



Zoning Board of Adjustment

July 24, 2013

*****Special***
Meeting
(Minutes)**

Prepared by:

Paul Demarest

◇ **OPENING REMARKS** (Commenced at 8:10pm) ◇

◇ **PLEDGE OF ALLEGIANCE** ◇

◇ **ATTENDANCE** ◇

Present

Joseph Bianco, RA/PP- Chairman
Steven Freesman, Esq.- Vice Chairman
Antranig Ouzoonian, PE
Thomas Hennessey
Heena Dhorajia, EIT
Michael Kafer, Esq.- Alternate #1
Joan Marks- Alternate #2
John Galluccio, Esq.- Alternate #3
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
Phillip Kwon, Esq.- Alternate #4
Arthur Dolson- Council Liaison

◇ **CORRESPONDENCE** ◇

In light of Secretary West's absence, Vice Chairman Freesman read mail received by the Land Use Department into the record.

◇ **MINUTES** ◇

A motion was made by Mr. Hennessey and seconded by Mr. Ouzoonian, to approve the minutes for the May 29, 2013 (Special) Meeting. The motion passed (3-0-0):

YES- Hennessey/Ouzoonian/Bianco;

NO- n/a;

ABSTAIN- n/a;

A motion was made by Ms. Dhorajia and seconded by Mr. Ouzoonian, to approve the minutes for the June 19, 2013 Meeting. The motion passed (3-0-0):

YES- Dhorajia/Ouzoonian/Bianco;

NO- n/a;

ABSTAIN- n/a;

Mr. Demarest indicated minutes for the July 17, 2013 Meeting have yet to be completed.

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

Mr. Kates announced that Resolutions for Case #'s Z-2011-16 (170 & 176 Closter Dock Road/Desan Enterprises, Inc.), Z-2013-05 (74 Taylor Drive/Parikh) and Z-2013-11 (63 Closter Dock Road/Tubito) were being drafted.

◇ **OPEN TO THE PUBLIC** ◇

n/a;

◇ **CASELOAD** ◇

<p>Case #Z-2013-12 Mark Topalian 93 Venus Drive (Block 2010/Lot 3) District #1- Residential A</p>
--

Case History

The applicant is seeking Bulk Variances for the construction of (2) additions, deck, (2) retaining walls, (2) patios (on-grade) and driveway expansion at the subject property; the application was received June 13, 2013 and scheduled for the June 26, 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 July 24, 2013 (Special) Meeting.

Representation

1.) Jordan Yuelys, Esq., 505 Main Street, Suite 304, Hackensack, New Jersey;

Witnesses

- #1: Michael Hubschman, PE, Hubschman Engineering, PA, 263(A) South Washington Avenue, Bergenfield, New Jersey;
- #2: Peter Dito, RA, FDS Architects Co., 19 Engle Street, Tenafly, New Jersey;
- #3: Mark Topalian, 93 Venus Drive, Closter, New Jersey;

Exhibits

- A-1: colorized version of pre-filed site plan (page 1 only) prepared by Witness #1, dated May 7, 2013 and last revised July 5, 2013;
- A-2: pre-filed site plan (page 2 only) prepared by Witness #1, dated May 7, 2013 and last revised July 5, 2013;
- A-3: 9 pre-filed photographs depicting exterior conditions of subject and surrounding properties, prepared by Witness #2 and dated June 26, 2103;
- A-4: colorized version of pre-filed architectural (page A2 only) prepared by Witness #2, dated January 2, 2013 and last revised July 3, 2013;
- A-5: colorized version of pre-filed architectural (page A1 only) prepared by Witness #2, dated January 2, 2013 and last revised July 3, 2013;

- A-6:** colorized version of pre-filed architectural (page A3 only) prepared by Witness #2, dated January 2, 2013 and last revised July 3, 2013;
- A-7:** colorized version of pre-filed architectural (page A4 only) prepared by Witness #2, dated January 2, 2013 and last revised July 3, 2013;

Relief Sought

- 1.) Bulk Variance: side yard <right-facing> setback (15' minimum required/10.83' provided);
- 2.) Bulk Variance: side yard setback aggregate (35' minimum required/30.23' provided);
- 3.) Bulk Variance: building coverage (20% maximum allowed/21.65% provided);
- 4.) Bulk Variance: impervious coverage (30% maximum allowed/30.95% 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. Hennessey and seconded by Ms. Marks, to approve the application. The motion passed (7-0-0):

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

NO- n/a;

ABSTAIN- n/a;

RECUSED- Ouzoonian;

Conditions

- 1.) provide swale traveling from side yard (right-facing) to rear yard so to avoid surface water draining onto 490 Ruckman Road while maintaining existing drainage pattern of surrounding area;
- 2.) provide yard drain at bottom of said swale to prevent flooding of 11 North Star Road;
- 3.) revise site plan to include guard rail on proposed upper patio area (contour line: 160/left-facing) as well as clarify such on architectural;

◇ **MISCELLANEOUS** ◇

With a final draft pending, Chairman Bianco summarized the following issues within the Board's forthcoming merged 2011 and 2012 Annual Report to the Governing Body and Planning Board to be discussed by the Board at a later date: 1.) alternate procedure to entering into Developer's Agreement when Board approval involves minor site improvements only; 2.) enumeration of minimum front yard setback requirements for all zoning districts whereby greater of average or expressed setback is utilized; 3.) change of jurisdiction regarding design

waiver requests for fencing in residential zones from Zoning Board of Adjustment to Planning Board; 4.) uniformity in definition of “impervious surface” as described in Chapters 170A-2 (Storm Water Control) and 200-5 (Zoning) of Borough Code; 5.) codification of standard detail requirements for refuse collection enclosures; 6.) inclusion of illustrations into Chapter 200-5 (Zoning) of Borough Code to enhance definitions of terms; 7.) transcription services in form of court reporter being in attendance of all Board meetings with option of providing transcript if litigation arises; 8.) inclusion of Chapter 3 of International Building Code (IBC)- New Jersey Edition, 2009 into Chapter 173-27D of Borough Code to simplify use group classifications and prohibition of High-Hazard and Institutional (subcategory 1-3 only) use groups within Borough being they involve dangerous materials and detention of people under restraint.

Mr. Kafer expressed that the Board as a whole should look to lessen its jurisdiction, emphasizing the purpose of its Annual Report is to find patterns in applications reviewed throughout the year.

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.

Mr. Kafer believed the language within the preamble of Ordinance 1955:13 suggested it is an amendment to Ordinance #192; Chairman Bianco concurred. Mr. Kates disagreed, citing the wording of the ordinance itself. Mr. Galluccio felt both interpretations had validity due to the ambiguity.

Mr. Kates mentioned that Chapter 200-9B of the Borough Code does not refer to either ordinance in question but rather refers to the effective date of the chapter, which may have been codified as recent as 1994; Chairman Bianco expressed concern that such rationale would result in hundreds of houses being eligible for 2-family use conversion. Both Mr. Galluccio and Mr. Kafer stressed the Board does not have the authority to analyze the possible impact of public policy.

In interpreting the relevant ordinances as they relate to applications for 2-family use conversion, the Board instructed the Zoning Officer to both utilize December 19, 1940 (date in which a house must preexist) and verify compliance with dimensional criteria using the present day Limiting Schedule.

In interpreting the relevant ordinances as they relate to applications for ratification of 2-family housing in existence, the Board instructed the Zoning Officer to both utilize December 28, 1955 (date in which a house must preexist) and verify compliance with dimensional criteria using either the December 19, 1940, April 14, 1954 (Ordinance #256) or December 28, 1955 Limiting Schedule depending upon when the house was built.

◇CLOSED SESSION◇

A motion was made by Mr. Hennessey and seconded by Vice Chairman Freesman, to have the Board go into closed session at 9:58pm. The motion passed (7-0-0):

YES- Marks/Kafer/Dhorajia/Hennessey/Ouzoonian/Freesman/Bianco;

NO- n/a;

ABSTAIN- n/a;

NOTE: Due to the topics of discussion, the minutes of this closed session will be released upon the resolution of said matters.

Chairman Bianco reopened the meeting to the public at 10:07pm.

◇ADJOURNMENT OF (SPECIAL) MEETING◇

A motion was made by Mr. Hennessey and seconded by Ms. Marks, to have the Board adjourn at 10:07pm. The motion passed by acclamation.
