

REGULAR MEETING

Salute to Flag: 8:05pm

OPENING STATEMENT:

This is the Regular Meeting of the Wanaque Board of Adjustment and adequate notice has been given and it has been duly advertised by the placement of a notice in the Suburban Trends on January 17, 2021 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 with the Borough Clerk

ROLL CALL: Chairman Jack Dunning, Members Frank Covelli, Suzanne Henderson, Donald Ludwig, Helena Aumenta, Dana Lynch and Michael Sbarra and Attorney Ronald Mondello and Engineer Christopher Nash

ABSENT: Vice Chairman Bruce Grygus and Member Michael Levine

Application ZBA2021-08 – Scenic Landscaping, Jefferson Street (Block 459/Lot 19)

David L. Rutherford, Esq., 141 Dayton Street, Ridgewood, NJ, appearing on behalf on Scenic Landscaping LLC and on behalf of its related companies Tranquility Pools and Tapestry Landscape Design. Also appearing on behalf of Haskell Holdings, LLC, the principals of which are a combination of Mitchell Knapp, Jacqueline Knapp and Richard Zimmer.

Exhibit A-1 – Plant Nursery Layout dated 9/24/21 and prepared by Richard J. Zimmer, Landscape Architect, Tapestry Landscape Architecture

Attorney Rutherford: My clients come before the Board with the knowledge and consent of Ann Wasserman, the owner of the property. Specifically, the property is on Jefferson Street known as Block 459, Lot 19 on the Borough's Tax Assessment Map. Mr. Knapp and Mr. Zimmer are here with me tonight along with Steve Lydon of Burgis Associates, our client's Professional Planner.

Attorney Mondello: Mr. Chairman, I've had an opportunity to review the Notice of Publication and the Notice to Residents within 200'. I would deem the application complete and that jurisdiction is vested in the Zoning Board to hear this application. Mr. Rutherford, back to you.

Attorney Rutherford: We consider this to be a fairly simple application. Haskell Holdings, LLC is the contract purchaser of the property. Scenic Landscaping and the other two companies, Tranquility Pools and Tapestry Landscape Design, have for many years operated a landscaping business, landscaping design firm and pool contracting firm on the lots to the south of Lot 19. These uses, I'm sure, are familiar to the Board. The companies plan to use the property that is the subject of this application for the storage of plant material, following delivery, and prior to installation at job sites. Mr. Zimmer will give you the details. Because the use is not permitted in the R-10 Zone in which the property is located, we seek a Use Variance as well as such other approves as the Board deems required. We have provided a survey of the property and a site plan prepared by Mr. Zimmer. Mr. Zimmer is prepared to provide the facts underlying our application and Mr. Lydon will address the legal criteria applicable to the request.

Attorney Mondello: Mr. Rutherford, I am not in receipt of a site plan, perhaps you are. This is some architectural drawings; there is no topography, there is no indication as to where exactly plants would be stored. Perhaps you misspoke or we don't have the site plan.

Attorney Rutherford: No, I did not misspeak. What I intended to say is that the site plan that we have provided is a plan that Mr. Zimmer, seated to my right, prepared. It is dated September 24, 2021. We think that this should be sufficient for the Board given the nature of the use that is proposed, the property and the changes that we propose to do. Basically, he has shown areas on the property where plants will be stored. He also showed a roadway entering from Jefferson Street that circulates through the property. You'll hear him say in a few moments that this plan is something that is going to somewhat develop or morph over time. In other words, this is not something that is going to take place right away. Areas of the property will be cleared. There are a number of dead trees, underbrush and a lot of things that need to be cleaned out to make it suitable for the storage of the materials. We are asking the Board, under those circumstances, to accept the plan that Mr. Zimmer has prepared as a site plan sufficient for the Board to evaluate the Use Variance request.

Attorney Mondello: Thank you Mr. Rutherford. We will leave that up to the Board. Your first witness.

Attorney Mondello swore in **Richard Zimmer, 7 Argyle Street, Haskell, NJ**

Attorney Mondello: Mr. Zimmer, I have not had the pleasure and I don't believe you've appeared before this Board or myself. Mr. Rutherford, do you want to voir dire?

Attorney Rutherford: I'm not necessarily offering him as an expert witness, although he does have expertise in landscape design. I will have him put his professional qualifications on the record and then provide factual testimony in support of our application. Mr. Zimmer, before we begin, Mr. Mondello's suggestion is a good one, can you give the Board the benefit of your professional qualifications, your education, your licensing and your professional experience?

Mr. Zimmer: I am a Licensed Landscape Architect in New Jersey and New York. I've been licensed for 22 years as a Landscape Architect. I am a partner and principal at Tapestry Landscape Architecture, the design division of our companies. I've been with the company for 25 years. I've given testimony to numerous Planning and Zoning Boards

throughout Northern New Jersey and have been accepted as a professional in Landscape Architecture.

Attorney Rutherford: Has anything happened with respect to your licensing since you were last so qualified that we adversely impact this Board's decision to qualify you again.

Mr. Zimmer: No.

Attorney Rutherford: Your license remains in good standing.

Mr. Zimmer: It does.

Attorney Rutherford: You have, in the past, in connection with your appearances before other Planning and Zoning Boards, prepared plans similar to the one that I have in my hand that I referred and discussed with Mr. Mondello just a few moments ago.

Mr. Zimmer: Yes I have.

Attorney Rutherford: That plan was based upon the survey that's been filed with the Board.

Mr. Zimmer: Yes.

Attorney Rutherford: For factual testimony, how long have you been associated with the applicant? When I say applicant, it is my understanding that the three companies work together out of this site all in slightly different disciplines so there is Scenic Landscaping, Tranquility Pools, which is the pool contractor, and there is Tapestry Landscape Design, which is the landscape design firm.

Mr. Zimmer: Correct.

Attorney Rutherford: You are associated with all three of them and for how long have you been associated with them?

Mr. Zimmer: 25 years.

Attorney Rutherford: In connection with that, what have your duties during those times and what is your position with the company now and your areas of responsibility at the present time?

Mr. Zimmer: I run the design division of the company. I am the Principal Landscape Architect. We are a high-end residential design build firm and I'm pretty much in charge of all the design aspects of the company, but also involved with some of the Project Managers and Operations of our company.

Attorney Rutherford: I indicated in my Opening Statement that Haskell Holdings, LLC is the contract purchaser of this property. Also, the owners of Haskell Holdings are owners that are in common with the three companies that already do business at the property to the south.

Mr. Zimmer: That's correct.

Attorney Rutherford: Could you describe, very briefly, what each entity does?

Mr. Zimmer: Tapestry Landscape Architects: we are licensed Landscape Architects and develop master plans for properties, we do full layouts of driveways, patios, pools and plantings throughout the property. We work throughout all of Northern New Jersey and mostly high-end residential type work. Tapestry is the design division of the company. Scenic Landscaping is the construction division of the company doing all of our plantings and hardscaping. Tranquility Pools is our pool division and they construct gunite swimming pools.

Attorney Rutherford: How long have the businesses been doing business at their present location?

Mr. Zimmer: 25 years at this present location. My business partner, Mitch, has had the company for 46 years.

Attorney Rutherford: I think during that time, you were on one lot and expanded to the adjoining lot a number of years ago, correct?

Mr. Zimmer: That is correct.

Attorney Rutherford: We are before this evening because Haskell Holdings is the contract purchaser of the property to the north that you want to use in conjunction with or association with the existing businesses.

Mr. Zimmer: Yes, we do.

Attorney Rutherford: Describe, very briefly, during the time that Tapestry and Scenic Landscaping has been located in Wanaque, what relationships have you established with the community and the neighbors around your property?

Mr. Zimmer: I think we have a very good relationship neighbors. We have been there for quite some time. We are always friendly with our neighbors and we try to help out wherever we can. We've had a good relationship if plantings are needed we are willing to help out. We want to be good neighbors. With the town, we are also thankfully involved and happy to work with the town on some projects. We do some annual/seasonal plantings and maintenance type services for the township both for the Town Hall as well as for the main Wanaque sign on Union and Ringwood Avenue. (Per Member Covelli: Also known as the 9/11 Memorial).

Attorney Rutherford: Can you explain to the Board why your companies wish to acquire Lot 19 and what you intend to use it for?

Mr. Zimmer: We would like to use it for temporary storage of plant material. We do currently store plant material on our property and we are very simply, and the reasons that I had some pictures attached to my plan, looking to do the same type of nursery that we are showing in these pictures that we have on our current property.

Attorney Rutherford: I know you carry a wide variety of plant product, but just give the Board an example of the kind of things that are presently stored on your present site and what you would want to store on Lot 19.

Mr. Zimmer: It varies from trees, balled and burlapped type trees, to container plants of gallon sizes up to ten or fifteen gallon sizes. I realize some of the pictures that we have may be a little tough to see but I do have them blown up here if anyone would like to look at our current nursery, which shows the types of plant material that we use; all decorative flowering plant material that we use only for our clientele.

Attorney Rutherford: I am going to guess that your business is somewhat seasonal in nature. Is that right?

Mr. Zimmer: It is.

Attorney Rutherford: Can you talk a little bit about when your most active and how activity ebbs and flows over the course of a year.

Mr. Zimmer: For example, now we are actually clearing out all of our nursery. We are closing things down. There really is not much activity in the nursery in the late fall into the winter months. Generally speaking in the spring is when plants are coming in and being dug and that's the time we are most active with the nursery and then it is sort of sporadic throughout the season that we are using the nursery. It definitely is a seasonal business spring to fall.

Attorney Rutherford: At this time of year, you are in the course of winding down for the winter months. A lot of your summer employees, your seasonal employees have left you to return in the spring.

Mr. Zimmer: They will be soon. Yes.

Attorney Rutherford: Talk a little bit about the nature and frequency of deliveries. Before we talk about where, what kind of deliveries do you get? You mentioned a moment ago that most of the deliveries are in the spring and into perhaps the early summer. Can you tell the Board about the nature and frequency of deliveries?

Mr. Zimmer: Generally, as I mentioned, most of the time it is in the spring. It does vary a little bit. We get deliveries maybe two/three trucks that would come in or even vans sometimes that would carry some of the smaller types of plant materials. Generally speaking, that is in the morning periods from about 7:30/8:00am until about 2pm, is when we typically have plant deliveries. Once we get passed the spring period where we are really bringing in a lot of our plant material, it is very sporadic when we do get plants, maybe it's once or twice a week that we would get a delivery of plant material.

Attorney Rutherford: At the present time, deliveries are made through Argyle Street to your current yard. Is that right?

Mr. Zimmer: That's correct.

Attorney Rutherford: If the Board were to approve our application to use Lot 19 for its intended purpose, you would want to access the property from Jefferson Street.

Mr. Zimmer: We would.

Attorney Rutherford: Maybe you can explain to the Board why that is and the impact that may have on your present operation.

Mr. Zimmer: Currently, if you've been to the property, you've seen it does have some rocky topography. The access between our two properties is limited and with larger vehicles we are looking to have a point of access off of Jefferson really to make it a lot quicker and more efficient to be able to unload plant material, not have to be driving machines back and forth as much. The closer that we can get a delivery to that area, the quicker that we can unload it to that property. Currently, we do have deliveries, and I imagine we would still have some deliveries coming to our property but it would just be some of the plant material that we would look to store over here.

Attorney Rutherford: If the Board were to see fit to approve this application that does not mean that there will be an increase in the number or frequency of deliveries. The deliveries will be essentially the same. It is just that they are going to be made to a different location and in a more efficient manner.

Mr. Zimmer: Yes.

Attorney Rutherford: As a general question, it is accurate to say that the purpose of this application will not necessarily involve any change in the nature or intensity of the use. It is just going to improve the efficiency by which you operate.

Mr. Zimmer: Yes.

Attorney Rutherford: You have prepared a site plan and perhaps Mr. Mondello, with your consent, we will mark that as A-1, and I'll identify it and he can confirm it. Mr. Zimmer we have a drawing entitled "Plant Nursery Layout", dated September 24, 2021, and it consists of a plan with four pictures on the left side and then a conceptual, if you will, or

site plan rendering, on the right side. I believe you testified earlier, but we'll confirm now, that you did, indeed, prepare that and that was based upon the property survey that you obtained of Lot 19 and which was filed with the Board.

Mr. Zimmer: Yes.

Attorney Rutherford: Let's just start first of all by going through the pictures. You mentioned these briefly earlier. Mr. Chairman, I think the Board has a copy of this plan do they not? We have additional ones here if anyone needs one.

Chairman: Yes, we all should have a copy of that.

Attorney Mondello: Maybe I'm mistaken, but the version that I have and that Mr. Nash has is not colorized.

Chairman: We just have black and whites.

Attorney Rutherford: If you wish, I will distribute the color ones.

Mr. Zimmer: That is the only difference; the colorization.

Attorney Rutherford: Can you describe what the photos are on the left side show?

Mr. Zimmer: Those are existing nursery photos and really what we are looking to do on this property. As you can see there are gravel pathways shown with plant material stacked to the side. You see some are in containers, some are balled and burlapped type trees and this is an example of exactly what we intend to do to store on the property on a temporary basis.

Attorney Rutherford: The plan that you have prepared and which the Board is reviewing shows the rock outcroppings on the property which essentially are going to remain there and it shows the areas that you propose to make suitable for the storage of landscaping plant material.

Mr. Zimmer: Yes.

Attorney Rutherford: Can you describe a little about the existing vegetation on the property in terms of the trees, their condition, underbrush and things of that nature.

Mr. Zimmer: The property does have a number of dead trees, but also a lot of mess in the lower areas. There are the rock outcroppings that are combined with the trees. We are really looking to work with the nature of this property and try to carve around existing mature trees if there are any larger and there is not too many since most of them are smaller caliper or dead trees that are in the area. We are looking to mainly clean up the property and try to make use of areas that are little bit more level to be able to use to store plant material.

Attorney Rutherford: I indicated in my opening that this is somewhat of a work in progress. Meaning that the property will be made suitable for the storage of material over a period of time as deliveries are made and you have the ability and time to make certain areas suitable for that storage. Is that correct?

Mr. Zimmer: That's correct.

Attorney Rutherford: It's not necessarily that we plan to get to the point that you are going to put in that gravel pathway all at once, right away.

Mr. Zimmer: Likely not. We're just intending to start to make use of it in some ways that we can, whatever would be easiest in the beginning.

Attorney Rutherford: And the pathways that you propose on the site plan, will be similar and look very much like what you show in the photos on the left.

Mr. Zimmer: Yes.

Attorney Rutherford: No pavement and no curbing; just a pathway, which is the best way to describe it, might have some gravel in it from time to time to just prevent erosion and holes and things of that nature.

Mr. Zimmer: Correct.

Attorney Rutherford: As I indicated, we are not providing or proposing any drainage facilities or new pavement. It will all still be pervious area except for the pathways that you indicated, and not lighting.

Mr. Zimmer: Correct and no lighting.

Attorney Rutherford: There will be a limited irrigation system is that correct?

Mr. Zimmer: We will have an irrigation system similar to what we have on our current property. We do run lines but then they go up onto an irrigation stand to water plants.

Attorney Rutherford: Are the lines above or below ground?

Mr. Zimmer: The lines typically we have below ground.

Attorney Rutherford: Is it your intent generally to respect and conform with the topographical features of the property? So we are not intending to go there and blast rock and moving rock or anything of that nature. You are going to work with what is there, clean it out and make it suitable for what you want to use it for.

Mr. Zimmer: That's correct.

Attorney Rutherford: The plan also shows a buffer, does it not?

Mr. Zimmer: Yes.

Attorney Rutherford: So maybe you can talk a little bit about what you have in mind there with the buffer area. You are showing a 15' wide planted buffer down the west side and along the north side as well. Correct?

Mr. Zimmer: That's correct.

Attorney Rutherford: What do you have in mind for that?

Mr. Zimmer: We would like to, as I've said, work with the property and certainly any trees along that buffer zone we'd like to work around and in fill if need be with new plantings to help buffer and create some privacy for both our property and for the neighbors.

Attorney Rutherford: That should work because that's your business; that's what you do.

Mr. Zimmer: It is.

Attorney Rutherford: Can you talk a little bit about the days and times of operation at the present time? Also, comment on whether the acquisition of this property will change any of that.

Mr. Zimmer: No, that will not change our current operating times during the week. We do have some crews come in on Saturdays on a limited basis, but operations in the yard and nursery are very limited except for during the week. We have hours of roughly 6:00/6:30am, some of the guys come in not that they are working in the yard, but 6:30am to about 4:00pm is our operating hours.

Attorney Rutherford: Nothing in the evening, very limited operations on Saturdays and nothing on Sunday. Identical to what it has really been for the past 25 years that you have been there.

Mr. Zimmer: Correct.

Attorney Rutherford: Just a few questions about other activities on Lot 19. You indicated that there is no proposal for the storage of material such as mulch, or wood chips, or anything of that nature on Lot 19. Why is that?

Mr. Zimmer: We really just want to work with this property and the plant material has some flexibility with the terrain. It is easier for us to work with. We have current facilities on our existing property that have the mulch and top soil that we need and it's conveniently accessed on our current property and we are not looking to change that. We are just looking to use this for plant storage.

Attorney Rutherford: You don't do tree work or any wood chipping or anything of that nature.

Mr. Zimmer: No.

Attorney Rutherford: Parking of vehicles, where will that take place?

Mr. Zimmer: That will remain on our property and, in part, what we are trying to improve somewhat is the parking on our property by allowing some of the plant material we currently have to go onto this property.

Attorney Rutherford: We already talked about Jefferson Street, which is intended to improve efficiency and actually enable less movement on your property and to receive material and to move material out in a more efficient manner. Is that right?

Mr. Zimmer: That's right.

Attorney Rutherford: That's all I would have. I may have more for Mr. Zimmer depending on Board questions or questions from the public.

Member Sbarra: My first question is what type of trucks are you guys looking for your deliveries? In reviewing the plan, Jefferson is generally a residential street. It is a narrow street especially from Whistler down to where you are planning on expanding.

Mr. Zimmer: It could vary. We get deliveries in box type trucks, van type trucks and there are some trailer bed type trucks that would come, whether or not we are going to utilize this property for that. I'm not sure with the terrain that's there if we would bring that type of plant material here, but it could all different types of vehicles that would be delivering, including trucks with trailers, like lowboys.

Member Sbarra: I guess based on testimony, you guys are basically saying that you want to use Jefferson Street to improve efficiency. Again, a concern that I have is being that Jefferson is residential. I'm sure that is why a lot of the folks are here today. Is there any way that you guys can access this property through your existing two lots?

Mr. Zimmer: It would take some work to do both on our property and that property.

Attorney Mondello: Can you expand on the "some work"?

Mr. Zimmer: To connect the two properties, there is a rock ledge along quite a bit of it, almost right adjacent to our property that prevents us from accessing most of that central area. There are two sections that we could, but the topography does raise up a little bit on that, we do have some plant storage just to the south of the property, and we're thinking we could have an access pathway, not really for vehicles, but more for smaller machines or for laborers to be able to access the road in that way, but we weren't thinking a true roadway that would allow vehicles to drive back and forth.

Member Ludwig: Why couldn't you, on the left hand side where that is building is shown on your property on the existing site, why couldn't you come in through there?

Mr. Zimmer: It is possible that a pathway could come through there.

Member Covelli: Mr. Nash, did you visit the site?

Engineer Nash: I did.

Member Covelli: Mr. Zimmer, as I'm looking at this because I was there, as we speak, Jefferson is, what I can see, can't be accessed from Argyle so I have to access it from Whistler. I come to the end of Whistler and I come to Jefferson and make a right and it's about a driveway and a half width of relatively new asphalt as compared to other road surfaces in the area. There is a house on the corner and there is another house and that's it. That piece of Jefferson again, if I'm correct, looks like a wide driveway. What you are proposing in this plan is to take off from where that asphalt end and you are going to build a whole road down that right now, Mr. Nash, is a paper road in Wanaque other than the first 80' of pavement? So that's what you are proposing just to be clear? Am I correct?

Mr. Zimmer: We are proposing to create a gravel road from an extension of Jefferson. Yes.

Chairman Dunning: The way Jefferson sits you have one house facing Whistler and behind it on Jefferson there is a newer home and he paved a little bit from his house. I wouldn't call it a street. If you are going to be running some trucks over that, that is going to a real issue. Something needs to be developed from Whistler into your property. Some type of decent road to hold your vehicle traffic. The other question I have is along that fence, you show an interior roadway, southbound, into your other property that adjoins this lot. What is the idea of that road?

Mr. Zimmer: That is what I was describing earlier as a pathway connection where we thought we could at least have some small machinery or laborers would be able to access the property.

Chairman Dunning: You're keeping it by the fence to take advantage of the rest of the property to put plants on.

Mr. Zimmer: Because of that being a paper road, we thought that being on this property would be easier to connect into it.

Member Covelli: I guess the question becomes, Chris, wouldn't they need the approval of the Borough to start building a road on a paper road?

Engineer Nash: Absolutely.

Attorney Mondello: Gravel, pavement, anything, the Borough Council has to approve.

Member Covelli: There has to be some kind of specification in terms of just making a roadway. The way you described it you are building it the way you want to use it, but you're activating a road that is a paper road as we speak, other than the first 80' that's paved, really I'm going to believe, to that second house. The corner house probably uses Whistler or they come around.

Chairman Dunning: That basically comes off of Whistler.

Member Covelli: That would seem to me to be a lot of cost and a lot of requirements to get through the Borough and yet you are activating this paper road but then you are going to build a whole fence along it to protect your property for the material you have inside, why

wouldn't you just build the access road inside your fence to whatever specs you want it to be and to service it from the existing property?

Mr. Zimmer: I can look into that. That is an option.

Member Covelli: I think and I don't want to speak for the people that are here, but it seems to me there are probably concerns, again I don't live in that area, with people that have lived on Argyle that have been good neighbors to tolerate the operation of this business in the back. By the way, you are a good business in town, we like you and do some nice work for the Borough. But they have to tolerate the fact that that's back there, and then you have Whistler that runs parallel to Argyle that is a street that we all know is used by a lot of locals to cut through when you don't feel like dealing with Ringwood Avenue. Whistler, for better or for worse, and by the way when Ringwood Avenue was reconstructed, anyone that didn't know it did that, was taught how to do it because that's where the detour was, and I'm sure people didn't forget it and it is used. So I think what might be a concern is that now you are dragging Whistler and Argyle now becomes the new cut off and if Whistler works I can cut off at Argyle and I can run up Jefferson and then I can cut back into Whistler and onto Jefferson and go up the backway past Back Beach and the like when I want to cut around Ringwood Avenue. So now we are dumping more traffic on both and I think that is what a concern would be.

Mr. Zimmer: I am trying to understand what you mean by cut through Argyle.

Member Covelli: Because you are going to connect this inside your property. It's not going to come out to Argyle?

Mr. Zimmer: No.

Member Covelli: You won't have access from here to here?

Mr. Zimmer: No. It's just a nursery path.

Member Covelli: It's almost like a one way. So at night all the kids could go back there and do what they want to do on the road and it becomes junior drive. I'm just wondering why we are opening up this can of worms when you have this property and you are going to build an access on the other side of this fence for your use and you could make it the way you want it and we could kind of focus on the use of the property, which is going to become an intensity to your existing business in the middle of a residential zone and we can deal with that as opposed to dealing that and this new activation of a road that causes this whole big issue. Just wondering. Is that a thought for consideration?

Attorney Rutherford: Just to make sure I understand, the plan we have before us calls for some limited improvements to Jefferson Street heading down to the south almost to my client's property. You are suggesting that be placed on the property itself rather than in the Jefferson Street right-of-way.

Member Covelli: That we leave Jefferson what it is. I would believe that since the Borough never developed it, the Borough doesn't have a desire to do that. I don't think all these people are here because they want to see Jefferson turn into this beautiful wide street. But I am saying you are going to invest time and money and you are going to have to meet the Borough Engineer's requirements for that of some sort and yet 25' over you're going to go build your own access road inside the other side of that fence.

Mr. Zimmer: It's not the same type of road though. It would really just be more of a pathway that is going to be fairly steep that comes in between the two properties.

Member Covelli: But you could make it the way you want inside your fence line.

Mr. Zimmer: Up when you are in the property you can, but the connection will be difficult.

Member Covelli: Are you saying there is no way to connect to the south bottom end of it to, is it the Argyle extension? Is that a piece of Jefferson when you make the turn?

Mr. Zimmer: No.

Engineer Nash: I had a site meeting with Mr. Zimmer I believe October 21st and we walked the site. I had some comments which I conveyed to Mr. Zimmer. One of them was this plan because they are talking about cutting trees down, they are talking about potentially moving soil around, not tremendously because they want to stay within the contours, but in order to negotiate through that even with a pick-up truck, you still have to level out some of the ground and do some work. The plan that we have is more akin to a cartoon than a property map. Mr. Covelli was questioning the access here and we can't see contours, the Board can't see the "lay of the land". I suggested that the Board Members visit the site and I hope they had the opportunity to do that. The other thing which is important is that this is a Use Application and it's hanging in the balance of the Board trying to understand what the Applicant's doing and then to quantify what the Applicant's going to do. It's difficult to do that when you can't see contours, you can't see what type of grading is going to happen and trees are coming down. I heard, and I may be paraphrasing the testimony, but it's like this is our business and basically this is what we do so don't worry about it and we are going to take care of it. The Board is not comfortable with that kind of testimony. They want to see what is exactly going to happen and then also, again this is a Use Variance that is going to run in perpetuity so you have to be able to show exactly where plant material is going to be stored on this site. Representing it this way, and I understand what you are doing, but it is difficult for the Board to make a decision on a Use Variance based on just a two dimensional plan.

Attorney Mondello: Just to supplement the record, the definition of site plan in the Code is pretty clear: topography, vegetation, drainage, flood plains, marshes and waterways, location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utilities services, landscaping, structures and signs, lighting and screening devices and any other information that may be reasonably required in order to make an informed determination pursuant to the Ordinance.

Attorney Rutherford: I understand. Our position and the reason why we came with the plan that we did this evening was because this is not a normal site plan in the sense that there is going asphalt and pavement and underground storage issues, lighting and landscaping. All the things that you normally see. This is going to be a very and I will characterize it as an informal use of the property so I appreciate what Mr. Mondello just said and I understand that, but a lot of those things won't really be applicable here just because of the nature of the use. We are showing just basically graveled roadways.

Member Covelli: Counsel, with all due respect, I'm not sure you can make that statement. An informal use of the land would be to do it on your own property. You're now taking a Borough right-of-way and deciding how you want to use the Borough right-of-way and so your defining it as a casual use but yet, from a risk management standpoint, you are opening up a municipal road. I don't think you could just say we'll decide how that municipal road will be used, how it is constructed and the like. It is a municipal right-of-way.

Attorney Rutherford: Totally understood and if I misspoke I was thinking more of was the pathways and roadways that Mr. Zimmer has shown on the plan within the property. Totally understood.

Member Ludwig: Even at that, if there were elevations on here it might explain why and to me I would access right next to that building that is on the left-hand side. If there is a steep hill, and I didn't walk that far back in, elevations would help an awful lot. To me, not so much where the gravel walkway is, but the other side would be the easiest way to get in and out. You probably already have tractor trailers and dump trucks coming into your site to the south. I can't see you making a turn, and I've driven a rig myself, and getting into that access point to the north. You are going to be tying up traffic.

Member Aumenta: And that is a major concern, because when you think about that area, right, we have one road in town, and one road out. When Skyline Drive is closed, the traffic is completely backed up, you're all the way out onto 287 that Whistler bypass is the only way traffic is not at a complete gridlock in this town. And you know, because you've been here, right? If you start backing that up with trucks, we've got a major issue. If you're taking trees down, and now you're causing any kind of flooding or anything get back in that area, that's a whole other issue. We can't see any of that. We can't see it based on what we've got here.

Member Covelli: I made an assumption when I said to you go 20' over on the other side. To the other Board Members points, I don't know what the topography is. I didn't walk the property. I went down Argyle, I went to the end, I looked at one end, and then I drove around and I came down Whistler and I went down Jefferson and I went to the edge of the pavement, and somebody saw me that lives in the house, and they wondered what the heck I was doing there and then I backed out again, and I left. I sensed in the neighborhood when somebody is there, you will know it. Again, I think it's a driveway and a half with that road. So I don't think anyone wants to see you not thrive in your business. And you're obviously been there a long time, although I was going to bring up the fact that you did some awfully nice work at the beginning of your business. That's not for this moment, but there's homes across the street and it would be nice if you finished what you started there, in the front to clean that up, because those people look out the window every day and see your operation. That's another matter for another time. But to this point, if we could have a better understanding of what you're doing there. It's not out of the ordinary for this Board to do a field trip, or to do a site visit. I'm not understanding and I think we're really going down, and I don't want to make a pun, but we're really going down quite the road when we start opening up this paper road and turning it into a limited use.

Chairman Dunning: You got a drawing here. What's missing is, you got this right-of-way, whose property is that?

Attorney Rutherford: I'm sorry, you're referring to Jefferson Street. Mr. Nash will correct me if I'm wrong, but I believe that's a dedicated, but unaccepted, municipal street.

Chairman Dunning: Who owns the property?

Attorney Rutherford: The Borough does. The Borough has rights to it because it's a dedicated street.

Chairman Dunning: Then you really should be dealing with the Borough.

Member Covelli: That's a 40' roadway, Chris?

Chairman Dunning: Your testimony is that whole gravel right-of-way on Jefferson is the Borough's property.

Attorney Rutherford: Yes, there's no question,

Chairman Dunning: Then you really should be talking to the Borough to see if they want you to use their property for this road,

Engineer Nash: Typically, when a road is extended, it has to be brought up to the Borough's standards.

Chairman Dunning: if you're extending to Borough road, it's not going to be gravel, it's got to have a 50' right away.

Engineer Nash: It has to have curb, drainage and everything.

Attorney Rutherford: Clearly we would not be proposing that. The purpose is not to improve Jefferson Street so to make it suitable for use by the public. It was really just for access to our property.

Member Covelli: For that matter, I don't think we can grant you use of a Borough right-of-way. I think the Borough has to do that. I think you're in the wrong department for that. But in terms of the use of the property, whatever we grant as a variance, as you well know, but for the benefit of the public, is permanent, it runs the life of the property. So we have to have a little bit more of a comfort level as to how this is going to work. You have neighbors all over there so we have to have a little bit more of a comfort level on how everybody coexists and a happy community.

Attorney Rutherford: Totally understood that we can't obviously take charge of Borough property without their consent.

Chairman Dunning: Why can't you identify the surrounding properties? You have at least for surrounding properties. We just identified that the Borough owns the road you want to put a gravel driveway on. The one to the right and south is your property.

Attorney Rutherford: That's correct, yes.

Chairman Dunning: The property that says "building" on it, who owns that?

Attorney Rutherford: Lot 1 is our property also.

Member Ludwig: That's why I was saying to put the road in from that corner.

Attorney Mondello: Mr. Chairman, may I. At this point, it is obvious that the Board requires, for lack of a better term, a full cycle. So I would suggest that you speak to your client and adjourn the matter, and come back with something that's a bit more substantial. Am I misreading the Board Mr. Covelli?

Member Covelli: That sounds very reasonable. I actually had a few more questions.

Member Ludwig: I would like to see the elevation if there's a problem in going between next to this building and there, there's some elevation reasons that you could not do it. But even that, I mean, I blasted for four days just to build my addition on my own house.

Chairman Dunning: I think what we need is this a full blown plan so we understand what's around you completely. And, if the Board agrees, we should have a site visit at your property to do a walk through because this thing doesn't even look like the one you have in color. The black and white is very misleading.

Attorney Rutherford: Okay, it wasn't intended to be, please understand, but I appreciate what you're saying. The Board has been very gracious with its comments, we understand your concerns, and we're certainly happy to address them.

Chairman Dunning: I have one other question since the Borough owns this side, who owns the property to the left?

Attorney Rutherford: Lot 9, those are all adjoining properties. Those are all residential properties, all on Jackson Street.

Chairman Dunning: The other question I have, which you should probably know the answer to this, you're going to water these plants so they don't dry up and die. What about runoff the neighboring properties? I don't know how much you water; it might be two minutes could be two hours. Is there any conditions to stop anything running off your property to a neighbor?

Mr. Zimmer: I don't believe that any of the irrigation systems for what we do on our plant material would add runoff to the property. I mean,

Chairman Dunning: Again, we don't know where this property pictures. If it's running fast downhill, you may be watering someone else's grass.

Member Covelli: Mr. Zimmer just to be clear, and so that we're all clear before you leave, so we can get as much on the record, for clarity, for you as possible. When you say plant material that you're going to leave here, I got the impression you're not going to store piles of mulch, or piles of gravel, or piles of dirt, or manure or anything else out. You're talking strictly plants.

Mr. Zimmer: Correct.

Member Covelli: Do you store any of those other materials on your existing property?

Mr. Zimmer: We do top soil.

Member Covelli: And that's delivered by tractor trailer?

Mr. Zimmer: Yes.

Member Aumenta: Can I ask one other question, too? So you talked a lot about deliveries to the site. What about the supplies coming off the site? The trucks, will they go up Jefferson as well, in order to pick up.

Mr. Zimmer: Possibly pickup trucks. Yes, our crews would need to get plant material out of that area. Since we didn't have a road that you could drive on, it's just these pathways that wouldn't really be suitable for the pickup trucks to go through.

Member Ludwig: So you will not be receiving deliveries? They're going to come in just a pickup truck?

Mr. Zimmer: No, she asked about taking material away.

Member Aumenta: Yes, but you said that there would be a problem with the trailers getting in there. That it's better for a smaller truck. But then we're saying that the deliveries are going to come in on the bigger trucks so there seems to be a disconnect.

Mr. Zimmer: Sorry, I thought you meant from our property accessing it and that's why we wanted the access from Jefferson so that we would be able to bring a vehicle big enough to take the material out.

Member Aumenta: So you could potentially be taking a trailer onto Jefferson to do a pickup of supplies as well, not just a delivery coming in.

Member Covelli: I think the initial testimony was they were getting deliveries there. I think Mr. Zimmer has expanded that to say, not only will this stuff come down Jefferson, in let's say a lowboy, trailer, a box truck, but pickup trucks, his own crew, would come down Jefferson load up and then leave.

Member Aumenta: Right, but would there be a trailer type pickup? Because I think you just mentioned that there could be a trailer picking up as well; a bigger truck, not just a pickup truck, picking up from Jefferson.

Mr. Zimmer: We don't have tractor trailers. So more just like large pickup, dump type trucks is what we have.

Member Aumenta: And so that's potentially going down that road between 6am and 6:30am in the morning, so it will pick up supplies.

Mr. Zimmer: No until 7am or 7:30am.

Member Aumenta: Okay, because you mentioned that your laborers would be there between 6am and 6:30am and start working.

Mr. Zimmer: They may get there but they're prepping for the day. So I'd say when the crews and things come in and they get started it's a little bit later.

Member Sbarra: One more question. Just for point of clarity, there are no retail sales out of this.

Mr. Zimmer: Correct. It's only for our clientele, no retail.

Attorney Mondello: Mr. Chairman, if I might, procedurally speaking, there are some folks here that may have questions for Mr. Zimmer, but what I was going to say is they may or may not want to hold those questions, because Mr. Zimmer is coming back and Mr.

Rutherford is coming back with a full blown site plan.

Chairman Dunning: They are here; let's hear them.

Attorney Mondello: Questions, and questions only, on the testimony from Mr. Zimmer.

Joseph Ferreira – 130 Jefferson Street

Mr. Ferreira: You had mentioned that you were going to be having deliveries go to this new access off of Jefferson Street. Some of the trucks that you will be driving in there are 24' box trucks, correct?

Mr. Zimmer: That sounds correct. Yeah.

Mr. Ferreira: So my question is coming off of Whistler Place to make a right onto Jefferson, a 24' box truck has a whole span probably roughly about 35', to make that swing, you're not going to make that road and to the left of that driveway and a half of Jefferson Street, is a drain off that comes from the woods with a 12 inch sonotube that goes into a storm drain. That would be crushed in a day. How do you prevent that from happening?

Mr. Zimmer: I'm not a truck driver so I couldn't answer exactly how they would negotiate that. But I would think that they would turn and back in.

Member Covelli: That's what I thought, which means that everybody's going to pull up Jefferson and then back up, they'll have a back-up alarm going the whole length of this, Mr. Ferreira: So basically they would make a left onto Jefferson Street, and the reverse down a public road to access your easement to your property? Drive and reverse 125'.

Chairman Dunning: The other thing is this; they're going have to improve Jefferson to Borough standards. When we go to the real Borough standards 50' wide, which means there'll be a major improvement to that corner which would then allow the truck to make the turn if the Borough does that.

Mr. Ferreira: So I guess my next question is right there at that access point, where that storm drain is I'm referencing, there's a sign there says Green Acres property. How do you build on Green Acres property?

Chairman Dunning: Well, that's why I asked who owned the property.

Member Covelli: No, they would be building on the Borough right-of-way, which would not be Green Acres property. I believe that's the property that ultimately was bought when we were looking at that development, right?

Board Secretary: Yeah, but the sign is right there at the end.

Mr. Ferreira: It's right there at the end Whistler Place and Jefferson Street. The sign is right there and says Green Acres. That's Green Acres so how do you build on that? If you're going to improve that turn to make it wider, how do you build on Green Acres?

Engineer Nash: It's a Borough right-of-way; you're allowed to build on it.

Mr. Ferreira: Even though it's protected land?

Engineer Nash: No Green Acres. You can build certain things on Green Acres property, it depends.

Member Covelli: I don't know where the placement of the sign is. I think the right-of-way predates the Borough acquiring that property, and I think they acquired the private piece. I'm not a surveyor and I don't know where things land.

Chairman Dunning: That goes to the condo development on the Boulevard that comes all the way down into that area, which was sold back to the Borough as parkland.

Member Covelli: That's right.

Member Ludwig: It could be a park in there or it could be a nature trail.

Member Covelli: I believe, Mr. Chairman, you are at the top of that hill, weren't you?

Chairman Dunning: Oh, yeah. I have walked up there.

Attorney Mondello: Any other questions?

Mr. Ferreira: No. Thank you.

Attorney Mondello: Okay. Questions on the testimony only, not comments, questions only.

Dylan Peck – 158 Jackson Street

Mr. Peck: I live right across the street from this company right now. With the expansion, can you guarantee to the new residents that you won't hit any gas pipes when you do that?

Mr. Zimmer: In which area?

Mr. Peck: Into wherever you are currently trying to expand your property? How can you do it safely? I just want guarantees and these fellow neighbors that live here.

Mr. Zimmer: It's a wooded lot.

Mr. Peck: It is wooded lot, there's no gas pipes under there.

Mr. Zimmer: There would be mark outs for that.

Mr. Peck: Okay. I appreciate that. Thank you.

Member Covelli: To the gentleman's point, just to be clear, it's a law that there has to be a check of that, and there are hefty fines if something were to happen.

Melissa Molnar – 142 Jackson Street

Ms. Molnar: You said you don't believe that water would be an issue with the homes. So when it rains, my sump pump goes off. How can you guarantee that there's not going to be extra? I moved in there knowing that there was a slight issue and I have the sump pump, but by you taking away any of the seepage where the water is able to seep into like the ground and stuff like that and you're changing everything up, how can you guarantee me that I'm not going to have more of an issue?

Mr. Zimmer: I feel there would still be the ability for water to penetrate back into the ground because we're not building any structures or putting any hardscape surfaces. They're just gravel paths and nurseries, so really, it should be the same absorption rate that was previously.

Ms. Molnar: Okay. My other question is you're saying that the gravel path is going to be elevated. Obviously, you can control your employees on how fast they go down a gravel hill. You can't control your delivery trucks, you know people that are delivering to you and all I imagine is on the incline driveway or road, however you want to say it, all I envision are rocks and little pebbles, you know, kicking up from these drivers that might be going faster than they should and hitting her home and hitting his home, breaking windows, breaking car windows, leaving dust all over the place. It's not good for people's health. How would you prevent that from being an issue?

Mr. Zimmer: We certainly would be maintaining things and doing it as we're trying to do currently on our property where we, you know, maintain the roads and we keep that down. If there's an issue, we would address that and figure out a way to maintain this in the right way so that it is kept clean at all times.

Ms. Molnar: Would there be any idling on that roadway, like there is in front of all the houses on Argyle at 6am, and they're leaving the lights shining in the people's homes that early in the morning?

Mr. Zimmer: No, we wouldn't not want them to idle at all on the streets; not at all.

Ms. Molnar: But they do. I've walked my dog early in the morning before work, and they're literally shining the lights. I've helped take care of a woman who recently unfortunately passed that lived on Argyle in the yellow house, and every morning, light shining in, car fumes, truck fumes, you know, people all over the place. It takes away from the privacy from the home. So how can we be guarantee that that's not going to be more of an issue somewhere else now that you're expanding out the property towards other people's homes?

Mr. Zimmer: We'd certainly be open to hearing any concerns and trying to address them as best we could for anyone if there was an issue like that. I was not aware of that issue, sorry.

Ms. Molnar: My other question is, how can there be so many commercial businesses that you own and it's a residential area?

Attorney Rutherford: It's a recognized non-conforming use in the residential area.

Ms. Molnar: But by you wanting to build on your own road, that makes it even more commercialized.

Attorney Rutherford: That's why we're here. We're looking to expand the use.

Ms. Molnar: But we're not a commercial area. It's a residential zone.

Attorney Rutherford: Yes, but we'll have more testimony later on, which will set forth the factual and legal basis by which we think the Board could grant that relief.

Ms. Molnar: Thank you.

Member Covelli: I think to your point, ma'am, the reason they are here is because they can't do it without an approval, because it would be an intensification of a non-conforming use. Their existing building, their existing operation is a non-conforming use in the zoning in that area, and to intensify it to acquire more property and to add to it, they have to have the Board's approval.

Theresa Reilly – 28 Whistler Place

Ms. Reilly: I just have a question about Jefferson Street. You had mentioned about possibly widening that street, I mean, if that was proposed. No that's a residential street that my neighbor's park on. So with a car parked there, that literally leaves half of the driveway for another vehicle to get down as it exists. So that is what you were saying as far as potentially going into the Green Acres to extend that road that way?

Member Covelli: I was trying to understand how they were going to take a road that in most of the section their proposing doesn't exist. It's a Paper Street. In the part that does exist, because it services a home on Jefferson, it's a driveway and a half. It's a substandard road in that section. But it's meant to be because it only services one home. I'm not here to surmise how but that's why it's the way it is. If you were going to do more of it, and then the testimony was is that they will be using it on a limited basis. So they're looking for us, which was the question that we asked, that we can't grant them, a partial or full use of a road that doesn't exist. That's not our jurisdiction.

Ms. Reilly: That's my concern because with a car parked there, I mean, that road is like, what, 4' from his window. You know what I mean? Not even and he's got an 18 month old, and with the dust and the dirt and everything. I mean, if we're parked there, it's no longer a residential street where we can use to park? I mean, it's seasonal, right? So that's when we're allowed to park on the street during that seasonal time.

Member Covelli: I would only say to you at this point, remember that we're asking questions to them..

Ms. Reilly: Yeah, well, that's my question. My question was directed at you is that what you were saying as far as that road would then have to be widened to accommodate his current plan?

Mr. Covelli: Yeah, my only thought was that you can't either, you know, you can't say I'm going to determine on a Borough right-of-way, right. I'm going to use a partial use of it. There's a whole another process that goes into it and it's beyond the jurisdiction of this Board to do that.

Ms. Reilly: Okay, that's what I want to clarify.

Member Covelli: We don't make decisions on public right-of-ways. We make decisions on people's private property.

Ms. Reilly: Understood, thank you.

Attorney Mondello: It's my understanding that the Applicant has absolutely, positively no intentions of paving, widening, etc. Jefferson Road. Is that correct? If the Borough permits it?

Attorney Rutherford: Yeah, we had we had to start somewhere, you know. So you come here, you go to the Borough first. But, no, obviously we're going to hear what the neighbors have to say, interested parties have to say, what the Board has to say and we'll obvious consider how we're going to proceed.

Ms. Molnar: I'm sorry I have another question. So you said it's not your intent to remove any rock, have to the blast, or anything like that, obviously, what happens if you hit that point that you need to, what happens to my foundation? What happens to the walls of my house?

Mr. Zimmer: I'm not sure I can answer that question.

Ms. Molnar: So what happens if you get approved for this, but it wasn't your intent to blast, but then you say, oops, look at this, sorry, got a blast.

Mr. Zimmer: I think we have to go through the proper procedures.

Member Covelli: I might be able to help you, Mr. Zimmer. Do you want to phone a friend? That was the whole point of our professionals saying we need a site plan, because the site plan will give us the insight into all of those areas for us to be able to assess that. And then if that were the case, either that would be considered by the Board a detrimental point to granting the variance, or they would have to provide some kind of remedy on how they would deal with it.

Member Ludwig: Most often, if there's blasting to be done, they've got to do a survey of the existing homes.

Engineer Nash: But then there's alternatives to blasting. We've got a house on Decker, they're building a house there, and they took the rock down without blasting. They drilled and split it, or however it was done.

Mr. Ludwig: Even if they use dynamite, it can be done right, and if they do make a mistake, it's their insurance that's going to have to pay to fix your house.

Ms. Molnar: Thank you.

Mr. Ferreira: So I traveled down Argyle tonight just to take a look at your entrance point to your facility. My question is, I noticed that Argyle Street has a tremendous amount of potholes, sunken storm drains, things like of that nature. I can only assume that's due to the amount of traffic going down to your property from the heavy trucks. Who's responsible for taking care of the roadways that, once the damage is done to these properties, who is going to take care of repaving the roads other than the taxpayers?

Mr. Zimmer: I'm not sure what caused the damage.

Mr. Ferreira: I'm speculating, but I have to assume.

Mr. Zimmer: But we certainly have always been willing to help if we feel that there is some damage or we do patching to help maintain the pavement.

Mr. Ferreira: You patch the pavement. What about as far as the sunken storm drains and things like that.

Mr. Zimmer: I haven't noticed that.

Mr. Ferreira: There's a big orange cone right in front of your shop. I don't know how you missed that. Sunken storm drain right down the left hand side when you're coming out of your property, on the left hand side, there's a sunken storm drain with a parking cone blocking it because it's so deep. If a car goes in it, it's going to destroy the car.

Mr. Covelli: Sir, just so you know, before we forward with the Minecraft trial for something like catch basins, the municipality seems to have a little bit of an issue with that. I believe they repaired 60 of them last year throughout the Borough. I just happen to know that because I keep fun facts in my head. But I think that there's a problem. I don't know if we should necessarily indict them for that.

Mr. Ferreira: Exactly, what I'm saying as far as the new roadway going in, if this is going to be transmitting more traffic with large trucks coming in, naturally, the roadway is going to have a lot more wear and tear. My question to you is who was responsible for that new wear and tear on the roadway?

Chairman Dunning: The Borough

Mr. Ferreira: The Borough and at the end of the day, that becomes the taxpayers, correct.?

Member Covelli: They are part of us, we all taxpayers and they pay taxes too.

Chairman Dunning: If you have any problems like that, address the Mayor & Council. It's their headache and see what their answer is.

Rita Campbell - 24 Grove Street

Ms. Campbell: I live in Midvale on Grove Street. Just in reference to friends who live on Whistler and Jackson, I'm just a little concerned or confused, I should say, this is a Borough owned road, correct? Jefferson? But it's not going to have public access from Argyle through Jefferson; screw your property. It's going to be essentially a private entrance for your company, but people are going to not drive on it. It's not going to be an actual road.

Member Aumenta: I think that's what we were saying is that they'd have to go in front of the Council.

Ms. Campbell: Yeah, because it's either a road or a driveway.

Member Aumenta: It's not something that we can decide on. But yeah, that's what they'd have to do.

Ms. Campbell: Right, because it's one or the other.

Chairman Dunning: If the Borough's going to allow it, it's going to be a public road.

Ms. Campbell: Yeah, and that changes the whole structure of that area. Thank you.

Chairman Dunning: Anyone else have any questions to ask of the testimony given to this point?

Mr. Peck: Why is there a mud puddle in front on my house if your irrigation system is not going to cause problems with the expansion?

Mr. Zimmer: I'm not sure. We could definitely take a look at that.

Mr. Peck: I mean, I left a voicemail for the company to come talk to me about it, but never responded. I mean, I live right across the street from you.

Mr. Zimmer: You're on Jackson?

Mr. Peck: 158. Jackson. Do you want to come by? I'll give you my phone number.

Actually I gave it to you on the voicemail. I have a giant puddle from you watering your plants right now. I just want to let you know that. But it's a pleasure meeting you. Been there five years.

Chairman Dunning: Anyone else? Okay let's decide what we're doing here. You're going to redraw this and make something we can understand.

Attorney Rutherford: Yes.

Chairman Dunning: You're going to talk to the Mayor & Council as to building this road through their property?

Attorney Rutherford: We'll obviously reconsider

Member Covelli: If that's what you choose to do.

Attorney Rutherford: That's correct. Yes, I understand.

Chairman Dunning: If you want that road, you're at the wrong Board. You need the Mayor & Council. Are there any other access points to this that concern the Borough property?

Attorney Rutherford: No.

Chairman Dunning: It's the only one.

Attorney Rutherford: Yes, sir.

Chairman Dunning: And you're going to provide typography and everything else we need on a legitimate plan.

Attorney Rutherford: Yes, we will show a plan. I will say that Mr. Mondello listed a number of items that, you know, may not necessarily be applicable to this project for which we may seek a waiver. I say that not to indicate that we don't want to give the Board what it wants. We understand that. But there may be some things that just don't apply here, okay, so we would ask for a waiver of that. We totally understand what the Board needs to make a meaningful decision on this. Yes, sir.

Ms. Reilly: I just have one more question. Once this new proposal is in place, are we going to get another certified letter letting us know so we can be here.

Chairman Dunning: That's what I'm trying to establish right now. I was wondering when our next meeting is going to be, where it's going to be and when your paperwork is going to be ready for us to look at.

Frank Lamendola – 24 Whistler Place

I know we have a questions about the testimony. But the thing is, we had kind of a thing prepared and we can't do it now, and maybe we'll come back and do it another time. But my question really is the safety aspect of this whole thing of going down Whistler Place. A lot of people promise things like when X number of years ago, they paved the street, and they said everything's going to be fine and I have an irrigation problem since then, where whenever it snows and rains, the water comes up, and I have pictures of me in boots and stuff trying to throw out my garbage. The Mayor came over to my house twice, Mayor Mahler and he can't do anything. Mr. Balunis, who is also on the board with you guys, came over several times and nothing can be done, and it looks like I'm stuck that way. So a lot of times we say that we're going to do things, or it's going to end up this way, and it's not necessarily the case. For example, you're going to have deliveries at 6:30am, box trucks maybe or as Ms. Aumenta said, you know, we're talking about regular trucks, these types of trucks coming up and down. Truck drivers are going to make any decisions they want when they are on the road. They're going to go down here at 6:30am/7am when I'm on the road taking my daughter to Mary Help of Christians Academy, going down Whistler Place trying to make turns. That street is going to be loaded with traffic with your trucks coming in. Buses coming down to take children to school all at the same time, we're never going to be able to go down there. I got to go to work, so now it's going to take me a long time to get her to school.

Attorney Mondello: Questions sir.

Mr. Lamendola: Anyway, that's the question. I mean you are going to have all these deliveries there at this point. Is there any way of going later on? I mean, again, it's a residential street. You can't just treat it you. I don't know how to pose it into a question.

Engineer Nash: Can I ask the question then? Mr. Zimmer, with this whole plan are you increasing the traffic we currently have?

Mr. Zimmer: That we currently have?

Engineer Nash: Yes.

Member Covelli: Are you increasing traffic to your operation?

Mr. Zimmer: To our operation?

Engineer Nash: Yes.

Mr. Zimmer: No, I wouldn't say so. We're looking to move plant material that we have on our existing lot onto this lot, so we can circulate and use our property better than we have.

Member Covelli: Spread out.

Engineer Nash: There are questions raised from the public about increase of traffic to Ringwood Avenue, to access. So you have the same operation and you are just spreading it out so the same deliveries incoming, same trucks leaving in the morning? Granted, you'd like your business to expand, you may add more of your vehicles, but that will be the increase, not so much the deliveries.

Mr. Zimmer: Correct.

Engineer Nash: Is that a fair statement?

Mr. Zimmer: That is a fair statement.

Member Covelli: Perhaps when you come back, I guess what you're hearing from the public, if I can summarize a little bit, is their concern that that these spreading out of your operation to make it more efficient or to flow better in terms of your business model, has them concerned that you're going to intensify the use. Either intensify the use of the property or intensify, for example, as I'm hearing the amount of traffic coming to and from your operation, as a result of you expanding. So perhaps you can add some of that into your subsequent appearance before us to be able to allay some of their concerns and be prepared to ask answer their questions.

Attorney Rutherford: Thank you.

Member Covelli: Is that a fair statement Mr. Lamendola?

Mr. Lamendola: Yes, Mr. Covelli. Thank You.

Attorney Mondello: I would suggest the Board close this portion of the meeting.

Chairman Dunning: That's what we're trying to do.

Attorney Rutherford: Mr. Chairman, we will not be ready for December, clearly. If the matter could be carried to your January meeting, Mr. Mondello, without further notice under the municipal land use law. If we can announce that date and time at this time, that's what we would request.

Chairman Dunning: The other question is if we want to have a site visit, it would happen a Saturday before our next, or say January meeting.

Attorney Rutherford: That's fine.

Board Secretary: January 5 and then Saturday would be January 1st.

Member Covelli: I don't know if my contract with the Borough requires me to work on New Year's Day. That's what kind of compensation do I get that day? The same as I get every other day? Double or Nothing? Alright, then how did we work around that?

Attorney Rutherford: I don't know Mr. Chairman, but January 1st is obviously, is not.

Chairman Dunning: Yeah, it's not going fly. Unless we do it in the afternoon when people sobered up.

Member Covelli: Well, that's an interesting question. So this is the November meeting, if we wanted to have a work session, because it's a work session, if you could at least be prepared, or felt that you were in a position to discuss it for us the Saturday before the December meeting, even though we're not hearing it at the December meeting, because the other thing, as my colleague here just pointed out, I don't think we want to be traipsing around this snow. We'd get a better sense of what's there in the absence it snow.

Attorney Rutherford: Just to be clear, at the site visit, I'm not expecting to offer testimony or respond to questions. My understanding is it's done on notice, the Board shows up, the Board looks around, we don't say anything, and that's all there is to it. Right Mr.

Mondello?

Attorney Mondello: Well, you could say something but not testify.

Chairman Dunning: I think we'd like to see those drawings before we have a site visit to better understand this.

Attorney Rutherford: Alright.

Chairman Dunning: As far as the public is concerned, the site visit is open to the public. So once we established when, if you people want to come out and see what we're doing, so be it.

Member Covelli: We had a site visit when we were hearing the application for the apartments that are across from the Exxon station. We had concerns with the height, the topography of the land, so we went up there, they had balloons up to show us the heights of buildings. We had plenty of discussion. Jennifer actually joined us. Ron, you were there.

Chairman Dunning: The whole Board and its professionals has to be there. So it is something that we all have to agree on as far as the timing of this. But the drawings are the key. Can you have the drawings done in three weeks, two weeks?

Attorney Rutherford: The typography is going to take some time Mr. Chairman.

Chairman Dunning: Yeah, I know, and that's why I'm asking.

Attorney Rutherford: Personally, I don't think that's realistic. If I thought it was, I'd tell you, but if it isn't, I'm going to tell you that too, because then we're wasting our time and the Board's time and we don't want to do that.

Chairman Dunning: Why don't you go to the Borough Council first because that's key. If you can't build that road there it changes everything.

Attorney Rutherford: We certainly will do that. Obviously quite honestly, from my perspective, we're going to give thought to that entire aspect of the plan even without considering the Mayor & Council. The best I can say, Mr. Chairman, is perhaps Mr. Mondello, what do you think, do we could carry it to your December meeting and at that point, we'll have a better idea of where we are, we'll report in at that time and let you know where we are.

Chairman Dunning: Yeah, we can do that.

Attorney Rutherford: Is that all right: We'll work our diligent, we'll do our best to get the plans started.

Chairman Dunning: There is a timetable with these drawings.

Attorney Rutherford: We'll let you know where we are.

Attorney Mondello: December 1st is the next meeting.

Member Covelli: We are here every month; it's in our contract.

Attorney Rutherford: Well, perhaps we're going to be here every month to for a bit. So then, Mr. Chairman, it would be carried to December 1, 2021 at 8pm without further notice, correct?

Chairman Dunning: Okay.

Attorney Mondello: We just can't have this back and forth here because, let's just say the Board were to deny this application, they were to sue, we're off in Superior Court and I get yelled at, because there's all kinds of gibberish going on. So you can't ask questions from the audience, I'm sorry. The next meeting will be December 1st at the same time. Back to you Mr. Chairman.

Chairman Dunning: Yeah, let's leave it at that, and you'll address where you stand with the Mayor & Council and everything else. Now Chris has a question.

Engineer Nash: I just had one thing for the Planner. The Planner didn't testify tonight. But I wonder if the Planner could look into this. So I'm looking at the plan sitting here tonight, calling to mind here, so Jefferson Street is the frontage of this property, every property has a front side and rear yard. So you're proposing a 6' high fence on the property. You'd need two variances for the height of the fence, and for it being on the property line.

Attorney Rutherford: Okay, thank you for that.

Member Covelli: We a very lucky that you're both a Planner and an Engineer. That's a very good point. I think we're kind of trying to tell you that there's a lot of difficulty as this sits with you trying to develop that road in some fashion, where road doesn't exist. I guess that might be the takeaway.

Attorney Rutherford: Understood. Thank you.

Member Covelli: I think what needs to be said, just to be clear Ron, is that there will be no further notification to any one of the meeting. This is your notification. We meet the first Wednesday of the month so the next meeting is December 1st, Jennifer.

Board Secretary: Yes

Member Covelli: So therefore, please feel free to join us. We're here.

Mr. Ferreira: I know when you do the meeting. The question was about the site visit that was open to the public. What time does that take place and on what date?

Member Covelli: That has not been established.

Mr. Ferreira: Oh, but you said it was the Saturday before the meeting.

Member Covelli: That is our normal schedule.

Mr. Ferreira: How do we get that notified of that?

Member Covelli: What you heard us talking about was that wouldn't work.

Chairman Dunning: The next meeting you'll know.

Attorney Rutherford: Thank you Mr. Chairman. We appreciate you and the Board's time.

Member Covelli: Mr. Chairman, can we have a two minute break before the next application?

Board took a break at 9:28pm and reconvened at 9:43pm with all Members present that were present before we took the break.

Application ZBA2021-09 - Mano, Bonnie A., 50 Greenwood Avenue (Block 445/Lot 71)
Peter Lefkowitz of Nurik & Lefkowitz for the Applicant, Bonnie Mano and his is our application for 50 Greenwood Avenue, Block 445/Lot 71. This is our application for a Use Variance for the operation of a home occupation. The home occupation is online sale of parrot food, freeze-dried parrot food. I understand, Mr. Chairman, you were there at the premises. At this time, I would just like to call the property owner, Bonnie Mano

Attorney Mondello: I was looking for the notices. I'd indicate to the Board that I am in receipt of the notice of publication and notices to residents within 200'. I would deem the application complete from that perspective, and then jurisdiction is vested in the Zoning Board.

Attorney Mondello swore in Bonnie Mano, 50 Greenwood Avenue.

Attorney Lefkowitz: So Ms. Mano you're the owner of 50 Greenwood Avenue?

Ms. Mano: Yes.

Attorney Lefkowitz: And it's your application here to conduct a home occupation?

Ms. Mano: Yes.

Attorney Lefkowitz: And it's the online sale a freeze-dried parrot food?

Ms. Mano: Correct.

Attorney Lefkowitz: Can you explain to us what that business entails?

Ms. Mano: I take produce, apples, whatever it is, cut it up, sometimes peel it, and in the machine it goes?

Attorney Lefkowitz: What kind of a machine?

Ms. Mano: It goes into a freeze dryer. The freeze dryer freezes it very, very, very cold, warms it up, takes out the moisture and when it comes out it's crunchy about two days later.

Attorney Lefkowitz: It's your intent to sell this online?

Ms. Mano: Yes.

Attorney Lefkowitz: Will there be any employees there?

Ms. Mano: No.

Attorney Lefkowitz: Where does the produce come from that you use to produce this product?

Ms. Mano: I go out and get it from restaurant depot.

Attorney Lefkowitz: Is it ever delivered to your residence?

Ms. Mano: No.

Attorney Lefkowitz: Does anyone come to your house to purchase this product?

Ms. Mano: No.

Attorney Lefkowitz: How is this product sold?

Ms. Mano: Via my internet site; often publicized through Facebook.

Attorney Lefkowitz: How does the product get delivered?

Ms. Mano: U.S. Postal Service.

Attorney Lefkowitz: How does that how does that work? You go there? Do they come to your residence?

Ms. Mano: Nope. I pack it up, click to come pick it up and in the morning it's gone. I put it on the porch and they pick it up.

Attorney Lefkowitz: How big are these packages?

Ms. Mano: It could be a little something flat up to maybe a 12 inch box.

Attorney Lefkowitz: Again, is there any advertisement on your property for this? Will there be any advertising for the sale of this product?

Ms. Mano: No.

Attorney Lefkowitz: Is any of the products stored outside?

Ms. Mano: No.

Attorney Lefkowitz: How much of the residence of 50 Greenwood or what part of that building do you use for the production of this product?

Ms. Mano: There is a 10 x10 bedroom upstairs that I'll use.

Attorney Lefkowitz: What is that for?

Ms. Mano: For the storage of pre-package for online sales.

Attorney Lefkowitz: Where is the machine we've talked about?

Ms. Mano: The machine is down, in what we're calling the living room.

Attorney Lefkowitz: Do you have any standing orders with any companies, such as Petco or PetSmart, or anything like that.

Ms. Mano: No.

Attorney Lefkowitz: So who is your customer? Individuals and businesses? I'm trying to clarify.

Ms. Mano: Individual bird people like me, who want to feed their birds well. That is what it is, individuals.

Attorney Lefkowitz: Okay, so you're not mass producing.

Ms. Mano: No.

Attorney Lefkowitz: Do you produce in advance or is it on an as need as orders basis?

Ms. Mano: It is done in advance because it's a long process. You can't do it last minute. It's just not possible.

Attorney Lefkowitz: Do you use FedEx?

Ms. Mano: No.

Attorney Lefkowitz: Do you use any kind of private delivery company?

Ms. Mano: No.

Attorney Lefkowitz: When you ship it out what does it go out in a box or an envelope?

Ms. Mano: Usually a box. 99% in boxes.

Attorney Lefkowitz: Are those delivered by any commercial entities such as, you know, Staples, that you buy these boxes in bulk and they're delivered to your home?

Ms. Mano: No.

Attorney Lefkowitz: Where do you get those supplies?

Ms. Mano: The boxes that I use I get them from the U.S. Postal Service.

Attorney Lefkowitz: Okay, so they're all in USPS boxes. It's not boxed and shipped by another shipper. You don't take it down to the UPS store.

Ms. Mano: No.

Attorney Lefkowitz: It is only the Postal Service. How many deliveries a week do you anticipate happening?

Ms. Mano: Maybe zero to three a week.

Attorney Lefkowitz: Okay. So it's not every day.

Ms. Mano: No.

Attorney Lefkowitz: If you don't get an order for a week, nothing goes out.

Ms. Mano: Correct.

Attorney Lefkowitz: Okay. What do you do with the refuse, the garbage? I mean is there any garbage that this process produces?

Ms. Mano: The only garbage would be cardboard boxes that get flattened and out for recycling. Produce peels or seeds, either garbage or garbage disposal. Except for my husband wants to start a garden on the side so we're building on this whole sort of compost compound.

Attorney Lefkowitz: Is there any discharge from this product out into, say a liquid discharge, out into the sewers? Does it make water? Does it make liquid? Is there something like that that has to go into the septic systems?

Ms. Mano: No. When the freezer freezes, it defrosts so you get a little water, but you're not talking about water right? You're talking about something else?

Attorney Lefkowitz: Right. How much water? Are we talking a cup or gallons? How much is added?

Ms. Mano: A quart.

Attorney Lefkowitz: A quart, maybe. Okay. I have no further questions of Ms. Mano about the business.

Attorney Mondello: If I could just jump in quickly. Ms. Mano, do you reside at 50 Greenwood Avenue?

Ms. Mano: I will when I get a c.o. I was told I can't move in until I get the c.o. So I started to but stop because it was explained to me that I can't.

Attorney Mondello: But your intention is to live there?

Ms. Mano: Yes.

Attorney Lefkowitz: What does your driver's license have as your residence?

Ms. Mano: I have that switched as to 50 Greenwood.

Attorney Lefkowitz: And the utilities are all in your name at 50?

Ms. Mano: Yes.

Attorney Lefkowitz: This is a catch 22. You can't live there until you get a c.o. and you can't get a c.o. until this is either approved.

Ms. Mano: Correct.

Attorney Lefkowitz: Because you've been before the Board before for a New Business Application before the Planning Board?

Ms. Mano: Right.

Attorney Lefkowitz: And that was denied.

Ms. Mano: Right.

Attorney Lefkowitz: Because they said you need a Use Variance?

Ms. Mano: Yeah.

Attorney Lefkowitz: That's why we're here tonight. I have no further questions of Ms. Mano. I don't know if the Board has any.

Member Henderson: It seems like this is a very small operation so why is it that she needs a Use Variance?

Attorney Mondello: Because it's not considered a customary home occupation. If you look at the definition, an art studio, dressmaking, physician, dentist, lawyer, engineer, architect, accountant, teaching with musical instruction.

Attorney Lefkowitz: I would note that, if you read the statute, and I agree with Mr. Mondello, but it doesn't say that's the definitive list. It says such as, I believe. We're kind of in a gray area so this is why we're here. My client was denied because it was felt that this did not fall into the confines of that definition, which again, it says such as.

Attorney Mondello: And it also says a home occupation shall not be interpreted to include barbershops, beauty parlors, commercial stables, kennels, real estate offices, restaurants, veterinarians, or animal hospitals. So it's up to the Board to figure this out.

Member Covelli: She's feeding the pet. She is not fixing the pet.

Attorney Lefkowitz: It's not her pets; it's her selling the stuff. So as I said, it would actually be our first intention is this isn't necessary that this is a home occupation under the statute and should be allowed, but the Planning Board sent us here. I agree with Ms. Anderson that I don't know why we're here.

Member Covelli: Ms. Mano, where do you currently reside?

Ms. Mano: 54, right next door.

Member Covelli: So it's your intention to sell that house and move into 50.

Ms. Mano: No, I'm going to leave him there, and I'm going to go to 50.

Attorney Lefkowitz: Indicating your husband. He's going to stay at 54 and she is going to live at 50.

Member Covelli: He is going to live at 54 and you are going to live at 50?

Ms. Mano: Yes.

Attorney Lefkowitz: They are adjacent.

Chairman Dunning: Since I toured your facility this afternoon, right after lunch, right now the whole first floor is a commercial process center. If you're going to move in there, what's going to happen to all that machinery?

Ms. Mano: The machines that you saw will stay there. There's a little bedroom upstairs that's going to be for packaged materials. There's a bedroom in the front that I will be making into my bedroom. There's a big room in the back, if you saw the deck, that's what I'm going to make into a living room kind of an area for myself. The downstairs front, where you saw wires, that's going to be encased in a cabinet that we're going to build. That'll be kind of more like a library and things like; a place where you store books.

Chairman Dunning: The question, which I touched on briefly with you, what approvals do you need to run this business? Forget in a house or in a garage or in a building. Is there any State, County regulations governing this type of business?

Ms. Mano: I don't understand, but are you meaning like health department?

Chairman Dunning: You told me your shipping stuff as far as California. Are there any regulations with this product that needs somebody approval?

Ms. Mano: No.

Chairman Dunning:

Chairman Dunning: You could just make whatever and sell it.

Ms. Mano: Yes.

Engineer Nash: I assume there are no odors emanating from the process.

Ms. Mano: No.

Chairman Dunning: It just seems to me there was a lot of equipment on that first floor.

Attorney Mondello: I think what the Board is concerned about is that it's not a home occupation if you don't live there 24/7. If you're simply going there to work from 8am until 5pm and then going back to join your husband at 54 Greenwood Avenue, it's not a home occupation. You must have one person, one family member, living there 24/7. Is that what you're going to do live there 24/7?

Ms. Mano: And that's what the front bedroom is going to be for me. If you're looking at the plans, top of the stairs, a little to the left.

Attorney Lefkowitz: So your answer is yes.

Ms. Mano: Yes.

Member Covelli: Mr. Mondello, thank you for providing that clarity. It's exactly what my concern would be. I don't speak for the Board. It would certainly be my concern that the whole idea of somebody operating a home business in their home is their living there.

Member Ludwig: Possibly in their garage, maybe.

Member Covelli: My concern is we're drilling down to the very reason that zoning is established. We have residential zones, we have commercial zones, and we have industrial zones. And with this application, I don't have a comfort level as it's being presented to me as we speak. I don't have clarity as to how we're not running a business in a building next door that's a house. It was designed and it was built as a house, it's in a residential zone, as is the other house. So 54 and 50 are both homes. They're both in the residential zone, and one of these homes is being converted to be a commercial space. I think that the zoning is clear, which is why you're here, and why you didn't have a business application approved before the Planning Board, is the question becomes is someone living in the home because what we grant here is for the life of the property, it's not for you. It's you making a case as to why this should happen. Why we should provide a variance to the zoning laws for you to permit you to do what you're doing, but that permission runs the life of the property. It doesn't end with you. So if you left the house, because you're going to challenge Purina in parrot pet food production, and you'll need a big huge place to build it, so you won't be in Wanaque anymore, and the next person moves in. The variance was granted for it. So I think that's where we're having a little, at least where I'm having a need for a little bit more clarity as to, it's not often, I'm not here to judge anyone, but it's not often that a husband and wife say "I'll live next door from you".

Attorney Mondello: And the follow-up question is why not do it at 54 Greenwood.

Ms. Mano: 54 Greenwood, we considered expanding. I've always wanted Cathy's property and Cathy used to own the property at 50. When she died, I got the opportunity to buy the property. Okay, so now I'm going to pay for the property. Well, the house was pretty crappy. So we decided we may as well revamp, expand and make it comfortable because we needed more room at the other house, too. So now we have more room here. We have a yard for the dogs, we have a bathroom for the dogs, there's extra socialization room for us, which we don't have over there.

Member Ludwig: It does seem strange to have a husband in one house.

Ms. Mano: I understand.

Member Ludwig: I mean I know people that have run mostly baking products out of their house. You know making wedding cakes and whatnot, but they are living in the house.

Now, it does seem strange that you're going to move out because how do we police that?

How do you police out or check back? I mean, it just seems like it's very strange.

Attorney Lefkowitz: It is unusual. Let's say that. But I mean, my client has testified that she's going to live there. I mean, quite frankly, I think that one of the problems is that this was originally initiated and this process was initiated backwards, which was Ms. Mano jumped the gun, and was applying for this to get the construction for using this as the home business, rather than doing the renovation, getting a c.o., moving in, doing it in that proper order, then applying for the variance for the home occupation. She tried to do everything at once and that, I think, clouded the issue. I mean, her testimony is clear. She's going to live there. I think what Mr. Mano does is his own business. She's saying this is going to be her home. She testified she transferred, you know, everything's in her name. But she can't even prove, and you're actually making it very difficult, she can't prove she's going to do it, because she can't get in there until somebody approves the c.o. So she can't even move in, start living there. And again, quite frankly, I would just submit that, you know, the personal relationship with Mr. & Mrs. Mano is Mr. & Mrs. Manor's business.

Member Covelli: Agree.

Attorney Lefkowitz: And if that's how they want to live, that's the way they want to live. How many people could afford to buy two houses side by side? I know I can't. But the fact that they're able to do that, and this accommodates their lifestyle, is fine. I recognize the Board's resistance to the idea of what's going to happen here. I understand the Board's concern about the perpetuity of granting such a variance. Quite frankly I don't think there is anybody else going to move in and do a freeze-dried parrot online business, but that could happen. You know the Board is very cautious in considering that. But her testimony is clear. She's going to live there and that is her plan. She can't demonstrate it to you because she can't get in there yet. But that's her plan, and that's what she's going to do. She is going to be the resident there.

Member Covelli: But Counsel don't you understand?

Attorney Lefkowitz: I absolutely understand.

Member Covelli: That we have neither the right nor the inclination to know what their business is as a marriage. I don't particularly care. I mean no disrespect in saying that. What the concern is, is that from a zoning perspective, all of this is predicated as our Counselor said, owner occupied. Once that predication is no longer there, the reason you have a business zone is that so businesses can be operated in the business zone. We might as well take the zoning map and throw it away, right, because now everybody just does what they want.

Attorney Lefkowitz: Respectfully, I think you're misconstruing a little bit. And again, if she were to withdraw this application, move in there for six months, get a c.o., withdraw this whole application, get a c.o., it's a simple residence. But she can't get a c.o. because of this pending application. She can't get a c.o. So if she withdrew this, got the c.o., moved in for six months by herself, I mean the Board would have absolutely no right to come and check whether she's living with Mr. Mano or who's living in that house. She's living in that house. That's what she's testified to, or that she would testify to, then made this application, how would it be any different?

Attorney Mondello: Well, the other issue is that the Board may find that it's not a customary home occupation. I understand your argument that, you know, it does fit within the statute.

Attorney Lefkowitz: It does. I mean because your ordinance is very vague in that respect.

Member Ludwig: I mean, I figure it is somewhat like you said. I know women that have done wedding cakes or whatnot, and they're baking something, you're dehydrating something.

Attorney Lefkowitz: We're now in the year 2021. We don't have a lot of women staying home and I think it would be disrespectful to suggest that that's what she should be doing. You know, she's doing just something different.

Member Ludwig: How much older comes out of what you do?

Ms. Mano: Nothing.

Attorney Lefkowitz: And there's nothing vented outside. But more importantly, there's nothing inside, correct. I mean, this would mean you'd be living in a toxic.

Ms. Mano: No.

Attorney Lefkowitz: Obviously, she would have to conform if there are any state or federal standards regarding food handling or what she's doing as the Chairman brought up. I mean, she'd have to comply with all this.

Ms. Mano: But there aren't for pets at this point.

Attorney Lefkowitz: I understand that but what I'm saying is you would be required to should it come down that there's now an ordinance that you can't send this through the mail. And I don't know that there is or isn't.

Chairman Dunning: How long have you been operating in that kitchen area?

Ms. Mano: At 50. The end of May. We bought the house May 1st.

Attorney Lefkowitz: This in 2020?

Chairman Dunning: You weren't before the Planning Board before May 1st, though.

Ms. Mano: Okay, so it was the year before. I don't know. It hasn't been two years.

Member Ludwig: Prior to that, you were doing it in 54?

Attorney Mondello: One of the requirements is that it's clearly incidental, and secondary to the use of the dwelling. Meaning, I really live there 24/7, and by the way I'm doing this in this part of the house. Incidental, secondary.

Ms. Mano: At the time that we bought the house, I was working in the section that we were not demolishing because there was two thirds of the house that was not fit for living or anything.

Chairman Dunning: Alright, so you started this before you moved in?

Ms. Mano: Yes.

Chairman Dunning: When you started, nobody was living there?

Ms. Mano: Correct.

Mr. Sbarra: Basically I want to ask what our attorney just stated. So are you basically testifying now to the fact that this is incidental or secondary to you actually living in that dwelling? Another word is this primarily being used as a house with the business being a secondary use? Or are you testifying that this is basically the primary use of this building is the business and I guess you're living there secondary?

Ms. Mano: No, the business is secondary.

Mr. Sbarra: So the business is secondary.

Attorney Mondello: What percentage of the house is the business versus your dwelling? Is the business 10%, 20%, 50%, 75%?

Ms. Mano: There's a 10 x10 room that's business, a little bedroom. Everything else is personal.

Member Covelli: That wasn't your testimony before. The testimony before was a 10 x10 room is the storage of the finished product. Downstairs, in what I heard to be the living room, or the like, was where the machinery is to do the drying.

Ms. Mano: And that machinery is there primarily for my birds. And that's how that whole thing got started. That is primarily for my birds. The business is secondary.

Member Covelli: But where's the machinery that does the dehydrating for the business?

Ms. Mano: It's the same machinery, but I'm primarily making it for my birds.

Member Covelli: Oh boy.

Chairman Dunning: If we condense this down looking at the amount of equipment I saw in your house this morning, you're using 65% to 75% of the square footage on the first floor for that business. Based on the amount, you got four freeze-dried machines, you've got two refrigerators, you've got all kinds of work tables, and you've got a compartment sink with drain board. You have a lot of equipment.

Attorney Lefkowitz: If I could just ask one question, I think it might make it clear to her. If you were to stop making the food for your birds, and only do this process for your online sale, how much of those machines would you need? All of them? I understand what the Chairman's saying that it looked like a big production.

Ms. Mano: Well, there are four machines.

Attorney Lefkowitz: I understand that, but if you weren't making it for your own birds.

Ms. Mano: A half of one.

Attorney Lefkowitz: A half of one. So the majority is for your business. How many birds do you by the way? You have a lot of birds.

Ms. Mano: 13 large birds.

Attorney Lefkowitz: So most of this that that you're producing, is your testimony, is for your own birds?

Ms. Mano: Yes. If I didn't have my own birds, I would not be doing it.

Member Covelli: That's how big the large bird is?

Ms. Mano: Yes and in you include the tail.

Member Covelli: That's the wingspan or the length of the body?

Ms. Mano: Head to tail.

Engineer Nash: Does it have a white head and white tail?

Ms. Mano: I had one however, she had a female problem and I didn't have a good enough vet at the time.

Member Ludwig: Do they talk?

Ms. Mano: Yes, they do. Sometimes you don't want them to.

Member Covelli: Does that mean they talk back? I'm just kidding.

Ms. Mano: Yes, they do.

Member Covelli: Where do these birds go in the winter?

Ms. Mano: They're in the house. They are only outside if I am home and the temperatures right. I can't bring birds out when its 60 degrees it's too cold. They make better watch dogs as you saw then the dogs.

Member Aumenta: Are these all pets or is it like a bird rescue?

Ms. Mano: No, there pets. I don't do rescue. Not interested in that. It's a little bizarre but it's my passion.

Member Aumenta: Yeah, I just think the limit in the town is three that's why it was asking with 13.

Ms. Mano: I had called and they were just no limit.

Member Aumenta: Really, because I know there's a limit of three pets per resident that's why I was asking. 13 seems like a lot.

Chairman Dunning: Any other questions from the Board Members? Okay, lets open up to the public. Does anyone in the public have any questions of the testimony given? Let the record show no one came forward.

Attorney Lefkowitz: We'd like to call Planner Dougherty.

Attorney Mondello swore in Alexander Dougherty, on behalf of John McDonough of McDonough Associates at 101 Gibraltar Drive, Suite A, Morris Plains, New Jersey.

Attorney Lefkowitz: Can you tell me what professional licenses you hold?

Planner: I am a Licensed Professional Planner in the State of New Jersey as well as the ASEP National Certification.

Attorney Lefkowitz: Have you testified before a Board such as this before?

Planner: Several and about forty this year.

Attorney Lefkowitz: But have you ever testified before this Board?

Planner: No, I have not.

Attorney Lefkowitz: Have you had the opportunity to review the site plan?

Planner: I have.

Attorney Lefkowitz: Have you had an opportunity to review the application in this matter?

Planner: I have.

Attorney Lefkowitz: Have you testified before Boards such as this regarding Use Variances?

Planner: Yes.

Attorney Lefkowitz: You said 40 this year?

Planner: Yes. A very busy year.

Attorney Lefkowitz: Okay. I offer Mr. Dougherty as a Professional Planner.

Attorney Mondello: Any objections from Board Members? Hearing none, seeing none. Your witness.

Attorney Lefkowitz: Mr. Dougherty, you review this application?

Planner: Yes I have.

Attorney Lefkowitz: Can you address the positive and negative criteria involved in this application?

Planner: Certainly, before you, I guess, semantics or not, this is a D-1 Use Variance because this is not expressly called out. But as we've established earlier on, under the ordinance here, a particular home occupation includes, but it's not limited, to the following uses, but we're here now on the D-1. And I would make the argument as a Planner that this

used before you is less intense than what is actually permitted including dental, lawyers, dance studios and so forth. With that being said, I can't go over the positive criteria. In order to satisfy the D-1 we had to satisfy them with a four part test. With that being said, we'll get right into it. We have site suitability. The site is particularly suited for this use by virtue of conditions, context and condition wise. The business operates out of the den of a home and it's very similar to any internet based sales. As you said Chair, it seems pretty large. We have some extra machinery for minor scanning, not all four of those machines are in operation. Condition wise, minimal space for the kitchen. This is a product that is picked-up from the grocery store. minimal space is needed for the storage, and we're using one back room of the house. Contextually the house is huge compared to the neighbors, and spatially it accommodates the use. When we look at your zoning ordinance here, we were reading at it earlier, the Part Four (a) the occupation or profession shall be carried out on wholly within the principal building or within a building or other structure accessory to the use. We do have a unique situation where we own both lots and how the client wishes to proceed with that. But the ordinance does identify that it could be in another structure adjacent to the principal use. So I do throw that out there for consideration, and again, adding to the contextual of the site itself. When we go to special reasons, it's well documented here that the pets provide healthy benefits for humans, you know, mentally, emotionally, physically. This use caters to pets. This is simply a retrofit to what is already there on promoting efficient variety of land use. All the above promote the purposes of land use law, Special Purpose A(g)(i)(m). When we look at the public impact, which is the third part of the test, the business involves a single person, the homeowner, no customers come to this site at all. Again, this is an internet based, more of a hobby, a passion that kind of evolved into something more. The use of involves grocery store bought produce. This is a freeze-dried in a kitchen with some machinery to do that. There are no harmful chemicals or noxious heat and odors and noise generated by this use. The waste generation is ordinary as a residential waste would be, you know, the produce and boxes, standard household waste. There are no large delivery trucks coming to this site. We don't have special grocery, you know, box trucks coming here and at the same time leaving. This is used through the Postal Service as pretty much a small operation, and again, it's more of a hobby that kind of manifests into something a little more. Visually, there are no signs as the ordinances require, there's no exterior signage here. So the business is pretty much unperceivable from the public realm. Again, this looks like just an ordinary residential home. All the operations will be in accordance with any codes that need to be but, as the client stated, there really aren't any codes like health codes and animal codes that would go but, if there were, the client would certainly make sure that those would be in order. When we look at the zone impact, apart from the zone scheme, is not substantial by any stretch of the imagination. When we look at your zoning here, particularly uses we have our studios, dressmaking, professional offices, physicians, dentists, lawyers engineers, architects accountants, within the dwelling. We have teachings of musical instruments for one pupil at a time. They directly call out not having barbershops, beauties and real estate, restaurants, veterinary hospitals, commercial stables and kennels. So we definitely do not fit on the "what's not allowed lists", but as I said before, what is permitted directly says, but is not limited to the following. When we look at that, the art studios, dress making, these are more intense, or they would bring people to the residences and so forth and some many even actually need more parking, they generate noise. This use again, from the

public realm, is in perceivable. So with that being said, the use is akin to the permitted uses allowed, less intensive. The home occupation meets all other requirements in the definitions; carried out in dwelling unit, is carried out by the member of the family residing. The client owns the building, has intent of living in the building and is clearly incidental, and is carried wholly within this building. As I said before, it also allows for other structures accessory to that principle. There are no employees this is, you know, a one person only operation. Again, it's more of a hobby here. No exterior signage, and no offensive noises, vibration, smokes, dust odors, heat, glare, and there's no traffic generation. I conclude, really, the application simply involves a unique home occupation that otherwise completely is consistent with requirements for the home occupation in the zoning ordinance. The omission of this use does not appear to be deliberate, as we saw with the barbershops and beauty salons, but rather unintentional a consequence zoning, we can't capture everything. That's kind of why they put that catch all; but it's not limited to the following. So with that being said, I believe statutory criteria for the relief has been met and approval is warranted so be it for the Board.

Chairman Dunning: Have you been at the site and looked at all the equipment in there?

Planner: I haven't seen the equipment firsthand but I know what the equipment is. I saw the specs of the equipment. I had been at the site and actually have exhibits for you. I forgot to hand them out. I don't think they're necessary. They're just visual, we took some drones out and captured this very large site. I think that's one of the reasons why the applicant wanted to purchase this property for so many years because this is a very large, large piece of property.

Chairman Dunning: It just seems to me that the amount of equipment in there far exceeds a normal in house business. That's what it boils down to.

Planner: Yes. From my understanding, it's when you get this equipment to do the freeze-drying, it's having one or two for backup. I mean these are pretty expensive machineries and I think that, from my understanding, talking with the client is two of the machines are really for backup, because she uses them regularly for own birds.

Attorney Lefkowitz: If I could, and I think it's important to go back to the testimony of the applicant. Those machines are secondary to the production of this product for her own birds. She even said she would need like a half a machine if she was just doing this for the business. So the use of those machines, if she were to not be doing this business, she would still use almost all those machines, to produce the product for her own birds. That's what she testified. So whether there's four machines, and that was obviously it's her testimony, and the Board can take it where it is, but only a small portion of that machine or the use of that machine, is for the commercial use/the home occupation. So to categorize and to just say, I saw all these machines, I saw four machines, she testified almost the entire use of those machines is for our own personal use. So I think it would be improper to, it would be wrong to attribute all four machines to this commercial enterprise.

Attorney Mondello: I don't agree with Mr. Lefkowitz. Unless, of course, we recall Ms. Mano and she says; well, no, I get 100 orders a month from the internet. That may far exceed what 13 birds do. On the other hand, she may; say I get two orders a month from the internet. In that case, it's certainly credible that she would need half of a machine.

Member Aumenta: That's really what I have noted as a question for her if we can recall her.

Attorney Lefkowitz: We can absolutely recall her.

Chairman Dunning: If you had to make an internal drawing of that house and show us what is on the first floor as far as machinery, you would see what I'm talking about. What I saw today. When you got four freeze-dried machines, that are commercial grade, they're not little toys for the house okay, two large refrigerators, you've got a stove in there, you got a single compartment sink with two drain boards which, that's whatever it is it's okay, and you've got a ton of work tables, stainless steel work tables. If you're not doing a lot of work, why do you have all these tables in here?

Attorney Lefkowitz: We testified to most of that is for her own birds. She testified. We can recall her though. I'd like her to address your questions because, quite frankly, Mr. Chairman, you're attributing all this equipment to the business and she's testified that the vast majority is for her own use. And I understand your concern, but that was your testimony, and I'll recall her and she'll testify again.

Chairman Dunning: You would think she'd have one freeze-dried machine, maybe two, one as a backup, not four.

Attorney Lefkowitz: I'll have her testify and clarify that issue for you. But that was her testimony.

Chairman Dunning: I understand.

Attorney Lefkowitz: I'll bring her back. I want it clear for the record quite frankly.

Attorney Mondello: It is clear for the record., and of course, this is a *quasi judicial* board, and they'll decide whether or not testimony is credible or not credible.

Chairman Dunning: The other question I have, and this may involve our building inspector, the site plan and the variance do they show the actual house as it is today. Didn't you put a bump out on the front of the house?

Attorney Mondello: Guessing the Planner can't answer that.

Planner: I didn't know he was talking to me.

Chairman Dunning: It shows the square boxes. Maybe the building inspector can.

Construction Official: I don't know since I haven't seen a copy of the application that was submitted. **Chairman Dunning:** It just seems that on the front of the house there's a pump out that isn't shown on the plan, which would change the variances that are on that plan.

The plan is just a square box/room.

Construction Official: As I recall, they changed the shape of the house, but I haven't done the building inspections quite frankly so I couldn't attest to what is there versus what is on this paper.

Planner: Do you want to see a picture of front of the house.

Chairman Dunning: Yes, sir. Let's see what the picture looks. It just seems that the plans don't match the actual house, which is not uncommon. Right, you could see it in the picture.

Attorney Mondello: Mr. Dougherty handed to the Board pictures which we will mark as A-1 – Four Colored Photos taken today.

Planner: So what you have in front of the Board is some just general photos. Essentially, Photo 1 is from a head on street perspective showing this property as it sits today. These

photos were taken earlier today, 3rd of November. Photo 2 is more of that same head on, but of an aerial. We had a drone out at the site. For clarity here, this is the property with the solar panels on the roof. So when we look to Photo 3, it's kind of spins it around and we get more of a rear view. As you see, there's no residential properties on the other side of the street. It's kind of shows you more of the business zone and the tree line. Then Photo 4 here, again we kind of spin it around and give you more of a bird's eye view really looking further up the street here and again it's from top down and that's really is what gives you a flavor of what is happening here and around the site. That is what this was intended to do. Chairman Dunning: But you see what I mean that bump out on the front is not shown on the site plan.

Planner: I do see what you're saying. I can't attest to why that is not reflected. I'm a Planner, not an Engineer.

Member Sbarra: Quick question, just for my own clarity. Number 54 is the building to the left of the subject building here with the red shutters if you look at Photo 2.

Planner: Yes.

Attorney Lefkowitz: We did apply for a notice for and all other variances subject to the submission of an updated site plan depicting that and the appropriate set offs, we would still need a variance for the front yard. And as Mr. Nash pointed out in his letter, it fails to set forth the property width. The width, I believe Mr. Nash said is 61 and required is 80, but that's pre-existing, and we would ask for a variance for that as well. Doesn't appear on the on the zoning table.

Chairman Dunning: Yeah, I think it's confusing. The two sheds are almost touching on a drawing there's 10' between them, maybe 12'. Not that's major problem it's just that the drawing is a little out of whack here. On Photo 2 you can see the sheds.

Attorney Lefkowitz: No, I understand that, but I don't if that's one shed or two.

Chairman Dunning: It is two sheds.

Member Covelli: Can someone clarify what the dotted line box is to the rear? The dotted line square at the rear of number 50 is that a patio or of some sort, fire pit or just.

Attorney Lefkowitz: On the site plan, I believe it says patio. That square says patio. Is that what you're asking sir?

Member Covelli: It doesn't say patio.

(Professionals & Members looking through plans)

Attorney Lefkowitz: I don't know why it appears like that. I would have to have the engineer describe why it is that. Obviously, pictures don't lie. They were taken this morning. I agree.

Chairman Dunning: This drawing was made in September, and the addition in the front was there.

Attorney Lefkowitz: It had to be.

Member Ludwig: I don't know if it is an addition from looking at the roofline with everything else. I don't know if it's really an addition. It could be a porch that was closed years and years ago. If you look at the birds-eye view, you can see that the look of the foundation looks old.

Attorney Lefkowitz: Right, I understand what he's saying.

Chairman Dunning: What is holding up the c.o.?

Attorney Lefkowitz: This application. The building department has determined this.

Chairman Dunning: Mike, what do we need, since you are the building inspector?

Construction Official: I'm not the building inspector. I'm a construction official, so ultimately it does fall on me. The fit out for the house, or the renovation to that house, was for a single family home. During the renovation process, it was discovered that a business was being operated out of this house, which is what halted a lot of the procedures. So we can't issue a c.o. for a business being operated out of the house, when we don't have zoning approval. So zoning ultimately is what stopped the process.

Chairman Dunning: Okay, so they come here to get the c.o.

Construction Official: To get the zoning approval. Once the zoning approval is done, then she can get the process rolling.

Chairman Dunning: Was your building permit for that front addition?

Construction Official: The building permit is for a single family home. The additions the home were approved. They satisfied zoning at the time. They left the front half of the house alone in the setbacks, and then built after that. So it didn't intensify the non-conformities. There were some non-conformities from, you know to the best that I recall, but they did not intensify them. Again, anything they knocked down, they knocked down a substantial portion of the house and rebuilt. And, again, from what I recall, it didn't it did conform to zoning at the time.

Chairman: Okay, thank you.

Attorney Lefkowitz: I can have Ms. Mano come back and testify regarding that we can consider the bump out but she's going to testify that that was there that's there. Member Ludwig, yes, that was already there. That wasn't expanded. So it still continues to be a pre-existing non-conforming use, and we do need a variance for that, and that's listed on the site plan. Bu the width that Mr. Nash has pointed out does not, and even though that's pre-existing, we would still need a variance for that. It's 80' and it's at 67'.

Member Aumenta: Actually, I have just a couple questions for Ms. Mano when you get a chance.

Attorney Lefkowitz: If you are done with the Planner, I'll recall Ms. Mano. Are there any more questions for Mr. Dougherty?

Chairman Dunning: Are there any more questions for the Planner?

Attorney Lefkowitz: I'd like to recall Ms. Mano. Ms. Mano you are still under oath.

Ms. Mano: Yes.

Attorney Lefkowitz: Do you want to describe about the bump out in the front? Was that already there? You've heard in testimony some questions about whether you added that on and that it doesn't appear on the site plan. What we're calling a bump out, did you add that work on the front?

Ms. Mano: No, that's existing house. Where it goes back and bumps out, that was existing, but we bumped it out beyond the setbacks so we avoided setbacks.

Attorney Lefkowitz: Right, but you didn't encroach?

Ms. Mano: Yeah, no, no, that was existing.

Mr. Sbarra: I guess for me, I just want clarity on the testimony. Just throw it out there. So you're stating again, that you're going to be living?

Ms. Mano: Yes.

Ms. Sbarra: And you're also stating that this business, and I'm not trying to put words in your mouth if I'm not saying this correctly, please correct me, are you stating that this business is incidental to your occupancy of the house?

Ms. Mano: Absolutely. Yes.

Attorney Lefkowitz: Is it your testimony that this business is incidental to the preparation of your food for your own pets?

Ms. Mano: Yes. Absolutely.

Attorney Lefkowitz: Okay. There's been concern about the type of equipment that's there; that there are steel tables, and refrigerators, and we're concerned about what there. Is that equipment, that's there, is that being used for the preparation for the food for your own birds?

Ms. Mano: Absolutely.

Attorney Lefkowitz: If you're not doing this business, if this was not an issue, would you still have that equipment for preparation of the food for your own birds?

Ms. Mano: Everything as is would remain the same.

Attorney Lefkowitz: Okay.

Ms. Mano: There's reasons if you really want to know.

Attorney Lefkowitz: Yes, they really want to know.

Ms. Mano: The birds are very expensive. I buy cases of things. You need somewhere to put the cases, you need variety so now you've got multiple cases, hence the large refrigerators that you saw. Now you've got these large boxes of produce which they will only sit there for so long and depending upon what it is they need to be processed quickly else they're going to spoil so some is used fresh and some is used as a freeze drying process.

Member Aumenta: I've had birds so I agree with you it takes a lot to do them. 13 is a lot so how often are you getting the packages, the cases of produce, and then freeze drying them for your birds? Is it an everyday thing? Is it a once a month thing?

Ms. Mano: I'm always going to be picking up something during the week. It depends on the time of the year because I'm going to try to get certain products if I know the prices are good, right, so I'm going to work that.

Attorney Lefkowitz: But again, you go and get this right?

Ms. Mano: Yes.

Attorney Lefkowitz: Nobody delivers this? You go to the stores and pick up.

Ms. Mano: No, it is not delivered.

Member Aumenta: No, I'm just wondering for the cases. Then how many packages a month, give or take, are you sending out for the business? What are your sales like?

Ms. Mano: Packages? Alright, let me try to calculate because we did the week right.

Member Aumenta: Well, a week is fine too. I mean just an idea to understand the volume of the business. Is it incidental?

Attorney Lefkowitz: We can do it by the week. Is it three a week?

Member Aumenta: We are just trying to understand sales volume.

Attorney Lefkowitz: Is it a hundred a month?

Ms. Mano: Zero to 8 in a week.

Member Aumenta: What are the weight of the packages give or take?

Ms. Mano: Freeze-drying makes them weigh like nothing.

Member Aumenta: How big are they?

Ms. Mano: This smallest could be like this (indicating not large). The largest box is 12", expect I have somebody who's getting paranoid now because of covid so I had to put it in a 14" box. But it's always like a 10" or 12" box or smaller.

Member Aumenta: Thank you.

Engineer Nash: So according to the numbers, and I'm a numbers guy, so you have four machines, half a machine does your business, and the three and a half machines takes care You have 13 birds so half of a machine does about two bird. You're your business is supplying freeze-dried food for two thirds. That's what your business is.

Ms. Mano: But it's very hard to. So I have a canary and I have my macaws.

Engineer Nash: I am just quantifying that the numbers you gave us that is how it shakes out. So you have an extremely small business.

Ms. Mano: Well, yes, I do. All it does is supplement my expenses.

Attorney Mondello: How many orders do you get a day, a week, a month, from the internet?

Ms. Mano: I might get three orders a week.

Attorney Mondello: When did you start the business?

Ms. Mano: 4 four years ago because I needed a better way to feed my birds.

Member Covelli: So this is not your sole source of income is this business?

Ms. Mano: No, I used to have a real job and then I got laid off. And now I do everything I do and husband is the sole provider.

Member Ludwig: Sounds like a hobby.

Chairman Dunning: Do we have any other questions Board Members? Okay. Do you want to make a closing statement, sir?

Attorney Lefkowitz: Very briefly, I think we've made it pretty clear that, and I understand the Board's concern about it really boils down to whether this is a home occupation and whether this is her home, okay, and there's been several questions about that. But as I stated, she's testified that this is her home, this is where she's going to live, and just because of the way that the permitting process has gone, she can't live there until this is resolved. But again, if this had never raised its head, she had gotten a c.o. and live there, then came here to do exactly the same thing, I don't think the Board would have the same concerns. But there's no way she can do that. And I again, respectfully and wording as Mr. Mondello clearly pointed out, you can take her testimony, weigh it and you know, even not believe it or anywhere in between. But it's her testimony that she's going to live there. Whether or not Mr. Mano lives there is their business. It's not the way I live, may not be the way that you live, but if that's the way they want to live, that's the way they want to live. Quite frankly, if I had 13 birds living in my house, I'd want to live some please else, but that's me. But that's her choice. You've heard, I think the testimony is pretty clear, that despite the amount of equipment, the amount that's used for the business, or the proposed business, is very incidental. That the majority of equipment that the Chairman saw was used for the preparation of food for her own birds. You heard the testimony of the Planner that it would have absolutely no impact on the neighborhood and on the neighbors. There's no deliveries; it's the post office. And I really think given the necessary ambiguity of your ordinance that the Board can find that this is, although it's not an anticipated one, we live in a modern society things change, that this can be considered a home business. It's not

baking cupcakes, it's not baking wedding cakes, but it's baking food incidental to her own use for parrots and I think it can be passed.

Member Covelli: I have a question, even though I guess I'm a little bit out of order since you gave your closing comments, but we don't have a picture. You saw the machines firsthand.

Chairman Dunning: Right.

Member Covelli: We don't have a picture. Do we have a dimension on the size of one of these machines?

Attorney Lefkowitz: Yeah. Ms. Mano, would you like to get your phone to actually give the actual one.

Member Covelli: Jack, would you be able to give an estimation of the size of the machine? Is it a freestanding machine?

Attorney Lefkowitz: I would describe it as maybe two microwaves sitting on top of each other.

Chairman Dunning: Sitting on stainless steel tables.

Member Covelli: I didn't know if this thing is wheeled in by a forklift, if this thing is carried in in a box.

Ms. Mano: They sit on a stainless steel table because that's the cleanest way.

Member Covelli: It's clean.

Attorney Lefkowitz: Yeah, I mean, it's clear, I think from everybody, it's not your it's not your typical little home dehydrator. I made the same mistake. It's not dehydrating; it's freeze-dried. That's a whole other machine and I thought the same thing, a little round thing you see that they sell Christmas time. (Showing Pictures: Those are the machines.

Member Covelli: So you would represent that it's roughly half the size of that table that you're at?

Ms. Mano: Oh, not even that.

Member Covelli: A little bit taller than a dorm refrigerator?

Chairman Dunning: They're 30" wide next to his little pump. So all it takes is at least 3' per machine.

Attorney Lefkowitz: Yes.

Ms. Mano: It needs air flow in case you want to do it one day.

Member Covelli: And these run on 110 or 220?

Ms. Mano: Oh, no. Is it 110?

Attorney Lefkowitz: Just look it up. What does it say?

Member Sbarra: Basically a regular outlet.

Attorney Lefkowitz: It's just a regular letter outlet and you plug it in?

Ms. Mano: Yeah, I just plug it in.

Chairman Dunning: Okay, are we all set now? All right, now I need somebody to make a Motion on this application.

Attorney Mondello: Somebody's got to do something for or against.

Member Aumenta: I'll make a Motion to Approve.

Attorney Mondello: Is there a second?

Member Ludwig: I'll second it.

Attorney Mondello: What conditions have been discussed? I mean, it's essentially going to remain as a home business or business for parrot food. There aren't going to be any deliveries.

Member Covelli: Since the ordinance is clear, that it needs to be an incidental, incidental to the service of the structure which is to be a home residence, both by its design and by its location, how does one maintain that it remains an incidental operation to the primary operation of a residence?

Attorney Lefkowitz: How do you do that with any home occupation?

Member Ludwig: I guess you could possibly limit the number of people working there. I mean, like a doctor might have an assistant but you can't have 15 people.

Attorney Mondello: Don, it's right here. No more than one person outside of the family shall be employed. So let's covered.

Member Sbarra: Is there a square footage, or percentage of square footage requirements?

Attorney Mondello: No. Any other discussion, anything else?

Member Covelli: How do you how do you make it a condition that someone has to reside in the house?

Attorney Lefkowitz: It's in the ordinance?

Member Aumenta:

Yeah, I think it's a condition of the ordinance.

Member Covelli: That protection is within the ordinance?

Attorney Mondello: Yes.

Attorney Lefkowitz: Freedom of association. You have to be careful.

Attorney Mondello: "Is carried on by a member of the family residing in the dwelling unit."

Engineer Nash: And the bulk variances.

Engineer Lefkowitz: Yes to the bulk variances correct?

Attorney Mondello: Which are what?

Attorney Lefkowitz: They are both rep-existing, the front yard setback and the lot width.

Attorney Mondello: All right, there's no other discussions, Roll Call.

Member Covelli: So the Motion is to Approve the application as presented with no stipulations other than, obviously you don't put a stipulation to follow the ordinance, and the two bulk variances which have to do with the front yard setback as the structure currently exists, and the lot width, which are all pre-existing.

MOTION TO APPROVE APPLICATION ZBA2021-09: made by Member Aumenta, seconded by Member Ludwig. Voting yes were Members Henderson, Ludwig, Aumenta, Lynch and Sbarra

Voting no were Chairman Dunning, Member Covelli

Motion Carried with 5 Yes Votes & 2 No Votes.

PUBLIC DISCUSSION: Let the record show no one came forward.

RESOLUTION: ZBA2021-07 – Licastro, Jason

Attorney Mondello: There was an application to permit to construction a one-family residence in an affordable housing multi-family overlay zone. There are number of conditions, and I'm not going to read them, but they start on page 32. Elimination of full basement, eliminated one bedroom and Applicant must provide a minimum of 20x30 parking. Paragraph D. goes on and essentially says they got to install two 1250 gallon detention tanks and if it doesn't work, they have to come back to this Board. I put in that the variance is null and void. Also I indicated that this is an affordable housing overlay zone and will contact the Borough Planner to ask about a fund for affordable housing.

MOTION TO MEMORIALIZE THIS RESOLUTION AS PREPARED BY BOARD

ATTORNEY: made by Member Sbarra, seconded by Member Ludwig. Voting yes were Members Covelli, Henderson, Ludwig and Aumenta and Sbarra

CORRESPONDENCE: None

VOUCHERS: submitted by Ronald Mondello, Esq. for the Licastro Application in the amount of \$1,575; and for attendance at the November 3, 2021 Meeting in the amount of \$400.

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

MOTION TO APPROVE OCTOBER 6, 2021 MINUTES: made by Member Aumenta, seconded by Member Ludwig. Voting yes were Chairman Dunning, Members Covelli, Henderson, Ludwig, Aumenta, Lynch and Sbarra

ENGINEER'S REPORT: One New Application

DISCUSSION: Vice Chairman Grygus will not be in attendance at the November Meeting.

MOTION TO ADJOURN AT 10:15 PM: Motion made by Chairman Dunning and carried by a voice vote.

Jennifer A. Fiorito
Board of Adjustment Secretary