

REGULAR MEETING
ZOOM VIDEO CONFERENCE

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 19, 2020 and September 20, 2020, 2020 (Zoom Meeting) 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: Vice Chairman Bruce Grygus, Members Frank Covelli, Bridget Pasznik, Don Ludwig, Michael Levine, James Minogue and Helena Aumenta and Attorney Ronald Mondello and Engineer Christopher Nash

ABSENT: Chairman Jack Dunning (excused absence) and Member Larry Malone (resigned-moved to South Carolina)

APPLICATION: ZBA2020-06 Chabad Jewish Center, 815 Ringwood Avenue (Block 306/Lot 12)

Acting Chairman Grygus: I'm looking at the Minutes and it seems that we had carried Chabad until October. Have we gotten any correspondence from them?

Attorney Mondello: Mr. Chairman, I have gotten some correspondence. I didn't know that we carried it. I thought they had left it open-ended to figure out when the architect could come up with some drawings. But maybe Jennifer could correct me if I'm mistaken on that.

Acting Chairman Grygus: We had/made a motion to carry the application to the October 7th Zoom Meeting.

Attorney Mondello: I've actually circulated some correspondence that I received September 30th from Mr. Moshman. There seems to be quite unusual issue. In 30 years of practicing, I've never come across this. There seems to be some issue with respect to filing fees and fees to be paid to the professionals. So I spoke to Mr. Moshman and I said I've had the pleasure of sitting probably a dozen or so religious institutions, and never once have I heard the institution request a waiver of all fees. In fact, quite frankly, I think that would be unconstitutional separation of church and state. So I think he's still trying to resolve that issue, and presumably, we carry this to the November meeting.

Acting Chairman Grygus: Jen, how are we in time with this?

Board Secretary: I think he has consented to extensions, because they're the ones asking for us to carry the matter.

Acting Chairman Grygus: I mean, I'm sure we're okay for tonight, but you know, between now and November. So the motion would be, I guess, we will carry it to the November meeting, which is the fourth?

MOTION TO CARRY APPLICATION ZBA2020-06 TO NOVEMBER 4, 2020 MEETING:

made by Member Ludwig, seconded by Member Covelli. Voting yes were Acting Chairman Grygus, Members Covelli, Pasznik, Ludwig, Minogue and Aumenta.

Member Levine abstained because he has recused himself from this Application.

Motion carried.

Member Pasznik: Jen, do I have to abstain from that?

Board Secretary: No, I think you could hear this one because they already got a partial approval.

Acting Chairman Grygus: Yes, it was bifurcated, so you would be able to.

Attorney Mondello: All right, so Mr. Chairman, if anybody is in attendance, and they expected to hear the Chabad Application, it's carried until the November 4 meeting.

ZBA2020-07 – The Catherine Civil Trust – 24 Erie Avenue (Block 236/Lot16)

Erica Edwards Esq., from Erika Edwards, Esquire, law offices in Flemington, New Jersey, on behalf of the Catherine Civil Trust and Catherine Schreck.

Attorney Mondello: We have an idea what this application is about. If you want to spend a couple minutes on an opening, that's fine. If not, you can call your first witness.

Attorney Edwards: I'll just say a couple of words, if I may. As we said we're here tonight on behalf of the Catherine Civil Trust and Catherine Schreck. The property that under discussion, tonight is Block 236/Lot 16 and the street address is 24 Erie Avenue. We are here tonight seeking a Use Variance to permit the conversion of a first floor commercial unit to a residential unit in a building that has existing residential units on the second floor. We have three witnesses this evening. We have a fact witness, Catherine Schreck who is the daughter of Mrs. Civil, who is a permanent resident of the state of Florida. At this point, she is 92 years old. Ms. Schreck is the attorney in fact, she has a signed power of attorney from her mom, who has authorized her to be here this evening, and I understand that that power of attorney has been provided to the Board previously. In addition to Catherine Schreck, we have two expert witnesses. We have our Project Engineer, David Egarian of DJ Egarian & Associates in Fairfield New Jersey. We also have our Professional Planner, Steve Lydon of Burgis Associates of Westwood, New Jersey. Is it the Chairman's prerogative to swear them all or desire to swear everyone at once?

Attorney Mondello: We'll do it as you call them.

Attorney Edwards: Okay, very good. We're going start with Catherine Schreck then if I could.

Attorney Mondello: And where is Catherine Schreck? Okay, actually you were sworn at the last hearing so you remain sworn. Your witness Ms. Edwards.

Attorney Edwards: Very good. Thank you, sir. Yes, Catherine, would you please state and spell your full name for the record?

Ms. Schreck: Catherine Schreck.

Attorney Edwards: And what is your relationship to the applicant, Catherine Civil?

Ms. Schreck: She's my mother.

Attorney Edwards: Okay. Has your mother given you the authority to testify in connection with this application this evening?

Ms. Schreck: Yes, she has, and I have power of attorney which you said and that was submitted to the Board.

Attorney Edwards: Very good. What is the address of the subject property that we're talking about tonight?

Ms. Schreck: 24 Erie Avenue in Wanaque.

Attorney Edwards: How long has your mother owned that property?

Ms. Schreck: 1980, which is 40 years.

Attorney Edwards: I know I've already said this, but for the record, how old is your mother?

Ms. Schreck: She's 92.

Attorney Edwards: She is currently residing where?

Ms. Schreck: Fort Myers, Florida.

Attorney Edwards: Is that her permanent residence at this point?

Ms. Schreck: Yes, it is.

Attorney Edwards: What is your particular relationship to the property in question?

Ms. Schreck: Well, our family business, Augenti & Civil. We're mechanical contractors and are the former tenants at the unit that we're here about tonight.

Attorney Edwards: So your family's company is the former tenant of that first floor unit that we're discussing tonight?

Ms. Schreck: Correct.

Attorney Edwards: How long did the family company occupy that first floor unit?

Ms. Schreck: 40 years.

Attorney Edwards: So ever since the building was purchased, your company occupied that first floor?

Ms. Schreck: Correct.

Attorney Edwards: How long were you, yourself with the company?

Ms. Schreck: About 30 years?

Attorney Edwards: So you came to work there every day for 30 years?

Ms. Schreck: Correct.

Attorney Edwards: Why did the company vacate that first floor unit?

Ms. Schreck: We are retiring and we're closing the business.

Attorney Edwards: Very good. So that first floor unit is currently vacant?

Ms. Schreck: Yes, it is.

Attorney Edwards: What is your mother's objective in bringing this application before the Board?

Ms. Schreck: Well, to secure our approval to change it from commercial to an apartment or from an office to an apartment.

Attorney Edwards: What is the square footage of that first floor unit?

Ms. Schreck: 1030 square feet.

Attorney Edwards: How many floors are there in that building?

Ms. Schreck: Two floors.

Attorney Edwards: What is on the second floor?

Ms. Schreck: Two apartments.

Attorney Edwards: How long have there been residential units on that second floor?

Ms. Schreck: 40 years.

Attorney Edwards: Ever since you purchased the building, there have been apartments up there?

Ms. Schreck: Correct.

Attorney Edwards: Are they currently leased?

Ms. Schreck: Yes, they are. Okay.

Attorney Edwards: Why do you think that first floor unit is particularly well suited to residential use as opposed to commercial use?

Ms. Schreck: Well, the building is off Ringwood Avenue. It's not visible from Ringwood Avenue, and for commercial use, you wouldn't get much exposure from driving by or even walking by. We didn't need that exposure as a company. But even with that said, we still had conflict, like it was still a difficult thing to do at times, because we had tractor trailers coming in during the day, and a lot of times we had to have trucks filled and ready to go at six o'clock in the morning, so we would be trying to keep it quiet because it's such a residential area. To me, an apartment would fit it more and would seem to be more in line with the neighborhood, rather than commercial, which is what we had been doing. Because it is 1030 square foot, I'll make a nice two bedroom apartment and I think it would fit in the neighborhood very well.

Attorney Edwards: It's interesting that you refer to it as the neighborhood, instead of referring to it as the commercial district. Is that because it's surrounded by residential units as it is?

Ms. Schreck: It is. It's a neighborhood. I mean, we've gotten to know all the neighbors over the years, but it's definitely more of a neighborhood. It is a neighborhood.

Attorney Edwards: If the Board grants your mother the approval she seeks tonight, what would be the timeline for converting that first floor unit to an apartment?

Ms. Schreck: We would like to do that immediately as soon as we were able to secure the necessary permits.

Attorney Edwards: I know the building has been in your family for 40 years, what is the family's plan for this building for the foreseeable future?

Ms. Schreck: We're going to keep it in the family. After my mom passes it is willed to myself and my two brothers, who have been in the business for all these years, Augenti & Civil and we all live locally.

Attorney Edwards: So you're a local family and going to keep it in the family.

Ms. Schreck: Correct.

Attorney Edwards: Okay, very good. Mr. Chairman, that's all I have for Ms. Schreck at this time.

Acting Chairman Grygus: Counselor you're going to have a Planner. Do you have an Engineer that's going to be testifying?

Attorney Edwards: Yes, the engineer will be on right after Ms. Schreck.

Acting Chairman Grygus: Any members of the Board have any questions for the Applicant?

Attorney Mondello: Any members of the public have any questions for Ms. Schreck?

I see there's somebody Marguerite, there is Christopher so I'm asking you to unmute; you don't have to, but I'm just doing that so the record is crystal clear that apparently there are no questions from those in the "audience" for Ms. Schreck. All right. Hearing none, seeing none, call your next witness. I do believe I need to unmute Mr. Egarian.

Attorney Edwards: The Applicant calls David Egarian, Professional Engineer.

Attorney Mondello: Welcome Mr. Egarian, would you please raise your right hand? Do you swear and affirm the testimony you are about to give be the truth, the whole truth and nothing but the truth so help you God?

Engineer Egarian: Yes, I do.

Attorney Mondello: Please state your name, spell your last name and give us your office address.

Engineer Egarian: David J. Egarian. I am the principal and president of DJ Egarian & Associates. We are located at 271 Route 46, Suite G208, in Fairfield, New Jersey.

Attorney Mondello: I don't believe I've had the pleasure, Mr. Egarian, and maybe some of the other board members have, I'm not sure, but could you briefly give us the benefit of your credentials?

Engineer Egarian: I have a Bachelor of Science from NJIT and a Master's in Business Administration from Rutgers University. I've been a Licensed Professional Engineer since 1978. My firm deals mainly in land use engineering, water and wastewater, and various other topics. I'm licensed in New Jersey since 1978. I'm also licensed in six other states. I've been before many boards, hundreds of cases over the years, but never in Wanaque though.

Attorney Mondello: Have you before any boards in Passaic County?

Engineer Egarian: Yes, a number of them; Paterson.

Attorney Mondello: That works for me. Any Board Members have any objections with having Mr. Egarian as an expert in the field of engineering?

Member Levine: What discipline are you licensed in or degree in?

Engineer Egarian: My degree is in Civil and Environmental Engineering.

Attorney Mondello: Any other questions from Board Members for Mr. Egarian? All right, hearing none, seeing none and no objections he is admitted as an expert in the field of engineering. Your witness Ms. Edwards.

Attorney Edwards: Very good. Thank you, sir. Mr. Egarian, would you please provide the Board with an overview of the site. They have the Site Plan in their possession. It was submitted by Ms. Schreck last month or before that actually and, if you would kindly provide the Board with an overview. We're not doing anything to the building, but please provide them with an overview of the site.

Engineer Egarian: As an overview, the site itself is 7156 square feet in area. It fronts on Villa Place and is roughly triangular in shape. It consists of one main building, which is a commercial space on the first floor and then 2 two bedroom units on the second floor. There is also a shed on the property. Ingress is provided by an asphalt driveway into a small asphalt parking area adjacent to the first floor. There is a parking area for the residence that fronts on Villa Place that's currently unstriped and the tenants for the two bedrooms live in that area.

So overall, from a civil engineering and site plan issue, it's a very simple application. The proposed construction is simply to convert a commercial space into a two bedroom unit. Therefore, there's no change in footprint, there's no exterior work at all. The only proposed civil site work that is on the boards is that we are going to stripe the existing parking lot that fronts on Villa Place to accommodate a total of six (6) cars, which will provide parking for the 3 two bedroom apartments. Each apartment is to have two (2) spaces, so three times two is six spaces. We actually have room for eight (8) spaces. We will not be milling the parking lot. We're just going to leave it the way it is and simply stripe it and provide enough parking for all three units to park in that area. Other than that, the coverages did not change, building coverage does not change, total impervious coverage would not change, and there are no drainage issues because we're not modifying the site plan at all. We're not changing the ingress and egress to the interior of the site. So overall, those are the major changes. I do note two things. One thing is in Mr. Nash's letter from Boswell regarding the size of the parking spaces that are proposed. We have proposed 9'x18' standard parking places that'll be striped in that regard. He mentions that the ordinance requires a total of 200 square feet, and we would need a waiver in that regard. So I think that we should request that waiver, but noting that the 9'x18' space is in accordance with the RSIS Standards, which should apply to this project, because we are talking residential units. So that front parking lot does accommodate eight, 9'x18' spaces. Secondly, Mr. Nash indicates that the fence that is behind the existing parking area, but is in the public right away, should be moved back to the property line in question. I understand that the Applicant simply wants to remove the fence as part of this project, so that would no longer be an issue with the fence being in the right of way.

Member Levine: The parking lot, as you face the front of the building is to the right and to the right of the fence, I'm not clear, is that part of the property, or is that the right away?

Engineer Egarian: That would be in the right of way.

Member Levine: Okay, so they don't own it?

Acting Chairman Grygus: Have you reached out to the Borough at all because this Board does not have the authority to approve parking that is on someone else's property?

Attorney Edwards: We have not reached out Borough of Wanaque about that parking to date. We have not done that to date.

Attorney Mondello: Well, the Board would have to consider that the parking is deficient because the Mayor and Council may say you're not parking there.

Attorney Edwards: If the Board was inclined to otherwise grant us an approval, they would be able to grant us an approval subject to our reaching out to the governing body and reconciling that parking issue, correct?

Attorney Mondello: But suppose they say no, and the Board based their approval on that parking.

Attorney Edwards: But the approval would be conditioned upon that parking being available.

Attorney Mondello: In that case, if the Mayor and Council said no, you would lose the approval, and it would be a denial.

Attorney Edwards: If the approval was contingent upon resolution of that issue with the governing body and we were not able to resolve it, then it would not, in effect, be an approval?

Acting Chairman Grygus: Let me ask this. You have two garage spaces, and you need six spaces. Have you explored in any way to get four spaces in the parking area that you have on the property?

Attorney Edwards: David, can you speak to that?

Attorney Mondello: Thank you. We'd prefer if attorneys don't testify.

Engineer Egarian: Yeah, the interior space would be somewhat limited, and we can certainly fit four (4) cars in there. We would have to kind of engineer it and get together with the Applicant as to if the shed could go and if there may be some interior spaces like a garage area that could be used as for parking as well. I couldn't testify at this point in time, if we could fit eight (8) spaces on site. We would have to take a look at that.

Acting Chairman Grygus: Well you only require six (6). You really don't have to look to put eight (8) on site; you only have to put six (6). You have two (2) in the garage so you really only need to put four (4)

Member Ludwig: What are the possibilities of widening the driveway itself and having parallel parking on one side, just if you're really stretched?

Engineer Egarian: That's a possibility. I think a parallel spot would be 10 wide by 20 long and I think that we could fit spaces along that curb line., if you widen it out like you suggested.

Member Ludwig: Okay, it looks like you have enough room to the building corner to widen it a fair amount.

Acting Chairman Grygus: I mean, in all honesty, that's your biggest hurdle with this application.

Acting Chairman Grygus: Chris, could you scale that shed off the property line? It appears that it may be less than 5'.

Engineer Nash: I don't have the plan, Mr. Chairman.

Ms. Schreck: We do have a large shed in the driveway area, and if we needed to, we could remove that which would allow us for more parking

Acting Chairman Grygus: I think that the issue is, and I can't speak for the Borough, but you never know what long term plans happen for roadways. At some point in time, they can come back and decide that they want to widen that roadway. So I don't know how successful you would be getting approval forever to have those parking spaces out there, which is essentially what it would be.

Ms. Schreck: No, I was talking about on our driveway.

Acting Chairman Grygus: I understand that. I'm just saying since your attorney had said you hadn't reached out to the Borough yet. You know, I think honestly you're better options to try to explore getting the six (6) spaces on your site, and then if you park in those front spaces, and the Borough says nothing about it, I mean, we didn't approve it. I'm sure you've been parking there for the last 40 years but, you know, it's just the Board has certain authorities, and certain authorities we don't have.

Ms. Schreck: I have a letter and we actually made that parking space. We got permission from the Golden Agers who own that. We have a letter stating that. So we asked them if we could, um, it was all gravel and everything else. So we made it so it was a parking lot, and we matched the stone to match the Golden Agers stonework. They gave us permission to do that. They gave us permission to use it, and we got permits to do that from the town.

Acting Chairman Grygus: Who owns the property now?

Ms. Schreck: Well, when we did this, the Golden Agers owned it and I believe they still do.

Acting Chairman Grygus: Okay, well, then that's who you would seek to get approval from them.

Ms. Schreck: As I said, we already did get approval from them. We do have a letter in our possession to that effect.

Attorney Mondello: But if they if they sell the property or I become the president of this Golden Ages and I decide that I'm going to tell the executive board, you can't park there anymore, that's that. The only way to really solidify it would be for it to be in their deed that your client's property has an easement to park forever,

Acting Chairman Grygus: Or buy that piece of property from them and that would require a minor subdivision, I would guess, Ron.

Attorney Mondello: I don't know. I don't have the site plan here either.

Member Covelli: Or we can go back to the original premise, which was that they seek permission from the Borough or that their engineer designs it such that the parking remains on their own property.

Attorney Edwards: We can do that.

Acting Chairman Grygus: If it isn't the Borough's property, the Borough can't grant the permission either.

Ms. Schreck: I believe if we remove the trailer off of our property/driveway, we would have enough parking for everybody.

Attorney Edwards: If I could it sounds to me, and I certainly obviously want us, we're prepared to make our full presentation tonight. That's what our intent was, of course. But it sounds like the Board has some questions about how best to make the parking work for this site and we have viable options, as we've kind of bantered about it here. Is the Board suggesting that we not proceed tonight, that we go back and address this parking issue more fully, and return to the Board once we've solidified our parking plans.

Acting Chairman Grygus: Well, as the Counselor had said, I don't see how the Board could grant an approval condition upon making the parking work. That being said, I think if you would like, you can have your Planner testify so that you would not have to bring the Planner back. It's your application, but perhaps then maybe, if you want to ask for to be carried to the November meeting to explore with your engineer the parking, all we would really need would be an updated site plan showing how you're going to handle the parking on your site, whether that's buying that property or putting it on your site.

Attorney Edwards: Understood, that makes sense.

Member Ludwig: I have a question myself. Is there any regulation as to how close they can put the driveway to the property line?

Acting Chairman Grygus: It can be paved right up to the property line.

Member Ludwig: It really looks like if they got rid of that shed or trailer or whatever it is in the back, they can easily get six cars, probably more like eight or ten.

Acting Chairman Grygus: Like I said, two in the garage

Member Ludwig: That's up to them. I mean to me, if they're willing to just somehow or other word it that it's guaranteed they will find six off

Acting Chairman Grygus: I think we are better off Don honestly having them show it on the site plan. I just think that's the better way.

Acting Chairman Grygus: Any other questions for the Engineer at this point?

Member Covelli: Mr. Chairman, I would just like to echo what you said, I think you very succinctly and, and well stated the position, I for one, and I'm not the newest member on the Board, would not be comfortable if I was asked to vote on a contingency based on the Governing Body taking an action. I don't think that's our place to do that. I think that the burden is on the Applicant. If we go back to the purpose of granting variances, the burden is on the Applicant to give us the plan. I would also have to say that I would hope that the Applicant, in planning all of this parking, is going to show us how they would better the appearance of the property in the process. We don't want it to look like an apartment building where everything is paved over with striped parking on it. I think as the Applicant stated previously, this is a neighborhood. I think that there is a burden upon the Applicant to show some deference to the neighborhood and making an appearance that this will look proper in the neighborhood.

Acting Chairman Grygus: You have some options. There's you know, the area back by the shed, you have the area in the front where the concrete walkway is.

Member Covelli: I don't want to design the Applicant's application.

Acting Chairman Grygus: I think there are enough options there for them to fit four spaces, assuming that the garages can accommodate two, to fit four spaces and fit them appropriately.

Acting Chairman Grygus: Anyone else have any questions for the Engineer?

Attorney Mondello: That would include Board Members and any member of the public?

Member Minogue: I got a question. When you talk about improvement, what's the criterion used for judgment on this?

Acting Chairman Grygus: Is your question for the engineer?

Member Minogue: For the Board or for anybody who wants to answer. I'm just saying, we're promising improvement, but I'm saying what's the criterion?

Attorney Mondello: I mean, I would I think you're right. Improvements mean one thing to you and maybe one thing to me and one thing to Mr. Covelli, but hopefully there's some common ground. I'm guessing he's talking about some landscaping, not just one paved parking lot with stripes, but I'm speculating.

Member Minogue: Thank you.

Member Covelli: Are you referring to my comment, Mr. Mondello?

Attorney Mondello: Board Member Minogue is. He's referenced your comment.

Member Covelli: Yes, and that's exactly what I meant.

Acting Chairman Grygus: Any other questions from the public for the engineer?

Is there anybody there that you need to unmute, Ron?

Attorney Mondello: I've done it before. I've asked to unmute Mr. Lynch and Marguerite. I can't read the last name, and they are not doing that. So Hearing none, seeing none, I assume they don't have any questions for Mr. Egarian.

Acting Chairman Grygus: Okay, Counselor your witness.

Attorney Edwards: Yes, we'd like to call our third witness now our Planning Consultant, our Professional Planner, Mr. Steve Lydon of Burgis and Associates.

Attorney Mondello: Welcome and good evening Mr. Lydon, nice to see you again. Do you swear and affirm that the testimony you are about to give be the truth, the whole truth and nothing but the truth so help you God?

Planner Lydon: Yes, I do.

Attorney Mondello: State your name, spell your last name and give us your office address.

Planner Lydon: My name is Steve Lydon. Our address is 25 Westwood Avenue in Westwood, and I'm associated with Burgis Associates, Inc.

Attorney Mondello: So Board Members, I've had the pleasure of working with Mr. Lydon as the Board Attorney in Bergenfield. Unless Board Members would like to hear Mr. Lydon's credentials, we will admit him as an expert in the field of planning. Hearing none, seeing none, your witness Miss Edwards.

Attorney Edwards: Mr. Lydon, I know that you have prepared a document for the Board that I believe each Board Member and the Board's Professionals have in front of them, and I know that you have some testimony that you would like to deliver directly, Mr. Lydon, so would you like to proceed with that?

Planner Lydon: Absolutely, sure. Just as a brief background, to prepare the report that you have, and I apologize for getting it so late. I only found out yesterday that you were looking for one, so much of yesterday afternoon and this morning, was spent preparing that report so you have it for tonight's hearing. Prior to doing that report, I have reviewed the 2010 Re-examination Report of the Borough. I have also reviewed the relevant portions of your Zoning Ordinance, and I've been to the site and carried out a site inspection. Based on that, I do have some observations and some basis for which the Board could grant the application. First the property is 24 Erie Avenue. A shorter road that has about 12 properties on each side. It is not one of the major commercial corridors of Wanaque. As you all know those would be Ringwood Avenue and Union Avenue. The properties along Erie Avenue between Ringwood and Villa Place are primarily detached one and two family dwellings. So it's a little interesting that this property is in a Business Zone. The opposite side of Villa Place, to the east of the subject site, is developed with some large surface parking areas, a meeting hall for the Golden Agers of Wanaque and a wireless telecommunications tower. Further to the south of us at Railroad Avenue and Villa Place is a large three story apartment building. So I would agree that this this property is really surrounded by residential dwellings, especially on this side of Villa Place. As I briefly mentioned earlier, this property is in the B Zone, and one of the permitted uses in the B Zone are apartments over stores. So the idea that there are apartments on this property shouldn't be any great surprise, and the fact that we're seeking to put another apartment on the property isn't really your typical use variance. Usually your typical use variance is someone seeking to either put in a non-permitted use or a prohibited use onto the site in this. In this particular application, the variances we are seeking are a little bit more nuanced. What we're really seeking is an increase in the number of permitted apartments from two, which the zone allows, to three, which is the proposal. It's interesting that the minimum size of a dwelling is 750 square feet. The Applicant is proposing an apartment of 1030 square feet to contain two bedrooms, so the apartment is consistent with the size requirements that the Borough has established.

Attorney Mondello: If I might just for a minute, Mr. Lydon, you're saying that apartments are allowed in the B zone? Well, apartments are not allowed in the B zone, unless they are above stores. So there must be a store along with an apartment. We just don't have apartments.

Planner Lydon: Well, actually, Mr. Mondello, I hate to take to make this next statement. But in 2002 in the B Zone for those properties not on Ringwood Avenue or not on Union Avenue, the requirement that the apartments be above stores was eliminated. That was done by Ordinance 8-0-02.

Attorney Mondello: So my 1993 is outdated?

Planner Lydon: A little bit. Yes, sir. Actually, I'll certainly be happy to provide you with a copy of this Ordinance tomorrow. I'll scan it and send it over to you.

Attorney Mondello: But it says apartment shall be permitted on all floors. Is that what you're referring to Section C?

Planner Lydon: Yes, (7)(c).

Attorney Mondello: It says apartment shall be permitted on all floors. But if you look at (7), there still must be a store associated with an apartment. Right?

Planner Lydon: Well, I'm not so sure because this is subparagraph (c) of that very (7). I believe Section (c), which was adopted after (7) was originally introduced and approved, modifies the limitation on where apartments can be. Because Mr. Mondello, we still have the limitation of two apartments and, if you read to the very end of subparagraph (c), it says not more than two apartments shall be located on the first floor of any structure containing apartments. So for those properties, such as this one that are not on Ringwood Avenue or Union Avenue, I believe the prohibition on first floor apartments has been deleted from the Ordinance.

Attorney Mondello: Alright, so paragraph (7) and (c) are in conflict, because (7) says an apartment has to be over a store, and you're saying (c) modifies that or is in conflict with that. It doesn't matter, you don't need a store. That's your position?

Planner Lydon: Yes sir, since we're not one of those two identified streets.

Acting Chairman Grygus: If that was the case, then they wouldn't be here because the Zoning Officer would have ruled that there was no use variance required?

Attorney Mondello: Well, there could only be a maximum of two.

Planner Lydon: And we have three, two existing and one proposed. But I think this discussion as to what the Ordinance says, it is very enlightening as to where the Governing Body is and how it's thinking has evolved. Originally, the idea of apartments was only supposed to be upper floor apartments. Typically, quite honestly, those are the spaces harder to rent for office or retail space. So it made sense to allow residential uses up there. Sometime in 2002, the Mayor and Council, for whatever reason, decided that, except for Ringwood Avenue, and except for Union Avenue, the prohibition on first floor apartments really didn't make any more sense.

Attorney Mondello: Yeah, and says on all floors.

Planner Lydon: Yes.

Member Ludwig: It does sort of make sense if you know the history of that area. There used to be a train track that was active there. You had people that would have used those stores, when there was an actual train going through there.

Planner Lydon: And that's why we're on Erie Avenue because of the train. Absolutely.

Member Ludwig: Yeah. So I mean the reasoning for that zoning back then made perfect sense. Now, no store is going to survive back there.

Planner Lydon: Right and that's what zoning is supposed to do. It's supposed to evolve as conditions change and in this case Wanaque has done that, and they have appropriately amended the Ordinance along this section of the B Zone.

Attorney Mondello: Thank you.

Planner Lydon: You're more than happy, Mr. Mondello, and I will send that to you tomorrow.

Attorney Mondello: No, I have section (c), but I didn't realize it was added on April 8 2002 by Ordinance No. 8-0-02.

Planner Lydon: Okay, good.

Planner Lydon: We are a non-conforming lot. We are supposed to have 10,000 square feet in the B Zone. The Applicant's lot, as testified to earlier, is 7156 square feet. The lot also exceeds the maximum building coverage, which is limited to 30% in this zone. The property is developed with all buildings that cover 39.8% of the lot. So I think that is one of the factors that this Board can use, if you see fit to grant us the requested approval, is that we're not making it any larger. The modifications that we're seeking are merely internal alterations to convert this 1030 square foot office space into a two bedroom apartment. Since we do need a use variance, we have been directed here by the Zoning Official, it's a D-1 in my estimation. We need to demonstrate special reasons as part of the positive criteria, and that basically says, you're asked a question, how is this site particularly well suited for the proposed use? We also need to, of course, demonstrate the negative criteria and that is to prove that there is no substantial detriment to the public good, and no substantial impairment to the Zone Plan and Zoning Ordinance. I think this application meets those standards as high as they are, because I think this application really is different than a typical use variance where the use is simply not permitted. Here, in fact, it is permitted. What we're doing is we're asking for an additional apartment. Right away, you might think, well, that's a density variance. In this case, I don't believe it is. I believe that it's not a density variance, because that prohibition on more than two apartments is true throughout the B-2 Zone. So if this lot was half the size it really is, or twice the size it really is, we'd still need a variance for having three apartments. So I don't perceive that to be a density variance. I'm not really quite sure where it came from, but we do acknowledge that it's in the Ordinance, and that we're seeking a variance from that. I think the Board can, recognizing that we're not expanding the building any, I think the Board can find a reason to grant it. We've already talked about that fact that we're not on Ringwood Avenue or Union Avenue, and so we aren't restricted to having just second floor apartments.

Acting Chairman Grygus: Let's talk about that again for one minute. So what is the use variance? Is it for a third apartment? Or is it for an apartment on a first floor in the B Zone?

Planner Lyons: Sir, if I can answer that, I think it's for the third apartment. If we were on Ringwood Avenue or on Union Avenue, I would think we would need both variances

Attorney Mondello: So Bruce, when you take a look at this section that Mr. Lydon is referring to, there seems to be some conflicting language. You know, it starts out and it says apartments over stores. So you start out with that mentality okay, and it makes sense, right? It's always a good idea to have stores on the bottom and apartments on the top, because the folks at night will keep an eye on the store, and the store folks will keep an eye on the apartments during the day. But then you move to paragraph (c) and it says apartments shall be permitted on all floors, so we're no longer above the store. It's all floors.

Acting Chairman Grygus: Chris, what's your interpretation of that because your letter states that the use variance is for an apartment on the first floor?

Engineer Nash: I'm going have to side with the planner that the variance is for the third apartment. But the Planner, in his letter, states that the Applicant can demonstrate that the proposed development is particularly suited for the site. How do you make that statement when there are six, non-conforming, bulk variances?

Planner Lydon: Well, I think those bulk variances have existed for a very long time. The building, according to tax records, was built in 1957, so quite a few years ago.

Engineer Nash: I understand all that. But you're in essence, you're providing three different apartments, and the bulk variances are screaming that there is not enough for it. That's what I'm seeing just looking at the table. It says to me that we can't fit three apartments on here, there's not enough room.

Planner Lydon: I would be more receptive to that line of reasoning if we were proposing new building space. The building space is what it is. It's there by right as a pre-existing structure. The area where the proposed apartment would be transforming and converting office space is toward the east of the building. It's away from the other residential properties in the area, and it's also closer to the parking lots on the other side, the east side, of Villa Place. So I think the fact that we're not adding to construction allows this to work. I think also you have to recognize there are already two apartments on the property, and they do serve a purpose, because they are currently rented. So I think, to a certain degree, the market proves the desirability of these apartments, even if it doesn't nicely match up with the Borough's Zoning Code. I think the site is particularly well suited for the proposed uses for a number of reasons, including that, if the application is approved, the result will be a greater degree of land use consistency and compatibility, both on the individual site and also within the neighborhood that the owners talked about earlier. Right now we are on the edge of a residential neighborhood, and you've heard testimony that there are tractor trailers that have come to the site, and you've also heard about the need for shipping early in the morning. Clearly, those can be disruptions to residential neighborhoods.

Attorney Mondello: Let me stop you there, Mr. Lyon. That has not occurred for at least six (6) months. There are no more tractor trailers on that space. It has been vacant, according to your client, for at least six (6) months.

Planner Lydon: That is true Mr. Mondello and the testimony was also that the property was used that way for 39 years, which is a lot longer than six months, which is really a blink of an eye.

Because the use has not been abandoned, some other similar contractor could also occupy the space and Wanaque and the neighbors, and we're certainly not threatening anybody, could be back in the same situation as they were up until six months ago.

Attorney Mondello: I don't disagree with that, but your client has testified, "we've had this building for many years now, and we've had an office underneath where Augenti & Civil have been doing business, which is our family business. We actually tried to rent it out as an office and we had it in a realtor's office I guess for six or more months, and we had no luck at all getting any kind of business. They don't want to come in." I'm guessing there won't be any more tractor trailers.

Planner Lydon: I believe as the Ordinance was amended by the Governing Body in 2002, apparently to eliminate the concern about apartments downstairs, that suggests that the Governing Body is willing and accepting of the idea of additional apartments in the B Zone. I don't think that this application is contrary to that. In fact, it furthers that goal. Also this application is consistent with your Master Plan objectives and two of them in particular. I point this out in my planning report, which is dated yesterday, relevant objectives of your 1985 Master Plan, which was revised in June of 1992, is to encourage residential densities that will allow housing for a variety of income ranges, and further to protect residential neighborhoods from adverse effects of traffic, noise and air pollution. I heard your comments earlier, Mr. Mondello and, up until six (6) months ago, there was traffic, noise and air pollution generated by those tractors. So this application will support and further some of those objectives of the Plan. In the Re-examination Report, it talks about more contemporary objectives in the land use element, and one of them was to preserve and protect existing residential neighborhoods from intrusions from incompatible land uses. I know there was testimony about not being able to find a tenant in six months, but that is a short amount of time and, if necessary, there could be a further attempt to fill that space. And I think that doing that would run contrary to this Master Plan goal of protecting and preserving residential neighborhoods. So I think this goal to add another single residential apartment is very consistent and compatible with the Borough's planning documents, going back till 1985, and it furthers the intended purpose of these documents. In fact, the Ordinance Amendment of 2002 seems to also support the documents that I've made reference to. We talked about this not being a density application. I also believe that the additional population that would be generated if this application were approved is not a major issue. Wanaque's estimated population in 2018 was 11,741. Approval of a single two bedroom apartment on this property will have no measurable impact on the Borough's overall population. Likewise, it wouldn't have any measurable impact to the Borough's school age population. So I don't think that's an issue. Traffic, especially truck traffic, is going to be lighter, and less frequent if this application is approved as a residential development, as opposed to a use similar to what had been occupying up until six months ago. I believe that this application will not have a substantial impairment to the Wanaque Zoning Ordinance if the application is approved. For those reasons,

I think the application is positive and the negative criteria and would actually provide a better fit to the neighborhood, then the way it's been used for the last 40 years.

Attorney Mondello: Mr. Lydon, quick question, page 5, paragraph c., existing use appears to lawfully operate out of this space as a non-conforming use. What's the non-conforming use?

Planner Lydon: The way the Applicant testified they were using it with the mechanical contracting yard. The fact that it hasn't been occupied for six months does not envision an intent to abandon it, in my estimation, and we had that Saddle River case where a property owner kept the barn as a barn, and then 20 years later put horses in it. When it went to the Superior Court, he was found to have the right to use that barn, even though there was a passage of 28 years.

Attorney Mondello: So you're saying that the prior operation was not permitted because, under the section that you cited 114-12, it says professional, commercial and general offices and you're saying that, I guess a contractor's office with trucks wouldn't fit into that paragraph?

Planner Lydon: Not for what I believe the Borough was trying to achieve with the B Zone District. Yes.

Attorney Mondello: Okay. Thank you.

Planner Lydon: Thank you. So that's really my testimony.

Acting Chairman Grygus: It's a difficult road, but you could almost make a case, though, that when you're going to take a B Zone business and convert it to an apartment, should that drive different setback requirements? I mean, a residential use should have more space, open space, than a than a business use.

Planner Lydon: Oh, that's an interesting observation, Mr. Chairman. And if I was working as a Board's Planner and you, as a Board Chairman or Board Member, had raised that issue, I would, frankly, tend to agree with you. And I would make the residential uses a conditional use in the zone. I would have probably some density standards in there, and I would probably have some open space standards in the Ordinance. That's the way I would write the ordinance. I didn't write the ordinance. I'm not criticizing Wanaque, and that's not the way Wanaque wrote the ordinance, although they could have, they just said no more than two on any one property, regardless of the size. So I think the use of this property for one additional apartment, even though it's on the ground floor, and even though it does exceed the number of apartments from two to three, is consistent and compatible with the Zoning Ordinance, notwithstanding that one deviation on the number of apartments.

Member Covelli: I personally think the Chairman made a very, very pointed reference. And I have to tell you that this lot is already a substandard lot at under 7200 square feet, and you want to add another apartment. That's quite an intensity of use on the property and, quite frankly, I don't agree with your assessment that a tractor trailer delivery once a week is more air pollution. Lately, our Applicant's keep bringing up air pollution for some reason and I'm not sure why we're a land use board but whatever. I don't think that in any way shape or form equals the intensity of the vehicles that will be there every day, 365 days a year. So quite frankly, I think that there's

quite an intensive use of this property adding the third apartment as referenced by this the six (6) variances that are needed. Just my observation.

Planner Lydon: I'm often hesitant to disagree with a Board Member. I'm not really sure that we need six (6) variances.

Member Covelli: Well right now the property is deficient in lot area, it is deficient in front yard setback, it is deficient in side yard setback, it is deficient in side yard total setback, it is deficient in rear yard setback and, to the point of intensity, building lot coverage. Now, with that said, and I'm not here to debate you, I'm merely saying that already those deficiencies exist on the property. The difference is you're increasing the intensity of the usage, and that's quite a lot of apartments on less than 7200 square feet, where there are already six (6) deficiencies on the property. Just an observation; that's it.

Planner Lydon: We can agree that there are deficiencies. I was taking a little bit of exception to the characterizations, variances, but yes, they are deficiencies. You're right.

Member Covelli: There are deficiencies and there are many. You kept citing the Ordinance is inviting the way you presented the Ordinance of the municipality. The other Ordinance of the municipality pointed out there are standards and this lot is deficient in six (6) of them. I'm just making the point of the characterization that you almost made it sound like Wanaque wrote an Ordinance to encourage such intensity on a lot that's less than 7200 square feet. All I'm saying is I don't think they did as evidenced by other Ordinances that exist.

Planner Lydon: I'm certainly not intending to debate with you either. What I was pointing out was that we were not making any of those six (6) deficiencies worse. None of those. They would all remain the same. The only point on intensity I would make is that the use of the property, as described by the Applicant, I think it'd be more intense than having a two bedroom apartment with maybe at the most four residents, maybe two residents, maybe one resident. I'm not sure that the apartment use if approved would be more intense than the uses that occurred on site for 40 years.

Acting Chairman Grygus: Hey, Ron, can you take a look at 114-12A.(7)(c)?

Attorney Mondello: Yeah.

Acting Chairman Grygus: So does it mention anything in there that the R-10 open space applies if the apartment is the first floor?

Attorney Mondello: It says, "Each property utilized for apartments shall comply with the side and rear yard requirements of the R-10. District."

Acting Chairman Grygus: So we don't in this case.

Attorney Mondello: Right.

Acting Chairman Grygus: So it would require additional variances for side and rear yard. I mean, in essence, I think the intent of that was to give additional space to that first floor apartment.

Attorney Mondello: Well, the R-10 District is you know one-family dwellings, churches, no public schools right?

Acting Chairman Grygus: It says that the R-10 space is what they have to conform to.

Attorney Mondello: Right

Acting Chairman Grygus: Which is greater the B Zone.

Planner Lydon: But in actuality, under (7)(b) it talks about a business structure and, if this application is approved, the building would convert from a mixed use structure to a residential structure.

Acting Chairman Grygus: But I believe it states that if an apartment is on the first floor, then the R-10 space is what it has to adhere to.

Attorney Mondello: I have to tell you Mr. Lydon may or may not disagree. It is somewhat confusing. You know (7) starts out by saying "Apartments over stores" and then (c) starts to talk about "Apartments shall be permitted on all floors", negating that statement about stores or being above a store. Alright, then we talk about the minimum, which this Applicant already has made the 750 square feet, and then each property utilized. It doesn't say business structure; it says each property utilized for apartments shall comply with the side and rear yard requirements of the R-10 District. Not more than two apartments shall be located on the first floor of any structure.

Acting Chairman Grygus: So each property neutralized.

Attorney Mondello: Yeah.

Acting Chairman Grygus: I read that to say that this has to conform to the R-10 side and rear yard setbacks.

Attorney Mondello: I would agree.

Planner Lydon: And actually Mr. Mondello, as you read that once again, the limitation now only seems to be on the number of ground floor apartments. "Not more than two apartments shall be located on the first floor of any structure containing apartments." This application would comply with that limitation. As one reads this application, this Ordinance and the provisions, the way it's been modified, I'm wondering is this really a Use Variance? Is this not more a C Variance for the number of apartments, which I'm not even sure we have any anymore?

Attorney Mondello: The statute is in conflict with itself. But I do believe the Chairman's right, that each property utilized for apartments, which would be this, shall comply with the side and rear yard requirements of the R-10. District. So you would need variances for that as well.

Engineer Nash: And those requirements are increased through the R-10.

Acting Chairman Grygus: Correct. 15 and 30 I believe on the side. Right Chris?

Engineer Nash: 15 and 35 and the rear is 40.

Attorney Mondello: And section (c) only applies to streets other than Ringwood Avenue and Union Avenue, which is this property. So I would tend to agree that this is less of a Use Variance because of section (c), and more of, as Frank would say, six (6) bulk variances that are even larger than previously anticipated, as the Chairman just pointed out.

Member Covelli: I was looking at the intensity of the usage Counselor.

Attorney Mondello: Right, as a result of all these variances.

Acting Chairman Grygus: So only the side and the rear yard have to comply with the R-10 Zone, correct Ron?

Attorney Mondello: Yeah, it says each property utilized shall comply with the side and rear yard requirements of the R-10 District.

Acting Chairman Grygus: Chris, if you could, could you just quantify the variances then the bulk variances that would be required? Nobody had that in any of any of the tables.

Engineer Nash: In the R-10 the side yard is 15 feet, any, and total is 35. The rear yard is 40.

Acting Chairman Grygus: So we would need three (3) there.

Engineer Nash: Yes.

Acting Chairman Grygus: And then that's it for bulks?

Engineer Nash: Yeah, because the others are existing, non-conformities.

Acting Chairman Grygus: I think in getting to Frank's comment, do you require them all because you could argue that you're intensifying the use?

Member Covelli: I'm going to throw this out there. Mr. Chairman, do you remember we had an application where someone wanted to add five bedrooms, have a total of five to six bedrooms, on a substandard lot to begin with. Well, that was a permitted use, but that was quite an intensity of use, and we didn't have an issue with something like a septic or some kind of physical barrier where that would be a problem. But it was it was a physical intensity of use. And that's my concern with this application. Three apartments on less than 7200 square feet is quite an intensity of use.

Planner Lydon: I don't disagree. I just point out that the site's been used for two, two bedroom apartments and the commercial office and the difference is the commercial office would go away and there would be a third two bedroom apartment. And it can be accomplished without making any of those deficiencies any worse than they have been since the Applicant purchased the property back in 1980.

Member Covelli: I heard you Mr. Lydon, but someone residing on the property versus a business operating is an intensity of use.

Member Ludwig: I have a question for the owner of the property. Were you familiar with all the comings and goings of people that work there? Did you have employees showing up every morning for work and parking their vehicles there?

Ms. Schreck: Yes, we did.

Member Ludwig: How many did you have that worked out of that building, as opposed to meeting you on the job site?

Ms. Schreck: We had seven (7) employees every day coming to work. Plus, we have trucks.

Member Ludwig: They would leave their car there and take the truck.

Ms. Schreck: Or they stayed in our office.

Member Ludwig: Or they stayed in the office.

Ms. Schreck: Correct.

Member Ludwig: Okay. So you had at least seven vehicles?

Ms. Schreck: Yes, but we also have more than that, because we have a fleet of company trucks, and we had a fleet up to about 15 or 16 of them at one time.

Member Ludwig: But did those people take the vehicles home, or did they pick it up in the morning is what I'm trying to say?

Ms. Schreck: Okay, some of them would go home, but most of them would, like we said, about seven (7) of them would come in every day.

Member Ludwig: Okay, because to me, it seems like you're lessening the load.

Ms. Schreck: In my opinion, we are definitely lessening.

Acting Chairman Grygus: Well, except that the business could operate say, 9 to 5 Monday to Friday, as opposed to residents who could be there 24 hours a day, 7 days a week, coming and going.

Ms. Schreck: But more 6 to 5, not 9 to 5.

Member Ludwig: But you're eliminating seven (7) trucks that are sitting on the lot that gives room for probably two (2) in a two bedroom apartment. I don't know it just seems like it's a lot less.

Acting Chairman Grygus: But that office use does not have potentially kids looking to throw ball ride a bike, whatever.

Member Covelli: Well, look here again, I have to tell you, I at one time lived not far from that building and it was on my walk in the morning and I never ever saw anything near the vehicles you just represented there. I didn't walk before 6am, generally speaking, so I did not see anything near 7 to 12 company vehicles there. Or conversely, if those vehicles were out doing their service calls and installations, employee cars in that area. I didn't see anything near that. Maybe you were already starting to retire or something, but I didn't see anything near that. That kind of intensity in that area.

Ms. Schreck: I don't know when you went by.

Member Covelli: I haven't lived there in over 10 years in that area. But I'm telling you this, when I was a younger man when I walked, but the point is I didn't see vehicles like that.

Acting Chairman Grygus: You know, Ron, that part about the R-10 side and rear yard kind of takes out the conflict?

Attorney Mondello: Well, the conflict that I was referring to was the beginning of paragraph (7), as apartments over store. It doesn't say apartments. It says apartments over stores.

Acting Chairman Grygus: And I think having them have to comply to the R-10 standards kind of takes out the conflict between (7) and (c).

Attorney Mondello: How so?

Acting Chairman Grygus: Because they're holding them to a different standard by putting the apartment there.

Attorney Mondello: Well, potentially, you know, when I say there's a conflict, I'm simply saying paragraph (7) says it has to be over stores, and then paragraph (c) says you can put it on any floor you want. And remember paragraph (c) is under (7). It's not number 8. It's not divisible. I would agree with Mr. Lydon, and I don't know what Mr. Nash says, but I think we're dealing with

Bulk Variances here. I would agree with you that the side yard is increased to 15, any total is 35, and rear yard is 40. But I just don't see a Use Variance here. What do you think Chris?

Engineer Nash: It appears to be permitted because it's not on Ringwood or Union. So I would agree they are Bulk Variances. It's not a Use Variance application. Who makes this call though?

Acting Chairman Grygus: Exactly, I mean, the Zoning Officer, I thought was the one who determined that it required a Use Variance.

Attorney Mondello: It's this Board's function to either agree or overrule any Construction Code Official. I'm just going to, for one second very quickly, share the screen here so that everybody can understand what we're talking about. Can everybody see this? Yes.

So here is Section (7). We start with this qualifier. It's apartment over stores period, and they're subject to these requirements. But then we come down here (c), it says apartment shall be permitted on all floors.

Engineer Nash: No, but read the rest of the sentence though Ron.

Attorney Mondello: Yeah, I get it, but it doesn't involve Ringwood Avenue or Union Avenue. So this applies. If it was on a Ringwood or Union Avenues, it wouldn't be permitted. It would have to be above the store. But it's not. So the apartment shall be permitted on all floors, and they meet this requirement already, and as the Chairman pointed out, they now have to meet this requirement.

Member Covelli: How big is each of the apartments, you say that they all meet them? The one they're proposing meets it because it would be the entire first floor. What is this total square footage of the second floor which is divided into two apartments?

Attorney Mondello: Well, that second floor may have existed prior to this amendment in 2002. They're grandfathered in.

Member Covelli: I understand. I'm just curious to know what the total square footage is of the second floor. And how are those two departments divided up?

Attorney Mondello: Do we need Mr. Egarian for that? Or can Mr. Lydon answer that?

Planner Lydon: I'm not the one to answer that question. Mr. Mondello, since I did not see a floor plan for the second floor. I have been told by my clients that there are two, two bedrooms up there., but I do not know the square footage of either.

Michael Civil: Yeah, I can tell you I can answer this question. The second apartment is the same exact size as the one we're proposing underneath. It takes the same square footage since it sits directly above . The other one is over the three car garage, and I would say that's between 750 and 900 square feet.

Planner Lydon: So then we would quote we would comply with that requirement for the size of each apartment.

Michael Civil: That's correct.

Planner Lydon: And the requirement that there be no more than two apartments does not seem to be applicable due to Section (7)(c).

Member Covelli: Mr. Mondello, do you have that up again?

Attorney Mondello: So I am of the opinion that this requires Bulk Variances, Dimensional Variances and not a Use Variance. Apartments permitted on all floors. And I'm guessing Ringwood Avenue and Union Avenue is more of a Business District, and the Governing Body felt that this shouldn't apply, and that they wanted stores on the bottom, and apartments on the top. Back to this, "apartments over stores".

Planner Lydon: Mr. Mondello, if I could modify my testimony, I think this would qualify for a C-1 Hardship, because the basis for the hardship would be the existing lawful structures on the property. We've been reviewing this application now for two months, an hour and a half almost tonight, and there's no suggestion that this is an unlawful structure. So I'm going to take the position that is a lawful structure and we're not doing anything to amend that lawful structure on the property. Therefore, I think the Board can grant the hardship variance based on that. I think there's also a C-2 basis for the grant of the approval, Mr. Mondello, and that is that the benefits outweigh the detriments. I heard through the testimony that sometimes there were up to 16 trucks on the property and that commercial activities, trucking activities occurred as early as 6am in the morning. By eliminating these permanently, by granting a variance to put a residential use in that space, the benefits flowed to the neighbors in the sense of an enjoyment of a peaceful, quiet neighborhood. So I think those benefits accrue to the neighbors. I think the C-1 Variance does accrue to the property owner is because of the existing structure that's been on the site for at least 40 years. So there's a basis in the law for that as well.

Attorney Mondello: Would your testimony change if your client had a, let's say, a real estate office move in or a financial advisor move in?

Acting Chairman Grygus: Well, I'll go one further, based upon the way you read that, you could have a business and an apartment on the first floor.

Planner Lydon: Yes, you could. You certainly could, as long as the apartment was 750 square feet or better.

Acting Chairman Grygus: And then you would still have to comply with the R-10 zone.

Planner Lydon: For those side and rear yard setbacks, yes. If you were building new, I think the provision in 70C, I think it's 70, I don't have in my Municipal Land Use Law in front of me Mr. Mondello, I think that's C-3 the lawful structures and this is a lawful structure and converting space falls clearly within that provision of the Municipal Land Use Law, in my opinion under the C-1 statute, or C-1 clause of the statute. So I think the Board can grant the variance, since we're not exasperating or increasing any of the existing non-conformities.

Attorney Mondello: Alright, so the Board has heard a lot of testimony. Are there any more questions for Mr. Lydon because, at the end of the day, the Board needs to do its balancing and decide which way it wants to go.

Acting Chairman Grygus: Any members or any members of the audience have any questions for the planner?

Member Minogue: I got a question for Mrs. Schreck. Why doesn't she just run the registration number of the trucks because there seems to be an outlier of which number. Did she have the trucks or not?

Ms. Schreck: I'm sorry, I'm not following you. You want to know that we had X amount of trucks and they were registered at that property?

Member Minogue: Right. And I heard testimony saying that this man never saw those trucks. Now, which is it? Did you have them or did you not?

Ms. Schreck: We had them.

Member Minogue: Then run them. Run the numbers, just let us know what happened.

Ms. Schreck: I'm not following run the numbers. What does that mean?

Member Ludwig: He says he has not seen any trucks there. And you say you did have trucks there?

Ms. Schreck: Yes.

Member Ludwig: When did you stop having trucks parked there?

Michael Civil: There are still four trucks or three trucks there now.

Ms. Schreck: There are three (3) trucks there now on the property and we're not even running the business right now.

Michael Civil: And the six that used to go into the office every day, we're not there anymore, either right now.

Member Ludwig: I think that's what he was trying to understand. You could also sell the building to another HVAC guy that would duplicate the trucks you had.

Member Levine: I was there the other day, I have pictures and there were trucks there.

Attorney Mondello: All right, any Board Members have any other questions for Mr. Lydon?

How about members of the public? Any questions for Mr. Lydon? All right, hearing none, seeing none. I'm sorry, Mike. Go ahead.

Mike Hafner: So the only thing I wanted to speak to is, I know you spoke a lot about the conflict in the Ordinance, and I think that in a very narrow scenario, maybe such as this, that there might be a conflict because Ron, like you said, it starts off by saying, "apartments over businesses", and then goes on to say that "apartments can be on any floor". But I think if you if you broaden up the scenario a little bit, where if you had two or three business units on the first floor, with two apartments above, it's saying that you could conceivably have one apartment on that first floor, and the Ordinance, then, indeed, does make sense. So that that was my only thought. And the way they wrote the ordinance was that, again, if you had more residential, that they would like to see a little more open space, because whereas a business doesn't need a yard to play in or a yard to have a barbecue in, residential would. That's why I think they probably thought to put the larger setbacks for the residential use if somebody was electing to do that.

Attorney Mondello: So Mike, you are suggesting that a Use Variance is still required? I don't follow you. So how would you have an apartment on any floor and still have a store on the bottom?

Mike Hafner: In this particular case, you probably couldn't. But if you were to take a court case of maybe a slightly larger building, or one that had more units, you could conceivably have, let's say you had three commercial tenants on the bottom and two apartments above, you could conceivably have two commercial on the bottom and convert one of those to an apartment and still be within the rights of the Ordinance. So it's very good question as to whether or not this is technically a Use Variance, or is it just going to be the Bulk Variances. But the fact that they are not going to have any commercial on the first floor may lend itself to being a Use Variance because they're violating just that the primary line of 12A.(7).

Attorney Mondello: 114-12A.(7), apartments over stores.

Planner Lydon: But if you continue reading that Mr. Mondello, that same line, it says subject to the following requirements. I think if you read it in total, I'm not sure (c) is in conflict with anything else. I think (c) can stand alone from the balance of the number (7), including the prohibition against first floor apartments, because it's subject to the following requirements, and the idea that you have to have them on the upper floors maintained but only on two certain streets.

Attorney Mondello: I would agree with you with that if paragraph (c) was (8). If it was number (8), I would agree with you, but it's supposed to be subservient to paragraph (7).

Mike Hafner: Yes.

Planner Lydon: But it's just another one of the conditions required following the requirements, not a condition. I strike that word. It's subject to the following requirements. So I think the Ordinance is consistent. And, in fact, based on (c), even though we're in the Business Zone, our client is not required to maintain a business on the property.

Attorney Mondello: And again, I would agree with you if it said subject to the following exceptions, but its requirements. Well, listen, the Board's going to have to do something with this. It is now 9:30pm.

Acting Chairman Grygus: Well, we already had reached a decision that you're probably going to carry to November so that you can work on your plan with respect to the parking and then in that time, Ron, I don't know, do we perhaps consult the Borough Attorney and come up with some kind of consensus here?

Attorney Mondello: Well, I could certainly speak to him. He's been around long enough and asked him what was the legislative intent that paragraph (c)?

Acting Chairman Grygus: Exactly, that's my point.

Attorney Mondello: He may say, I don't know. But the Borough Attorney has been around for, you know, five decade. And he's sharper than a tack. I mean, he runs circles around me. What's the Board's pleasure.

Acting Chairman Grygus: Alright, so I'll ask the Applicant the counselor, I mean, are you all in agreement with that plan.

Attorney Edwards: I think generally, except I will say I have a conflict, a scheduling conflict on the 4th of November. I regret. So unless the Board has an additional meeting in November or a

special meeting, then I would need to it would need to be a December meeting, subject to the availability of the Applicant and the other professionals.

Acting Chairman Grygus: There are provisions for you to request, as an Applicant, a special meeting, but there are fees associated with that.

Attorney Mondello: If we cannot nail down when the next meeting is your client may have to re-notice.

Attorney Edwards: Right. I mean, if I could, if the Board would indulge us to just ask my professionals, right now, what their availability is and the Applicant's availability.

Steve and David and Casey are we all available on December 2nd, I believe, correct?

Board Secretary: Yes.

Attorney Edwards: Casey and Mike. How about you guys?

Ms. Schreck: Yeah, we're available.

Attorney Edwards: Okay. Dave, did I hear you said yes.

Engineer Egarian: Yes, yes.

Acting Chairman Grygus: I don't know that your Planner could provide anything in addition to what he already has. He stated his position on why he feels it's not a Use Variance, if the Board decides that it is.

Attorney Mondello: He went further than that. He testified if it is a Use Variance, here's why the Applicant is entitled to it. And I can I can convert this meeting to, you know, I can transcribe it using artificial intelligence. It's not perfect, but Jen is actually perfect. But most of Mr. Lydon's testimony will be there almost verbatim.

Acting Chairman Grygus: Not that he's not welcome to come. I'm just saying that I just don't know if it would be necessary.

Attorney Mondello: I think it's a good point. Mr. Chairman, I was thinking the same thing. I don't know what else Mr. Lydon could add to the equation. He's testified as to the proofs under a Use Variance. He's testified as to the C-1. He testified as to C-2. We know what his testimony is.

Attorney Edwards: Understood. Just as a matter of course, we would ask him in case we decide that we want to bring him back.

Attorney Mondello: That's entirely up to the Applicant, or actually the Board, if the majority of the Board feels he needs to come back.

Attorney Edwards: Mr. Lydon, what did you determine about your schedule?

Planner Lydon: I am available on Wednesday, December 2.

Attorney Edwards: Okay. Good to know. Okay.

Member Covelli: Mr. Chairman, just as a point of reference, I'm just trying to watch the purse strings of the Applicant, I thought our purpose of hearing the Planner tonight was so that the Engineer can come back with the site plan, with the parking, and that the Planner would be satisfied. I know that I'm satisfied with the testimony and presentation of the Planner.

Acting Chairman Grygus: The Board is not requesting him to come back. It would be totally up to the Applicant, if they determined to have him come back.

Attorney Edwards: Thank you.

Attorney Mondello: Mr. Chairman, you might want to simply ask the Board if they felt that Mr. Lydon should return.

Acting Chairman Grygus: Anyone from the Board feel that they need to have the Planner come back in December? (Silence – No verbal response made by any Board Member)

Attorney Mondello: That sounds like a no.

Acting Chairman Grygus: So we're going to carry this to the December meeting. We would need a Motion for that. I just want to convey to the Applicant, Jen, maybe just let them know if there's any extensions that are required.

Attorney Mondello: Miss Edwards has been kind enough in letters to extend and I'm sure that she would represent this evening that her client extends through December 2. Is that correct Miss Edwards?

Attorney Edwards: Correct

Acting Chairman Grygus: Before we entertain that Motion, I would also ask just one request of the Engineer, that if your updated plan does not contain removing the shed, I would ask that the dimensions of it be put on the plan, as far as the size of the shed and the setbacks from the side yard.

Engineer Egarian: Sure we can do that. I'm sure that's already on the survey. We'll just have to put that on the plan.

Member Covelli: I would make such a Motion, Mr. Chairman. I would also point out as a parliamentary point of order, Ron, carrying this the Applicant is under no obligation to do any further notification that the application is being carried to the 2nd, correct?

Attorney Mondello: Yes, sir.

Member Covelli: That by notice during this public meeting, the public has been notified.

Attorney Mondello: Yes, sir.

Member Covelli: That's my motion.

Member Ludwig: I'll second that.

Acting Chairman Grygus: Just a quick question on the Motion, now that I'm thinking about it. Ron, if we did determine that it became a Bulk versus a Use Variance, I don't think that would require any notice because the criteria for the Bulk Variance are less than the Use Variance.

Attorney Mondello: That's exactly right. And the Applicant has already noticed for a Use Variance.

Acting Chairman Grygus: Okay. So we had a Motion and a Second Roll Call, please.

MOTION TO CARRY APPLICATION ZBA2020-07 TO THE DECEMBER 2, 2020 MEETING:
made by Member Covelli, seconded by Member Ludwig. Voting yes were Acting Chairman Grygus, Members Covelli, Pasznik, Ludwig, Levine, Minogue and Aumenta.

Board requests recess.

Recess: 9:55:03

Reconvened: 10:08:00

Let the record show that Member Minogue is no longer attending the meeting, but all other Board Members and Board Professionals are still in attendance.

RESOLUTIONS:

ZBA2020-08 - Macedon Builders, Inc., 33 Decker Road, Haskell, NJ (Block 432/Lot 3)

Applicant came before the Board to construct a 2,000 square foot two story single dwelling. The typical conditions were placed in the Resolution but, in addition, the Applicant agreed to install a stormwater retention system, or detention mitigation system to use Mr. Nash's language, in accordance with the Board Engineer's specifications. The installation must be completed before any construction is commenced. The Applicant agrees that there will be no blasting of rock at the property. The Applicant agrees to locate the air conditioning unit to the rear of the property. Those are the only specific conditions placed in the Resolution. I'll entertain questions or comments the Board Members may have at this point.

Member Levine: I have one comment for Miss Karner. I would like to thank her for that note she sent me. I appreciate it, and I just want to thank you. I sent a copy of it to the Board Attorney and Board Secretary.

Attorney Mondello: Any other questions or comments. Hearing none, seeing none, I'd ask for a Motion followed by a Second.

MOTION TO MEMORIALIZE THIS RESOLUTION AS PREPARED BY BOARD ATTORNEY: made by Member Covelli, seconded by Member Ludwig. Voting yes were Acting Chairman Grygus, Members Covelli, Ludwig and Pasznik. **Motion Carried.**

Member Levine questioned why he wasn't asked to vote. Attorney Mondello stated you voted No on the Application and you cannot vote on the Memorialization of a Resolution if you voted against the Application. You are prohibited.

PUBLIC DISCUSSION: Any members from the public have anything they want to share with the Board? Seeing and hearing none.

Member Levine left Meeting. He had something else to attend to. Thank You.

CORRESPONDENCE:

Attorney Mondello: I already mentioned this correspondence and I don't believe I need to go into it again. But there seems to be an issue with respect to the Applicant, Chabad Jewish Center, paying professional fees, escrows, that sort of thing. Quite frankly, I've never heard or seen anything like that in the 30 years I've been practicing but my understanding is that the

Applicant's attorney is trying to resolve it with the Governing Body. I work for the town; I don't work for Chabad so I certainly would not appreciate a waiver of my fee and I'm sure Mr. Nash feels the same way.

VOUCHERS: submitted by Ronald Mondello, Esq. for the Application and Resolution for Macedon Builders \$1,050; and for attendance at the October 1, 2020 Meeting for \$400.

MOTION TO APPROVE VOUCHERS: made by Member Ludwig, seconded by Member Covelli. Voting yes were Vice Chairman Grygus, Members Covelli, Pasznik, Ludwig, and Aumenta.

MOTION TO APPROVE SEPTEMBER 2, 2020 MINUTES: made by Member Ludwig, seconded by Member Aumenta. Voting yes were Acting Chairman Grygus, Members Covelli, Pasznik, Ludwig and Aumenta.

ENGINEER'S REPORT: Nothing else to report other than there is another Application. Board Secretary also advised that there are two new ones in the office that she has to get out. Two applications are Use Variances and one is Bulk Variance. (511 Ringwood Avenue/1458 Ringwood Avenue/39 Snake Den Road)

DISCUSSION:

Attorney Mondello: Did we get a letter from Mr. Malone officially resigning now that he has moved.

Board Secretary: No. Last meeting I spoke to the Mayor about some of the Board Members and I had heard that he had moved to South Carolina and the Mayor spoke to him. The Mayor called yesterday saying that he did resign on the phone with the Mayor because he does live in South Carolina and that they are appointing another member at the Mayor & Council meeting next Monday.

Acting Chairman Grygus: The gentleman that was on tonight, he is a member?

Board Secretary: He is a member and had a little bit of confusion about Zoom Meetings. He was on the Board quite a few years ago when he lived in Brookside Heights. Mr. Minogue was appointed by the Mayor & Council at their January meeting.

Acting Chairman Grygus: Any update on our suit.

Attorney Mondello: We should be going into closed session for this.

Acting chairman Grygus: How do you go into closed session in Zoom?

Attorney Mondello: You just simply eliminate somebody from the public that there appears to be one individual, first name is Margaret, I simply just remove her from the meeting, and that would be the closed session. But I got noticed from the Appellate Division that there's going to be oral argument, I believe, November 20th, or something like that. I don't have anything else.

MOTION TO ADJOURN AT 10:00 P.M.: Motion to adjourn meeting made by Member Ludwig. Motion carried by a voice vote.

Jennifer A. Fiorito, Board Secretary