

REGULAR MEETING

Salute to Flag: 7:15PM

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 8, 2023 respectively, and a notice thereof has been posted on the bulletin board in the Municipal Building in the Borough of Wanaque, on the Borough's website and a copy thereof has been on file in the Borough

ROLL CALL: Chairman Jack Dunning, Members, Donald Ludwig, Michael Sbarra, and Dana Lynch and Attorney Ronald Mondello

ABSENT: Member Helena Aumenta

ARRIVALS AFTER MEETING STARTED:

Member Frank Covelli arrived at 7:24pm

Vice Chairman Bruce Grygus arrived at 7:50pm, but has recused himself from Application  
No. ZBA2023-06 – Martin Theresa, 31 Tremont Terrace, Wanaque

Engineer Christopher Nash arrived at 8:40pm

RESOLUTION: ZBA2023-04 – Sbarra Property Management LLC

Attorney Mondello: Member Sbarra could you please sit in the audience since you were the Applicant? Member Sbarra removed himself from the dais and sat in audience.

Attorney Mondello: This application was to permit the continuation of the property, 26 Brook Street, to be used as a construction storage yard. Fairly lengthy Resolution at about 23 pages. In addition to the normal conditions, there is a condition that the Applicant to work towards improved curb appeal by installing plantings and shrubbery and, again, the rest of the typical conditions are place in the Resolution. Any changes, modifications, discussions from any of the Board Members? Hearing none, seeing none, I would ask for a Motion to Memorialize this Resolution followed by a second.

MOTION TO MEMORIALIZE RESOLUTION: made by Member Ludwig, seconded by Member Bonner. Voting yes were Chairman Dunning, Members Ludwig, Lynch, and Bonner. Motion Carried.

**Member Sbarra returned to the dais at this time.**

**CORRESPONDENCE: No correspondence.**

**Board Secretary will be passing out a new Application after the meeting.**

**VOUCHERS: submitted by Boswell Engineering for the Brook Street/Sbarra Application in the amount of 530.**

**MOTION TO APPROVE: made by Member Lynch, seconded by Member Ludwig. Voting yes were Chairman Dunning, Members Ludwig, Lynch and Bonner  
Member Sbarra recused himself**

**VOUCHERS: submitted by Ronald Mondello, Esq. for Brook Street/Sbarra Application in the amount of \$577.50.**

**MOTION TO APPROVE: made by Member Lynch, seconded by Member Ludwig.  
Voting yes were Chairman Dunning, Members Ludwig, Lynch and Bonner  
Member Sbarra recused himself**

**VOUCHERS: submitted by Ronald Mondello, Esq. for attendance at the November 1, 2023 Meeting in the amount of \$500.**

**MOTION TO APPROVE: made by Member Ludwig, seconded by Member Bonner.  
Voting yes were Chairman Dunning, Members Ludwig, Sbarra, Lynch and Bonner**

**MOTION TO APPROVE SEPTEMBER 6, 2023 MINUTES: made by Member Ludwig, seconded by Member Lynch. Voting yes were Chairman Dunning, Members Ludwig, Lynch and Bonner  
Member Sbarra recused himself**

**Application ZBA2023-05 – Mercado, Sigfredo, 22 Milton Place, Street, Haskell, NJ**

**Attorney Mondello:** I note for the record that I am in receipt of the certified mail that was sent to residents within 200' and a copy of the advertisement that was placed in the newspaper so I would deem the application complete from a notice perspective and that jurisdiction is vested in the Zoning Board to hear the Application.

**Attorney Mondello** swore in the Applicant, Sigfredo Mercado, 22 Milton Place, Haskell, NJ.

**Attorney Mondello:** Why don't you tell the Board what you want to do and why you want to do it.

**Applicant:** I have second story deck. I think it is 4.2' x 7.7' and I wanted to extend it to 10.2' x 7.7'.

**Attorney Mondello:** What kind of variances are implicated, if you know. I see that you either filled out this application or maybe you had some assistance, I don't know, but why don't you tell the Board what variances you are seeking.

**Applicant:** Basically side and rear; being the property from the back of the house to the back of the lot and then to side of the lot. You have to be I believe 15' from the side and 40' from the rear and being that I'm on a corner lot I am 7' from the side and 36' from the rear.

**Attorney Mondello:** I see it says something about a pre-existing deck which was structurally unsafe and damaged due to weather and improper building materials. The objective was to rebuild for safety and structural with a slight expansion of 6'.

**Applicant:** Correct

**Attorney Mondello:** Note for the record that Member Covelli is here (7:24pm).

**Attorney Mondello:** Mr. Mercado could you be so kind as to just repeat what you said because we have another Member that just appeared and we want to make sure he is able to vote and ask you questions.

**Applicant:** Everything.

**Attorney Mondello:** Yes, except we don't need to swear you in again.

**Applicant:** Basically, I had a pre-existing deck 4.2'x 7.7' and looking to extend to 10.2' x 7.7.

Again, it wasn't structurally done properly. Apparently, they had used finishing nails on the top so my daughter actually went through one of the railings.

**Attorney Mondello:** Is she okay?

**Applicant:** She is okay. She didn't go totally thru. Her hand went thru. I didn't think about that until it started to get fixed and they showed me one of the railings. There were actually finishing nails on top used for trim and then regular nails that were supposed to be used on the bottom.

**Attorney Mondello:** Thank you. Board Members have any questions?

**Chairman: Basically what this is, from Chris' Report, it's in the R-10 Zone and he is replacing a deficient deck. Chris provided a Zoning Table:**

	<b>R-10 Zone</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	
A.	Lot Area	10,000 SF	5,219.5 SF	5,219.5 SF	<b>Yes</b>
B.	Lot Width	80 FT	50 FT	50 FT	<b>Yes</b>
C.	Lot Depth	120 FT	104.39 FT	104.39 FT	<b>Yes</b>
D.	Front Yard	30 FT	22.71 FT	22.71 FT	<b>Yes</b>
E.	Side Yard (any)	15 FT	6.47 FT	6.47 FT	<b>Yes</b>
F.	Side Yard (total)	35 FT	23.01 FT	23.01 FT	<b>Yes</b>
G.	Rear Yard	40 FT	38.64 FT	<b>28.47 FT</b>	<b>Yes</b>
H.	Bldg. Coverage (max.)	25%	17 %	17 %	No
I.	Max. Building Height	35 FT	<35 FT	<35 FT	No

**Attorney Mondello: And those are all pre-existing, correct?**

**Chairman: Right, but Chris wrote down variance needed. The rear yard at 40', and he has 38' existing, and once you put the deck in it's 28'. That definitely needs a variance. The coverage is 25% and he has existing 17%. So the only thing really is the rear yard setback. You are on a corner piece of property so you sort of have two front yards to start with, which complicates things. You provided us with prints of the deck location and, actually what he has, he has two lots, according to Chris' paperwork. He has Lots 15 and 16 facing Milton Place. The deck is real nice. You have it anchored down to the patio below so it's stable. I was there the other day looking at it. Any other questions gentlemen, woman?**

**Member Sbarra: Right now that deck is basically just kind of like a landing to get out of the door, right, that you guys have upstairs.**

**Applicant: Yes, that's the only access to the backyard.**

**Member Sbarra: So you are looking to expand this obviously another 6', and I'm just curious what you plan to do with this place. Living space?**

**Applicant: Slightly additional square footage because when you come out there you really can't do much so I have a little patio set for there.**

**Member Sbarra: A place for like a bar-b-que or something like that, maybe?**

**Applicant: Bar-b-que we do downstairs. I would never bar-b-que there. It's additional square footage just to be able to sit there and have breakfast or dinner at night.**

**Chairman: The deck is not that big when you look at it.**

**Applicant: It really is not.**

**Chairman: Any other questions Board Members? Seeing and hearing none, somebody want to make a Motion?**

**Attorney Mondello: Any members of the public have any questions or comments either for or against the application? Hearing none, seeing none, we'll close that public portion. Come back to the dais.**

**Chairman: Somebody want to make a Motion For or Against this Application?**

**Member Ludwig: I'll make the Motion but somebody else has to read all the variances.**

**Chairman: The rear yard is really all we need.**

**Attorney Mondello: Everything else is pre-existing.**

**Chairman: Chris did it, but it's just for basic knowledge of the property.**

**Attorney Mondello: It is exacerbating the rear yard by about 10'.**

**Chairman: Okay. You made the Motion Don, do we have a second on that?**

**Member Lynch: Second.**

**MOTION TO APPROVE: made by Member Ludwig seconded by Member Lynch. Voting yes were Chairman Dunning, Members Covelli, Ludwig, Sbarra, Lynch and Bonner  
Motion Carries**

**Application ZBA2023-06 – Theresa, Martin – 31 Tremont Terrace, Wanaque, NJ**

**Michael Rubin, 1330 Hamburg Turnpike, Wayne, NJ, representing Marty Theresa.**

**Attorney Rubin: As a little introduction, Marty Theresa and the Borough have been having “discussions” but sometimes it has gotten more than discussions. It has come to litigation and hearings and what not. It has been seven years since we’ve been doing this and we’ve been before the Superior Court, the Appellate Division and without resolution on what is happening on Mr. Theresa’s property. Mr. Hafner and I have spoken many, many times and we’ve spoken just recently when I suggested putting together this application and we are hoping that this Board can resolve this so we don’t have to do anything further and the Borough doesn’t have to do anything further. I think the Borough has spent thousands of dollars on this matter and Mr. Theresa has spent thousands of dollars, so it is time to end. Hopefully, this Board can figure this out and move forward.**

**Attorney Mondello: I do note that the notice requirements are met and jurisdiction is vested in the Zoning Board to hear this matter.**

**Attorney Mondello: Mr. Rubin, I would simply ask what was the end result of this litigation? What did some judge say Mr. Theresa must do or must not do?**

**Attorney Rubin: The last judge who heard it gave Mr. Theresa a choice. Come to a Land Use Board to have the matter heard or take down the shed and gazebo which is the subject matter of the issue and he has opted to come before this Board.**

**Attorney Mondello: And that begs the question, why didn’t he do that seven years?**

**Attorney Rubin: Because Mr. Theresa felt seven years ago and five years, and four years, that he didn’t have to. That it was grandfathered and you’ll hear a little bit about that, even though that’s not really the question before this Board, but the type of testimony that was given was that this was a pre-existing, non-conformity and has been on the property from many, many years and did not need any zoning approval.**

**Attorney Mondello: Fair enough, and with that, first witness.**

**Attorney Rubin: The first and only witness is going to be Marty Theresa, if he could be sworn.**

**Attorney Mondello swore in Applicant, Martin Theresa, 31 Tremont Terrace, Wanaque, NJ.**

**Attorney Rubin: Mr. Theresa, about when did you buy your home at 31 Tremont Terrace?**

**Applicant: I believe it was 1987.**

**Attorney Rubin: You have been living in the home ever since?**

**Applicant: Yes.**

**Attorney Rubin: No moving, and your family has been there throughout?**

**Applicant: Yes.**

**Attorney Rubin: Getting to the exact question that has been before the Borough and yourself for a number of years, just generally tell us what’s in the backyard or on the side yard of this property.**

**Applicant: The side yard contains a shed and the backyard, left side towards the lot line, has a gazebo. I mean, somethings I couldn’t bring up and I couldn’t understand why because I have pictures with my sons when they were infants in front of the gazebo, but we couldn’t entertain that**

type of pictures, I guess because they couldn't be verified, but they've been there for a long time. For the shed, we've built up a lot of things in almost forty years there. There is a lot of storage in that shed.

**Attorney Rubin:** That's not the question. There is a location survey that has been attached to the application and this was used in other proceedings. In fact it has a marking of the Borough of Wanaque for other proceedings, but does this show the shed and gazebo and your home and patio and everything that is on the property?

**Applicant:** Yes.

**Attorney Rubin:** Mr. Theresa, so it has been your testimony, so it is clear, that the gazebo and the shed have been on the property for many years?

**Applicant:** Yes.

**Attorney Rubin:** That has been your testimony in other proceedings right up to today?

**Applicant:** Correct.

**Attorney Rubin:** So that there is no question, and what brings us to this Board to resolve your issues, the shed and the gazebo are slightly over the property line. Do you agree with that?

**Applicant:** Yes, according to that survey.

**Attorney Rubin:** And the survey shows, does it not, and I want to make sure because it is very hard to see, .3" for the shed and .8" for the gazebo, and that's what it shows on the plan?

**Applicant:** Yes.

**Attorney Rubin:** Among other things, that has been a point of contention between you and the past neighbor and the Borough?

**Applicant:** Correct.

**Attorney Rubin:** In order to resolve all of these issues, have you taken it upon yourself to do something about moving the shed and the gazebo?

**Applicant:** Yes, I've called quite a few contractors. It is a little difficult because there is just enough room, there is about a 4' to 5' walkway to the gate so there isn't much room where you can pull it somehow so that it has to be kind of lifted those .3" and brought out and then dropped down and that's on the shed.

**Attorney Rubin:** We are going to do one at a time, but let's first decide did you have a discussion with one contractor in particular to remove both the shed and the gazebo off of your neighbor's property and onto your property?

**Applicant:** Yes.

**Attorney Rubin:** How where they going to do that?

**Applicant:** He's actually going to move all the dirt and dig down. We did a little test section because the shed goes on multiple railroad ties. I'm not familiar with the whole thing because I didn't design it, but it goes down pretty deep I guess for frost. There is dirt between those joists. They can't slide it. It is not something that isn't slidable because everything is nailed to railroad ties. They are going to dig around the two sides; the side of the walkway and the right side that has about 8' before my gazebo and they are going to put whatever is needed underneath there,

whether it is block or cement, so that they are going to lift it and move it that .3" and drop it back down again once they have firm footing for that to happen.

**Attorney Rubin:** So that there is no question, Boswell Engineering, the Engineers for the Borough, Mr. Nash, signed off that the shed is over the property .3" and he put in parenthesis (3.6"), so he did the arithmetic. First, talking about the shed, what is the name of the contractor who you are talking to?

**Applicant:** I don't recall his name. It's been awhile now. He is right in town actually and West Milford.

**Attorney Rubin:** Is it your testimony that you have preliminarily made arrangements with the contractor to move it 3.6" to the property line and beyond several inches so it is totally on your property?

**Applicant:** Correct.

**Attorney Rubin:** That is something you have agreed to do and make the representation to this Board that, in the event that this was allowed to be done, this is something you would do with the contractor who you have made initial contact with to do this work?

**Applicant:** Yes.

**Attorney Rubin:** You have been advised by Mr. Hafner that he believed that the side yard required a 20' set back and that is one variance that you are asking for because, when the shed is brought over the property line, you wouldn't be 20' from the house since there is no room. There is just a few feet between where the shed will be and your house.

**Applicant:** Right now, yes. There is just enough to the walkway right now. I believe it is 5' from the property line and 10' from the house.

**Attorney Rubin:** So, according to Mr. Hafner's conversations and my own, you are asking for a side yard variance to allow the shed to be closer, which would be a violation of the 10' side yard to the home because the home is not 20', it is much less. You are agreeing to place it within your own property but several inches from the property line.

**Applicant:** Yes.

**Attorney Mondello:** Mr. Nash has it down as 12.9'.

**Chairman:** That's it. That's on the site plan.

**Member Covelli:** Mr. Chairman, I'm a little confused here.

**Chairman:** We are all confused.

**Member Covelli:** So I'm looking at the site plan and I see a shed that is a little bit more than half in the easement, but it says

**Attorney Rubin:** You are looking at the wrong side.

**Member Covelli:** I'm looking at the wrong side. I'm sorry. It's a good thing I asked.

**Chairman:** Let's clarify one thing. Have you looked at our shed and fence ordinance, which is 114-20? It directly says, one simple thing, (a) sheds cannot be in the side yard. Also, you need 5' from the property line to the rear of the shed and 10' in front of the shed to the principal



residence. If you add that up, it's 23' and you don't even have half of that. You can't put a shed there. It's that simple.

**Attorney Rubin:** That's why we are asking for a variance.

**Chairman:** The gazebo fits in the same thing that's got to be 5' off the property line and 10' away from the principal residence.

**Member Covelli:** Can I ask how big that shed is? That shed looks big.

**Applicant:** It's a little less than 8x25.

**Chairman:** Frank, it's just under that 200 square foot for landscaping shed, which is in the distant part of our ordinances and doesn't appear until recently into our shed ordinance.

**Attorney Rubin:** One thing that became an issue before the Court, it is that the New Jersey Administrative Code changed it's position and took away requirement for building permits for backyard sheds. That became an issue for the courts.

**Chairman:** What did the court decide?

**Attorney Rubin:** If it was just the Administrative Code, which the building inspector relied upon, we would be correct. But he didn't rely on it, he relied on the zoning ordinance.

**Chairman:** That is a recent change. That shed has been there for 15 years now, or more, so it predates this change.

**Attorney Rubin:** Yes.

**Chairman:** It is not grandfathered in. It is very simple. Our ordinances are very clear cut now in fencing and zoning. You're got issues with the shed and the gazebo. You have affected four neighbors with your fences putting them on their property. In fact, I think one of your neighbors, in the back, took the fence down. It was 4' onto his property. In the back, you have two neighbors that abut to your rear property line. On the one side you are taking 30" away, and the other side you are taking about 20" away. It is clear in the zoning that the fences must be on your property, not on the neighbors' properties. I know you went to the Planning Board to get a lot adjustment, which didn't go anywhere.

**Attorney Rubin:** It was a tie vote 4-4.

**Chairman:** Right, it doesn't matter. It didn't pass.

**Attorney Rubin:** Correct.

**Chairman:** I know what you're saying and what you're looking for, but our ordinances do not permit to have all of that in your side yard. The other question I have, and this is a serious question, where your shed is, you have a second floor window with an air conditioner in it, right?

**Applicant:** Yes.

**Chairman:** Okay, if there is a fire and somebody is trapped in that room, how is the fire department going to put a ladder up and get them out?

**Applicant:** There is a back and side window to that room.

**Chairman:** If they had to get on that side for whatever reason, they cannot effectively get to that window.

**Applicant:** Not that window, but that room has two windows; one in the back and one in the side.

**Chairman:** But it is still a safety factor. The whole thing is that the ordinances worded very simple. You cannot put a shed in the front or side yard. That's is the whole issue here.

**Attorney Rubin:** It is one of the issues.

**Chairman:** The other issue is the fence on four other neighbors' property.

**Attorney Rubin:** No, that is not the issue. That is not what we are here for.

**Chairman:** Yes it is. You are not here for that but that is a problem that the town has been dealing with for a long time.

**Attorney Rubin:** But that's not before the Board.

**Member Covelli:** That's good to hear because you realize we can't grant permission to put fences on other people's yard. So I'm very glad to hear that we're not hearing that.

**Attorney Rubin:** On the back that's correct, but what we I have appended to the application is the consent of the neighbor.

**Chairman:** That doesn't matter. Our ordinance says your fence must be on your property.

**Member Covelli:** Mr. Mondello, do we have jurisdiction over agreements that people have to cross property lines?

**Attorney Mondello:** Mr. Rubin is well aware; he knows. He has indicated that is not the issue before the Board. We are not here to bless any type of an agreement between the Applicant and his neighbors. He knows that. He is simply here to try to see if there is something that can be done with the shed and the gazebo.

**Attorney Rubin:** So if we could get all the information on the record, we'd appreciate that.

**Chairman:** Are you going to move the shed and the gazebo out of that side yard?

**Attorney Rubin:** Yes, we are going to get it out of our neighbor's property.

**Chairman:** Out of the side yard. They are not permitted in the side yard.

**Attorney Rubin:** No, there is nowhere to put it.

**Member Covelli:** What about the other side yard?

**Chairman:** You got more room on the other side of the house.

**Attorney Rubin:** You can't move it. The should testify to that, not me.

**Member Covelli:** I have a shed his size and I just moved a month and a half ago. Put it up on pipes and rolled it across the yard.

**Applicant:** As I said before, this is down very deep into the ground on railroad ties. It is not a Home Depot type of shed.

**Chairman:** You mean inside the shed is below grade?

**Applicant:** No, not inside. The shed is at grade, but it is mounted onto two or three railroad ties below.

**Chairman:** Why?

**Applicant:** I don't know why. That's the way it was built when it was built.

**Chairman:** When did you put the shed, what year?

**Applicant:** I never put that shed in.

**Chairman:** Yes, you did.

**Applicant:** No I didn't.

**Chairman:** Here's the thing, you've been in court with the Borough of Wanaque for a lot of years.

**Applicant:** Yes.

**Chairman:** We have aerial photographs from the early 2000 that shows the shed is not there.

**Applicant:** The shed was moved when Jeff Brusco asked me. We had put drainage in when I was doing my rear retaining walls and the water was coming out onto the street and it was flowing. I had 6" of rain every day for years in my backyard that we couldn't ever use the backyard or the patio. That is what prompted the retaining walls to get done. Mr. Brusco advised me to move everything, put the draining in because you have limited room on your side yard and then put everything back, and that's what I did.

**Chairman:** Where does that drainage run to?

**Applicant:** The drainage runs to the front of my lawn straight out the side yard.

**Member Sbarra:** Maybe I misunderstood, but did you say that, when you put the drainage in there, you had moved the shed and then brought it back? So, is it your testimony that shed can be moved or can't be?

**Applicant:** Well the bottom was left and I had to replace some walls and stuff on it because some were rotted at the time and he said just move it where you could get underneath there, that's how I know there were railroad ties and stuff underneath, it goes very deep, to put the drainage in.

**Member Sbarra:** Gotcha.

**Applicant:** I only know from doing that kind of work but it was practically removed. In fact, that one photo you do have, actually there is a third shed that's on that photo that nobody ever saw, and you can see it is right next to the gazebo, which I have pictures at home, when I had that shed but it is in that photo. Everybody keeps saying the gazebo is in the side yard. It is really the back yard.

**Chairman:** No it isn't it. It doesn't matter. It has to be 5' from the rear and 10' from the principal residence.

**Member Covelli:** The house faces Tremont.

**Applicant:** Yes.

**Member Covelli:** It's the side yard.

**Member Bonner:** Mr. Chairman, I'm must wondering would you require to move this and do the drainage, would you require a permit?

**Chairman:** He didn't have a permit when he put the shed up.

**Applicant:** Jeff Brusco knew everything that was going on at the time.

**Chairman:** Did you take a permit out to put that shed there?

**Applicant:** He told me I didn't need anything and he advised and was there all the time supervising what was getting down. What more could I ask for. I wasn't going over his head when he was helping me out and telling me what I need to do.

**Attorney Rubin:** Who was Jeff Brusco at the time?

**Applicant:** He was the Building & Zoning Officer.

**Chairman:** In court it was testified that you never got a permit for the shed.

**Applicant:** No, he told me I didn't need it. He was taking care of everything because he knew what I had to do. I'm going according to the faith of what somebody supposed to know in their position is telling me to do.

**Chairman:** That's hard to believe because we have ordinances that say you can't put a shed in the side yard.

**Applicant:** Maybe. I don't know all of that. What I'm saying is I asked the proper authorities. I was told what to do. The gentleman, Mr. Brusco, was on my property dozen and dozen of times throughout the whole project. He didn't have any problem with any of it. Everything was done with at that point. I even got my fence permit from him.

**Attorney Rubin:** If I could move forward Mr. Dunning. Just staying with the shed and the testimony, is it your testimony that the shed will be moved, by the contractor that you dealt with, several inches and take it out of your neighbor's property and wholly onto your own property?

**Applicant:** Yes.

**Attorney Rubin:** It would then become just several inches from the side of your home?

**Applicant:** It will be inside of my property line.

**Attorney Rubin:** It would just be a few inches away from your house?

**Applicant:** It will be over 4-1/2' away from my house. The walkway can still stay there, which is fairly wide at 12-1/2'.

**Attorney Rubin:** So that is in the testimony so it can be as clear as can be, from your perspective, that this shed has been on the property even before you bought the home?

**Applicant:** Yes.

**Member Sbarra:** I have a question going back to when you put the drainage in. You said the shed was moved, obviously you fixed some rotted railroad ties or whatever you had to do, where did the shed go when you moved it? Where did it move? Where did you put it?

**Applicant:** The panels were put against the house.

**Member Sbarra:** So was it disassembled and then kind of reassembled?

**Applicant:** Kind of, yeah.

**Member Sbarra:** So my question to you is this, if the ordinances in town are saying you can't have sheds in the side yard, and your testimony is you really can't move it, is it possible to disassemble again and reassemble possibly on the southern side; the other side yard there? My point is this, if you have disassembled it once before, can you do the same thing again?

**Applicant:** That side of the property is level. Actually from the fence that's there, the boundary fence, there is about a 3 to 3-1/2' drop off which is a railroad tie wall. You have the fence, you have about maybe 4" before the retaining wall that goes straight down to about 3-1/2', and then a few inches out starts the shed. That's level land over there where the shed is. The other side of the property is a big slope. I don't even know how you would do something. I'm sure it can be, but it would look like a one-ended, two-story structure. Maybe make it look level but I think it

would look stupid where it isn't even nice for the neighbor. I mean, here, nobody even sees the thing because the fence is 6' and the shed goes down the 3 to 3-1/2' because of the railroad tie wall.

**Chairman:** You can see the shed over the fence.

**Applicant:** You can but you're seeing a little bit of the shed.

**Chairman:** The code says 5' in the back, 10' in the front and not in the side yard. It has to be in the rear yard. You are asking for something that the Board really can't grant you. It comes that simple.

**Attorney Rubin:** Most respectfully, I believe the Board can. That's why we're here.

**Attorney Mondello:** That's why they are here. It may be denied and they'll demolish that or whatever the case may be.

**Chairman:** Basically, it shouldn't be there. It was put there without a permit, nobody permit, they never came here for a Zoning Board approval. If Brusco approved that, it's hard to believe, because I know Jeff for a long time. He followed the basic ordinances.

**Attorney Rubin:** That's the testimony.

**Chairman:** That's the thing. The other question is you are talking a couple of inches to the property line.

**Attorney Rubin:** Yes.

**Chairman:** And under 4' in the front, or basically 4' in the front, when it should be 5' and 10'.

**Attorney Rubin:** Yes.

**Chairman:** It's that simple. It doesn't belong there. The code says not in the side yard or the front yard.

**Attorney Rubin:** That's why we are here. If I can move forward and talk about the gazebo.

**Member Covelli:** Mr. Rubin, before you go any further, I'd like to ask Mr. Theresa a question? I just want to be clear as to what I am looking at. So, the side yard on the side where this frame shed is, is a total of 12.9' from the building to the property line, correct?

**Applicant:** I believe so.

**Member Covelli:** I'm reading that correct?

**Applicant:** I think that's correct, yes.

**Member Covelli;** On the other side, it is 35.2' to the property line with a 15' easement, which I don't know, but I'd believe that they don't want you building on the easement. That's the purpose of the easement, correct?

**Chairman:** I would think so.

**Member Covelli:** But yet there is a shed that's 3/4 of the way on the easement.

**Chairman:** Right.

**Member Covelli:** But that's the same area that you said that the sloping is so deep, you wouldn't be able to put the structure there.

**Applicant:** Not there but from where the house starts, which I would consider the side yard, not the side lot line, the section between the house, front of house, back of the house.

**Member Covelli:** Would you be able to show that to us.

**Chairman:** We're saying you can't put it in the side yard so you can't go the side of the house on that side either. You have to stay in the backyard.

**Member Covelli:** You're saying the backyard is the area that is too sloped.

**Applicant:** No, the backyard is the only part, except for that side passed the shed, you can see where there is a rock section on that side of the property.

**Member Covelli:** Where it says stone slope?

**Applicant:** Yes. That is all rock. Then you have one little flat section where that shed is. Then there is the fence that cuts across to the house there. From that fence, straight down to the street, is one big huge slope.

**Member Covelli:** Okay, I think I get it. But you couldn't put it in the rear yard anyway because you'd be too close to the pool.

**Applicant:** Yes, definitely.

**Member Covelli:** In other words, in front of the area identified as "the stone slope", you said it is relatively flat there.

**Applicant:** Where the shed is, is the only flat spot.

**Member Covelli:** I thought I gathered from what you just said, that between the stone slope and where the above-ground pool is, there is a patch of land.

**Applicant:** Yes, that's a flat section.

**Member Covelli:** But if you put the shed there, it would be too close to the pool.

**Applicant:** Yes.

**Member Covelli:** Because we have ordinances on that too.

**Chairman:** Which is only 10'.

**Member Covelli:** I think once you put a shed there, he'd be right back in the same spot and the same problem with being able to put the shed and maintaining conformance with that requirement.

**Chairman:** Where he is a block wall and it curves into the side property.

**Member Covelli:** Where is Mr. Nash tonight?

**Attorney Mondello:** We've texted him twice.

**Member Covelli:** Sometimes we need the guy here.

**Attorney Mondello:** This would be one of those times.

**Applicant:** Gentlemen, the way I see it, if it was movable to the other side, and yes I do know there is a lot of property there, the slope is tremendous, I don't think it would look good once it's built up to make it level. Where you're talking that one side and filling that one part in to make it level, it is almost going to be two stories facing the street side, or at least a story and a half, to make that wedge.

**Member Covelli:** I guess what we're trying to say is when you look at that other side, and I'm not asking the Chairman to agree, I'm just hypothesizing for a minute, not casting any opinions or anything else, but you are 35', again, from the property line to the house, so we can entertain if we were to get past other issues, but to the Chairman's point, on that side you are starting with a house that's a pre-existing, non-conforming use, in terms of its distance to the property line. Of

course, you didn't create it. That's not what I'm saying. What I'm saying is, with nothing there, you are deficient in terms of the ordinance. Again, not your creation, your grandfathered, I'm not asking you to move your house, not even suggesting that, I'm saying we already have a deficiency and now we are exacerbating the deficiency by trying to squeeze a rather large shed and gazebo into that spot. That's what I'm saying.

**Applicant:** If you saw it, it doesn't look as condensed as it sounds. I mean we've used it our whole our life, especially the gazebo which is right off of our property. The floor of it is part of the patio actually. We've used that forever. It's never been an inconvenience. I mean in all honesty if you go through the neighborhood, I'm sure you guys know, there is a zillion houses that don't even have any room in the side yards with sheds and there are at least over a dozen, just within my block radius, maybe two dozen, that I can name at the top of my head.

**Chairman:** That have sheds in the side yard?

**Applicant:** Yeah, and there's no room between the fence and the house. They are abutted right in there.

**Member Covelli:** May I say that you would have a case because we are supposed to listen to physical hardships. However, in this case, there is already a hardship to begin with. I think that's the problem, at least I'm having.

**Attorney Rubin:** There is. It is pre-existing.

**Chairman:** But when is it pre-existing Mr. Rubin? In part of your paperwork you said that shed was there when you brought the house in 1987.

**Attorney Rubin:** That's his testimony.

**Applicant:** We even had a witness that lived across the street come in and give testimony before I lived there that the shed was there and he used to shovel the snow and mow the lawn there. His father was in the newspaper business and evens stored his father's newspapers in that neighbor's shed across the street.

**Chairman:** And it was that big?

**Applicant:** Yes.

**Chairman:** When I look at the shed, and I was at your house yesterday and nobody answered the door, and was there this afternoon and nobody answered the door since I guess you didn't want to talk to me.

**Applicant:** I wasn't home.

**Chairman:** Nobody was home, I guess. I've looked at the shed and it doesn't look that old. If it is that old, it is a miracle.

**Applicant:** In all honesty, nobody ever said anything about this until we painted this bright tropical looking beige with the dark brown color and I put a Spanish tile roof on it, which isn't real Spanish clay tiles, they are asphalt tiles. In fact, Mr. Brusco even told me that before he was a building inspector he did tile work and he had never seen anything like that and he loved it. That's how much he knew of everything that was there at the time and I had his blessing on this whole thing and he never complained. Once I put that barrel roof over the original roof, it stuck

out like a beautiful looking piece of a house. Everybody walking and living in the neighborhood never said anything for years to me about the shed, but when they saw it painted with that roof on it, everyone loved it and wanted to know where to get the tiles. It made it stand out is all I'm trying to say from something that was there. I even know they call a gazebo a shed, which it's not. It's an open air structure. There is no walls to the gazebo. I got pictures of my kids from the 1990's there and the shed code didn't even come out until 2003 or 2004.

**Chairman:** That is when it was revised. We've always had a shed permit. They updated it mainly for the fence end of it, not the sheds. That ordinance has been in existence probably from the early 60's when they first started to make ordinances in the Borough.

**Applicant:** Gentlemen, all I would like to do, even with all the existing, I don't care about other neighbors. I've lived here a long time. I love getting along with people. Things get misconstrued. All I'm looking for is to keep what I'd have and lived with my whole life there, a gazebo and a shed, which changes everything as to how I use my outside. Not to mention the amount of money because you have a heavy crane that has to come and lift this, and the guy explained that they have to hoist it, dig it out, put straps, whatever they got to do.

**Attorney Rubin:** And you are willing to do that?

**Applicant:** Yes, I'm willing to do that.

**Chairman:** Before you said they took it apart in pieces to put the drainage in.

**Applicant:** I took it apart.

**Chairman:** You took it apart, but it's a sectional unit?

**Applicant:** No, it has plywood walls, actually T1-11.

**Attorney Mondello:** Here is the difference, he didn't have to move it before because of those railroad ties. He took it apart and put the panels somewhere to shift it. Now he is being required to move it off the neighbor's property.

**Attorney Rubin:** If I could just keep on going to talk about the gazebo. Is the gazebo the same thing that your testimony is that it was there when you brought the home?

**Applicant:** Yes.

**Attorney Rubin:** Is the gazebo in the same place that it has always been?

**Applicant:** Yes.

**Attorney Rubin:** The Engineer, Mr. Nash, said the survey indicates it is .8', which is shown on the survey, which equals 9.6". Is it your testimony that you will obtain a contractor to lift the gazebo off of your neighbor's property and onto your property.

**Applicant:** Yes.

**Attorney Rubin:** There is no question that it's a condition you are willing to live with, that you will pay for that and contract with the appropriate contractor to have it moved off your neighbor's property.

**Applicant:** Yes.



**Attorney Rubin:** And you know that even if it is still on your property, there may be a bulk variance that it is too close to your home or it's not far enough from the property line and that's a variance that you are asking for this Board to entertain?

**Applicant:** Yes.

**Attorney Rubin:** You want it on your property and the location just a few inches in from the property line.

**Applicant:** Yes.

**Attorney Rubin:** So that there are several variances that are being asked for and that is what, most respectfully, you are asking this Board to entertain?

**Applicant:** Correct.

**Attorney Rubin:** There is one other issue that has to be put on the table in that there is a fence that is not on your property but it is on your neighbor's property. Is that your fence?

**Applicant:** Yes.

**Attorney Rubin:** And there is a retaining wall on your neighbor's property. Is that your retaining wall?

**Applicant:** I don't know on the retaining wall because that was there when I moved in. I assumed that the prior fence was where the new fence is was mine and I assumed being that the railroad ties are right by the fence, and you can't use that section. Here's the guy's lawn and here's the drop off with the railroad ties and the fence is right here, like 4" above this drop off of the railroad ties. So you can't put a fence down here because of the 3-1/2' of the railroad ties drop down.

**Attorney Mondello:** Mr. Rubin, I'm sorry, why are we discussing the fence. That's between him and the neighbor. We have no authority.

**Attorney Rubin:** I added it to the application because, one of the reasons is because Mr. Hafner suggested I do that and that I make it part of the application because it was on the neighbor's property.

**Attorney Mondello:** This Board can't give approval.

**Attorney Rubin:** I did put it in that the neighbor consented to an encroachment agreement with Mr. Theresa to keep the fence and the wall to retain in place.

**Attorney Mondello:** We believe you, but that's hearsay.

**Attorney Rubin:** I presented it to the Board and I sent to the Board October 2<sup>nd</sup> in correspondence and I gave you a signed document from the neighbor, Mr. Parrales, that says that. I didn't make it up. Also, what I did, because I thought it appropriate, is that when I gave the Notice to my 200' neighbors, I also noticed on the next door neighbor's property.

**Attorney Mondello:** I don't any of that Mr. Rubin. I'm just trying to get my arms around what you want us to do with it?

**Attorney Rubin:** The question was, and I followed Mr. Hafner's lead on it, he said bring it to the Board's attention so that you put all of the issues in one basket, so to speak, so that you would know everything that was going on.

**Attorney Mondello:** Fair enough.

**Applicant:** My neighbor next door to me signed the agreement that he wants to keep the fence there because the land is no use to him if that fence wasn't there. He couldn't put a fence there because of that drop off. He is willing to sell me the land, put an easement there, whatever it takes for you guys to authorize me to keep the shed and the gazebo, he is will to do for me.

**Chairman:** Okay, and let me ask you this. You have four neighbors and your have your fence on four neighbors' properties, not just the one next to you. I was there again this afternoon looking through your fence on the side of your house, that part of the fence in the backyard is gone. What happened to that part of the fence?

**Applicant:** That neighbor ripped it down.

**Attorney Mondell:** As is his right.

**Chairman:** Right, because it was on his property. Now, what was there before the plastic vinyl fences? Was there a chain link fence?

**Applicant:** In the exact spot that the vinyl fences are.

**Chairman:** It was off of your property when you moved in there?

**Applicant:** Yes.

**Chairman:** That makes no sense.

**Applicant:** If you look at Dan's house, he has a metal fence back there. That's the same metal fence that ran between all the properties years ago.

**Chairman:** But now the fence you have on the next door's property is on his property, not yours.

**Member Sbarra:** Is it Lot 15, Lot 8? What lot are we talking about?

**Chairman:** I mean, however did the survey, shows exactly where you put your fences. They are all on the neighbors' properties.

**Member Sbarra:** So you have consent for Lot 15, correct?

**Applicant:** Yes.

**Member Sbarra:** I'm wondering about Lot 8, Lot 14 and whatever that corner.

**Applicant:** Lot 8 there is nothing there anymore.

**Member Sbarra:** 8 is gone. How about Lot 9? So I'm still looking at Lot 9 and Lot 14. If Lot 8 is gone, is Lot 9 also gone, or no? Lot 9 is that triangular corner piece in the bottom there.

**Attorney Rubin:** We have nothing to do with that on this application. This application was very specific that it was just on Lot 15, the north side of Mr. Theresa's property.

**Member Sbarra:** I'm just curious because it says vinyl fence here that also runs on Lot 14, which also looks like it is over the property line. Is that your vinyl fence?

**Attorney Rubin:** I don't know.

**Attorney Mondello:** These are somewhat interesting issues, but certainly not before the Board. The fences are the fences; let the neighbors deal with it. Either take them down if they are on my property or keep them up if they're on my property. The Board is here for a really one reason; the sheds and the gazebo. Do the positive criteria outweigh the negative criteria. That's what you are going to decide.

**Attorney Rubin:** Correct, and what we tried to do is give you the whole picture. Mr. Hafner said bring the whole picture to the Board, which we have done. The neighbor is willing to enter into an

**encroachment agreement that is separate from everything from else, but because there were issues because of this encroachment**

**Attorney Mondello: Mr. Rubin can you just wait a second? I apologize but we don't want to lose Mr. Covelli. He is the back on the phone and if we could wait just one minute.**

**Member Covelli: We have the Engineer on the phone. He had a scheduling issue on his calendar. He is wondering if he should get here now?**

**Attorney Mondello: It is your call Mr. Chairman, not mine.**

**Chairman: How long will it take him to get here?**

**Member Covelli: 15 minutes.**

**Chairman: I would like to wait for the Engineer, myself. Since he wrote his report and there are different questions. Let's take a 10 minutes break.**

**Recess at 8:29**

**Reconvened at 8:43**

**Let the record show Engineer Nash has arrived and all Members are present to continue hearing the Application.**

**Attorney Rubin: I think we've exhausted most of the questions that we're asking of Mr. Theresa. Mr. Theresa, just to finish out the gazebo, the gazebo will also be lifted off of wherever it is today from your neighbor's property and totally onto your own property?**

**Applicant: Correct.**

**Attorney Rubin: Just so we all understand the survey, which we are all using and dated August 4, 2018 and prepared by EID Associates, Inc., it appears that the gazebo is behind the house.**

**Applicant: Yes, it's in this back area.**

**Attorney Rubin: This doesn't have the same infirmity as the shed, which has been said is in the side yard, this is in the rear yard.**

**Applicant: Correct.**

**Attorney Rubin: But it will not be more than 5' from the property line. It will be less than 5'.**

**Applicant: Yes.**

**Attorney Rubin: You have spoken to and made tentative arrangements with a contractor to lift the gazebo from wherever it is onto your own property and that's a condition that you are willing to make and a concession you're willing to make so it is no longer an issue being off your site?**

**Applicant: Correct.**

**Chairman: I have two questions. What if you took that shed that shouldn't be on the side of the house and you put in place of where your small shed is on the other side? That property right there looks pretty flat. You've got 35.2' there. The shed is 20' you said. You'd still have 15' of open space there.**

**Applicant:** There isn't that room and the liability of only moving something .3 of a foot, but to lift a structure. I didn't get into these discussions with the contractor, but he originally thought it was getting moved over the house and he wasn't going to do it I guess because of liability and it could come crashing down. I'm not going to ruin my house over a shed to move to the other side of the property and then I'd be giving up a shed that is used for my pool stuff.

**Chairman:** You have a shed that's 8x20 and that's pretty big.

**Applicant:** Believe me it is packed to the max.

**Attorney Rubin:** What is in there Mr. Theresa?

**Chairman:** Listen I have a problem with this shed being that close and your going to be putting it back right on the property line. Instead of 5', you are going to have 0.

**Attorney Rubin:** It won't be zero.

**Chairman:** What would it be? You are going to move it 3 or 4", so when you move it back onto your property, you are almost dead on the property line, if not more.

**Member Covelli:** With less room between the house and the shed then there is now.

**Chairman:** Instead of 10' in the front, you're going to have

**Applicant:** It's 5' right now and it'll be about 4-1/2' which is still plenty for my sidewalk.

**Chairman:** But it doesn't comply with the code. We are looking at what the ordinance says. We can make a little adjustment to the ordinance, but to have basically zero on the back and 4' in the front doesn't do 5' and 10'. It's that simple.

**Member Covelli:** Engineer Nash, would you be able to give us some measurements to support what either the Applicant is making or what the Chairman and some of our concerns are with respect to the distance. Can you do that for us?

**Engineer Nash:** So you are going to move the shed to the property line or offset from the property line?

**Attorney Rubin:** Off, it won't be on it.

**Engineer Nash:** It'll be offset how much?

**Applicant:** Minimal as possible because of the walkway.

**Engineer Nash:** So there are no measurements given on the plan or the dimensions of the shed. I guess we are all assuming that the survey is correct and it's showing the shed right on the edge of the paver walk. Is that how it's in reality?

**Applicant:** On the sidewalk?

**Engineer Nash:** Yes, the shed is showing right on the edge of the sidewalk.

**Applicant:** Yes. I am actually going to take the paver, which is about 4", with is more than the .3, and put the paver on the other side of the walkway and abut the shed against the sidewalk.

**Attorney Rubin:** So that'll be 4" or 5".

**Applicant:** It'll be a little over 4".

**Member Covelli:** We haven't spent much time talking about the shed, as you referred to it as the shed you keep your pool supplies in. That is 3/4 of the way on the easement. Isn't the easement not

supposed to have any structures on it. In other words, the pond is one issue and the structure is another issue, right?

Engineer Nash: We are talking about the other shed.

Member Covelli: I know, but I'm just asking because we are focused on the shed on the north side and we talk nothing about the shed on the south side.

Attorney Rubin: That's not the application before the Board.

Member Covelli: But if there is a deficiency on the property, if we being asked, we know it is there, I would like to know is it a problem that the shed, while it's within the property line, is way over the line with respect to the easement. Is that or is it not a violation or non-compliance?

Attorney Rubin: We'd have to analyze the easement document. I don't know who owns the easement. I don't know what the easement says.

Member Covelli: It is referred to as a utility. Is there a utility in there. Is there a pipe?

Attorney Rubin: No. It's not the issue before the Board and we have not analyzed it.

Member Covelli: Mr. Rubin, we have to look at everything. We can't ignore what we see.

Attorney Rubin: I'm sorry, that's not part of the application.

Member Covelli: Mr. Chairman, in the past, when we looked at an application and said we have this issue, this deficiency and the like, would you like to clear that up?

Chairman: Right.

Member Covelli: I hear what you're saying Mr. Rubin, but there is one problem. I've sat here for 22 years and that's not the way we ever operated; what you stating. All I asked was is it an issue. That's a black and white question. Is it an issue with an ordinance or not? That's the question that I would like answered.

Attorney Mondello: I agree with Mr. Rubin that it's not before the Board. However, you are correct. If the Board was so inclined to grant the relief sought by the Applicant, you may say well we'd also like you to do x, y and z as a reasonable condition to grant. It is not a zoning issue.

Member Covelli: What does our ordinance say about easements?

Attorney Mondello: But it is there already. We have no authority.

Member Covelli: When we have an application and there are six sheds on it, we just had one not that long ago, and we said you got six sheds on here and we addressed it.

Attorney Mondello: And you grant part of the relief that was sought and he voluntarily said I'll get rid of three or two. He doesn't want to get rid of anything.

Engineer Nash: I think our jurisdiction has to do with offset from the property line, location within the property.

Member Covelli: So we don't have jurisdiction with respect to the easement?

Attorney Mondello: I don't know what the easement says. What is the width of the easement? What is the length of the easement?

Member Covelli: It says the width of the easement is 15'. They told us that.

Applicant: I just would like to say one thing. That's a simple shed. If there was a problem where somebody needed to get on the easement, that one can be pulled and taken off the easement, no problem. It can be removed if need be for easement work. I got no problem with that.

**Member Covelli:** Do you have a copy of the easement?

**Applicant:** No.

**Member Covelli:** It is recorded somewhere with the County.

**Chairman:** It's been looked up. It is on the Deed. The easement has been there from day one it looks like.

**Engineer Nash:** There are two pipes; one is sanitary and the other storm.

**Attorney Rubin:** Mr. Theresa has said something which I haven't heard before, he has made a representation that, if this shed on the south side of the property must be moved, he will do it.

**Applicant:** Plain and simple. That's an easy one.

**Chairman:** Mr. Rubin there is one more thing that bothers me on a lot of these applications. Mr. Theresa has lived in the house for a number of years, here is my problem, what is there now is fine. It's there and we understand that. The shed should not be there, the gazebo shouldn't be there, but my problem is this, when we create a variance it runs with the life of the property and you know that.

**Attorney Rubin:** It runs with the land.

**Chairman:** Mr. Theresa sells the house in five years, and a neighbor moves it who doesn't get along with his neighbors, now you have a war going on about where the fences are, things on the property lines. In the future, a lot of crazy things happen.

**Attorney Rubin:** It could be written if the Board gives us that suggestion that it only is in effect with Mr. Theresa and no one else.

**Chairman:** But leaves everything up in the air. That could leave with four neighbors fighting with the new owner of Mr. Theresa.

**Attorney Rubin:** No, there is no four neighbors. It is only the owner of Lot 15.

**Chairman:** Lot 14, 15, 8 and 9.

**Attorney Rubin:** They have nothing to do with this.

**Chairman:** Yes they do, they touch his property.

**Attorney Rubin:** They are separate issues.

**Chairman:** Separate issues as far as the fences are not on his property.

**Attorney Rubin:** I don't know who owns the fences. We don't know that.

**Chairman:** Well, Mr. Theresa testified he put the fences up.

**Attorney Mondello:** Mr. Chairman, I think once again, we are going down a road that we need not pave. If I have no problem with my neighbor's fence so be it, and if I do, I'm taking it down if it's on my property. We shouldn't be involved with that.

**Chairman:** I'm just looking at the future. When we grant a variance, it runs with the property.

**Attorney Mondello:** We are not granting a variance to have the fence on somebody else's property. We have no authority to do that.

**Chairman:** No, but we're letting a shed sit on a property line basically.

**Attorney Mondello:** Yes, we are.

**Chairman:** If he had to move his fence back on his property, he would need x amount of inches or so just to put the fence on the property.

**Member Sbarra:** Let me make a point here. Correct me if I'm wrong, but I thought I heard some testimony that said potentially, I know you have this consent with Lot 15, and obviously at this point you have a decent relationship, I guess, with that neighbor. Is it possible, and I think I heard you say this, possibly to buy some additional land off that neighbor.

**Attorney Rubin:** We tried to do that and the Planning Board, the vote of 4 to 4, did not allow it. We tried that.

**Attorney Mondello:** With that other lot become non-conforming if he took a slice of his property?

**Chairman:** Then it would create a side yard variance.

**Attorney Mondello:** It's already non-conforming so its exacerbating a non-conforming lot.

**Attorney Rubin:** Correct, along with other issues, the Board decided it didn't want to get involved with this and by a 4 to 4 vote being a tied vote and a tied vote is not granting an application. We tried and filed an application for a lot line adjustment, which means a minor subdivision, and the Board did not agree with it.

**Chairman:** That was in 2018, right?

**Attorney Rubin:** It was a couple years ago.

**Applicant:** You talk about moving the fence, and the other neighbor moving it, the sheds on the property line, so the fence goes up to the shed on both sides and the shed becomes the fence.

**Chairman:** I don't believe that would be legal.

**Applicant:** You can't go through the shed wall.

**Member Bonner:** When an exhibit is presented to us, we analyze that whole exhibit do we not? Every aspect of the exhibit.

**Attorney Mondello:** Yes.

**Member Bonner:** Any comments relevant to the fence and everything else are germane. Maybe not appropriate for us, but germane.

**Attorney Mondello:** Sure, if you want to look at it that way, yeah.

**Member Ludwig:** Why is the gazebo on the property and that's not a problem?

**Chairman:** That's why I said both structures are in the wrong place.

**Member Ludwig:** We keep talking about the shed.

**Chairman:** But the gazebo is the same problem.

**Attorney Rubin:** Most respectfully, the gazebo is not the same because it is in the rear yard.

**Member Covelli:** If he moved it six inches or a foot, it wouldn't be a problem. He doesn't have a constraint there other than he doesn't want to disrupt his patio.

**Chairman:** Whether it is a gazebo or a shed, it is still 10' from a residential property and 5' from the rear.

**Attorney Rubin:** It needs a variance, correct. The only thing that it has it is in the rear yard and the shed is not in the rear yard, it is in the side yard. That's why we came and we were hoping

that this Board can figure all these things and come to some conclusion that is acceptable to both the Borough and Mr. Theresa so we can end this issue.

**Member Covelli:** You know our responsibility is not figure out the applicant's wishes, it is to rule on them. With that said, I'm trying to figure out how to help Mr. Theresa because he has a spot here. I can see he is in a spot and I don't want him necessarily having to bulldoze and re-engineer his entire yard. I happened to see the property, he has spent a lot, I think he has a lot of pride in his property and I think he is trying to make a very nice, and I'll use the word little oasis for himself. However, I can't seem to get past the shed that is 12x20 on the narrowest part of the property. Again, it is not our job to figure things out, but that's where I'm getting the most stuck. I'm looking at the gazebo and saying we can work with that, I think. The fences are not our issue. But that shed over there is a problem. I'm also hearing that shed over the years, you didn't construct it. I heard you. You also said it's been disassembled and has been moved and slide around because you had other issues to do and you found a way to do it. In fact, your testimony tonight is you are going to have to move it 3", 5", 6", and figure out a way to do that. So my question is, where can you put that shed on the property that works, other than 4-1/2' to 5' from the side of that house. What can we do Mr. Theresa?

**Applicant:** In all honesty, there is just one place to put it and that's on the other side where you thought it should go and I would agree 100% except for when you have a 45 degree slope. To level that shed out, you would almost have a two story facing the street. You would have a wedge of block that's going to stick up one end possibly 6' high to level out the shed to be placed on the block.

**Member Covelli:** The Chairman was on the site and said there was enough room there.

**Chairman:** Run it the other way, just how the fence runs. Get rid of the small shed.

**Applicant:** You couldn't. You'd be short then because of the easement. If it is 35' and you have to have 10' to the house and 5'.

**Chairman:** It works if that shed is only 25' long. First of all, your property is not 45 degrees, that's really steep.

**Applicant:** It's very steep.

**Chairman:** In the back where you built the walls, very steep. I don't walk well but I walked your property to the fence on that side.

**Applicant:** 30 degrees.

**Chairman:** Maybe 30 degrees and it varies. When you get to the backyard between that fence and your step walls, you have a triple step wall there to meet that grade to the neighbor behind you, it is not that bad. It is maybe 15'. It is very level where you put that pool. The other problem we have here is that, even the new pool, you never took out a permit to put that new pool.

**Applicant:** Yes I did.

**Chairman:** The court records said you didn't. I just read them.

**Applicant:** I had a permit for the pool and I had a permit for the fence. , both from Mr. Brusco. I did pay for a pool permit.



**Member Covelli:** Okay, I'm not going to question that. I'm not questioning your pool and I'm even thinking about how to keep your pool shed for you if you move the other one. Mr. Theresa do you know where I live.

**Applicant:** No.

**Member Covelli:** I live on Ringwood Avenue and you know the house that I live in and I'll describe it for you. It is the Victorian that's been worked on for 5-1/2 years. I just moved a shed. Do you want to know what went into that house to fix it? Do you want to talk challenges? When I move an ironing board and I can look outside the house and the 22 tons of plaster that came out of it. But I'm telling you where there is a will, there is a way. I tell you what, if I were you, I'd be angry to pay somebody thousands of dollars to move something 3". I'd rather get maximum use out of that to improve my property and remove all issues going forward. That's one man's opinion.

**Applicant:** So would I. I'm only looking to spend the money to get this over with the easiest way possible.

**Member Covelli:** And to best position you in the future to protect yourself. As the Board said, you have a shed sitting on the property line that, I don't know, a surveyor, were talking 3" over hundreds of feet, boy you could have missed that by a little bit, and be back in the same suit. If you want to convince me that you can't move it, then I'm going to ask for a recess tonight and, before the next meeting, I'm going to walk your yard and I'm going to see where the shed by the easement is, if that is a level as the Chairman says it is.

**Applicant:** First of all, I can't speak for somebody but I'm not moving it, a crane and proper people that know had to move it will have to do it. I don't know, right now, how that would be or if it can be done.

**Member Covelli:** You are talking to a guy that fixed a 150 year old house. Where there is a will, there is a way.

**Applicant:** There is probably somebody that can do but I just don't know.

**Member Covelli:** I don't think you have to lift it, I think you can roll it. I wouldn't even both putting straps and lifting it. I thoroughly agree with you. I don't want that hanging over my house.

**Attorney Mondello:** Why not get a new shed?

**Engineer Nash:** Which shed you talking about?

**Applicant:** At this point, I thought it would be hopefully

**Attorney Mondello:** It's principal now.

**Applicant:** Well, it was principal all along because it was there and I believe that somebody hear me speak of Mr. Brusco who authorized everything and new of everything that somebody would say, okay, he was the proper person to speak to you. You took his word for it, fine, it's been there from his time.

**Attorney Mondello:** Unfortunately, you lost that battle.

**Applicant:** I lost all the battles. I need you gentlemen and ladies to give me a hand. With the costs, I could have built three sheds.

**Member Covelli:** I think that's what Mr. Mondello is saying, don't spend \$10,000 to move a \$6,000 shed.

**Applicant:** It's not a \$6,000 shed.

**Member Ludwig:** What do you have in that shed?

**Applicant:** It's probably close to \$20,000.

**Member Ludwig:** No, what do you material wise, gas tanks?

**Applicant:** No, nothing like that. A lot of patio equipment goes in there, a gardening tools, I keep tools like a table saw. It's packed to the max. I wish I didn't even need it.

**Member Covelli:** We are not refuting the fact that you want your shed.

**Applicant:** I don't know how I would go about even asking, I know how to ask to have it moved, but to find somebody that's going to do such a thing and take on the liability to move it. Moving something 2" or 3" isn't bad. It isn't going to fall and kill somebody or wreck your house if it falls down and I'm sure there is insurance for that. I don't know to move a shed that size over my house.

**Member Ludwig:** You either dismantle it or once it's jacked up and you have rollers underneath it you could move.

**Applicant:** You can't roll it. It is down 18" into the ground.

**Member Ludwig:** Your floor isn't 18" down.

**Applicant:** The floor is ground level.

**Member Ludwig:** So it's on a base and the foundation is going down. That's going to stay there. I've been in construction since I've been about 14 years old. You are not going to lift all that up out of the ground.

**Applicant:** They are lifting the whole thing up.

**Member Ludwig:** That doesn't make any sense at all.

**Chairman:** That doesn't make sense because wherever they are going to put it they'd have to re-dig pockets down for that to sit perfectly.

**Applicant:** They are. They are digging a trench around the two corners of the shed, they are going to put all new foundation blocks down because, when they slide it, it's going to come off the foundation blocks and they are going to lift it up, move it over 3" and drop it on the new foundation blocks.

**Chairman:** Listen, that doesn't make sense. Sheds are put on either cement pad, railroad ties that are 4" high, they don't go down 1-1/2'.

**Applicant:** I'm telling you it is. I've been trying to find pictures of when I did the drainage.

**Chairman:** That's the other question, when you did the drainage, you moved the whole shed, right?

**Applicant:** I moved the walls.

**Chairman:** What about the floor?

**Applicant:** I couldn't because it went down too far.

**Chairman:** How did they put drainage under the shed?

**Applicant:** I went behind the shed, between the shed and the railroad tie wall.

**Chairman:** So you went off your property to do that? The shed is on the neighbor's property so if you went behind it.

**Applicant:** I don't know who to explain this. This is what I was instructed by Jeff Brusco at the time and he oversaw everything. He knew exactly what I was doing, where I was putting everything and now I don't want to bring a drainage issue into it. I did what people told me to do. I shouldn't be held accountable for going through the proper authorization of people. You call up the town and ask who do you talk to and was told the building inspector and I did and he came over and looked at. He looks at it and advises what I can do.

**Chairman:** That can open a lot of questions because if somebody comes and looks at it. We send the Borough Engineer and show him the pipe isn't on your property, that can be another issue, right Mr. Rubin?

**Attorney Rubin:** It's true.

**Chairman:** Here's the problem Mr. Theresa. We are trying to figure this thing out, but there is so many unanswered questions and somebody complications to this thing, it doesn't make any sense.

**Member Ludwig:** Just because somebody else made a mistake years and years ago, doesn't mean we should validate the mistake.

**Chairman:** We can't justify something that happened 20 years ago, or less. The pictures that they have in the court action in 2003 and 2004, I believe it was, show no shed there at all. You saying, in one of the papers here, that the shed was there when you brought the house.

**Applicant:** Yes. I had testimony from the neighbor across the street who used to use it.

**Chairman:** When they took those aerial pictures, where did the shed go? It is not in the picture.

**Applicant:** Maybe that was the time it was being moved and I think your dates are off. I mean, I don't even remember the dates anymore.

**Chairman:** The aerial photographs have dates on them. That's where I got the dates.

**Attorney Rubin:** But we had an eyewitness who lived across the street who testified under oath that they were there before he brought his house.

**Applicant:** The shed and the gazebo.

**Chairman:** In other words, when you went to court, they accepted those pictures.

**Attorney Rubin:** And they didn't accept the testimony. The judge said that he didn't believe, I can't remember the exact words, but he wasn't impressed by the testimony of the neighbor.

**Applicant:** What he said, and I do remember it, and I kind of thought that it didn't sound right, this is a guy and neighbor who moved away before I moved there. His mother still lived there.

(Applicant continued to talk about the neighbor's court testimony and the neighbors themselves).

**Attorney Mondello:** These are interesting stories but, once again, simply not related to whether or not the Board finds the positive criteria outweighs the negative criterial granting the variances

that are sought. What is the Board's pleasure here? Frank, you initially said that you may want to walk the property. What is the Board's pleasure?

**Member Covelli:** I'm trying to find a way to help Mr. Theresa and I'm trying to entertain what he is asking us.

**Attorney Mondello:** I think he has made it crystal clear he is not moving it to that other side because he is concerned that it can't be done.

**Applicant:** I don't know. I haven't contacted anybody to even know if it can be done.

**Member Covelli:** Mr. Mondello, I can't support that position. I'm saying that, I've learned this after being here 20 years, I'll tell the applicant what my concerns are so he doesn't get blindsided in a vote, but I am also willing to leave the door open. I'll walk the property and I'll do what I can to help him because he is in a spot. I don't want us to just vote no and leave him in a spot.

**Attorney Mondello:** Because if we vote no, he has to demolish the shed.

**Member Covelli:** Personally, and it is thoroughly up to the applicant, if he wanted to recess it, I'll go look, he can go talk to his contractor, we can reconvene with more information, more knowledge and see if we can find a way through to grant him some relief so he can, to your point, I don't if it's this shed or another shed, or whatever he wants, but he can resolve his issues and do what he wants to do. But I can't support that shed staying in that spot.

**Member Sbarra:** And to Frank's point, and my question was going to be point blank, and then I was also going to make the suggestion exactly what Frank had said as well, are you willing, if it is possible, to move that shed off this side yard to another location, yes or no?

**Applicant:** I am interested in entertaining it if it is possible. But I don't want it to look like an eyesore either. If I move it, you guys are stuck with the way it looks then.

**Member Sbarra:** My suggestion is exactly what Frank had said as well. My suggestion would be maybe you can speak to another contractor to see if it is even possible for you to do. Frank and maybe a couple other of us will walk the property a little more thoroughly to see if we might be able to do that as well. Is that something you are willing to entertain, at the very least?

**Applicant:** I am willing to entertain it. The only reason why I preferred it there is it keeps most of our everyday stuff that is needed and with my son being down syndrome, he walks right out the patio and he can something out of the shed and he can go there. Now he would have to walk through a gate, through to the front of the house where he don't let him outside the confines of the backyard. So that all ends, that easiness of things being done around the house and that does contain most of the stuff we do on a daily basis and we've used it for years for that. Now, I can't send him out there any more to do any of that.

**Attorney Rubin:** Let's have the Board, those members are interested, look at this property.

**Applicant:** I agree. If we get something down where we think it is viable to do, I will then reach out with that plan to somebody that possibly could do it. I have no problem with that.

**Member Covelli:** Jack, on the Antillie property, if you remember, we met the applicant on our work session Saturday. He did the balloon, we took minutes, and we literally had a site meeting.

**Attorney Mondello:** That was a fairly big project. This is a shed. Perhaps the Board Members

shouldn't have no more than three (3). Three or less visit, then you don't have to have a public meeting, we don't have to notice for it, I or Jenn don't have to take notes, etc.

**Member Covelli:** Is that all right with you that we come to your property and visit.

**Applicant:** Yes, I can do it any day of the week.

**Chairman:** It has to be on a Saturday, basically.

**Applicant:** Saturday is fine.

**Member Sbarra:** I'll make a motion to carry the application.

**Attorney Mondello:** If we are indicating that all the Board Members are going to be there on a Saturday, it has to be noticed, there has to be a mechanism, I mean it just seems that it is a lot, Jack, for a shed. Perhaps individual Board Members should just go out there, taken a look. I mean it is up to the Board.

**Chairman:** I went yesterday and today and nobody was home.

**Member Bonner:** I was there last week.

**Applicant:** We very rarely are. If you tell me, I'll be there.

**Member Covelli:** I hear what you're saying. Yes, that was a 30 something apartment.

**Attorney Mondello:** And we had a lot of objectors.

**Member Covelli:** I am also looking at this man has been through a lot and he wants to bring it to a close and we need some kind of closer here. If we vote just to knock him down without doing the process, he is back in a lurch, so that was the only reason I said if we can on a date. Everybody is there, we all hear the same thing, he knows what the date, he knows when to have his discussions with his contractors and like, we know what questions we are going to ask. If we go individually, we go individually.

**Attorney Mondello:** That is the decision that is before the Board.

**Member Covelli:** I'll defer to the Chairman and do whatever he wants to do.

**Chairman:** Let's do it as a group. We can't ask any questions of the applicant.

**Attorney Mondello:** Why not? If it is a regular meeting that has been noticed and minutes are being taken.

**Chairman:** You are right. Regular meeting and take minutes, yes. Chris would have to be there also.

**Member Sbarra:** In saying all of that, I personally think that we should just go individually. That's my personal opinion.

**Chairman:** Everybody has to sign off that they've been. We can go as a group of 2 or 3 Ron?

**Attorney Mondello:** 3

**Chairman:** So we go 3 at a time. I was there twice and I didn't open the gate because I don't know if you have a vicious dog. I have run into that.

**Member Covelli:** Mr. Mondello, there are 8 Board Members, so if we picked a day with Mr. Theresa, and we said at 9:00 this group goes, by 10:15 the next group. In other words, we're not tying you up, *per se*, we all come, but we have to come spaced so we are not there together. We have to follow the law Mr. Theresa, you understand that? We can do that Mr. Mondello?

**Attorney Mondello:** Yes, and we simply just carry it to the January meeting. By then, everyone should have a better idea of what this application.

**Board Secretary:** The next meeting date would be Wednesday, January 3, 2024.

**Member Covelli:** Which is probably a good thing with the holidays and the like, it gives ample time. You don't want to come here and we haven't answered all our questions yet.

**Member Sbarra:** I'll make a Motion to Adjourn this Application to the January 3, 2024 Meeting.

**MOTION TO CARRY THIS APPLICATION TO JANUARY 3, 2024:** made by Member Sbarra,  
seconded by Member Covelli. Voting yes were Chairman Dunning, Members Covelli, Ludwig,  
Sbarra, Lynch and Bonner  
Motion Carries

**Chairman:** We'll be visiting your property.

**Member Covelli:** We'll find a Saturday when we can do our hour visit.

**Applicant provided his phone number to Member Sbarra.**

**PUBLIC DISCUSSION:** Let the record show there was no one in the audience.

**DISCUSSION:** Vice Chairman Grygus questioned Construction Official about Buske Property/Application.

Mr. Hafner advised the Board that we do have permits for the house. The interior is almost done. We do not have permits for the garage.

Board is concerned that there may be more trucks on the property than approved.

**ENGINEER'S REPORT:** Scenic Landscaping

Engineer Nash: The biggest issue from the resident that I'm hearing complaining is from the Reilly Family on Whistler Place, and their property is the third house down from Jefferson. Scenic's property is shaped, not like a rectangular piece, but has a notch cut in it, so Whistler extends all the way in on three sides not just the back of the property. Their fence line actually goes around the Reilly property. Initially there was water from the Scenic property going onto Reillys. They sent videos. I viewed the video and often times a neighbor complains and the reality is not what they are saying, but in this case it was. There was water coming from Scenic's property that wasn't coming there prior to them doing all the work. I and the Mayor, both walked the properties, spoke to Mrs. Reilly. She had a legitimate problem. I had a separate meeting with Scenic and spoke with them. I gave them some specific direction, which they followed. I went to the site on Monday after a weekend of rain. I don't see that situation is occurring now; the runoff from Scenic's property onto theirs. I don't see it anymore. There are still some complaints. The complaint is, if there is runoff, so now it becomes hypothetical, it was reality before, and now it's if there is water coming on my property that wasn't there before, I'm going to sue you. So I went out there and I don't see that happening and I don't see the signs of it. Last time there were signs and you could see stone that ran off from the property. They even put the landscaping in. The fence is offset inside the property line by 5' and they are putting a buffer of plantings on the outside of the fence. There is a section of Reillys where there is ledge rock on the Reilly's property and obviously you can't plant anything on ledge rock. That was an issue and they've asked Scenic to remove some dead trees that are falling and that's happening. They have what really looks like a detention basin in the far corner of the property on Jefferson that's maybe 3' deep so that fills up and empties by seeping into the ground. I have told Scenic that, if that becomes a problem, if that's a potential property and it over tops and causes issues, not to Reilly but the other neighbor, they have to do something and take that drainage and connect it physically to the basin at the intersection of Whistler and Jefferson, which they said they would do. They have also done some off sight regrading and have diverted some of the water. Where Jefferson ends, there is trail that begins and winds up the hill, there was water coming down that trail, so Scenic went back in and cut some ditches in so that water doesn't come directly onto the end of Jefferson; it goes into the woods. They've done, what I can see, is all they can do. Scenic has been very responsive to all the site visits I made, and all the emails and letters that I've sent them.

Vice Chairman Grygus: This may have been discussed before, but what was ever done with the access roads and stuff that were built wider than what the plan showed?

Member Covelli: That's was the meeting I was at with him.

**Engineer Nash:** I think what they've done, and this is not a curb and paved roadways, this is kind of a little different animal, they just cleared pathways where they tried to minimize disturbance to certain trees and things like that, so it may have gotten a little wider, but I don't think its egregious in any way. It is still open and they are going to store their plants there. They haven't started to bring them in yet. It is all going to be open space, if you will, versus what it could have been.

**Member Covelli:** I think that is something that is often forgotten as evidence by what Jennifer just threw in front of us. That could have been I don't know how many apartments. Plants are a lot quieter plus I think they are good for the environment. That's what I've been told.

**Engineer:** That's my report on Scenic Landscaping.

**MOTION TO ADJOURN AT 9:42PM:** Motion made by Member Covelli, seconded by Member Ludwig and carried by a voice vote.

---

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