

**BOROUGH OF CLARKS SUMMIT
304 SOUTH STATE STREET
CLARKS SUMMIT, PENNSYLVANIA 18411**

**ZONING HEARING BOARD - Reconvene
Tuesday, August 1, 2017
7:00 P.M.**

The Board of Zoning Appeals held a duly advertised meeting on Tuesday, August 1, 2017 at 7:00 PM. The Meeting was held in Borough Council Chambers, 2nd Floor, 304 South State Street, Borough of Clarks Summit, County of Lackawanna and Commonwealth of Pennsylvania.

Chair Mr. John Kazista called the meeting to order and recording secretary, Ms. Virginia Kehoe, called the roll.

Present: Mr. John Kazista, Mr. John Jeffrey, Mr. Geoff Brock, Solicitor Robert Sheils, Recording Secretary Virginia Kehoe, Code Enforcement Officer Jenn Basalyga, and Stenographer Nicole Pizarski. Absent from the meeting was Mr. Bill Dempsey.

- 1. APPROVAL OF THE AGENDA:** Geoff Brock made the first motion to approve the agenda, seconded by John Jeffrey, vote was unanimous 3-0.

- 1. OLD BUSINESS:**

2017-01 Appeal – JCJ Realty Holdings LLC – appeal Ordinance 2002-01 Section 404.3 Part 6 Impervious Coverage as amended by Ordinance 2015-06 D in section II Maximum Lot Coverage 25% as amended by the variance from ZHB hearing dated 12/8/15, application 2015-02 to 47.47% on the property located at 215 Clarks Avenue, Clarks Summit, PA 18411

Code Enforcement Officer Jenn Basalyga was sworn in:

RE: JCJ Realty Holdings LLC

Owners – JCJ Realty Holdings LLC, 4805 Birney Avenue, Moosic PA 18507

Applicant – JCJ Realty Holdings LLC, 4805 Birney Avenue, Moosic PA 18507

Location – 215 Clark Avenue (200 N. State Street)

Tax Map # 09015-010-04900

Zoning District – CC

The hearing was advertised in The Scranton Times on July 13, 2017 and July 16, 2017. The four corners of the property were posted on July 17, 2017.

The applicant is appealing a notice of violation:

Ordinance 2002-01 – Section 404.3 Part 6 Impervious Coverage which was amended by Ordinance 2015-06.D in Section II Maximum lot coverage of 25% as amended by the variance from ZHB hearing dated 12/18/15, application 2015-02 to 47.47%

The Nature of the Violation is the Maximum lot coverage as approved by Variance 2015-02, of 47.47% is allowed at the above listed property. It is clear that the recent paving of unpaved areas has increased the lot coverage to excess of 47.47%.

The property was measured out by James Dougherty and based on his measurements we calculated the total square footage of the property to be 11,833.92 square feet and the amount of pervious land at the property measures 1,603. Therefore the existing impervious lot coverage is now calculated at 86.45%. This lot coverage clearly exceeds the 47.47% that they were authorized.

John Kazista asked Ms. Basalyga to give James Dougherty's title. Ms. Basalyga stated that he is the Assistant Code Enforcement Officer.

Attorney Larry Moran on behalf of JCJ/Convenient stated that Mr. Dougherty's numbers are fundamentally different than their numbers. Attorney Moran stated that they do not feel that they are exceeding the 47.47% lot coverage which was permitted. He will take the ZHB through their accounting of their calculations. Attorney Moran stated that the total square footage of the property is 11,483 square feet. Mr. Dougherty calculated an 11,833. Mr. Dougherty calculated the impervious coverage at 86.46%. Engineer Emmett Mancinelli was sworn in. Mr. Mancinelli stated that the existing lot size is 11,483 square feet. Solicitor Sheils stated the board did not receive any of this information prior to the meeting and the information was requested 3 weeks ago. Also, Mr. Mancinelli was the borough engineer for a number of years. Ms. Kehoe stated that there were 2 phone calls made of the last several weeks requesting this information. John Kazista stated that when the board granted the conditional variance concerning the underground water retention system with the project needing approval from the borough engineer. Emmett Mancinelli stated that they did submit the stormwater design to the borough engineer and he came out 3 times and authorized and gave them the ok to complete the installation. Virginia Kehoe was sworn in. Ms. Kehoe stated that the permit was granted because the conditions were met. Ms. Kehoe stated that what has changed since then is they increased the impervious surface after. Mr. Mancinelli stated that the pre-development condition is before they touched the site and did anything. In June of 2015 they came before the board and got a 47.47% of lot coverage variance approved. Mr. Mancinelli stated that additional areas were paved. The lower lot is calculated at 1892 square feet. The Upper lot stone patio and driveway was existing, there has been an addition of 783 square feet of pave on that area. So he stated that the paving of the upper and lower lot have been added since the variance was granted. The total calculations comes to 70.5% coverage based on all of the construction as

it exists at this moment. They are asking for a credit for the roof. Mr. Mancinelli stated that the stormwater system collects water from the roofs of the building. Mr. Mancinelli showed the ZHB members a map of the property and explained the stormwater system etc. 2,765 square feet of coverage that has been paved goes into their stormwater system. If that area doesn't get into the borough stormwater system then the coverage should be reduced by that amount. Therefore they should be at 46.5%. Solicitor Sheils asked if the borough was ever approached with this information. Mr. Mancinelli said no. Clark Avenue is going to have a pavement strip in the borough right-of-way. Council approved the addition of paving and parking within the borough right-of-way. This is a separate issue. The water from Clark Street comes down and does not go into the inlet, it goes in to 215 Clark's property, by paving that area and an additional inlet was added it helped with the flooding of the property. Mark Toth was sworn in. Mr. Toth, owner of Convenient Food Mart, Summit Cigar Lounge and Bar stated that the reason paving was done on the upper section, which he personally approached the borough. Mr. Toth stated that back when they paved Clark Avenue, they came down Clark and they stopped before the pave reached their property. This water does did not hit the catch basin, 50% of the water comes out at the inlet and flows down Clark Avenue and goes into his property. So during construction their basement was flooded with water constantly. There was always water coming in. JCJ put in a catch basin in to stop the water from hitting the foundation, but the water still does get into the building. Mr. Toth stated that he offered to take care of this under his expense, they offered to pave straight down and get the water to go into the catch basin down below. Mr. Kazista asked if there was any consideration at that time that there was a limit on what he could do in terms of paving. Mr. Kazista stated that the ZHB issued a decree more or less and said that under these circumstances that they could proceed with the construction. Ms. Kehoe stated that Mr. Toth came before Council and they were talking about working in the borough right-of-way. So it didn't affect the impervious surface of the property. They were offering to fix this area for us and Council was amenable because they were strictly in the right- of-way so this work does not affect their lot coverage. Ms. Kehoe stated that the upper parking lot is on the property owner's property and Mr. Toth did not seek a permit for that. They paved it after the storm drain was put in. But they were still having stormwater issues and they then came to the borough council to talk about it. Ms. Kehoe stated that she gave him the notice of violation after the upper parking lot was paved without a permit. While we were working on the notice of violation and appeal they were still having this water problem and they asked if this work can be done in the borough right-of-way. So there are two different issues, both trying to solve the water problem there. The borough did not authorize any paving on their private property. Mr. Toth stated that when they paved the upper parking lot they thought that was under the previous coverage of the underground detention pond that they put in at their expense. Mr. Kazista asked about the paving on the lower lot. Mr. Toth stated that the owner of the property at that point JCJ paved that. Attorney Moran stated that he doesn't know why JCJ did it but it was for aesthetics. Mr. Mancinelli does not know why it was paved either.

Mr. Brock stated that this area was pervious at approval and it is now impervious. Geoff Brock questioned the proposed credit. Impervious surface from a satellite view is impervious surface, so what they are proposing if a lot coverage percentage tally is taken on a roof area, whether those gutters drain into the lawn or if they drain to the curb and they go into the Clarks Summit stormwater basin. This is considered impervious surface. Mr. Mancinelli stated that their storm system is underground, that water does not see the borough storm system, and it does not go over land. They captured the water from the downspouts of the rain gutters. Geoff Brock asked if they have used this credit before on other properties. Mr. Mancinelli said he doesn't remember, but certainly not in Clarks Summit. Mr. Kazista stated that Mr. Dougherty came up with 86.45% and they came up with 70.51%. Ms. Kehoe stated that she worked with Mr. Dougherty on preparing those numbers; the total lot coverage number came from the Tax Assessors dimensions on the property. Because we were not exactly sure where the property lines began and ended, Mr. Dougherty was instructed to measure out all of the pervious land. Then we subtracted that out of the total to come up with a percentage. Ms. Kehoe stated that there is room for error probably 5% either way. Ms. Kehoe stated that they don't have the patio, or the pad for the HVAC system included in these numbers. Mr. Mancinelli stated that the patio was included in the original conditions because the patio was there when they bought the property. Ms. Kehoe stated that was incorrect. The deck and the patio were not there before when that lot coverage was granted. Ms. Kehoe stated that when the application came in for the deck, we were under the impression that they were not putting impervious underneath when it was granted. Mr. Mancinelli stated that those numbers are not included in his calculations. Mr. Brock stated that with the numbers provided they are at 70.51% plus the deck which is another 280 square feet and the initial number was 47.47% approved. Mr. Mancinelli stated that the retention system was designed to accommodate 2,756 square feet of impervious coverage. John Jeffrey asked if the previous owner Frank Emmitt had the same water problems, did he go to Council for help. Mr. Toth said Mr. Emmitt really didn't know where the water was coming from. He thought it was an underwater spring. Mr. Jeffrey asked if there is ponding at the bottom of the street. Ms. Kehoe said yes at the intersection near Veteran's Park that was before the construction. The borough engineer knows what numbers as we provided them. He was not given any information, so any argument was not presented to our engineer. Mr. Kazista stated that there are questions as to what the percentages are and how they were arrived at and our borough engineer has not seen any of this.

The ZHB recessed at 8:15pm

The ZHB reconvened at 8:22pm

Mr. Kazista stated that they were going to vote on the appeal. The board has discussed with the Solicitor that perhaps the procedure that should have been taken, the appeal, gives them very little leeway as to what they can do and how they can vote it. Mr. Kazista stated that if the vote is no then they will suggest

that the penalty process, the financial process be defrayed. There will be no penalties. Mr. Kazista stated that a variance request be put through again. The vote on the appeal is as follows: John Kazista voted to deny the appeal, John Jeffrey voted to deny the appeal and Geoff Brock also voted to deny the appeal. Ms. Kehoe stated that we are not looking to assess any penalties and we are encouraging the applicant to submit a new variance application for the newer lot coverage. Solicitor Sheils stated that no matter how you calculate it, it is over.

2. PUBLIC COMMENT/INPUT:

3. ADJOURNMENT:

Geoff Brock made the first motion to adjourn, seconded by John Jeffrey, vote was unanimous 3-0.

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