



Zoning Board of Adjustment

March 20, 2013

Meeting
(Minutes)

Prepared by:

Paul Demarest

◇ **OPENING REMARKS** (Commenced at 8:07pm) ◇

◇ **PLEDGE OF ALLEGIANCE** ◇

◇ **OATHS OF OFFICE** ◇

Alternate #2 (2-Year Term Expires December 31, 2013):
Elevated

Joan Marks

Alternate #3 (2-Year Term Expires December 31, 2014):
Elevated

John Galluccio, Esq.

Alternate #4 (2-Year Term Expires December 31, 2013):
Appointed

Phillip Kwon, Esq.

◇ **ATTENDANCE** ◇

Present

Joseph Bianco, RA/PP- Chairman
Theodore West, DDS- Secretary
Mitchell Monaco
Antranig Ouzoonian, PE
Thomas Hennessey
Heena Dhorajia, EIT
Andrew Shyong, DDS- Alternate #1
Joan Marks- Alternate #2
John Galluccio, Esq.- Alternate #3
Phillip Kwon, Esq.- Alternate #4
Arthur Dolson- Council Liaison
Leonard Sinowitz- Zoning Officer
Michael Kates, Esq.- Board Attorney
Jeffrey Morris, PE- Board Engineer
Paul Demarest- Board Coordinator

Absent

Steven Freesman, Esq.- Vice Chairman

◇ **CORRESPONDENCE** ◇

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

◇ **MINUTES** ◇

A motion was made by Secretary West and seconded by Ms. Marks, to approve the minutes for the February 20, 2013 Meeting. The motion passed (7-0-0):

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

NO- n/a;

ABSTAIN- n/a;

A motion was made by Ms. Dhorajia and seconded by Secretary West, to approve the minutes for the February 27, 2013 (Special) Meeting. The motion passed (7-0-0):

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

NO- n/a;

ABSTAIN- n/a;

◇ SUBCOMMITTEE ASSIGNMENTS ◇

March 27, 2013 Work Session: Bianco/Hennessey/Dhorajia;

◇ OPEN TO THE PUBLIC ◇

n/a;

◇ MISCELLANEOUS ◇

Chairman Bianco suggested having James Whitney, the Borough's Code Enforcement Officer (West Side), appear before the Board as a fact witness when it feels his testimony can enlighten the Board during its consideration of a particular application, especially since he regularly inspects properties up for rental or resale as well as investigates those which have had complaints lodged against them. Chairman Bianco stated Mr. Whitney would be entitled to compensation for his time, currently at an hourly rate of \$23.85. Mr. Kates questioned if Mr. Whitney's appearance for a case would be determined by the Subcommittee at the time of completion review, noting that if such a decision is made by the full Board at a hearing, the applicant would be subject to unnecessary delay. Secretary West inquired about accessing a fee to an applicant to cover the compensation of Mr. Whitney; Chairman Bianco deferred such logistics to the Borough's administration. Mr. Kates informed that escrow monies posted by an applicant cannot be used towards Mr. Whitney because he is not a professional, and the only alternatives are direct payment through the Borough's treasury or an increase in the Board's application fees. Mr. Hennessey believed it is a Board member's responsibility to visit subject sites in order to be prepared for case deliberation, which would negate Mr. Whitney's appearance; Chairman Bianco disagreed, saying such expectation is not realistic given the voluntary membership of the Board. Mr. Kates endorsed Chairman Bianco's proposal only in those instances whereby an applicant is before the Board due to a suspension of sentence or being in the preliminary stages of court prosecution. Mr. Ouzoonian felt the use of Mr. Whitney would have the Board acting as an enforcement body, which it is not. Dr. Shyong suggested having Mr. Whitney provide a written report on a case by case basis rather than having him appear; Chairman Bianco believed having an individual verbalize an independent opinion under oath, along with allowing for cross-examination, resonates better than words on paper. Mr. Galluccio believed a condition of approval could be written into a Resolution having Mr. Whitney furnish a report, which would be used by the appropriate enforcement agency to ensure compliance in the future; he was unsure the Board is the proper body to evaluate Mr. Whitney's reports. Chairman Bianco questioned how the Board could make such a condition

without knowing the details of the report; Mr. Galluccio replied the Board cannot condition an approval to a violation that may not exist. Mr. Ouzoonian concurred, saying the Board would become subjective in its decision-making. The Board decided against having Mr. Whitney report to it in person on a per diem basis with the exception being those Board cases involving a court rendering, which would likely require him to supply the Board with a written report only.

Mr. Demarest informed that requested items as per the voice votes for Case #'s Z-2012-12 (388 Anderson Avenue/Erbeli) and Z-2012-11 (120 High Street/Carpentieri) have yet to be filed, resulting in the delay of said Resolutions being memorialized; Mr. Kates stated the Resolutions for Case #'s Z-2013-01 (551 Closter Dock Road/Votto) and Z-2012-07 (441 High Street/de la Bastida) were being drafted.

A motion was made by Mr. Hennessey and seconded by Mr. Monaco, to dismiss without prejudice, in accordance with the Board's By-Laws, Case #Z-2012-01 (318 Harrington Avenue/Baquiran) for lack of prosecution due to the applicant's postponement of 3 consecutive hearing dates. The motion passed (7-0-0):

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

NO- n/a;

ABSTAIN- n/a;

A motion was made by Mr. Hennessey and seconded by Mr. Monaco, to dismiss without prejudice, in accordance with the Board's By-Laws, Case #Z-2011-15 (447 High Street/Haverilla) for lack of prosecution due to the applicant's postponement of 3 consecutive hearing dates. The motion passed (7-0-0):

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

NO- n/a;

ABSTAIN- n/a;

The Board advised Mr. Demarest to inform the Code Enforcement Bureau to act as it sees fit with respect to the dismissed cases.

◇ **CASELOAD** ◇

<p>Case #Z-2013-03 Anthony & Linda De Falco 175 Herbert Avenue (Block 1501/Lot 15) District #2- Residential B</p>
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Case History

The applicants are seeking Bulk Variance Relief for the reconstruction of a storm-damaged detached garage at the subject property; the application was received January 31, 2013 and scheduled for the February 20, 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 March 20, 2013 Meeting.

Representation

1.) Anthony & Linda De Falco, 175 Herbert Avenue, Closter, New Jersey;

Witnesses

- #1: Anthony De Falco, 175 Herbert Avenue, Closter, New Jersey;
- #2: Linda De Falco, 175 Herbert Avenue, Closter, New Jersey;
- #3: Leonard Sinowitz, Zoning Officer, Borough of Closter, 295 Closter Dock Road, Closter, New Jersey;
- #4: Michael Hubschman, PE, Hubschman Engineering, PA, 263(A) South Washington Avenue, Bergenfield, New Jersey;

Exhibits

- A-1: 1 photograph depicting makeshift shed abutting southern portion of house, prepared by Witness #1 and undated;
- A-2: 1 photograph taken at close range, depicting makeshift shed abutting southern portion of house prepared by Witness #1 and undated;
- A-3: revised construction drawings prepared by Witness #1 and undated;

Relief Sought

- 1.) Bulk Variance: accessory building setback (3' minimum required/1.30' provided);
- 2.) Bulk Variance: impervious coverage (30% maximum allowed/41.76% provided);
- 3.) Bulk Variance: # of accessory buildings (2 maximum allowed/3 provided)
<WITHDRAWN- 1 OF 2 SHEDS ELIMINATED>;

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 Secretary West and seconded by Mr. Ouzoonian, to approve the application. The motion passed (7-0-0):

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

NO- n/a;

ABSTAIN- n/a;

Conditions

- 1.) remove makeshift shed depicted in Exhibit #'s A-1 and A-2 (2nd shed shall remain on-site);

The Board recessed at 8:57pm.

The Board reconvened at 9:05pm.

**Case #Z-2009-10
DR Schmidt Realty, LLC
170 & 176 Closter Dock Road
(Block 1301/Lots 10 & 11)
District #3- Business Area**

Case History

The applicant is appealing the determination of the Zoning Officer, in response to its inquiry, as to the legality of existing use(s) at the subject property; NOTE #1: the application stems from prior a Board decision (Case #Z-2008-06) granting Use Variance and Site Plan Approvals for the conversion of existing office space to 2 apartments, resulting in a total of 4 at the subject mixed-use building; NOTE #2: due to the nature of the case, perfection by the Subcommittee at a Work Session was not required; NOTE #3: given the history surrounding the subject property, the Borough Attorney's presence is required during Board proceedings; the application was received June 26, 2009 and scheduled, pending the Board's receipt of outstanding application items and public noticing requirements, for the August 19, 2009 Meeting; due to scheduling conflicts with both the applicant's attorney and Zoning Officer, the case was postponed to the October 21, 2009 Meeting; due to a scheduling conflict with the Borough Attorney, the application was postponed to the November 16, 2009 Meeting; pending the outcome of ongoing litigation in the Superior Court of New Jersey- Bergen County Law Division regarding the above-mentioned Board decision, the application was postponed indefinitely; as per the Court order, the case was scheduled, pending the Board's receipt of public *re-noticing* requirements, for the October 19, 2011 Meeting; direct, cross- and redirect examinations of the Zoning Officer were completed and the application was adjourned to the November 22, 2011 Meeting; due to the applicant's attorney being ill, the case was postponed to the December 19, 2011 Meeting; due to a scheduling conflict with the applicant's attorney, the case was postponed to the January 18, 2012 Meeting; due to the Board's heavy caseload, the application was postponed to the February 15, 2012 Meeting; due to a scheduling conflict with the applicant, the case was postponed to the March 21, 2012 Meeting; due to a scheduling conflict with the opposing counsel, the case was postponed to the April 18, 2012 Meeting; due to the Board's heavy caseload, the application was postponed to the May 16, 2012 Meeting; due to a scheduling conflict with the Zoning Officer, the case was postponed to the June 20, 2012 Meeting; due to the Board's heavy caseload, the application was postponed to the July 18, 2012 Meeting; due to scheduling conflicts pertaining to Case #Z-2011-16 (170 & 176 Closter Dock Road/Desan Enterprises, Inc.), the case was postponed the August 15, 2012 Meeting and, again, to the October 24, 2012 (Special) Meeting; due to the Board's heavy caseload, the application was postponed to the November 21, 2012 Meeting; as a means of consolidation, both the applicant's attorney and counsel representing the applicant named in Case #Z-2011-16 (170 & 176 Closter Dock Road/Desan Enterprises, Inc.) agreed to combine the remainder of their respective cases in terms of presentation and, therefore, the case was adjourned, with no items requested by the Board, to the December 19, 2012 Meeting; being the engineer involved in Case #Z-2011-16 (170 & 176 Closter Dock Road/Desan Enterprises, Inc.) did not furnish items to the applicant in a timely fashion, the case was postponed to the January 16, 2013 Meeting; due to the Board's heavy caseload, the application was postponed to the January 23, 2013 (Special) Meeting; due to a scheduling conflict with the applicant's attorney, the case was postponed to the February 20, 2013 Meeting; being the applicant did not fulfill public *re-noticing* requirements, the case was postponed to the March 20, 2013 Meeting; ***the application has been withdrawn.***

**Case #Z-2011-16
Desan Enterprises, Inc.
170 & 176 Closter Dock Road
(Block 1301/Lots 10 & 11)
District #3- Business Area**

Case History

The applicant is seeking Site Plan Approval for the conversion of existing office space to 2 apartments, 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 Meeting; being the Board decided that testimony by both the Zoning Officer and witnesses for the objector named in Case #Z-2009-10 (170 & 176 Closter Dock Road/DR Schmidt Realty, LLC) should precede presentation of the remanded case, the application was postponed to the November 22, 2011 Meeting, December 19, 2011 Meeting and, again, to the January 18, 2012 Meeting; due to the Board's heavy caseload, the application was postponed to the February 15, 2012 Meeting; 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 Meeting; due to a scheduling conflict with the applicant's attorney, the case was postponed to the April 18, 2012 Meeting; the applicant's engineer completed subsequent testimony and the case was adjourned, with no items requested by the Board, to the May 16, 2012 Meeting; due to the Board's heavy caseload, the application was postponed to the June 20, 2012 Meeting; further direct, cross- and redirect examinations of the applicant's engineer were completed as was the direct examination of the objector's engineer, and the case was adjourned, pending the Board's receipt of requested items, to the July 18, 2012 Meeting; 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 Meeting; further direct, cross- and redirect examinations of the objector's engineer were completed and the case was adjourned, with no items requested by the Board, to the October 24, 2012 (Special) Meeting; further direct, cross- and redirect examinations of the applicant's engineer were completed as was the direct examination of the previous owner-in-fee of the subject property, and the case was adjourned, with no items requested by the Board, to the November 21, 2012 Meeting; cross-examination of the previous owner-in-fee of the subject property was completed as was the direct and cross-examinations of its current principal owner-in-fee, and the case was adjourned, with no items requested by the Board, to the December 19, 2012 Meeting; being the applicant's engineer did not furnish items to the objector in a timely fashion, the case was postponed to the January 16, 2013 Meeting; due to the Board's heavy caseload, the application was postponed to the January 23, 2013 (Special) Meeting; due to a scheduling conflict with the objector's attorney, the application was postponed to the February 20, 2013 Meeting; being the applicant did not fulfill public *re-noticing* requirements, the case was postponed to the March 20, 2013 Meeting.

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: Michael Hubschman, PE, Hubschman Engineering, PA, 263(A) South Washington Avenue, Bergenfield, New Jersey;

Exhibits

- A-5: pre-filed engineering plans prepared by Witness #1, dated September 27, 2011 and last revised December 6, 2012;
- A-6: pre-filed cover letter appended to Exhibit #A-5, prepared by Witness #1 and dated December 6, 2012;

Relief Sought

- 1.) Design Waiver: parking space (29 spaces required/18 spaces provided);
- 2.) Design Waiver: parking space dimension (10'x20' required/9'x18' provided);
- 3.) Design Waiver: parking space area (200 sf required/162 sf provided);
- 4.) Design Waiver: parking in sight triangle (25' minimum clearance required/3 parking spaces <#s 8, 9 and 21> within sight triangle provided) <WITHDRAWN- PARKING SPACES REMOVED FROM SIGHT TRIANGLE>;
- 5.) Design Waiver: parking setback in front yard (20' minimum required/10' provided);
- 6.) Design Waiver: parking setback in side yard (5' minimum required/0' provided);
- 7.) Design Waiver: parking setback in rear yard (5' minimum required/0' provided);
- 8.) Design Waiver: parking/driveway curbing (required/none provided) <WITHDRAWN- PARKING/DRIVEWAY CURBING PROVIDED>;
- 9.) Design Waiver: refuse collection/storage (reasonable access required/none provided) <WITHDRAWN- ACCESS PROVIDED>;
- 10.) Design Waiver: sidewalk elevation between parking area and building (6" minimum above parking area/0" provided) <WITHDRAWN- ELEVATION PROVIDED>;
- 11.) Design Waiver: lighting <WITHDRAWN- (2) LIGHT POLES PROVIDED TO COMPLIMENT EXISTING BUILDING MOUNTED AND UNDERCANOPY LIGHTS>;
- 12.) Design Waiver: green area (20% minimum required/11.95% provided);
- 13.) Design Waiver: 500' drainage area map (required/not provided);
- 14.) Bulk Variance: side yard setback <left-facing> (6' minimum required/1.59' provided);
- 15.) Bulk Variance: impervious coverage (80% maximum allowed/88.05% provided);

Response to Prior Board and/or Subcommittee Requests

- 1.) applicant provided storm drains neighboring 313 Harrington Avenue as well as trench drain in parking lot on 176 Closter Dock Road;
- 2.) applicant provided contour lines for parking lot on 176 Closter Dock Road;
- 3.) applicant provided parking stall size (9'x18');
- 4.) applicant clarified there to be 4 total employees on-site of which 3 are dedicated to automotive repair shop;
- 5.) applicant provided detail for area between front building on 170 Closter Dock Road and thoroughfare so to differentiate sidewalk from driveway/apron;
- 6.) applicant provided refuse enclosure that consists of steel posts and cross members;
- 7.) applicant provided existing and proposed drainage facilities/methods that will curtail

storm water runoff to both surrounding properties and Closter Dock Road;

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. Dhorajia, to approve the application. The motion passed (7-0-0):

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

NO- n/a;

ABSTAIN- n/a;

RECUSED- Kwon;

Conditions

- 1.) replace existing material of rhombus-shaped area between front building on 170 Closter Dock Road and thoroughfare with different type, color and pattern of brick paver while maintaining existing dark-colored, brick paved sidewalk along 170 and 176 Closter Dock Road that matches scheme of downtown area;
- 2.) install signage that indicates parking is prohibited in active driveway at garage door of front building on 170 Closter Dock Road;
- 3.) install signage that indicates parking between front and rear buildings on 170 Closter Dock Road is both reserved for automotive repair shop and restricted to residential tenants;
- 4.) place lease restrictions on residential tenants to regulate on-site parking arrangements;
- 5.) revise conflicting depictions within site plan so that refuse enclosure is comprised of metal substructure (metal frame and wood panels attached with U-bolts);
- 6.) post performance bond with Borough (in lieu of entering into developer's agreement) based on estimate provided by Board Engineer;

◇ ADJOURNMENT OF MEETING ◇

Chairman Bianco reminded that the Borough will hold its bi-annual Joint Meeting, a gathering in which the public and Borough official discuss land use matters, on April 27, 2013; he also informed of a land use symposium scheduled for April 20, 2013 which can be attended by Board members regardless of whether or not they have obtained land use board certification, a statutory requirement to serve on the Board.

A motion was made by Dr. Shyong and seconded by Ms. Marks, to have the Board adjourn at 10:44pm. The motion passed by acclamation.
