



Oversight leads to legal dispute between Bernardsville neighbors

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BERNARDSVILLE – An apparent oversight of a notification requirement has led to a legal dispute between two prominent neighboring property owners.

The Gallaway & Crane Funeral Home, Inc., which owns a home at 37 Wesley Ave., filed a complaint in state Superior Court in Somerville against Community In Crisis (CIC), a local non-profit that combats drug abuse that's located at an adjoining tract at 9 Church St.

The lawsuit alleges that CIC failed to notify Michael Gallaway, a principal of the funeral home who lives in the Wesley Avenue home, when seeking Planning Board approval last year to demolish a detached garage to the rear of its property and build a two-story "community center" for meetings and other activities to support its mission.

Construction of the building is nearly complete but the work has been halted due to the dispute.

The civil action seeks to remand the CIC application back to the Planning Board, which is also listed as a defendant.

Ironically, CIC had purchased the former funeral home building from Gallaway & Crane for \$625,000 about three years ago. Known as "The Hub," the 4,250-square-foot CIC building dates back to 1910. It was purchased by E. Hass Gallaway and Ransford G. Crane, founders of the funeral home, back in 1950.

Today, funeral operations are run out of Gallaway & Crane's facilities on South Finley Avenue in Basking Ridge.

CIC renovated the Church Street building before moving in permanently in 2021. It operated out of rented space just down the road at the Old Library building on Morristown Road for about three years prior to that.

The lawsuit was actually filed back in August but efforts to resolve the dispute have thus far proven unsuccessful.

According to the civil action filed by Millington attorney Frederick Zelle, CIC applied to the Planning Board on Dec. 8, 2021, for site plan approval for "community meeting rooms, a proposed use that had not been disclosed to Michael Gallaway and his family."

CIC served notice of the hearing as required to adjoining property owners within 200 feet of its property "but not upon the plaintiff" Gallaway, the suit claims.

The board approved the application after a hearing on April 28, 2022, with a resolution stating that "no member of the public objected" to the proposal, according to the court papers.

The suit claims the CIC legal notice was "defective" in that the neighbor "most affected" by the operation was not notified of the hearing.

It also alleges that the legal notice for the application "included no description whatsoever of its intended use of the subject property."

Due to its failure to give proper notice, the board "lacked jurisdiction" to hear the application and the approval is "legally invalid," it claims.

"The bottom line is they had their site plan application heard and they did not provide notice to Gallaway and Crane," Zelle said in an interview with this newspaper on Thursday, Feb. 23.

The reason notice wasn't sent to Gallaway was apparently due to an issue with the borough's tax office. The properties involved had been subdivided and approved by the borough when CIC purchased the Church Street lot from Gallaway.

But, the lawsuit notes, the Bernardsville tax assessor "concededly" had not updated the records "to reflect the 2019 subdivision that created" the two separate lots.

The applicant used those records for the required notifications.

"They provided notice to everyone on the assessor's list – that's not disputed," Zellely said. "But the fact is, they had actual knowledge by seeing Mr. Gallaway on a daily basis as their neighbor not to mention that they bought the property from Gallaway and Crane. So they can't possibly claim that they are not aware of us.

"We are the single most interested neighbor in terms of what's happening next door," he added. "So it's a significant problem that Gallaway and Crane was not notified of this hearing."

Maryann McCoy, the attorney for CIC, said there is no need to remand the application back to the board.

"Nor is CIC equipped to incur the expense," she said. "Proper notice was sent by CIC to everyone on the list. The law supports that the applicant can rely on the list provided by the town."

"This was an unfortunate circumstance, due to no fault of the board," Planning Board Attorney Steven K. Warner told this newspaper in an interview on Feb. 23.

Warner said that even though the board is named as a defendant, it is "neutral" in the matter, as the dispute is between CIC and Gallaway.

"The board was of the opinion that the notice was sufficient for jurisdictional purposes, and the board had no way of knowing that arguably someone who should have been noticed wasn't," he said.

"If the decision (of the court) is to go back to the board, yes, the board is happy to hear it again because the board always wants everybody to have an opportunity to participate who wants an opportunity," he added. "The boards are always defendants in these cases but it's not that they've done anything wrong. It's just that they have to be a party because it's like an appeal. No one is challenging the decision. It's just a question of whether it's coming back for a do-over, for lack of a better term."

Warner and Zellely both explained that in cases when a municipal board decision is appealed, there's no actual trial, as the judge will review briefs and hear oral arguments before rendering a decision.

"This is simply an appeal – called an action in lieu of prerogative writ – that's the method for appealing a Planning Board's decision," Zellely said. "If there's a grievance of some sort against a decision of the board you have to file suit in Superior Court, which is what we've done."

"The basis of the suit – it's not for monetary damages or anything like that – it's to have it remanded back to the board in order to hold a hearing in a way that we think is appropriate as opposed to what was done the first time."

Michael Gallaway declined to comment for this story.

'Good Neighbor'

McCoy, a Basking Ridge resident who serves on the CIC board of directors, is representing the non-profit on a pro bono basis.

In a statement to this newspaper, she said she hopes the dispute can be resolved amicably.

"Community in Crisis is driven by the needs of the community they serve, and this building is one such example of a community asset that many residents of all generations need and will enjoy," she wrote. "And it's especially for the kids – CIC's prevention education is innovative and engaging, and really resonates with the younger generations."

"We have lost too many young people to overdose and mental health challenges in this community, and CIC's end goal is, quite simply, to save lives," she added. "This new venue will offer a safe, welcoming and supportive environment for all."

"We're perplexed by the lawsuit," she said. "CIC just wants to be a good neighbor and get on with the vital work they do. We're hoping this can be resolved amicably so that CIC staff can focus on what they're here to do and have successfully been doing for close to 10 years."

She also said CIC's "intended use" for the new building "was fully disclosed to Gallaway during contract negotiations and fully described in the contract of sale signed by both parties."

The proposed use was discussed publicly when CIC held an open house and ribbon cutting ceremony to welcome the community to its new Church Street home on Sept. 20, 2021.

"This is a huge milestone in our journey," said Basking Ridge resident Jody D'Agostini, the CIC founder and board chair. "This house is now our own home, a permanent haven embedded in the community, dedicated to saving lives and supporting healthy living."

Renovations will continue, she said, noting that the garage in the back parking lot would be converted into "a spacious two-story community center that will offer programs, workshops and activities to the Somerset Hills community."

On Saturday, McCoy said "CIC remains hopeful that there is a resolution that allows the space to be used to carry on its critical programs, and maintain neighborly relations."

Zelley also expressed hope that the dispute could be resolved.

"We're trying to resolve it, we're trying get the issues settled amicably," he said. "So that's the goal ultimately. We're not looking to shut down Community In Crisis or anything like that. We just trying to make sure that the site's operating in a way that doesn't detrimentally affect Mr. Gallaway and his family because they're living in that house. It's very, very close quarters, obviously."