

**REORGANIZATION MEETING
&
REGULAR MEETING
ZOOM VIDEO CONFERENCE**

Salute to Flag: 7:43pm –Meeting opened by Mayor Daniel Mahler

OPENING STATEMENT:

This is the Reorganization and Regular Meetings of the Wanaque Board of Adjustment and adequate notice has been given and it has been duly advertised by the placement of a notice in the Suburban Trends on December 16, 2020 and a notice thereof has been posted on the bulletin board in the Municipal Building in the Borough of Wanaque and a copy thereof has been on file with the Borough Clerk and has been posted on the front doors of Borough Hall on the day of the meeting.

Mayor Daniel Mahler swore in Re-Appointed Members Bruce Grygus and Frank Covelli

James Minogue is no longer a Member of the Board and the Mayor & Council should be appointing a replacement at their February 8, 2021 Meeting.

ROLL CALL: Members Bruce Grygus, Frank Covelli, Phillip Stefanowicz, Don Ludwig, Bridget Pasznik, Michael Levine and Helena Aumenta

ABSENT: Chairman Jack Dunning (excused absence) and James Minogue is no longer a Member of the Board.

NOMINATION FOR CHAIRMAN: Member Ludwig nominated Bruce Grygus. Member Grygus declined appointment. Member Ludwig rescinded nomination.

Member Grygus nominated Jack Dunning, seconded by Member Covelli. No other nominations heard. Nominations closed.

ROLL CALL ON NOMINATION FOR CHAIRMAN: Voting yes were Members Grygus, Covelli, Stefanowicz, Ludwig, Pasznik, Levine and Aumenta

NOMINATION FOR VICE CHAIRMAN: Member Ludwig nominated Bruce Grygus, seconded by Member Covelli. No other nominations heard. Nominations closed.

ROLL CALL ON NOMINATION FOR VICE CHAIRMAN: Voting yes were Members Covelli, Stefanowicz, Ludwig, Pasznik, Levine and Aumenta.

Member Grygus abstained.

NOMINATION FOR BOARD ATTORNEY: Member Covelli nominated Ronald P. Mondello, Esq. for Board Attorney, seconded by Member Pasznik. No other nominations were heard. Nominations closed.

ROLL CALL ON NOMINATION FOR BOARD ATTORNEY: Voting yes were Vice Chairman Grygus, Members Covelli, Stefanowicz, Ludwig, Pasznik, Levine and Aumenta

Member Ludwig lost his computer connection for the Zoom Meeting

NOMINATION FOR BOARD ENGINEER: Member Levine nominated Boswell Engineering (Christopher Nash) for Board Engineer, seconded by Member Aumenta. No other nominations were heard. Nominations closed.

ROLL CALL ON NOMINATION FOR BOARD ENGINEER: Voting yes were Vice Chairman Grygus, Members Covelli, Stefanowicz, Pasznik, Levine and Aumenta

ADOPTION OF OFFICIAL NEWSPAPERS: Continue with the Newspapers approved by the Mayor & Council which are (1) Suburban Trends and (2) Herald News/The Record.

MOTION TO ACCEPT AND ADOPT THE NEWSPAPERS: made by Member Pasznik, seconded by Member Stefanowicz. Voting yes were Vice Chairman Grygus, Members Covelli, Stefanowicz, Pasznik, Levine and Aumenta

MOTION TO MAINTAIN THE FIRST WEDNESDAY OF THE MONTH FOR THE REGULAR MEETING AT 8:00 P.M.; AND THE SATURDAY PRIOR TO THAT MEETING FOR SITE VISITS AT 10:00 A.M.; AND DIRECT THE BOARD SECRETARY TO ADVERTISE IN ACCORDANCE WITH THE OPEN PUBLIC MEETINGS ACT TO GIVE NOTICE OF THE MEETING DATES FOR 2021: made by Vice Chairman Grygus, seconded by Member Ludwig. Voting yes were Vice Chairman Grygus, Members Covelli, Stefanowicz, Pasznik, Levine and Aumenta

MOTION ON ADOPTION OF EXISTING PROCEDURES AND BY-LAWS: made by Member Covelli, seconded by Member Stefanowicz. Voting yes were Vice Chairman Grygus, Members Covelli, Stefanowicz, Pasznik, Levine and Aumenta

NO RECESS – BOARD CONTINUED WITH REGULAR MEETING AT 8:05PM

REGULAR MEETING

Let the record show that every Member that was present at the Reorganization Meeting is present for the Regular Meeting, along with Attorney Ronald Mondello and Engineer Christopher Nash.

Member Ludwig was able to reconnect and is back in attendance for the Zoom Meeting.
Attorney Mondello: I apologize to Marylou's iPhone, but I've muted you. Typically if you're not a Board Member, or one of the Professionals, I ask that you mute yourself because we are recording. Obviously, there'll be a time where we would ask you to unmute yourself.
Mr. Chairman, I see that Don is reconnecting so I guess he got his computer back up.

Acting Chairman: Don, we got you. You're muted just so you know. We'll start with our first application.

Application ZBA2019-07 –Romero, Marylou – 39 Snake Den Road (Block 102/Lot14)

Attorney Mondello: If I'm not mistaken that's Mr. Kopp's case. Please enter your appearance into the record.

Attorney Kopp: John Kopp, 999 Riverview Drive, Totowa, New Jersey on behalf of Marylou Romero.

Attorney Mondello: This was carried from one of the prior meetings, perhaps you can bring the Board up to speed as to where we are.

Attorney Kopp: Actually, Miss Romero had made an application in back in 2019, seeking certain relief. At that point, I think it was pointed out to her that she would need a variance and she was unable to go forward with the application. She asked that I assist her with making a new application. To tell you the truth, I've never really quite seen an application such as this, and I'll run it down for the benefit of the Board. The reason why I've never seen an application like this is because she requires an approval of an addition placed on the building at 39 Snake Road, which is a one family, 60 year old residential structure. It's situated on 1.45 acres of land in a Water Resource Zone. My reading of the Water Resources Zone indicates to me, and correct me if I'm wrong, that you really can't do anything within that zone without seeking prior approval of the land use boards. What happened here is Ms. Romero was involved with a domestic partnership and her partner made an addition to the premises and made changes to the premises without obtaining building permits and without coming before any land use board. So following from that, they had a falling out and they had involved the legal proceedings in the domestic violence area in Passaic County. Their respective lawyers came up with an agreement wherein the premises was to be sold and, under that sale, there was supposed to be a division of proceeds, notwithstanding the fact that the partner had no record title interest in the property. She attempted to place the property on the market through a real estate agent, and was immediately confronted with this idea that she lacked approval and lacked Board approval for the improvements that have been made. Now the issue comes up because, in order for her to get a certificate of occupancy, she has to go back through the process, get Board approval, and then get building department permits and permit approval for the construction. Now, the interesting part about this is that it was an added bedroom, which is 10 x22' added to the one side of the house. Although it increased the volume of the building, it didn't increase the footprint because the addition was cantilevered off the side. So we have no additional footprint underneath this cantilevered section as near as I can tell, but we do have an increase of volume and square footage of enclosed space in the dwelling of about 220 square feet.

I know that under our zoning law, we are loath to grant variances based upon self-imposed hardships and things of that nature. However, in this instance, we have a party was not involved in this construction and really was unaware of any impact that would have because her partner

had taken to do all of this. The one thing that does stand out in this is that this property was assessed by the Borough Assessment Team back in, I think it was 2012. It was noted at that time that the house was in need of work. So what has actually happened is that the improvements made on the building has rehabilitated the housing stock in this instance alone. This house has been kind of brought up to date, as far as many of the aspects are concerned, the first floor, the bathroom, the kitchen, and things of that nature. I think under your ordinance with the Water Resource Zone, what it is actually being considered is a Use Variance to allow for this construction.

Attorney Mondello: So I'm going to speculate that that particular zone, the Water Resource Zone was probably put in place around, and this is just because we had an application not too long ago that seemed to have gone on for a decade, but probably around 1958. Was this house constructed prior to that?

Attorney Kopp: It was constructed at or around that time. My reading of the revised ordinance indicated to me that it went into effect somewhere around 2010.

Attorney Mondello: No, no, no. That doesn't make sense. I mean, most of the zones were created around 1958. Unless you're saying this is such an unusual zone that it only came, and I don't have that in front of me right now, but it only came into existence in 2010, well then you certainly would need a D-1 Variance. If the house was constructed prior to this particular zone being enacted, it would be a D-2 Variance.

Attorney Kopp: Okay, well, the Borough lists the age of construction at or around 1960. However, the fixtures in the property specifically, the type of heating radiators present in the property would indicate construction well prior to 1960. We've tried to track it back and as near as we can track it back is around 1960, and that's taken from the property record card.

Acting Chairman: That Water Conservation Zone could have been part of the Highlands Act, Ron, which would have put it after the original zone.

Mayor Mahler: Can I interject something?

Attorney Mondello: Sure.

Mayor Mahler: As the Mayor, I also sit on the Planning Board, and the Planning Board is doing their ten year master plan revision. One of the revisions on the agenda is the residential properties along Snake Den Road being taken out of that Zone. We sat with the Building Inspector and he gave us a list of things that he felt should be changed, and it was about six or seven items. One of them was the zoning of the houses on Snake Den Road in that Zone. We're still having discussions on it. It's probably going to be sometime in the spring that we're going to go forward with the master plan revision, but you have to look at it every ten years and do revisions. There's a half a dozen things that we're looking at changing and I'm not sure if this specific property was included, but it's on Snake Den Road so it's probably in what he had because I think it encompassed all the houses on Snake Den Road in Wanaque. Snake Den Road starts in Ringwood, goes into Wanaque, goes back into Ringwood, and actually winds up in Bloomingdale. Actually, it winds up in West Milford so it is in four towns.

Attorney Kopp: So this property is very close to Ringwood. It's 200' of Ringwood?

Mayor Mahler: Yeah, that stretch between Ringwood (Wanaque) and Ringwood I believe all of those homes are in the piece that the Planning Board is considering/

Attorney Mondello: There you have it Mr. Kopp. You've got a Planning Board Member and Mayor indicating that it's going to be the Governing Body's intention to rezone that particular

street. You still obviously need either a D-1 or a D-2 Variance tonight, but I'm sure the Board heard the Governing Body's intention loud and clear.

Engineer Nash: It appears to be just that simple expansion of a non-conforming use. We've been dealing with, you know, several of these, and it appears that the use was initiated prior to the zoning, so it's fitting into that classic case that we've been having the last couple of years.

Attorney Mondello: If that's the case, it's a D-2 Variance, which the proofs are considerably less, and you can go back to Tree Tavern, it's considerably less than a D-1

Attorney Kopp: Right. We would be seeking that type of variance. I have Miss Romero here. I don't think she can testify as to the exact age of the premise, but she would indicate that she has lived in the premises since 2005, and that the construction actually took place in probably around 2018 or 2019.

Attorney Mondello: Those are dates that, quite frankly, are irrelevant for trying to determine whether or not the building was erected prior to the prohibiting ordinance but, having said that, this doesn't seem like a complex application. I would bring it back to the Board to take the pulse of the Board Members.

Acting Chairman: I agree with the D-2, Ron.

Attorney Mondello: So do any Board Members have any questions of Mr. Kopp? We're not sure, so I'm going to have to make it a D-1. We don't know whether this was constructed prior or after the prohibiting ordinance. To be safe, it would have to be a Use Variance.

Attorney Mondello: Does anybody have any questions for Mr. Kopp?

Mr. Stack: I have questions.

Attorney Mondello: Okay, hold on a second. Please state your name, spell your last name and give us your address.

Mr. Stack: Michael Stack, 45 Snake Den Road, Wanaque.

Acting Chairman: Ron, let's just hold that for a minute until we go to that portion for the public for questions. Let's just continue with the testimony.

Attorney Mondello: I don't think there is any more.

Acting Chairman: Well, the one thing that I'd like to do is, it looks like there's only one issue Chris with your letter would be Item 9.

Engineer Nash: I only have four items.

Attorney Mondello: Yeah, I was going to say maybe Item Four, the applicant shall provide testimony as to the number of bedrooms.

Acting Chairman: My letter is dated September 24, is there one after September 24?

Member Aumenta: November 19, 2020.

Engineer Nash: The one you are looking at is from 2019.

Board Secretary: You got a whole new application in the package.

Acting Chairman: It's the same thing though. It's the application for alterations so it's about the number of bedrooms.

Attorney Kopp: There are currently three (3) bedrooms. The upstairs ones, which I would call them dormered bedrooms. They're built underneath the roof upstairs and there are two of those. Then there was the new bedroom built off the side of the house making a third. Because of that, the applicant has had to bring in a septic expert to determine septic capacity and my understanding is that they have told her that she must expand the septic, if that answers any more of that question.

Acting Chairman: Why don't we swear Miss Romero and just have her address that issue?

Attorney Kopp: Okay, Mary Lou Romero's currently muted.

Attorney Mondello: I'm asking her to unmute. There we go. Good evening, Miss Romero.

Would you please raise your right hand? Do you swear and affirm the testimony you're about to give be the truth, the whole truth and nothing but the truth?

Miss Romero: Yes sir.

Attorney Mondello: Please state your name, spell your last name and give us your address.

Miss Romero: My name is Marylou Romero and my address is 39 Snake Den Road, Wanaque, New Jersey, 07465.

Attorney Mondello: The Chairman would like to know what's going on with the bedrooms and the septic system in particular.

Miss Romero: Okay, I'm having a hardship. I have to move out because I have run in with my ex- partner and I didn't know what's going on in there. I just worked and paid the bills. To get to the point, I can afford to pay mortgage and everything so I have to sell the house. It surprised me that I have all these problems and I tried to solve them right way. I now have to put a new septic tank because I didn't know that I have a cesspool. So everything is new for me. I don't know nothing much. He added one extra bedroom with no plumbing, no nothing in there, just a bedroom. That's it. That's the extra bedroom that I have problem with. I can't sell my house because I have to do certain things that I didn't know. Like I said, I just worked and paid the bills.

Acting Chairman: Okay. So chances are, if you sell this house, whether you had that addition or not, the septic probably would have been an issue.

Ms. Romero: Yes.

Acting Chairman: All right. So you're addressing that with the Board of Health, and that's an issue that's going to be resolved prior to the sale, obviously.

Miss Romero: Yes.

Attorney Kopp: Miss Romero, how many bedrooms are in the house now?

Miss Romero: Three (3).

Acting Chairman: Okay, any other questions from the Board Members or Professionals?

Member Ludwig: I have one other question. If we're going to be, you know, voting on this and the required variances, it shows it that they need really like a two and a half foot variance for the garage. Should we be including that?

Acting Chairman: Well, typically, when we get these applications, we try to clean the whole site up.

Engineer Nash: I think, Mr. Chairman, he is looking at the letter from 2019.

Attorney Kopp: That was included in 2019.

Engineer Nash: There's no bulk variances associated with that WRC Zone, so they don't need variances from them.

Member Ludwig: Okay.

Acting Chairman: So they're just strictly the use then?

Attorney Kopp: Yes. The original application was made, I think, under her thinking that it was an R-87 Zone. Does that sound right?

Engineer Nash: Yes. If you look at the zoning map, it's very hard to place this property on the zoning map. It's a chore. With no landmarks, it's very difficult.

Attorney Kopp: And it was very close to that zone boundary.

Acting Chairman: Any other questions from the Board or Professionals?

Seeing and hearing none, we'll open it up to any members of the public that have questions, and questions only at this time?

Mr. Stack, you can unmute yourself. I'm sorry to interrupt you before.

Mr. Stack: No worries.

Acting Chairman: Can we have your name and address again, please.

Mr. Stack: Michael Stack, 45 Snake Den Road.

Acting Chairman: And your question would be?

Mr. Stack: My question, and I have several, but the most concerning to me is, since this was built without permits, and therefore without inspections, I've got significant concerns about if the homeowner did electrical work by himself. If he burns his house down, he burns the whole neighborhood down. There's dense woods between his home and mine, and he was known to be a do it yourselfer, and I would question the abilities.

Acting Chairman: My understanding of it is, and we can probably defer to Mr. Hafner on this but, as part of this process in creating the variance, he's going to have to apply for building permits for the addition and those will be subject to all the applicable inspections. And if that means that they have to open walls or ceiling or whatever to see what they need to see, then that's what they'll need to do. Mike, do you want to add to that at all?

Mr. Hafner: Nope, that's it. That's correct.

Attorney Kopp: My understanding is, I have here tonight, Mr. Abate, who is the applicant's real estate agent and he's attempting to help her with some of this process. My understanding is he has kind of run interference for her to try and explain to her how this has to proceed and that the Building Department is actually waiting on some form of determination here before they will really get into what all has to happen with their inspections and work redo, if necessary, and things of that nature. By the way, I just wanted to make it clear that the owner of the property is Miss Romero, she did not do the work, her domestic partner undertook to do this work and he had no ownership interest in the property. He was living there, but had no ownership interest in the property.

Attorney Mondello: I'm sure the Board understands that Mr. Kopp, but Miss Romero lived there. So apparently, she heard the hammer, she heard the sanding, she heard the sparks, the electrical work.

Attorney Kopp: I know it's hard to grasp, but she thought everything was copacetic because he actually was employed in that type of field.

Attorney Mondello: Understood, understood.

Acting Chairman: Hopefully, once they get the permits, there'll be no issues. Mr. Stack, other questions?

Mr. Stack: I guess how would we know when those permits have been pulled and checked?

Attorney Mondello: You can OPRA. You can file an OPRA or contact the Building Department.

Mr. Stack: All right. My second concern is about the septic. I understand there is some septic work going on. About six weeks ago or so, I had a knock on my door from someone who said they were a septic engineer and he started asking questions about where my well is and where my septic system is. And where they're doing digging is, you know, probably 50' or so from my well and I happen to be downhill from Miss Romero's property. Once again, I'm concerned about making sure that placement is done correctly and where it's not going to impact my well.

Acting Chairman: That would be the purview of the Health Department. The Health department would have to approve any design for a septic system, which takes into account all those concerns you just had.

Engineer Nash: And the septic system has to be designed by a professional engineer who would sign and seal the drawings. So it's not going to be haphazardly placed. Somebody's placing their license on the line.

Mr. Stack: I guess my other question relates to this property is for sale and by granting the third bedroom does that open them up since it's a use variance? Does that open it up to become a two family house or a commercial property of any sort?

Acting Chairman: No.

Attorney Kopp: I think any further application would have to come back before this Board. Am I not correct?

Attorney Mondello: If the Governing Body rezones that particular street, they wouldn't be coming back for a Use Variance. I don't know, they may come back for Bulk Variances or whatnot.

Acting Chairman: It depends on what zone they put it in and what they're going use as the criteria. But obviously, to come back to try to make it a two family, the septic system wouldn't comply.

Engineer Nash: And they'd be back to this Board for Use Variance.

Acting Chairman: Because that two family may not be permitted in whatever zone that gets changed to.

Mr. Stack: Finally, there is what I would call a dilapidated pool on the property that is uphill from me. Their own real estate listing references that it's broken and only suitable for pond animals. What's going to be done with that? There's also a structure on the lower part of the property that has been derelict for a number of years, is not necessarily secured, windows open, I don't know if the door is open or not, but I would like to understand what the plan for that piece of building is.

Attorney Mondello: So much of these questions are not within the purview of this Board. Is it an above ground pool?

Mr. Stack: It's an above ground pool.

Attorney Mondello: I mean that's up to the applicant. If it's in that rough shape, they probably want to take it down. But that other structure that you're referring to, these are Building Department issues. This Board doesn't have any jurisdiction to tell the applicant, listen you need to, you know, repair that window. Now, we could ask and say that's a reasonable condition. If it's a broken window, you really should repair it. It's not an unreasonable condition, but most of the stuff you're discussing is with either the Health Department or the Building Department.

Mr. Stack: All right, then I'll reach out to the Health Department as far as the septic and will look forward to seeing when those variances come through for the electrical work.

Attorney Mondello: So those are permits, not variances.

Acting Chairman: All right. Any other members of the public have any questions and, questions only, at this time? Seeing and hearing none, we'll open it up. Does anyone from the public have a comment about this Application? Seeing and hearing none. Mr. Kopp, do you want to do any kind of summation?

Attorney Kopp: I think we've pretty much set it out to the Board at exactly what is going on here and what has gone on here. I think Miss Romero has been candid in trying to explain the relief

that she needs to move forward. Right now she's got an affordability situation due to the break-up of her relationship, and she needs to try and market the property. In order to do that, she's going to have to address a lot of business that was not attended to in the first instance and, for that reason, I would ask that you look favorably upon her application and grant her relief.

Acting Chairman: Alright. Anybody have a Motion?

Attorney Mondello: The Motion would be for, if the Board's inclined, a D-1 Use Variance.

Acting Chairman: I honestly believe with this, the positive and negative, or the hardship is.

Attorney Kopp: The one good thing is that the property will be brought into compliance. That's always a good thing.

Attorney Mondello: Okay and it appears it's the Governing Body's intention to rezone that street properly.

Acting Chairman: A Motion?

Member Ludwig: I'll make a Motion to Approve a D-1 Use Variance on the existing conditions that are there.

Acting Chairman: A Second?

Member Covelli: I'll Second it Don with the provision that we include that obviously, all of the requirements of the Building Department and the code be met in accordance thereof.

Member Ludwig: I kind of assumed that that would happen, but I thought that was not really our area.

Attorney Mondello: Don, my Resolution has a provision in there that the applicant will comply with all requirements.

Member Ludwig: Then I'll gladly add that to my Motion.

MOTION TO APPROVE APPLICATION: made by Member Ludwig, seconded by Member Covelli. Voting yes were Acting Chairman Grygus, Members Covelli, Stefanowicz, Ludwig Pasznik, Levine and Aumenta

Motion Carried

Attorney Kopp: I appreciate your courtesies here tonight. Thank you and have a happy new year.

Attorney Mondello: A lot of background noise. Miss Romero you can sign off as well as your attorney. Good luck and the Resolution should be prepared for next month. However, you can work with the Building Department. I believe Mike is very business friendly, user friendly, and you can start working on those permits so you can get your house sold. Good luck.

Attorney Mondello: Mr. Hafner, do you have a question?

Mr. Hafner: Yes, I'm sorry. One of the questions that I do have is with the granting of the Use Variance, the applicable setbacks for the zone, do you still apply the WRC setbacks?

Engineer Nash: The WRC doesn't have bulk requirements.

Mr. Hafner: Okay, so we're free and clear on that then?

Engineer Nash: Yes, yes.

Mr. Hafner: Okay. Very good. Thank you.

Member Covelli: By the way, is a point of parliamentary order. The only reason I included that was because the structure is already built, and I thought it was important that the Minutes reflect the Board's recognition of that, and just to reiterate the point. I know Mr. Mondello, because of his thoroughness, does include that in the Resolution, but I thought that the action here, and the Minutes should reflect it accordingly.

Attorney Mondello: It makes sense. So the record is clear, Don made the Motion, and Frank Seconded. Was that right?

Board Secretary: Yes.

Application ZBA2020-12 – Liljestrand, Stephen, 36 Hillside Road (Block 105/Lot 11)

Acting Chairman: I think we have some correspondence.

Board Secretary: Yeah, I got it yesterday from the attorney's office. Apparently, they haven't received the 200' search so they are asking to be carried to the February meeting, even though there were no notices have been sent out and no publication was done. But like I said, we only got the letter yesterday.

Attorney Mondello: So that's pretty unusual that they'd be asking for an application to be carried that's far from being complete.

Acting Chairman: How were they deemed complete to be put on the agenda?

Board Secretary: Well, they were deemed complete by Engineer Nash and I sent her all the information. My question would be to them is how come, because you know me, I already have the agenda done 10 days before, so they had to know 10 days before that they couldn't get publication or mailings done, but we only got the letter yesterday.

Attorney Mondello: All right, so I would suggest that the Board informally carry it to February, you know, with the understanding they should be noticing for that meeting.

Acting Chairman: Okay, so the Motion would be to carry the application to the February 3 meeting, with the provision that they notice.

Member Ludwig: I'll make that motion. Bruce,

Member Pasznik: Second

Attorney Mondello: Mike, just to let you know, you're on mute. I know you went to second but we didn't hear you.

Member Levine: No problem.

MOTION TO CARRY APPLICATION WITH PROVISION THEY HAVE TO NOTICE: made by Member Ludwig, seconded by Member Pasznik. Voting yes were Acting Chairman Grygus, Members Covelli, Stefanowicz, Ludwig Pasznik, Levine and Aumenta

PUBLIC DISCUSSION: Hearing none, seeing none, let the record show there was no one to come forward.

Attorney Mondello: I might be confused and maybe I am looking at an old agenda, so there are two applications that are being carried.

Acting Chairman: One was asked last month to carry right to February.

Board Secretary: They have also not noticed or published. So nobody has gotten any notices on that application either.

Attorney Mondello: Going forward, if they don't provide you with proof of publication, they're not on the agenda.

Board Secretary: But they don't have to provide that to me until a few days prior to the meeting. My whole issue is that they have to know 10 days prior that they're not doing the notices or publication, but they're not letting me know that until the agenda and everything's mailed out. Like I said, we got the one letter yesterday.

Attorney Mondello: Yeah, that's not fair to you. It's not fair to the Board Members. They know, 10 days before, whether or not they've actually published and you should communicate to them that you're not going to be on the agenda, unless you provide me with proof. Is that

Acting Chairman: Is that in our application and, if so, can we modify it.

Board Secretary: They have 10 days to mail out everything. Usually, the holdup is the affidavit of publication with the newspaper.

Engineer Nash: Are we talking about 1458 Ringwood? They have to revise their plans and provide the plans 10 days prior to the meeting. They haven't done that either.

Board Secretary: I'll reach out to them. Like I said the week before they have to know because if it's going to be published or mailed out 10 days before, like with the Suburban Trends you have to get that out five days prior. Tomorrow, when I send to the Suburban Trends the Notice of Decisions from tonight, I'll email them but they will not be published until Wednesday, because that's their timeframe. So they know 15 days, if not sooner, before the hearing date that they don't have anything done, but they are not communicating that to me. When I send everything out, I put the application on in the assumption that I'm going to get the, you know, affidavit of service and publication. But instead, I got a request to adjourn two days before.

Attorney Mondello: It's just that we don't even have the authority to grant them an adjournment if they haven't noticed. If they haven't noticed, this Board has no jurisdiction to do anything.

Acting Chairman: Plus, once they're on the agenda, that typically starts the clock ticking,

Board Secretary: I've revised this one. The one that's on the website and the one that's on the front door just has the Romero application on it.

Attorney Mondello: Just the fact that it's just on the agenda that doesn't usually start the clock. The Board would have to hear, you know, somebody would have to say something and I'd have to say I'm receipt of the notices, etc. Something would have to be discussed but notice is paramount. Notice is really what starts things off. Of course, Mr. Nash's opinion that, from an engineering perspective, the application is complete. Without notice, it's woefully incomplete, and we are without jurisdiction to do anything.

Acting Chairman: All right, that's nothing we're going to solve tonight. Frank, we may have to think about maybe taking a look again at that application package to revise. Even look at the fees.

Member Covelli: Interestingly, I was thinking it might be time to look at that. It's been a while since we've looked at it.

RESOLUTIONS:

ZBA2020-07 – The Catherine Civil Trust, 24 Erie Avenue, Wanaque

Attorney Mondello: Board will recall that initially we thought this was a Use Variance and after I did some research it was determined that it wasn't. Of course, this particular Applicant wanted to be able to change the first floor business use to a residential apartment adhering to the R-10 Zone Schedule. I circulated this Resolution, and I also got it to the attorney, who had some minor changes. The typical conditions were placed in the Resolution. The Applicant shall remove the shed and provide a Final Site Plan indicating the removal of the shed, the tandem parking and the precise pre-existing six (6) Bulk Variances. There were no other conditions other than the typical conditions, so I'll entertain any questions, comments or changes the Board Members may have at this juncture.

Hearing none, seeing none, I'd ask for a Motion followed by a Second.

With your permission Mr. Chairman, I'll call those Members eligible to vote.

MOTION TO MEMORIALIZE THIS RESOLUTION AS PREPARED BY BOARD ATTORNEY: made by Member Pasznik, seconded by Member Aumenta. Voting yes were Acting Chairman Grygus, Members Ludwig, Levine, Stefanowicz and Aumenta **Motion Carried**

ZBA2020-10 – Nouvelle, LLC, 551 Ringwood Avenue, Wanaque

Board may recall, interesting application, for a two story apartment building with two apartments on each floor for low income residents and family members suffering from developmental/physical disabilities. I circulated this Resolution. Also the attorney had slight changes/clerical changes. The typical conditions were placed in the Resolution, including the Applicant agrees to the placement of a trash dumpster, and the installation of screening around the air conditioning units. That particular dumpster needs to be one that is serviced by the municipality, so it can't just be any dumpster, and that would conclude the conditions. Any questions comments, modifications changes at this juncture?

Acting Chairman: Ron, I just have one question. When I read through the whole Resolution, I saw there we had discussed about putting some kind of overhang over the back that was similar to the front, which they agreed to do, but I didn't see it as a as a condition. Since it's in the Resolution that they agreed to do it, it's still part of the Resolution?

Attorney Mondello: Correct. If there was any testimony as to what the Applicant was going to do, and if it's recited in the Resolution, it makes it easy for Mike to look at the Resolution and say, they didn't do this, but they did do that.

Member Levine: Ron, do we have to be more specific on the screening around the air conditioners.

Engineer Nash: The Applicant sent revised plans and I got them yesterday, I believe. I'm going to be preparing a compliance review, just to make sure that they've revised the plans. The Resolution sometimes gets lost in the shuffle, so if they have a set of plans that goes to Mike that has all the conditions than that's the best options.

Attorney Mondello: And to answer your question, Mike, being specific as to that buffering would have to come out during the meeting. It was a reasonable condition, but, you know, the Applicant now has its own idea as to what buffering is. If you had specific ideas, you certainly could have raised that and said, I want picket fencing or whatever the case may be.

Engineer Nash: It may have been conditioned with my approval. I'm not sure how the condition was made.

Attorney Mondello: There is a generic provision that if there are any comments or requirements in Mr. Nash's letter, and if the Applicant is unable to resolve those conditions to his satisfaction, they have to come back to the Board. Any other questions?

Hearing none, seeing none, I'd ask for a Motion followed by a Second.

With your permission Mr. Chairman, I'll call those Members eligible to vote.

MOTION TO MEMORALIZE THIS RESOLUTION AS PREPARED BY BOARD ATTORNEY: made by Member Covelli, seconded by Member Ludwig. Voting yes were Acting Chairman Grygus, Members Covelli, Pasznik, Ludwig, Levine, Stefanowicz and Aumenta Motion Carried

CORRESPONDENCE: None

VOUCHERS: submitted by Boswell Engineering for Romero Application in the amount of \$212; Catherine Civil Trust Application in the amount of \$371; Nouvelle, LLC Application in the amount of \$1,166; and 1458 Ringwood Avenue, LLC Application in the amount of \$530.

MOTION TO APPROVE: made by Member Levine, seconded by Member Ludwig. Voting yes were Acting Chairman Grygus, Members Covelli, Stefanowicz, Ludwig, Pasznik, Levine and Aumenta

VOUCHERS: submitted by Ronald Mondello, Esq. for Nouvelle, LLC Application in the amount of \$750; Catherine Civil Trust Application in the amount of \$1,050; and attendance at the January 6, 2021, Meeting in the amount of \$400.

MOTION TO APPROVE: made by Member Ludwig, seconded by Member Pasznik. Voting yes were Acting Chairman Grygus, Members Covelli, Stefanowicz, Ludwig, Pasznik, Levine and Aumenta

MOTION TO APPROVE DECEMBER 2, 2020 MINUTES WITH CHANGE ON PAGE 9 (35' HEIGHT): made by Member Stefanowicz, seconded by Member Covelli. Voting yes were Acting Chairman Grygus, Members Covelli, Stefanowicz, Ludwig, Pasznik, Levine and Aumenta

ENGINEER'S REPORT: Nothing New

DISCUSSION: Acting Chairman: Ron, I think you want to talk a little bit about the remote meeting Resolution.

Attorney Mondello: You know, luckily, we haven't had too many applications that were controversial during this pandemic. Some of my other towns, we've had 125 people, so it was becoming a circus/zoo, so we needed some regulations, some by-laws, whatever you want to call them, put in place. These are recommendations from the DCA. Of course, the DCA has no authority over this independent regulatory land use body. I do have some problems with some of this stuff but, for the most part, I did make some changes and I took what they're calling regulations. The DCA is calling them regulations, not suggestions. It's what we're supposed to follow. There may obviously be some lawsuits and whatnot in the courts. The one thing I always have a problem with is, if somebody wants to submit, you know, comments without actually showing up. Picture yourself as the applicant or the applicant's attorney, well how do you cross examine that piece of paper that you just read into the record? How fair is that? These are my suggestions that we adopt. I would suggest that when you can't sleep, take it to bed with you, and take a look at it, circle stuff you don't like, we should talk about it. But if you're happy with it, we should probably ask for a motion followed by a second and a roll call at some point to adopt these bylaws, these rules governing these Zoom Meetings.

Acting Chairman: That thing that you mentioned was the fact that we had been talking to Jen about it was what stuck out to me too. I mean, can we adopt them without that included?

Attorney Mondello: Why not; let somebody sue us. I don't think that's going to happen because I question the authority of the DCA to regulate Land Use Boards. There's no Statute that I can put my finger on.

Acting Chairman: I don't see how we can put anything into the record that isn't subject to cross examination.

Member Aumenta: They wouldn't allow it in a court of law, you know. They don't allow somebody to just submit a letter; you have to be there.

Attorney Mondello: That's a great point, Helena, but even though you guys are *quasi judicial* judges, the Rules of Evidence are relaxed in these hearings, and more things would come in, versus a court. But I agree with you guys. It's just unfair. How do I get a second bite at the apple if you just read some scathing letter?

Acting Chairman: Even if the Board was advised if that happened that, as you weigh this comment, just keep in mind that the applicant has not had an opportunity to cross examine the person that submitted this, that's easy to say, it's not so easy all the time to do. Or, you know,

Member Aumenta: What I was kind of thinking to, like you said, you know, let them take us to court. I think, even though it's relaxed in a court of law, you would have to be there. A letter is not appropriate; you can't just submit a letter. I would think that, even if someone came to try to sue us for that, the court of law would understand that typically you would want to be able to have somebody refute it.

Acting Chairman: Ron, they could be in by phone only and read their comments. I could see someone saying, I'm not very technically savvy to go in on a Zoom Meeting, and I don't have anything that has a camera, but all you have to do is dial in on the phone and then you can read your comment into the record and have your day in court and let the applicant have opportunity to have their day.

Attorney Mondello: I completely agree.

Acting Chairman: To me, that would be our defense, if they were to say why'd you take it out.

Attorney Mondello: It's just interesting. I think the DCA was really thinking about Mayors & Councils folks where people just send in letters about stuff or comments about stuff. This is different; this is a *quasi judicial* board where you're weighing evidence, you're rejecting evidence, so it's got to be somewhat adversarial. Not necessarily, you know, strictly adversarial, but you want the facts to come out, and if some attorney or applicant wants to cross examine a statement, I think it's problematic. So I agree with the Board.

Acting Chairman: Even if the Board, a Board Member, wants to ask a question about the statement, or make a comment about the statement to the person who submitted it.

Attorney Mondello: I'm certainly open to any and all changes, and I can just simply delete that.

Acting Chairman: So when you get an opportunity, just review it. If there's anything else that you think maybe you'd like to see come out, we'll discuss it at the next meeting, and then we can get that adopted.

Attorney Mondello: That's the only thing that bothered me. I didn't ever problem with anything else, really. So if the Board Members have the time and you want to sift through it.

Acting Chairman: Unless you're comfortable just taking that part out. I mean, I read it. I was okay with the exception of that, unless you just want to adopt it tonight. I mean, we've been doing it for quite a while now.

Attorney Mondello: I would be more comfortable if we may be carry it one more time and give those Board Members that may not have had an opportunity to read it. I mean, it's not one page; it's four pages, single space. There may be something that really bothers one of the Board Members, other than what we've discussed.

Member Pasznik: Do we know if there is any chance anytime soon of getting back in our room?

Acting Chairman: We discussed that. Dan, are you guys still back? Are you remote?

Mayor Mahler: We were back in October and November. We went remote in December, January and February.

Acting Chairman: Okay. So we're going to be remote, at lease, for another month.

Mayor Mahler: Yeah, I mean the number of number of cases have skyrocketed since October 8th. We actually had our first death since May.

Acting Chairman: Okay, so we're going to be at least one more month.

Attorney Mondello: Well, Bruce, that is entirely up to this Board. You know, I understand you're trying to follow what the Council's doing, but I have some Boards where, no matter what the Governing Body is doing, they're not coming back. There are some elderly guys that are at risk, and they're simply not going to do it, so the majority of the Board Members said, "we'll come in when we're ready to come in". I leave that up to the Board.

Mayor Mahler: Even when we decide it is safe to go in, you can also decide not to go in. The Planning Board decided not to be in person in those same months that we were in there.

Attorney Mondello: I have somebody on one of my boards who spent seven days on a ventilator, and he says "I ain't coming back".

Member Levine: I can agree to that.

Member Ludwig: I say we put it off making the decision on this. I don't like that people can't basically cross examine.

Acting Chairman: All right, we're going to carry that until February, take a look at it between now and then, jot down whatever changes you're not comfortable with and we'll discuss it in February and then we'll adopt it after we decide, as a Board, what we want to take out.

Attorney Mondello: Feel free to call me or email me if there's a paragraph you don't understand, or if you have some questions.

Acting Chairman: All right, with that a Motion to Adjourn:

MOTION TO ADJOURN AT 9:00PM: made by Member Ludwig. Motion carried by a voice vote.

Jennifer A. Fiorito
Board of Adjustment Secretary