

REGULAR MEETING

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 8, 2023 respectively, and a notice thereof has been posted on the bulletin board in the Municipal Building in the Borough of Wanaque, on the Borough's website and a copy thereof has been on file in the Borough

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

Member Edward Bonner arrived at 7:35pm

ABSENT: Vice Chairman Bruce Grygus

RESOLUTION: ZBA2023-03 – Calabrese, Victor

Attorney Mondello: There was some discussion as to whether or not he needed even to come before the Board to construct a garage. I did circulate the Resolution and there aren't any additions to the conditions that we normally put in the Resolution. Nothing special, just the standard conditions. I ask for a Motion to memorialize this Resolution, followed by a second.

MOTION TO MEMORIALIZE RESOLUTION: made by Member Ludwig, seconded by Member Lynch.

Voting yes were Chairman Dunning, Members Ludwig, Aumenta, Sbarra and Lynch
Member Covelli not qualified

Salute to Flag: 7:15PM

VOUCHERS: submitted by Ronald Mondello, Esq. for Calabrese Application in the amount of \$495; and attendance at the September 6, 2023 Meeting in the amount of \$500.

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

VOUCHERS: submitted by Boswell Engineering for the Gorge Drive/Licastro Application in the amount of \$106; Calabrese Application in the amount of \$212; Scenic Landscaping in the amount of \$742 and Brook Street/Sbarra Application in the amount of \$212.

MOTION TO APPROVE: made by Member Ludwig, seconded by Member Aumenta. Voting yes were Chairman Dunning, Members Covelli, Ludwig, Aumenta, Sbarra and Lynch Member Sbarra abstained only in voting on the Brook Street/Sbarra Invoice

MOTION TO APPROVE JUNE 7, 2023 MINUTES: made by Member Aumenta, seconded by Member Ludwig. Voting yes were Chairman Dunning, Members Ludwig, Aumenta, Sbarra and Lynch Member Covelli abstained

ENGINEER'S REPORT: Nothing New

Chairman Dunning questioned Engineer Nash on Scenic Landscaping.

Engineer Nash advised the Board that they haven't constructed the berm in the back yet, but fall is a good time to plant.

Member Aumenta: The Reilly's are still complaining about it. Chris went out with the Mayor and walked through and they have a letter, that was in the correspondence, stating what they had to do.

Engineer Nash: They've made two grading changes, but one of them brought water from the Borough's property came into their property, into their basement, built up and went through Reilly's property. The Reilly's were actually getting water that they never saw before since it came from elsewhere. They bermed that up and redirected it somewhere and they didn't do it exactly the way I would want them to do it, so I have to go back and check that. And they still have to build the berm.

Chairman: You prepared a report dated July 28, 2023 to the Board.

Engineer Nash: The letter just summarized. When I go there, I want to make a record of what we spoke about both with the property owner and the other property owner.

Member Sbarra: Have they given any indication as to when they might be building that berm?

Engineer Nash: In the fall. Fall is a good time to plant. It is their busy time, but they are going to devote some time to that as well because that is when the plants are going to take.

CORRESPONDENCE: Just Engineer Nash's letter regarding Scenic Landscaping.

PUBLIC DISCUSSION: Does anyone in the public have any discussion with Board?

Let the record show no one came forward.

Chairman Dunning: Let's take a five minute break and hopefully the other member gets here.

Recess: 7:23pm

Meeting restarted at 7:35pm when Member Edward Bonner arrived.

Member Michael Sbarra recused himself and moved far away from the dais and is in the audience.

Application ZBA2023-04 – Sbarra Property Management, LLC, 26 Brook Street, Haskell, NJ

Attorney Mondello: I note for the record that I am in receipt of the notice of publication to residents within 200' of the subject property and the advertisement in the local newspaper. I would deem the application complete with respect to notice and, therefore, jurisdiction is vested in the Zoning Board to hear the Application.

Attorney Battersby: Francis J. Battersby, Esq. for the Applicant, Sbarra Property Management, LLC. The Application is the owner of property at 26 Brook Street, Block 436/Lot 4. The property is currently, and has for many years been used as a construction storage yard. The use was in place when my client purchased the property and has remained in place throughout his ownership. There are no permanent structures on the property. My client is not looking to change the current use. He is seeking approval to install three light posts on the property for safety of the property. He is also asking that the Board issue a Use Variance to allow the use to continue without further issues for my clients. Testing this evening will be Jeff Houser will be our expert, Mike Sbarra, who is the principal of the Applicant, and Ronald Kimble, who is familiar with the property.

Attorney Mondello swore in Jeffrey Houser, 1141 Greenwood Lake Turnpike, Ringwood, New Jersey.

Attorney Mondello: Board Members, Mr. Houser has indeed appeared before this Board several times and given testimony as an expert in the field of Engineering. Any objections of doing the same and admitting him? Seeing none, your witness Mr. Battersby. License in good standing?
Engineer Houser: Yes.

Attorney Battersby: Can you described the property to the Board?

Engineer Houser: I will give an overview. The property is approximately .79 acres and located at the southwest intersection of Brook Street and Pierce Avenue. The property is currently not developed with any permanent structures other than the fencing that surrounds the property on essentially all four sides. The property is accessed from the intersection of Brook and Pierce via a gate. It is occupied by a number of accessory structures including six sheds, eight metal shipping containers and two trailer containers, and various vehicles. The sheds and containers are situated along the perimeter of the property keeping a central portion of the property open to maneuver vehicles in and out amongst the various storage areas.

The property does include a 20' drainage easement along the northerly property line which allows for a stormwater pipe from the public right-of-way to the stream that runs down the western

portion. It also includes a 20' drainage easement along the western portion of it, which is for Post Brook, which is small stream that runs through there.

In addition, this property is partially in a flood hazard area. The designed flood elevation meanders through the property a little bit. It is basically right at that level and some of it is slightly below, some of it is slightly above.

In terms of the general area around there, to the north there is a mixed-use residential property. To the east, Lot 6.01 is a multi-family development and, immediately adjacent to our property, is a parking lot for that multi-family unit and there is a storage garage. As you move south along our eastern property line, there is another area that is primarily used for storage and that is Lot 7, that wraps around to the south of our property as well. To the west, is undeveloped land and I think it is roughly 150' to 170' from our property line to ultimately Greenwood Avenue. So there is a large buffer on that side.

In terms of the proposed improvements, the only improvements here are three light poles. Three LED light situated on a 15' poles that are primarily for safety and security of the lot.

The use of the property as a contractor's yard reportedly dates back decades. I did go back onto the NJDEP Geo Website and they have different aerial imagery that is available on there. Some of it is more fuzzy than others, some are more clear. I went back to 2007 that seems to be the clearest resolution and those images do show materials, vehicles, trailers being stored on the property. Do you want to enter this as an Exhibit?

Attorney Mondello: Yes, A-1 is fine. Exhibit A-1 is 2007 Google Aerial Map and Exhibit A-2 is 2012 Aerial Map, both of which were printed out by Engineer Houser on 9/6/2023.

Engineer Houser: I also used the same website and found an image from 2012, which shows similar uses, similar amount of materials there maybe slightly expanded. These two days are somewhat critical. The 2007 date leads me to my next point regarding this property in the flood hazard area. As many of you know, any flood hazard area is highly regulated by the DEP. The ability to construct permanent structures in it can be challenging, if not impossible often, and when you do you have to go very high and follow flood prevention measures. The use of this property as an outdoor storage area is actually permitted by FHA Rules under what something is called a Permit By Rule, as long as that material has been there since 2007. There are certain restrictions, but more or less, a Permit By Rule is you don't have to get a permit. You're by rights. As long as you qualify for these certain things, which include no hazardous substance stored, that the facility was established prior to November 5, 2007, which I why I brought that 2007 document up, the facility has been in continuous operation since 2007, the size and the peak volume of the material stored has not significantly increased. The footprint of the material stored within the riparian zone is not increased and no trees are cleared cut or removed in the riparian zone. I think the aerial images we provided demonstrate that we haven't cleared anything, in addition to what has been there.

We are not in the floodway and that is another important part.

Attorney Battersby: In view of the flood delineations on this property, is this current use a storage yard a suitable use for this property?

Engineer Houser: Yes.

Engineer Nash: So it is a permitted use from the environmental standpoint?

Engineer Houser: Correct.

Engineer Nash: That is your summation?

Engineer Houser: Yes.

Attorney Battersby: The proposed application is not going to result in any change in the existing use of the property, is that correct?

Engineer Houser: Correct.

Attorney Battersby: It's not going to increase any of the non-conformities, correct?

Engineer Houser: Correct.

Attorney Battersby: In your opinion, will install the lighting at the property have any negative impacts on the surrounding neighborhood?

Engineer Houser: No, we are putting in minimal lighting. The maximum lighting is 2' candles and along the perimeter it is even less. It is just enough to provide some lighting and hopefully discouraging somebody from going in and being somewhere they are not supposed to be.

Attorney Battersby: In your opinion, is this property particularly suitable for its current use?

Engineer Houser: Yes. Its location, especially since it has limited frontage, it is adjacent to, what amounts to a parking lot, another storage garage, and a property that is being used for storage that is on the east and to the south and to the west there is a natural screening buffer. Typically, the concerns about contractor's yards and outdoor storage in most municipalities ordinances is screening. This location, tucked away off the corner of essentially a bend in the road, with minimum frontage, it is uniquely suited for that. In addition, because of the fact that it's in a flood hazard, there are limited uses for this property without substantial permitting efforts.

Attorney Mondello: What is stored there?

Engineer Houser: Right now it is primarily landscape materials, equipment, lawn mowers, things like that. There are some vehicles, but maybe the Applicant can testify in more detail. I did visit the site and most of the stuff is within these containers so I don't know what is exactly in them.

Attorney Mondello: I know this is in the B District, but it appears that most of the permitted uses would not be permitted because of environmental constraints. A theater, a bowling alley, a church, public school, gas station, filling station, motor vehicle service station, none of those would be able to be constructed on that because of environmental issues, correct?

Engineer Houser: That is accurate.

Engineer Nash: It is currently in the Special District. There was an ordinance passed in 2012, so according to that ordinance, they've restricted it further in terms of its uses. It is not the traditional Business Uses. It is more mimicking Haskell Center, which is what the original district was set up for and expanded that. Haskell Center is at the corner of Doty Road and Ringwood Avenue. The 2012 ordinance is what they are promoting, if you will.

Attorney Mondello: Are you referring to 18-0-12.

Engineer Nash: What this does is two things. It's saying that they are expanding that Zone that they created for the Haskell Center and then they are also further specifically restricting some of the uses that are silent in the B Zone. So, if you read my letter, I didn't have the benefit of this ordinance. One of the reasons why, if you go to the zoning map, the zoning map was updated in 2006 right after the adoption of that Special District. When this 2012 ordinance was adopted, the map has not been updated since. If you look at the map, you think this property is just in the Business District, but it is actually now encompassed in this new ordinance.

Chairman: How far does this District go?

Attorney Mondello: Here are the actual Lot & Block, but I am of the opinion that, quite frankly, this business existed prior to adoption of this ordinance; therefore, this ordinance does not relate to this property.

Engineer Nash: Mr. Mondello was saying that certain uses in the Business District, this lot doesn't apply to, but there is an ordinance now specifically relating to this lot even though it doesn't apply to this Applicant because he has a use that was in effect prior to this ordinance being adopted.

Member Covelli: I believe it runs all the way down to Coles.

Chairman: If it runs all the way down to Coles, why wasn't that brought up when we did Big Foot Tree and Buske Construction?

Engineer Nash: The Applicant prepared the zoning table and it says it's in the B Zone, I look at the zoning map and I agree that it is in the B Zone. This information should have been brought into the Wanaque Ordinance online. It does have it in the subsequent language that is in here is all updated in the code, but that list of the properties is not.

Attorney Mondello: It doesn't apply to this Applicant, but I would simply supplement the conversation Mr. Chairman by saying that there are aspects of this ordinance that, with no disrespect to the Governing Body, I think they are some serious due process and constitutional issues. They mention no Use Variances are permitted, but they say we are never going to get involved with eminent domain. You mean to tell me since 2012 I can't do anything with my property. I am allowed to come in and at least apply for a Use Variance, you may deny it, but I think there are some very serious defects, but it has nothing to do with this Applicant.

Member Ludwig: They are just adding lighting and not changing the usage.

Member Covelli: The fact that the property has been used prior to the adoption of the ordinance, would exempt them from the ordinance?

Attorney Mondello: So there are two things going on. The ordinance that we are speaking about had to do with a redevelopment.

Member Covelli: My recollection is, and I'm not giving testimony and I'm not stating this as a fact, that there was a talk at one point that there would another Haskell Center type building south of Doty Road. The town bought that corner lot, which is now a parking lot, in anticipation of that and I believe they were looking to assist a developer in the redevelopment, which might have been the reason for this. I believe it ended on the north side of Coles Avenue, which wouldn't have affected Buske, but it would have potentially affected Big Foot.

Attorney Mondello: Go heard Mr. Battersby.

Attorney Battersby: I have no further questions for Engineer Houser.

Attorney Mondello: Any Board Members have any questions for Engineer Houser? Members of the public any questions for Engineer Houser on his testimony?

Chairman: I have a questions. Basically, the Applicant's property runs into the brook.

Engineer Houser: The brook runs on his property, correct.

Chairman: So he losses that, unless he wants to park stuff on the brook, which isn't going to work.

Engineer Houser: Right.

Chairman: He has some kind of drainage across the north end of the property, right?

Engineer Houser: Yes, there is a drain pipe coming off of Pierce directly into the street.

Member Covelli: Just out of curiosity, is that drain a County off of Ringwood Avenue, or is that a pipe off the Borough's stormwater collection system?

Chairman: There is a manhole cover right in the corner there Brook meets Pierce.

Engineer Houser: I don't know.

Member Covelli: Because that end of Ringwood Avenue, and if anyone has noticed it has happened a couple of times this summer, water backs up on Ringwood Avenue in front of there and the story goes that when the County improved Ringwood Avenue, they enlarged the pipes along Ringwood Avenue, but did not change the pipe that goes through that property or it could be a little bit further down where the doctor is, but they never changed that and that's why Ringwood Avenue backs up. Our friends at the County created that situation, I'm told.

Chairman: Ringwood Avenue is a County road so we have no authority.

Engineer Houser: I'm not sure.

Attorney Mondello: I have a question for Engineer Houser. You have already testified that, in your opinion, you believe that this particular property is particularly well situated for this apparently dated, old use that has been in existence for at least since 2007 and who knows, perhaps prior to that; that's number one. Number two, are you of the opinion that the positive factors associated with the Board, if they are so inclined to grant this Use Variance outweigh any negative factors?

Engineer Houser: Yes.

Attorney Mondello: Are you aware of any negative factors? And I'm going to ask Engineer Nash, who is also a Planner, if he is aware of any negative factors associated with this application?

Engineer Houser: No. The only change is the proposed lighting, which is minimal, and just enough to provide some security.

Member Ludwig: And they will be aimed away from the houses?

Engineer Houser: Correct.

Engineer Nash: The lighting that is proposed, the LED lights, you really have control over the direction and you can have the direction straight down.

Member Ludwig: Will they be on timers or sensors for if someone comes into the property especially for security of the materials that are there?

Chairman: The lighting actually helps the contractors that store their stuff on the lot and in the winter months when they are done at a job at 5pm and it is dark. So the lighting serves a purpose for the contractors that rent space in the yard and the light shine to the brook. So when the leaves are off the trees, the lights are only going to spread a little bit to the brook. On the other side of the brook, is the proposed Passaic County Hiking Trail, so nothing would ever be built over there that would object to the use of this property and I believe under that former railroad space is the water line that runs down to Bergen County from the reservoir.

Chairman: I visited the site today and they have, the equipment that is there is a mixture. Every contractor has different equipment. I know the tree guy has been there forever and on that property for a long time.

Engineer Nash: Is one of the purposes of this is to serve Wanaque residents that are contractors so it keeps the contractor equipment off of people's driveways.

Chairman: A lot of Wanaque, I believe, you can't park your commercial equipment in your driveway.

Engineer Nash: That is a positive benefit to the community.

Member Aumenta: It is tucked in a corner away from everything else too.

Chairman: It serves purpose; it's not a buildable lot; it has no frontage. It is an odd lot that the only use of it is storage or empty.

Attorney Mondello: It appears, at a minimum, the positive criteria, paragraph (a) "to encourage municipal action to guide the appropriate use or development of all lands in this State in a manner

which will promote the public health, safety, morals and general welfare”; and paragraph (c) “to provide adequate light.

Chairman: Actually, the lot to the east of this, which is the parking for the apartments, has a business in the parking lot, which is the same thing, only a different use.

Attorney Battersby: There are some pre-existing, non-conformities that I am going to have Engineer Houser address those.

Engineer Houser: We’ve been focused on the use aspect of this, which is the critical part here, and we’ve been talking about what it’s in the code and this 2012 ordinance that changed what you can and can’t do. Just to be clear, we are here for a Use Variance despite the 2012 ordinance.

Chairman: A lot of our ordinances are not well written and we are working on that. On, Ringwood Avenue, and I know the town has for a long time been trying to straighten it out. We have businesses, used car lots, asphalt paver, and cement company right on Ringwood Avenue. Our Business Zone are used for many different things and not how people would think of a retail business. We have a lot of gas stations that became repair shops or have disappeared. Ringwood Avenue has gone through a lot of changes over the years. A lot of our ordinances have not dealt with those changes. We get some of these applications and it’s difficult to deal with, very difficult for the Construction & Zoning Officers. They have to defend it and it is not easy.

Attorney Mondello: Mr. Hauser, any addition testimony?

Engineer Houser: Yes, I am just going to read off some of those existing variances regarding the location of the sheds and the use. Obviously, the Use Variance for commercial truck and outdoor storage is not a permitted in the B District. There is one shed per principal structure that is allowed. We don’t have a principal structure here, but we do have six (6) sheds, so that is a variance. Sheds shall not exceed 100 square feet; two (2) of the six sheds that we have on the property and, again are existing, one is 248 square feet and the other is 203 square feet. In addition, the location of these structures and we have a side yard setback. The sheds are supposed to be 10’ from the property line, we are as close as .1’ or 1/2’. That is critical here because we are trying to leave the middle of the site open for maneuvering vehicles in and out to access the use. If we were to place them 10’ away, we wouldn’t really be able to function and operate as a contractors’ storage yard. Similarly, the combined side yard setbacks are supposed to be 25’ and we are at 1/2’ combined. One other item, the curb openings are not to exceed 30’ and ours, more or less, and somewhat subjective as to how exactly you interpret our curb cut because the road kind of runs onto the property, but I would guess it would be interpreted as closer to 40’ to the inside corner of that. There is 30’ along the Brook Street portion and then another 10’ or so along Pierce Avenue, which is technically the curb cut to get to there. Those are the variances we’ve identified and included on the plan.

Attorney Battersby: None of those conditions are being increased?

Engineer Houser: Nothing is changing; there are currently existing.

Chairman Dunning: If a tenant leaves and somebody comes in and it’s a different tenant and a different type of contractor, how would that effect this?

Attorney Mondello: If the Board is so inclined to grant a Use Variance and it is along the same lines, presumably storage, there is no issue. If they want to do something very different than what we are discussing this evening, that may be a problem.

Chairman Dunning: They would have to go to the Planning Board for a New Business Application and then the Planning Board would have to deal with the property owner. Because there are a lot of truck here, they are mobile so today they are there and tomorrow they are gone, what impact does that have on this? It looks like there are five different contractors.

Attorney Battersby: I think that is the whole purpose of a storage yard. It is for ongoing businesses that need a place to store their equipment.

Member Covelli: It might be wise to bring the Applicant up

Attorney Battersby: I just have a couple of questions for Mr. Kimble. He'll be very quick.

Attorney Mondell: It is your application and that's not a problem. But before we do that, any other questions for Engineer Houser, unless he needs to be recalled? There aren't any members in the public to address him.

Attorney Mondello: Swore in Ronald Kimble, Jr., 16 Storms Avenue, Haskell, NJ.

Attorney Battersby: Mr. Kimble, are you familiar with the property that is the subject of this matter.

Mr. Kimble: Yes. I've been a lifelong resident of Haskell since 1965.

Attorney Battersby: What are your first recollections of this property? What year can you go back roughly?

Mr. Kimble: As a kid growing up there, right across from the property, 7 or 8 years old.

Attorney Battersby: What year would that have been?

Mr. Kimble: 1967, 1968.

Attorney Battersby: In 1967 and 1968, do you have a recollection of what was on this property?

Mr. Kimble: We were always going across into the property, crossing the creek on the old railroad tracks, play football and we would go through this lot numerous times. We used to climb up on the trailers, equipment and trucks that were there. We would be on this lot, playing on stuff, being bad. Living across the road, we would go up Brook Street and go over to Rainbow Lake to fish and play. We were always over there and lived directly across from there.

Attorney Mondello: So it sounds like this type of use has continued from at least 1967 up until now.

Mr. Kimble: Yes, that would be the age we started to roam around. We would cross Ringwood Avenue to the property and we were always roaming through this property.

Attorney Battersby: There were contractor's trucks there?

Mr. Kimble: There was stuff there. We climbed over everything and threw rocks and broke windows. There was always stuff there, climbing on them, looking to see if keys were in the vehicles, doors unlocked.

Attorney Mondello: Any questions for Mr. Kimble? Anything from the Board Members?

Engineer Nash: If there was security lighting, would you still have done that?

Mr. Kimble: Probably since it would make it more fun and challenging. That is the idea why we are talking about lighting the property because of not only for us to see but also for security. There is plenty of stuff to be stolen there. Stuff has been missing over the years, but with the lighting it would deter criminals.

Attorney Mondello: Any other questions for this witness? Thank you Mr. Kimble. Final witness Mr. Battersby.

Attorney Mondello swore in Applicant, Michael Sbarra, 14 Brook Street, Haskell, NJ, the principal owner of Sbarra Property Management LLC on the site, 26 Brook Street, Haskell.

Attorney Battersby: Mr. Sbarra, when did you first acquire an interest in this property?

Applicant: Through a landscaping business that I had back in December of 2012.

Attorney Battersby: It was under the name of a different entity?

Applicant: It was an entity by the name of At Your Service Landscaping.

Attorney Battersby: Since then, you have acquired title through this new entity, that's the applicant?

Applicant: Yes. There was a period of time when I sold off a piece of this property but had the ability to re-purchase it two years ago.

Attorney Battersby: When you first acquired your interest in the property back in 2012, what was the use of this lot?

Applicant: Back in 2012, there was a contractor's yard. Granted, the intensity might not have been as much, but there was absolutely a landscaper there and a whole bunch of different contractors on the yard at the time.

Attorney Battersby: Since 2012, the property remained a storage yard?

Applicant: The property has remained a storage yard, yes.

Attorney Battersby: As a result of this application, do you propose any changes to the use?

Applicant: Other than the lighting for security purposes, we are not proposing any changes to what is currently there today.

Attorney Battersby: Thank you. No further questions.

Attorney Mondello: Board Members?

Member Covelli: It's safe to say that your property is not the most attractive property in the Borough of Wanaque.

Applicant: That is safe to say, yes.

Member Covelli: However, there is a need for property that serves this purpose. There are contractors that need a place. I think as the Board said earlier, and the observations of the Board, at the end of the day, a community needs that like I guess some communities have a place where garbage trucks are stored. Nobody likes garbage trucks unless they are coming by your house to pick up your refuse then you like the garbage truck. When you look around the Borough, you are in a pretty secluded place. I think it's been established that the property has very limited use giving all of the regulatory requirements that come forth in this day and age. You are not intensifying the use of the property.

Applicant: I think we are pretty maxed out at this point. I don't think we can really intensify the use. To your point, that is the reason I am personally here in Wanaque. I had brought this with my landscaping business for a place for my landscaping business originally. That is the sole reason as to why I am not a resident of the Borough of Wanaque.

Member Covelli: You also live on the street. Does your residential property abut this property?

Applicant: It does. Where my residence is, there is another building as well on that same lot and block, but my residence is the next lot over.

Member Covelli: I remember when you came before this Board for your residence. You did a nice job on the house.

Member Aumenta: It looks fantastic.

Applicant: Thank You and I remember too.

Engineer Nash: So you don't have electric service on the site?

Applicant: There is currently no electric service on the site.

Engineer Nash: You have to bring a service in and run the lights from the meter and all that.

Applicant: Yes, we are proposing to do that.

Chairman: You live very close to the property.

Applicant: I do.

Chairman: Does the assortment of stuff on that property bother you?

Applicant: To be honest, when I moved in there, it was a contractor's yard so I kind of knew what I was getting into. It's been a contractor's yard as far as I know. When we brought, we knew what we were buying.

Chairman: Your family is not offended by it because you're the closest house to the property.

Applicant: We are not offended and I am.

Chairman: And probably the only house that really can see it.

Applicant: True.

Attorney Mondello: And to your point Mr. Chairman, I note that there aren't any objectors in the audience.

Member Ludwig: Will those light be on all night or will they have sensors on them?

Applicant: To be honest, I haven't thought that far ahead. I was intending on keeping them on at night for security. They are kind of low intensity lights and they are directed.

Member Ludwig: That's why I was wondering with a sensor, if someone goes in there boom they go on.

Applicant: A motion sensor rather than a darkness sensor I think would be probably be a little more suitable to my needs.

Member Covelli: Is that gate open all the time?

Applicant: Typically, unless one of the contractor's forgets to lock it, when the last guy is out, that gate is shut.

Member Covelli: When I went by it was open but that was during the day.

Applicant: During the day, generally speaking, that gate is open. The guys do come in and out.

Member Covelli: Where is your front gate? So as the road bends is where your cut is where the gate opening is.

Applicant: It is right at the intersection of Brook and Pierce.

Member Covelli: Is your fence at the property line? Is your fence behind the property? Do you have property between the fence and the technical right-of-way of the road?

Applicant: There is a little bit, yes. The fence is set back slightly.

Member Covelli: Any thought to put in any kind of greenery, any kind of shrubbery, any kind of improvement to soften that fence as you come down street?

Applicant: We are always open to that, absolutely.

Member Covelli: Is that your testimony?

Applicant: That is my testimony.

Member Covelli: Since you have five landscapers, if they each donated a little tree, an ornamental, or something it could look a little nicer in that corner.

Applicant: Absolutely. If you had taken notice when you were over there, in the front there is a mailbox and a little bit of walking path kind of right there, there is some mulch there and we are absolutely amendable to putting a couple of plantings there if that's the Board's pleasure.

Member Covelli: Based on how beautiful you made that house, you could make that look nice.

Member Ludwig: It's not like it is a street that a lot of people go through their either.

Applicant: We absolutely have no issue whatsoever putting a couple of plantings right there.

Member Covelli: What is interesting is when you go down Brook, you almost think it dead ends. You don't really see Pierce coming in until you almost get on top of it, and then you realize I can exit right here. When you look down Pierce, it looks like a dead end street.

Attorney Battersby: Just keep in mind, as far as plantings, that drain line from Ringwood Avenue does run through that area that's open by the gate.

Applicant: We can do some low lying shrubbery. I wouldn't necessarily want plant trees.

Member Covelli: You wouldn't want trees since that could obstruct your view for security.

Chairman: From the west side, Greenwood Avenue, you can't see that property.

Applicant: From Greenwood you cannot it. Aside from the old railroad trussell that was there, and that setback all the way from Greenwood, there is also a tree line there as well a little but on my side of the brook and all on the other side of the brook even before you get to the cleared out all road.

Chairman: Basically, other than Brook and Pierce, your property is not visible to too many people.

Applicant: I agree with that.

Member Covelli: Pretty much it's only that front cut and a little bit of the front gate is visible. That property is the least visible. You'd have to be on Brook or Pierce to see it.

Attorney Mondello: I just want the record clear with respect to what the actual use is. I am hearing contractors and associated equipment. Is it only landscaping contractors? What is the use that this Board is contemplating.

Applicant: It is an assortment of various contractors. It is intended to be an assortment of various contractors due to the fact that

Attorney Mondello: What type of contractors are there now?

Applicant: Currently there is a gentleman that does tree service, there is a landscaper, there is a gentleman that does sports field, like bleachers, and he might be doing Lakeland High School.

Attorney Mondello: So what does he store there?

Applicant: He stores his equipment to install. A lot of trucks, vans, work vans, that kind of stuff. He does store some material such as if he does some bleachers.

Attorney Mondello: What I am trying to get out Board Members, I don't know, supposedly next year somebody who does basketball courts, some type of contractor, we want to make sure that is included in this use.

Applicant: There is a handyman, Mr. Kimble. There is a tree guy.

Chairman: I was there today. There are five (5) different contractors.

Applicant: There is a gentleman that does scrap removal and for the most part, he stores his trucks there. He has a lot of vehicles that he personally purchases that he has there.

Attorney Mondello: Is the number one business, when we say contractors, they are all using your property to store vehicles.

Applicant: Vehicles and equipment.

Attorney Mondello: Equipment varies; it could be lawn mowers, and also could be parts to put in.

Applicant: There are skid steers, there is material as far as bleachers that the gentleman installs.

Member Ludwig: And the sheds and what not are yours or theirs?

Applicant: They are the tenants. The sheds were there when I purchased the property.

Attorney Battersby: The tenants have possession of their stuff physically stored there.

Applicant: The purpose of all these various sheds is to try to clean up that place so they can store their materials, store their tools and equipment, and also for their security as well. They want a place to lock it up. Granted, it is a contractor's yard, we all understand that, but we are trying to keep it as neat as possible.

Attorney Mondello: So what if a pool contractor wants to lease a certain portion, are we going to allow that pool contractor to store chlorine?

Chairman: That would be the Planning Board when they come in for a new business application.

Member Covelli: I think that, using the chlorine as an example, would be a permitted use in that zone given that it is in a flood zone. I don't know about chemicals and if we should be boiling it down that. He is storing contractor's equipment and supplies is specific enough to encompass what it is, whether the pool guy stores sheets of vinyl for pool storage or sheet metal for pools versus the guy that is installing bleachers storing aluminum and posts and the like.

Attorney Mondello: Understand.

Member Covelli: I don't know if this pre-dates you, but this reminds me when we were defining Braen Supply and what Braen could do in Wanaque Supply and what had been done in Wanaque Supply as a pre-existing, non-conforming use. I think Ron, with the help of Chris, you are going to have to write it in such a way that there is enough definition that he doesn't have an explosive/pyrotechnic manufacturer or someone that decides that in one of those containers they can start a light assembly process in there. That wouldn't be a use of a contractor's yard. But we don't want to be so restrictive where if a landscaper leaves and an exterminator comes and all of a sudden that's a big deal because it's an exterminator, but really it's a contractors. There are a number of contractors.

Chairman: And we have a large pool supplier next to Braen. Now you have a plumbing supply coming next to that. He can be storing propane tanks for his customers, which are technical explosive, or other fuels.

Member Ludwig: A lot of houses have propane tanks.

Attorney Mondello: All right, you get the gist that the Board, if they are included to grant this Use Variance, they are making a very broad with respect to contractors. They may not like to hear that and he is shaking his head, but that is what it's going to be.

Member Ludwig: I would also think that, since he lives right next to what it is, he doesn't want a dynamite company.

Member Covelli: After we grant the variance, Applicant can sell his house and move to Upper Saddle River.

Applicant: I will let it be my testimony that I have no plan anytime soon in doing that.

Chairman: The catch all is that a new tenant would have to go to the Planning Board to get approval and it falls to the Planning Board to say yes or no we don't want that person in there.

Mr. Hafner: The Planning Board is going to read the Resolution that the Board passes here and they are going to have the jurisdiction as to whether or not they believe they fit or they remand them back to this Board for a Use Variance.

Member Covelli: If one tenant leaves and another one joins, is that a new business? Mr. Sbarra is the business. Who his tenants are is a different story.

Mr. Hafner: It would be a new business. While he is the LLC, he has individual tenants. If I have a strip mall, and I've got five stores, each one of the is a tenant so when he moves out and a new business moves in, it is a new business application.

Member Covelli: That is a good analogy.

Chairman: That protects the town to some degree.

Attorney Mondello: Most towns I'm finding now, instead of sending them to the Planning Board, they vest that authority and they let those folks (zoning) decide whether or not they have to go through a Planning Board hearing just because we are swapping out one pizzeria for another pizzeria, or that sort of thing.

Chairman: Is that how it works here?

Attorney Mondello: No, they have to go to the Planning Board here. That's the way this process works here. We changed it in Fair Lawn 15 years ago because it is just cost prohibitive.

Attorney Battersby: Oakland did the same thing because of cost to prospective tenants.

Member Covelli: What is interesting is how much we don't know is happening in the Borough as we speak, and in homes.

Attorney Mondello: Any other questions for Mr. Sbarra? Hearing none, seeing none. Again, I note that there are no objectors in the audience. Any other witnesses Attorney Battersby?

Attorney Battersby: No other witnesses.

Attorney Mondello: I would open it up for public comment, but there is no public, so at this point, do you want to sum up Attorney Battersby before the Board decides what type of Motion to make on this application?

Attorney Battersby: We are asking the Board at this point to approve a Use Variance to conform that the current grandfathered use is a permitted use and to allow the requested lighting to be installed on the property.

Attorney Mondello: It is my understanding also, based on Engineer Hauser's testimony, that there is going to be some type of, whether it be a waiver or a variance, for two sheds where they are only allowed to be 100 square feet and one is 248 and the other is 203. Then with respect to locations of the shed, they are supposed to be 5' from the property and at a minimum they appear to be .1' up to .5'. With respect to the combined side yard it is 25' and you've got .5'. With respect to curb cuts, the maximum is 30' and in some instances applicant has 40'.

Engineer Nash: Side yard is not applicable because there is no principal building. It is just for the sheds.

Attorney Mondello: My understanding is that some landscaping or plantings are going to occur. I was a bit confused as to what the Board wanted to do with lighting, whether there is going to be a motion detector or whether you are leaving that up to the applicant.

Member Aumenta: Leave it up to the applicant.

Attorney Mondello: Leaving it up to the applicant.

Member Ludwig: I mentioned it because it should be his choice especially since he lives near there, does he really need it on all night. If it has sensors on it, he can tell if somebody is getting on the property.

Attorney Mondello: The Board has indicated it is your call.

Mr. Sbarra: Okay, fair enough. I did have a question though for point of clarity. With the current tenants that are on this property, I don't know if this Board has the jurisdiction to approve the tenants that are currently there.

Attorney Mondello: We have no jurisdiction to do that. The Board can approve this Use Variance so that whatever they are doing is permitted, but I'm not familiar with this process of swapping out tenancies. I don't know how it works, but I do know some towns still send everything to the Planning Board.

Mr. Sbarra: I understand that.

Member Ludwig: It's usage is storage so if one person stores something and he decides to leave, he is going to put another storage business.

Mr. Sbarra: That is my point.

Member Covelli: It is not within the purview of this Board.

Attorney Mondello: It's not and that's why many towns have delegated that authority to the Building Department. They say instead of spending this money at the Planning Board, okay you are swapping out Jack's Pizzeria for Ron's Pizzeria, approved. My understanding is that once you get your Use Variance I think you are back to the Planning Board for these five new businesses that have existed.

Mr. Sbarra: They are tenants at this point and they have to apply?

Attorney Mondello swore in **Michael Hafner, Construction Official, Borough of Wanaque**

Mr. Hafner: A few years back we had approached the Planning Board because you guys have an ordinance in place that says a new business needs to apply to the Planning Board. They have the original jurisdiction at that point and they then determine whether or not it is a permitted use for the property or a permitted use in the zone. We asked about changing that and giving the authority to the office and they didn't want to do that. Attorney Mondello is correct that you do have that in a lot of towns. You probably have Use Variances coming to the Board because I that, we as trained Zoning Officers, know the Land Use Law and we know what uses fit in what zones. Also with your particular ordinances, as you know, they crafted slightly different than other towns. The question as to whether or not you are approving these particular five businesses or are you approving the use for the particular property is a very good question. You guys get to hash that out as to whether or not you are going to approve not only the five businesses or are you just going to say we are approving the use and go to the Planning Board you five individuals. In which case that Board is going to look to see that you granted the Use Variance for this property and they are going to say you are an approved use in the zone and it is a mere formality.

Chairman: How do we deal with this is different than a storage facility that is renting space in a building? It is the same thing as this property, isn't it?

Mr. Hafner: I think it differs slightly.

Chairman: It's not a building but it is the same idea. You are renting space for storage and that would be the same as a storage facility.

Mr. Hafner: But a storage facility you would be limited; you are going to be limited to the confines of a building, where there is not limited. I mean it's limited obviously to the confines of the property line, but who is to say that the guy that has two vans moves out and then you have a crane operator that comes in that has a 25' tall trucks or whatever else. So, I think that will be addressed at the Planning Board level for each new tenant.

Attorney Battersby: The Board has to consider the fact that the tenants are not operating a business at this property. The business is Mr. Sbarra's. As the Chairman is saying you renting a bin in a cube storage, you don't have to go to the Planning Board.

Chairman: If you rent a storage facility, nobody knows what is inside of it.

Attorney Battersby: You can only fit so much onto this piece of property.

Attorney Mondello: That is interesting. It is not a new business; it just a place to store.

Attorney Battersby: The business is the renting of the facility just like any other storage facility. No one is operating a business there. The landscaper doesn't have his telephones there and he is not doing business there. He is strictly storing his items there like you would in a storage facility.

Chairman: Realistically, this property is hidden from the basic public. But when you look at Big Foot, Buske, Crete Concrete, Asphalt Paving, they are all on the main road.

Mr. Hafner: Those properties are different in the sense that they had buildings on the property.

Chairman: But they are all in the B Zone. This thing got screwed around when they put it into the Redevelopment Plan.

Mr. Hafner: I'm not going to argue that and that's all for you guys to hash out.

Member Covelli: This is very interesting because you gave the example of the strip mall and that's a viable analogy. Jack's analogy is also very viable. If this was a garage, instead of just being a vacant lot, it was garage and let's say this garage is a special garage where you can move the interior walls around. One guy had a bunch of painting vans in there and he moves out and the next guy brings in cranes, but within the building you could move the walls and he could back it in. What would be the difference? Why is it a new business? He is still doing the same thing he was doing before. I don't know the answer to this question.

Applicant: I will say this right, Sbarra Property Management, with this particular location, is in the business of renting space to others. That is the business of Sbarra Property Management.

Attorney Mondello: There's your authority; it is not a new business.

Mr. Hafner: To that example, you, the Board, needs to know that there will be no further applications as a check and balance on this property. As you make your deliberations and as you make your decision, some of you may decide it is okay because another authority will be looking at this going forward, but that may not be the case. There may not be any other authority that looks at this going forward so, as you make your decisions, you are going to make it based on that whatever opinion you come up with.

Attorney Mondello: We have no jurisdiction. What is in place right now is that, even if they are not new businesses, he is in the storage business. It appears they may have to go to the Planning Board.

Member Ludwig: How many years has it been storage?

Applicant: Since 1967 per Mr. Kimble.

Mr Kimble: It might have been even earlier than that. That is when we started running over there at that age.

Member Covelli: I think Mr. Hafner stated this properly that we have to craft this that our jurisdiction has to do with Mr. Sbarra, or Sbarra Property Management LLC's operation as a storage entity on this property. I don't know if it is the Planning Board Attorney decision or if it is the Borough Attorney that decides if that is a new business, if Pete's Painting replaces John's Painting.

Attorney Battersby: I think that would be the Zoning Officer who enforces that. He'd have to decide if it is a new business or not.

Attorney Mondello: If it is a new name, the ordinance probably considers it to be a new business, end of story. It is off to the Planning Board and we have no further jurisdiction.

Member Covelli: Can we make a Motion now on this application?

Attorney Mondello: You certainly can. I tried to summarize what we are looking for.

Member Covelli makes a Motion that we provide a Use Variance as testified and requested by Sbarra Property Management LLC located at 26 Brook Street, Block 436/Lot 4, Haskell, NJ, that the variances requested with respect to the sheds and containers and as provided in the testimony be granted; that the curb cut be allowed in its existing form, which can be up to 40'; that the lighting that triggered this whole application be left to the Applicant to decide if it will be on all night, dusk to dawn, or if it is going to a motion sensor or if it is going to be a combination thereof, or anything he chooses in accordance with our lighting codes for properties, and that he can't exceed any of the lighting codes, so he cannot decide to put any operating lights there, when he has testified that these are security lights; and that the Applicant has testified that he will do some type of curb appeal improvement with shrubbery and like, of his choosing, and that it doesn't interfere with either the drainage, site distance or anything else with respect to that. Have I left anything out?

Attorney Mondello: You have not sir.

Member Covelli: Attorney Battersby, did I leave anything out?

Attorney Battersby: Just to be clear that, in addition to the sheds, he can continue the outdoor storage.

Attorney Mondello: That is the D-1 Use Variance.

Member Covelli: That is the variance sought by the Applicant that I said that we would be granting through my Motion.

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

Motion Carries

MOTION TO ADJOURN AT 8:45PM: Motion made by Member Lynch, seconded by Member Aumenta and carried by a voice vote.

Jennifer A. Fiorito
Board of Adjustment Secretary