



Zoning Board of Adjustment

September 18, 2013

Meeting
(Minutes)

Prepared by:

Paul Demarest

◇ **OPENING REMARKS** (Commenced at 8:02pm) ◇

◇ **PLEDGE OF ALLEGIANCE** ◇

◇ **ATTENDANCE** ◇

Present

Joseph Bianco, RA/PP- Chairman
Theodore West, DDS- Secretary
Mitchell Monaco
Antranig Ouzoonian, PE
John Galluccio, Esq.- Alternate #3
Phillip Kwon, Esq.- Alternate #4
Leonard Sinowitz- Zoning Officer
Michael Kates, Esq.- Board Attorney
Paul Demarest- Board Coordinator

Absent

Steven Freesman, Esq.- Vice Chairman
Thomas Hennessey
Heena Dhorajia, EIT
Michael Kafer, Esq.- Alternate #1
Joan Marks- Alternate #2
Arthur Dolson- Council Liaison
Jeffrey Morris, PE- Board Engineer

◇ **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 Mr. Galluccio, to approve the minutes for the August 21, 2013 Meeting. The motion passed (4-0-0):

YES- Galluccio/Ouzoonian/West/Bianco;

NO- n/a;

ABSTAIN- n/a;

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

Mr. Kates informed that a vote to memorialize the Resolution for Case #Z-2013-10 (626 Closter Dock Road/Khanna) was postponed due to non-receipt of requested items.

Regarding Case #Z-2013-11 (63 Closter Dock Road/Tubito), Mr. Kates informed that the drafted Resolution includes a deviation from the Board's customary stipulation that it receive revisions prior to it adopting a Resolution; he said it stems from the applicants' attorney requesting a vote

occur conditioned upon the site plan being revised to include a proposed curb and sidewalk at a future date. Mr. Kates expressed concern being some time has passed since the Board conducted a voice vote at the July 24, 2013 (Special) Meeting. He clarified that the Zoning Officer would not be prohibited from issuing a zoning permit, but the Building Department would not issue a construction permit until the revision is received; he said Chairman Bianco should sign the Resolution assuming it is adopted but not the latest revisions despite the included architectural and landscape plan being correct.

A motion was made by Mr. Kwon and seconded by Chairman Bianco, to memorialize the Resolution for Case #Z-2013-11 (63 Closter Dock Road/Tubito). The motion passed (2-0-0):
YES- Kwon/Bianco;
NO- n/a;
ABSTAIN- n/a;

◇SUBCOMMITTEE ASSIGNMENTS◇

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

◇OPEN TO THE PUBLIC◇

n/a;

◇MISCELLANEOUS◇

Chairman Bianco began a discussion on Mr. Kates' draft of the Board's merged 2011 and 2012 Annual Report to the Planning Board and Governing Body. Mr. Kates believed the Borough should retain a court reporter on a per diem basis to attend all meetings (not work sessions) and such would be paid for through increased application fees. Mr. Kates noted if a transcript is needed in response to an appeal filed against a Board decision, the Board would receive a courtesy copy. He stated the standard appearance fee for a court stenographer is approximately \$250.00 to \$300.00 per meeting. Mr. Kates stated that transcripts provided by a litigious resident, Jesse Rosenblum, are often incoherent because they are based on compact disc recordings, and such complicates putting forth a defense of the Board in court. Mr. Ouzoonian asked if a transcript would replace minutes prepared by Mr. Demarest; Mr. Kates replied in the negative, saying if there was a discrepancy between the 2, corrections would be made. He further noted that the transcript would only detail the case relevant to an appeal and therefore minutes are necessary to give a synopsis of the meeting in its entirety. Mr. Kwon questioned how much of an additional cost would be passed on to the applicant; Mr. Kates estimated such to be \$25.00. Mr. Kwon inquired if a poor transcript has caused the Board to lose a case on appeal; while Mr. Kates believed such has not occurred, he emphasized it is more difficult and time-consuming (resulting in higher legal bills for the Borough) to generate and argue a brief in court. Chairman Bianco reminded that the Board agenda consisted of 18 active items in March 2012; he pondered if transcription should be required on a case by case only in hopes of preventing needless costs to residents filing inconsequential applications.

Mr. Bianco said minimum front yard setback regulations should be amended so that there is enumeration for all zoning districts whereby the greater of either the average or expressed setback is utilized including when no other buildings exist on lots on the same side of the

thoroughfare other than the subject parcel; he said, for example, the minimum requirement would be 35' in District #1 (Residential A) and 25' in District #2 (Residential B). He explained that new construction is occurring in older neighborhoods and the minimum front yard setback is not being met, so much so that that an automobile barely fits in a driveway such as is the case with the recent development of Storig Avenue.

As a means of having consistency within the Borough Code, Mr. Kates said the definition of "impervious surface" indicated in both Chapter 200-5 (zoning ordinance) and Chapter 170A-5 (zero increase in storm water runoff ordinance) should be revised so they do not conflict with each other. Chairman Bianco explained the Borough only started regulating impervious coverage in 1986 in response to a flurry of industrial sites cropping up on and nearby Ruckman Road. He said he is a proponent of retaining as much natural earth on a parcel as possible as opposed to coverage with wood, stone, asphalt, concrete, etc. Mr. Ouzoonian questioned if the term "compaction" should be defined while acknowledging such could become too technical. Mr. Kates said he would research the term.

With respect to enhancing the Borough Code's zoning terminology by incorporating illustrations, Chairman Bianco noted that the picture depicting building height was inaccurate since the peak, not midpoint, is used in determining the calculation. He noted he prefers having the Borough's Zoning Code in sync with the definition of building height prescribed by the New Jersey Uniform Construction Code, which takes the measurement from the peak of a building; to emphasize his point, Chairman Bianco said a building could, technically, be constructed to a height of 56' (double the 28' maximum allowance to the midpoint) to the peak by having a 45 degree roof angle, and no variance relief would be required.

Chairman Bianco expressed frustration that the recent Board recommendation to have the Borough adopt the use group classification stipulated in the New Jersey Uniform Construction Code as its own (means to lessen conflict and confusion with the use classification within the Borough's Zoning Code) was not done so by the Governing Body, nor was its request to ban high-hazard and institutional establishments. Mr. Kates questioned when the Borough Code requires that Site Plan Approval be obtained for a change in non-residential tenancy; Mr. Sinowitz responded if a proposed change of use is permitted in the relevant zoning district, Site Plan Approval would not be required by the Planning Board so long as certain construction, site or environmental factors are not negatively-impacted. Chairman Bianco countered that if a proposed use does not match the existing use on-site, Site Plan Approval should be required.

Mr. Kates mentioned the following miscellaneous issues to be addressed in the Annual Report: 1.) allowance for Board Attorney to author Developers' Agreements instead of Borough Attorney; 2.) change of jurisdiction regarding design waiver requests for fencing in residential zones from Zoning Board of Adjustment to Planning Board; 3.) codification of standard detail requirements for refuse collection enclosures; 4.) enhancement of Limiting Schedule chart to clearly indicate maximum allowance for building height in District #'s1 and 2 is 28' to midpoint and not 30'; 5.) simplification of parking space dimensional requirements by using 9'x18' standard in all instances.

Mr. Kates informed of the absence of the term "place of worship" within the Borough Code as discovered by the Zoning Officer. Mr. Sinowitz revealed that a recent construction permit

application filed with the Building Department proposed an elaborate floor plan for a finished basement within a 1-family house including a sacristy, priest quarters and icon corner. Mr. Kates said the term is merely mentioned within the Borough Code's definition of "group gathering uses". Citing both *Farhi v. Deal Borough* and the Religious Land Use and Institutionalized Persons Act, he said a municipality cannot impede upon an individual's right to worship within their home by arbitrary, capricious or unreasonable means unless its occupation becomes secondary to an institutional use. He gave as an example an instance in which a rabbi purchased a large estate in the City of Englewood, which he intended to use for worship; Mr. Kates noted that officials discovered the rabbi operated a website advertising seminars, open membership, etc. at the residence. Ultimately, he said the rabbi was compelled to seek variance relief from the Zoning Board of Adjustment, but the fact that the City did not have a definition for "place of worship" allowed for the rabbi to argue the point that he had a constitutional right to worship within his home.

Mr. Kates said all discussion points will be incorporated into a recirculated draft of the Annual Report before its adoption by the Board.

The Board discussed an amendment to Chapter 87-5 of the Borough Code currently pending before the Governing Body. Chairman Bianco said the existing ordinance requires zoning review if questions arise about the use of a building being inspected for rental/resale purposes, and the proposed amendment would eliminate such a provision. He surmised that the reasoning behind such a change would be to reduce the number of 2-family use applications filed with the Board. Mr. Kates said he would contact the Borough Attorney to determine what prompted the proposal.

◆ **ADJOURNMENT OF MEETING** ◆

A motion was made by Secretary West and seconded by Mr. Galluccio, to have the Board go into closed session at 9:07pm. The motion passed (5-0-0):

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

NO- n/a;

ABSTAIN- n/a;

Chairman Bianco reopened the meeting to the public at 9:17pm. Mr. Kates disclosed that the Board discussed the recent decision handed down by the Superior Court of New Jersey- Bergen County Law Division, which upheld the Board's denial of Case #Z-2009-14 (63 John Street/Wiggers). He noted the Board authorized him to relay that it would not entertain anything further on said case despite a written request received from counsel to the applicant earlier this evening.

A motion was made by Secretary West and seconded by Mr. Galluccio, to have the Board adjourn at 9:18pm. The motion passed by acclamation.
