

REGULAR MEETING

Salute to Flag: 8:05pm

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 February 13, 2019 respectively, 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

ROLL CALL: Chairman Jack Dunning, Vice Chairman Bruce Grygus, Members Bridget Pasznik, Peter Hoffman, Donald Ludwig, Michael Levine and Larry Malone, and Attorney Ronald Mondello and Engineer Christopher Nash

Member Frank Covelli arrived at 8:10pm

ABSENT: Vice Chairman Bruce Grygus

Application #ZBA2019-03 – Seifried & McAuliffe
35 Grove Street (Block 240/Lot 13.02)

Michael Walker, Esq. of Ringwood, New Jersey, on behalf of the Applicants, Linda McAuliffe and Joyce Seifried, who are both here. We also have people in the audience and we also have here today a Planner, Lisa Phillips, who is filling in for Ken Ochab, to testify.

APPLICANTS' EXHIBITS

- A-1 Application For Hearing
- A-2 Survey of 35 Grove Street Prepared By J.P. Miceli and dated 10/2018
- A-3 December 3, 2007 Deed
- A-4 May 13, 2008 Deed
- A-5 Tax Assessor's Property Record Cards (3 Pages)
One Home and Two Bungalows Built 1946

- A-6 Jeff Brusco Memorandum dated September 13, 2013**
- A-7 House Lease Dated July 1, 1990**
- A-8 February 22, 2018 Letter From Ann M. Smolen, Certified Tax Collector**
- A-9 Survey of 35 Grove Street Prepared By G. Cassetta & Assoc. Dated 3/27/1992**
- A-10 4 Photographs from 1953/1954**
- (1) Susan Trovato sitting in front of the gray bungalow**
 - (2) Grandma Jordan & Babe in front yard with white bungalow in background**
 - (3) Grandma Jordan in backyard in front of the bungalows**
 - (4) John Jordan, Grandma's son**
- A-11 26 Photographs from 3/4/2019 Showing Present Conditions of Property, Structures and Surrounding Area**

Attorney Mondello questioned where are we in this process to proceed?

Attorney Walker answered that we are going to proceed solely on the basis that the structures were pre-existing before the zoning ordinance and also the use as rental properties was pre-existing. We are proceeding on that basis solely this evening. As I understand it, we are asking for a waiver of certain of the requirements because, we are not talking about the use variance.

Attorney Mondello commented if the Board finds that it is pre-existing use, it pre-dates the prohibiting ordinance, then that is it. You get to go back to where you were. If on the other hand the Board finds that there isn't sufficient testimony and they don't believe it's a pre-existing use, at some point you will have to move into a use variance application.

Attorney Walker stated that is my understanding.

Attorney Mondello commented the last thing that I would point out is, if the Board finds that it is pre-existing use and you are expanding the footprint of any of the structures, you would have to go for a D-2 Use.

Attorney Walker commented I absolutely understand but we have no intention of expanding the footprint, certainly not part of this application, or is it the intentions of the Applicants.

Attorney Mondello commented, one other issue the Chairman brought to my attention, you made note that there are four owners of this property, yet it appears that there are only two applicants. Perhaps you can explain to the Board what the situation is with respect to the other 50% owners.

Attorney Walker commented first of all it is my understanding only a party that has an interest in the application has to file the application. However, the other two owners are also family members who are aware of the application and are aware that we are proceeding here this evening. Some are remote; one is in California and we had no intention of bringing them to testify.

Attorney Mondello commented I agree wholeheartedly. If the Board is inclined to grant whatever relief you are seeking, would it be a problem to get some type of consent from those other two owners?

Attorney Walker answered I do not anticipate that being a problem at all.

Attorney Mondello: Call your first witness.

Attorney Walker commented I made a submission to every Board Member so it is a little bit easier for me if we could have that marked as we make reference to it. We also have the survey that was submitted previously.

Attorney Mondello advised that the Application is typically A-1 and whatever supporting documents you have well go in order; A-2, A-3, etc. , so whatever you decide to first mark into evidence will be marked as A-2.

Attorney Walker stated I will mark the survey that was previously submitted which was prepared by John Miceli dated October 29, 2018.

Attorney Mondello swore in Linda McAuliffe, 125 Doty Road, Haskell, NJ

Mrs. McAuliffe advised the Board she owns the property with her sister and two cousins. Her cousins are not present tonight since they don't live around here. One is in California and one is in Florida. They are both aware of the application.

Attorney Walker: Let us take a look at the survey and give me a little bit of a description of the structures on the lot.

Mrs. McAuliffe: The main house is Grandma's House. We call it Big Gram's because that is where we grew up. Big Gram lived next store. We now own Big Gram's property. The house is on the bottom and the bungalows are in the back. They were there before I was born. They are just little summer bungalows that, to the best of our knowledge, were used for people to come visit in the summers from the city, way back in the days, and then after that, I guess they filled in the lake. I don't even know when Lake Scrivani was here, but I am pretty sure that's what they used them for. People always lived there for as long as I can remember. When my grandfather died, Grandma rented them out always at a minimal cost to people. Everybody who lived up there was always very happy. It was like your own little piece of the hill.

Attorney Walker: Referring to the Survey, I know you already made reference to the main house and the two bungalows, can you give a little bit of a description of the bungalows?

Mrs. McAuliffe: They are very old, need a lot of work.

Attorney Walker: Is one of them approximately 572 square feet? Is that correct?

Mrs. McAuliffe: Probably. I'm not good with size but I would image the gray one we're talking about. The gray one is right in the front and the white one is set back a little. The white one always had families living in it. The gray one maybe had a couple with a child or two. The white one is bigger.

Attorney Walker: Just for the record, you have the two bungalows, but there was another bungalow located on the property at one time.

Mrs. McAuliffe: Yes and that one burned down. I believe in the late 90's there was a fire and they just got rid of it.

Attorney Walker: Is it your testimony that typically these bungalows were rented out?

Mrs. McAuliffe: Always until when Grandma passed away. They need work and they need to be fixed. They are old. People will love to live there if we could fix them and make them like they were years ago. Everybody that lived there loved living there.

Attorney Walker: You had family members who lived in the house, in the area, can you give a little bit of a background to the Board as far as who lived in the main house over the years?

Mrs. McAuliffe: Grandma lived there until she died in 2006.

Mr. Walker: Who built the house?

Mrs. McAuliffe: Our Grandfather. He was a carpenter. He was a building inspector in Wanaque but I don't know what year, but I have a sign in my bedroom that says so. They lived in the main house. He died in 1975 and she died in 2006.

Mr. Walker: Right now, who is residing in the main house?

Mrs. McAuliffe: Now we have tenants in the main house.

Mr. Walker: To the best of your understanding, you testified that the bungalows were rented out, historically speaking. Is that correct?

Mrs. McAuliffe: Yes.

Attorney Walker: Do you know when the bungalows were last rented out?

Mrs. McAuliffe: The gray one; I wish I could remember when Dan the Mailman flew the coop. I don't know if any of you are from town, but remember Dan the Mailman? He was the last guy that lived there and I have no concept of time. (Joyce responded probably 2006/2007). Early 2000 for the gray one and the white one I believe the people moved out maybe 2013/2014.

Attorney Walker: Let's go back a little, I am going to make reference to a Deed dated December 3, 2007, which has been submitted to the Board already, is that when you first obtained an interest in the property?

Mrs. McAuliffe: 2007 yes. Our stepmother, my father passed away before Grandma, he owned the property, and she turned it over to my sisters and I.

Attorney Walker: Did there come a time when you acquired a greater interest in the property?

Mrs. McAuliffe: Yes, about two years later. Our other sister, who lives upstate, didn't want to be bothered with it so she gave it to Joyce and I.

Member Ludwig: So the Deed is incorrect with the five names that are on there?

Attorney Walker: There is an additional Deed that was also provided which transfers one sister's interest to the two remaining.

Member Covelli: Counselor, do you want that woman to come up and be sworn in?

Attorney Mondello: After we are done with this witness, right Mr. Walker? Are you going to have somebody else testify? Apparently, Member Covelli is suggesting somebody else in the audience might have knowledge.

Member Covelli: The woman there seems to give a lot of clues behind you.

Member Hoffman: Which one of the people on the Deed gave up their interest?

Mrs. McAuliffe: Janet Nevitt.

Attorney Mondello swore in Joyce Seifried, 53 Claremont Terrace, Wayne, NJ

Attorney Walker: You own 25% interest in the property at this time, correct?

Mrs. Seifried: Yes

Attorney Walker: That was the result of a Deed that was transferred from your other sister?

Mrs. Seifried: Yes, Janet Nevitt

Attorney Walker: Your sister, Linda, testified that your other two cousins are aware of this application this evening, is that correct?

Mrs. Seifried: Yes.

Attorney Walker: You have already heard Linda McAuliffe testify with regard to the history of the property. It would seem, from what I understand, you have some additional information to add to that history.

Mrs. Seifried: Not really.

Attorney Walker: What is your knowledge of the existing main residence itself?

Mrs. Seifried: My knowledge is it has been there my whole life ever since I can remember.

Attorney Walker: How long have you lived in the area?

Mrs. Seifried: My whole life; since 1959.

Attorney Walker: It's our contention that the structures were built in 1946. Structures being both the main house as well as the two cottages. I understand you were not around here in 1946, but do you have any information or family history based upon talking to your family as to when the structures may have been constructed approximately?

Mrs. Seifried: We have the records from the town that 1946 and we have the photo of my mom when she was a teenager sitting in front of them.

Attorney Walker: We have the one Deed from 2007 and we have an additional Deed from 2008, can we mark those Deeds Exhibit A-3 (2007) and A-4 (2008) respectively. You made reference to a certain town record and may I also have this marked as Exhibit A-5. Again this is part of my package. Have you seen this document marked A-5 previously?

Mrs. Seifried: I have.

Attorney Walker: Based upon your review of the documents, which consist of three pages, what is your understanding as to when these structures were first erected?

Mrs. Seifried: 1946

Attorney Walker: One of the pages is for the main house, which is on the road, which shows the date of construction is 1946 then there are two additional pages which refer to the two bungalows, and it shows that the bungalows were constructed in 1946. Is this correct?

Mrs. Seifried: Correct

Attorney Walker: I know you weren't here in 1946, 1950 or 1951, but based upon talking to family members over the years, do you have any ideas when these structures may have been first constructed?

Mrs. McAuliffe: I think they were built, to the best of our knowledge, right after the main house was built. I have piece of what looks like an old paper survey from when our grandparents brought the property and it is dated in the early 40's. There are no buildings on it because there was nothing built then, and then he built them. Mom said, when she came around in 1953, that they were already there as you can see in the pictures that we have of her and Grandma and our dad sitting in the yard out in front of them that they also had been there for quite a few years.

Attorney Walker: The property has been in the family for a very long period of time.

Mrs. McAuliffe: The property has been in the family forever. Our grandmother was born on Grove Street and died on Grove Street.

Attorney Walker: To your knowledge right now, you've indicated that the cottages have been historically rented out. Was there ever any intention to no longer rent them out?

Mrs. McAuliffe: No, our intention was to get enough money to fix them up and make them like they used to be.

Member Levine: Regarding the white cottage, you mentioned that the last renter was around 2013/2014, so we are talking about four years. It looks like it needs a lot of work.

Mrs. McAuliffe: Yes it does.

Member Levine: So in this time frame, from when somebody rented it to now, it degraded to this extent?

Mrs. McAuliffe: Well there in pretty sad shape but Grandma was 96 years old. She had no money.

Member Levine: Was it in this shape when the renters were there?

Mrs. McAuliffe: No, absolutely not.

Member Levine: Over the four years, it went downhill to what I saw today? I didn't go inside, but the outside looked in pretty bad shape.

Mrs. McAuliffe: Probably because there was no heat in there. Yes, I saw pieces of stuff falling down, but it wasn't like that when they were living there. But it wasn't the best thing, if they paid \$500 a month rent. It is in very bad shape and that's why we want to fix them. Can't you picture a really cute little house back there?

Member Hoffman: Your intent is to rent it?

Mrs. McAuliffe: Yes

Chairman Dunning: The letter from the Building Department in 2013 is when they pulled the water meters and at that point it hadn't been used for a while and you got the water meters off of both bungalows. From the looks of the tags, the electric looks like it has been turned off probably just as long, if not longer. It has hard to tell.

Mrs. McAuliffe: Can we say why we did that?

Chairman Dunning: Because you were getting charged for water and nobody was in the house.

Mrs. McAuliffe: Exactly. We didn't know. Because Joyce chose the word uninhabitable because to us it would be uninhabitable, but to people who need a place to live and not a lot of money, it was a way for them to have a roof over their head. There was a family living there legally.

Attorney Walker: We have the Memo from the Building Department dated September 13, 2013, and we'll have that marked as A-6. I am going to read a pertinent sentence from this Memo: "Ms. Seifried states the two rear bungalows are not in livable condition, but she may plan to fix one up in the future." I think the intention there was to fix them up but again this may not be perfectly phrased. It also indicates that they didn't intend to abandon it, but in fact, fix it up. If you did not fix it up immediately, is there a reason why you did not?

Mrs. Seifried: Yes, lack of funds. We had a really bad tenant that we needed to have evicted, which took months, so we had no rental income and the taxes are high there.

Member Hoffman: That was the tenant in the main building?

Mrs. Seifried: Yes.

Attorney Walker: It was the finances that were an issue?

Mrs. Seifried: Yes, they are an issue.

Attorney Walker: Was it ever your intention to abandon them or have them ripped down?

Mrs. Seifried: Never. We never abandoned them. We have insurance on them, we pay taxes on them, we landscape them.

Member Ludwig: The Memo stated you were only go to fix up one of them. Was that a typo.

Mrs. McAuliffe: Probably because we just want to make them like they used to be.

Mrs. Seifried: That was me, being me. Not understanding that you take whatever I say really seriously.

Member Levine: You pay taxes on them up to today, every year, up until today?

Mrs. Seifried: Yes and homeowner's insurance on them.

Chairman Dunning: You showed us a copy of the House Lease. Is that the last Lease?

Attorney Walker: No it is not. Unfortunately, it was the only Lease that they had from the bungalows. We will mark this Exhibit A-7. It was also to show that, historically speaking, they had been rented out.

Attorney Mondello: And there may have been tenants there they didn't have a Lease, they were month-to-month?

Mrs. Seifried: That was when my grandmother owned it.

Member Covelli: I hear us trying to get dates in order of when these bungalows were occupied. I think there is evidence in front of us that I'd like clarification on. The fact that the meters were pulled, means the meters were there. So if the meter is there, it means there were connections paid for.

Mrs. Seifried: Yes for water and electric.

Member Covelli: Do you have records on those?

Mrs. Seifried: Back to the 50's?

Member Covelli: Maybe from the 90's up?

Mrs. Seifried: From when we inherited it?

Member Covelli: Actually the town has records. You don't have to keep a record; the town would have a record.

Attorney Walker: I think by virtue of the fact that the meter was there, we know somebody was paying the bills, whether it be the tenant or the owners of the property.

Mrs. McAuliffe: We always paid the water bills.

Member Covelli: The next letter dated February 22, 2018, Exhibit A-8, is from Ann Smolen, the Tax & Utilities Collector, says they adjusted something. This letter was provided by the Applicants.

Attorney Walker: That was provided with the Denial of Permit. I think once again that was an indication that they were looking to fix them up, develop them, and eventually rent them out.

Chairman Dunning: Are they all hooked up to the city sewer system?

Attorney Walker: No they're not. They are septic.

Mrs. McAuliffe: We got an exemption, or whatever you did back when everybody was hooking up? I have that paper somewhere at home that they were exempted because it's up a hill that I think is full of rock and they would have had to blast out all of that.

Mrs. Seifried: It is rock; the house is on a rock.

Member Levine: Have you filed yet with the Borough as far as what upgrades or renovations you wanted to do.

Attorney Walker: They couldn't do that because they were denied the construction permit so the next stop was to do what we are doing right now.

Member Hoffman: Do you have the location of the septic? Is the septic adequate for two dwellings and did you have it inspected by someone to make sure that it is adequate?

Mrs. McAuliffe: We haven't done anything because you wouldn't give us any permits.

Attorney Mondello: The Health Department will take care of that.

Mrs. McAuliffe: I know where the one is by the white house.

Chairman Dunning: Is that the green pipes about 8" coming out of the ground?

Mrs. Seifried: No, there are no pipes coming out of the ground.

Member Ludwig: 8" is awful big for a sewer pipe.

Chairman Dunning: On the right side of the white house there are two round stones covering up two pvc pipes.

Mrs. McAuliffe: I understand that stuff, but my husband knows.

Chairman Dunning: It is marked on your drawing is why I looked at it.

Mrs. McAuliffe: That is where the septic is. One is clean out thing maybe.

Attorney Walker: We do understand that if the Board does determine this is a pre-existing use, we are still going to have deal with the Health Department.

Chairman Dunning: The septic is fifty years old and you might have to replace.

Mrs. McAuliffe: We understand we are going to have to take all those steps in the future.

Chairman Dunning: Are there three septic; one for each house?

Mrs. McAuliffe: No.

Member Covelli: The main house is on the sewer?

Mrs. McAuliffe/Mrs. Seifried: Yes.

Chairman Dunning: The problem is the survey you provided from Cassetta & Associates out of Hackensack from 1982 and your new survey don't agree.

Attorney Walker: Normally surveys will not show septic.

Chairman Dunning: Not septic, another question. This survey shows that the house to your right is on your property. When this new survey was done for some reason the surveyor realigned the lot line, but left the old lot line on the drawing.

Mrs. McAuliffe: You mean the corner of the house on the right is on our property?

Chairman Dunning: Yes. The new survey shows it at .8' and the old survey it's at 3' 1".

Mrs. Seifried: We didn't move the house.

Chairman Dunning: The house up by the white bungalow, is that on your property also?

Mrs. McAuliffe: It could be. It was all family.

Mrs. Seifried: The main house was Grandma's. My father lived to the right with my mom and us and my aunt lived in that white house that you are speaking you. So it was all family, but not anymore.

Chairman Dunning: You have overlapping issues that are butting on top of your property. If you sold this tomorrow, it might create an issue.

Attorney Walker: If that was the case, there would have to be an easement in place.

Chairman Dunning: The other question is, while talking about surveys, is this driveway right-of-way to the neighbor's garage. Is that your garage?

Mrs. Seifried: No.

Member Hoffman: That is where your parents lived. The one with the right-of-way and the garage in the back of the main house.

Mrs. Seifried: Yes. They don't live there anymore, but that's an easement we granted.

Attorney Walker: Are you questioning how the easement originated?

Mrs. McAuliffe: The house on the right our sister brought from our mother and when she wanted to sell, in the old days you used to be able to share driveways, so there was a driveway on the right of that house that we always used when we all lived there. Whenever she left, I don't know the date, 1992 I guess, they wouldn't allow that to happen, so she had to put a driveway through the back of Grandma's yard and that is what that easement is. So the people that live there now, park their cars in that driveway, on the easement of our property.

Attorney Walker: It leads to a garage correct?

Mrs. Seifried: Yes, but it cuts right through our property.

Attorney Walker: They have a right to drive through the property. The easement gives them that right, but not necessarily to park on the easement.

Member Levine: There are two cars parked there.

Mrs. McAuliffe: Well they park on there and we are very friendly people. We don't cause rifts with the neighbors.

Chairman Dunning: There are just a lot of overlapping things.

Mrs. McAuliffe: Because that's Wanaque back in the good old days. Everybody gets along. **Attorney Walker:** The surrounding property owners, with regard to house encroachments or easements, don't seem to be creating a problem there. If they do, that really would be between the respective property owners.

Attorney Mondello: Agreed. You are off to Superior Court, not us.

Mrs. McAuliffe: The people that live there are very kind and we have no problems with them and they have no problems with us. They share shoveling the hill to get in and out.

Member Levine: What if they sell tomorrow?

Mrs. McAuliffe: They just moved in.

Member Levine: What if they sell next year? I am just saying the nice agreement you have with them can change.

Mrs. McAuliffe: They just moved in and we had the same agreement with the guy that lived there before. It's not ever been an issue.

Attorney Walker: If there was a change in title, and if there were an issue, that would probably have to be addressed in terms of a more precise language with respect to the easement and with respect to any encroachment. It wouldn't preclude the sale necessarily because yes it happens in Wanaque, it happens in a lot of towns. Whatever easement is here right now is the driveway and, again, we know what the use is, but if that became an issue it would have to be clarified between the respective property owners.

Chairman Dunning: I think in some of your paperwork it said originally that garage was entered from the reverse side.

Mrs. McAuliffe: That is correct.

Attorney Walker: The original access to this property, 13.01, where was it from?

Mrs. McAuliffe: On the right of the house.

Attorney Walker: Before this easement existed, how did you get to the house?

Mrs. McAuliffe: We got up the same driveway that the people in the back use. I don't know what lot that would be. There is a little gray house in the back.

Member Ludwig: Lot 16 and 17.

Mrs. McAuliffe: 45 Grove Street was our house. 41 Grove Street; whatever is next store. We always shared that driveway for that house in the back. Because, back in the days of Mr. Grotti, he didn't care if we used his driveway. I'm going back to old Wanaque; that is how it was. But then they won't allow my sister to do that so that is why she put that other driveway in. So they closed up that side of the garage and put on a garage door on that side.

Chairman Dunning: If you sell this property tomorrow to somebody else, there's an awful lot of open issues here that are going to result in some real problems somewhere along the way.

Attorney Walker: I don't think they will. They may need to be ironed out, but I think they will.

Member Covelli: Based on my knowledge, I have to ask this question. Did your grandmother hook that house up prior to 1992 to the sewer system? In other words, when the sewer system came through Wanaque, did the main house get hooked up to the sewer system?

Mrs. McAuliffe: Yes. The main house did.

Member Covelli: The answer to that question is worth over \$20,000 and that is why I asked it. If the answer is yes, than that means if you were to sewer the two bungalows, you will not have to pay another connection fee. The connection fee runs with the property. If the answer is it happened afterwards, you would have to pay a connection fee for each one of them. I am going to believe, and I'm not an engineer and don't represent you, that neither one of those houses is going to have a sufficient septic and you're not going to build a septic. You're going to be looking to connect them to the sewers.

Attorney Walker: Actually, that's well said.

Member Covelli: I would hate to see them waste their time going through this to then run into that blockage because a typical sewer system today is \$16,000 to \$20,000 proposition and that's a nice easy one with no problems. With the rock issues you have and other things and then it's not a simple easy and you wouldn't spend that money on 500 square foot bungalow, so you are probably going to go down that road. If they connected prior to the connection fee that was paid at the time runs for anything on the property, and I happen to know the answer to that question.

Mrs. McAuliffe: \$825.

Attorney Walker: I appreciate that you mentioned this since it is good for them, as the owners of the property. You are absolutely correct. It is going to be a lot less for a plumber to tie into the existing line then it would be put in one or two septic systems.

Member Covelli: Also septic and tenants don't get along especially ones that to know how to use a septic.

Attorney Walker: If appreciate, I would like to call Susan Trovato as my next witness. These witnesses aren't going anywhere.

Chairman Dunning: Any other questions from the Board Members? Okay, let's open it up to the public. Does anybody in the public have any questions on the testimony given so far? Next witness.

Attorney Mondello swore in Susan Trovato, 9114 Warren's Way, Wanaque, NJ

Attorney Walker: Mrs. Trovato, you heard the testimony given prior. Can you tell us the relationship between Joyce, Linda and you?

Mrs. Trovato: I am Joyce and Linda's mother. I lived up on that property. I went with their father in 1953 and, at that time, the bungalows were definitely there. It's my knowledge they had been there from whenever the house was built because they would talk about all the different families that would come up in the summertime to visit. Other than that, I know they've always been there.

Attorney Walker: I am going to show you these four photographs, and you have photocopies of these photos, which we'll mark as Exhibit A-10. I am going to show you the first picture we'll mark as A-10-1 and can you tell me what it shows?

Mrs. Trovato: It shows me sitting in front of the gray bungalow with the white one in the back and that was when I was about 18 years old and I'm almost 84. As I said, to the best of my knowledge, they've always been there.

Attorney Walker: The photograph marked A-10-2 can you tell me about this one?

Mrs. Trovato: This one shows Grandma Jordan and Babe sitting in front yard showing the white bungalow in the back and I'm not quite sure if that's a piece of the gray one or not. Like I said, that was all in 1953.

Attorney Walker: Photograph A-10-3?

Mrs. Trovato: That is Grandma Jordan in the backyard in front of the bungalows. I would say this is in 1953, possibly 1954. Like I said, I know they were rented before that because they would talk about the different people that stayed there, came up for the summer, but I can't say anything before 1953.

Attorney Walker: Photograph A-10-4?

Mrs. Trovato: This is John Jordan, Grandma's son. I guess they were all taken about the same time it looks like.

Attorney Walker: Do you have anything to add about the history of the property and your knowledge of when the as to when the bungalows were built?

Mrs. Trovato: To the best knowledge, Mrs. Jordan's father gave them the property to build that house on and that would have been John Kazaza. They owned a lot of property on that street. I can't say just how much, but there was Grandma's house, their Aunt Sis had a house in the back near that white bungalow and that house is still there. It was all family property.

Attorney Mondello: Any questions from the Board Members? Hearing none, seeing none. Any questions from residents? Next witness.

Attorney Walker: I am going to call our Planning Expert, Lisa Phillips.

Attorney Mondello swore in Lisa Phillips, 1200 Avalon Way, Bloomingdale, NJ.

Attorney Mondello: Have you appeared before this Board?

Planner Phillips: No I have not.

Attorney Mondello: Briefly give your qualifications.

Planner Phillips: Bachelor of Science Degree in City Planning from the Pennsylvania State University. I started my career in 1987 and was licensed in 1992 both in the State of New Jersey and Nationally Certified. I worked for Burgess Associates for 10 years. Have worked in Morris, Bergen, Passaic and Essex.

Attorney Mondello: Have you appeared before any Zoning or Planning Boards in Passaic County?

Planner Phillips: Yes, Wayne quite a bit.

Attorney Mondello: That's enough for me. Any objections to admitting Planner Phillips as an expert in the field of Planning? You are in.

Attorney Walker: You have heard the testimony presented here this evening, correct?

Planner Phillips: Yes.

Attorney Walker,: Can you give a brief summary of what you reviewed prior to coming today to aid you in testifying?

Planner Phillips: I read through all of the documents and obtained the tax assessment cards to see what dates for each of the buildings which was listed as 1946, even if they weren't built the same year, sometimes that is done because they are all part of the same property, but I did evaluate that. Looked at the Zoning Ordinance and Master Plan. Even though this isn't a Use Variance at this point, I did want to get a sense of it. I've gone to the site and actually, Ken Ochab did prepare the photographs that I am going to hand out. You don't have to go through each photograph but it is giving the Board a good sense of what exists there today, presenting what the dwellings look like inside.

Attorney Mondello: Let's just mark this Exhibit A-11, 26 photographs.

Planner Phillips: There are also photos of other existing accessory type structures because, as I understand learning more here tonight about the neighborhood, this seems like an area that had once been seasonal. Driving around the neighborhood I could see that there is still some of those buildings that exist so as you go through your packet, you'll be able to see on some of the latter pages some other properties that have similar type situations.

One of the things that we need to discuss technically, because I think we have covered historical knowledge *per se* and personal knowledge of this site. Technically what we are here for is to talk whether we could be deemed a pre-existing, which it's non-conforming, or pre-existing condition. One of the things I wanted to remind the Board of is that we have to look at intent to abandon and also somewhat of a time frame and whether there was any kind of action by any of the owners to actually abandon this type of use. I believe there was a third cottage, but I'm not quite sure where on property it was located, that did burn down in the 1990's. At that point, I believe, there were still renters on the property. But if they were in such disrepair, and things like that, if there really was an intent to abandon and just go back to having a single-family house on a rather large property, they could have taken the other structures down then. It would have gotten rid of all the accessory structures on the property so I don't think that there was really any intent. It would have been easy to do, they probably had some type of machinery up there to finish the job with the fire having destroyed. I think just from common sense looking at, if there

was really any intent during that time, they could have taken all those bungalows down at that point.

Attorney Mondello: If they did that, they wouldn't be paying taxes on the houses.

Planner Phillips: Right, exactly. The first two pages are the property so you can see the driveway that we've been speaking about to the left. The gray/light blue front cottage, as you can see on the lower left, and that is when you go up to the driveway that would be to your right. The rear cottage would be as you go up you'd go to the left. The inside Photo Exhibit B, which is attached to the first page, you can see the inside and it's still set up as a residential structure. You can see that there is definitely work that needs to be done and I believe that is what kind of precipitated the applicants to come before the Board was that they were filing to get permits to do some work and then this is when it all came about that these were pre-existing, non-conformities and that this had to go before the Board, so there was some intent on their part. You can see that the residential natures still exist in disrepair, I agree. The second individual page is the front cottage so you can see the inside, you can see where the utilities had been connected at one time, you can see the façade and the roof definitely need work. The third is the photo exhibit of the rear cottage. I would say that might be in a little bit better shape and I think that is also the larger of the two cottages. You can see the existing house in the lower right photograph of the page labeled rear cottage and you can see that would be the adjoining dwelling that was spoken about earlier, I believe, with the deck. Next, this is just the street views on Grove so you can see the existing conditions. This is the neighborhood along Grove and I believe parts of Park Street just showing that there are a lot of these types of accessory uses in the area. You can see behind some houses there looks like there is garage that has been converted to a house, and another one where there is a garage with a living unit above. These are all within a block or two of the area. The last photograph is at the corner of Belmont, so as you are approaching Grove you come to that corner, which is a multi-family. It almost looks like it had been a motel-type of structure maybe when it was constructed, but it is certainly a multi-family. Then there is another one on Colfax Avenue that shows a detached dwelling to the rear that has a second unit in it. So this is an area that has these types of accessory structures. I don't think it is something that unique, but we are here to discuss whether the Board could view this as a pre-existing, non-conformity. We have proof that at least a Building Ordinance was adopted in 1952.

Attorney Mondello: Actually, the Board may be able to take judicial notice of the fact that that prohibiting Ordinance came into play in 1958. Remember the submission we got that was actually a copy of the publication that basically said from this point on, a single-family residential only.

Attorney Walker: This is also my understanding from reviewing the prior Tree Tavern application.

Attorney Mondello: That was submitted by the objector.

Attorney Walker: We were going based upon the information that we had initially, but then having reviewed further, my understanding as you indicated the Building Ordinance came into play in 1958.

Attorney Mondello: Even the applicant had a hard time; they didn't find it. The objector actually found a copy of the newspaper article, the publication, of that particular Ordinance. It was 1958.

Member Levine: On the removal of the meters, electric, water, and whatever, what precipitated the utilities to remove the meters, was it lack of payment, what was the reason they removed the meters?

Attorney Mondello: There was testimony that they didn't want to pay the money. Nobody was using it.

Member Levine: So it was a lack of payment.

Mrs. Seifried: It wasn't a lack of payment, we always paid for it. We didn't want to pay for it since nobody was living there. I think the electric meters were taken off because nobody lived there, tenants weren't paying electric bills, so the electric company came and took them off.

Member Malone: For clarification, it was your decision to stop the water.

Mrs. McAuliffe: Yes, it was our decision, and you had to be careful with the winter if that the pipe doesn't freeze.

Attorney Walker: But you intended to carry on the use as rental premises.

Mrs. McAuliffe: Yes. We didn't know this stuff and it would be such a big deal if we turned the water off.

Planner Phillips: So just in terms of the proof, there are some cases on this. There is one out of Saddle River that I think is one of the oldest cases that about a horse barn that hadn't been used in 27 years. The Court found that it really wasn't really an abandonment; that even though dis-use of it, does not constitute abandonment. So there has to be some overt action to actually abandon, such as a change in use, as if they had changed that to a work shop or something else or totally converted it. In this case, these properties have been maintained as residential structures so there has not be any kind of overt action to actually abandon that type of use; that secondary use.

Attorney Walker: The case you are referencing is *Borough of Saddle River v. Bobinski*, Chancery Division, 1969.

Planner Phillips: There was a recent objector case, *Berkeley Square v. Trenton*, and that actually had to do with the objector, similar to the situation you just cited, where there was an objector who had wanted to present proofs, but it was shown that they had to prove that there was some action by the owner that proved that there was going to be an intent to abandon; not just that they weren't using it over five, six, ten years. The Court upheld the applicant's position and went against the objector in that situation and they laid out the reasons why and it was about these two factors if I could just quote from the Municipal Land Use Law and, actually the Cox Book, where it discusses this: "Some overt action or failure to act which carries sufficient implication that the owner neither claims nor retains any interest in the pre-existing use." So that is one of the prongs of you look at whether something is a pre-existing, non-conforming and whether it has been abandoned. The other facet is an intent to abandon. Examples of non-use for extended period of times are not abandonment; however, change to another use would be considered abandonment, or if they'd taken them down. Like I said, they had that opportunity in the 90's that, if they were tired of the situation, if they didn't want to be landlords any more, if there were other situations, they could've just said, when you take that building down, let's just take them all out and be done with it. They didn't and retained them. I think that is a very individual example, but on this property, that's exactly what happened. They retained the other two and they just took down the third one.

Chairman Dunning: Any questions from the Members? Let's open it up to the public. Any questions in the public on this statement by the Planner? Seeing and hearing none, we close the public portion.

Attorney Walker: I have other witnesses here to testify as to some history. I don't know if I need to inundate the Board with this, okay. I think we have established that 1958 is the operative date. We have had Susan Trovato testify that she has photographs of the property from at least 1953, if not earlier. Again, I have other people from the area and if the Board wants me to, I will bring those witnesses us.

Chairman Dunning: It is your application.

Member Ludwig: Is it really necessary?

Attorney Mondello: If the Board feels that there is an adequate need, then we can proceed. What the Chairman is just saying it is Attorney Walker's call, but what he's trying to do is feel out the Board whether or not you want other testimony.

Chairman Dunning: Any of the Board Members want to hear from some of the residents in that neighborhood?

Attorney Mondello: I think you have your answer.

Attorney Walker: We have nothing further.

Attorney Mondello: There are no other witnesses. Did you want to sum up or anything?

Attorney Walker: The only thing I want to indicate very briefly is the operative date.

Chairman Dunning: We have the Building Inspector here this evening. Mike, do you want to put anything into this.

Attorney Mondello: It would be pretty unusual to have the Construction Code or Building Inspector add anything, but you're certainly welcome to say something if you want.

Mr. Hafner: I think the Planner did quite a good job summing up abandonment.

Chairman Dunning: I have one question of you.

Attorney Mondello: Swore in Mike Hafner, Construction Official, Borough of Wanaque

Chairman Dunning: Have you been out to that property and looked at those bungalows?

Mr. Hafner: I have not. I have only been to the front house most recently and that was at night so I did not go to the back of the property.

Chairman Dunning: Then you can't answer my question.

Chairman Dunning: The real question I have, does the gray house have to be knocked down?

Attorney Walker: No. There is no intention to knock down.

Chairman Dunning: It can be rehabilitated somehow? That thing is really a mess. It seems to have a lot of rot in it and I think it could fall down on somebody.

Mrs. McAuliffe: Yes. We were under the impression if you left one wall standing, you could rebuild and I'm going back to before we owned any of that. That as long as the walls were standing, you could fix them.

Attorney Walker: The question is, is it your intent to fix it or is it your intent to knock it down?

Mrs. McAuliffe: It is our intent to fix them, and make them like they always were. Bottom line; that is all. We want to see it like it was when we were growing up. It took us a long time to get here.

Member Ludwig: Construction wise, as a builder, it may look rotted, but I'm not so sure it is as bad appears. I have seen worse.

Chairman Dunning: The white house has been fairly kept up. The gray house is in unbelievable condition. The last roof has actually rotted away and now you see the second roof under it. All the way around, it seems to be rotting away.

Mrs. McAuliffe: We're not saying it doesn't need a lot of work.

Chairman Dunning: I don't think anybody has been in the house in a long time. The real question is, if you are going to knock down, you deal with the Building Department and get a permit to rebuild it.

Mrs. McAuliffe: You can?

Member Ludwig: If she leaves up a couple of walls and does it piecemeal, its sketchy?

Chairman Dunning: We are here tonight so let's deal with this because that building is in sad shape.

Mr. Hafner: In the case of total destruction, it cannot be rebuilt, unless they come back for Board approval. Then it really comes down to is partial. There is a ton of case law out there with regards to partial destruction. Is it more than 50%? So the old adage of one wall, two walls; it's going to be assessed at that point so there is no guarantee that taking down the structure that it can be rebuilt.

Attorney Mondello: This is the issue. If you have to take the entire cottage down, you now lose your pre-existing, non-conforming constitutional right.

Mr. Hafner: That is correct.

Attorney Walker: The testimony has been consistent that they have no intention of tearing it down.

Member Pasznik: I think he is just saying if it's beyond repair.

Member Ludwig: Let's put it this way, to me the gray house looks it can be bearable being in the business as long as I have, but if it is not able to be rebuilt, will you still go through with rebuilding the other and fix that up?

Chairman Dunning: That's the question. Since we are hearing this application, if that house is not rebuildable and they have to knock it down and build a new structure, they have to come back to this Board.

Attorney Walker: They do; there is no question about it.

Member Covelli: Counselor, as parliamentary point of order, that's not germane for us. We are here to establish if it is a pre-existing, non-conforming use. If there is an issue with the structure, what percentage of it can be fixed or not fixed, they have to deal with the Building Department. We have to get back to the issue of was it there or not; not can it be fixed or not?

Chairman Dunning: Attorney Walker lead us into opening that. If we have to go to a Use Variance for whatever reason, you would deal with that. That's what this may become.

Member Covelli: I don't want to go down this road because I happen to know a guy that fixed a house at 906 Ringwood Avenue, and a piece of that house was torn down. It was deemed that it would still meet the requirement. What they are going to run into is that because it's not owner occupied, you are going to rent it, and they are going to do what that guy did and they are going to get an architect to design how they are going to fix it. There are going to be parts of that house that will meet new code, and parts of that house that will meet old code. If you want to go down the road, that's where their headed. That is for

them to deal with. We are here to establish was it here prior to 1958 and I just want us to get to that point, make that decision, and they have a whole host of things they can have fun with. They can even find out if they have a cesspool, which isn't even legal. You have lots of fun things you can have fun with the Borough. Let's go back to what we're here to decide.

Attorney Walker: I certainly appreciate Mr. Covelli's comments, but it is our intent to rehab the existing structures. It is your point that one unit is beyond rehab, but I don't know that to be the case. Again, I think the issue here tonight is did it pre-exist; yes it did. Did we abandon; no.

Engineer Nash: In other municipalities in similar cases, if you have a building that is oversized, greater than the lot coverage allows, and they want to re-use the building, the variance is easier to obtain because you are using an pre-existing , non-conforming use. You are not expanding it, but re-using it. So what happens is they want to use and their intent is to use, however, when they go to construction, they find out the foundation is no good, we have to rebuild this whole thing. So now they have approval for excessive lot coverage. In this case, you kind of have the same thing in essence. Their intent is to rebuild the structures and they go out there, we can't save any of them, but they're going to rebuild them, so what stops them from rebuilding them completely?

Member Covelli: If you want to look at that guy down on 906, after he took down a piece of the building that was beyond, every piece of foundation that was used was and is there, and that was the answer in that case. I don't know what they are going to do, but they will have the fun of home ownership and dealing with it. They will work with the Construction Department and, if they run into a blockage, I guess we'll see them again, if we have to.

Attorney Mondello: The first question before the Board is whether or not this use pre-existed the prohibiting Ordinance, which existed or was published in 1958?

Member Covelli: Do we have any other questions, because I am ready to make a Motion?

Motion that based on the testimony given to this Board this evening, sufficient evidence has been presented to establish that the two structures located as auxiliary structures on 35 Grove Street were pre-existing to the zoning of Wanaque as established by the date of 1958, and that we therefore affirm their existence.

MOTION MADE THAT, BASED ON THE TESTIMONY GIVEN TO THIS BOARD THIS EVENING, SUFFICIENT EVIDENCE HAS BEEN PRESENTED TO ESTABLISH THAT THE TWO STRUCTURES LOCATED AS AUXILIARY STRUCTURES ON 35 GROVE STREET WERE PRE-EXISTING TO THE ZONING OF WANAQUE AS ESTABLISHED BY THE DATE OF 1958, AND THAT WE AFFIRM THEIR EXISTENCE: made by Member Covelli, seconded by Member Pasznik. Voting yes were Members Covelli, Pasznik, Hoffman, Ludwig, Levine, Malone and Chairman Dunning.

Attorney Mondello: Member Covelli or any other Board Member, we would need some kind of Motion to determine whether or not the Applicant abandoned that use that you just found pre-existed the prohibiting Ordinance. There are two prongs to this. You have to find that it existed prior to the prohibiting Ordinance.

Member Covelli: If you were someone that was going to make such a Motion, even though you can't because you are counsel, but if you were, how would you frame such a Motion?

Attorney Mondello: Make a Motion to determine that, based on the evidence, the Applicants did not intend to abandon their use.

MOTION THAT ESTABLISHES THE COUNSELOR HAS MADE SUFFICIENT CAUSE THAT THE APPLICANTS DID NOT INTEND ABANDON THE USE OF THE PROPERTY: made by Member Covelli, seconded by Member Malone. Voting yes were Members Covelli, Pasznik, Hoffman, Ludwig, Levine, Malone and Chairman Dunning.

PUBLIC DISCUSSION: Let the record show there was no one to come forward.

RESOLUTIONS: None

CORRESPONDENCE: None

VOUCHERS: submitted by Ronald Mondello, Esq. for attendance at the May 1, 2019 Meeting in the amount of \$400; and for 1049 Ringwood Avenue in the amount of 300.

MOTION TO APPROVE: made by Member Ludwig, seconded by Member Hoffman. Voting yes were Chairman Dunning, Members Covelli, Pasznik, Hoffman, Ludwig, Levine and Malone.

MOTION TO APPROVE MARCH 6, 2019 MINUTES: made by Member Ludwig, seconded by Member Pasznik. Voting yes were Chairman Dunning, Members Covelli, Pasznik, Hoffman, Ludwig, Levine and Malone.

ENGINEER'S REPORT: None

DISCUSSION:

Attorney Mondello questioned if the Board is inclined to go into closed session to discuss the Bellante/Tree Tavern Litigation? I will need a Motion and a Second.

MOTION TO GO INTO CLOSED SESSION: made by Member Pasznik, seconded by Member Ludwig. Voting yes were Chairman Dunning, Members Covelli, Pasznik, Hoffman, Ludwig, Levine and Pasznik.

Closed Session Began 9:23:42

Closed Session Ended 9:30:05

MOTION TO ADJOURN AT 9:30 PM: Motion carried by a voice vote.

Jennifer A. Fiorito
Board of Adjustment Secretary