

REGULAR MEETING

Attorney Mondello swore in New Member, Lawrence Malone, before the meeting

Salute to Flag: 8:10pm

OPENING STATEMENT:

This is the Regular Meeting of the Wanaque Board of Adjustment and adequate notice has been given and it has been duly advertised by the placement of a notice in the Herald News and the Suburban Trends on January 11, 2017 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 Frank Covelli, Peter Hoffman, Donald Ludwig, Michael Levine and Larry Malone, and Attorney Ronald Mondello and Engineer Christopher Nash

ABSENT: Vice Chairman Bruce Grygus and Member Bridget Pasznik

Application #ZBA2018-01 – Kabakci, Abibe
1095 Ringwood Avenue (Block 437/Lot 3)

Board Secretary advised that she requested the Attorney to provide the Board with a letter detailing the present status of the application because of the age of the application. The Attorney was also advised that the meeting was tonight, Wednesday, November 7th. The Secretary spoke to the Attorney directly last week and a reminder e-mail was sent to the Attorney yesterday. An e-mail response was received today about 3:25pm from the Attorney's Office that a letter would be received tomorrow, Thursday, November 8th.

Attorney Mondello doesn't recall this Application and doesn't recall any attorney appearing or testimony. Have we been carrying the matter since May?

Board Secretary advised the application was referenced in the May 2, 2018 Minutes.

Attorney Mondello commented sometime in May the Applicant came before us and we deemed the application complete from a legal perspective.

Chairman Dunning advised we have been carrying it every month. They were missing

documents.

Engineer Nash commented he prepared a report. They needed revise the plans because there were so many issues with the Architect's Plan.

Chairman Dunning commented the paperwork was incomplete.

Attorney Mondello commented essentially six (6) months have gone by now and we haven't heard from the Applicant other than this correspondence.

Board Secretary stated we received a letter September 10, 2018 requesting that an adjournment be granted.

Attorney Mondello questioned if they waived the time for decision in that letter?

Board Secretary advised no.

Attorney Mondello commented, although it is unlikely, I've seen it before. If an application just sits on the back burner, after 120 days it is automatically approved.

Board Secretary advised that Engineer Nash's letter deemed the application incomplete as from an engineering perspective.

Engineer Nash stated the clock hasn't started ticking.

Attorney Mondello questioned was it deemed complete from a legal point of view? We have done this before and have said you've noticed everybody so that administrative portion of the application is okay. Almost every applicant is missing something and we ask them to supply that at the next meeting. Serrano would be a perfect example. I am not so sure just because they were missing a,b,c and d.

Engineer Nash commented they were missing a survey, a site plan.

Attorney Mondello commented if I made the statement when he or she was at the microphone that I deemed the application and jurisdiction is vesting in the Zoning Board to hear this application, the clock started to tick.

Attorney Mondello questioned: What is the Board's pleasure? We can both dismiss it without prejudice and tell them that they don't have to repay the filing fees, or we can roll the dice with the understanding and the hope that this isn't going to be an applicant that runs into Superior Court and says that nobody did anything on this application and, therefore, it should be granted. I think the probability of that is remote, but it still stays out there.

Chairman Dunning questioned if the October letter has any bearing on this when they asked to be carried.

Attorney Mondello commented they should be asking to waive the time of decision.

Board Secretary stated she had a letter dated May 31st from the Architect requesting the June 6th meeting be adjourned and "we are requesting to waive any time limits as well."

Chairman Dunning commented that basically we couldn't do anything with it because there was too much paperwork missing to move forward.

Attorney Mondello questioned we are carrying it to the next month?

Chairman Dunning yes, we need a Motion to Carry.

MOTION TO CARRY APPLICATION TO DECEMBER 5, 2018 MEETING: made by Member Ludwig, seconded by Member Levine. Voting yes were Chairman Dunning, Members Covelli, Hoffman, Ludwig, Levine and Malone.

Application #ZBA2018-01 Subcarrier Communications
1 Skyline Drive (Block 250/Lot 1)

This Applicant has never physically been before the Board.

Chairman Dunning commented they submitted documents, now they withdrew those documents and they are going to supply all new documents. They have sent letters asking to be carried. This letter is asking to be carried to December 5th.

Attorney Mondello commented if they are redoing the entire plans, they may have to re-notice everybody.

Chairman Dunning commented the letter says something about the equipment on the tower itself. I don't know if the footprint of the plan is changing; it's what is going on the tower itself. That's what the letter says:

“..there has been a change in both the identity and number of the collocators on the proposed communications tower. As a result of those changes, the Applicant is not in a position to proceed with the public hearing on November 7th. It is the intention of the Applicant to facilitate the Board's review of this application to submit revised plans reflecting the current proposed collocators.”

Attorney Mondello commented if this new addition or subtraction of a collocator doesn't trigger any new variances or any changes, they may not have to re-notice and we just simply have to tell the audience that we are carrying this until next month.

MOTION TO CARRY APPLICATION TO DECEMBER 5, 2018 MEETING: made by Member Ludwig, seconded by Member Covelli. Voting yes were Chairman Dunning, Members Covelli, Hoffman, Ludwig, Levine and Malone.

PUBLIC DISCUSSION: Seeing none – there is no public here tonight.

RESOLUTIONS:

1. Application #ZBA2017-01&02 – Agostino Properties, LLC

Attorney Mondello commented he spoke to the attorney for the Applicant. I still have some work to do on that and he had no objection that it be carried to the December Meeting.

2. Application #ZBA2017-06 – Serrano-Swing

Attorney Mondello commented that this Applicant came before the Board for some variance relief to construct a partial second floor addition and an addition to the rear of the house. There was a lot of discussion regarding the conversion of her garage to living quarters. There were a lot of discussions about parking in front of the house, on the right and left side of the house. Eventually, the Board did approve the application and the Applicant agreed to limit the number of bedrooms to a maximum of four (4) bedrooms reducing her original request from five bedrooms. The Applicant agreed to relocate the existing shed so that it was in conformance with the Ordinance. The Applicant agreed that

any parking would be done on the south side of the house and agreed she will not be parking in the front yard and that she would not be installing grass pavers. In addition, there some discussion about water problems and water retention so I threw in this condition: “The Applicant agrees to install water retention system or seepage pit in accordance with the Board Engineer’s specifications if, and only if, the same is required as a result of the improvement.” I know Engineer Nash made a comment on the record that the property is too small for us to require such a drainage system, but whatever anybody comes for a variance and it involves some type of impervious change, the Board can, in many instances, request the same. In this particular case, I think it is up in the air and up to Engineer Nash.

Any questions, comments, changes, corrections – hearing none, seeing none, I would ask for a Motion followed by a second to memorialize the Resolution of Carmela Serrano-Swing.

MOTION TO MEMORIALIZE THIS RESOLUTION AS PREPARED BY BOARD ATTORNEY: made by Member Ludwig, seconded by Member Hoffman. Voting yes were Chairman Dunning, Members Covelli, Ludwig, Hoffman and Levine. Motion Carried.

3. Application #ZBA2018-04 – Covelli, Frank

Let the record show that Applicant & Board Member Frank Covelli recused himself and left the dais and the council chambers for this portion of the meeting only as we discuss the Memorialization of his Resolution. (8:27:15)

Attorney Mondello commented that as the Board Members are aware Mr. Covelli’s application was very much akin to Tree Tavern without any variances. It was up to the Board to decide whether or not there was a pre-existing use; namely three-family use of the structures and the property that Mr. Covelli owns prior to the prohibiting ordinance. The Board did vote in the affirmative with respect to that and there was some concerns about another structure on the property that may have been used in the same fashion but after the prohibiting ordinance, but the Board found that the municipality, through either its taxing authority or by the issuance of permits, allowed that particular use to continue for many, many decades. The Board voted in the affirmative to find that this use was a pre-existing, non-conforming use as a three-family in a one-family zone.

Any questions, comments, changes, corrections – hearing none, seeing none, I would ask for a Motion followed by a second.

MOTION TO MEMORIALIZE THIS RESOLUTION AS PREPARED BY BOARD ATTORNEY: made by Member Ludwig, seconded by Member Hoffman. Voting yes were Chairman Dunning, Members Ludwig, Hoffman and Levine. Motion Carried.

Member Covelli returned to the council chambers and dais. (8:30:37)

CORRESPONDENCE: None

VOUCHERS: submitted by Ronald Mondello, Esq. for attendance at the November 7, 2018 Meeting in the amount of \$400; for the Serrano-Swing Application in the amount of 600; and for the Covelli Application in the amount of \$300.

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

VOUCHERS: submitted by Boswell Engineering for Agostino Properties' Application in the amount of \$353.50; for Serrano-Swing's Application in the amount of \$303; for Subcarrier Communications' Application for \$202; and for MKR Enterprises' Application in the amount of \$202.

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

DISCUSSION: Attorney Mondello commented, since we mentioned Tree Tavern, I am still waiting for a date to actually argue the Motion For Reconsideration. The judge has been really busy and it is really hard to coordinate six attorneys' schedules. The matter keeps getting pushed off. Right now there is no date to actually argue the Motion. There is no time limit for this, but there was a time limit for him to file the Motion For Reconsideration, but now it is just a matter of scheduling.

MOTION TO APPROVE September 5, 2018 MINUTES: made by Member Covelli, seconded by Member Ludwig. Voting yes were Chairman Dunning, Members Hoffman, Ludwig and Levine. Members Covelli and Malone abstained/not qualified.

ENGINEER'S REPORT: 1049 Ringwood Avenue – 36 Unit Apartment Building
Engineer Nash commented that they got a c.o. and they are asking for bond money to be set and all that so that the maintenance bond will become effective. They are at a point where they are "allegedly finished", but they didn't complete several of the items that were in the conditions and/or on the plans. I wrote a letter to the Board outlining what I saw that was not in conformance with the approval. The items were they didn't cut the hillside back. What they did was cut trees down and they left the stumps. The whole purpose of it was to clean up the front for aesthetics and also the sight distance. All they did was cut the trees down, they didn't cut the rock back so the sight distance is sub-standard and doesn't meet the sight distance requirements of the Board or what the County asked for. There was also some chain link fence that the County wanted, but I don't fully understand why they wanted a black chain link fence.

Board Members commented so that rocks don't fall on the street.

Engineer Nash commented they don't need the fence since they didn't cut any of the rock back. Those are the items.

Member Covelli questioned how did our Construction Official issue a c.o. when, as I understand it, until that application is deemed in compliance, he should have only issued a t.c.o. for 50% maximum occupancy.

Engineer Nash commented this happens often when and, in this particular case, when the Board Engineer is not responsible for what goes on at the project. It is my understanding that the Developer's Agreement is with the Borough of Wanaque and they have a Borough Engineer so the Board Engineer is not in the equation. I am not going out and looking and doing inspections.

Member Covelli commented I think it is a deficiency in the process and reflects poorly on both the Borough Engineer as well as the Construction Official.

Member Malone questioned could the Board request the c.o. to be pulled?

Chairman Dunning commented, about three weeks ago, a tree came down on Ringwood Avenue.

Attorney Mondello answered no, but they could be issued summonses from the Building Department. You are supposed to do this and if you don't it by a certain date, I am going to fine you \$1,000 every day.

Engineer Nash stated if they don't comply with the Resolution, they don't have an approval from the Board.

Attorney Mondello agreed, but stated they were issued a c.o.

Member Covelli stated I was alarmed to hear the deficiencies of the Town Engineer and the Construction Official on this, and the Administrator took immediate action. My concern, in the business I am in, is if someone pulled out of there and had an accident, this municipality could be liable. The Administrator issued a letter and I do believe there is some follow-up. I think if it is appropriate with respect to this Board discussing the fact that the Applicant is in non-conformance, that the Engineer or the Attorney direct a letter to the municipality notifying them, or at least we have that dialogue with the Building Department that something should be done to evidence that action is being taken because if anything is to happen in front of that property.

Chairman Dunning commented it did.

Member Covelli commented I would call that a "warning shot".

Attorney Mondello commented isn't this a solution in my hand; a letter dated September 28, 2018 from the Interim Borough Administrator which essentially says, "you are directed to immediately mitigate the deficiencies identified in the Zoning Board Engineer's correspondence."

Member Covelli stated that grew out of our discussion and they completely ignored it.

Chairman Dunning stated they have done a thing since.

Attorney Mondello commented that they gave him ten days, otherwise the Borough is going to move forward to complete the work with proceeds from the bond. The problem may be that the bond is less than what the work may be. There is another avenue here. The Building Inspector can go to the Municipal Court and start fining these guys \$1,000 a day for not doing what they were supposed to do. That is the route I would take. I will call the Borough Administrator to have him instruct the Construction Official to start issuing summonses. Nobody will fine them; but they will wake up and do something.

Member Covelli commented the whole issue is to show that the municipality is taking action to protect the public.

Chairman Dunning stated a municipality should move after the tree hit the car. A dead tree fell right through the windshield of a moving car and broke the whole window out. The person had to get hurt. That is the front that should have been cleaned up.

Member Covelli again stated “warning shot”.

Attorney Mondello commented that is a great impetuous to get a judge to say, you know what, its \$2,000 a day.

Chairman Dunning stated there is another dead tree just behind where this one was. I know about it because I was in the traffic waiting for the road to move. It was backed way up. It was on a Friday morning about 7am.

Attorney Mondello asked the Board Secretary to scan all the documents relating to these issues and e-mail it to him and he will call the Applicant’s Attorney.

Member Levine questioned what is the Borough Engineer’s responsibility on these deficiencies?

Attorney Mondello commented this is a great point. As Engineer Nash said, it is routinely done that Developer’s Agreements are between the Governing Body and the Developer. So what happens is the Governing Body uses their engineer and, of course, the developer has their engineer and that is it, we are out of it. However, in the future, we may want to consider, and I don’t see any developer objecting, to keep this guy (Board Engineer) on board since he is the guy who knows the plans the best, knows the process the best, he sat through all the hearings, so let him be the guy that is supposed to do it, as opposed to the Borough Engineer. We may get some push back from the Governing Body but if the developer agrees to something like that, there is nothing wrong with it.

Member Levine commented it is the Borough’s Engineer who is responsible for picking this up and obviously he didn’t.

Member Covelli stated that is correct.

Member Malone questioned someone stated that they did clean up some of the shrubbery and the trees and stuff like that. Was that done before the tree fell?

Chairman Dunning answered no. What we are talking about they cleaned up is when you first come down the driveway where they put the sign up. That 50’ area is where they cleaned up half-ass.

Member Ludwig commented basically just enough to satisfy the people that they were renting to and the heck with everybody else.

Chairman Dunning commented the dead tree was just sitting back off the road in the front area where it is not cleaned up. It was about halfway up dead middle.

Member Hoffman commented I didn’t know if we had asked them to clean the whole front area up.

Board Members answered yes we did.

Chairman Dunning commented the line of sight was 400’ and they were to clean the whole front up so it is aesthetically pleasing to the Borough.

Member Covelli commented we spent a lot of time on that time and it is in the Resolution. I recall it vividly because I was one of the people that pushed it.

Chairman Dunning stated they did a wonderful job at the top of the property around the building but just said the hell with the front. It doesn’t make sense. Now that the leaves are off the tree, you want the fence up there. Because kids playing up there could take a

skidder right down that hill and kids like to climb around or roll stuff onto Ringwood Avenue and cause an accident.

Attorney Mondello commented I will reach out to the Borough and Applicant's Attorney.

MOTION TO ADJOURN AT 8:50 PM: Motion to adjourn meeting made by Member Ludwig. Motion carried by a voice vote.

Jennifer A. Fiorito
Board of Adjustment Secretary