

REGULAR MEETING

Salute to Flag: 7:10PM

OPENING STATEMENT:

This is the Regular Meeting 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 January 10, 2024 respectively, and a notice thereof has been posted on the bulletin board in the Municipal Building in the Borough of Wanaque, on the Borough's website and a copy thereof has been on file in the Borough

ROLL CALL: Chairman Jack Dunning, Vice Chairman Bruce Grygus, Members Frank Covelli, Vincent Farinella, Donald Ludwig, Helena Aumenta, Michael Sbarra, Dana Lynch and Edward Bonner and Attorney Ronald Mondello and Engineer Christopher Nash

Application ZBA2023-06 – Theresa, Martin – 31 Tremont Terrace, Wanaque
Vice Chairman Grygus recused himself from this Application and left the dais.

Michael Rubin, Esq. representing the Applicant in this matter.

Attorney Rubin: This is a continuation of the November 1, 2023 regular meeting, which has been adjourned several times, and tonight is the night of bringing, hopefully, all the pieces together and come to a conclusion. There are just two small items that most respectfully we could call Mr. Theresa again to testify on two items, which will take a few moments, and then we can go into what happened on the site visitation.

Attorney Mondello: Welcome Mr. Theresa. You remain sworn. Your witness Mr. Rubin.

Attorney Rubin: Since the last November 1st meeting, you were able to find a photograph that was taken. Can you describe it for the Board?

Applicant: Yes, this is my mother-in-law and father-in-law who have passed and my two young sons, who are here that are 30 and 31, when they were 2 years old.

Attorney Rubin: Who took the picture?

Applicant: Me or my wife at that time. There were no digitals back in those days. There were 110 or whatever.

Attorney Rubin: I would ask that it be entered into evidence as Exhibit A.

Attorney Mondello: Sure, what is the date or the year, winter, spring, summer.

Applicant: It is approximately, I'd say 1995.

Attorney Rubin: What is the purpose to bring this photograph to the Board's attention?

Applicant: There was a lot of doubt about, during other court matters, where the shed, well with respect to the gazebo. You don't really take a picture of a shed back in those days and we didn't

have digital where we could flick away at will. And the shed is in the side yard. And with the gazebo, we had a hard time trying to find a picture. I finally had somebody send me a picture that we had of my kids when they were younger.

Attorney Rubin: What is being shown in the background?

Applicant: It's showing that the shed, the gazebo

Attorney Rubin: Is it the shed or the gazebo?

Applicant: That is the gazebo but there is another shed, which is actually in that picture in the right side of it. If you look, the original metal chain link fence was actually in that picture too.

Attorney Rubin: About how old is all of this?

Applicant: That picture is approximately 1995.

Attorney Rubin: Was it your testimony, and just to reiterate as to when the shed and the gazebo where built, did it come with the house or when did you build it?

Applicant: Even though the shed was, as I had stated, there were changes made because Mr. Brusco, I needed to put drainage in, and he said that I could move it and everything at the time that it was changed. The gazebo was never moved and everything was there from house purchase.

Attorney Rubin: Are you saying to this Board that the gazebo, which is in this photograph (Exhibit A) was there when you brought the house?

Applicant: Correct.

Attorney Rubin: And that it hasn't essentially been changed over the years?

Applicant: No.

Attorney Rubin: It's the same gazebo forever?

Applicant: Yes.

Attorney Rubin: The other question I wanted to ask that came up since the November 1st meeting, did you take it upon yourself to look up the Borough's records as to if ever the Board entertained an issue with a shed and a side yard.

Applicant: Yes, I did.

Attorney Rubin: Was that something that came up at the November 1st meeting that the Board hadn't seen this before? Did you actually find something that happened before this Board of Adjustment where the Board entertained such an application?

Applicant: Well, what was actually, I believe stated at that meeting was, that variances were never given for such a thing with a shed in the side yard where it needed a boundary variance and the distance from house variance. On April 6, 2016, and I know Jack Crilly well, he had that done on his property. I have the pictures and it is in the exact same place as mine. He does have a little bit of width, but he did have the variances issued for both because it didn't conform within the side yard setbacks.

Attorney Rubin: Was that an application before the Board of Adjustment?

Applicant: Yes.

Attorney Rubin: And that was approved?

Applicant: Yes.

Attorney Rubin: And so what had occurred was somewhat different than what the testimony was or came out at the last meeting?

Applicant: Yes.

Attorney Mondello: Mr. Rubin, I'm sorry, I'm somewhat confused as to this line of testimony. Whatever the Board does is not precedential for another application.

Attorney Rubin: Mr. Theresa has felt that it was very important that he bring this before the Board because it was stated the last time that the Board never did this before and he just wanted to show that the Board had done it.

Chairman: Mr. Rubin let's get one thing straight. Mr. Crilly's shed is not 8x25 and it doesn't start at the front of the house. It's in a back side yard because he had a very difficult piece of property.

Applicant: I can present the pictures showing

Chairman: You can bring all the pictures you want and, as Ron said, every application is its own basis.

Attorney Rubin: There is no question, Mr. Chairman, every property is different.

Chairman: Mr. Crilly's shed was put in with a permit, number one. Number two, Mr. Theresa's shed was not there when he brought the house. He testified to that at one of the meetings. And it was never approved by the town. There is no permit, there's no nothing. He brought in a picture of a blank permit, no number on it, no signature, that he found inside his shed. That makes no sense.

Attorney Rubin: You are correct that he presented the placard.

Chairman: Here is the best thing. He testified when he bought the house it was there. We know it wasn't there.

Attorney Rubin: That is a question for the Board to decide.

Chairman: No, it is very simple. In the Building Department, in one of his trips to the court, there is a site plan when he brought the house in 1987, the second shed was on the other side of gazebo towards the backyard, not the side of the house. There was never a shed on the side of the house when he brought and for a number of years, we have aerial photographs. There is no shed there.

Attorney Rubin: It is his testimony.

Applicant: And I'm not changing it.

Chairman: I know that, but I'm just stating what the Board has to work with is reality.

Attorney Rubin: I understand. Mr. Theresa has given his testimony under oath. That's his position that, when he brought the house, it was there. Those are the only two issues that I wanted to bring up which were supplemental, you can call it, from what came out of November 1st.

Attorney Rubin: As we left the meeting and my reading of the Minutes, it appeared that the Board was making arrangements to do a visual of the site.

Chairman: We did. We had a site visit. I contacted Mr. Theresa because I stopped there a couple of times during the week and nobody was home and I don't walk in somebody's yard in case they have a dog even though he gave us a letter of permission, because you just don't know what is sitting in the backyard. We made an appointment. We went there in groups of three since that's all we are allowed. So we made two trips of two groups of three to see the backyard and visit the shed and everything else. So we have visibly seen the whole thing, it's location and other things that were done in that yard. Our suggestion was you cannot move the shed of your neighbor's property because that is going to be way too close to the house. The limits are this; 5' from the property line and 10' from a dwelling. You know that and I know that.

Attorney Rubin: I've been using Mr. Hafner's recommendations and that is what he has told us in the past.

Chairman: That's the ordinance.

Attorney Rubin: That's correct, and that's what we've been asking for as far as the variances.

Chairman: As far as the gazebo, that's on the original site plan of 1987. It shows but not off the property so it was moved back into the neighbor's property by 2' or so.

Attorney Rubin: Mr. Chairman, moving that gazebo, it just doesn't look like it's movable.

Chairman: It moved. We have a site plan downstairs in the Building Department Office showing the gazebo and the old shed behind it going to the east to the rear of the property. That's what existed in 1987. We have photographs that our Engineer has supplied into, what was it Chris, 2005 or 2008 or something, and the shed is not there.

Attorney Rubin: The question before the Board today is. First, and just so the record is clear, the cases say that if there is a site visit, what occurred on the site visit is supposed to be put on the record, if it could be, as to what the Board saw.

Attorney Mondello: Mr. Rubin, there was never a quorum. One person goes, seven or different times, you want everybody to put on the record.

Attorney Rubin: Unless there is a spokesperson who could speak to it, but somehow it is supposed to be on the record.

Chairman: Mr. Rubin, when we've done a quorum, we bring the Engineer, the Lawyer, the Secretary, everybody, and the public is invited because it's technically a public meeting. When two people, one person goes to look at a site, if all the members went each separately, we need hours and hours to present that. It makes no sense.

Attorney Rubin: However the Board wants to handle this. It's this Board's decision.

Chairman: And you have been before this Board numerous times so you know we are legit, okay.

Attorney Rubin: I know it is very difficult to getting people together.

Member Covelli: Quite frankly, I can speak Jack. I was with you and, specifically, all I did was look at the shed, I exchanged pleasantries with Marty and his family, he wanted to show me some documents and I specifically said "I can't take any testimony, I'm only here for a visit". I thanked him again and wished him a Happy New Year, and I left. So there is my report on what happened when I went and Jack was standing next to me, and Dana (Member Lynch) was on the other side.

Attorney Mondello: Thank you Mr. Covelli.

Member Covelli: So there is the report with respect to my visit.

Attorney Rubin: The question comes down to the variance application. I made an application and it didn't just come out of thin air. It came out of numerous conversations that I've been having with Michael Hafner, the Construction Code Official. He and I have spoken numerous times about trying to resolve the issue over time. I have great faith in him because he knows more about construction than anyone, in my opinion, that works for any town, so I've been relying on him and his suggestion was to bring it before this Board. Not knowing whatever the Board did, and obviously you can't say and I can't say and no one can say what the Board will do, but to bring it before this Board to try and get some conclusion from this case. It has been going on now for 5 or 6 years.

Chairman: Longer than that.

Applicant: 10.

Chairman: You went before the Passaic County Construction Appeals Board and didn't get anywhere. You've been in the Municipal Court at least once or twice. We have all the records downstairs and there is a file this thick on this thing.

Attorney Rubin: And it is time to end it.

Chairman: We've got to end it.

Attorney Rubin: The Borough has spent much money on this.

Chairman: Way too much money.

Attorney Rubin: And Mr. Theresa has spent a fortune on this.

Chairman: Watch this, for what the town and Mr. Theresa spent, you could have put a brand new shed on the other side of the property and have been done with this a long time ago.

Attorney Rubin: He could have brought a new house.

Applicant: It's the principal.

Chairman: But it isn't. You never took out a permit. That's the bottom line.

Attorney Rubin: Right now, what is before the Board is the application for what we call a bulk variance to allow the shed and gazebo to be moved out of the neighbor's property, which he has made the representation that he'll pay for that moving. It'll be lifted and brought over, whatever it is, over the property line so that it is entirely on his property and that will cost several thousand dollars as I'm sure the Board can understand what that kind of cost would be. It is still would require a variance for the shed being in the side yard, without any question, and it would be less than 5' from the property line and it would be less than 10' from the house.

Member Covelli: Mr. Rubin, it would be less than 5' from the property line.

Attorney Rubin: When I say the rule according to the ordinance, it is a 5' setback.

Chairman: And 10' to the house.

Attorney Rubin: Correct.

Chairman: You only have 12' of property there. If you moved it 5' away from the property line, it would into the house.

Attorney Rubin: That's why it is a pure, pure hardship. You can't do it. You can't do it, there's no room.

Attorney Mondello: And apparently, Mr. Rubin, the Applicant is also requesting variances for the fence and retaining wall encroachments.

Attorney Rubin: I think you know that Board would not entertain that; it's a private matter between this property owner and the next store, which we have an agreement.

Attorney Mondello: Oh, I'm sorry.

Chairman: It is on all three sides Mr. Rubin. We got a letter from one of the neighbor's at the last meeting objecting to the fence on their property. To my knowledge, the person in the back, in the back it's a split lot so you have two neighbors against his property, the one neighbor took the fence down and threw it into Mr. Theresa's yard to reclaim his property.

Attorney Rubin: I don't know what he did with the fence, but it went down.

Chairman: Exactly, which the man had a right to do.

Attorney Rubin: I don't know about the one next to it. I don't know what happened there. You can't be on somebody else's property, there's no question.

Chairman: Exactly, but it is all three sides.

Attorney Rubin: But that's not why we are here.

Chairman: No, but we'll back with them I'm guessing because the neighbors are complaining.

Attorney Rubin: These are not monumental things. If they have to go, they'll go. The same with any encroachment on the Mayor's side, which is Lot 14 I think.

Chairman: On the Mayor's side it is 20" or 21". On the back it is 4'. On the left side, or the north side, it is 30". That raises this question, and you're the attorney, if one of those houses are

sold, that becomes a huge issue. You appeared before the Planning Board to get a lot line adjustment, which would take ownership of your neighbor's property. That creates a side yard variance for the neighbor you'd have to do.

Attorney Rubin: We tried to do that.

Chairman: I know you were at the Planning Board 6 years.

Attorney Rubin: It was a 4-4 vote, a tied vote and a tied vote doesn't pass. That's why Mr. Hafner suggested I come to the Board of Adjustment and bring it here.

Chairman: Didn't the Court suggest that?

Attorney Rubin: Yes, and Mr. Hafner did too. Mr. Hafner has been asking me for a long time to come to this Board.

Chairman: But the Court told you to come here and you never came.

Attorney Rubin: Well we had an alternative. It was that or do something else, pay the fines. Mr. Theresa made a decision to come here. Mr. Hafner has, as I've said, has been suggesting I come here and to see what the Board would say.

Chairman: Let me ask you this. If you didn't come here, and you went back before the Court, they would slap a fine on this by the day, by the week, by the month, which would have cost Mr. Theresa one hell of a lot of money and he would still have to move the shed, and you know that. You were in Court.

Attorney Rubin: Well, we'd probably still be in Court.

Chairman: At one time, you had 10 postponements.

Attorney Rubin: We keep going to various courts. You are correct. That's why we are here. We want to end it.

Member Covelli: Mr. Theresa, could you give some clarity as to why the Google Earth and the Borough's records say that the shed wasn't there and you testified that it was there? Could you provide some clarity on that?

Applicant: If I recall, and I'm not 100%, I believe the map that came up that day, I think it was in Court, was a 2008 map. Clearly, in the picture with my sons, and they said in that picture the shed wasn't even in that picture, just the gazebo. They didn't even see the other shed, the old shed, which if you look at that picture really well, you could see the gazebo, you could see the shed, the old shed that's in the picture with my kids.

Member Covelli: Thank you for the clarity. That's right, you can see the old shed. You can't see the shed that you are referring to.

Applicant: I can, but it is very shaded out, where maybe I read into it because I knew it was there. But it is very difficult with that shade to see that picture. And, at the time, this is when I was in discussions since about 2006/2007, with Mr. Brusco, when he told me to move the shed. So there is a shed, actually, and I don't even recall when it was moved, because I did it little by little, I moved it because I had to work on the drainage that he told me to do that I needed to move the shed. So in that picture, the big shed that was in the side yard, may not have been there in that specific photo due to the work I was doing in that area at that time. I don't know. It goes way back too far than I would have thought that'd I have to remember.

Member Covelli: Okay, we could work with that for a minute. You are right, we don't know when pictures are taken and you could be doing work, you could be moving the shed, I accept your rationale, with the exception of, in the picture I'm looking at, I'm looking at a picture from 12/2002 and that shed is not there. 7/2007, that is five years later, not there. 6/2010, the shed is not there. 12/2010, the shed is not there. 10/2014, the shed is not there. 4/2016, the shed is there.

Member Covelli: In the pictures, the pool is there, of course your house, other amenities that are there, the shed is not. So, if the shed were moved for a reason, I think what you are telling me is it's on roller skates because it moves around the yard like the moon does and we never know exactly where it is, but that is a lot of pictures that the shed is not appearing in, and this is an independent third party. I don't think they are picking on you or anything, and I don't think Mr. Google has something against you, unless you want to tell me he does.

Applicant: If I can respond to that, I saw some of those pictures and those pictures are actually in worse condition. I zoomed in differently and used whatever things they have on these paint programs to highlight areas and technically the shed does come through all those shadows and grains. I didn't build this and do this drainage where the shed was moved, did all the drainage, and put everything back right away. It took quite a few years. Secondly, the pictures show when the orange roof was changed. It was originally a very dark roof that you couldn't tell. As soon as the orange roof when on it from the barrel roof that I put on, it pops right out in the pictures. That's where the difference in change where you could visibly see it right away.

Member Covelli: In the 2010 picture I can see the gazebo and I can that the yard is blank where the shed was. It is very clear picture.

Applicant: I'm not looking at it; I don't know.

Chairman: Mr. Theresa, when did you move the fences and put the new fence up and take the metal wire fence down?

Applicant: The fence was taken down probably around, most of the fence up to the gazebo, say up the side yard where the shed is right now, the big shed, that was all broken down years ago. The only part was left that the post was still holding it up, was in the picture of I have of my kids where there was a little section left. Right after that, I actually changed the fence again and put a wood fence there because, that neighbor at the time, had kids and he said to me, "Marty, you know my kids could fall off easy" cause you see there is railroad tie wall there, he said "can you fix the fence" and, I said, "sure I'll put up a fence", so I put up a wooden fence at the time. I have that in actually older pictures than that, which aren't here, but there was wooden fence at that one time.

Chairman: Was the wooden fence on your property?

Applicant: All of the fences have been there; where the metal one was in the picture of my kids, the same place that the vinyl fence is now and where I placed the wooden fence.

Chairman: Mr. Theresa, let's get something straight. The fences are not on your property.

Applicant: You know, I have the neighbor's survey, the neighbor that lives there now, and I have the neighbor before that, and there is no indication on either one of their surveys, when the brought the house, that the shed is even there. They do show the fence on their properties, but it don't even show the shed on their surveys.

Chairman: You actually took out a permit for the fence.

Applicant: Yes.

Chairman: And the deck on your new pool. You changed pools.

Applicant: No, I took out a permit for the pool and the barrier, which was the fence, because the fence was done at that time too.

Chairman: What year was that?

Applicant: The fence was done in stages because in the backyard the walls were being done.

Chairman: We don't want to get into that because you did that without a permit also.

Applicant: And Mr. Brusco was at that meeting in Passaic County and said he authorized it.

Chairman: No, he didn't. Watch you got two letters in the file from the Borough Engineer, Mr. Cristaldi, telling you that you need permits and engineer drawings.

Applicant: I'm sorry, but if you look at the Board of Adjustment for Passaic County, when we went there, Mr. Brusco was at that meeting, he swore, and they let the wall because he authorized it he told them. You can read the minutes. I'm not lying here.

Chairman: Mr. Theresa, I don't want to argue with you, but we have a file that weighs about ten pounds downstairs and it has two letters from the Borough Engineer telling you that you need a permit for the walls that you built. Your railroad tie walls were breaking up and you needed a permit and you needed engineer drawings for the safety of those walls.

Applicant: Do you want me to go back to the drawings? First the way this started in mid-2000, which I first approached Mr. Brusco, I was getting a ton of water in my backyard and he told me there was nothing we could do. I was getting a runoff from the top of the hill because the easements up there, the storm drain system was all broken, and I was getting flooded out down below. He was trying to help me and he told me he was afraid I was going to damage the foundation on your house with all this standing water all the time. I decided, at the time, I went with a company and I did get engineering for it, we were going to put those big blocks in, those blocks that are 3'x5'x24". Those real interlocking blocks and I wanted to put one wall in, a 12' wall and it was engineered so I could have done it. It went through an engineer. We were going to do one 12' wall instead of me doing the tiered walls, at the time, and we put that in and then all of a sudden it got too complicated with the engineer and I didn't like the way it looked because you can't bend a 5' block that easy doing a radius. It just doesn't look good and I thought aesthetically, I'm in my back yard and I'm going to look up a 12' straight wall in front of me. So Mr. Brusco suggested to me why don't you just do it in the garden type of blocks and as long as you have a two to one setback you don't need any permit and there is no engineering and the whole thing was changed. That is how it got built and Mr. Brusco was there at least every week for all the time I was working on that and he had no problem with it.

Chairman: Mr. Brusco is not in charge of the wall; the Borough Engineer, Mr. Cristaldi, from Alaimo, had jurisdiction on the walls and he sent you two letters that said you need permits and engineer drawings and you got neither.

Applicant: That was on the big block wall.

Chairman: No it wasn't.

Attorney Mondello: All right, I apologize, but

Applicant: Mr. Brusco allowed me to go through with it that's all I know.

Attorney Mondello: We understand that.

Attorney Rubin: What is kind of interesting is we did go to the Construction Board of Appeals in Passaic County and they dismissed the application on the Borough's part. The Borough brought the complaint there and they dismissed it. That's the record.

Chairman: The complaint came from the Borough Engineer, not the Building Department.

Attorney Rubin: Mr. Cristaldi wasn't in the hearing. Mr. Brusco was.

Attorney Mondello: Is there any additional testimony from this witness, Mr. Rubin?

Attorney Rubin: No, that's the case.

Attorney Mondello: All right then. Are there any questions for this witness from the public on the testimony that he has given thus far? Hearing none, seeing none, Mr. Rubin why don't you sum up and we'll bring it back to the dais and see what the Board is inclined to do.

Attorney Rubin: This is an application that is for a bulk variance to allow a garden type shed and, let us call it a gazebo, for lack of a better word, to remain on the subject property. We've given you a location survey prepared by Stephen Eid, which showed where everything is today. The Applicant/Owner, Mr. Theresa, has agreed to have a company come to physically lift the garden type shed and the gazebo, lift it out of the ground and take it out of his neighbor's property that is out of Lot 15, Block 200.12 and the neighbor has agreed to be helpful. In fact, the neighbor has been terrific with this. As I had said earlier, there is a fence and a retaining wall that remains on the neighbor's property, which has been there a number of years and he has signed an encroachment agreement which allows it stay. Not a question before this Board at this moment. The issue though is the gazebo and the garden type shed. Mr. Theresa will spend a significant amount of money to have it lifted and brought onto his property. That creates several bulk variances. The ordinance is clear that you can't have a garden type utility shed in a side yard. It is supposed to be in the rear. That's what the ordinance says in 114-20 G. We can't get it into the backyard and that's why we're respectfully asking that the Board allow us to lift it, put it onto his property and allow a bulk variance to allow it in the side yard. There is another ordinance that says there is a 5' setback from a property line. Interestingly enough, the ordinance says 5' from the side or rear lot line. There is an inconsistency then in the ordinance where it says you can't be in the side yard, but here it says you can be if you are 5' away. In any case, you will be less than 5' on the setback and that is a second variance. There is a third variance that says that you have to be 10' from a principal building. The house is the principal building and we would be less than 10' from that. Those are all the variances regarding the garden type utility shed. The gazebo, which is not a garden type utility shed, but your Zoning Officer and Construction Code Officials and a number of people in the Borough have regarded it as a shed. It is really not a shed, but we've been regarding it as a shed. In any case, that is in the rear yard so it doesn't need a variance for that but it is within 10' of the principal building, if that is a rule that would apply to the garden shed and it is less than 5' from the property line. I don't know it would apply and I'll leave that to the Board to make a decision because that what's Boards of Adjustment do. It appears that it would not apply to a gazebo and that no variances are required for the gazebo, but we would have to leave that to the Board's discretion and hopefully the Board would see it that there is no ordinance that pertains to the gazebo. In any case, regarding the application for the garden type utility shed, we noticed the public on it, published our notice, we gave notice to everyone within 200' and not only did I give notice for Mr. Theresa's property, Lot 14, but I also did the 200' from the next door neighbor's property, Lot 15, because I thought it was appropriate to do that because of the encroachment on it. Are there other encroachments that have come up during these proceedings, maybe, probably on Lot 14 and in the back property, but they are not issues for this application. They may be for another day or Mr. Theresa will just take care of it if those property owner's ask him to, but we know, for example, the one on Lot 15, which is the northerly property, they have been very accommodating and signed an encroachment agreement. That is our position. We've been here a long time. We've been in a number of Courts and most respectfully we are asking the Board to try and see its way to be helpful and to end what has been going on for a number of years and allow Mr. Theresa to keep both of these two accessory structures where they are on his property after they are moved. Thank You.

Attorney Mondello: Thank you Mr. Rubin. I have forgotten to open it up to the public. Any comments the public may have either for or against this application? Hearing none, seeing none, we'll close that public portion and bring it back to the dais.

Chairman: Members, we need a Motion on this application.

Member Covelli: With all due respect, I don't believe the Applicant has made the case on why there is a physical hardship that would bring this Board to grant an application of this magnitude to place a shed on a property line that close to a home with bedrooms on the second floor which could cause fire issues, fire department issues if there was a very rescue needed and the like. In visiting the property, I think there is ample space for this not to be in the location it is at. I would make a Motion to Decline the Application.

MOTION TO DENY APPLICATION ZBA2023-06: made by Member Covelli, seconded by Member Bonner. Voting yes were Chairman Dunning, Members Covelli, Ludwig, Aumenta, Sbarra, Lynch and Bonner

Vice Chairman Grygus and Member Farinella recused themselves.

Attorney Mondello: Thank You Mr. Rubin. Wonderful job as always. The Motion to Deny Carries.

Attorney Rubin: Thank you for all the time you have given us Mr. Chairman. We certainly appreciate the Board looking at this.

Recess: 7:59pm

Reconvened: 8:11pm

Let the record show that Vice Chairman Grygus has returned to the dais and all Members are present.

Chairman: Mr. Sbarra has stepped down from the dais as he is the next Applicant to be heard on an Interpretation of the Board's Resolution.

Application ZBA2023-04 – Sbarra Property Management, LLC – 26 Brook Street, Haskell
Interpretation of Decision & Resolution

Chairman: Mr. Sbarra is now an Applicant for an Interpretation of our Resolution.

Attorney Mondello: It may even be a bit more than that, so Michael let's explain and then I'll chime in.

Applicant: As you know, we had an application in front of the Board for 26 Brook Street that was approved for a Use Variance as well as additional security lighting. The reason why I am here for an interpretation is I had applied for the permits at the Building Department and Mr. Hafner had given me a call about two weeks ago or so saying that there were a couple of issues and he had given me a couple of options and one of which was to get an interpretation here from the Board so that's why I am here today. I don't want to speak for Mr. Hafner, but the way I understand how he explained it to me and, if the Board recalls on my application I was putting in three (3) utility poles with lighting set at 15' on the pole. Now granted, my engineer at the time, and I will say this, did say in his initial summary and I'll read it and it says quoting from the Minutes here, "In terms of the proposed improvements, the only improvements here are three light poles. Three LED light situated on 15' poles that are primarily for safety and security of the lot." Granted yes, according to the Minutes my Engineer did say that; however, as per what it says on the Site Plan, and I believe he slightly misspoke. What I believe that he meant to say was that there were going to be three (3) light fixtures mounted on a utility pole at 15'. The reason why that had always been my interpretation was, by code, overhead wires, which is what is called for on the Site Plan, have to be mounted at 18' so there would be no reason for him to say that we have 15' pole if the overhead wires have to be mounted at 18'. Just so the Board knows, a standard utility pole that you see on any side street here in Wanaque is roughly 40', Class 4 Utility Pole. What I had to apply for with the Building Department is for the installation of three (3) 26' Class 4 Utility Poles set forth 5' deep in the ground so 21' would be above the ground. Shorter by almost half the size of a standard utility pole. Granted, yes, it gives me that at least 18' so I could actually put the overhead wires in. Mr. Hafner had taken that slight miscue in the testimony and that's why he said I needed an interpretation. I will say this too, taking a step back, and I have, not to scale, but I do have another copy of the Site Plan, and it clearly shows overhead wires, and I'll pass this around if anyone wants another look at it again. It clearly shows that the lights are mounted at 15' as per the lighting plan and it does show overhead wires. It also says, "light fixtures be mounted on a utility pole and wired via overhead connection." Again, my Engineer, I don't think he would overlook the fact that code says that the utility wires have to be mounted at least 18' so that would just assumed that we would have a utility pole at least at 18'. Mr. Hafner said I had to address that and that is one of the issues why he isn't issuing the permits at this point. The other thing he had brought to my attention and, again, granted we did a full Lighting Plan, these are LED lights shining downward. As my recollection, the Board had no issue with the Lighting Plan that we had presented and Mr. Hafner was saying that I need to shield these LED fixtures from the neighbors. I don't remember that being a condition of this Board at all. So that was the other thing that was holding up my permitting. So I'm just looking for an interpretation at this point.

Chairman: On your plan that you used at the Board, under description of the lighting schedule, it says "forward throw external clear shield".

Applicant: Okay.

Chairman: It's right there, so it's already in the plan.

Applicant: It's in the plan. So what I'm saying is Mr. Hafner said I need additional shielding to shield from the neighbor's property. The lighting plan that was presented on the site plan had the foot candles and everything. I thought it was all there. I did not think this additional shielding that Mr. Hafner is requesting. Maybe I'm misinterpreting. I wish he was here.

Chairman: The neighbor to your north side is the street.

Applicant: Yes.

Chairman: On the south side there is something there.

Applicant: It is another parking lot.

Chairman: Another commercial piece of property.

Applicant: Which has lighting by the way.

Chairman: Your shields are stopping the light from going backwards and you really have no neighbors to bother anyway.

Engineer Nash: Can I jump in. The calculations for the lighting foot candles were done at what height.

Applicant: 15'. So in other words, the pole was unspecified as far as height of the pole.

Obviously, I need something at least 18' to do the overhead wire. But the lights are mounted at 15' and I'm still proposing that obviously.

Engineer Nash: That's fine. The LED lights almost are flat. In the old days you had to put shielding so that you didn't get light spillage but the LEDs shine straight and that is what's shown on that plan. Now when the light is up like on the ceiling height, you can't see some of these because they are recessed into the ceiling. Imagine if the light was here, you could see the light from your property. You are not getting foot candles on the property, but you can see it. That's what they refer to as glare. I don't what the shielding is. You can put shielding around it like these recessed lights.

Chairman: But then it would shoot it straight down.

Engineer Nash: Yes, but you can't see, like the lights right above you, you see how you get glare when you look up at them and the ones at there you don't get glare. That is what the shielding is going to do. It is going to prevent that when you are in your property looking at the light you can see it, it's glare.

Vice Chairman: I don't have a plan and I wasn't part of this application, but are the lights to the east of the property or to the west of the property?

Applicant: The lights are on the east.

Vice Chairman: So the west of the property, I drove through there today, I don't think there are any neighbors to the west of the property.

Applicant: There is none.

Vice Chairman: The brook is there. So as long as the lights are to the east of the property, if you had a back shield, there is nobody to look up at the lights from the north, south or the west.

Engineer Nash: With the wire, the poles are this high, and the wire spans. The 18' is the sag so the poles have to be even taller than 18'.

Applicant: What I had proposed, and I have the poles already, on the permit application, three (3) 26' poles sunk 5' deep so they would be 21'.

Engineer Nash: That makes sense.

Vice Chairman: Chris, in your professional opinion, do you feel that there is any adjoining neighbors to the north, south or west that could see glare from those if they are back shielded?

Engineer Nash: It is possible, but that wasn't a condition of the approval.

Applicant: In Mr. Hafner's defense, I believe he is talking about back shielding the parking lot that abuts my parking lot on the Ringwood Avenue side. More or less, to the east.

Vice Chairman: But those poles are on the property line?

Applicant: Yes.

Vice Chairman: And they are back shielded?

Applicant: I don't well enough but we called out the exact fixture on the plan.

Attorney Mondello: Mike, when you refer to the code saying it needed to be 18' high, what code?

Applicant: To be honest, I am not sure myself.

Member Covelli: That was going to be my question to Mr. Nash. Is there a code that talks about this outdoor wiring or light fixtures, that says it has to have this sag you speak of and it has to be 18' or whatever we are talking about?

Engineer Nash: It is part of the electric code but I don't know exactly.

Member Covelli: The electrical subsection of the Uniform Construction Code?

Engineer Nash: It might be even it's own electrical code. I'm not exactly sure what the name of it is.

Chairman: Did you get a picture of this light fixture to show Mr. Hafner?

Applicant: I did not. Like I said, it is called out in the site plan.

Chairman: Well that might answer all the questions.

Applicant: I don't believe it is back shielded. If you look on the site plan, there is a picture on there.

Chairman: No, in you notes there, describing the fixture, it says you have a glare reducer. Chris, that's the picture, right?

Applicant: Granted, that light would be mounted not necessarily on this steel pole as the picture shows. It would be mounted on a utility pole/telephone pole; whatever you want to call it.

Different bracket but virtually the same fixture.

Attorney Mondello: Any other questions from the Board Members? Hearing none, seeing none. I don't want to say we are overruling Mr. Hafner's decision.

Member Covelli: We are providing clarity which is what was asked of us.

Vice Chairman: Is there such a thing as a Modification to the Resolution?

Attorney Mondello: It is not even mentioned in the Resolution and obviously this electrical code says it must be at least 18' so I'm guessing there must have been some miscommunication somewhere.

Applicant: It does say in the Resolution that testimony that I did read from the Minutes. So the Resolution does say that same quote that the Minutes said that of which my Engineer said. My Engineer said, and I'll quote it again, "In terms of the proposed improvements, the only improvements here are three light poles. Three LED light situated on 15' poles that are primarily for safety and security of the lot." I believe that is what Mr. Hafner is stating. However, like I said, I believe he had misspoke and the site plan that he prepared, the site plan clearly says, it doesn't call out the height of a utility pole, and it clearly shows that the fixtures themselves are

mounted at 15'. What he probably should have said, if he had a better choice of words at the time, that we are looking to install these LED fixtures at 15' on a utility pole.

Chairman: Right.

Attorney Mondello: So how about a Motion to Modify the Resolution to allow the utility pole to be 26', with 5' in the ground and 21' above ground. Does that work?

MOTION TO MODIFY RESOLUTION ZBA2023-04 TO ALLOW FOR UTILITY POLES TO BE 26' IN HEIGHT, WITH 5' IN THE GROUND AND 21' ABOVE GROUND: made by Member Covelli, seconded by Member Lynch. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Covelli, Farinella, Ludwig, Aumenta, Lynch and Bonner.

Attorney Mondello: That interpretation, or modification, to the Resolution passes.

Member Covelli: That clarity. We provide clarity.

PUBLIC DISCUSSION: No one in the audience.

Member Sbarra is back on the dais.

RESOLUTION: ZBA2023-08 – Phillips, Benjamin

Attorney Mondello: Mr. Phillips came to the Board for a post construction deck in the rear yard that was not connected to the principal structure. Typical conditions were placed in the Resolution. The Applicant has agreed in testimony that he will obtain approval from the Governing Body for the deck/dock that has been constructed. The existing vinyl shed must be moved to the rear of the property with proper setbacks and the existing metal shed and the above-ground pool are in non-compliance with Zoning. At the time of the “demise” (as Frank said) of these structures, the Applicant will follow the proper protocols. I’ll entertain a Motion, followed by a second.

MOTION TO MEMORIALIZE RESOLUTION: made by Member Aumenta, seconded by Member Ludwig. Voting yes were Chairman Dunning, Members Covelli, Ludwig, Sbarra, Aumenta and Lynch

RESOLUTION: ZBA2023-09 – Pardo, Desiree

Attorney Mondello: This is essentially the same thing with basically the same conditions with the “demise”. I’ll entertain a Motion, followed by a second.

MOTION TO MEMORIALIZE RESOLUTION: made by Member Aumenta, seconded by Member Ludwig. Voting yes were Chairman Dunning, Members Covelli, Ludwig, Sbarra, Aumenta and Lynch

CORRESPONDENCE: Board Secretary passed out to Board Members three new applications.

VOUCHERS: submitted by Ronald Mondello, Esq. for the Pardo Application in the amount of \$437.50; for the Phillips Application in the amount of \$612.50; and for attendance at the March 6, 2024 Meeting in the amount of \$500.

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

VOUCHERS: submitted by Boswell Engineering for the 1025 Ringwood Avenue Application in the amounts of \$53 and \$212; for the Phillips Application in the amounts of \$530 and \$212; the Pardo Application in the amounts of \$530 and \$212; and for the 921 Ringwood Avenue Application in the amounts of \$212.

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

MOTION TO APPROVE JANUARY 3, 2024 MINUTES: made by Member Aumenta, seconded by Member Sbarra. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Covelli, Farinella, Ludwig, Aumenta, Sbarra, Lynch and Bonner

ENGINEER'S REPORT:

Engineer Nash: Scenic Landscaping has been super cooperative in handling all the requests that I've made but there is one property owner that has been complaining about water. They had been getting some water from that site probably last summer and I've been to the site probably three times since then and they have been very responsive. There was some water from the Borough property coming onto theirs and ending up in the Reilly property. So they went outside of their property onto the Borough property and redirected the runoff. So they took care of that and they have added some additional berms. Today, when I went out, I don't see water going onto the neighbor's property but I see the potential for it so we are going to head it off at the pass and add another berm. They are willing to do all of the suggestions I've made. They'll add another berm and in the back corner there is depression that fills up with water and I can see that when it gets over the top it is going to go back towards the property. They have agreed to design a positive means to empty that little basin back onto the Borough property in the swale. They are going to have lay a pipe across over Jefferson because there is not enough pitch to get from the low end of the basin to that ditch so I told them that they could basically lay the pipe on the road and then put fill over it.

Chairman: You are staying on top of this.

Engineer Nash: Yes and they are very cooperative. They are doing everything.

Vice Chairman: Do we have escrow money from them? I want to make sure the Borough has money in escrow to pay for this.

Board Secretary: Yes, and when it gets low they have to replenish it. Engineer Nash's bills come to us for approval.

Chairman: That's your report.

DISCUSSION: Chairman Dunning, Vice Chairman Grygus, and Member Covelli and Zoning Officer Azer are on the Ordinance Committee. They discussed, at length, the issues with some of the ordinances; i.e. what they are trying to change, what new ordinances they would like to add and what ordinances they feel are priorities (parking, accessory structures, electric chargers). Some of the ordinances are very old and need updating. Also, if any Members have any ideas that you would like to rely on things you have seen in hearing of applications that you think could use some clarification let us know.

MOTION TO ADJOURN AT 9PM: Motion made by Chairman Dunning and carried by a voice vote.

Jennifer A. Fiorito
Board of Adjustment Secretary