:** the application stems from an order by the Superior Court of New Jersey- Bergen County Law Division (see Docket #BER-L-6731-09) remanding a prior Board decision (Case #Z-2008-06), which approved the above-mentioned proposal, for further review by the Board; **NOTE #2:** the Court order does not require that a Use Variance, again, be granted as part of the applicant's re-filing; **NOTE #3:** due to the nature of the case, perfection by the Subcommittee at a Work Session was not required; the application was received September 30, 2011 and scheduled, pending the Board's receipt of outstanding application items and public noticing requirements, for the October 19, 2011 Hearing; being the Board decided that testimony by both the Zoning Officer and the objector's witnesses (see "Item #2" on the Board agenda) should precede presentation of the remanded case, the application was postponed to the November 22, 2011 Hearing, December 19, 2011 Hearing and, again, to the January 18, 2012 Hearing; due to the Board's heavy caseload, the application was postponed to the February 15, 2012 Hearing; the applicant's engineer completed direct, cross- and redirect examinations and the case was adjourned, pending the Board's receipt of requested items, to the March 21, 2012 Hearing; due to a scheduling conflict with the applicant's attorney, the case was postponed to the April 18, 2012 Hearing; the applicant's engineer completed subsequent testimony and the case was adjourned, with no items requested by the Board, to the May 16, 2012 Hearing; due to the Board's heavy caseload, the application was postponed to the June 20, 2012 Hearing; further direct, cross- and redirect examinations of the applicant's engineer were completed as was the direct examination of the objector's engineer (see "Item #2" on the Board agenda), and the case was adjourned, pending the Board's receipt of requested items, to the July 18, 2012 Hearing; due to scheduling conflicts with both the applicant's engineer and an intended witness (previous owner-in-fee of the subject property), the case was postponed to the August 15, 2012 Hearing.

Representation

- 1.) Mark Madaio, Esq., 29 Legion Place, Bergenfield, New Jersey;
- 2.) Elliot Urdang, Esq., 19 Engle Street, Tenafly, New Jersey (FOR OBJECTOR);

Witnesses

- #1: David Hals, PE/PP, Schwanewede Hals Engineering Co., 9 Post Road- Suite M11, Oakland, New Jersey (FOR OBJECTOR);

Exhibits

- A-3: informational chart itemizing requested Variances and Design Waivers prepared by applicant's counsel and undated;

- S-15:** photograph depicting parked vehicle in northeastern corner of 170 Closter Dock Road in front of entrance to 2nd floor apartments (triangular-shaped area surfaced with brick pavers), uncredited and undated;
- S-16:** report commenting on Exhibit #A-1 prepared by Witness #1 and dated February 15, 2012;
- S-17:** report commenting on pre-filed engineering plans (prepared by Robert Mueller, PLS/Michael Hubschman, PE and dated September 27, 2012- Exhibit # not assigned) prepared by Witness #1 and dated October 18, 2011;
- BD-4:** report prepared by Mr. Morris dated November 18, 2011;
- BD-5:** report prepared by Mr. Morris dated February 10, 2012;

Relief Sought

(DISCUSSED AT APRIL 18, 2012 HEARING);

Response to Prior Board and/or Subcommittee Requests

- 1.) applicant provided chart itemizing Variance/Design Waiver requests and reasons for such (including those addressed by objector's engineer);

New Board Requests

- 1.) provide reconfiguration of area depicted in Exhibit #S-15 to decipher parking space(s), private walkway(s), sidewalk, sidewalk ramp and curb cut(s) with use of landscaping and differing surface materials (AS PER OBJECTOR);
- 2.) provide abatement of non-compliant sidewalk, sidewalk ramp and access area to building depicted in Exhibit #S-15 with respect to hazardous elevations/slopes (AS PER OBJECTOR);
- 3.) provide abatement of blind spot created by convergence of drive aisle beneath front building's under canopy and its rear stairway (AS PER OBJECTOR);
- 4.) provide drainage appurtenance at mouth of driveway (176 Closter Dock Road) to alleviate anticipated flow increase onto thoroughfare caused by conversion of gravel to pavement on-site (AS PER OBJECTOR);
- 5.) provide means to reduce safety concerns of having 3 driveways for 176 Closter Dock Road, 190 Closter Dock Road and 317 Harrington Avenue clustered together (AS PER OBJECTOR);
- 6.) provide revised parking space calculations to reflect increase from 3 to 4 service station bays caused by outdoor vehicle lift located in front of rear building which results in both loss of 2 spaces provided as well as 4 additional spaces being required (AS PER OBJECTOR);

Public Questions

n/a;

Public Comments

n/a;

Decision

The case was adjourned to the August 29, 2012 (Special) Hearing. Due to the proximity of said date, the October 17, 2012 Hearing was announced as an alternative if scheduling conflicts arise.

◇ CLOSED SESSION ◇

A motion was made by Mr. Ouzoonian and seconded by Secretary Freesman, to have the Board go into closed session at 10:12pm. The motion passed (7-0-0):

YES- Dhorajia/Hennessey/Ouzoonian/Monaco/West/Freesman/Bianco;

NO- n/a;

ABSTAIN- n/a;

Chairman Bianco reopened the hearing to the public at 10:51pm.

Mr. Kates revealed that the Board discussed an allegation made against Chairman Bianco by a party, other than the applicant, involved with Case #Z-2011-17 (597 Piermont Road/TD Bank, NA), which suggests his supposed solicitation, in March 2009, as a real estate agent/broker on behalf of a client interested in the subject property. Mr. Kates explained he requested that affidavit(s) be furnished through the applicant's attorney; in response, he said the Board asked for additional information concerning the bona fides of the sworn statements. He informed a rebuttal was received earlier in the day. He said Chairman Bianco vehemently denies the accusation and will prepare his own affidavit to answer/counter the allegation. Mr. Kates indicated that Chairman Bianco would not recuse himself and the Board unanimously supported him.

Mr. Ouzoonian put into the record that the Board found the evidence presented to support the accusation against Chairman Bianco not to be credible. Upon role call, the entire Board roster confirmed it could, in spite of what has transpired, remain objective in the event the applicant wishes to proceed with the presentation of its case. Mr. Kates stated he would relay Mr. Bianco and the rest of the Board's determinations to the applicant; on the assumption there would a continuation of the application, the Board tentatively scheduled its resumption for the October 17, 2012 Hearing.

◇ ADJOURNMENT OF HEARING ◇

To consolidate its meeting dates, the Board cancelled its August 22, 2012 (Special) Hearing and announced Case #Z-2012-09 (16 Morrison Street/Gunderman) would be re-scheduled for the August 29, 2012 (Special) Hearing.

A motion was made by Dr. Shyong and seconded by Dr. West, to adjourn the meeting at 11:05pm. The motion passed by acclamation.
