

REORGANIZATION MEETING
&
REGULAR MEETING

Salute to Flag: 8:03 P.M.

OPENING STATEMENT: Read by Mayor Dan Mahler.

This is the Reorganization And 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 Herald News on January 26, 2012 and the Suburban Trends on January 29, 2012 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

Mayor Mahler swore in reappointed Member Michael Levine to a 2 Year Term expiring 12/31/13 as Alternate #2.

ROLL CALL: Members Jack Dunning, William Grygus, Peter Hoffman, Eric Willse and Michael Levine.

Member Joseph D'Alessio arrived at 8:08 P.M.

ALSO PRESENT: Ronald Mondello and Christopher Nash

MEMBERS ABSENT: Members Frank Covelli and Jaime Landis

NOMINATION FOR CHAIRMAN: Member Grygus nominated Jack Dunning, seconded by Member Ludwig. No other nominations heard. Nominations closed.

ROLL CALL ON NOMINATION FOR CHAIRMAN: Voting yes were Members Grygus, Hoffman, Ludwig, Willse and Levine. Member Dunning abstained.

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

ROLL CALL ON NOMINATION FOR VICE CHAIRMAN: Voting yes were Chairman Dunning, Members Hoffman, Ludwig, Willse and Levine. Member Grygus abstained.

NOMINATION FOR BOARD ENGINEER: Member Willse nominated Boswell Engineering, seconded by Chairman Dunning. No other nominations were heard. Nominations closed.

ROLL CALL ON NOMINATION FOR BOARD ENGINEER: Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Hoffman, Ludwig, Willse and Levine.

NOMINATION FOR BOARD ATTORNEY: Chairman Dunning nominated Ronald P. Mondello, Esq., seconded by Member Levine. No other nominations were heard. Nominations closed.

ROLL CALL FOR NOMINATION FOR BOARD ATTORNEY: Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Hoffman, Willse and Levine. Member Ludwig abstained.

ADOPTION OF NEWSPAPERS: Continue with the Suburban Trends and Herald News: **MOTION TO ACCEPT AND ADOPT THE SUBURBAN TRENDS AND HERALD NEWS AS THE OFFICIAL NEWSPAPERS:** made by Vice Chairman Grygus, seconded by Member Willse. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Hoffman, Willse and Levine.

MOTION TO MAINTAIN THE FIRST WEDNESDAY OF THE MONTH FOR THE REGULAR MEETING WITH A 7:30 P.M. WORKSHOP AND THE REGULAR MEETING WILL FOLLOW AT 8:00 P.M.; AND THE SATURDAY PRIOR TO THAT MEETING FOR SITE VISITS AT 10:00 A.M.; AND DIRECT THE BOARD SECRETARY TO ADVERTISE IN ACCORDANCE WITH THE OPEN PUBLIC MEETINGS ACT TO GIVE NOTICE OF THE MEETING DATES FOR 2012: made by Vice Chairman Grygus, seconded by Member Willse. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Hoffman, Ludwig, Willse and Levine.

ADOPTION OF EXISTING PROCEDURES AND BY-LAWS:

MOTION TO ACCEPT EXISTING PROCEDURES AND BY-LAWS: made by Vice Chairman Grygus, seconded by Member Willse. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Hoffman, Ludwig, Willse and Levine.

Mayor Mahler swore in reappointed Member Joseph D'Alessio to a 4 Year Term expiring 12/31/15.

RECESS: 8:12 P.M.

REGULAR MEETING

Chairman Dunning called Regular Meeting to order at 8:18 P.M.

ROLL CALL: Let the record reflect that all the Members present were present for the Re-Organization Meeting.

Application #ZBA-2011-09 – Theresa Kressaty, 3 Third Avenue, Block 435 Lots 13 & 14 Use And Bulk Area Variances

John Barbarula, Esq. representing the Applicant, Theresa Kressaty

This application contains a residential house in the middle of a commercial zone. A pre-existing, non-conforming use based upon the zoning as it stands today. The applicant wishes to put a garage onto the existing building and will testify to this. We will also have the architect testify, whose testimony will show that to put the garage on the opposite side of the house would create a major situation in terms of the structure of the house. We will also show, through pictures, that if the garage was to be relocated from the right side to the left side of the house, it would destroy the only trees in the entire area, which trees are probably over 60 years old. Not only is it structurally a problem with locating the garage on the left-hand side, but also an environmental tragedy to get rid of those two trees.

We also received a letter from Arrow, in response to our request to see if they had any additional property to sell to us to eliminate the bulk variance. Arrow does not have any property available at this time to sell.

Attorney Mondello has reviewed the Hearing Notice served on property owners, Affidavit of Service and Notice for Publication, and deems the Application complete.

Attorney Mondello swore in the applicant, Theresa Kressaty, 3 Third Avenue, Haskell.

Exhibits Offered Into Evidence

- A-2 Arrow Industries Letter dated March 5, 2012
- A-3 Photograph of house with three cars parked on right-hand side of property
- A-4 Photograph of house showing bilko doors on left-hand side of property
- A-5 Photograph of left-hand side of house

Testimony of Applicant

I am making the application to construct a one-car garage. Since the minimum lot area in this zone is 10,000 square feet and my existing home is 4,641 square feet, I attempted to acquire additional land from Arrow Industries. I received a written response indicating that they are not at this time willing to sell any property (A-2).

The house is a one-family with two bedrooms, small living room and small dining room, kitchen and bath. I took photographs of my property on March 6th. A-3 shows the right

side of the house (looking from the road) where I want to build the garage. A-4 shows the left side of the house (looking from the road) with the bilko doors going into the basement (only entrance to basement), two bedroom windows and a large tree. A-5 also shows the left side of the house with Arrow Industries in the picture and a tree.

Vice Chairman Grygus questioned to applicant:

Whose vehicles are in the photograph marked A-3? Those are my neighbor's vehicles.

Where do you park now? I have to park around. I come through the parking lot and I park on the grass. Because of the way my neighbor parks his vans, I had to have the property surveyed and staked because he kept parking on my side. I sprayed painted a line and he parks his vans right on the line so that if I do have my car there, I cannot get in and out. I had Lakeland Auto Parts park some of his cars there so I can at least walk through and get into my property and that is why those vehicles are in the photo.

Where do the set of stairs in your kitchen go to? They go downstairs, but the stairs are so narrow you cannot walk down them any more.

They are drawn on the architectural plan as a normal set of stairs.

Chairman Dunning questioned why the bump out of the garage? Because my property goes on an angle so I wanted to have as much room as I could out of my garage, and then it narrows as it gets to Third Avenue. I bumped it out for storage purposes for my motorcycle.

Vice Chairman Grygus questioned the conflicting dimensions on the site plan and the architectural plan. For example, the architectural plan shows the garage at 13 feet and the site plan showing it at 12 feet 9 inches, but it is very hard to read. Which is it?

Attorney Mondello swore in the architect, Michael Macagney, 29 Watervliet Avenue, Pompton Lakes, New Jersey. I am a licensed architect in good standing in the State of New Jersey for 20 years. Years ago, I gave testimony before Boards in Morris County, probably less than five times. I have never given testimony in Passaic County. Board accepts Mr. Macagney as an expert in the field of architecture.

There is a discrepancy of the width of the garage at the rear. Architect Macagney sees the discrepancy, but is unable to answer for the surveyor.

Chairman Dunning stated that the question arises from that measurement. With the architect's design, you are only 2 inches from the property line.

Engineer Nash commented that this is not the critical point, but the point at the corner.

Chairman Dunning commented that if you add 3 inches to the back wall, it pushes the bump out point either .2 or 2 inches from the property line so it would push it an inch over the property line. That is the issue. We cannot go over the property line.

Architect Macagney stated the surveyor does indicate matching the 11 feet in the front. I think the issue now is adjusting the measurement for the corner.

Engineer Nash questioned, if you are having difficulty with the other property owner, how are you going to work around the house, maintain the house and dig the footing and build the garage?

Member Willse commented that, if the foundation is .2 inches from the property edge, when you put siding on the house it is going to project out.

Member Ludwig also commented that the footing could be into the neighbor's property.

Applicant agreed to/decided to get rid of the bump out in the garage, thus reducing the requested variance and she will then be able to maintain the building.

Vice Chairman Grygus questioned Architect Macagney about the stairs in the kitchen. They are basically a "ships ladder" down to the basement. I have a hard time going down. The stairs are totally non-conforming and dangerous. They are out of scale on the plan.

Referencing point number 5 in Engineer Nash's February 17, 2012 letter, Vice Chairman Grygus asked Attorney Barbarula if there were any revised plans that show a workable driveway to access this garage staying entirely on the applicant's property?

Attorney Barbarula responded no, not at this time.

Board Members believe that if the neighbor decided to put a chain link fence on his property line from the street, it would be impossible for you to get in and out of the garage. Applicant believes she will have no problem getting in and out of the garage.

Board Members mentioned that there is quite a bit "going on" there, i.e., the corner of the porch, the stairs, and if someone was to purchase the house at a later date and had a large sports utility vehicle, they would not be able to get into the driveway.

Chairman Dunning stated what was missing is a measurement on the whole length of the driveway. There is a minimum width for a driveway. Forget about the sharp turn, we need a line struck on the drawing to show that you have a "curb cut" of a minimum of 10'. Attorney Barbarula stated that it could be shown by an expansion of the macadam and elimination of the walkway.

Chairman Dunning, referencing photo A-3, you have a curb or railroad tie, which strikes the eastern part of the driveway. We need a 10' line, or more, drawn on the plan to show the building department where the driveway is suppose to be, if we approve the application and they need to do an inspection, so that it is built to code.

Attorney Barbarula asked Architect Macagney if there was more than 10' there when we remove those materials based upon the scale from the property line? Architect Macagney answered yes, there is 11' now.

Attorney Barbarula stated you can see the cars that are parked there now have sufficient room and they are all within the boundary lines because the surveyor put a line on the ground. We can submit a plan showing the curb and removal.

Chairman Dunning stated you need to get Mr. McGeoch to update this plan to show the markings of a driveway, with some measurements, so the Board knows you have clearance from the front steps of the porch to make it a legal size driveway. This should have been put on the plan originally.

Attorney Barbarula explained to the Applicant that the Board is requesting that the engineer draw on the plan to show that there is a minimum of 10' curb. Where the cars are parked, you still have 2' between the cars and the house. When you put the garage up, and you angle the driveway and removing the railroad ties and everything on the ground, you will have more than 10', but the Board wants a plan that shows this so that when the building department looks at it they say okay everything matches. Since we are now eliminating the bump out, he has to put the new dimensions on the plans.

Vice Chairman Grygus asked if the architect could elaborate on the issues with putting the garage on the other side of the house? Architect Macagney stated that there are two bedrooms on that side of the house, and we would lose egress requirements for the one bedroom and we would have to reconfigure the house to accommodate the second bedroom. The egress requirements are a door and a certain size window. You would also need a narrow wall between the garage and the house.

Member Willse, referencing the Architect's Plan A-4, following roughly the front of the garage over to the left side of the house the existing bedroom in the front of the house, that egress window would be before the garage. The second window that is over the bilko doors would be in the garage and that would be closed up, but you still have an egress in the front east corner. On the back bedroom, you have one window that is on the back wall that could become the egress, if it is not already an egress-sized window now. This way you could put the garage on that side and eliminate all the issues with the property line. However, you would have to move the bilko door.

The Applicant also stated she would have to move the air conditioning system, the gas line, the trees, and I don't want to lose my side yard. Where I propose the garage is cement already.

Vice Chairman Grygus asked if this decision is because of a financial hardship? Attorney Barbarula said he believes it is not a financial hardship, but more of restructuring of the house and foundation with removal of the bilko doors, and environmental issue with removal of the tree or trees.

Member Willse asked where you are going to re-direct the exhaust from the range per photograph A-3? It would probably have to be re-vented through the roof since there is no second floor. It is a lot easier to do a vent than to re-do a foundation.

Chairman Dunning asked the Architect about the interior access to the basement, what is the problem with that? Architect Macagney stated the stair is very narrow, very steep and dangerous. They would have to be re-built if you want to use them. They are definitely not code compliant. Walking down there is really like a ship ladder, that is what it feels like. To fix the stairs, you would have to re-do the kitchen and bathroom in the living area. I did look into seeing if we could widen the stairs to make it better, but there is a girder in the way that runs the entire length of the house from front to back.

Vice Chairman Grygus asked Attorney Mondello if this is a Use Variance also? It is an expansion of a non-conforming use. Attorney Mondello asked Attorney Barbarula what his opinion was and he answered that it is an expansion of a non-conforming use requires five (5) votes because it is the same as getting a Use Variance. Attorney Mondello asked

you consider it to be a Use Variance? Yes, however, the difference is that there is a modification under case law because it is a pre-existing condition, but it is a higher and better use, because case law considers residential higher and better than industrial. As long as you do one-foot expansion of a pre-existing, non-conforming use, you are under the auspices of D. The only difference that this application has is that it is a higher and better pre-existing use, so there are other aspects, and the negative is a little less impacted because you are going for a better use.

Attorney Mondello stated it is not the fact that garages are really not permitted, they are not listed in the B District, but everywhere in the Ordinance where it permits a house, they expect there to be a garage as an accessory use. The Applicant advertised for a D Variance.

Member Ludwig questioned if we can even really vote on this application with what we have in front of us. I believe we should wait until we get a better set of drawings that show exactly what is going to be here and possibly give the engineer and architect involved a chance to review what the client definitely wants.

Member D'Alessio asked if the applicant has thought about a car port? She does not want that.

Attorney Barbarula stated that, per Engineer Nash, once we take that bump out we need a dimension of the closest point, which is the front of the garage and which is not on Mr. McGeoch's plan. The other aspect is to show that we can get the 10' in. I am inclined to ask Mr. McGeoch to give me an overlay, which is a drawing that will fit over the survey drawing that would show the dimension for the variance and show the driveway and not have all the other notations. I will have the drawing made bigger and remove the adjoining properties. The document will be signed and sealed by Mr. McGeoch.

MOTION TO CARRY APPLICATION TO APRIL 4, 2012 MEETING WITHOUT ANY NEED FOR ADDITIONAL PUBLICATION OR NOTIFICATION: made by Member Ludwig, seconded by Member Willse. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members D'Alessio, Hoffman, Ludwig, Willse and Levine.

PUBLIC DISCUSSION: None/Closed

RESOLUTIONS: None

CORRESPONDENCE:

1. Valentine Beauty Supply Letter on Kressaty Application.
2. County of Passaic Letter dated 1/9/2012 on Exxon/1040 Ringwood Avenue They gave it conditional approval, pending their receipt of fees and they will have to eventually obtain a storm drain connection permit.

3. Elizabeth Newton, Principal Planner of County of Passaic, October Letter to Tax Assessor about the fact that we don't give notice on applications that are within 200' of Ringwood Avenue. Even though it is in our packet, most applicants just look at the Tax List because they are told to notify off the list they are given.

Board Secretary will send a memo to the Tax Assessor about this issue.

VOUCHERS: submitted by Ronald Mondello, Esq. for attendance at tonight's meeting in the amount of \$300.

MOTION TO APPROVE: made by Member Ludwig, seconded by Member D'Alessio. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members D'Alessio, Hoffman, Ludwig, Willse and Levine.

VOUCHERS: submitted by Boswell Engineering on the 1040 Ringwood Avenue, LLC Application in the amount of \$513; and another for the Kressaty Application in the amount of \$513.

MOTION TO APPROVE: made by Member Ludwig, seconded by Member Levine. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members D'Alessio, Hoffman, Ludwig, Willse and Levine.

MOTION TO APPROVE DECEMBER 7, 2011 MINUTES: made by Member Ludwig, seconded by Member Willse. Voting yes were Chairman Dunning, Members D'Alessio, Hoffman, Ludwig, Willse and Levine. Vice Chairman Grygus not qualified.

ENGINEER'S REPORT: Engineer Nash had nothing new to report.

DISCUSSION: Permit Extension Act – Attorney Mondello advised the Board that it looks like there is going to be yet another extension of the Permit Extension Act for another twenty-four months. It has passed the Assembly and it looks Senate Bill 31-65 is probably going to get approved, and that would take the Permit Extension Act of 2008 out until December 31, 2014. We were concerned about the Exxon/1040 Ringwood Avenue application as to whether their time frame was up and it looks like it is not and would not be until December of 2014.

For example: If anyone received a variance approval in 2008 and have not acted on it, they are still good until December of 2014. However, there are some exclusions but not ones that come before us (environmental, wetlands).

MOTION TO ADJOURN: at 9:25 P.M. made by Member Ludwig, seconded by Chairman Dunning. Motion carried by a voice vote.

Jennifer A. Fiorito
Board of Adjustment Secretary