

**REGULAR MEETING**

**Salute to Flag: 8:05pm**

**OPENING STATEMENT:**

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

**ROLL CALL: Chairman Jack Dunning, Vice Chairman Bruce Grygus, Members Donald Ludwig, Michael Levine and Larry Malone, and Attorney Ronald Mondello and Engineer Christopher Nash**

**ABSENT: Member Bridget Pasznik & Member Peter Hoffman moved out of town and handed in his resignation.**

Member Frank Covelli arrived at 8:08pm.

**Application #ZBA2019-07 – Romero, Marylou**  
**39 Snake Den Road (Block 102/Lot 4)**

Marylou Romero appeared by herself.

Attorney Mondello advised Ms. Romero that, unfortunately, there are a number of deficiencies with your application. In particular, your notice that was published in the newspaper needs to specify that you need a Use Variance. Some of these things may be very confusing to you. We can't give you advice. You need to either seek legal advice or perhaps speak a family member who has gone through the process, but we can't give you legal advice. We can tell you what is wrong with the application. We can't even hear it this evening because of these deficiencies. The Engineer has indicated that there are a number of things that he needs in order to complete his review of this application. So the Board doesn't have jurisdiction to hear your application and it is going to have to be carried to another point in time. I also notice that, unfortunately, you had applied for a building

department in October of 2018 and you were denied and you went forward and constructed the additional without any Board approval. No explanation is needed. Although the Board will not look at that in a negative light, you should understand that if you don't meet the land use statutory schemes, whether your positive criteria exceeds the negative criteria, this Board could deny your application and you would have to remove your addition. Perhaps at this juncture you may want to seek some legal advice.

Engineer Nash commented about a correction to his letter because my letter indicated that it was in an R-87 Zone and it is actually in the WRC Zone, which changes the game from just a simple bulk variance application to expansion of a non-conforming use (D-2 Variance) which, as counsel has stated, changes the notice requirements required to the neighboring property owners.

Attorney Mondello: Any other comments and then we will entertain whatever Ms. Romero has to say, but we cannot hear the application this evening.

Member Covelli arrived.

Chairman Dunning questioned if we have the notice within 200 feet?

Attorney Mondello answered we have all the notices, but the problem is that the actual notice has to use the words "Use Variance" so that, if I'm a neighbor I can ask, what do you mean a Use Variance? Something is prohibited and if I want to show up I can show up. The courts are pretty liberal with notices, but when there is a D-2 or D-1 Variance, they want to see the word "Use Variance".

Attorney Mondello: Apparently Ms. Romero nobody else has any comments, what would you like to say, but the Board cannot hear your application this evening.

Mrs. Romero: I understand. My ex-partner built this and I don't know anything about it. I tried to do this by myself, but I will try to do better.

Attorney Mondello: I suggest you speak to someone. Have a nice evening.

Member Covelli recommended Ms. Romero stay and watch the proceedings since it is a public meeting and there is another application tonight. Sometimes people are not familiar with what the Board of Adjustment is and what it does.

**Application #ZBA2019-08 – Bourhill, Alison**  
**9 Crescent Road (Block 200.01/Lot 22)**

Attorney Mondello advised that apparently there is another deficiency but this may not be a fatal deficiency. The Applicant has noticed 8 days as opposed to 10 days which is a statutory requirement, but they did notice and the notice is accurate. The courts have been somewhat flexible with that because they have, in fact, noticed and even though it wasn't within the 10 days to give neighbors and other folks that may be interested in attending at least it was done 8 days. The Board has the option of either adjourning this and correcting that notice deficiency or agreeing upon hearing it this evening and I would caution the Applicants that they really should wait 45 days after the Resolution is approved and published to actually begin construction, assuming it is a granted application. Member Ludwig questioned should we ask for their okay to take the gamble that somebody might complain that it wasn't 10 days?

Attorney Mondello commented that's fair enough. So let me just explain. There is a statutory requirement in the law that you notice your neighbors and put in the newspapers 10 days prior to this date that you are coming here and asking for variances. It puts everybody on notice whether I am your neighbor or somebody who just lives in town and I don't like the idea of you doing x, y and z. I can show up and I can comment. You didn't do that; you are shy at least 2 days. So we could go through this whole process, the Board could grant your application, I could put together a Resolution, the Board could adopt this Resolution, you could begin construction and then some private citizens, with or without the help of an attorney, could run into the Superior Court and make you remove what you did or stop.

Vice Chairman Grygus commented I guess really the choice is that either you wait another 30 days to hear the application, or wait 45 days, after the notice is published, before you start construction.

Applicant commented that we are probably not going to start until the Spring anyway, so that is fine.

Member Covelli commented as long as you understand that the matter is out of our hands at that point.

Applicant answered yes, I understand.

Member Ludwig just wants to make sure you are advised of all the risks.

Applicant answered that's fine.

Member Covelli commented that Jennifer advised that the neighbors got their mailed notice within the 10 days. It was the newspaper.

Attorney Mondello advised it is the same thing; it doesn't matter.

Member Covelli commented I understand that how the newspaper can be because when I had to publish mine they were very lackadaisical about it. In fact, maybe they need an education of the statute because they are not very kindly in getting back to you or how you pay them and you have to get this in the paper. I feel your pain.

Engineer Nash commented does anybody even read the newspaper these days or the legal notices?

**Chairman Dunning stated we need a Motion to move forward this:**

**MOTION TO MOVE FORWARD WITH THIS APPLICATION: made by Member Covelli, seconded by Member Ludwig. Chairman Dunning, Vice Chairman Grygus, Members Covelli, Ludwig, Levine and Malone.**

**Attorney Mondello: The Board has found unanimously that they are willing to go forward despite the two day deficient in the publication to The Record so the application will therefore be deemed complete. I don't have the authority to do that; the Board just did it. Who is going to be testifying?**

**Attorney Mondello swore in Kenneth J. Szeles, who is the Architect that designed the addition, and he resides at 25 Johnson Avenue, Bloomfield, New Jersey.**

**Attorney Mondello: I don't know if anyone is familiar with Mr. Szeles work as an Architect. It doesn't appear anyone has. Briefly give us your credentials. Architect Szeles answered I am Licensed in the State of New Jersey as an Architect. I've been an Architect since, I believe, 1990. I specialize in additions and renovations and I have done work in Wanaque and in this area.**

**Attorney Mondello questioned have you testified before Zoning & Planning Boards in Passaic County?**

**Architect Szeles answered about a dozen times.**

**Attorney Mondello: Anybody have any questions for Architect Szeles?**

**Hearing none, seeing none he is accepted as an expert in the field of Architecture. Please tell us what your client would like to do and why they want to do it?**

**Architect Szeles:**

**Architect Szeles stated we would like to build a family room on the back of the house. The family room is situated where it has to access from the kitchen area inside the house, which is the most appropriate place I feel to have access into the family room. The breakfast room steps down about two steps and it makes it more convenient to get into the family room. The other side of the house is the living room, which is already developed. Middle of the house is the bathroom so that's not possible. The left side of the house, as you are looking at it from the front of the house, is the best place to build the addition.**

**For the bulk variance, the setback would require building 20' off the left property line. Right now the existing house, garage and breakfast area is about 15' off the property line, so we feel going straight back off the existing left side of the house would be appropriate and, basically, the path of least resistance. The reason being strict adherence of the Zoning Ordinance applies to a property that is 100' wide. The Bourhill residence is only 75' wide so applying the strict Zoning Ordinance would leave about a 30' wide swath of area in the backyard for development of the family room and that puts it pretty much smack dab in the middle of the backyard and you end up with a t-shaped house, which is not something that people normally would want. It also forces the development into the best area of the property used for leisure, recreation and typical backyard use. Strict application to the Zoning Ordinance would really obviate that and force the addition into the center of the backyard. We feel strongly the strict application of the Zoning Ordinance should not**

really apply to a property that is 75' wide. The Zoning Ordinance was set up for properties that are 100' wide which, again, would afford a normal property owner about 65' of that available property in the backyard to develop, which is fine if your property is 100' wide. Being 75' wide it penalizes the owners of 75' wide pieces of property because they can't enjoy the center of the backyard as other people would who have 100' wide swath of property. We feel that the Zoning Ordinance frankly harms property owners who have a 75' wide piece of property through no fault of their own. There are prevented from enjoying the backyard as other people who have a 100' wide piece of property would be legally able to enjoy the backyard. We feel that the property itself presents a hardship to the client and the Zoning Ordinance really sort of exacerbates that hardship by preventing the homeowners from enjoying their property as a property owner who has a 100' wide piece of property would be able to. It is a combination of a hardship, a narrow piece of property and the other half of that would actually being harmed by the Zoning Ordinance as it is now.

Attorney Mondello commented that a hardship typically goes to a lot that is irregular shape. You wouldn't say this is irregular; you would just say that it is 75' versus 100'. Architect Szeles stated it is a little irregular in the back. She has a big backyard but there is not much you can do with that. The property does take an unusual shape. But, yes, it is generally something that wasn't anticipated certainly when they developed this part of the township. All the properties in that neighborhood are 75' wide. Obviously, whoever built the houses was not up against the Zoning Ordinance as it is now written because otherwise they wouldn't have been able to build the house on the property.

Attorney Mondello questioned only adjoining neighbors have 75'?

Architect Szeles answered a quick survey of the neighborhood will show you that most of them do have 75' wide properties.

Chairman Dunning agreed that most of the properties there are 75' wide.

Vice Chairman Grygus questioned do we know if any of the property is in a flood zone?

Architect Szeles answered I do not know that.

Attorney Mondello swore in Applicant, Alison Bourhill-Tumser

Applicant stated that she has lived at this address for 14 years, through Sandy and a few strong storms when we first moved here, and we've never had water, not even in the backyard.

Vice Chairman Grygus stated I am asking because the original survey has no elevations. I see where the line delineates the top of a bank so I'm just wondering what is the elevation between the top of the bank and the edge of the brook.

Architect Szeles answered I don't think we have that information. We don't have the elevations but to our knowledge, the property is not in the flood zone.

Member Covelli questioned do you have a mortgage on the property?

Applicant answered yes.

Member Covelli questioned has your bank every required you to have a flood policy?

Applicant answered no.

Vice Chairman Grygus commented I have to believe that some of the property has to be in a flood zone only because the property line is under the brook, but not the dwelling.

Attorney Mondello commented that it may not be an unreasonable condition if the Board is so inclined to grant the relief sought by the applicant to request that some type of seepage pit or tank be installed.

Chairman Dunning commented it would never work.

Vice Chairman Grygus stated my concern is not having any elevations or knowing that any of the property or dwelling is in a flood zone.

Member Ludwig commented that we could put in the Resolution that they are building at their own risk.

Vice Chairman Grygus stated if they were to get approval and then six months from now they build the addition and a year later the property floods.

Member Covelli commented the solution to that is Architect Szeles is representing to us that it is not an issue and if he has a change of heart, we will put it in the Resolution that is subject to that property not being in a flood zone.

Vice Chairman Grygus commented I don't think an architect can testify to that.

Member Covelli stated he is not testifying; he is representing.

Chairman Dunning commented the next street over, Grist Mill Road, has flooded a few times. That sits lower; that is the low side of the brook.

Attorney Mondello commented then if I'm an adjoining property owner, I sue the Board and I sue the applicant because her construction has caused me more water.

Vice Chairman Grygus commented I was more concerned with the liability if we were approve to construction of this addition and then one year later it floods and we don't have any flood limits delineated.

Chairman Dunning commented they build at their own risk. That's the way we're out of this.

Member Ludwig commented, as to the water runoff, it's a little better than half of this new structure is over a concrete slab anyway.

Chairman Dunning stated I live not far from you by the other brook. The brook in my backyard comes up in my yard a little bit and that's a bigger brook then what you have.

On your side, it does flood into Grist Mill.

Applicant answered yes.

Vice Chairman Grygus commented the brook behind my house floods into the condos, but my side is higher.

Applicant commented we are all the way "up here" and you really have to hike to get down to the brook. It's not even near the property.

Vice Chairman Grygus commented we typically like to try clean up whatever we see on the application. The shed that you have does not meet the ordinance from the property line. It is possible to move it or would you like to get a variance for it?

Chairman Dunning stated the variance leaves it where it is, or you move it 3'.

Applicant answered "leave it where it is".

Vice Chairman Grygus asked Engineer Nash to scale out the distance between the shed to the pool.

Member Covelli questioned Construction Official what a deck around an above-ground pool is?

Construction Official answered “a structure”.

Vice Chairman Grygus questioned if the shed is 8’ from the pool, then clearly that deck is closer to the property line just by looking at it.

Chairman Dunning questioned where is the pool to the property line?

Engineer Nash answered the deck is 5’. The pool is 10’.

Chairman Dunning commented that is in compliance.

Vice Chairman Grygus stated that, technically, by ordinance, there is an issue with the shed to the pool and there is an issue with the deck to the property line. Were the pool and the deck there when you purchased the house?

Applicant answered yes it was. The pool and deck are the exact same items that were there when we brought the house in 2005. We only replaced the pool liner.

Member Ludwig commented if it has been there and nobody has complained, can’t we just include that along with the other variances?

Chairman Dunning answered yes. We are going over the whole plan and we are trying to clean up all that would have been a required variance in its previous history when it was built.

Vice Chairman Grygus, addressing Engineer Nash, said the deck was approximately 5’ and the pool to the shed is 8’. So we need one for the shed to the property line, and one for distance between the shed and the pool, and one for the deck to the property line. The pool is okay.

Attorney Mondello commented there are three variances plus what they are seeking to construct.

Chairman Dunning questioned, the tree in your backyard, will that be coming down, since it wasn’t addressed in the plan?

Applicant answered it will probably come down.

Chairman Dunning stated the exit out of the family room is to the deck that comes down to the patio. Lot coverage is good.

Engineer Nash stated the only comment I have, a cosmetic comment, and it’s architectural, on the rear or south elevation, where the addition comes into the main house, the eave is running into the window as you drew it.

Architect Szeles commented it is a lantern there, but it is close.

Engineer Nash commented no, the whole eave runs right the window. The overhang goes right to the top of the window. Obviously, when you get to framing it, you won’t have that.

Member Covelli stated, since the Engineer brought that up, again I am looking at a plan that was drawn, but it would seem to me that is the floor height of the addition the same height as the floor height of the house?

Architect Szeles answered no. It is the same height as the floor height in the breakfast area, which is two steps down from the main level of the house. In other words, the breakfast area is pretty much on equal level to the garage, and that’s a fire door there.

Member Covelli commented it appears the foundation is lower to the ground, after we just had conversations about flood zones and water, etc.

Architect Szeles answered yes, but the property, without the elevations, there is a pretty good slope from the back of the house the whole way down to the brook and then as Alison said, once you get to the brook, there is a significant drop/bank there. The entire property is sloping down toward the creek.

Member Levine questioned what is the elevation difference between the breakfast area and the family room?

Architect Szeles answered about a foot. There are two risers, about six inches each.

Vice Chairman Grygus questioned if all the utilities are going to the house from the front?  
Architect Szeles answered correct.

Member Covelli questioned what type of gutters are you putting on the house addition and where are they going to drain?

Architect Szeles answered they are going to drain to the grade. Is there a township requirement that they go to the street?

Member Covelli answered you heard the attorney ask about a seepage pit. We are not necessarily asking for that, but if you are extending a structure closer to the property line where there is another house, and you bring additional roof water over to that side of the house, would be able to drain it towards the back as opposed to the side?

Architect Szeles answered yes.

Chairman Dunning questioned do you have a basement in the house?

Applicant answered yes.

Chairman Dunning question has it ever gotten any water?

Applicant answered never.

Chairman Dunning: Any other questions from the Board Members?

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

Does anyone in the public have any questions or comments about this application?

Seeing none, hearing none we close the public portion.

Would someone like to make a Motion?

Vice Chairman Grygus: I'll make a Motion to Approve the Application:

**MOTION TO APPROVE THE CONSTRUCTION OF THE FAMILY ROOM ADDITION TO THE REAR OF THE STRUCTURE WITH THE FOLLOWING VARIANCES: ONE WILL BE THE SIDE YARD WHERE 20 FEET IS REQUIRED BY ORDINANCE AND APPLICANT IS PROPOSING 15.96 FEET FOR A VARIANCE OF 4.04 FEET; TOTAL SIDE YARD WHERE 45 FEET IS REQUIRED BY ORDINANCE AND APPLICANT IS PROPOSING 29.83 FEET FOR A VARIANCE OF 15.17 FEET; ALSO GOING TO HAVE TWO VARIANCES ON THE SHED: ONE WILL BE FOR THE PROPERTY LINE WHERE 5 FEET IS REQUIRED AND APPLICANT PROVIDED 2 FEET FOR A VARIANCE OF 3 FEET AND SECOND VARIANCE WILL BE FOR THE DISTANCE OF THE SHED TO THE POOL WHERE 10 FEET IS REQUIRED AND APPLICANT IS PROPOSING 8 FEET FOR A VARIANCE OF 2 FEET.**

**FINAL VARIANCE IS FOR THE DECK TO THE SIDE YARD WHERE 10 FEET AND APPLICANT IS PROPOSING 5 FEET FOR A VARIANCE OF 5 FEET. THE CONDITION WOULD BE THAT THE APPLICANT ACKNOWLEDGES THAT THEY ARE PROCEEDING AT THEIR RISK AND PERIL DUE TO THE AFOREMENTIONED NOTICE DEFICIENCY.**

Member Covelli will Second that Motion with some Amendments to be included:

1. Where you say that the shed should be 5' off property line and 2' is evidence, we are not sure it's 2'. Vice Chairman Grygus commented that the engineer scaled it. Chairman Dunning stated it is deficient. Member Covelli stated that it appears to be about 2' and whatever it is, the variance is granted to satisfy the deficiency.
2. Member Covelli commented that I would use the same wording Counselor on the deck of the pool.
3. Member Covelli commented I would also ask that the Applicant warrants that any responsibility with respect to flood zoning, flood determination and flood delineation is of their responsibility and this Board makes no representations and made no approval based on such.
4. Member Covelli commented that I would also add that the Applicant represents to the Board that they will ensure that all roof drainage water reverts to the rear of the property and does not discharge on the deficient side yard.

**MOTION TO APPROVE APPLICATION WITH THE STATED AMENDMENTS:** made by Vice Chairman Grygus, seconded by Member Covelli. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Covelli, Ludwig, Levine and Malone.  
Motion Carried

**MOTION TO APPROVE JUNE 5, 2019 MINUTES:** made by Member Ludwig, seconded by Member Malone. Chairman Dunning, Vice Chairman Grygus, Members Covelli, Ludwig, Levine and Malone.

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

**RESOLUTIONS:** Application #ZBA2019-05 – Joseph Miceli

**MOTION TO MEMORIALIZE RESOLUTION AS PREPARED BY BOARD**

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

**CORRESPONDENCE: Member Peter Hoffman's Resignation**

Letter from Peter that states he sold his home and he is no longer a Wanaque resident and had to resigned from the Board of Adjustment because of a residency requirement. He was a member for well over 20 years.

**VOUCHERS:** submitted by Ronald Mondello, Esq. for the Miceli Application in the amount of \$450; and for attendance at the October 4, 2019 Meeting in the amount of \$400.

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

**VOUCHERS:** submitted by Boswell Engineering for the Seifried/McAuliffe Application in the amount of \$404; for the Subcarrier Communications Application in the amount of \$103.50; for the Miceli Application in the amount of \$207; for the Serrano Application in the amount of \$103.50; for the Agostino Properties' Application in the amount of \$103.50; and for the Bourhill Application in the amount of \$310.50.

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

Member Covelli abstained. He recently retained Boswell Engineering for work at 906 Ringwood Avenue so I think it best I recuse myself. Attorney Mondello agreed.

**MOTION TO APPROVE JUNE 5, 2019 MINUTES:** made by Member Ludwig, seconded by Member Malone. Chairman Dunning, Vice Chairman Grygus, Members Covelli, Ludwig, Levine and Malone.

**ENGINEER'S REPORT:** Engineer Nash reported as follows: The last several Board Resolutions required the Board Engineer to perform inspections so that is why you see invoices for Serrano and for Agostino.

1. Agostino: I did a seepage pit inspection. They dug the seepage pit and called me out and I looked at the hole and all that stuff before they did any work.
2. Serrano: She is designing a seepage pit. I have been back and forth three times with them to try and get it right. So I am working with Serrano to get the seepage pit right. The architect is having some issues with some geometry; the volume calculations.
3. We received an application just last week for 20 Colfax Avenue. It is a knock down and I didn't because it wasn't within the time frame for this meeting, but I did have an issue with it since the application was not calling out variances. They have an existing house that has bulk variances and they are knocking it down and then saying that they are trying to hold those side yard variances and saying that they still have them. You don't have them when you knock down the house. It's a situation where the existing house is one way and the new house is not in the same place, it's shifted and in different locations and bigger. Secondly, they didn't provide a survey. They used a survey from a surveyor and

**copied it on the architect's plans and you can't do that particularly in this case. We do let things slide, but when we have bulk variances and side yard, they can't be scaled from an architect's plan, it has to be calculated since variances go out to the hundredths and we saw that tonight. I assume they are going to have variances since it's a narrow lot so there are going to be side yard variances, but they have to get variances for what they are; you can't scale them. The Board couldn't review it yet because I reached out to the architect and told him these things. I don't think what they had was useless, but they needed more information. The other thing they didn't have was the Checklist so the Checklist is where you request waivers from the requirements and they didn't even supply the Checklist and Item No. 2 on the Checklist is the survey. It was administratively deficient.**

**Board Secretary gave out the application for 20 Colfax Avenue along with the added information provided by the applicant..**

**DISCUSSION: We are in need of 2 to 3 members from both the Wanaque and Haskell sections of town.**

**MOTION TO ADJOURN AT 9:00 PM: made by Member Ludwig and seconded by Member Vice Chairman Grygus. Motion carried by a voice vote.**

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