

REGULAR MEETING

Salute to Flag: 8:02pm

OPENING STATEMENT:

This is the Regular Meeting of the Wanaque Board of Adjustment and adequate notice has been given and it has been duly advertised by the placement of a notice in the Suburban Trends on February 13, 2019 respectively, and a notice thereof has been posted on the bulletin board in the Municipal Building in the Borough of Wanaque and a copy thereof has been on file with the Borough Clerk

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

ABSENT: Vice Chairman Bruce Grygus and Member Frank Covelli

**Application #ZBA2019-09 – 20 Colfax Wanaque LLC
20 Colfax Avenue (Block 240/Lot 24)**

Applicant's Exhibits

- A-1 Response of Abutting Property Owners dated October 6, 2019 and signed by Maria Conte, owner of 22 Colfax Avenue**
- A-2 Response of Abutting Property Owners dated August 31, 2019 and signed by Paula, John & Steven Capella, owners of 18 Colfax Avenue**

Attorney Mondello: I have had an opportunity to review the submissions by the Mr. Dixon with respect to the Notice to residents within 200' and the publication in the newspaper. I deem the Application complete from a legal notice perspective and jurisdiction is vested in the Zoning Board to hear this Application.

David Dixon, Esq. of Feeney & Dixon, LLC of Pompton Plains, New Jersey, representing the Applicant, 20 Colfax Wanaque LLC

Attorney Dixon: I want to briefly review what we have submitted. We've submitted a site plan together with architectural plans along with a survey of the existing conditions and a summary. Subsequent to submission and deeming the Application complete, it was pointed

out to us, very graciously by the Board's Engineer, that there were a few errors on the plans that have been submitted so we resubmitted a new set of plans correcting the misidentification of some of the variances that were in the original plans. What you should have before you is plan with a revision date of 10/30/19 on the upper right-hand corner of the plan.

We have a lot that is located along Colfax Avenue, Block 240/Lot 24 with a small bungalow built upon a pre-existing lot that contains only 9, 043 square feet. There are pre-existing conditions associated with lot widths. In the particular zone, which is the R-15 Zone, requires 15,000 square feet minimum together with 100' of lot width. There are also other conditions associated with this site, which are, according to the existing use, pre-existing side yard variances and also variances associated with the location of the single car garage that is located on the premises. It was also pointed out to us that this not going to be a case in which we are simply adding onto an existing structure. We are going to demolish the structure and we are intending to put up a new structure in its place. We believe the bungalow had been constructed in the 1920s and we believe it has reached the end of its useful life. Notwithstanding that, we are seeking variances from the variances which pre-existed on this property, which would be lot area; lot width; side yard – also both individually and combined; together with the side yard for the garage which is the only structure that is proposed to remain on the premises and also the distance between the principal structure and the garage.

The distance between the current structure/house and the garage is 3.5'. The new structure is going to maintain that same distance. There are certain circumstances or certain conditions on the property that forces the location of where a house can be located but the some of the variances that pre-exist on the property will actually be continued and will not be exacerbated on the new Application.

Attorney Mondello: Are there any variances that will be exacerbated?

Attorney Dixon: By my reading, the total side yard and also the side yard, which is the side yard to the left of the property, will be exacerbated. Currently the side yard on the left is 16.59' and, with the new construction, it will be 13.867'. That is the side of the property that is located adjacent to the pole of the flag lot that surrounds this property. There is a driveway access to property in the rear and the variances that we are seeking relates to that particular side.

Member Levine: I am correct that in the letter by Engineer Nash that pre-existing approved variances don't hold any more?

Attorney Mondello: They go away because they are demolishing the structure.

Member Levine: So whether it was an approved variance prior, it doesn't mean anything.

Engineer Nash: If it was an approved variance, it would go with the land.

Attorney Dixon: This is more of a situation where we are just putting in a new building. So you are going to look at this as if we were putting a new building on a pre-existing lot. That relates however only to the side yard variances. The pre-existing conditions associated with the size of the lot and the width of the lot are pre-existing conditions that go with the land. So what we are talking about with the building it is side yard.

Attorney Dixon: At this point, I would like to call one of the Members of the Applicant, Mr. Capella, to give a little overview of what they propose to do together with the a description of the neighboring properties and what is associated with this particular property. I would also like to place on the record two forms that we obtained back from neighboring property owners in regards to a request to purchase neighboring property from the Conte's who are the property to the rear and to the side and also from the Capellas who are to the right of our property.

Attorney Mondello marked them as Exhibit A-1 and A-2. I understand why, but why don't you just mention to the Board why you are submitting these and why your client took this action.

Attorney Dixon: In order to justify the granting of a variance based upon hardship, you have to demonstrate that you, in fact, had suffered a hardship but also if there is property available that would make the variances moot, you have to go through the initial effort to at least try to acquire that property in order to eliminate the need for the variances. In this particular instance we went through this process and made a request to the neighboring property owners for us to take a portion of their property in order to bring this property into conformance. Quite honestly the only property that would apply to would be the Capellas' property. However, in any event, both of the property owners refused to grant our request for purchasing any portion of their property. Therefore, there was no way in which we could acquire additional property in order to eliminate the need for the variances.

Attorney Mondello swore in Steven Capella, 129 Dutch Road, East Brunswick, NJ.

Attorney Mondello commented, in fact, it looks like you signed A-2.

Mr. Capella answered correct.

Attorney Dixon: Mr. Capella, in addition to being a neighbor, you are also one of the members of the Applicant. What do you do for your profession?

Mr. Capella: I am a real estate appraiser.

Attorney Dixon: Are you familiar with this particular neighborhood and this particular house?

Mr. Capella: I grew up on this street in the neighboring house so I know the house all my life.

Attorney Dixon: There may be one issue that comes up with regarding to this particular bungalow. To your knowledge, it has been there for your entire life, correct? And it is your understanding that this was built sometime in the 1920s?

Mr. Capella answered yes to both questions.

Attorney Dixon: Have you had the opportunity to review the inside of this building and its condition? And if so, describe the condition to the Board.

Mr. Capella: It is an older home and it was pretty much in a state of disrepair prior to the incident. What happed was the former owners were put in a nursing home and the house had oil heat and they had no oil, everything froze and basically the house filled up with water. There is damage to the floors and you can barely get into the house since everything is warped.

Member Levine questioned how long has it been vacant?

Mr. Capella answered about one year; this happened last winter.

Attorney Dixon: You and your partners only recently acquired this property and I think you closed only recently. Is that correct?

Mr. Capella answered we closed in May.

Attorney Dixon: Please describe what this bungalow is like.

Mr. Capella: The house is only about 600 square feet. The foot print is 20x30. It is a one bedroom bungalow with relatively low ceilings. That this point, it is filled with mold from the moisture. The floor plan is really not conducive to current standards.

Attorney Dixon: As an appraiser, you have to determine what the highest and best use of the property is. Is that correct?

Mr. Capella answered yes.

Attorney Dixon: Looking at this particularly property and considering all the limited factors associated with it, it is your belief that this has reached the end of it useful life?

Mr. Capella answered yes.

Attorney Dixon: Do you believe that the highest and best use for this property would be the replacement of this with a more modern home?

Mr. Capella answered yes.

Attorney Dixon: You say you grew up in the neighboring property. How long has that been?

Mr. Capella answered 59 years.

Attorney Dixon: So in the 59 years you are familiar with all the surrounding property and your family's property which is located to the right of the subject property. Now your family has already submitted the form indicating that they are not willing to give up any of their property, but if you had given up, let's say 5,000 square feet of your property, would that have imposed a burden on your house and the setbacks associated with it?

Mr. Capella answered our garage is relatively close to the property line as is our driveway so there is really no room there to give up without giving up the garage and driveway.

Attorney Dixon: This is the basic reason why you refused to grant that.

Mr. Capella answered yes.

Attorney Dixon: Your property lot has about a 1/3 of an acre and this, Lot 24, has about 9,000 square feet. What are the other lots like in this neighborhood?

Mr. Capella: They vary. There are some relatively large lots, but then there are small lots. It was developed over time so when they were built it was basically whatever was there and a lot of times the houses were built close to property lines so I don't think all of the homes on the street or the neighborhood would conform.

Attorney Dixon: Looking at this particular site, the Contes' own the property to the rear and there is what appears to be the pole of a flag lot that runs up to the left side of this property. Is this right?

Mr. Capella answered yes.

Attorney Dixon: The garage is proposed to be retained on your plans?

Mr. Capella answered yes.

Attorney Dixon: The driveway itself is currently positioned as depicted on the plans and there isn't going to be any change in the location of the driveway or the location of the garage?

Mr. Capella answered that is correct; no change.

Attorney Dixon: As you are familiar with this neighborhood, is this lot size consistent with any other lots within the area?

Mr. Capella answered yes; there are other relatively narrow lots.

Member Levine questioned can you clarify the existing driveway because I've been to the property and have pictures of it and I don't see any driveway.

Mr. Capella answered it's gravel and kind of grown over it and into it. There is gravel that goes to the garage from the street. The prior owner had a car and they shoveled it and it is a gravel drive that over time the grass grows into it. It was never paved.

Member Levine questioned is that the same situation as the concrete walk in the back of the house?

Mr. Capella answered there was a former shed in the back. It could very well be deteriorated or grown over with grass.

Chairman Dunning commented it looks like it sunk down and everything grew over it.

Member Malone questioned this was an older couple that lived there?

Mr. Capella answered yes.

Attorney Dixon: With regard to the current property, is there anything more you wish to add as to the current conditions that are associated with this lot?

Mr. Capella answered no.

Member Levine questioned can you clarify your position in this whole thing. You're the neighbor on the right and you are testifying for this structure. You are associated in some way with this property.

Mr. Capella answered my family owns the property on the right along with my siblings and I am a member of the LLC for this property that we purchased on the left, 20 Colfax.

Member Levine questioned what do you plan to do with the new structure? Have somebody in your family live there, or are you going to sell it, what is the purpose?

Mr. Capella answered we are going to sell it.

Attorney Mondello: Along those lines Attorney Dixon, I just want to clarify Mr. Capella's testimony. I know he spoke about appraisal, but he is an owner.

Attorney Dixon: I was trying to determine that this is a bad house and the best use of this house and the position of the developer is that it be destroyed and that it be replaced with something better.

Attorney Mondello: The Rules of Evidence of somewhat relaxed and the Board will decide what to do with that appraiser testimony even though he's the owner.

Member Levine questioned I assume the owner of the property on the right will have no objections to what you are going to do on the left?

Mr. Capella answered that is correct.

Attorney Dixon: I just want to clarify that Mr. Capella doesn't live there presently. His family owns it.

Mr. Capella commented it is an improvement to the neighborhood. The prior owners are a sweet couple, obviously they had health issues and that's why they couldn't maintain the property and it fell into quite a state of disrepair. It is very small and has very little appeal functionally as it was constructed.

Chairman Dunning: You mentioned oil heat that's in the house. Where is the oil tank?

Mr. Capella answered in the basement.

Chairman Dunning questioned has it been tested for leaks? Has the soil been tested?

Mr. Capella answered we had a tank sweep for the lot. It is a newer tank in the basement.

Chairman Dunning stated an older tank could have leaked. The State is very strict about oil leaks and oil tanks. If you had a leak, they are going to drive you crazy.

Engineer Nash questioned do you know if the oil tank was always in the basement?

Mr. Capella answered the tank sweep company indicated that they believe that it was. They found no evidence of in ground oil tank on the property. To my knowledge for 59 years, I remember the oil man coming and fill on the side of the driveway next to my property. As far as I know, the tank was always in the basement.

Chairman Dunning stated right, because on the right side you have the fill pipes coming out of the house and they don't look that old that's why I'm asking.

Mr. Capella stated they upgraded.

Engineer Nash questioned the tank sweep was ground penetrating radar, is that what you're talking about? **Mr. Capella** answered usually, but I don't recall.

Engineer Nash commented they can detect if a tank is not there, but that doesn't mean the tank was there and was removed and the soil is bad. All they are doing is saying there is no tank.

Attorney Dixon commented what they used to do with a tank sweep also is they look for any evidence of fuel lines coming out of the house, any evidence that there had been in the past in connection with an oil line. I have to assume that they found nothing based upon the report of the client. Problem is that if there is a leak it's our problem that we would have to remedy in the event if we wanted to get the building permit for this property and sell. If we are going to ever sell it, it has to be clean. As long as there is no evidence to tell us that there was any kind of leak, there is no evidence of a leak in the basement, it was probably a seventy year old tank that they had replaced in the basement. Again, it is our problem and a problem that we would have to solve if we ever wanted to market this premises if, in fact, there was a problem.

Engineer Nash commented there are various check points along the way. If it is not checked here, where is the next step? Are we relying on the building inspector to witness it of some sort?

Attorney Dixon commented actually the construction department doesn't have jurisdiction over leakage. They have jurisdiction over removal. If we are going to be connected to gas, we would have to remove the tank and obtain a permit from the construction department in order to do so. If the house is coming down, it is going to have to be removed. Again, it is a problem that is outside the jurisdiction of this Board and the town. It is subject to the jurisdiction of the DEP. If there is a leak, we would have to comply and would have to clean it up. If we don't have insurance, we'd have to pay for it out of our own profit.

Engineer Nash commented I agree with you, but if this house on wetlands and you came to us and said, you don't have jurisdiction over this, it could be questioned.

Attorney Dixon commented you grant the approval subject to whatever compliance we have to do. If we discover an oil leakage, or we have to remove the tank which is likely.

Member Ludwig questioned since you've been in the basement, are there any signs of any lines coming through the foundation wall or through the wood frame that gives you any inclination that there is was tank?

Chairman Dunning stated the existing fill lines are there going into the basement.
Member Ludwig commented you should see signs that there was a hole through the concrete if there was one originally on the outside.

Chairman Dunning stated there is a hole towards the back of the house not from those oil lines that might have been a fill for the old tank.

Member Ludwig stated many of these houses have them standing up right against the side of the house.

Attorney Mondello commented the Resolution would say that it is subject to DEP approval if there are any issues.

Chairman Dunning: Are you building a basement in this house?

Mr. Capella: It is going to be a crawl space.

Chairman Dunning: You mentioned the basement had a lot of water in it. Is there a high water table there with the swamp across the street?

Mr. Capella: There is shelf there from the mountain, and a sump pump.

Chairman Dunning: I saw the pipe coming down. That would lead to a high water table so you are doing a crawl space to try and stay above that?

Mr. Capella answered correct.

Member Levine: You are going to be using gas for the new structure?

Mr. Capella answered yes.

Member Levine: The electric requirements for the amount of power you have coming into the existing versus what you are going to need for the new house, are you going to need additional power?

Mr. Capella answered obviously there is going to be a new panel and service and a/c, but I'm not familiar with the line itself, but more is going to be needed for the new house.

Attorney Dixon: There is probably 100amp service right now. Most people on new houses want 400amp service, when the usual standard was 200amp service, because people have a lot of electrical equipment that we didn't have twenty years ago. In any event, new service is going to have to be installed.

Member Levine: Is it presently hooked into the sewer system?

Mr. Capella answered yes.

Member Levine: The new house won't any additional sewage flow that maybe the piping has to be upgraded.

Mr. Capella stated it is a single family house to a bigger single family house.

Chairman Dunning questioned the cement block in the front yard, 4x4 concrete cover, what is under it?

Mr. Capella answered an old well that will be filled in.

Member Ludwig stated that he didn't see any numbers for a minimum side yard.

Attorney Dixon stated the requirement is 20' minimum for any one side, and combined 45'. What we have right now is 16.59 on the one side and the total for both sides is 29'. What we are proposing is 13.867' on one side and a combined total of 22.783'. You can see that total from the dimensions shown that we've added on the site plan itself. It is typical in most towns, especially the R-15 type zone, that they would have a minimum for any one

side and a combined which sort of keeps it to no less than 20' on either side and, in this particular instance, it's a pre-existing condition is a variance condition, but also what we are proposing is an increase in the side yard except that there is a slight betterment associated with the side yard to the right. You'll see that the existing right-side side yard is 12.41' and we are actually going to be straightening out the house so that it is going to be a little bit more squarer to the lot.

Chairman Dunning questioned what is the distance from the right side of the driveway to the property line?

Attorney Dixon answered it has not been scaled.

Chairman Dunning questioned what is the minimum on that?

Attorney Dixon answered there is no setback for driveways. It is the garage that has the setback requirement.

Engineer Nash questioned is the garage the same age as the existing home?

Mr. Capella answered I am not sure because that is in considerably better condition.

Member Ludwig questioned do you plan on siding it or anything like that?

Mr. Capella answered yes; it is going to match the house. It will be refurbished.

Chairman Dunning stated the structure is old but looks like a pretty new garage door.

Mr. Capella stated yes.

Chairman Dunning: On the old house, in the rear, is a 4" pvc pipe coming out of the ground, what is that for? It is not shown on the plan.

Mr. Capella questioned is it out in the middle of the lawn? Probably a sewer clean out even though it is in the rear of the house.

Chairman Dunning: Any other questions from the Board Members? Let us open it up to the public. Does the public have any questions? Seeing and hearing none, we close the public portion.

Attorney Dixon: Since there are not further questions, I will call Mr. Macagney.

Attorney Mondello swore in Michael Macagney, 211 Wild Acres Drive, Dingmans Ferry, Pennsylvania. I appeared before this Zoning Board in 2012. I have been in the architectural field for 40 years and have been licensed for 35. I am licensed in the State of New Jersey.

Attorney Dixon: Have you been accepted as an expert in the field of architecture, including the preparation of site plans, as architects are permitted to do, before this Board or any other Board in the State of New Jersey?

Architect Macagney answered yes.

Attorney Mondello: Any Board Members have any objections to admitting this witness in the field of architecture? Hearing none, seeing none, your witness.

Attorney Dixon: Architect Macagney you are the individual who prepared both the site plan and the architectural plans associated with this application. Is that correct?

Architect Macagney answered correct.

Attorney Dixon: Please describe for the Board what the existing conditions were on this site/property relating to the survey that was incorporated into your site plan and describe the proposed changes you are going to undertake.

Architect Macagney: After reviewing the survey, we went out to the site and confirmed that everything is accurate and I incorporated it into my plans.

Attorney Dixon: Let's look at the existing conditions. What is located on the site now?

Architect Macagney: A one-story bungalow that contains about 600 square feet of livable space and a mason garage.

Attorney Dixon: Your understanding of the ordinance for the R-15 Zone requires that the minimum floor space be 1,050 square feet and this deviates from the minimum standard for the R-15 Zone. Correct?

Architect Macagney agreed.

Attorney Dixon: You heard the testimony from Mr. Capella with regard to the condition of the property. However, from an architectural standpoint, was there any means by which you felt that it was possible to raise this building up or increase the square footage with the existing conditions?

Architect Macagney answered no.

Attorney Dixon: So you felt there was insufficient support for the construction of a building in the existing footprint or on the existing foundation?

Architect Macagney answered support as well as space, yes.

Attorney Dixon: What is the maximum width that a building could be built on here without a variance?

Architect Macagney answered 5'.

Attorney Dixon: There would be no way that even the existing building could be constructed on this lot without a variance? Also the square footage of the lot is approximately 9,000 square feet and that is a pre-existing condition and this house has been placed on this lot and, therefore, you would require a variance if you were intending to build on this property in any event?

Architect Macagney answered correct.

Attorney Dixon: With regard to the garage, there was a question that was raised regarding the condition of the garage. Did you have an opportunity to examine the garage and determine whether or not that it was structurally sound and it's not in the deteriorating condition as the rest of the property?

Architect Macagney answered yes, and it is structurally sound and is actually well built.

Attorney Dixon: With regard to the location of the garage, it is presently sitting approximately on the property line. The driveway itself runs from Colfax up through and then to the right of the house into the garage. But the house itself, as it sits there today, is a little bit cockeyed, and it encroaches actually 12.41' to that side line and then widens up a little bit as you go towards the rear.

Architect Macagney agreed to all the comments.

Attorney Dixon: What is it that we are proposing to place on the lot in place of the existing structure?

Architect Macagney: We are rotating the footprint to accommodate the drive and not make it as narrow and give more side yard and a straighter path into the garage.

Attorney Dixon: You are straightening out the house so that it follows the lot lines and you are also straightening out the area that is for the driveway.

Architect Macagney answered yes.

Attorney Dixon: That 12.41' side yard deficiency is actually going to be increased to 13.867'. Is that correct?

Architect Macagney answered that's correct.

Attorney Dixon: In your mind is that a safety issue with regard to access to the rear of the property or an access issue because of the location of the house and its blocking of the driveway?

Architect Macagney answered by increasing the side yard, it's actually going to diminish the danger of hitting the house since it was very tight coming in there.

Attorney Dixon: Of course, there is no room on the left side of the house even existing to place a driveway if you were seeking to gain access to the garage.

Architect Macagney answered correct.

Attorney Dixon: The garage doors face towards the street, not the side yard.

Architect Macagney answered correct.

Attorney Dixon: The variances that we are seeking, and I'm going to ask you to concentrate mostly on the side yard variances, just tell the Board what it is that is going to change with regard to this plan. Presently, what is the minimum side yard of the smallest side yard for this particular property?

Architect Macagney answered the minimum side yard is 16.5', which is the left side of the existing building.

Attorney Dixon: When we construct this new building, what will be the side yard and which will be the shortest side yard on this particular building?

Architect Macagney answered the shortest side yard will be 6.95'. That is actually a cantilever gas fireplace and there is no foundation underneath to it. To a foundation would be 8.9'.

Attorney Dixon: It was also pointed out that there also was a projection on the original plan on the right side of the house and that has been eliminated from this plan in order to better accommodate, is that correct?

Architect Macagney answered that is correct, as well as an entry that would encroach on the driveway.

Attorney Dixon: What is the basic purpose of a side yard requirement? What are you trying to control when you set up a side yard?

Architect Macagney answered to have a certain distance or room between either an access point or a neighbor.

Attorney Dixon: In this particular instance, the new construction will increase the side yard on the right side of the building, but we are going to be decreasing the side yard on the left side of the building, but what is located on the left side of this building? What is adjacent to this property?

Architect Macagney answered an access driveway to the rear property.

Attorney Dixon: The nearest house on this side of the property is actually the next lot over.

Architect Macagney answered that's correct.

Attorney Dixon: What is the width of this driveway access to the rear property? And could that be built upon?

Architect Macagney answered approximately 40' and it couldn't be built upon.

Attorney Dixon: That is the only access to the Conte property in the back, correct?

Architect Macagney answered yes.

Attorney Dixon: For all intents and purposes, there will be construction or building located within 40' across this driveway and also for our side yard. From a distance of 46.8' there will be no construction, no building, nothing located there, correct?

Architect Macagney answered correct, and as well as adjacent property side yard setbacks.

Attorney Dixon: This is a unique aspect of this particular property that makes it different from any other property that may be in a similar situation. So that particular aspect of the side yard requirement has been satisfied because we don't have any building located within a very long distance from our property. Why do we need side yards and why do we need an access point on either side of the property?

Architect Macagney answered distance for access.

Attorney Dixon: By its location here next to a driveway section, you can gain access to the rear of this property and you can also gain emergency access to the rear of this property.

Architect Macagney answered yes.

Attorney Dixon: By widening the side where the driveway is, where the most activity is going to occur, do you believe that increases the safety associated with that driveway?

Architect Macagney answered yes.

Attorney Dixon: Moving onto the other variances, which are dealing with mostly the accessory building which is the garage that is located there, we are not moving it. It is a pre-existing condition that we are not going to change. The zero setback from the side yard is going to remain zero setback from the side yard and the distance between the house and the garage at 3.5' that exists now is going to exist on the new plan. We are not exacerbating that issue, we're not expanding that issue, we're not interfering with the distance between the properties any more than what exists now.

Architect Macagney agreed.

Attorney Dixon: Looking at the distances for the side yard, 13.867' is that sufficient width to accommodate a motor vehicle and, in fact, isn't this the only place a motor vehicle could gain access to the garage?

Architect Macagney answered yes.

Member Levine questioned the only way a car, once in the garage, can get back out is by backing out. There is no ability to turn the car.

Attorney Dixon answered that is right.

Attorney Dixon: The other conditions that are on sight that were questioned were a well that is located in the front that has a 4x4 concrete cover. Is that going to be removed? Also there was a question about an oil tank that is located on the property. Is it your understanding that the oil tank is planned to be removed when the house is demolished?

Architect Macagney answered correct to both questions.

Attorney Dixon: The area that surrounds the property, is there any plans on fencing that yard or providing any barriers to the rear property line?

Architect Macagney answered no.

Attorney Dixon: You heard Mr. Capella talk about the neighborhood and the fact that there were a number of other properties that are of similar size, that undersized to the 15,000 square foot minimum required for this zone, together with other properties which are apparently located within 20' of their respective side yards. Do you believe that this particular development will have any negative effect upon the zone plan within this area?
Architect Macagney answered no, I don't.

Attorney Dixon: In this particular instance, you have a little illustration showing what the house is going to look like. Is that the final plan that you've come to for the exterior view of this house?

Architect Macagney answered yes.

Attorney Dixon: The livable space in this new proposed house is going to be how many square feet?

Architect Macagney answered approximately 2,200.

Attorney Dixon: So that meets the requirements for this particular zone for livable space, does it not, whereas the existing structure does not?

Architect Macagney answered that's correct.

Attorney Dixon: There was a question about the size of the electrical service for this house. Do you believe a 200amp service will be sufficient for a house this size?

Architect Macagney answered yes.

Member Levine: Regarding the new crawl space that is going to be under the whole house is the existing structure, supports going to be taken out, filled in and you're just put a new crawl space in?

Architect Macagney answered yes.

Chairman Dunning: On your second floor elevation, the upper rear part you have a walk-in closet, what is the bump out on the outside of the closet?

Architect Macagney stated that is an error. That is the top of the fireplace that we took out.

Chairman Dunning: How are you going to air condition this house?

Architect Macagney answered more than likely central air.

Chairman Dunning: Where are you going to put the outside condensers?

Architect Macagney answered the best location would probably be in the back.

Member Ludwig commented you have the deck back there.

Chairman Dunning: The back is the right place, but you don't have a lot of room the way it is constructed.

Architect Macagney commented we could probably put something right outside the family room; probably two units.

Member Levine stated probably between the steps and the bay window.

Attorney Dixon: Your point being, we are not going to place the air condition in any side yard. We will agree to a condition that indicates that the mechanicals will be located only in the rear yard or not in the side yard.

Chairman Dunning: Any thought as to water retention on the property for the storm drains.

Attorney Dixon commented we haven't made any plans for it. Even though we are increasing the impervious coverage, however it doesn't exceed the limitation of your ordinance. We have no on-site retention plan.

Attorney Mondello: The Board Engineer will take a look at that. If he decides that you need one, we'll put that in the Resolution.

Chairman Dunning commented that is a very flat piece of property.

Attorney Dixon commented it is built on ledge rock.

Engineer Nash commented that is the issue that the rock is right there. If the water is supposed to discharge into the ground and there is a lot of rock there.

Chairman Dunning commented it you look across the street, there's a swamp, so you know there is a high water table.

Attorney Dixon: For the record, you observed the property itself and what is the general slope of the property, where does it go?

Architect Macagney answered back to front. There is a mountain in the back and it slopes back to front.

Attorney Dixon: If the engineer determines that we are going to need some sort of retention, seepage pits or whatever, we will do that. However, for the record, we have not increased the impervious coverage to anywhere close to what your limit is under your ordinance. For a single-family home to require a retention might be a little bit too burdensome. However, if it is determined that because of the topography and because of the geological nature of the property, the building department or the engineer determines that we need some form of control of the water, we'll do it.

Chairman Dunning questioning **Mr. Capella:** You have lived there for a long time, during some of the crazy storms

Mr. Capella: Everything runs down to the swamp into the sand pit.

Chairman Dunning: In your first floor plan, you have a down arrow, so you have a stairwell going into the crawlspace?

Architect Macagney answered this was a stock plan that probably had a full basement underneath, but we don't plan on doing that.

Attorney Dixon: When we submit for building permits, it'll be a little more detailed than this particular plan.

Architect Macagney stated there might be an access panel in the floor in the laundry room to get down there.

Attorney Dixon confirmed there will be no basement nor any stairs leading to a basement.

Chairman Dunning: What is in the attic of this house? Is there any access to the attic, drop down stairs?

Architect Macagney answered probably pulldown stairs.

Chairman Dunning: You show a window in the front but no room up there to build anything right?

Architect Macagney answered no, not livable space.

Chairman Dunning: Any other questions from the Board Members?

Seeing none, hearing none let's open it up to the public.

Does anyone in the public have any questions or statements on the Architect's testimony?

Seeing none, hearing none we close the public portion.

Attorney Dixon: I have nothing further at this point. I just want to sum up by indicating that I believe we've established that these are acute cases and previously nonconforming conditions associated with this property that are not going to be changed and cannot be changed. For those conditions where we are forced to change them, we are not going to be exacerbating the situation any further than what exists now and replacing the premises with a building which meets modern standards and also meets your livable floor space requirement for this particular zone. If you are looking for something to lay your hat on under C-1 or C-2, I believe that we have shown hardship for C-1 and, in addition, based upon the actual zone plan and how all the lots are put together in this particular neighborhood, I don't believe that this will deviate from the standard zone plan and will not interfere with the zoning for this area and will not be abhorrent to the zone plan. In fact, it will be an enhancement and will be an aesthetic improvement for this property and aesthetic improvement for the neighborhood. Also, because of its location next to the pole of a flag lot, I think that ameliorates any issues associated with the side yard variance. It meets the requirement, or the standard, that you are trying to seek when you are looking at a side yard because no one is every going to be building within 45' of our side yard. No one is going to be placing any other structures there and, therefore, the requirement for spacing, and requirement to maintain that distance between houses is maintained in this particular instance just because of the unique nature of this location. I just ask that the Board consider that and grant the approvals.

Chairman Dunning: Would somebody like to make a Motion for or against this application?

Engineer Nash: The only think I would like to quantify what the side yard variances because I don't have them documented in my letter since I didn't provide a second review letter for the hearing.

Attorney Dixon: The standard is 20' minimum for one side. We are asking for a variance to allow 13.87' which happens to be on the right-hand side of the property. Also, the total side yard standard for both sides is 45' and we are seeking a variance to allow a total of 22.78', whereas the existing condition is 29'. Also, with regard to the accessory building there are side yard variances associated with that. 5' is the minimum required and this is a pre-existing condition and the garage is going to remain and located right on the property line at 0'. We are not changing that, but a variance is required. Also, with regard to the distance between the principal building and the accessory building, your ordinance requires that it be no less than 10'. Currently, it is 3.5' between the existing house and the garage and the distance between the new house and the garage will still be 3.5', but again, a variance is required. Just for the record, we are going to be meeting your livable floor space standard, which is not met by the existing condition.

Member Ludwig made a Motion To Approve Application With The Following Conditions:

1. Continue any pre-existing variances that are not being changed.
2. Total side yard requirement is 45' where presently the total is 29' and the application is asking for a total side yard of 22.78' but when bump out of 1.96' is included, a variance of 20.82' is required.
3. Any side yard requirement is 20' and the applicant is asking for 13.87' for a variance of 6.13'.
4. Well is going to be filled in.
5. Air conditioning units will not be located in the side yard.
6. Board Engineer is going to determine whether or not a seepage pit will be needed.
7. Oil tank will be removed and subject to DEP approvals, if needed.
8. So the remaining variances are the minimum side yard, the accessory structure and minimum distance between principal building and accessory structure.

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

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

RESOLUTIONS: Application #ZBA2019-08 – Bourhill, Alison

MOTION TO MEMORALIZE RESOLUTION AS PREPARED BY BOARD

ATTORNEY: made by Member Levine, seconded by Member Ludwig. Voting yes were Chairman Dunning, Members Ludwig, Levine and Malone. Motion Carried

CORRESPONDENCE: None

VOUCHERS: submitted by Ronald Mondello, Esq. for the Tree Tavern/MK Enterprises Litigation in the amount of \$750; for attendance at the November 6, 2019 Meeting in the amount of \$400; and for the Bourhill Application in the amount of \$450.

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

VOUCHERS: submitted by Boswell Engineering for the Bourhill Application in the amount of \$207; and for the Romero Application in the amount of \$310.50.

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

MOTION TO APPROVE OCTOBER 2, 2019 MINUTES: made by Member Ludwig, seconded by Member Malone. Voting yes Chairman Dunning, Members Ludwig, Levine and Malone. Member Pasznik abstained.

ENGINEER'S REPORT: There is an application for next month that has just come in for a property on Ringwood Avenue. Roma's Pizzeria is the location. I have to do the review on it. Board Secretary handed out the application to the Members present.

DISCUSSION: Reorganization Meeting For 2020
January 1, 2020 is the first Wednesday of the month and a Holiday.
The Board will schedule the Reorganization Meeting for Wednesday, January 8, 2020.

MOTION TO ADJOURN AT 9:40 PM: made by Chairman Dunning. Motion carried by a voice vote.

Jennifer A. Fiorito
Board of Adjustment Secretary