

REGULAR MEETING

Salute to Flag: 8:03 P.M.

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 Herald News and the Suburban Trends on March 14, 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

ROLL CALL: Chairman Jack Dunning, Vice Chairman William Grygus, Members Joseph D'Alessio, Peter Hoffman, Donald Ludwig, Michael Levine, Attorney Ronald Mondello and Engineer Christopher Nash.

MEMBERS ABSENT: Members Frank Covelli and Jaime Landis

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
Continuation of Hearing from March 7, 2012 Meeting**

The witness and expert are still under oath regarding any testimony given by them.

**Revised drawings have been submitted, and reviewed by the Board's Engineer.
We have eliminated the bump out and have an Exhibit that is a blow up of that section and would like to mark it Exhibit A-6.**

The Applicant testified that, since we were last here, I have installed a fence upon the property line between my home and the retail store, and there are still cars parked between the fence and my house. These cars have adequate spacing to drive out onto Third Avenue and do not have to go on the property of the retail store.

Attorney Barbarula stated that we have basically made changes in response to the Board's comments. We have eliminated the bump out, made the garage smaller and have shown how the elimination of the edge of the property and driveway show that there is no problem with ingress and egress.

Vice Chairman Grygus questioned when this new exhibit was received. Attorney Barbarula stated he was just marking it now for a demonstration exhibit. Chairman

Dunning stated that it is a blow-up of the one we have. Attorney Barbarula felt that the original one was a little too small and I asked the surveyor if he could blow it up so we could use it for discussion purposes.

Attorney Mondello believes Vice Chairman Grygus' concern is that this exhibit has not been supplied to the Board previously. Are they exactly the same? Engineer Nash stated "no", and this is Vice Chairman Grygus' concern.

Engineer Nash stated that the difference is the clearer text. For example, in the front of the house, it says "walk to be realigned", that is not on the previous plan.

Attorney Barbarula stated that the physical shape of the garage and the existing structure have not changed on the plan. Basically, this is just a demonstration exhibit.

Vice Chairman Grygus commented that the dotted line showing the widening of the driveway on this new exhibit, does not appear to be shown on the sealed plan.

Engineer Nash stated "it is not".

Vice Chairman Grygus' concern would be that this new exhibit/plan was not on file ten days before the hearing. My concern is that Engineer Nash's letter, item 4, still shows that "the proposed driveway will need to be shown entirely on the Applicant's property" and clearly the plan received on April 20th does not show that.

Attorney Barbarula stated that I am showing you in this demonstration exhibit, with the dotted line, is that it can be done.

Attorney Mondello believes the changes are not material and not so substantial. They were made to simply help educate the Board as to what the Applicant was doing. This particular exhibit was not on file, but the older one was on file from the 20th. I don't see that as being a material defect that would divest us of jurisdiction.

Vice Chairman Grygus questioned Engineer Nash if he could determine how wide the proposed curb cut would be based upon this plan? Engineer Nash stated we are labeling it as 12 feet. Across the frontage, it is my understanding that is what the 12 feet relates to.

Attorney Mondello stated, if the Board was so inclined to grant the Applicant the relief that she is seeking, would they would want a set of as-built plans for the engineer to say "okay", we saw that you proposed the 12 feet and it is actually there?

Attorney Barbarula stated this exhibit was basically given out so the Board could see it better. I will have the Applicant testify as to how wide she is going to make the driveway. Exhibits are allowed to be presented on the night of a hearing and I thought it would be easier for you as a visual method. If you don't want it, I will take it back and just have the Applicant testify.

Chairman Dunning confirmed that this document was being used to back-up the testimony. Either way, the original plan is what we are working with.

The Applicant testified that when the driveway comes out to the property line and it comes out onto Third Avenue, the width of the driveway will be 12 feet. The three cars parked between the house and the fence are using this width of the driveway and have no problems coming in and out onto Third Avenue. There is also no grass on this side of the property, just cement. I will also be redoing the walkway to conform with the new driveway.

Chairman Dunning questioned Engineer Nash if there is adequate clearance where the driveway starts to bend right at the porch and step? It seems to be the narrowest point

right there. Engineer Nash answered “yes”. It is not ideal, but you will be able to walk around the car parked there.

No other questions for the Applicant.

Chairman Dunning asked the Board if there were any questions for the Architect, Mr. Macagney, on the new drawings submitted?

Member Hoffman asked if the dining room wall, where the two windows that are being closed for the garage, is going to be fire-stopped? “Yes, the sheetrock will be fire rated, as per Code.”

No other questions for the Architect.

Chairman Dunning: Does anyone in the public have any questions on the testimony given on this application?

Attorney Mondello swore in Richard DuHaime.

I reside at 23 Hester Street, Bloomingdale, New Jersey.

I own Valentine Beauty Supply, the building right next store.

My objection to this proposal is the first time I noticed the garage was about two inches off of my property and now I see it is about five inches. I have a couple of pictures to hand out to the Board.

Attorney Mondello has marked the pictures as Exhibit O-1 (two pictures) and asked Mr. DuHaime to describe the two pictures. The first two pictures show my vehicles that are in the parking spots next to Ms. Kressaty’s vehicles, which are small vehicles.

Mr. DuHaime questioned who allowed her to put up the fence, which is on her property but also bends into mine property as well, as shown on this picture. Attorney Mondello marked these pictures as Exhibit O-2 (four pictures). Board Secretary advised that a fence permit was issued and approved.

Mr. DuHaime advised that daily we have FedEx trucks come in, UPS trucks come in and occasionally we have tractor-trailer trucks come in. I can assure you that, in the winter, this garage and fence, are going to be hit by our vans or some truck is going to come in during severe weather and slide and bang into the fence and/or garage. We will get sued if that happens and you will become accountable as well. It is much too close to my property. I have no objection to her building a garage if she puts it on the other side of her building or behind it. There is a huge amount of space on the other side of her building, which picture is marked Exhibit O-3 (one picture). I think she parks her car that she uses every day behind her building. The cars that you see sitting there right now are there all the time, they do not move and if you notice, there are no license plates on them. If you had a large car, it would not be able to get in and out of that spot without going on my property.

Attorney Mondello stated that, as far as automobiles colliding with other automobiles, the town would never be responsible for that particular situation. Not only are there several layers of tort immunity for a town like Wanaque, but we would have no negligence with respect to whether one car hit another car.

Mr. DuHaime stated he is not talking about cars hitting cars, but trucks and cars hitting the building.

Attorney Mondello stated same thing, unless the town owned it.

Mr. DuHaime believes you are putting yourself in jeopardy by approving this. They need so many variances and it is basically on my property.

Attorney Mondello stated that is a different argument.

Attorney Barbarula, after reviewing the picture exhibits, questioned Mr. DuHaime if he took the photographs? Mr. DuHaime advised he took one or two pictures and so do some of his employees. He does not remember if any of the exhibits were taken by him. All the pictures are basically the same and were taken since he received the application for this garage, but does not know the exact date. There are pictures of before and after the fence was put up.

Isn't it a fact that employees and occupants of this building have, on a regular basis, been trespassing and parking on the property of the applicant? "No sir."

Isn't it a fact that on a regular basis that your people have backed into her building now and her cars?

Attorney Mondello questioned Attorney Barbarula as to how is this relevant to the variances that your client's seeking? "Mr. DuHaime is indicating that it is his property. I just want to get the point that it is not his property."

Attorney Mondello stated that the Board understands it is not his property. We have about six inches before we move to his property.

Attorney Barbarula stated that none of the property where the proposed garage is located is going to be on your property? "That is correct."

The fence is not on your property? Isn't that correct? "Part of that fence is on my property, if you notice."

Do you have any expert testimony? "I don't need any expert testimony."

Do you have a picture here that shows that it is on your property and point out which one?

Attorney Mondello advised that this Board does not have any jurisdiction to ask anybody to take the fence down, if it is on somebody's property. That is in the Superior Court if, in fact, it is an issue.

Attorney Barbarulo stated that Mr. DuHaime said there was a photo showing this and I would like to know which one it is. Mr. DuHaime chose one of the O-2 exhibits but stated he was not sure if he took the picture himself. Did you have someone survey your property? "I had the property surveyed when I bought it." Do you have a copy of the survey for the Board? "No. Basically they just agreed that the this is the line of the property."

Attorney Mondello questioned Mr. DuHaime if there was anything else he would like to add to his testimony? "Other than the fact that I don't think it is a proper place to put a garage, it is very, very tight. She has so much property on the other side plus behind her building, why squeeze it in and cause a problem because the problem can and, I believe, will exist when the weather becomes severe especially when a tractor trailer makes a delivery. I just want you to know that. The area that she would be bringing her car out of is very small and a large car would have a big problem getting out of her property."

Chairman Dunning questioned Mr. DuHaime about what area are you talking about not being able to get a car out? Are you saying when she backs out or pulls out of her driveway onto Third Avenue, she is going to have a problem? “I just think it is a very small area for her to get out. It seems like the driveway is just very small. A large car going in there would have a problem. The cars in the pictures are relatively small cars”.

Engineer Nash questioned when you say small, you mean narrow in width small? “The car or the spot.” You are saying that the driveway is small. “If you look at the way the property line goes.” The applicant testified tonight that they are going to widen the driveway to the east, away from your property. “If they widen the driveway, they are going to go right up into their front door.” No, on the front yard portion of the house, that is where they are going to widen it; up to that porch corner and there is still about nine feet or so left. “You have my objection and I hope you will take it into consideration. It is a very busy business with trucks going in and out all the time.”

Member Ludwig questioned if trucks were going in and out of the applicant’s property? “No, just mine.” So you are relying on your neighbor’s to turn in, is that what you are trying to say? “All I am saying is that there are a lot of vehicles going in and out of my property every day and I’m afraid that her fence will be hit and the garage will be hit and I am afraid I will be sued because of that.”

Member Hoffman asked if there is a loading dock in the back of your property? “No.” Why can’t a tractor trailer or truck park on Third Avenue? “Because they come in with heavy products and it is hard for people to go out and carry 50, 60 or 100 boxes of 30 or 40 pounds each in.” You can’t encroach on your neighbor’s property to make it convenient for deliveries. “We don’t encroach on her property. We are not on her property at all.” You are saying the fence might get hit. “That’s because it is right on the property line.” Member Levine asked if there have been incidents before? “No.” But you are assuming there might be a problem? “I am just concerned that the fence and garage will be hit and I will get sued.”

Chairman Dunning asked if Mr. DuHaime had anything else to say? “No, that is all. Thank you for your time and courtesies gentlemen.”

Chairman Dunning asked does anyone else in the public have any questions or statements on this application? Seeing or hearing no more, we close the public portion.

Attorney Barbarula summarized by saying all work on this property has been and will be done with permits. After reviewing all the paperwork and photographs and hearing testimony, this area is already an impervious surface and does not require taking any additional impervious surface. The open space that is on the left-hand side of the home is extremely valuable in terms of an environmental aspect for this home and is the only open space in an area, which contains commercial buildings and factories. As a homeowner we are responsible to keep and maintain our own property and promote land use for the best use of the land. Since this area is already impervious, this is the best use for this particular garage, which has been reduced to an appropriate size (removal of bump out). We have addressed all of Engineer Nash’s concerns regarding getting in and out of the driveway and I think it would be a good addition to the house and an appropriate application. I don’t

believe there is any negative effect on any of the properties. The only question is, when it snows, we may have tractor trailers pull into the back of the commercial property and hit the fence or the building. I understand this concern of Mr. DuHaime's, but it is speculation. I believe Mr. Levine's question was quite telling; "has that happened already?" It has not. The fact of the fence or building being there now would not have stopped a tractor trailer from having this issue.

The positive aspects of this application is that it preserves open space with the only two trees on site, it utilizes impervious surface instead of adding any additional impervious surfaces and, I think, for these reasons, I would ask the Board to grant the application.

Attorney Mondello questioned if there was any detriment to the zone plan? "There definitely is no detriment to the zoning plan and mainly because we have a residential use in a sea of commercial uses. This residential use, in and of its pre-existing nature, has not adversely affected any of the properties around it. If anything, the commercial properties have adversely affected this pre-existing, non-conforming use, but that is what happens when you have a house that gets built-up and everything else gets built around it. This use is not going to adversely affect the big factory behind it, the auto parts store or even the beauty supply store. As you can see from the objector's photographs, there is a very big back loading area, he has two big trucks there and I doubt that a tractor trailer would pull in there, it would just stay on Third Avenue, but this is also speculation on my part. All documents provided by the applicant and all testimony given show that there is really no negative impact on the area, nor the zoning plan because Residential is always a higher and better use in a general overall category under the Municipal Land Use Act. In this instance, the addition of a garage will enhance this residential use."

Member D'Alessio questioned, would it be fair to say that the fence was put up because the other people were intruding on this property and she had to have a clear route out? With the approval of Attorney Mondello, Attorney Barbarula answered that was done because there have been encroachments.

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

Vice Chairman Grygus voted no.
Motion Carried.

Member Joseph D'Alessio had to leave at 8:45 pm for a family emergency.

PUBLIC DISCUSSION: None/Closed

RESOLUTIONS: None

CORRESPONDENCE: Letter of immediate resignation from Eric Willse.

Congratulations to Councilman Eric Willse. The Board wishes him a lot of luck in his new adventure and we would like to thank him for his services. He has been on the Board since 2006.

With regard to Jaime Landis, she has not found a new residence in town and is still living in Ringwood. I advised the Mayor that we are down two members and he needs to look at this Board's appointments. We did grant her a leave of absence, but how long do we let it run. Member Ludwig suggested that if we decide to discontinue the leave of absence, we can make a recommendation to the Mayor & Council that she be given first consideration and be reinstated when another opening is available.

Attorney Mondello advised that, even though this is a Mayor & Council appointment, if the Board collectively determines that absences that are not excusable, can't be forgiven or are creating a hardship, the next step would be to advise them that the position is vacant and that they need to fill it.

Chairman Dunning advised that they are currently interviewing to fill Councilman Willse's position. There is a whole new procedure in place now if you want to volunteer for a Board. There is a form you can fill out and submit to the Borough to volunteer your services for a particular board and you are placed on a list.

We received another letter from the County on the 1040 Ringwood Avenue/Exxon Gas Station application. This is a repeat of many letters asking for money from the applicant.

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 Vice Chairman Grygus. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Hoffman, Ludwig and Levine.

MOTION TO APPROVE MARCH 7, 2012 MINUTES: (with change to page 3, paragraph 3, first sentence should read: Where do you park now? I have to park around back.) made by Member Ludwig, seconded by Member Levine. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Hoffman, Ludwig, and Levine.

ENGINEER'S REPORT: Engineer Nash has received a new sign application for Quick Chek. When completed, he will send out report. Vice Chairman Grygus questioned if there was an ordinance for the height/dimensions of the individual letters on the pylon mounted sign and they are not showing that on the application. Engineer Nash has no recollection, but will check this when he does he review.

DISCUSSION: 207 Ringwood Avenue: Vice Chairman Grygus questioned the new work at this address and new permits being issued, but at some point in time don't they go back to review what is still outstanding from prior approvals before new permits are issued? Chairman Dunning stated this Board gave its approval as a retail structure with a certain amount of stores, with a canopy on the back and update the building, but they never finished the project as far as the exterior work on the building. I was told by Mr. Brusco that you cannot deny a c.o. unless it is something that can cause a liability to the public. The building has gone through different owners, and most of the businesses have changed hands and now the liquor store is taking over where the deli was. They got a permit to do the demo work and to expand the business. The Mayor & Council expanded licensing of the liquor license to cover the square footage being occupied now. Because there is limited parking, if a sit down restaurant wanted to go in there, they would have to come back to this Board because they would need more relief from the parking requirements. The building has been sold and the project was never finished. They put up steel to build the canopy, which was never done and now there is rusting steel in the back of the building. This property is in a Business Zone and all new business have to get Planning Board approval, even the day care center that is a tenant with a playground in the parking lot.

MOTION TO ADJOURN: at 9:05 P.M. made by Member Ludwig, seconded by Chairman Dunning. Motion carried by a voice vote.

**Jennifer A. Fiorito
Board of Adjustment Secretary**