



Zoning Board of Adjustment

December 18, 2013

Meeting
(Minutes)

Prepared by:

Paul Demarest

◇ **OPENING REMARKS** (Commenced at 8:09pm) ◇

◇ **PLEDGE OF ALLEGIANCE** ◇

◇ **ATTENDANCE** ◇

Present

Joseph Bianco, RA/PP- Chairman
Steven Freesman, Esq.- Vice Chairman
Thomas Hennessey
Heena Dhorajia, EIT
Michael Kafer, Esq.- Alternate #1
Joan Marks- Alternate #2
John Galluccio, Esq.- Alternate #3
Phillip Kwon, Esq.- Alternate #4
Leonard Sinowitz- Zoning Officer
Michael Kates, Esq.- Board Attorney
Jeffrey Morris, PE- Board Engineer
Paul Demarest- Board Coordinator

Absent

Theodore West, DDS- Secretary
Mitchell Monaco
Antranig Ouzoonian, PE
Arthur Dolson- Council Liaison

◇ **CORRESPONDENCE** ◇

In lieu of the absent Secretary West, Vice Chairman Freesman read mail received by the Land Use Department into the record.

◇ **MINUTES** ◇

A motion was made by Mr. Kwon and seconded by Vice Chairman Freesman, to approve the minutes for the October 16, 2013 Meeting. The motion passed (4-0-0):

YES- Kwon/Galluccio/Freesman/Bianco;

NO- n/a;

ABSTAIN- n/a;

A motion was made by Mr. Hennessey and seconded by Ms. Dhorajia, to approve the minutes for the November 20, 2013 Meeting. The motion passed (5-0-0):

YES- Kwon/Dhorajia/Hennessey/Freesman/Bianco;

NO- n/a;

ABSTAIN- n/a;

◇ **MEMORIALIZATION OF RESOLUTION(S)** ◇

A motion was made by Mr. Hennessey and seconded by Ms. Dhorajia, to memorialize the Resolution for Case #Z-2013-15 (596 High Street/Landi). The motion passed (5-0-0):
YES- Kafer/Dhorajia/Hennessey/Freesman/Bianco;
NO- n/a;
ABSTAIN- n/a;

A motion was made by Mr. Kafer and seconded by Mr. Hennessey, to have Vice Chairman Freesman sign associated revisions as acting Board Secretary in lieu of the absent Mr. West; the motion passed by acclamation.

A motion was made by Mr. Hennessey and seconded by Ms. Dhorajia, to memorialize the Resolution for Case #Z-2013-14 (246 Parsells Lane/Birla). The motion passed (2-0-0):
YES- Dhorajia/Hennessey;
NO- n/a;
ABSTAIN- n/a;

◇SUBCOMMITTEE ASSIGNMENTS◇

December 25, 2013 Work Session: ***CANCELLED***;

◇OPEN TO THE PUBLIC◇

n/a;

◇MISCELLANEOUS◇

Mr. Demarest informed that the Borough Administrator, Richard Sheola, authorized changes to the Borough's handling of legal and engineering escrow accounts which would take effect on January 1, 2014; he said Mr. Sheola wishes to prevent depleted accounts from remaining so beyond the date on which a Resolution is memorialized, resulting in the Borough having the difficult task of collecting monies for unpaid invoices after the fact. He said Mr. Sheola hoped both the Board Attorney and Borough Engineer could begin presenting their invoices/vouchers for a particular case at the time of its Resolution being memorialized. Mr. Kates replied that his firm's invoices/vouchers are presented within 30 days following the voice vote on an application. He reiterated that unused escrow funds should not be relinquished by the Borough until both Board professionals have completed their review; Mr. Demarest clarified that the issue is not premature release of escrow monies but rather insufficient funding. He further stated that his suggestion of increasing the initial engineering escrow deposit at the time of a case filing, which is currently \$1,500.00 for Site Plan Review, has gone by the wayside. Mr. Morris responded that Boswell Mc Clave Engineering, Inc. would now supply the Board with estimated charges by the time of memorialization so it can be determined if additional monies are required. Chairman Bianco questioned if invoices/vouchers could be prepared 1 week prior to the Resolution being adopted; Mr. Morris believed such would be possible if he overestimates anticipated charges to ensure a refund to the applicant upon completion of the case. Mr. Demarest asked if the release and/or publication of a memorialized Resolution could be delayed if it is known an escrow account is deficient; Mr. Kates replied the proper way for the Board to react to such a circumstance is to simply not vote on memorialization until the account is replenished. Mr. Kates reiterated that the accounts need to be monitored more closely for

deficiencies. Mr. Demarest reminded that Mr. Kates' firm increased its initial legal escrow deposit requirement significantly a few years ago, which did away with legal escrow accounts becoming deficient at some point during the Board's handling of a case. Mr. Morris asked that he be informed of an account's balance 1 week in advance of the scheduled memorialization of a case; Mr. Demarest agreed to do so, but reminded that Boswell Mc Clave Engineering, Inc. must begin providing the Land Use Department with its invoices/vouchers, noting they are currently submitted directly to the Deputy Treasurer, Dorothy Woods.

Chairman Bianco informed of a matter pending before the Mayor and Council that concerns the legality of withholding the return of legal escrow monies to an unnamed prior Board applicant as leverage to get compliance on stipulations that were engineering in nature; Mr. Kates responded he had already given word to Councilman Dolson that the Governing Body has the authority to do so.

◇**CASELOAD**◇

<p>Case #Z-2013-13 Aurora Baquiran, MD 318 Harrington Avenue (Block 1312/Lot 10) District #3- Business</p>

Case History

The applicant is appealing the determination of the Zoning Officer as to the legality of as well as seeking pre-existing/nonconforming status for a 3-family use (front building), 2-family use (middle building) and 1-family use (rear building) at the subject property; in the alternative, she would seek a Use Variance and Site Plan Approval; the application was received June 21, 2013 and scheduled for the July 24, 2013 Work Session, at which time, it was deemed incomplete; pending the Subcommittee's receipt of requested items, the application was rescheduled for the August 21, 2013 (Special) 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 September 18, 2013 Meeting; due to the applicant's failure to both submit requested items and fulfill public noticing requirements, the application was postponed to the October 16, 2013 Meeting; the applicant and her planner completed initial testimony and the case was adjourned, pending the Board's receipt of requested items, to the November 20, 2013 Meeting; due to a scheduling conflict with the applicant, the case was postponed to the December 18, 2013 Meeting.

Representation

- 1.) Andrew Kohut, Esq., Wells, Jaworski & Liebman, LLP, 12 Route 17 North, Paramus, New Jersey;

Witnesses

- #1: Steven Lydon, PP, Burgis Associates, Inc., 25 Westwood Avenue, Westwood, New Jersey;
- #2: Leonard Sinowitz, Zoning Officer, 295 Closter Dock Road, Closter, New Jersey;

Exhibits

n/a;

Relief Sought

- 1.) Appeal of Zoning Officer Determination: pre-existing/nonconforming status for 5 of 6 dwelling units on subject site, specifically, 2- of 3-family use (front building), 2-family use (middle building) and 1-family use (rear building);
- 2.) Use Variance: 1 of 6 dwelling units on subject site, specifically, 1- of 3-family use (front building);
- 3.) Bulk Variance: floor area of 1-family used/2-storied house (1,200 sf minimum required/1,154 sf provided);
- 4.) Design Waiver: number of parking spaces (16 spaces minimum required/7 spaces provided);

Response to Prior Board and/or Subcommittee Requests

- 1.) applicant provided more succinct argument (via unmarked informational packet consisting of 10 categories of documentation <labeled A to J> and dated December 13, 2013) for granting pre-existing/nonconforming status for 2 of 3 apartments in front building (2nd floor only), 2 apartments in middle building and 1 apartment in rear building;
- 2.) applicant provided survey prepared by Frank Koestner, PLS and dated May 5, 1972 which she obtained upon being conveyed title in 1985;
- 3.) applicant provided Certificate of Occupancy issued by Building Department on May 29, 1987 along with associated paperwork and architectural drawings for 2nd story addition to rear building;

New Board Requests

- 1.) provide both argument and proofs for granting Use Variance relating to 1 apartment located on 1st floor of front building;

Public Questions

n/a;

Public Comments

n/a;

Decision

A motion was made by Mr. Galluccio and seconded by Mr. Kafer, to partially-approve the application, specifically granting both pre-existing/nonconforming status for the front building and an appeal relating to 2 apartments located on its 2nd floor while upholding the determination of the Zoning Officer on 1 apartment located on its 1st floor. The motion passed (7-0-0):

YES- Kwon/Galluccio/Marks/Kafer/Hennessey/Freesman/Bianco;

NO- n/a;

ABSTAIN- n/a;

A motion was made by Mr. Galluccio and seconded by Mr. Hennessey, to partially-approve the application, specifically granting both pre-existing/nonconforming status for the middle building and an appeal relating to its 2 apartments. The motion passed (7-0-0):

YES- Kwon/Galluccio/Marks/Kafer/Hennessey/Freesman/Bianco;

NO- n/a;

ABSTAIN- n/a;

A motion was made by Mr. Galluccio and seconded by Mr. Hennessey, to partially-approve the application, specifically granting both pre-existing/nonconforming status for the rear building and an appeal relating to its 1 apartment. The motion passed (5-2-0):

YES- Kwon/Galluccio/Marks/Hennessey/Freesman;

NO- Kafer/Bianco;

ABSTAIN- n/a;

Conditions

n/a;

The case was adjourned to the January 15, 2014 Meeting.

<p>Case #Z-2013-18 Arthur & Susan Forst 27 Pine Street (Block 512/Lot 10) District #2- Residential B</p>

Case History

The applicants are seeking a Bulk Variance for the construction of an addition, deck and pergola at the subject property; the application was received October 23, 2013 and scheduled for the November 20, 2013 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 December 18, 2013 Meeting.

Representation

1.) Arthur Forst, 27 Pine Street, Closter, New Jersey;

Witnesses

#1: Arthur Forst, 27 Pine Street, Closter, New Jersey;

#2: Christian Albrecht, RA, 253 Passaic Avenue, Fairfield, New Jersey;

Exhibits

n/a;

Relief Sought

1.) Bulk Variance: building coverage (20% maximum allowed/25.20% provided);

Response to Prior Board and/or Subcommittee Requests

n/a;

New Board Requests

n/a;

Public Questions

n/a;

Public Comments

n/a;

Decision

A motion was made by Mr. Kafer and seconded by Vice Chairman Freesman, to approve the application without conditions. The motion passed (7-0-0):

YES- Kwon/Galluccio/Marks/Kafer/Hennessey/Freesman/Bianco;

NO- n/a;

ABSTAIN- n/a;

RECUSED- Dhorajia;

Conditions

n/a;

◇ **ADJOURNMENT OF MEETING** ◇

Chairman Bianco informed of bids received from the Borough Clerk as part of the yearly “fair and open” process in awarding public contracts, specifically legal counsel and engineering consulting for the Board; he noted 1 bid was submitted for each position and both bidders currently hold the positions of Board Attorney and Board Engineer.

A motion was made by Mr. Kafer and seconded by Ms. Marks, to nominate Michael Kates, Esq. of Kates, Nussman, Rapone, Ellis and Farhi, LLP as Board Attorney conditioned upon current appearance, escrow and litigation rates remaining unchanged. The motion passed by acclamation.

A motion was made by Mr. Kafer and seconded by Hennessey, to nominate Boswell Mc Clave Engineering, Inc. to provide engineering consultant services on behalf of the Board with the recommendation that Jeffrey Morris, PE serve as Board Engineer. The motion passed by acclamation.

A motion was made by Mr. Kafer and seconded by Vice Chairman Freesman, to have the Board adjourn at 10:16pm. The motion passed by acclamation.
