



Zoning Board of Adjustment

March 21, 2012

Hearing
(Minutes)

Prepared by:

Paul Demarest

◇ **OPENING REMARKS** (Commenced at 8:01pm) ◇

◇ **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
John Galluccio, Esq.- Alternate #4
Arthur Dolson- Council Liaison
Leonard Sinowitz- Zoning Officer
Michael Kates, Esq.- Board Attorney
Paul Demarest- Board Coordinator

Absent

Jeffrey Morris, PE- Board Engineer

◇ **CORRESPONDENCE** ◇

Secretary West read mail received by the Land Use Department into the record.

◇ **MINUTES** ◇

Being minutes for the January 18, 2012 Reorganization/Hearing, January 25, 2012 (Special) Hearing, February 15, 2012 Hearing, February 22, 2012 (Special) Hearing and February 29, 2012 (Special) Hearing were not finalized, the Board postponed their votes to the March 27, 2012 (Special) Hearing.

◇ **SUBCOMMITTEE ASSIGNMENTS** ◇

- 1.) March 28, 2012 Work Session: Bianco/Ouzoonian/Dhorajia/Morris;
 - 2.) 2011 Annual Report Drafting- April 18, 2012: Bianco/Hennessey/Marks/Kates;
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◇ **MISCELLANEOUS** ◇

The Board discussed means by which to ensure applicants comply with Board stipulations both pre- and post-memorialization of Resolutions. It decided that Subcommittees would be required to address technical elements of an application at Work Sessions so the full Board is not forced to critique every aspect of a case during a Hearing; the Board also determined that Subcommittees should more often require applicants to post a \$300.00 engineering escrow to allow for Mr. Morris to review cases, regardless of whether or not Site Plan Review is being sought. Lastly, the Board asked that administrative reports be requested for Use Variance-only applications. The Board acknowledged that its members should review Chapter 173 and Chapter 200 of the Borough Code to assist them in deciding cases. Mr. Kates advised that if the Board felt its orders are not being enforced by the Borough following memorialization of Resolutions, it should consult with the Governing Body on a case by case basis.

◆ **OPEN TO THE PUBLIC** ◆

n/a;

◆ **MEMORIALIZATION OF RESOLUTION(S)** ◆

A motion was made by Dr. West and seconded by Dr. Shyong, to memorialize the resolution for 3-5 Harvey Street (Case #Z-2010-16). The motion passed (6-0-0):

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

NO- n/a;

ABSTAIN- n/a;

◆ **CASELOAD** ◆

<p>Case #Z-2011-18 Estate of Alexander & Mary Giannotti 47-49 Fairview Avenue (Block 705/Lot 11) District #2- Residential Area B</p>

Case History

The applicant is appealing the determination of the Zoning Officer as to the legality of the continuation of both a 2-family use for the main house as well as a 1-family use for a detached garage at the subject property; in the alternative, it would seek a Use Variance; the application was received October 28, 2011 and scheduled for the November 28, 2011 Work Session, at which time, it was perfected; pending the Board's receipt of requested items and public noticing requirements, the application was scheduled for 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 initial testimony and the case was adjourned, pending the Board's receipt of requested items, to the March 21, 2012 Hearing.

Representation

1.) Rose Tubito, Esq., 239 Old Tappan Road, Old Tappan, New Jersey;

Witnesses

- #1: Charles Olivo, PE, Stonefield Engineering & Design, LLC, 36 Ames Avenue- Suite 2B, Rutherford, New Jersey;
- #2: Steven Lydon, PP, Burgis Associates, Inc., 25 Westwood Avenue, Westwood, New Jersey;
- #3: Robert Giannotti, 37 Day Avenue, Tenafly, New Jersey;
- #4: Jesse Rosenblum, 65 Knickerbocker Road, Closter, New Jersey (OBJECTOR);

Exhibits

- A-5: pre-filed site plan/floor plan prepared by Witness #1, dated August 9, 2011 and last revised March 1, 2012;
- A-6: 2012 property tax bill indicating subject property as "47-49 Fairview Avenue" and having 3 dwelling units;
- A-7: photographs of subject property's exterior prepared by Witness #2 and dated March 2012;
- A-8: 2009 property tax record card for "47-49 Fairview Avenue" (2-family house);
- A-9: 2011 property tax record card for "49 Fairview Avenue" (detached garage);
- A-10: deed dated May 20, 1948 conveying subject property from Anna Giannotti (grandmother of Witness #3) to Alexander and Mary Giannotti (parents of Witness #3);
- A-11: deed dated June 29, 1936 conveying subject property from Albert Giannotti (uncle of Witness #3) to Anna Giannotti;
- A-12: deed dated August 27, 1927 conveying subject property from Richard and Elizabeth Kinzinger to Anna Giannotti;

Relief Sought

- 1.) Appeal of Zoning Officer Determination: pre-existing/non-conforming status for both 2-family use and 1-family use (REQUEST WITHDRAWN);
- 2.) Use Variance: 2-family use & 1-family use (main house and property were developed after December 19, 1940 and do not meet all current bulk requirements; no more than 2 dwelling units are permitted per lot in District #2/Residential Area B; no more than 2 principal buildings are permitted per lot in District #2/Residential Area B);
- 3.) Bulk Variance: floor area- 1-story dwelling unit (900 sf required/810 sf provided);
- 4.) Bulk Variance: impervious coverage (30% maximum allowance/35.40% provided);
- 5.) Bulk Variance: front yard setback (21.80' required/19.40' provided);
- 6.) Bulk Variance: side yard setback <left-facing> (15' required/9.50' provided);
- 7.) Bulk Variance: side yard setback <right-facing> (15' required/10.90' provided);
- 8.) Bulk Variance: side yard setback aggregate (30' required/20.40' provided);
- 9.) Design Waiver: curb cut (21' maximum allowance/59' provided);

Response to Prior Board and/or Subcommittee Requests

- 1.) applicant reduced impervious coverage by 221 sf (from 36.80% to 35.40%) via removal of concrete pad in rear yard, concrete area nearby *Bilco* doors of 2-family house and concrete area behind detached garage;
- 2.) applicant made correction to stairway depicted on architectural drawings to indicate how basement is accessed from 1st floor in main house;
- 3.) applicant provided square footage of 3 dwellings units (all levels inclusive);
- 4.) applicant determined that approximately 65% of 2nd floor's ceiling height in detached garage is 7', 3";

New Board Requests

n/a;

Public Questions

- 1.) Jesse Rosenblum, 65 Knickerbocker Road, Closter, New Jersey;

Public Comments

- 1.) Jesse Rosenblum, 65 Knickerbocker Road, Closter, New Jersey;

Decision

A motion was made by Dr. Shyong and seconded by Mr. Hennessey, to approve the application.

The motion passed (5-2-0):

YES- Shyong/Dhorajia/Hennessey/Monaco/Bianco;

NO- Ouzoonian/West;

ABSTAIN- n/a;

Conditions

- 1.) 1st floor of detached garage to be utilized for garage/storage purposes only (no residential occupancy);
- 2.) removal of concrete pad in rear yard, concrete area nearby *Bilco* doors of 2-family house and concrete area behind detached garage (all of which to be replaced with landscaping of applicant's choosing);
- 3.) compliance to applicable building/fire codes prior to issuance of Certificate of Occupancy;
- 4.) all conditions to be fulfilled no later than 90 days after memorialization of Resolution;

◇ **ADJOURNMENT OF HEARING** ◇

Mr. Kates reported on pending litigated cases, all of which are awaiting decisions from the presiding judge: 1.) *Wiggers v. Zoning Board of Adjustment* (Superior Court of New Jersey- Bergen County Law Division); 2.) *Rosenblum v. Zoning Board of Adjustment & Crimmins* (Superior Court of New Jersey- Appellate Division); 3.) *Rosenblum v. Zoning Board of Adjustment & Panagi* (Superior Court of New Jersey- Bergen County Law Division). Due to the unresolved matter of properly recording Board meetings held outside of the Council Chambers, Mr. Kates informed that a stenographer would be present at the March 28, 2012 (Special) Hearing and suggested 1 be retained regularly with the only cost to the Borough being an appearance fee to create the record of a proceeding (he felt the Board's application fees should be increased to cover such an expense); he noted that in all instances where a transcript is necessary, the Board would receive a copy free of charge since it is custom for the applicant to pay for it.

Councilman Dolson stated the Governing Body had yet to address a recent Planning Board ordinance recommendation which ties the Leadership in Energy and Environmental Design (LEED) certification system to the Borough's Limiting Schedule with relation to green building elements. He believed the Borough's 2008 Master Plan Reexamination Report is often used by applicants incorrectly during the course of presenting their cases and, thus, to the Board's disadvantage. In order to counteract such occurrences, he asked Board members to review said document, as well as the Municipal Land Use Law of New Jersey. He noted the Board should diminish non-conformity whenever possible and exercise its power to grant relief sparingly.

A motion was made by Mr. Ouzoonian and seconded by Ms. Marks, to adjourn the meeting at 10:51pm. The motion passed by acclamation.
