

**REGULAR MEETING**  
**ZOOM VIDEO CONFERENCE**

Meeting Opened by Chairman Jack Dunning at 8:00pm

**OPENING STATEMENT:** This is the 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 February 13, 2022 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 will be posted on the front door of Borough Hall on the day of the meeting.

**ROLL CALL:** Chairman Jack Dunning, Vice Chairman Bruce Grygus, Members Frank Covelli, Suzanne Henderson, Helena Aumenta, Michael Sbarra, Dana Lynch and Charles Sahanas and Attorney Ronald Mondello and Engineer Christopher Nash

**ABSENT:** Member Donald Ludwig (Got into Zoom Meeting at 8:10pm)

Attorney Mondello: So I'm sorry, Jennifer, we're missing Don.

Board Secretary: Yes, and I don't see him on the screen.

Attorney Mondello: Neither do I. Are we missing anyone else?

Board Secretary: No, just him.

Attorney Mondello: All right, back to you, Mr. Chairman. Sorry.

Chairman Dunning: Well, let's start with our first application, which is Scenic Landscaping.

**Application ZBA2021-08 – Scenic Landscaping**

Attorney Mondello: Good evening Mr. Rutherford, if you could kindly enter your appearance into the record.

Attorney Rutherford: Good evening. Members of the Board and Mr. Chairman, for the record David L. Rutherford, appearing on behalf of Scenic Landscaping LLC and its related companies as well as Haskell Holdings LLC, which is the contract purchaser of this property.

Attorney Mondello: Good evening, Mr. Rutherford. Perhaps you could be kind enough to just bring the Board up to speed as to where we left off and where we are going.

Attorney Rutherford: Yes, Mr. Mondello, thank you. We appeared before the Board on November 3 2021 And February 2 2022. We provided testimony from Mr. Zimmer and Mr. Egarian our Professional Engineer on those occasions. The Board devoted a considerable amount

of time to this matter at the February meeting, heard testimony from our witnesses as well as testimony from a number of members of interested parties and members of the public. As a result of that, we made some significant changes I believe, to our plan. I have Mr. Egarian here this evening, who is prepared to offer testimony concerning the changes to his plan, and then Mr. Zimmer as well, who I think made some significant changes to the buffer planting plan, as well. So I have both of them ready to proceed. And then we do have also Mr. Steve Lydon, who is our Professional Engineer so when we're done with the testimony of Mr. Zimmer and Mr. Egarian, Mr. Lydon is prepared to proceed.

**Attorney Mondello:** And Mr. Lydon is your Professional Planner, not your Engineer, correct?

**Attorney Rutherford:** Yes, that's correct. He is our Planner. Mr. Egarian is our Engineer.

**Mr. Zimmer** is a principal in the Applicant.

**Attorney Mondello:** Is your first witness, Mr. Egarian?

**Attorney Rutherford:** Yes.

**Attorney Mondello:** All right. Welcome, Mr. Egarian, nice to see you again. You remain sworn. Your witness, Mr. Rutherford.

**Attorney Rutherford:** Thank you, Mondello. In the interest of moving this forward, I'm going to have Mr. Egarian proceed in narrative fashion, but just for the record, he is referring to his plan. It's essentially Drawing #2, last revised on February 16, 2022. It's a three page plan. Since the last meeting, I know that page two, at least, was revised. He provided a letter to the Board which I hope the Board has dated February 17, 2022. And that was then reviewed by Mr. Nash, your Engineer and he responded by letter dated February 23, 2022. So if it pleases the Board, I'm going to have Mr. Egarian essentially go through the revisions that were made to the plan, as well as the various points in his letter of February 16th. Mr. Egarian, you can proceed.

**Attorney Mondello:** Mr. Egarian, did you want to share your screen?

**Mr. Egarian:** I can do that. Let me see if I can get it up.

**Attorney Mondello:** You now have the capability, right.

**Mr. Egarian:** Can you see that?

**Attorney Mondello:** It simply says that you started screen sharing, but it is it is a blank black screen.

**Mr. Egarian:** Okay. I'm sorry.

**Attorney Mondello:** There you go. Yes.

**Attorney Rutherford:** Mr. Egarian, just for the record, what you are showing the Board is Drawing #2 of your plan set, last revised on February 16, 2022, correct?

**Mr. Egarian:** That's correct.

**Attorney Rutherford:** Good. I'd like you to work through please the changes that were made and then make reference to your letter of February 16th.

**Mr. Egarian:** Okay, I'll review the changes to the plan, which goes hand in hand with our response letter of February 17, 2022. In the first item, we took under consideration the comments from the Board and the neighbors regarding the 15' planting buffer. And we show on the plan now that the proposed fence is moved back 5' back from the property line. And we propose to plant a vegetative buffer within that 5' strip on the neighbor side, followed by the fence and then followed again by 10' of plantings. Scenic will provide the plantings in that 5' strip. The black fabric that was originally proposed for the fence has now been deleted. As far as the plantings go, they will be coordinated with each of the homeowners and they will be native species if possible. The fence will remain at 6' in height and will be 1" Non-Klein PVC coated black fabric. So in this manner, this is an attempt to soften the overall appearance of the fence and the planting so the neighbors should see a very attractive landscaped planting screen with a black mesh vinyl fence behind it. And, behind that again, would be the 10' planting buffer.

**Attorney Mondello:** I'm sorry Mr. Egarian if I might just a very brief question while you're on the subject of this 5' buffer area or strip. Your letter dated February 17, 2022 indicates that this 5' strip will be planted by your client, yet to be maintained by the homeowner. Is that something you have already discussed with the homeowner because, certainly if I was living there, and I had experts like your client, I would say fine come on the property and do whatever maintenance is required to make sure that none of this stuff dies. So your thoughts please.

**Attorney Rutherford:** Mr. Mondello, I don't mean to interrupt and Mr. Egarian can certainly answer the question. Mr. Zimmer is prepared to address the details of what will be done with respect to the planting and the commitment that the Applicant is making to ensure that the plantings "take" and includes a drip irrigation watering system and he's going to address that.

**Attorney Mondello:** Fair enough. Thank you. I just saw that it's a paragraph one, second line, that this strip is to be maintained by the homeowner. But thank you for that, and I apologize for the interruption back to you, Mr. Egarian.

**Mr. Egarian:** Okay, so that that covers the 15' planting buffer that abuts the neighboring properties. Along the street side (forgot name of street), we still have the 6' fence with the black fabric draped thereon.

**Attorney Rutherford:** For the record, that's on the east side of the property Mr. Egarian, where it abuts the Jefferson Street, which is an unimproved municipal right of way, correct?

**Mr. Egarian:** That's correct. Secondly, as shown in our letter, we have pulled back the driveways in the northeast, the northwest and the northeast corners to allow a greater buffer distance between the neighboring properties and the terminus of the roadways.

**Attorney Mondello:** Let the record reflect that I see that Don has joined us and he is present.  
**Board Member Don Ludwig.**

**Board Secretary:** Thank you (@8:10pm).

**Mr. Egarian:** Next in our letter, there was a concern voiced by one or two of the neighbors regarding the amount of irrigation water that would be utilized during the period in which the plantings are spread throughout the property. We took a look at the actual capacity of the sprinkler spray heads and found that these spray heads actually sprinkle at two gallons per minute. And just by way of reference, when you use your outdoor hose in your backyard that's normally about five or six gallons per minute. So these sprinkler heads will dose at two gallons per minute and will dose an area of 25' in diameter. The system will be arranged in various zones and each one of the zones is run by a timer, each zone being sprinkled for a period of 20 minutes. So total of 40 gallons are going to be dosed per zone over that 20 minute period. And just by way of computing what the actual gallonage is, that equates only like 1/8 inch deep of water is spread over the 25' diameter area of the sprinkler head. We also note in the letter that the soil itself is sandy and gravelly loam with a very good percolation rate. So the combination of this very mild sprinkling of the water stock supported by a gravelly, sandy loam that will allow the water to percolate in, and there will be no enhanced runoff off the site and into the neighbor's properties. #4 in my letter, we address the sheds on these two properties and the Applicant will commit to relocate the sheds to the neighboring properties to a location that they deem. But the actual improvements on their property, supposing such as foundations and so on, would be up to the neighbor itself. #5 in our letter, we review the comments made two weeks ago about adding additional plantings to screen or enhance the front of the existing operation and the Applicant will provide additional plantings in that manner. Lastly, there was an issue, but a concern about security cameras, and it's confirmed that there will be security cameras installed but the quantity and location have not been determined yet, but they will not be directed toward neighboring properties. That's really the extent, Mr. Rutherford, of our changes on the plan.

**Attorney Rutherford:** Thank you, Mr. Egarian. Members of the Board I can say that Mr. Zimmer will also be providing a bit of context to some of these changes not only the commitment that we're making to the health of the landscape buffer on the neighbors' side of the fence, but he can also talk a little bit more about the frequency of irrigation and how that's done. He can also talk about the sheds if the Board had additional questions there as well as the additional plantings to enhance the appearance of the existing entrances to the operation. So that's all, Mr. Chairman, that I would have for Mr. Egarian.

**Attorney Mondello:** Thank you, Mr. Rutherford. Two quick things. Board Members, this would be your opportunity to question Mr. Egarian on the testimony that he's just given. Second, you may have noticed in the chat function, three cheers for technology, I've paid some additional money to have live transcription. It's probably about 85% accurate, maybe more. So Don, if you've missed anything, you can click on that chat function. It'll take you to the live notes and you can scroll all the way back to the beginning and you can review what Mr. Egarian just recently testified. So with that back to you, Mr. Chairman, questions from Board Members. Okay, Bruce, you can unmute yourself.

**Vice Chairman:** I was wondering if maybe we could have Chris go over his second review letter.

**Attorney Mondello:** Chris, you're up.

**Engineer Nash:** All right. I didn't get to warm up; he threw me right into the game. I didn't know I was coming. This is the fifth bite at the apple and the Applicant has been modifying the plans and I've been using my letters as a checklist. I don't add additional comments unless there's something that I see that needs to be added. If you go to my letter of February 23<sup>rd</sup>, the only item that's really outstanding is item #5, with regard to the height of the proposed buffer trees. So there was a comment in my previous letter that said that the buffer trees needed to be 8' high, or at least the replacement buffer trees, and with that comment, I assume a landscaper, such as Scenic Landscaping, would have no issue addressing that comment.

**Attorney Rutherford:** Not interrupt, Mr. Nash, I'm sorry. But yes, we can address that, we will comply with that, and Mr. Zimmer will address that in a moment.

**Engineer Nash:** And then at the close of Comment #5 and at the close of Comment #6, I'm suggesting that both the vehicle paths be maintained with whatever language you think Mr. Mondello as part of the condition of approval if the application is approved. And then also with regard to the hours of operation and all of that, I think needs to be spelled out in any kind of condition of approval. That's really all I had. The landscaping plan showed didn't label the fence so that just needs a little housekeeping and needs to be shown on that plan. That's all I had at this time.

**Attorney Mondello:** Oh, the transcription has me down as Mandela. Bruce, there you go, unmute yourself and jump in.

**Vice Chairman:** I got yelled at last month for that so that's why I didn't want to do that. I guess I have other questions regarding what he's proposing with that 5' planting area and also like to get some more clarification of what he's proposing along the front of the existing. But I'm thinking that's probably better going to come from the Applicant.

**Attorney Rutherford:** Yeah, Mr. Zimmer will address that. Yes sir, thank you.

**Member Covelli:** Before we continue, I'd like to actually ask Mr. Nash a question. Chris, you heard Mr. Egarian's response with respect to the watering of the plants, the materials and the flow rate of the heads and the like, and we've had a fair amount of discussion on that potential concern with any runoff from the site that might impact the neighboring properties. What was your assessment of the representations made by Mr. Egarian with respect to the water flows, and based on what you heard, do you feel comfortable that the site can handle that and retain that water on site as opposed to causing a runoff on adjoining properties?

**Engineer Nash:** Sure, intuitively, yes, that the site can handle, that the soil can absorb that little amount of water. I actually was trying to do the calculation when I was called to speak. I just wanted to convert the gallons to the gallons distributed over a 25' diameter circle and just to verify. It's going to be a small amount of water. I just want to make sure that it's a reasonable

amount and that it's not too small that it's not even watering the plants. So I'll get back to you on that.

**Member Covelli:** Okay, that that would be my question at this point. I was going to reserve my questioning after Mr. Zimmer spoke so that that we would hear from both the Engineer and the Applicant before we had a host of questions.

**Attorney Mondello:** Any other questions from Board Member on Mr. Egarian's testimony? Hearing none, seeing none. Any questions from residents with respect to Mr. Egarian's testimony.

**Attorney Petreski:** Good evening. My name is Boris Petreski. I'm an attorney from Kinnelon, New Jersey, and I was retained by Theresa and Robert Riley, who own Lots 16 and 17, which adjoined the back of the property. Mr. Egarian our primary question is, if you look at the northeast corner of the lot, we have the fence in the buffer correct, you pull back the path, and I think not on this drawing but on other drawing, it showed us about 43' from the property line to, I guess, the radius of that circle if you go up. Yes, that area, so you did pull that path back. Now my client, I believe, addressed this in the February meeting, but there's a third path that they've been using for the last 20 years to cross over from the unimproved roadway into their lots, which are Lots 17 and 16. Is there a reason why you couldn't pull that buffer zone back to leave that 12' path so that my clients can still access, what would eventually be landlocked, if this was approved? Is there any reason you can't move that fence back to allow access to Lot 17?

**Attorney Rutherford:** Mr. Chairman, I'll let Mr. Egarian answer the question, but I do want to address that issue, but I don't want to if he can answer it and I'm happy to hear his answer.

**Mr. Egarian:** Well it certainly can be moved back a little more. We need to access that corner. But pending the resolution of access to Lot 17 between the Applicant and the owner, we could adjust that loop accordingly.

**Mr. Petreski:** You know better than me, but I don't think you actually need to adjust a little bit. I'm just saying maybe just push the fence back so that the buffer starts at, you know, 12' from the property line instead of right on the property line. And I guess maybe Mr. Rutherford or Mr. Zimmer would be able to address that, whether that they'd be willing to do that. But in an engineering term, it is feasible to pull that back to the 12' from the property line, correct?

**Mr. Egarian:** Yes, it's feasible.

**Vice Chairman:** Is that a deeded right-of-way to that lot?

**Mr. Petreski:** No. What my argument tonight is going to be that it's a prescriptive easement. So it's been in use for over 20 years. It was adverse, hostile, continuous and uninterrupted and visible. So it's not recorded, but one of the things that my clients are going to ask is that it be part of the condition of approval is to allowing for an easement on that portion of the lot.

**Attorney Mondello:** Yeah, well, the Board has no jurisdiction to decide whether or not this, in fact, is an easement due to the fact that it's been open notorious, etc. But I'm sure that Mr. Rutherford may be chomping at the bit to supplement this conversation.

**Attorney Rutherford:** Yeah, if this is the time, I didn't want to disrupt the proceedings or disrupt Mr. Petreski's opportunity to question Mr. Egarian. But yes, and to answer the question that was posed a few moments ago, I have examined a title search of Lot 19 and it is silent as to any right-of-way or easement running in favor of the owner of Lot 17. My client is the contract purchaser of the property, and therefore does not have a historic or encyclopedic knowledge of the manner in which it's being used. For the record, I probably don't contest the fact that that Mrs. Reilly has used and crossed over this property to access Lot 17. But Mr. Mondello as far as I'm concerned, you are exactly correct. The Zoning Board of Adjustment is a Board of limited jurisdiction and has the opportunity to, as the right I should say, to just adjudicate only those issues that are set forth in the statute. ,Whether or not Mrs. Reilly has rights to a prescriptive easement, I would suggest as a complex factual and legal analysis, is that certainly there's no factual basis for that in the record. And even if there were, I don't think the Board has the jurisdiction to determine whether those rights exist or not. So personally, I don't think it's relevant. I don't think it's a proper issue for the Board. I don't think it's a proper condition for the Board to impose because I don't think it has anything to do with the zoning and planning issues that are presented by this application. That having been said, I am aware of the issue because I had spoken with Mr. Petreski prior to this evening's meeting. I've discussed it with my client. Mr. Zimmer can probably address it in a little more detail in a few minutes. But, you know, Scenic Landscaping certainly wants to be a good neighbor. On the other hand, Scenic Landscape is reluctant to encumber its property with an easement running in favor of Lot 17 just for obvious reasons. It certainly is nice to keep your title nice and clean. That having been said Scenic does want to be a good neighbor and wants to try to work something out with Mrs. Reilly if that's possible. But at the moment, we feel the plan is appropriate as it's presented. Mr. Egarian certainly correct that the fence absolutely could be moved back. At the moment, my client really isn't prepared to do that. But I think we don't even have to get into those issues, Mr. Mondello, because I think you're exactly correct. This Board doesn't have the jurisdiction to adjudicate them. It's not a proper condition so that's a matter between the Applicant and Mrs. Reilly to resolve at some point in the future.

**Attorney Mondello:** Fair enough. Mr. Petreski, any other cross examination for Mr. Egarian?

**Attorney Petreski:** No, Mr. Mondello. I just want to say that we're not asking the Board to adjudicate that. We just want to make the Board aware that we have a potential claim on that and we wanted the Board to be aware that, if it was approved as is, that's a potential that we would seek to perfect that claim in a different jurisdiction.

**Attorney Mondello:** Sure, that is your clients' right in Superior Court, Passaic County.

All right, any questions for Mr. Egarian, from residents? Any questions for Mr. Egarian on his testimony from residents, or Board Members, for that matter? Hearing none, seeing none, next witness Mr. Rutherford.

**Attorney Rutherford:** We have Mr. Zimmer, Mr. Mondello?

**Attorney Mondello:** I believe Mr. Zimmer was previously sworn, is that correct?

**Attorney Rutherford:** Yes, he offered testimony in November and in February. He's present. I don't see him at the moment, but I know he's here.

**Attorney Mondello:** He's there. Good evening. Mr. Zimmer, your witness Mr. Rutherford.

**Attorney Rutherford:** Thank you. Mr. Zimmer, you understand that you were sworn at prior meetings and you understand you're still under oath?

**Mr. Zimmer:** Yes.

**Attorney Rutherford:** Since the last meeting, you prepared a revised Buffer Planting Plan. I believe the latest revision date is February 15, 2022. Is that correct?

**Mr. Zimmer:** That is correct.

**Attorney Rutherford:** And that plan was revised in direct response to concerns raised by the Board and interested parties at the February meeting. Is that correct?

**Mr. Zimmer:** Yes.

**Attorney Rutherford:** The major change, and I'll let you talk in a moment, but one of the major changes was a change in the location of the fence that goes around the perimeter of the property. At least a change in the location of the fence that abuts properties used for residential purposes. And the fence was moved 5' off the property line so as to provide some plantings in front of it and then a 10' buffer in back of it. Originally, as it was proposed last time, the fence was essentially on the property line, and all the plantings were behind the fence, correct?

**Mr. Zimmer:** Yes, correct.

**Attorney Rutherford:** We changed that because a number of interested parties and perhaps even Members of the Board said, you know we're just looking at a fence. You know, you have all these beautiful plantings, you have 15' of plantings there that you have, and we're not going to be able to see them. So what you did was you made it possible to still preserve that and create the 15' buffer, but also have that 5' of that landscape on the residential side and then 10' on the other side. Is that right?

**Mr. Zimmer:** That's correct.

**Attorney Rutherford:** Okay, so I'll let you talk now that we've gotten the concept of the plan straight so maybe you can tell the Board a little bit about the details of the landscaping plan. And what I'd like you to address also is Mr. Mondello's comment, and perhaps that of the Board Members too, in terms of the commitment that the Applicant is making to those plantings and to ensure that they will actually thrive and grow. So I want you to talk about that as well.

**Mr. Zimmer:** Sure. Is my screen being shared

**Attorney Rutherford:** I don't see it just yet.

**Attorney Mondello:** One second, I'm sorry. Go ahead.

**Mr. Zimmer:** So yes, the landscape plan, as has been mentioned, was modified. The fencing was moved back from the property line to enable us to plant shrubbery on the neighboring side of the fence in addition to the additional plantings that were added throughout the buffer to make it thicker, and to add some softening plantings on the neighboring sides. You could see we also have



a quick 3-D Image of this. The fence now not having the black mesh on it will be just a black link type fence, which should have a lot of visibility through the fence. And what we're trying to show in this image that is on the sheets, are the shrubs, a mixture of mountain laurels, viburnums, certainly open to native type plantings and making some adjustments as needed. But these types of shrubs that have the ability to grow anywhere from 3' to 7' tall depending on how the neighbors might want to have those plantings to soften the fence. As was also mentioned by Mr. Egarian, being that this fence doesn't have the mesh, we see a mix of the plantings on both sides of the fence, really helping to allow this fence to dissolve into the landscape and really create a nicer view on the back of each property. It's understood that Lot 9 has a unique situation with the rock outcropping by the fencing area. We do have the ability to lightly berm, which I do have on the plan, to enable us to be able to plant in that area and soften the fence. I understand this as a more unique situation on that particular lot and certainly willing to make some minor adjustments and work around the rock as best we can to enable us to soften that fencing. Our intention is to install and establish these plantings. We would either be hand watering or putting a drip irrigation system in to enable these plants to be installed. And simply the mention of maintenance by the neighbors is simply giving them the ability to say if they would want to keep plantings at a smaller size or if they'd like to let these plantings grow up taller and have more height on the back there. Certainly, I'm willing to work with the neighbors. I'm not looking to add any significant and I don't think these will be a lot of maintenance. And we certainly intend to establish and plant these and get them irrigated and make sure that they're going to establish in these spaces.

Attorney Rutherford : You've indicated a plant schedule on your plan that's below the rendering that you prepared. I just added it up very quickly. This is roughly 200 plantings. Am I correct in that regard?

Mr. Zimmer: Roughly yes.

Attorney Rutherford: Okay. And when you said irrigation, can you tell the Board what form that irrigation might take place for the plantings on the neighbors' side of the fence?

Mr. Zimmer: Yes, either hand watering or a drip irrigation which would just be like a soak type hose that gets buried slightly under the mulch to be able to water these plants and establish them.

Attorney Rutherford: And that soaker type hose is something that you control and it could be on a zone, it could be on a timer. There's lots of different ways that could take place, correct?

Mr. Zimmer: That's correct.

Attorney Rutherford: So the Applicant's intent here and objective is to provide some plantings that the neighbors will be readily able to see and enjoy. They will also have some control over how wide they get and how high they get, right, in terms of in terms of their maintenance. Is that correct?

Mr. Zimmer: That's correct.

**Attorney Rutherford:** Talk a minute, and I know last month there was some concern about the height of the fence. We had proposed a 6' high fence and we still propose that as well. Certainly, I should clarify for the record, I believe the fence along the Jefferson Street right-of-way, unimproved right-of- away, is not the same as what was originally proposed, correct.

**Mr. Zimmer:** Correct, along Jefferson, yes.

**Attorney Rutherford:** Yeah, and the change in the type of fence and the elimination of the fabric and, I apologize if I've been using the wrong term, is along those portions of the fence that abut residentially zoned properties.

**Mr. Zimmer:** That's correct.

**Attorney Rutherford:** Okay, just again, explain and think you maybe did this at a prior meeting, but again, explain to the Board why you feel the need for a 6' high fence.

**Mr. Zimmer:** Well, security is certainly something that we need to be cognizant of. We feel that the 6', especially without having a mesh cover on the fence, adds to it not being claimable. We do want that fence to not be claimable. Certainly, we feel that it's going to be softened greatly. It will not have a top rail to it, which again, adds to its lower profile and visibility. But really it's a security that we do have some plant material. Sometimes they're container type plants that are smaller, and we do need to have security of the property.

**Attorney Rutherford:** So in your estimation, that 6' high fence with the buffering on both sides, the elimination of the fabric and elimination of the top rail is going to significantly reduce the visibility of that fence from neighboring properties.

**Mr. Zimmer:** Yes, I do.

**Attorney Rutherford:** Mr. Nash, talked about the sprinkler system and the nature of the water flow and drainage issues and all that kind of thing. Again, just remind the Board about where these sprinkler heads will be located and what they're intended to do.

**Mr. Zimmer:** Right, so only as needed. As I've mentioned in the past meetings and in one of the pictures you can see on the top left picture that's on our sheets shows these poles. They are only going to be around 25' wherever we're going to keep plant material because we're going to be watering separately with either a drip irrigation system or hand watering the buffer zones. We're essentially going to have all of these at least a 30' to 35' in on the property so they will not be that far from the edges of the property. So no impact, and the buffer zone itself is even a separation of where those heads would be. And that is just for temporary watering as needed for the plant material that we store in the area.

**Attorney Rutherford:** And so it's fair to say that the sprinkler system is not necessarily used every night in the same spot. It's used as needed, as based upon weather conditions, based upon the quantity and location of the plant material on the property, based upon the time of year right, based upon weather conditions.

**Mr. Zimmer:** Correct.

**Attorney Rutherford:** There are a number of factors that go into it. Is it accurate to say that you water when it's needed? You're not watering just for the sake of watering I guess is my question.

**Mr. Zimmer:** Yes, I mean we water when is needed. I mean it is on a rotation of the whole property so nothing is going off all at once. It is a rotational where, you know, a few heads might be going in one section and then a few other heads throughout the day as needed and as we determine it's needed with the heat.

**Attorney Rutherford:** Okay. And one of Mr. Nash's comments had to do with the, actually his two comments on your plan had to do with the height of the replacement plantings at 8' and I think that was really just an oversight on your plan. We are certainly more than able and willing to comply with that condition, correct?

**Mr. Zimmer:** Yes, that's correct. I did actually revise a plan to address that and increase the plant list heights for the appropriate plants. I know four (4), based on the tree removals, the ordinances, and any tree over 12 inches of caliper. So four (4) were required, but we are going to take of the 22 evergreens that are around the perimeter, we're going to have half of those, 11 of those, become 8' to 10' size. And I do have a revised plan that shows that.

**Attorney Rutherford:** And you also have revised the plan simply to show the location of the fence on your buffer plan as well.

**Mr. Zimmer:** Correct. So those two items were addressed on a revised plan noting the fence location and the increase in size to 8' to 10'.

**Attorney Rutherford:** Okay, and that was something that was revised after you got Mr. Nash's letter of February 23rd.

**Mr. Zimmer:** That's correct. I do have it if we want to have it as an exhibit.

**Attorney Rutherford:** I don't necessarily think we need it. The changes are pretty straightforward. But if the Board certainly wants to see it, we can do it. I know another question that was raised just a few moments ago, had to do with the supplementation of plantings by the entrances to your facility. Maybe you can address that just a little bit as well. We don't have a plan for that, but maybe you can give the Board an idea of what you would plan to do there also.

**Mr. Zimmer:** As has been said all along we certainly want to be good neighbors. We have heard concerns that some of the neighbors have had and we are intending to clean up the front of the property. I know it's been expressed, you know, that we have it cleaned up a little bit more towards our main entrance and we should continue that cleanup down the street, which we fully intend to do. We would like to do some fence repairs, repair some of the grades, put in some perhaps ornamental plantings across the front of the fence to help soften it and enhance the roadside over on our main property.

**Attorney Rutherford:** Obviously it goes without saying that's not necessarily a direct part of this application. It is obviously on the adjoining property that will be used for access to a Lot 19 should the Board approve this matter.

**Mr. Zimmer:** Yes.

**Attorney Rutherford:** Security cameras: I know we addressed that last time. I only mentioned it now because Mr. Egarian mentioned it but you can certainly confirm that care will be taken so that the security cameras fulfill only the function for which they are designed and that is to monitor the property during the nighttime hours, I presume, or perhaps even daytime hours on weekends when no one's around. Certainly, we're going to be respectful of neighbors' privacy rights with respect to that as well.

**Mr. Zimmer:** Yes.

**Attorney Rutherford:** Mr. Mr. Zimmer, I think all the other comments in Mr. Nash's letter, I think you had provided testimony at prior meetings. So I don't know if there's anything else that we need to add about your revised plan.

**Mr. Zimmer:** I don't believe so.

**Attorney Rutherford:** I don't think so either. So, Mr. Chairman, that's all I would have for Mr. Zimmer. Thank you.

**Attorney Mondello:** Thank you, Board Members any questions for Mr. Zimmer? Go ahead, Mr. Nash.

**Engineer Nash:** Mr. Egarian's testimony regarding the watering. I'm really not that concerned about the watering. I think the watering is going to be something that's almost self-policing because it doesn't behoove the Applicant to overwater the site so much that waters going to run off the site from the watering. But I did a quick calculation with Mr. Egarian's numbers. He said per cycle would be 40 gallons over a 25' diameter area and I'm coming up with a 10th of an inch, which to me doesn't do enough to water the plants. So Mr. Zimmer's testimony was a little better in terms of their going to water when they need it, not water when they don't need it, but it doesn't quantify anything. So it does leave the Board with a little bit of a quandary in terms of what happens if plants do get overwatered to the point where there's runoff, maybe not runoff, but there might be in some areas some pooling of water or something that's attributable to the watering. So I don't know how to frame that in a condition, maybe Mr. Mondello, maybe come up with something.

**Attorney Mondello:** I don't know how to correct it. Maybe Mr. Zimmer doesn't care if there's pooling of water on his property.

**Engineer Nash:** I'm talking about it coming off the site because we don't care either to any degree that it's ponding if you will. I just don't want it to come off the site. I mean it could happen. It could be, you know, a back area they don't get to for a few weeks and its overwatered and water ends up on somebody's property.

**Attorney Rutherford:** Maybe we could ask Mr. Egarian's basis for his calculation and hopefully I'll get this right. It was a zone operating for 20 minutes with 40 gallons of water over the 20 minute period. Mr. Zimmer, maybe you can give us an idea of how often a particular sprinkler head would be activated. You know, is that something that happens? Actually, Mr. Egarian said

that it would all perk into the soil in about 15 minutes, so maybe you could give the Board a little better idea of the frequency of watering perhaps that might help.

**Mr. Zimmer:** It's hard to specify exactly. I would say, you know, typically the zones are probably running about a half hour or so/half hour to 45 minutes as they rotate around. That would be difficult for me to answer exactly how often it is. I mean, it is as needed as I mentioned. We do have an irrigation contractor that we work with that is responsible for the system who we get the information from as far as how much it does water and what we're using to water. I think Mr. Egarian would probably have a better sense of his calculations. That's not something that I'm an expert on.

**Attorney Mondello:** Well, I'm starting to formulate that perhaps the only way to solve this potential problem of water seeping into neighbors' property is that, if there is a complaint and there are pictures, you're going to have to come back to the Board and you're going to have to propose a solution, whether that is some type of seepage pit, and the Engineers know much better than I do. But you know that water must be contained on your property and your property alone.

**Engineer Nash:** Mr. Mondello it was testified that the sprinklers that they're using to do this watering is going to be offset from the property line. And because there's a perimeter planting, you know, it almost serves as a berm because it is going to be mulched. So, you know, on second thought I don't think it would be any, because it doesn't behoove them to have to pay for the water too, so you're not going over water. It's a delicate balance because their plants are their life and blood so they do need to make sure they live. Like I said on second thought I don't see this as a real issue. I don't think it needs to be a condition. I don't think it's likely to happen.

**Attorney Mondello:** If you're comfortable, I'm comfortable.

**Engineer Nash:** Yeah.

**Attorney Mondello:** I see that Helena has got her hand up. Did you have any other question, Chris? No. Okay, go ahead and Helena.

**Member Aumenta:** So along the sprinklers just to keep along that line, you had mentioned that you have folks that maintain those sprinklers but I just heard you say you have like a vendor that that does that for you or a company. Who maintains those sprinklers?

**Mr. Zimmer:** Both. We have guys that are full time in the yard that handle all of our nursery stock and work on whatever adjustments need to be made. And then we have a general overall irrigation company that services our system and if we have any problems. We have both guys on staff and also an irrigation company that we work with.

**Member Aumenta:** Folks on staff are experts so that if one of the sprinklers goes bad and just starts to constantly drain water and doesn't stop that someone is immediately handling that or is that something where you're calling for service and it could continue for a period of time?

**Mr. Zimmer:** No, no, it's very important even our guys that are on site are able to do repairs and quick fixes as needed. As it's been mentioned, it's obviously very important that the irrigation system is right and everything is taken care of. So we're very on top of that.

**Member Aumenta:** Okay, because I think we've heard some testimony from some of the local neighbors that that's not necessarily happening. That these sprinklers are causing water issues where they are currently in the current yard. So I just wanted to clarify that. The other thing you mentioned is that these sprinklers are going to be away from the edge of the property but I see that on the edge of each of the property you have sections where you're going to be keeping your supply. So how far do these things spray that you're going to be able to keep them 35' to 40' off of the edge of the property line but still be able to accomplish watering all of the supply that you have that's right up against the edge of the property line.

**Mr. Zimmer:** So they're 25'; the heads spray 25. Therefore, since we have that 15' buffer zone, we won't be irrigating that buffer zone that will be on a separate drip system just for the plants to get those plants to establish so between the buffer of 15' and 2'0 to 25' where the heads would need to be to be able to reach the edges.

**Ms. Aumenta:** All right. I'm a little concerned still about the homeowners being kind of on the hook for maintaining the plantings that you're putting in. You mentioned at one point that you know there will be the drip system or there will be hand watering and you said maybe perhaps. Is that a guarantee that there's going to be a watering system there or is that something that you're considering doing because it didn't seem very clear when we were talking about it?

**Mr. Zimmer:** No, there will be irrigation to establish those plantings?

**Ms. Aumenta:** Okay, so to establish them. But ongoing maintenance, who does that fall? You said that the homeowners can control how big or small they get. Are you providing the landscaping for that and controlling those plantings or is that something that your expectation is that the homeowners will be responsible for ongoing in perpetuity?

**Mr. Zimmer:** I'd be open to the feedback of the homeowners, but when we actually do these plantings I wanted to give them somewhat the option of maybe choosing some of the plant types, maybe telling me if they want these plants to grow up taller or to stay lower. So we really just wanted it to be something that would be a benefit to them that if they wanted to maintain these plants. Certainly we can do some general maintenance on these plants. I mean they are still on the property, but because it's, you know, right on it on the adjacent on the other side of the fence, we didn't want to impose upon the neighbors and necessarily have to go on their property if they didn't want us to maintain these plants. And that was why we were putting that out there as the maintenance is optional for them.

**Member Aumenta:** So I'm still not clear on the answer. So is the maintenance on the homeowner or did can they choose to have you as part of your company and your business maintain those plantings in perpetuity once they're put there. Not just to start them, but maintain them consistently over time.

**Mr. Zimmer:** I think over the long term, we'd like to be able to just have them naturalized and not have maintenance. Really they shouldn't need much maintenance over the long term except for whether they want the plants to be large or small. Certainly if they want us to maintain them, we can maintain those plants.

**Member Aumenta:** So is that a guarantee and something that you will be putting in writing should your application be approved that you will, for the lifetime of your ownership, that you will maintain those plantings?

**Mr. Zimmer:** We will care for all of these plantings, yes.

**Attorney Mondello:** Helena, it's a reasonable condition and they've agreed to it. I think what he's trying to say is some of the neighbors may not want them.

**Member Aumenta:** I understand but what I'm trying to establish is, because again I'm not getting the yes or no, right. Each time we ask the question its well we're going to be planting them to get them to take, we're going to deal with them taking but we're not talking about you know, this is a lifetime ownership of this land, and this has an impact on the homeowners for the time that they own their property. If no one's maintaining them, right and it's not on the homeowner's property, this is on our petitioner's property. So you know, expecting the homeowners to in perpetuity forever, means he needs to or are we going to start the plantings and then I'm hearing you know, we want to let them naturalize. We all know what that can be right? Anybody around here that doesn't deal with their own landscaping, it grows forever, and then it becomes a nuisance and it becomes a problem. So, you know, I just want to make sure that we establish that if the homeowner does not agree to maintain these plantings that are not on their property that are there as you know, a condition to make this business look nicer for the homeowners property and the value of their property if they ever want to sell it, etc., that this doesn't become a nuisance and that the business is responsible for maintaining if the homeowner chooses not to.

**Attorney Mondello:** Yeah, so here's how we compartmentalize that. If I'm an adjoining homeowner, I don't want anybody on my property, that's it. I'm taking care of the plants myself. On the other hand, if I've said and I don't have a green thumb and these guys do, I want you to take care of my plants and you can come onto my property whenever you want for the sole purpose of maintaining these plants, as you say in perpetuity. That's what they're going to do, and that's the way the Resolution is going to read.

**Member Aumenta:** Well, and that's what I wanted to confirm and I haven't heard a Yes until just now for that final answer that I received.

**Attorney Mondello:** Fair enough. All right, any other questions, Helena,

**Member Aumenta:** With the fence that is up against the property that is now not going to be cloth covered, etc., it's just going to be the chain link fence. There's a view behind that and, so again, up against the property line, there is the supplies that are going to be held there. The road is also up against it. I know there's a 5' barrier and that's all well and good, but being able to see through that. Are there going to be trucks and other supplies and maybe backhoes and all of that left back there? Also with the supplies, who's going to maintain all of that so that, again talking about the homeowners right looking back there, I don't think that even when there's some shrubbery and things like that they're going to want to be looking at trucks and that that are parked in the back of the property. So I just want to confirm that.

**Mr. Zimmer:** We're not going to store any materials or park any trucks back there. There will be vehicles that will have to go back there, back and forth, to get the material. I think we're going to be improving the view back there with not only the buffer of plantings that we're going to have, but the fact that all on the edges between the road and that buffer would simply be a container plant material and temporary stored plantings, which would have a very nice look and add to the thickening. So we do not intend to store anything on this property besides the plant material. And we just need access with vehicles to be able to get back and forth to that material.

**Attorney Mondello:** So Mr. Zimmer, what is plant material?

**Mr. Zimmer:** Balled and burlapped, anything that's temporarily stored on the property that would be going to a job site. So a tree that has a root ball on it that sets on the ground or containers, like 10 gallon container plants, that have shrubs in them. That's what would be just sitting on the surface of the ground.

**Attorney Mondello:** Thank you, anything else, Helena?

**Member Aumenta:** Just one last question around the cameras. Are you planning on having cameras pointing at the fence or will all the cameras be pointing interior to your property? I know we're going to try to avoid pointing them at the homeowners, but are we planning on having them point at the edge of the fence; that section that you own?

**Mr. Zimmer:** I would say that we're definitely not planting them at the neighboring properties and they will be planted or, excuse me, they will be positioned to view into the property, whether they're going to be along the edge of a fence in some situations as long as they're not infringing upon views of the neighbors. Everything should be internal on the property with the camera views.

**Member Aumenta:** And does someone consistently monitor those camera views and take a look or it's only if something happens that you'll be taking a look at those?

**Mr. Zimmer:** I mean we have cameras screens up in our office at all times.

**Member Aumenta:** Okay and I'm just asking because we know with weather, with wind, with a lot of different things, these things get moved around and so you may unintentionally be recording your neighbors and that's not something that we would want to have either.

**Mr. Zimmer:** We have no intention of doing that.

**Member Aumenta:** No intent, obviously, but you know things can happen. Okay, that was all for me. Thank you.

**Attorney Mondello:** Frank. I think you're up followed by Co-Chair Grygus there who's going to fire me if I yell at him again.

**Member Covelli:** Mr. Zimmer, let me say at the outset, nice job. You did a lot of changes, a lot of improvements and I think Scenic really reflected that they listened to the Board, they listened to the residents, and it really shows in what you're presenting here tonight. Thank you for that. I have a specific question. We received a letter from one of the neighbors and I don't know if



they're on tonight, but it's an issue worth raising because of the uniqueness of one of the properties and that's the first property I guess it would be Lot 9, where the rock outcrop is.

**Mr. Zimmer:** Yes.

**Member Covelli:** You address some of it but I would ask just for a little bit more clarification. You said that you could berm and the like and modify the fence. I meant to grab the letter and I'm not 100% sure I grabbed it with me. I did read it early today, but then I happen to do a whole day's worth of work so I don't remember every specific detail. But my question would be to you is if that homeowner, for example, wanted, I believe that they appreciate the aesthetics of the rock of the outcrop.

**Mr. Zimmer:** Yes.

**Member Covelli:** Would that fence for example be able to go behind the rock as opposed to go over the rock?

**Mr. Zimmer:** So right now, the rock does protrude not only on our property, but onto Lot 9, and there is a flat area on top of the rock. I actually did go over and take a look at the rock and I even did look at it with the neighbor. There is room up there to be able to berm, to create some plantings and there are some plants that are growing out of the rock. I know it is a rocky area and we would need to create some planting zone to be able to do it. But I think we do have enough ability to keep the visual of the rock, I don't think it changes how it's going to look, facing the property. But up on the top, moving the fence back, I think when we berm it and the plantings fill in there and we're not doing the mesh, I do think it's going to disappear just as the others. Now if there is a particular section, because it is a rock and there are some odd little areas of it, if we have to make some slight adjustments to be able to maximize being able to soften that fence in that area. I understand it's a unique situation and we certainly want to work with them to make it look as best as it can be.

**Member Covelli:** That's pretty much what I wanted to hear Mr. Zimmer. That you'll work with that property owner because you know, you guys all have to coexist. And again, I wanted to say that I think he did a nice job of trying to do that. I was also thinking that if the fence went behind it, you might defeat the purpose of the fence where someone could jump from the rocks over the fence and then you'd have your security issue again.

**Mr. Zimmer:** It would.

**Member Covelli:** So I understand, but if you would be willing to work with that property owner to achieve what you're both looking for aesthetics for them and security for you, that would be a good thing.

**Mr. Zimmer:** Yes.

**Member Covelli:** We've heard a lot about the sprinkler. I had a question. Are you on well water in that area or are you on the municipal system?

**Mr. Zimmer:** We're on municipal.

**Member Covelli:** I don't remember if it was Mr. Mondello or Mr. Nash's point, you're paying for that water that you're using?

**Mr. Zimmer:** Yes.

**Member Covelli:** Not that you don't pay for well water but it's a lot cheaper.

**Mr. Zimmer:** Right.

**Member Covelli:** Can we revisit the fence issue? Let me ask a question first. The mesh you're using is it the tighter mesh, the 1", as opposed to the standard 2-1/2" or 3" whatever it is?

**Mr. Zimmer:** It is the tighter mesh to make it not climbable.

**Member Covelli:** Right, but it also provides additional screening in and of itself with the tighter mesh.

**Mr. Zimmer:** I still feel that it's something and I could share other pictures, but I do feel that both of those types of fence do lose themselves. But yes, it is a tighter mesh, so there is a little bit more of what you see on that mesh. It would be a black chain link.

**Member Covelli:** Are you putting in those lawns? That's a beautiful lawn. Are you putting that in for all those neighbors? That's beautiful; just a little levity, Mr. Zimmer. Back to the fence, I heard a statement made that there's no top rail on the fence.

**Mr. Zimmer:** Right. It's a wire. They put a wire on the top to hold it taut. That helps with the climb ability but it also lessens the visibility of it because you won't see a top bar on the fence.

**Member Covelli:** It also creates where it's more susceptible to disfiguring or bending or whatever the case may be.

**Mr. Zimmer:** But we'll certainly make sure that we're maintaining it. I've even seen with normal fence posts, if a branch falls and it bends it, this actually could be adjusted a little bit more easily if something happens.

**Member Covelli:** Alright, so it's like a flat plate; they put it in a small thin flat plate. They put at the top of it.

**Mr. Zimmer:** Yeah, it's like a heavy gauge wire that allows it to stay taut at the top.

**Member Covelli:** Okay. Could you spend a moment more, because I'm certainly intrigued when you talk about cleaning up the front of the property that faces Jackson, which faces the neighbors?

**Mr. Zimmer:** Yes.

**Member Covelli:** Could you speak just a little bit more in detail about that, because you do have a very attractive entrance to your property?

**Mr. Zimmer:** Yes, we have the entrance planted a little bit more heavily and we don't have as many plantings going down the street and we intend to do that. We'd like to, to really carry that look that we have at the front and carry it down to our secondary gate area. I really feel that, you know, it's a situation where it is a roadside, so I do need to be careful with the types of plants I put there and how will they hold up to winter conditions. So I do think something like ornamental grasses and some decorative treatment along the front edge of the fence to clean it up would be nice. As well as there are a few fence sections that I think need to be reset and redone so we really want to clean up the look all across the front there.

**Member Covelli:** So you have some pillars towards the front entrance. Are you bringing those pillars across the front to the other gate as well?

**Mr. Zimmer:** We were going to consider putting those at the other entrance area, the pillars at the other entrance area there. The problem is we do have some existing trees kind of in the middle there which would make it a little prohibitive to try to dig the footings for the piers. I'd certainly like to maybe do something more enhanced at the other entrance and I think we have the ability. But in that center section, we might just have to do a nicer fence section to match the front but I think I'll have challenged with some piers there.

**Member Covelli:** Okay, if the Board were to grant this variance, if we were to say that there's to be no road vehicle parking on this this property, would that be something that you would consider restrictive in terms of your use of the property. So, in other words, all of your dump trucks and your mason dumpster and the like, the road vehicles that you use to operate your business they remain on the existing lot. Obviously you're using them to move the plantings and to service this lot, but not for that to be an overnight storage over there.

**Mr. Zimmer:** No, there would not be.

**Member Covelli:** Would you consider that reasonable if a condition like that were put on the Resolution?

**Mr. Zimmer:** To not store construction vehicles on the street you're saying?

**Member Covelli:** No, overnight on this property?

**Mr. Zimmer:** Oh, overnight on the new on the new property?

**Member Covelli:** Yes.

**Mr. Zimmer:** Correct. Yes, we would not store; we would be fine with that.

**Member Covelli:** You would be okay with that where the vehicle storage remains on the existing property?

**Mr. Zimmer:** Yes.

**Member Covelli:** Obviously, I'm not talking about your bobcats and the like equipment that's used to service this property. I'm talking about the vehicles that service the business.

**Mr. Zimmer:** I understand, yes.

**Member Covelli:** I also believe that, either your testimony or perhaps Mr. Egarian's, I'm not 100% sure, it was represented that you're using a shipping container as a storage facility and that would be relocated further away from these property owners.

**Mr. Zimmer:** Well, I did discuss about screening that off and making some adjustments to it. I think we could change the fencing and clean that up. Because we are going to have our access now there, we can't really move it out too far away from that corner. But I definitely want to screen that off and fix up the look of that and, if I can shift it a little bit away, I certainly will. But it's a little limited because now we have the access coming through there.

**Member Covelli:** Okay, fair enough. I appreciate your time and your responses.

**Mr. Zimmer:** Thank you.

**Member Covelli:** All right, Bruce, you're up.

**Vice Chairman:** Thank you, Counselor. I have a couple questions. Are you proposing any gates in the fencing around the property?

**Mr. Zimmer:** As of right now, we did not show any gates.

**Vice Chairman:** So let's make an assumption that the owner of Lot 6 wants you to maintain their buffer; you're going to have to have someone walk from behind the trailer all the way in that 5" buffer to get to Lot 6?

**Mr. Zimmer:** Well, I think you're making good point that we should have a few gates for service like that, for maintenance or, something that was even mentioned, if something damages the fence, so we have the ability to go on both sides of the fence. So I think that we should add a few gates around the perimeter.

**Vice Chairman:** Okay. My next question would be what is your reluctance to pull the fence all the way back to the inside of the 15" buffer?

**Mr. Zimmer:** I just feel that we're doing a lot to accommodate as far as softening this fence, and I think that we want to keep most of the plants on our side to be able to maintain them easier. I think maintenance has a lot to do with it. And I think we do also, of course, just want to be able to maximize the use of the property as best we can and being able to maintain these plants from the inside will certainly be easier. All the bigger plantings will be on the inside of the fence.

**Vice Chairman:** I just think that if you had the fence all the way on the inside, and all the plantings between the fence and the property line, makes it easier to maintain and nothing encroaches at all onto your storage areas.

**Mr. Zimmer:** Yeah, we really would like to do what we're proposing. We think it's a very reasonable proposal of losing the fence within the landscape around the edge there.

**Vice Chairman:** The only other question I would have is, and I had brought up at the last meeting, and that was at the northwest and the northeast corners. I know you pulled those roadways back, but we talked about possibly pulling that plant material storage areas back further into the interior, which would help mitigate runoff. You know, the more material storage you had to the interior of the property, the less opportunity that you would have for runoff. Is there any reason why you can't contain the bulk of your storage to the interior of the property, understanding that you do have some rock outcrops?

**Mr. Zimmer:** I mean, I think that we did try to pull the roadways back to give a little bit more of at least a vehicular, machine buffer. But again, I don't feel that this is going to be impactful from a drainage perspective and we do want to make use of the property as best we can. So we would like to still be able to use it, but we understand and are pulling those roadways back to just try to limit some vehicular traffic or machine traffic into those areas.

**Attorney Mondello:** So Bruce, let me just say this to you, and you already know this having been on the Board for such a long period of time, the Applicant is asking for a lot. This is a use variance. If I could quote Judge Harris, who's now in the Appellate Division, use variances no longer exist. So if the Board feels that moving that fence to the 15' buffer is reasonable, so be it. If the Board feels that the material should be placed in the center of the property as opposed to in other places, so be it. These are not unreasonable conditions. I understand why the Applicant doesn't want to do it. It's probably along the lines of maximizing the property, which always

equals dollar signs of which this Board has no concern whatsoever. So I would leave that up to you to decide.

**Attorney Mondello:** Any other questions? Oh, I see that, Don (Member Ludwig) you had a question. Will the control of the watering, if done by automatic timers, have rain sensors so as to shut down the sprinkler if it is raining, so it would not cause runoff? So that's to presumably, you, Mr. Zimmer.

**Mr. Zimmer:** They would use rain sensors but we do not count upon them. You know a rain sensor is maybe decent for residential application. But I think that sometimes the rain sensors could cause watering to stop unnecessarily perhaps at times. It's more important that our guys that run the yard are very much in control of that system and, if they don't need it to run, that they turn that system off.

**Attorney Mondello:** All right, thank you. Any other questions from Board Members? Mr. Chairman?

**Chairman:** Yes. At the last meeting I had asked a question of I think was Mr. Zimmer. You talked about watering all these plants and your plantings and your storage plants. Where's the water shown on this plan? How does it get there? Is it all on garden hose type things, fire hoses, piping in there?

**Mr. Zimmer:** Yeah, underground plastic piping. It's just a slight burial that runs to wherever the poles would be along the roadsides.

**Chairman:** Where the poles going to be?

**Mr. Zimmer:** Every 20' to 25' wherever we put plant material within and as I mentioned, they would be no closer to the property line than roughly 30' or 35'.

**Chairman:** Well, you don't show them on here, and when you look at, I think you drew this plan yeah Haskell Holdings. When you get in to the most say the southern area/east area, you got quite a distance from the road to where your storage plants are. You're going to have poles to carry the water far enough there?

**Mr. Zimmer:** Which area you referring to exactly?

**Chairman:** Southeast corner. It says material storage. All the way from the roadway to the rock outcropping,

**Mr. Zimmer:** On this side. I think we would have posts along the road spraying into the property. And if we needed to put an additional post within, we would put it further in 25' in on the property.

**Chairman:** All right. In the northeast corner, where there's now a Loop Road that comes back which is good, where would the poles be up there?

**Mr. Zimmer:** In the northeast corner?

**Chairman:** Yeah.

**Mr. Zimmer:** I would have them by the roadways spraying because I think we're probably looking at roughly you know 20' or so between the road and the planting buffer.

**Chairman:** Right and then you'd have more poles in the middle of the big loop so could you produce a plan showing all of this. You are going to dig this site up and put a lot of underground piping to supply the poles you're going to have over the whole site.

**Mr. Zimmer:** Yeah, it's fairly non-invasive. I could see basically they would run right along the roadways probably. They're not buried very deep so it's fairly non-invasive. It's just a small diameter PVC pipe that just runs. We'll probably put it right under the road or at the edge of the gravel to the posts. I think it'll be very discreet.

**Chairman:** Alright, and in the back, we'll say the northern part of this property, where it goes down and wraps around 17 and it goes back up, you can control the water there where it doesn't run into those lots.

**Mr. Zimmer:** Yeah, I think the way the grading works, and maybe Mr. Egarian could speak to it, but the way the grading works, this all is a low area in that northwest corner there so any water would actually come and stay on the property in that corner in that northwest corner.

**Chairman:** Alright, so you can contain the water now. The other question is you've got the same problem of access to that northern zigzag property line. How do you propose to address that? You're going to get permission from those three property owners to cross their property?

**Mr. Zimmer:** I'm sorry, I'm not clear on that.

**Chairman:** In the northern property line?

**Mr. Zimmer:** Yes.

**Chairman:** You've got Lots 16, 17 and 18. How you can access that property? You going to have permission from the owners to access that to maintain the plants?

**Mr. Zimmer:** Well, I think the point was made and well received that we need to add some gates on some of these perimeter areas of the fencing so that we can get through.

**Chairman:** Right, but you're going to have to get owner's permission to cross their property.

**Mr. Zimmer:** If they want us to maintain the plants, I mean, they would need to know that we could be on the edge of their property to maintain those plants.

**Chairman:** And those are three empty lots; two of which are landlocked. I'm just concerned with this watering of this site because its topography goes up and down from 240 something down to 220s. It's going to be hard to control the water on this property. And if you start running off to the neighbor's, there's going to be a war over there. I don't think they're going to want the water on their property.

**Mr. Zimmer:** No, I'm sure that we can control it and I'm sure that if there were any issues, we would address them right away. I feel that, even with what Mr. Egarian said, you know, it's very minimal what we're doing here watering wise and I think the topography and the fact that we have the buffer all around the edge really contains this site and I don't see it being an issue.

**Chairman:** So you're basically verbally guaranteeing that there be no water runoff.

**Mr. Zimmer:** We would make sure that we don't create water runoff and that we would address any issues that would arise for any reason.

**Chairman:** All right. And the fence that goes on the east side of the property which has no plantings other than you got to rip out some trees and stuff around, that's just a plain fence, same as on the other side, no top rail, no nothing.

**Mr. Zimmer:** It is except we do want to keep the black mesh on that fence since we don't have plantings for security and privacy.

**Chairman:** So that one would be labeled that it would have some kind of mesh.

**Mr. Zimmer:** Yes.

**Chairman:** Have you ever looked at Lakeland baseball fields on Chestnut and Meadowbrook they got all that black on there and after a while it don't look pretty.

**Mr. Zimmer:** Yeah, I haven't seen that. I'm sorry.

**Chairman:** Granted, it's a long fence, an L shaped fence, and there's nothing to stop the wind from touching. But they have problems in the winter, summer, windy days and it rips off.

**Mr. Zimmer:** Well, we would certainly look to maintain our fencing and that mesh if it needed to be replaced.

**Chairman:** Now on the southern area, does that fence continue across your property?

**Mr. Zimmer:** No, we wouldn't need the fence between our properties.

**Chairman:** I don't mean across the bottom straight. Where your road just stops at the property edge now, does that fence continuing into your next lot?

**Mr. Zimmer:** Yes, it does continue.

**Chairman:** Same thing, on the other side where you have the trailer issue, that just dies over there and stops right there.

**Mr. Zimmer:** The fence goes around the trailer and then to the garage.

**Chairman:** It goes around the trailer?

**Mr. Zimmer:** Yeah, between Lot 9 and the trailer there is a section of fence there.

**Chairman:** stockade fence or wooden fence?

**Mr. Zimmer:** I think yes.

**Chairman:** That's what it says. Looking at your proposed concept rendering, those plants are going to grow. You have, you know, five homeowners that abut against that western fence. Don't you think that's going to be a problem with maintaining all those plants?

**Mr. Zimmer:** No, I would choose shrubs that would fit in that space. You know, the viburnum, for instance, is a shrub that, you know if you do want to let it grow taller, you can and it could get a little bit bigger, but I think that they're appropriately chosen that the types of plants and like I said I could substitute some plants if a specific homeowner was concerned about a particular plan and willing to work with them on the plantings.

**Chairman:** A Mount Laurel keeps growing.

**Mr. Zimmer:** Yeah, it's a slower but it's in the rhododendron family and yeah they're they could get to be medium to large size shrubs if you let them grow over a long period of time.

**Chairman:** All right, that's that basically takes care of me.

**Attorney Mondello:** Thank you Mr. Chairman. Any other questions from Board Members? Hearing none, seeing none. Mr. Petreski, do you have any questions, cross examination for Mr. Zimmer?

**Attorney Petreski:** Yes. Thank you, Mr. Mondello. Mr. Zimmer, I'm going to along the same lines that I was asking Mr. Egarian, the northeast corner, we had discussed previously that there's a path there that my clients have been using to access Lots 17 and 16. You pulled back the roadway and your Engineer had testified that it would be feasible to move that fence back. If the Board would put a condition on you to move that back to allow for that 12' path, would you be willing to do that?

**Mr. Zimmer:** As my attorney had answered that question that for this application we're not looking to have that a part of this. We're certainly looking to be good neighbors and willing to work with our neighbor, but as part of this application, we're not looking for that to be a part of this application.

**Attorney Mondello:** Next question, sir.

**Attorney Petreski:** Then I don't have any further questions.

**Attorney Mondello:** All right, thank you. Any residents have questions?

**Member Covelli:** Mr. Mondello, I actually have two questions. I'm curious and now that it's been raised again. Lot 16 and Lot 17 obviously they appear to be landlocked. Are they owned by someone different other than either 10, 12, 13, 14, 15 or 18?

**Attorney Petreski:** Mr. Covelli., yes Lots 16 and 17 are owned by the Reillys who Lot 13, which is, I guess, across from Lot 17.

**Member Covelli:** I see it; it's above it. Do they not have access through their lot to 17 and then to 16?

**Attorney Petreski:** Correct, there's no access because of the size of the house and then there's a garage on both sides so there's no access to bring anything, you know, larger than a couple feet wide to the back so there is no access to bring a vehicle or access it if those were ever to become buildable lots, you couldn't put a driveway anywhere in there there's not enough space.

**Member Covelli:** Okay. Thank you for the clarification counselor.

**Chairman:** I have a question too. On the plant nursery layout, Drawing #2, it says Whistler Place and then a little bit of Jefferson that turns into a dirt path. You've got a corner house, which is on Lot 15, on Lot 18 I believe there's a house there.

**Member Covelli:** Yes.

**Chairman:** Again, you get the same thing with these plantings facing that house.

**Member Covelli:** Mr. Chairman, there is a house on Lot 18 and it actually faces the road.

**Chairman:** It faces Jefferson. We approved that 10 years.

**Member Covelli:** Yes. You said that I don't remember it but I've heard that said. I went down the road so I do know that house actually faces the unimproved road.



**Chairman:** Right, it faces Jefferson. In fact, when that was built, they put a topping on a dirt path there originally.

**Member Covelli:** Yes, it appears like it's a driveway, Mr. Chairman.

**Chairman:** Yes.

**Vice Chairman:** When Charlie and I were out there, it almost appeared that the path that he's talking about was on Lot18 and not on the Applicant's property. I mean not that it matters because you could see the markers from the survey. Charlie, correct, Charlie, what's your thought on that?

**Member Sahanas:** Yeah, it looked like it. It's hard to see looking because there are really no measurements on here. You know where you're going from and the screen and I'm looking at it doesn't show that house that's on that lane right there. So it's kind of hard to see where we were. I'm going by where we went up that little bit of an incline right there with that rock was there that's kind of what I'm looking at the great differences there but it's hard to see.

**Member Covelli:** I'm sorry Mr. Mondello. I interrupted you when you were asking the public if they had questions.

**Attorney Mondello:** No problem, Mr. Covelli.

**Attorney Mondello:** Any members of the public have any questions only for Mr. Zimmer? Any members of the public? Hearing none, seeing none, next witness, Mr. Rutherford.

**Attorney Rutherford:** My Lydon.

**Attorney Mondello:** Steve, nice to see you again. If you could please raise your right hand. Do you swear from the testimony your about to give you be the truth, the whole truth and nothing but the truth so help you God.

**Planner Lydon:** Yes, I do.

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

**Planner Lydon:** Steve Lydon, 25 Westwood Avenue, Westwood.

**Attorney Mondello:** So Mr. Rutherford, I've had the pleasure and so has the Board of hearing Mr. Lydon and testify in the capacity of a Planner before but if you want to *voir dire* him that's certainly your choice.

**Attorney Rutherford:** No, I'm happy to accept that, Mr. Mondello, in the interest of time. As long as the Board is prepared to accept Mr. Lydon as an expert in the field of Professional Planning I'm happy. He's prepared an outline and testimony and again, as I indicated earlier, I'm happy if he can proceed in narrative fashion just to move forward as expeditiously as we can. And so Mr. Lydon, you can proceed, please.

**Attorney Mondello:** Alright, so Board Members, any objection to admitting Mr. Lydon as an expert in the field of Planning? Hearing none, seeing none, your witness Mr. Rutherford.

**Attorney Rutherford:** Okay, Mr. Lydon you can proceed to offer the Board your testimony. Tell them a little bit about you did to prepare for this evening, the documents you examined, and the

fact that you as to what you understand them to be and then the legal conclusions you've drawn as to why these variances should be granted.

**Planner Lydon: I'll be happy to. I'll try to be brief. I know it's already 9:30pm. I reviewed the Wanaque Master Plan dated 2010. I have been to the site. I had a tour with Mr. Zimmer for quite a few hours. Actually, it was last fall. I have been to all the hearings that were held on this application. And I have viewed the Wanaque Zoning Ordinance. I do have an outline and, as I said earlier, I will be brief. I like to first give a very truncated description of the property and the reason for that is that the property in question is quite unique, and it's quite unique for several reasons. First, it has unimproved frontage on a municipal street. You may think, well what does that mean? Well, not only does it have frontage on an unapproved street, but the property across the street on the east side of Jefferson is also likewise undeveloped and in addition we're the last property on at the end, the southern terminus of Jefferson. So the likelihood of Jefferson Street seeing additional traffic or additional development is fairly remote. In fact, I do notice that when that house on adjacent Lot 18 was constructed, the Board saw fit to not require the improvement of Jefferson Street all the way to the southern property line and that was probably a good decision. It minimized the amount of impervious but it also shows that there's really no expectation Jefferson Street will be used in the future. So that's one of the reasons why the site is rather unique. The second is that it's vacant and wooded. The third is that it's large. It's a 2.32 acre property. That's a pretty good sized lot, especially when we consider the zoning in this area of the Borough calls for 10,000 square foot lot. So having a lot in this neighborhood that is an excess of two acres is pretty amazing and meets me classifying this as a unique lot. Mr. Rutherford asked me what I'd done. I also looked through the Highlands Council Regional Master Plan. Why because Wanaque is in the Highlands Council area and the Regional Master Plan of the Highlands Council identifies this particular portion of the Borough as being in the Existing Community Zone Planning Area of the Highlands Council, not the Preservation Area and that is a huge distinction. The other thing that's important about that is the Highlands Council calls for in the Existing Community Zone and, I'm think I am quoting the Regional Master Plan when it says, this is an area of concentrated development, the limited environmental constraints, existing infrastructure and support additional development or redevelopment lands within the existing community zone are suited and this is a quote "to higher densities and intensity of development and redevelopment and other zones". Now I'm not suggesting by any stretch of the imagination that the Highlands Council has their own zoning ordinance, but they have looked at this property in this area from an environmental perspective and their conclusions are that these properties are suited for higher densities and intensities of use. Despite being currently vacant, this lot has significant unrealized development potential. That's my analysis of the proposed use of the property and I know you've heard three nights of testimony so I will be very brief.**

**It's a simple application. It's a seasonal use of the property. Very rare and it's a very different type of application and boards typically see. Furthermore, there's limited construction proposed**

and there is no building. When was the last time you saw, except the application I did on 24 Erie Street, an application with no construction, very rare. The only things we are seeking to construct are some narrow pathways and I use the word pathways because they're not paved, they're not driveways, to facilitate the moving of nursery equipment. So it's a very benign type of use. And especially important I believe, as the Board considers this application, is to recall that we have an Applicant who has voluntarily decided not to use Jefferson Street. And I want to emphasize that because the earlier plan that we reviewed back in, I think November, called for use of Jefferson Street. This plan does not. In fact, it fences off Jefferson Street from the property in question to the site. So let there be no mistake, Jefferson Street will not be used as far as this application. So what are we trying to do? Nothing more than place nursery stock on the property and to put plants and shrubs on this 2.3 acre parcel. It's a very benign use. There's no proposed paving, there's no proposed lighting and there are no school age children that you have to worry about educating. So all of the things that typically are concerns with applications such as traffic, drainage, school aged children, lighting, none of those are our factors in this application. It's in the R-10 Zone as I mentioned earlier where 10,000 square foot lots are required. This site is oversized. The permitted uses include single family dwelling, which we all know, but it also allows a much more intense type of use of the property. Why do I say that? Because churches, houses of worship, parish houses, convents, church schools, public schools, Borough parks and facilities, and public libraries are all permitted uses in this particular zone. So I know no one's proposed to put a church school on this property. 2.3 acres may accommodate a school but that's the kind of development that could potentially come on here. As part of this application, we're seeking a D-1 Use Variance. Mr. Mondello quoted, paraphrased earlier about the end of the D-1 Use Variance and the fact that it doesn't exist anymore in New Jersey. I hope that this application to suggest that maybe slightly premature. Our use is simply to have a temporary storage of plant materials and that's not a permitted use in your zone. And I think this is an important aspect of this development. One of the things you have to look at as a Board, and I'm sure Mr. Mondello will tell you this later, is our side the Applicant needs to explain why this use wasn't included by the Mayor & Council when they did the Zoning Ordinance. If this is the best thing since sliced bread, why didn't the Mayor & Council think about it? No disrespect to your Mayor & Council, I've been doing this now for a few years, more than a few years, I've written my share of Zoning Ordinances and I've probably reviewed upwards of 300 different Zoning Ordinances and I don't think I have ever either written or even reviewed a Zoning Ordinance that allowed plant storage as a standalone permitted use. That's important in your consideration of this application because that explains, I believe, why the Mayor & Council didn't select plant storage as a potential use for this 2.3 acre site. The other reason I would suggest that the Mayor & Council didn't include it is because of the homes on Whistler and elsewhere in the neighborhood. As I mentioned earlier, it is in a residential neighborhood, but this is not the type of use that's included in Zoning Ordinances. So that's why it's not an allowable use in your particular community. As mentioned earlier we are seeking a D-1 Variance and we're also seeking a Bulk Variance, a C-1 or 2 Variance, for the height of a fence in the front yard. And oftentimes planners will come

before this Board and other Boards and say, well you know the Bulk Variances are subsumed or included within the D Variance. I'm going to suggest that in this case, they're not. In fact, you could approve the storage of plant materials on this parcel and there wouldn't need to be any fence along Jefferson Street. So I'm going to suggest to you that there is a reason why this variance can be granted both from the positive criteria and from the negative criteria.

The first positive criteria for the D-1 Variance is to demonstrate that the site is particularly well suited for the use and then it carries out a purpose of the Municipal Land Use Law. We also have to show there's no substantial detriment to the public good with or the zone plan, and that there's no substantial impairment to the Master Plan. I think I can meet all of those burdens, despite what Judge Harris may have said, and he did say it because I did read that decision myself.

For the D-1 Variance, I think first you need to look at the intensity of the use. It's the seasonal use, and no construction is proposed. We're seeking nothing more than to store plant material on the site. There'll be no access to Jefferson Street. So it's a very low intensity of use on a unique site. The subject site is particularly well suited for the use due to its size and proximity of other lands used by the nursery. I think it's another reason why the site is both particularly suitable and unique. If this site were not next to the businesses run out of the adjacent site, it would be a very little value for this particular use, but because it's adjacent to and, in fact, has connections with the other lands of Scenic Landscaping and Tapestry Landscaping, the site has an enhanced value for this particular use, minus the truck traffic. It also has a benefit of to the community. If Tapestry Landscaping was three quarters of a mile down Ringwood Avenue, there's very likely there'd be constant truck traffic back and forth between the two sites. Here, the subject site can be incorporated into the existing use, minimizing traffic and minimizing disturbance of neighbors. So I think this a key factor when the Board deliberates on this application. I think the fact that the site is large also works.

I know there has been a lot of concern about visual impact on the neighbors. I think some of the testimony is worth the review. Adjacent to Lot 9 where the rock outcrop is, the property owner contacted the applicants, you know, I kind of like looking at the rock and maintain some features and he's attempting to do that. I think they'll come to a mutually beneficial decision. But for the other homeowners, what they what they see now is a sparsely wooded area and there are some actually wood roads through the property. What you'll see, if this application is approved by the Board, if you can see through the fence or if you can't, if you can't see the fence and the berm and the landscaping in front of the fence, if you can't see the fence or over the fence, let's say from a second floor window, you'll see plants which is what you see now only I suspect you may see a higher density of plants. Usually when applicants are proposing a landscape buffer it is to hide something like equipment on an industrial site or a parking lot or a loading bay. Here, the Applicant's proposing to use plants to shield a chain link fence which he's proposing partially to block views of the site. But also he's using a buffer to buffer trees planted and plant materials. I think the whole visual thing is important of course, but in either event properties you're going to see vegetation.

**It's important to remember that existing access patterns are to be maintained. No use of Jefferson Street. That's not the first time I've said that. As far as the Municipal Land Use Law, I believe this application furthers about 6 Purposes of the Municipal Land Use Law and quickly: "Purpose a. to encourage mental action to guide appropriate use of the land". This use is appropriate since it is a low intensity use within a residential neighborhood and adjacent to an existing nursery building and property and they're going to be under common ownership. So this is an appropriate use of land by allowing the expansion of that existing use which has many benefits for the Borough, including the beautification of the area in front of Borough Hall. It also furthers "Purpose c. of the Municipal Land Use Law will provide for light, air and open space." There are no proposed buildings on the subject site; just some planting material that will be temporarily stored seasonally. It also furthers "Purpose e. to promote establishment of appropriate population densities." The existing residential neighborhood that this property is part of will see no change in the existing population levels. So there's no overburden of the street network or the utilities, sanitary sewer or for the municipal water department. "Purpose f. of the Municipal Land Use Law to encourage the appropriate and efficient expenditure of public funds." A typical property owner who wants to develop this property would most likely use Jefferson Street. This application is not using Jefferson Street. The municipal funds which would need to be made to maintain Jefferson Street will not be expanded because of its application. Borough residents will not need to foot the bill to plow, light and maintain the street. This application avoids those future municipal bills. It encourages the appropriate and efficient expenditure of funds. "Purpose g. provides sufficient space and appropriate locations for a variety of uses." I'm sure you've heard many planners cite this as they're doing their application. Here though, because of the neighboring uses that are already established, this is particularly important. This is the lot that's the appropriate location for Tapestry Landscaping to store its plant material seasonally. There's no other alternative site that has the attributes and the advantages both to the municipality and our client as this site and its 2.3 acre so it's a large spot, a large property. You've heard testimony earlier that the nursery is dependent on expansion in order to stay competitive and to maintain operational efficiencies and to stay alive and I believe that's a good thing, so this use is particularly appropriate on this location. Lastly, "Purpose i. to promote desirable visual environment." No buildings, no pavement, no air conditioning uses, no generators; just plant material seasonally stored on the site. I believe for various reasons and multiple reasons that this application can meet the positive criteria required for D-1 Variance. I believe you can also meet the necessary negative criteria. There's no substantial detriment to the public good if the application is approved. Existing communities zoned lands as per the Highland Council exuded the higher densities and intensities of developed . Here the higher dense and higher intensity is just removing some existing trees and having plant material stored for the season. Very limited use and very limited impact on surrounding land uses, as use is only during certain months, and only involve placement of plant materials. There are no new lights to bother neighbors. No new construction to impact neighbors. There's no substantial impairment to the intended zone planning and zoning ordinance. You're Wanaque Master Plan; the most recent re-**

exam is from 2010. The re-exam contains several objectives, several of which are significant with regard to this development. The Master Plan seeks to encourage development of appropriate commercial, industrial, employment and recreational facilities to serve the needs of all borough residents to help maintain a stable tax base, appropriate located and appropriate ties to commercial development. I think we meet that objective. Second Master Plan objective is to provide for specific regional commercial sites that will encourage regional commercial development without adversely impacting the surrounding neighborhood communities. I think for all the reasons I mentioned earlier, we also support and advance that second Master Plan objective. An additional objective is to encourage consistency with the State Plan and appropriate patterns of compatible residential, commercial and industrial development, fostering economic growth in or adjacent areas already utilized for search purposes while protecting the Highlands environment in an orderly way. And I've testified that this proposed use is immediately adjacent to an area used for similar purposes. And as far as the Highland environment go, there's no construction on the site, no impervious material and very little water use and very, very little, if any stormwater runoff. I believe it's consistent with the Highlands and all environmental protection. One of the purposes of the Wanaque Zoning Ordinance is to ensure orderly growth and development. This application, to seasonally expand an existing adjacent nursery, achieves this quarterly growth and development purpose. As far as the front yard fence, you allow 4' and we're seeking a variance to have an additional 2'. As you analyze this particular variance, which is a bulk variance not a use variance, I think you have to look at why it was written. Most of the properties in Wanaque are developed as residential, and they have other houses on the road so you want to have an attractive streetscape. You don't want to be driving down a canyon with 6' high walls along properties on both sides of the road. And you want to provide a safe sight distance for people pulling out of driveways. None of those factors are at play here. The development across the street is woods. I believe it's owned by the Borough as open space land. This property will have no driveways to it. There's no one further down to the south along Jefferson who will be adversely impacted by the fence. So I don't believe there is any negative impact of having a fence there 2' higher than what the Ordinance would allow. And there is an important reason for the Applicant and that is to protect and to maintain security of the site. And because there are no other property owners looking at it, I think that is a reasonable tradeoff for a granting the 2' high fence. That basically concludes my testimony, unless Mr. Rutherford, any questions for me. I'd be happy to answer questions from the Board or from Mr. Mondello or from the public.

**Attorney Rutherford:** Mr. Mondello, I have nothing further for Mr. Lydon. Thank you, Mr. Lydon.

**Attorney Mondello:** Thank you. Any Board Members have questions for Mr. Lydon?

**Member Aumenta:** This is Helene and I do have one question. What I heard in your testimony was a comment about expansion of the business and then a need, you know, to stay in Wanaque

that would be something that was required. I think we heard in prior testimony from the owner that there was no intention to expand the business that this was simply just for storage and not to actually expand the business. So I just want to clarify the point that you made there that there is no plans to expand the business if this variance is granted or not?

Planner Lydon: It's late and I may have misspoken. You're right; the Applicant said he's not expanding the business. What I heard in his earlier testimony, this goes back to I guess the November and December meetings, that he's constrained with his current site and it doesn't operate efficiently, and he can't provide the services that he would like to be able to. So it's not an expansion of the site or the use, its being able to meet his business needs efficiently.

Attorney Rutherford: I can add to that. Yes, that was Mr. Zimmer's testimony. In fact, I think at one of the prior meetings, a Board Member questioned, you know, why he wouldn't want his business to expand but I think, Ms. Aumenta answer your question a little bit more perhaps, and to accurately reflect, yes this is about efficiency of operation. It's not about expansion of the business or the nature or intensity of use at all. It's just to allow this business to operate more efficiently.

Member Aumenta: Thank you.

Attorney Mondello: Any other questions for Mr. Lydon, from Board Members? Hearing none, seeing none, Mr. Petreski any cross examination for Mr. Lydon?

Attorney Petreski: Thank you, Mr. Mondello. Yeah, just a couple quick questions. Mr. Lydon, you had described the R-10 Zone and said that it was a single family and then there was other uses churches, libraries, schools, etc. Those are what's defined as an inherently beneficial uses, is that correct?

Planner Lydon: I would think all of those fall within the inherently beneficial category, correct. It would make an approval from this Board easier.

Attorney Petreski: Sure, but the proposal that your client is proposing it wouldn't qualify as an inherently beneficial use, correct?

Planner Lydon: That's correct. That's why I went down the Medici pathway.

Attorney Petreski: Okay. And then, I guess my other question is, you had talked about the negative criteria and saying that there's no impediment to the current zoning. It's a single family zone with those exceptions. If the Board were to approve this application, you're aware that you will be blocking off access to two residential lots, Lots 16 and 17. Is that correct?

Planner Lydon: No, I disagree with that. I'm not a lawyer, but if those Lots are landlocked, the landlocked nature of those Lots was not created by this property or this use. My understanding is when our client went into contract to purchase this property, the status quo is as you see it, so this lot, and this proposed use will not land lock those Lots. If those Lots are landlocked, that's the concern of the owner who bought a landlocked lot, and maybe it's not a concern at all.

Attorney Petreski: This lot currently is an undeveloped lot, correct? So it's functioning as a buffer between the residential area and the commercial area, is that not correct?

**Planner Lydon:** No, I would not think that is correct at all. It is what it is. It is a vacant, undeveloped lot. It's not functioning as a buffer.

**Attorney Petreski:** If it is going to be developed into a more commercial space, doesn't that bring the commercial activity closer to the residential lots?

**Planner Lydon:** No. It's the seasonal storage of plant materials. I don't believe that that is a commercial development in the traditional sense of a commercial development. There is no building here, there's no paved parking area, there are no loading docks, and there's no outdoor activities. It's a storage of plants and very consistent with a residential neighbor. In fact, what do people typically do on their properties? They plant plants.

**Attorney Petreski:** People don't typically use equipment to move the plants around correct on a regular basis.

**Planner Lydon:** You should see my neighbor with his bobcat, Holy Toledo.

**Attorney Petreski:** But you would agree it's a more intensive use than it is currently being used.

**Planner Lydon:** I would agree with that assessment. Yes, that's why we're here for a Use Variance.

**Attorney Petreski:** I have nothing further, Mr. Mondello. Thank you.

**Attorney Mondello:** All right, any members of the public have any questions for Mr. Lydon; any members of the public whatsoever? I don't see any hands up. I don't see anything. Hearing none, seeing none. I assume that's it. No further witnesses Mr. Rutherford?

**Attorney Rutherford:** That's correct.

**Attorney Mondello:** All right. So if there is nothing else do you want to sum up, it's your pleasure?

**Attorney Rutherford:** Does the Board wish to hear from the public first or for hear from me first

**Attorney Mondello:** Oh, thank you. I haven't gotten any indications at any of the members of the public have an interest in this. I'm sorry, give me a minute, Frank. I'm going to open it up to the public for comments, not questions. We don't need to play Jeopardy. Any comments you have with respect to this application? Any comments from residents? All right, Mr. Petreski, you wanted to say something good.

**Attorney Petreski:** Yeah. So I would like to make a comment on behalf of my clients.

Respectfully, we're asking the Board to deny this Use Variance Application. We don't believe that it meets the criteria required to grant a Use Variance. Again, Use Variances are very difficult to get approved in the state of New Jersey. There's a couple ways you can get them. Their Planner already advised that this isn't an inherently beneficial use. I don't believe they proved that there was an undue hardship. This is a residential lot that could be developed as a residential lot so I don't believe that they can fit it on there under the undue hardship criteria. So they're left with it this site is particularly well suited for this use, and we would argue that it's not. I mean, the Board has already brought up issues about the water potentially pooling. They have to look at both positive and negative criteria. This is a wooded lot currently and I would argue that it's not well



suiting for commercial use because it's in the middle of residential development. It's going to abut I think like 9 or 10 different residential backyards and these people are going to have to deal with equipment, machinery, bobcats and other types of machinery to move stuff around during the daytime. It's going to be a nuisance to the neighborhood and I believe that's going to be negative detrimental to the area. The lot has previously served as a buffer between the commercial use that the landscaping use that it was and this area that allowed the peace and quiet in that area or the neighborhood. What the proposal is to get rid of that buffering lot and kind of wedge it into the middle of the residential neighborhood. We have negative criteria. This is a residential area, there are two building lots that are going to be landlocked and become economically unviable. They're asking the Board to approve one use and then denying the use of two additional lots already there. I would argue that would amount to an economical taking of my clients' property because they've now their two lots become landlocked. Again, the Applicant had the opportunity to move the fence back in the northeast corner to allow for that path and they have decided not to. For the reasons that I had cited, I don't believe they meet the criteria so we respectfully request that the Board deny this application. Thank you.

Attorney Mondello: Thank you. All right, last time for members of the public. Hearing none, seeing none, Mr. Rutherford, did you want to sum up?

Attorney Rutherford: Yes, I'm prepared to do that. Mr. Chairman, first of all, I thank the Board and its professionals for the time you've given this application. You've devoted a lot of time to it over the three months that we've been here and we are appreciative of that. I'll talk a little bit about the D-1 Use Variance. D-1 Use Variances exist for a reason, admittedly, the burden of proof is very high evidenced not only by the fact that it requires a super majority, in other words, the affirmative vote of five members of this Board in order to be approved, that doesn't mean that they should not and cannot be granted. There are situations where an applicant can most definitely meet the burden of proof for D-1 Use Variance and I think in this case we have. Mr. Lydon has outlined to you the permitted uses in the zone, not only single family residential use, but other types of uses that could be considered to be considerably more intense than what we're proposing. I think he was very persuasive in demonstrating to the Board that the location of this particular property, adjacent to the existing landscaping business, makes it particularly suited for this use, and actually its location adjacent to the use enables this Applicant to significantly reduce the intensity of the use and the nature and the scope of activities conducted upon it. The Board knows that this is intended as Mr. Lydon mentioned and as Mr. Zimmer has mentioned, for the seasonal location of plant material. Mr. Zimmer said a lot of that comes in in the early spring. It's there and the object is to get it out by the end of the fall, you know, or late fall, and then the pattern starts over again. So it's a seasonal use. We are not, as again, because we have the ability of using the existing facility to the south, we're not storing things like mulch and woodchips, we're not doing firewood, we're not splitting wood, and we're not doing any of those things like storing other types of landscaping, materials, pavers and concrete block, anything of that nature. It's

simply the storage of seasonal plant material, which is very similar to what's there now. I would dare say that when we're done, the property is going to be significantly improved from what it is now. It has not been maintained. Obviously, it's just an undeveloped tract. There are a lot of dead trees, there's a lot of underbrush in there and all those kinds of things. In the course of creating the areas that are needed to store the plant material, I think the Applicant is going to make a significant improvement to the property. So we think we've shown particular suitability. I think Mr. Lydon has also been persuasive in pointing out that the granting of the variance can be reconciled with the prohibition of the use in the zone. The reason for that is that this isn't really a customary use. It's not one that's customarily zoned for, it's not something that you'd necessarily expect to see in a zoning ordinance, and therefore, you can't draw any conclusion from the failure of the Mayor & Council to include it one way or the other. So that's the Medici test. We acknowledge it is not an inherently beneficial use. We do not make that argument at all. This is a commercial use so we have to do the traditional special reasons which do not involve hardship by the way. A D-1 Use Variance, unlike many other types of bulk variances, does not require a showing of hardship, based upon the shape or size of the property or its topography or the structures upon it. It requires showing a special reason which is particular suitability, which I think Mr. Lydon addressed. He addressed the enhanced burden of the Medici. And then the question is, is there substantial detriment and the word is substantial detriment. The land use law acknowledges that any variants involve some detriment. The question is, is it substantial detriment? Variances exist for the reason of ensuring that properties are devoted to a proper use, a use that is consistent with the Master Plan and the development plan for the community. Mr. Petreski mentioned that this property serves as a buffer well, it does. But I would dare say that the owner of a property of 2.32 acres is not obligated to maintain a buffer for adjoining property owners. Nor is that what the ordinance contemplates. The ordinance certainly contemplates some sort of development on this property and our argument only is that what we're proposing is more suitable than perhaps some of the other uses that are otherwise permitted. Now with respect to the detrimental impact of the granting of this Use Variance, and I'm not going to repeat all of them necessarily, but throughout the course of these hearings, the Applicant has made a number of changes to the plan in order to mitigate the detrimental impact. We abandoned the use of Jefferson Street for access to the property, a 15' buffer around the perimeter of the property with approximately 200 plantings has been proposed. We've proposed a fence, we've tried to mitigate the impact of that fence, and we've tried to have some plantings on the one side of the fence so that the residential property owners aren't looking directly at the fence. They're going to see some plantings, they're going to be able to see through the fence to a certain degree to see the buffer on the other side. And then, when as Mr. Lydon pointed out, what are they seeing on the other side, they're seeing more plants so it's not like they're seeing a commercial development, an industrial facility, a power station, anything of those natures. They're seeing more types of natural materials, and that fence relocation and the design of the buffer was intended directly to address concerns raised by the Board and adjoining property owners. The Applicant has committed, and this can be certainly a condition of approval, that the plantings in the buffer area will get off to a

good start. They're going to be planted and this, after all, is my clients business; that's what they do. They know how to do this. They'll be properly planted, they will be watered properly and they will get off to a good start. You heard Mr. Zimmer indicate earlier that , if adjoining property owners want these plantings on their side of the fence, maintained albeit on our property, that will be done. Some may want maintenance, some may not. He indicated that they may not necessarily require a lot of maintenance. I think that maintenance is going to depend on essentially on how large the adjoining property owners want the plants to grow. So we're going to do that. We've provided more detail on the irrigation system. I realized that there are perhaps some lingering Board concerns in that regard. I think for a host of reasons, off site runoff is not going to be an issue. First of all, Mr. Egarian and Mr. Nash provided some professional engineering evaluation of that. The quantity of water is really pretty small. The soils are equipped and able to accept the flow and to absorb it. Really just looking at it from a business point of view, and Mr. Zimmer testified to this, watering is not done more than it's needed. It's needed to maintain the plant certainly, but it's not done more. It costs money. It's maintenance of the system and all those kinds of things. So the watering is done on an as needed basis. Again as Mr. Zimmer pointed out, there's going to be a 15' landscape and buffer around the entire perimeter of this property that I think certainly will alleviate or address any concerns the Board might have about offsite runoff. I dare say that the application has generated significant community interest and I'm certain that if that becomes an issue, my client is a responsible business owner and it will be addressed. We're not proposing any large trucks or other equipment on Lot 19. As I indicated earlier, no storage of materials, no parking of vehicles. We've committed to that as well. There will be no on overnight, I should say, parking of vehicles. The Board heard testimony about hours of operation. I know at one of the meetings there was a question about the starting hour in Wanaque. We will obviously comply with whatever the municipal ordinance says, but Mr. Zimmer's testimony was that most of the activity here is in the early morning. The crews pick up their material, they go to the job site, and they return in the evening having planted it and get in their cars and go home. Most of the activity is Monday to Friday. A little bit of activity on Saturday. Nothing on Sunday. And, again, seasonal. This property is very quiet. I think his testimony was from along about the end of October, you know, to the end of March or the early part of April. It's limited activity, as I said, on Saturday, and there's nothing on Sundays, regular hours during the week, no lighting, no paved road surfaces, no desire on the part of the Applicant to make more improvements than what are absolutely needed to make it work. And just to emphasize what I said earlier, Mr. Zimmer's testimony was that that he didn't think this was going to cause any increase in the business. And obviously we all expect businesses to grow and hope that they will, but hopefully the Board understands that this is not part of a plan to increase the nature or intensity of this business. It is part of a plan to enable it to occupy or to operate I should say, in a more efficient manner. No idling trucks; I think we talked about that as well. So it's a very benign use, about as benign a use as you could imagine and the level of activity commensurate with that. Just essentially the storage of plant materials, pending the installation of job sites. We discussed the issues of a potential prescriptive easement

held by Ms. Reilly, the owner of Lots, I guess, 13 17 and 18. Mr. Mondello I think addressed that and I made my position clear on that. I don't think that's an issue for this Board. That's an issue that would be hopefully resolved between my client and Mrs. Reilly. The approval of this application, I should say, does not render Lots 17 and 18 landlocked. We are not changing the configuration of these Lots at all. There's no easement agreement of record. So it's really an open question as to how long Ms. Reilly has been using it and whether she has any legal right to do that. At the moment, I would suggest to you most respectfully that there may well be no legal right to do that. But we're not creating any landlocked situation. If the property has been used, it's been used without benefit of formal easement agreements, so I don't think that's an issue at all for this Board to consider.

I think for all of those reasons, the Board would be justified in granting a D-1 Use Variance. Mr. Lydon addressed I think the other two potential, not potential, but variances noted related to parking. As we indicated, this does not involve an increase in employees or the volume of the business so there's no parking issue. With respect to the fence, the 6' high fence I understand is permitted. The only reason we need the variance is for that portion of the fence that's along Jefferson Street, which as we all know, is an unimproved municipal right of way, where it's in the front yard and cannot be 6' high. I don't think that's certainly of any concern to the Board. Finally, Mr. Zimmer, I had him testify a little bit earlier to as to why the 6' high fence is needed for security. Again, another condition would be the cameras can be placed in such a way that we have no intention of interfering with anyone's privacy. So I think that's a standard kind of condition. But certainly security cameras not unusual throughout your Borough or anybody's municipality these days. I'm sorry to take so long, but I really do think we have met the burden of proof with competent lay expert testimony from Mr. Egarian and Mr. Lydon. I would ask the Board to approve the matter. Obviously, there would be a host of conditions that would be imposed that we have agreed to that I think would alleviate any concerns the Board might have about potential detrimental impact coming out of this property. With that, once again, I thank you for your time and I would rest Mr. Mondello. Thank you

Attorney Mondello: Thank you, Mr. Rutherford. I see that Mr. Covelli's hand is raised. You have the floor. Mr. Covelli.

Member Covelli: I think Mr. Rutherford needs a drink of water. Mr. Mondello, fellow Board Members, I'm prepared to make a Motion to Approve this application where the permitted use is in the R-10 Zone and the Applicant seeks a D-1 for the use of plant material storage. The second variance would be with respect to the front yard fencing where 4' is permitted by ordinance and the Applicant is seeking a 6' fence for a variance of 2'. I would further state that the following conditions be associated with the approval of this application:

a. That there would be no overnight storage of road worthy vehicles on the subject property.

b. That the improvements to the frontage of the business as represented and warranted by the Applicant be performed and fulfilled.

c. That the Applicant, as has been represented in extensive testimony, would work with the affected neighbors with respect to plantings, buffers, and in accordance with the Applicant's plans submitted. And with the maintenance thereof those shrubs as predicated by the specific impacted land owners; adjacent property owners I guess I should say.

d. That the Applicant warrants there will be no runoff to neighbors' properties with respect to the watering, or any other water operations, on the property.

e. That the Applicant has represented there will be gates added to sections of the fencing to allow for the servicing of the buffer zone to the affected neighbors.

f. That with respect to Lot 9 and the rock outcrop, Mr. Zimmer has testified and represented that he will work with that neighbor to specifically reach a settlement amicable to both that property owner and the Applicant with our Board Engineer serving as the arbitrator on any matter there.

That concludes my Motion.

Attorney Mondello: Nice job Mr. Covelli, thank you. Is there a Second.

Chairman: I'll Second it.

Attorney Mondello: That's the Chairman Dunning. Alright, Jen roll call and Dana and Michael apparently do not vote. We have a full seven (7) Members.

Attorney Rutherford: That's what I was going to ask Mr. Mondello. We do have seven (7) eligible Members this evening. Yes, thank you, that's all I wanted to know.

Member Sbarra: Mr. Mondello, I believe I am a Member that does get to vote.

Board Secretary: It is Member Lynch and Members Sahanas.

Board Secretary: Can all Members unmute themselves for a vote, please?

**MOTION TO APPROVE APPLICATION ZBA2021-08:** made by Member Covelli, seconded by Chairman Dunning. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Covelli, Henderson, Ludwig and Sbarra. Voting no was Member Aumenta.

Motion Carries: 6-Yes & 1-No

**Application ZBA2021-12 – 1049 Ringwood Avenue, LLC**

**Attorney Mondello:** Good evening, Mr. Molinelli. If you could be so kind as to enter your appearance into the record:

**Attorney Molinelli:** John L. Molinelli, of the firm Price, Meese, Shulman & D'Arminio, Woodcliff Lake, New Jersey, on behalf of 1049 Ringwood Avenue, LLC, the Applicant.

**Attorney Mondello:** Thank you Mr. Molinelli. So Board Members I had an opportunity to review the notices that the Applicant has sent out to residents within 200' and the notice of publication. I would deem the application complete from that perspective, from a legal perspective. Mr. Molinelli, why don't you give us a brief overview as what your client wants to do and perhaps who the witnesses are. I don't think we're going to get too much. The Board typically winds down at about 10:30, but at least you are converted from new business to old business.

**Mr. Molinelli:** Thank you. This is The View, which is located at 1049 Ringwood Avenue, and is an existing 36 unit multifamily residential project that was approved by this Board in 2016. As part of the approval, the Applicant set aside a corner in the northeast section of the property and installed a pad which facilitated an outdoor lounge area but more importantly, was really a location for garbage and refuse. There is a significant and rather intensive view that a lot of property owners, particularly multifamily property owners, now place upon refuse. Things are changing. There's legislation proposed that municipalities are going to have to start recycling perishable items. It is a constant change. So the owner, my client, has chosen to upgrade the manner in which they handle refuse and garbage by the installation of a 30'x40' rather small two-story building to replace the existing refuse and garbage pad. It will require the removal of one parking space. Two stories; on the bottom floor will be a storage area and area for the storage of equipment needed to maintain the building, and on the other side will be the refuse and recycling area. We are installing a trash compactor, which presents a lot of extraordinary opportunities to manage waste much better. But a decision was made also to build on the second floor a very modest size superintendent's apartment. This person would be a resident and this is the person that generally handles maintenance and upkeep of the entire building, and would also be responsible for maintaining the garbage and refuse area below. There's also a smaller closet in the storage area that is for the storage of equipment that you would not want to keep out. I do have to make a correction to the application. When we originally applied, we did not want to lose a parking space. Right now, the required number of parking spaces is 70 based upon the number of units and this is pursuant to the Resolution that was adopted actually six (6) years ago tonight, March 2, 2016. Originally we were going to replace the lost parking spot that we're going to lose as a result of this construction by cutting in and leveling and creating an additional spot on the west side of the building. We've done further thought on that and we find that, because we're currently over parked, there are 83 spaces currently on site. The requirement right now was 70. If the Board approves this application, the required number of parking spaces would then go from 70 to 72. We would still have a rather significant abundance of parking. So as a matter of formal amendment, we are withdrawing that part of it. We'd rather keep the pervious area on the site

because obviously if we added another parking space, we're creating more impervious, so we're just moving ahead just with regard to that application. There are variances that are required in connection with this request. First of all, the initial 2016 approval that this Board granted was itself a Use Variance to allow the construction of a multifamily use in a project that straddles both the R-10 Residential Zone and the Business Zone. The actual request this evening for the garage and the apartment is in the B Zone. That creates a second reason and, of course, the expansion of a non-conforming use is a D-2 Use Variance. There's also another Use Variance involved. We have an apartment over a non-residential use in a sense; the garbage and the refuse. Under the Ordinance for the Business Zone, apartments are allowed, but they have to be over a retail store or retail use. Since it's not a retail use, your Zoning Officer correctly, in my judgment, determined that a Use Variance was required, a D-1 Variance. So those two variances are implicated by this particular application. There's one other thing that I would just bring out and I raised it in the application. There was a third reason for the denial and it was based upon, in my judgment, the application of an Ordinance that I don't think applies here. In town you cannot operate an independent recycling facility. That is not a permitted use. I will represent to this Board and there will be testimony that the only people that are going to use this recycling and garbage facility are people who reside in The View. This is not something that's going to be available for anyone else. So it is clearly something that is accessory to the use that is currently permitted by variances and I would ask just for clarification, perhaps Mr. Mondello, I've spoken to Mr. Nash on the topic, and obviously we decided just to leave it to the Board and their understanding. I have two witnesses. Brian Cusano is a representative of the owner and will testify briefly just on pretty much what I've just said, and Shan-Pei Fanchiang is a Professional Engineer who prepared the four page Site Plan. I do have available the Architect. There's a fifth page to the submission that is an Architectural Drawing that shows all four elevations and the internal layout of the apartment. I have them available to testify if needed. That is a short summary of my application.

**Attorney Mondello:** Thank you, Mr. Molinelli. Mr. Chairman, I'm going to turn it back to you with respect to some direction it is now 10:26pm. What is the Board's pleasure with respect to perhaps one witness for five or ten minutes?

**Chairman:** Why don't we do one witness since we've been dragging this poor guy around for a while and let's have one witness. If there's a page five, because I only have four pages here, page five of the architectural should be forwarded because there's going to be a lot of questions about this building.

**Attorney Molinelli:** When I say page five, it is actually attached. The way it was actually submitted is the first four pages are the engineering drawings and they are dated September 15, 2021 from Bertin Engineering. The last page is also on Bertin Engineering, but it is the architectural elevations.

**Chairman:** What is that number?

**Attorney Molinelli:** It is C 4.1.

**Chairman Dunning:** I got it. Okay. Thank you.

**Attorney Molinelli:** All right. It might not be stapled to the one you have Mr. Chairman.

**Attorney Mondello:** So with that Mr. Molinelli, your first witness, please.

**Attorney Molinello:** Brian Cusano. If he's still here I hope.

**Attorney Mondello:** I don't see Mr. Cusano.

**Attorney Molinello:** He was on earlier. Well, is Mr. Brian Trematore on?

**Attorney Mondello:** He was on and he is no longer on either.

**Attorney Molinello:** What is the message being sent to the lawyer when his clients abandon him?

**Attorney Mondello:** Your bill is too high.

**Attorney Molinelli:** I was really hoping to start with them because they are much shorter witnesses so I am compelled to have the Engineer testify.

**Member Covelli:** Quite frankly, I think Mr. Molinelli is a trooper because he stuck with us the whole time I think that's important.

**Attorney Molinelli:** I learned a lot about landscaping and it was quite interesting.

**Engineer Nash:** Without any witnesses, I think you need a fourth variance.

**Attorney Mondello:** He has one witness. So Mr. Chairman, am I hearing you correctly that you want to entertain testimony from an Engineer at 10:28p.m.

**Chairman Dunning:** You know it's been a long night. Why don't we just carry this to the next meeting? You've got the next meeting and we'll start with you and go from there.

**Attorney Molinelli:** Thank you.

**Vice Chairman:** Ron, I have a suggestion maybe and for point of order, you're going to have to tell me if it's something that we can do. Some of us may have some concerns with the plans that are before us. Would it be beneficial at all to voice those concerns so that it least over the course to the next meeting that the Applicant could be prepared to address those concerns for the sake of speediness of the application?

**Attorney Mondello:** Yeah, I think it's an excellent idea. Instead of entertaining testimony, if any of the Board Members and everybody can read the Site Plans very well, if they have some problems, it might be a good time to indicate what those problems are so that the Engineer can perfect them at the next hearing.

**Vice Chairman:** Okay and I will personally kick that off. On this initial application, this Board went through great lengths to push this building back as far as we could conceivably from Ringwood Ave for obvious reasons. I just believe in my personal opinion putting this proposed structure in the front, hanging over that cliff *per se*, defeats a lot of the reasoning why we worked as hard as we did to push that building back and I certainly would like to explore opportunity to perhaps have that in the rear of the building instead of the front.

**Attorney Mondello:** Fair enough Bruce. To the Engineer, you may have to try to find another location on that spot because I remember this application, and the visits we made, and the balloons up in the air. Any other Board Member have any questions?



**Member Henderson:** Yeah, and I also remember that there's a house towards the back, whether it's a multifamily house or whatever. If this structure were to be relocated to the rear of the property, I mean, is it possible because isn't there the property drops towards the back also, right?

**Chairman:** Yes.

**Member Henderson:** So I think we have to be cognizant of the neighbors behind that property also.

**Attorney Molinelli:** Could I get clarification on that. When you say behind the property you're talking about to the west.

**Member Henderson:** It's to the north.

**Vice Chairman:** It's to the northwest. I just think that there are some opportunities further southwest of the dwelling.

**Member Henderson:** Agreed.

**Attorney Molinelli:** I'll bring to your attention there is a rather large storm water detention basin in the southwest corner. It's not actually shown on this plan, but maybe what I can do.

**Vice Chairman:** Counselor, 've been there, and I still believe just taking that proposed building the way it's proposed on the front and plopping it down in that corner. I think there's an opportunity there let me just put it that way.

**Attorney Mondello:** Anyone else?

**Chairman:** I think the other thing is parking. We went over this thing forever to get a couple extra parking spaces. We understand it requires two per unit. But this is in a unique area. And let's face it a lot of people have more than two cars. They have a teenage son that has a car, a daughter and, if you have visitors, there was no extra parking spaces. We beat this around to get eight or ten extra parking spaces. Now we're going to lose something and I don't think that's going to benefit this building personally. However this is going to go, look to increase because you're adding another unit which requires two more parking spaces. So we need to somehow increase the parking not decrease it.

**Attorney Mondello:** All right, so to summarize, there are serious issues with the location of this garbage compactor and the individual who's going to be living above the garbage and parking as well. So to your Engineer, Mr. Molinelli, they may want to relook at those plans. I see that Mr. Nash has raised his hand. Go ahead, Mr. Nash, followed by Mr. Covelli.

**Engineer Nash:** So we have an application that's built. The Board had concerns about parking. What is the actual parking demand on the building? Maybe you can do a quick analysis, some studies on various days of the week and see how many, hopefully, vacant parking spaces there are on the site.

**Attorney Molinelli:** The only thing I'll say is the Residential Site Improvement Standards do contemplate visitor parking. We are over parked on the site. We have 83 spaces and the requirement is 70. So maybe if you give me some more guidance on exactly what you want. Do you want trip studies done on this, because I know originally, a Traffic Engineer did testify for the

**Applicant:** I have had the benefit of reviewing what I think is a 190 page Resolution, very, very, thorough, very detailed. And I recall the issue of parking coming up and it was the Applicant that wanted to build more parking spaces because you don't have off street parking, on street parking adjacent to a residential development. You got to go up a long hill, and that's the only parking. The only parking is up there. This is coming as a surprise to me. I'm not aware of any complaints or issues concerning parking, so if I had a little better direction on exactly what the Board wants, it might be helpful.

**Chairman:** We want as many parking spaces as we can get. It's not in a normal, we'll say, location where you park out on the street or around a corner. There's no parking within a good distance, so all the parking for the residents and guests whatever has to be on that site.

**Attorney Mondello:** I believe you may be up Mr. Covelli.

**Member Covelli:** I'll tell you what, I went up there the other day to look and I'm going to tell you it was 5:00p.m. and I think I even had the Chairman on the phone and virtually every spot was full. I'm not here to represent whether there is too little or too much parking, that's just an observation. What I would say is I hope that any plan that comes before us includes a landscaping plan, a specific landscaping plan for the front of this property, because quite frankly, what had been represented to us and assured to us is not what got built. So I would like to see a specific landscaping plan. I think under this application, we get a second bite of the apple so to speak to. The Applicant did an outstanding job and what I saw on the on the property, the building, the top of the property, but unfortunately the frontage to Ringwood Avenue lacks that attention to detail and, quite frankly, again a very nice job at the top, but the folks utilizing Ringwood Avenue, the residents of Wanaque don't see that quality on what represents that property on the side of Ringwood Avenue.

**Mr. Sbarra:** I would also add to Mr. Covelli's point as well, also a landscaping plan to buffer that spoken about other house I guess to that to the north, I guess we decided of that property. I know where I saw where you guys were proposing a dog park there currently is some sort of buffer and I'm curious to see how if that dog park or so to be proposed is that buffer between that other driveway up there is going to be removed or replaced or what's going to go on with that as well?

**Attorney Mondello:** All right, it looks like the Applicant has got some work to do. Anybody else? Hearing none, seeing none, Mr. Molinelli, any questions before I ask the Board to make a Motion to carry your client's application?

**Attorney Molinelli:** I have no questions.

**MOTION TO CARRY APPLICATION ZBA2021-12 TO THE MEETING ON APRIL 6, 2022:**  
made by Member Covelli, seconded by Vice Chairman Grygus. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Covelli, Henderson, Ludwig, Aumenta, Sbarra, Lynch and Sahanas

**Attorney Mondello:** All right, the matter is carried. Thank you, Mr. Molinelli. Board Members we have some other work to do. Hopefully we can quickly back to you, Mr. Chairman.

**PUBLIC DISCUSSION:** Does anyone in the public have any discussions with the Board? Seeing and hearing none, let's go to Resolutions. We have two Resolutions to approve.

**RESOLUTIONS:**

**ZBA2022-02 – CDJ Enterprises LLC**

**Attorney Mondello:** Thank you. Alright, the first one I have on my screen is CDJ Enterprises LLC. They came before the Board to demolish an existing house and construct a new two story house. The typical conditions were placed in the Resolution especially the one concerning a stormwater management. The Applicant agrees to install a water retention system or seepage pit in accordance with the Board Engineer's specifications. I'll entertain any questions or comments the Board Members may have at this point. Hearing none, seeing none, I'd ask for a Motion followed by a second.

**MOTION TO MEMORALIZE THIS RESOLUTION AS PREPARED BY BOARD ATTORNEY:** made by Member Sbarra, seconded by Member Ludwig. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Covelli, Henderson, Ludwig, Aumenta, and Sbarra  
Motion Carried

**ZBA2022-03 – Giangrande/Petrillo**

**Attorney Mondello:** They sought final site plan approval with variances to replace and extend the damaged front roof overhang. Vice Chairman mentioned the shed. Attorney Mondello stated that is in the body of the Resolution, it's not a condition. With the Board's permission, I am going to modify the typo on page 8. Any other questions or corrections? Hearing none, seeing none, I'd ask for a Motion followed by a second.

**MOTION TO MEMORALIZE THIS RESOLUTION AS PREPARED BY BOARD ATTORNEY:** made by Vice Chairman Grygus, seconded by Member Aumenta. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Covelli, Henderson, Ludwig, Aumenta and Sbarra  
Motion Carried

**CORRESPONDENCE:** None

**VOUCHERS:** submitted by Ronald Mondello, Esq. for CDJ Enterprises LLC Application in the amount of \$1,072.50; for Giangrande/Petrillo Application in the amount of \$495; and attendance at the March 2, 2022, Meeting in the amount of \$400.

**MOTION TO APPROVE:** made by Member Ludwig, seconded by Member Aumenta. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Covelli, Henderson, Ludwig, Aumenta, Sbarra, Lynch and Sahanas

**VOUCHERS:** submitted by Boswell Engineering for Scenic Landscaping Application in the amount of \$420; for 435 Ringwood Avenue LLC Application in the amount of \$212; for CDJ Enterprises LLC in the amount of \$424; and Giangrande/Petrillo Application in the amount of \$212.

**MOTION TO APPROVE:** made by Member Ludwig, seconded by Member Lynch. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Covelli, Henderson, Ludwig, Aumenta, Sbarra, Lynch and Sahanas

**MOTION TO APPROVE FEBRUARY 2, 2022 MINUTES:** made by Member Aumenta, seconded by Member Lynch. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Covelli, Henderson, Ludwig, Aumenta, Sbarra, Lynch and Sahanas

**ENGINEER'S REPORT:** One New Application

**DISCUSSION:** April 6, 2022 will be an In Person/Live Meeting at Borough Hall

**MOTION TO ADJOURN AT 10:50PM:** made by Member Sbarra. Motion carried by a voice vote.

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Jennifer A. Fiorito  
Board of Adjustment Secretary