



Zoning Board of Adjustment

September 16, 2015

Meeting
(Minutes)

Prepared by:

Paul Demarest

◇ **OPENING REMARKS** (Commenced at 8:04pm) ◇

◇ **PLEDGE OF ALLEGIANCE** ◇

◇ **OATH OF OFFICE** ◇

Full Member (Existing 4-Year Term Expires December 31, 2016): Richard Daly
Appointed

◇ **ELECTION OF OFFICER** ◇

A motion was made by Ms. Marks and seconded by Ms. Rothbaum, to nominate Mr. Wasserman as Secretary of the Board following Theodore West's resignation; the motion passed (9-0-0):
YES- Kwon/Rothbaum/Marks/Ouzoonian/Daly/Elias/Baboo/Wasserman/Bianco;
NO- n/a;
ABSTAIN- n/a;
LATE ARRIVAL- Monaco;

◇ **ATTENDANCE** ◇

Present

Joseph Bianco, RA/PP- Chairman
Mitchell Monaco- Vice Chairman
Kenneth Wasserman- Secretary
Dharamraj Baboo
Evan Elias
Richard Daly
Antranig Ouzoonian, PE- Alternate #1
Joan Marks- Alternate #2
Mindy Rothbaum- Alternate #3
Phillip Kwon, Esq.- Alternate #4
Leonard Sinowitz- Zoning Officer
Daniel Steinhagen, Esq.- Board Attorney
Paul Demarest- Board Coordinator

Absent

Heena Dhorajia, EIT
Arthur Dolson- Council Liaison
Jeffrey Morris, PE- Board Engineer

◇ **CORRESPONDENCE** ◇

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

A motion was made by Mr. Elias and seconded by Mr. Baboo, to extend to the October 21, 2015 Meeting the time in which the applicant for Case #Z-2015-04 (596 High Street/Nami Properties, LLC) must appear before the Board, thereby avoiding a dismissal without prejudice for lack of

prosecution due to the applicant's postponement of 3 consecutive hearing dates in accordance with the Board's By-Laws. The motion passed (6-0-1):

YES- Marks/Ouzoonian/Elias/Baboo/Wasserman/Bianco;

NO- n/a;

ABSTAIN- Daly;

LATE ARRIVAL- Monaco;

◇MINUTES◇

A motion was made by Mr. Ouzoonian and seconded by Ms. Marks, to approve the minutes for the August 19, 2015 Meeting. The motion passed (8-0-0):

YES- Kwon/Marks/Ouzoonian/Elias/Baboo/Wasserman/Monaco/Bianco;

NO- n/a;

ABSTAIN- n/a;

◇SUBCOMMITTEE ASSIGNMENTS◇

September 23, 2015 Work Session: ***CANCELLED***;

◇MISCELLANEOUS◇

Chairman Bianco requested 2 Board members serve with him on the Subcommittee to draft the Board's merged 2013 and 2014 Annual Report to the Planning Board and Governing Body, the meeting dates of which were not yet known; Vice Chairman Monaco and Ms. Rothbaum volunteered.

With respect to those Board members (Wasserman/Elias/Daly/Rothbaum) who have yet to obtain land use board certification from an agency/affiliate recognized by the State of New Jersey within 18 months of their initial appointments by the Governing Body, Secretary Wasserman, Mr. Daly and Ms. Rothbaum confirmed they would attend a land use symposium on September 27, 2015 being hosted by New Jersey Planning Officials (NJPO); Chairman Bianco stated he would be attending as well while Mr. Elias indicated he would not be available.

◇OPEN TO THE PUBLIC◇

n/a;

◇MEMORIALIZATION OF RESOLUTION(S)◇

A motion was made by Mr. Ouzoonian and seconded by Vice Chairman Monaco, to memorialize the Resolution for Case #Z-2014-14 (49 John Street/Crimmins). The motion passed (7-0-0):

YES- Marks/Ouzoonian/Elias/Baboo/Wasserman/Monaco/Bianco;

NO- n/a;

ABSTAIN- n/a;

◇CASELOAD◇

**Case #Z-2014-11
Dahyalal Gajera
265 Demarest Avenue
(Block 907/Lot 28)
District #2- Residential B**

Case History

The applicant is appealing the determination of the Zoning Officer as to the legality of the continuation of a 2-family use at the subject property; the application was received June 25, 2014 and scheduled for the August 20, 2014 (Special) Work Session; due to a scheduling conflict with the applicant's attorney, the case was postponed to the September 17, 2014 (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 November 19, 2014 Meeting; due to an error in noticing caused by the intended newspaper publisher, the case was postponed to the December 17, 2014 Meeting; being the applicant intends to both seek a Use Variance in the alternative and retain a planner, the case was postponed to the February 25, 2015 (Special) Meeting; being the applicant's attorney requested further review of Borough records on the subject property, the case was postponed, pending the Board's receipt of public *re-noticing* requirements, to the April 15, 2015 Meeting; due to reasons not specified by the applicant's attorney, the case was postponed to the May 27, 2015 (Special) Meeting; due to the unavailability of the applicant's attorney, the case was postponed to the July 15, 2015 Meeting; due to the Board's heavy caseload, the application was postponed, pending the Board's receipt of public *re-noticing* requirements, to the August 19, 2015 Meeting and, again, to the September 16, 2015 Meeting.

Representation

1.) David Watkins, Esq., 285 Closter Dock Road, Closter, New Jersey;

Witnesses

- #1: Robert Mueller, PLS, Hubschman Engineering, PA, 263(A) South Washington Avenue, Bergenfield, New Jersey;
- #2: Leonard Sinowitz, 295 Closter Dock Road, Closter, New Jersey;
- #3: Roger De Niscia, PP, 347 Upper Mountain Avenue, Montclair, New Jersey;

Exhibits

- A-1: colorized version of pre-filed site plan, prepared by Witness #1, dated March 21, 2014 and last revised October 9, 2014;
- A-2: property record card indicating existence of 2 dwelling units within subject house, year built as 1934, prepared by Tax Assessor and dated 2010;
- BD-1: letter submitted as part of Case #Z-1981-15 (withdrawn Board application for 1- to 2-family use conversion) indicating subject house was built in 1948, prepared by Carl Bussow (grantor who conveyed subject property to applicant on September 21, 1983) and dated October 21, 1981;

Relief Sought

- 1.) Appeal of Determination by Zoning Officer: pre-existing/nonconforming status for 2-family use <WITHDRAWN>;

- 2.) Use Variance: 2-family use (uncertainty as to whether house was built prior to December 19, 1940 due to discrepancy between Exhibit #'s A-2 and BD-1/does not meet all current bulk requirements):
 - a.) Bulk Variance: front yard setback (28.15' minimum required/27.33' provided);

Response to Prior Board and/or Subcommittee Requests

n/a;

New Board Requests

n/a;

Public Questions

- 1.) Jesse Rosenblum, 65 Knickerbocker Road, Closter, New Jersey;

Public Comments

- 1.) Jesse Rosenblum, 65 Knickerbocker Road, Closter, New Jersey;

Decision

A motion was made by Mr. Baboo and seconded by Mr. Elias, to approve the application. The motion passed (7-0-0):

YES- Marks/Ouzoonian/Elias/Baboo/Wasserman/Monaco/Bianco;

NO- n/a;

ABSTAIN- n/a;

EARLY DISMISSAL- Daly;

Conditions

- 1.) remove kitchen located in basement (Exhibit #A-2 indicates subject house contains 2 kitchens on 1st floor and 3rd kitchen in basement);
- 2.) provide deed restriction assuring use of subject property shall be 2-family (such is to be recorded with Bergen County);
- 3.) obtain inspection report from Code Enforcement Officer prior to October 21, 2015 (anticipated date of Resolution being memorialized) to clarify room layout of both dwelling units;

◇ADJOURNMENT OF MEETING◇

Vice Chairman Monaco inquired about the status of code enforcement at 63 John Street, the subject property of Case #Z-2009-14 (63 John Street/Wiggers), in which the Board denied a request by the property owner, Dennis Wiggers, to continue a contractor's yard operation on-site; the Board expressed frustration over the slow process in having all non-residential activity stopped at 63 John Street and the removal of his operation from the adjacent unimproved section of Westminster Avenue (paper street), especially given all of his appeals on the Board's decision have been exhausted. Mr. Sinowitz replied that a Cease and Desist Order will be issued in the near future, which Mr. Wiggers will likely appeal in the Superior Court of New Jersey (Law Division). Mr. Steinhagen noted that the zoning violation resulted in a Municipal Court action, presumably to enforce a penalty; he explained the issue is now criminal because there is a violation of an ordinance. In response to Secretary Wasserman, Mr. Sinowitz stated that for 2 months he has been issuing weekly \$1,500.00 penalties to Mr. Wiggers. Mr. Steinhagen stressed that if the penalties are not paid, Mr. Wiggers would be in contempt and the Court

could suspend his driver's license, etc. With respect to Westminster Avenue, Mr. Sinowitz reiterated the Police Department has jurisdiction being a public right-of-way is involved. Mr. Steinhagen said the Borough may opt to remove Mr. Wiggers' equipment/material from the paper street and attach a lien on 63 John Street. Secretary Wasserman reminded that Mr. Wiggers apparently removed a blockade installed by the Borough preventing access to Westminster Avenue from Railroad Avenue and there were no ramifications.

Mr. Kwon suggested the Borough file a Temporary Restraining Order to allow for collection of heavier fines accessed daily. He pointed out that such would essentially be a violation of a court order and interest could be charged. He said the Borough could have a 2-pronged approach (criminal and civil) in dealing with Mr. Wiggers, both a Cease and Desist Order and a preliminary injunction. Mr. Kwon stressed, however, that due process remains, and the matter can be drawn out by Mr. Wiggers, but the Borough can be aggressive as well. He summated that the Borough has a favorable decision on the matter of land use, but enforcement has to be ordered at some point.

Agreeing with Mr. Kwon, the Board directed Mr. Steinhagen to prepare a memo to the Governing Body suggesting it have the Borough Attorney file a Temporary Restraining Order against Mr. Wiggers.

A motion was made by Secretary Wasserman and seconded by Vice Chairman Monaco, to have the Board adjourn at 9:40pm. The motion passed by acclamation.
