



Zoning Board of Adjustment

July 17, 2013

Meeting
(Minutes)

Prepared by:

Paul Demarest

◇ **OPENING REMARKS** (Commenced at 8:05pm) ◇

◇ **PLEDGE OF ALLEGIANCE** ◇

◇ **OATH OF OFFICE** ◇

Alternate #1 (2-Year Term Expires December 31, 2014):
Appointed

Michael Kafer, Esq.

◇ **ATTENDANCE** ◇

Present

Joseph Bianco, RA/PP- Chairman
Theodore West, DDS- Secretary
Mitchell Monaco
Antranig Ouzoonian, PE
Thomas Hennessey
Heena Dhorajia, EIT
Michael Kafer, Esq.- Alternate #1
John Galluccio, Esq.- Alternate #3
Phillip Kwon, Esq.- Alternate #4
Arthur Dolson- Council Liaison
Leonard Sinowitz- Zoning Officer
Michael Kates, Esq.- Board Attorney
Elliot Sachs, PE- *in lieu of Jeffrey Morris, PE- Board Engineer*
Paul Demarest- Board Coordinator

Absent

Steven Freesman, Esq.- Vice Chairman
Joan Marks- Alternate #2

◇ **CORRESPONDENCE** ◇

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

◇ **MINUTES** ◇

A motion was made by Mr. Ouzoonian and seconded by Secretary West, to approve the minutes for the April 24, 2013 (Special) Meeting. The motion passed (7-0-0):

YES- Kwon/Galluccio/Hennessey/Ouzoonian/Monaco/West/Bianco;

NO- n/a;

ABSTAIN- n/a;

Mr. Demarest indicated minutes for both the May 29, 2013 (Special) Meeting and June 19, 2013 Meeting have yet to be completed.

◇SUBCOMMITTEE ASSIGNMENTS◇

July 24, 2013 Work Session: Bianco/Hennessey/Dhorajia;

◇OPEN TO THE PUBLIC◇

n/a;

◇MISCELLANEOUS◇

Chairman Bianco announced that the Board's discussion on the draft of its merged 2011 and 2012 Annual Report to the Governing Body and Planning Board was postponed to a future date to allow for additional revisions by Mr. Kates.

With respect to Mr. Sinowitz' request of the Board to make an Interpretation on the Borough's 2-family housing ordinance, Chairman Bianco summated the question revolves around Ordinance #'s 192, adopted December 19, 1940 by the Governing Body, which allowed for the new construction of 2-family houses in District #2 and 1955:13, adopted December 28, 1955, which permitted 2-family houses in District #2 only if such were the result of the conversion of an existing 1-family house. Mr. Kates explained the uncertainty comes when the Zoning Officer receives an application to ratify the existing 2-family use of a house built sometime between the adoption dates of the 2 relevant ordinances. Mr. Sinowitz inquired what the language within Ordinance #1955:13 is amendatory to; he elaborated that he needs guidance as to whether the ratification of a 2-family use is permitted by right if it is proven to have existed prior to either December 28, 1955 or December 19, 1940. Mr. Kates opined that if a 2-family use preexisted December 28, 1955, it should be considered a permitted, nonconforming use; he continued saying the later ordinance reads that a residence to be converted to a 2-family use must be in existence upon its effective date (December 28, 1955), and the reference to complying with "...provisions of the zoning ordinance to which this is amendatory..." refers only to the dimensional criteria (bulk standards) in place as of December 19, 1940. Chairman Bianco disagreed, saying the threshold date should be December 19, 1940 because such time predated the United States' entrance in World War II and the Borough's housing stock consisted of large 1-family homes; he said that in order to prevent them from becoming rooming houses, the Borough legislated to allow them to become 2 dwelling units as a compromise. He further stated that post-World War II, there was a housing boom which could have otherwise caused a massive influx of 2-family housing within the Borough, negatively impacting its school system, traffic, etc.

Due to its caseload, the Board tabled said discussion to a later date.

◇MEMORIALIZATION OF RESOLUTION(S)◇

Mr. Kates informed that the Resolution for Case #Z-2011-16 (170 & 176 Closter Dock Road/Desan Enterprises, Inc.) may need further revising due to yet another submission by the applicant received yesterday.

A motion was made by Secretary West and seconded by Mr. Monaco, to memorialize the Resolution for Case #Z-2013-09 (411 Piermont Road/Sear House) with noted corrections. The motion passed (6-0-0):

YES- Kwon/Dhorajia/Ouzoonian/Monaco/West/Bianco;

NO- n/a;

ABSTAIN- n/a;

◇**CASELOAD**◇

<p>Case #Z-2013-05 Birain & Bijal Parikh 74 Taylor Drive (Block 2204/Lot 9) District #1- Residential A</p>

Case History

The applicants are seeking a Bulk Variance for the installation of an outdoor barbecue station, fire pit, pergola, walkway, patio (raised) and patio (on-grade) expansion at the subject property; the application was received April 16, 2013 and scheduled for the April 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 May 15, 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 May 29, 2013 (Special) Meeting; the applicants, along with their engineer and architect, completed initial testimony and the case was adjourned, pending the Board's receipt of requested items, to the June 19, 2013 Meeting; the applicants and their architect completed subsequent testimony and the case was adjourned, pending the Board's receipt of requested items, to the July 17, 2013 Meeting.

Representation

1.) Birain & Bijal Parikh, 74 Taylor Drive, Closter, New Jersey;

Witnesses

#1: Marios Lachanaris, RA, 1610 Center Avenue, Fort Lee, New Jersey;

#2: Birain Parikh, 74 Taylor Drive, Closter, New Jersey;

#3: Bijal Parikh, 74 Taylor Drive, New Jersey;

Exhibits

BD-2: review letter prepared by Mr. Morris dated July 17, 2013;

A-6: pre-filed site plan prepared by Michael Hubschman, PE, Hubschman Engineering, PA, 263(A) South Washington Avenue, Bergenfield, New Jersey dated May 10, 2013 and last revised July 3, 2013;

A-7: pre-filed architectural prepared by Witness #1, both dated and last revised July 5, 2013;

Relief Sought

1.) Bulk Variance: impervious coverage (30% maximum allowed/32.53% provided);

Response to Prior Board and/or Subcommittee Requests

- 1.) applicants further reduced proposed impervious coverage from 35.72% to 32.53% via conversion of proposed raised patio to deck (with no man-made surface beneath) and reduction of both driveway and proposed patio (on-grade) as well as elimination of proposed walkway;
- 2.) applicants corrected proposed impervious coverage by omitting proposed deck from calculations;
- 3.) applicants eliminated installation of proposed 55” outdoor television set out of consideration to neighboring properties;

New Board Requests

n/a;

Public Questions

n/a;

Public Comments

n/a;

The Board recessed at 9:21pm.

The Board reconvened at 9:25pm.

Decision

A motion was made by Mr. Kwon and seconded by Mr. Ouzoonian, to approve the application.

The motion passed (4-1-0):

YES- Kwon/Ouzoonian/Monaco/West;

NO- Dhorajia;

ABSTAIN- n/a;

RECUSED- Bianco;

Conditions

- 1.) Exhibit #A-7 (architecturals) shall govern approved placement of barbecue station instead of Exhibit #A-6 (site plan) which appears to depict structure abutting house (no clearance);
- 2.) further reduce proposed impervious coverage from 32.53% to 32.09% via reduced dimensions of proposed patio (on-grade) from 18’x13.42’ (241 sf) to 15’x10’ (150 sf);

<p>Case #Z-2013-11 Vincent & Daniela Tubito 63 Closter Dock Road (Block 805/Lot 49) District #1- Residential A</p>

Case History

The applicants are seeking a Bulk Variance for the construction of a new 1-family house at the subject property; the application was received May 14, 2013 and scheduled for the May 29, 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 June 19, 2013

Meeting; the applicants' architect and engineer completed initial testimony and the case was adjourned, pending the Board's receipt of requested items, to the July 17, 2013 Meeting.

Representation

- 1.) Rose Tubito, Esq., 645 Westwood Avenue, Suite 301, River Vale, New Jersey;

Witnesses

- #1: Robert Zampolin, RA, 187 Fairview Avenue, Westwood, New Jersey;
- #2: Jeffrey Martell, PE, Stonefield Engineering & Design, LLC, 36 Ames Avenue, Suite 2B, Rutherford, New Jersey;
- #3: Edward Snieckus, PLA, Burgis Associates, Inc., 25 Westwood Avenue, Westwood, New Jersey;

Exhibits

- A-2: pre-filed architectural (page A5 only) prepared by Witness #1, dated June 7, 2013 and last revised 7-3-2013;
- A-3: architectural (page A5 incorporating detail on attic ceiling height) prepared by Witness #1, dated June 7, 2013 and last revised 7-17-2013;
- A-4: pre-filed site plan prepared by Witness #2, dated February 18, 2013 and last revised 7-3-2013;
- A-5: landscape plan prepared by Witness #3 and dated July 16, 2013;
- A-6: colorized version of Exhibit #A-5 prepared by Witness #3 and dated July 16, 2013;
- BD-1: review letter prepared by Mr. Morris dated July 17, 2013;

Relief Sought

- 1.) Bulk Variance: building height (28' to midpoint maximum allowed/30.79' provided);

Response to Prior Board and/or Subcommittee Requests

- 1.) applicants reduced proposed building height from 32.13' to 30.79' (reducing excess to less than 10% and negating Use Variance) by lowering both basement and first floor finished elevations as well as changing floor structure design of all levels of house while maintaining average existing grade elevation (30.96);
- 2.) applicants provided ceiling height detail of attic;
- 3.) applicants confirmed most of rear yard is located within flood hazard area as established by New Jersey Department of Environmental Protection (NJDEP) based on National Geodetic Vertical Datum of 1929, not North American Vertical Datum of 1988;
- 4.) applicants will seek both alternate method (shallower system than seepage pits) for storm water management and location (other than rear yard) dependent upon geotechnical testing;
- 5.) applicants indicated adjacent grade surrounding perimeter of house is to be 1+' higher than flood hazard elevation (29.90) to ensure no hydraulic connection or surface water/surcharge but acknowledged concern for ground water remains;

New Board Requests

n/a;

Public Questions

n/a;

Public Comments

n/a;

Decision

A motion was made by Ms. Dhorajia and seconded by Mr. Monaco, to approve the application.

The motion passed (4-2-0):

YES- Kwon/Dhorajia/Monaco/Bianco;

NO- Ouzoonian/West;

ABSTAIN- n/a;

Conditions

- 1.) obtain approval from NJDEP and other applicable jurisdictions prior to issuance of construction permit by Building Department;
- 2.) revise site plan to indicate installation of new curbing and sidewalk;
- 3.) satisfy drainage concerns outlined in Exhibit #BD-1;

◇ **ADJOURNMENT OF MEETING** ◇

Chairman Bianco informed that questions regarding completion of the financial disclosure statement required of all serving Board members should be addressed to the Borough Clerk.

Mr. Kates reported that Alexander Carver, presiding judge over the case in the Superior Court of New Jersey- Bergen County Law Division concerning the appeal of the Board's denial of Case #Z-2009-14 (63 John Street/Wiggers), recently announced his retirement effective September 1, 2013; therefore, Mr. Kates anticipated his long-awaited decision on the case in the near future. With respect to the Board's approval of Case #Z-2008-13 (49 John Street/Crimmins), Mr. Kates stated the applicant was recently denied a petition for certification by the Supreme Court of New Jersey. Mr. Kates said he brought to the attention of Judge Carver that the 49 John Street Board approval was reversed by a panel of the Superior Court of New Jersey- Appellate Division, yet the Board approval of Case #Z-2008-12 (35 John Street/Armaniaco), which shared the same findings of fact, was upheld by a different panel. Mr. Kates explained that the current state of the law is that the 63 John Street Board denial is the way the Appellate Division has ruled, and thus, Judge Carver should sustain the Board in denying the 63 John Street application.

Mr. Demarest questioned what legal options remain for the 63 John Street applicant; Mr. Kates replied there are none unless a significantly altered application were to be filed with the Board for new consideration.

Mr. Kates updated that he is still defending the Board's approval of Case #Z-2011-18 (47-49 Fairview Avenue/Giannotti Estate) at the Appellate Division.

A motion was made by Ms. Dhorajia and seconded by Mr. Monaco, to have the Board adjourn at 10:53pm. The motion passed by acclamation.
