

STATE OF NEW YORK  
TOWN OF GREENBURGH

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Public Hearings and Decisions Before  
The Zoning Board of Appeals of  
Greenburgh, New York, in Connection with  
Various Applications in Relation to the  
Town Ordinance of the Town of Greenburgh.  
X-----X

DECEMBER 12, 2019  
8:00 P.M.

Greenburgh Town Hall  
177 Hillside Avenue  
Greenburgh, New York

BOARD MEMBERS:

- Laurence J. Doyle (RETIRED)
- Eve Bunting-Smith (Acting Chairwoman)
- Rohan Harrison
- Louis Crichlow (NOT PRESENT)
- William Losapio (NOT PRESENT)
- Daniel Martin
- Kristi Knecht
- William Bland (NOT PRESENT)
- Barbara Brennan (NOT PRESENT)

STAFF MEMBERS:

- Carole Walker,  
Secretary
  
- Anthony Zacarolli  
Deputy Town Building Inspector
  
- Edward Lieberman, Esq.  
Deputy Town Attorney

Debra L. Rinaldi  
Official Court Reporter

12-12-2019 - Case No. 19-21

(Whereupon, at 8:04 the meeting of the Zoning Board of Appeals of the Town of Greenburgh was called to order.)

MS. BUNTING-SMITH: Come on, some holiday cheer. How is everyone tonight? And cold right. Okay. We're going to try to warm things up for you a bit. The meeting of the Zoning Board of Appeals for the Town of Greenburgh will now come to order.

We have eight cases that were scheduled for tonight's agenda. However, just as a little preview, Case No. 19-21 will likely be adjourned simply because we got a wealth of material from the applicant just this week.

Please note that the Zoning Board will have our regular meeting on Thursday January 16th, 2020. Well, never thought I'd make it there. But as usual if we cannot complete the hearing this evening it will be adjourned to another meeting hopefully to be completed at that time. Also as is usual to save time, the reading of the property location and the relief sought for each case is inserted in the record and also it appears in the agenda.

After the hearing of tonight's cases we adjourn to the conference room behind us to discuss the cases and to deliberate. And everyone is permitted at that time to listen but not participate, and after our deliberations we come back into this room to announce the Board's decision for the formal record and for it to be broadcast to the community.

If you're going speak tonight you must come up to the microphone, please. Clearly state your name and address or your professional affiliation. The reason we asked that is because we have the public watching us on television, as well as listening to this, and also people who get

12-12-2019 - Case No. 19-21

to replay it later. When you're talking out from in the room someplace it doesn't get picked up so people lose what's being said.

If you're not a named applicant please come up and spell your name for the record. We've heard testimony on some of the cases at prior meetings. Any prior testimony is already in the record and should not be repeated.

So, with that, the first case we have on this evening is Case No. 19-21, Michael Teverbaugh. And as I said, we've just received a lot of materials that we have not had time to digest, but we will listen. For a while.

ZBA Case No. 19-21 - Michael Teverbaugh, for property located at Van Cott Avenue (P.O. White Plains, NY). Applicant is applying for variances from Section 285-39(C)(9)(b) of the Zoning Ordinance to decrease required street frontage from 25 ft. (Required) to 0 ft. (Proposed) on each of the three (3) lots in connection with a proposed three (3) lot subdivision. The property is located in an R-10 One-Family Residence District and is designated on the Town Tax Map as Parcel IDs: 7.520-316-11,12,13,14,& 15.

MS. BUNTING-SMITH: Okay, we're ready.

MR. SENOR: Good evening. Elliot Senor, Engineer-Surveyor for the project. We also have Daniel Finger, who is the attorney for the project here as well.

I just wanted to go over, the only correspondence that we got was one letter from one of the neighbors. Do you want me to recap what's going on or just deal with the correspondence? Or how would you like to --

MS. BUNTING-SMITH: Personally I

12-12-2019 - Case No. 19-21

would probably prefer to keep it short and sweet. We do have a lot of cases on tonight. And also because of the holidays there are probably some people who are not here this evening and who would be here after the holidays.

But, in any event, it might be better for us to listen to your presentation after we've reviewed what you've presented so we can correlate it.

MR. SENOR: Well, I would indulge that if there are people here who had comments that we should hear them.

MS. BUNTING-SMITH: We can find out. Are any individuals in the audience wishing to comment on this case? Yes, two. Okay, three. You're probably only -- I meant people not involved in the -- not involved. This is Van Cott Avenue. I see two hands. Okay, so we'll hear you.

MR. SENOR: All right. Well, as you know, we have a paper street on Van Cott Avenue that we're trying to develop into a -- we have been to the Planning Board. We showed them some alternatives. This was the best alternative in our minds as well as -- I think -- I don't want to speak for them, but as well as the Planning Board.

There was an alternative that came down from this piece of property here (indicating). It's very steep. It would be excess of 14 percent, serpentine. We would have problems with fire access and things like that. And it would only give access to two lots.

In any event, we showed an alternative to come up to develop part of Van Cott Avenue and a 20 foot wide pavement. The 20 foot wide pavement was picked because that is what the State accepts as Fire Department access. Those are the alternative fire access for dead-end roads.

12-12-2019 - Case No. 19-21

So we had chosen to use this one here (indicating). We had gotten a letter from the Fire Department. The Fire Department -- in reference to our 20 foot wide roadway, it says in the beginning that they know that the road appears to be 20 feet wide, which it is, and that they asked for an area at a hydrant that's halfway up the road to be widened 26 feet.

That is as per the State Code requirement in an area of a hydrant. You'll widen it to 26 feet, that does show on our plans.

So we did get a memo from a neighbor I guess at the corner of Windham and Van Cott, talking about, um, made several points about access. So one of the things we're not asking necessarily for -- we're asking for a zero frontage on a town road, but we still have frontage on our private road, in excess of about a hundred feet.

She also talked about the fire access which we just went over. Even the Town standard 40 foot diameter cul-de-sac doesn't meet the State Fire Code standards. The Fire Code access requires a 96 foot pavement for turn-around.

So I think those are the basic two items, technical items that the neighbor had raised about the fire access, the emergency services access.

We do have a letter from the Traffic Department that their comment was no parking on one side of the street, and we have agreed to that. We have signs posted on our site plan that shows no parking on one side of the street. So that one of her comments was, "well, if everybody is parking and you can't get through," that type of thing. So we have dealt with that as well.

12-12-2019 - Case No. 19-21

That's pretty much it, unless you have some questions.

MS. BUNTING-SMITH: Let's see what the neighbors who are here want to comment. Whoever is closest to the front come up, please.

MR. COOK: Hello. Jason Cook, 35 Windham Street. I believe what you referenced was the letter you received from my wife about the fire access and the concern with the width of the actual road going down to the house. Some of the concerns of, you know, like snow, the blockage of the cars and things of that nature. So I addressed everything that I was concerned with.

He also mentioned that even the cul-de-sac now isn't up to a certain code, and that's exactly just what we were doing. While I'm not actually opposed to the development, I just want to preserve the integrity of the community and make sure it follows the Zoning Ordinances.

And you know we called the Fire Chief Howard Reiss from the Fairview Fire Department, who said he would like to see the road expanded to at least 25 feet; you know, that would be great if that was possible.

So, as far as like what codes are, you know, what's deemed safe and what's up to Code and what's not up to Code I don't know; but, you know, I would like to see everything be done up to Code.

MS. BUNTING-SMITH: Well, if everything was up to Code they probably wouldn't be here.

MR. COOK: You know, we do have the safety concerns. And, you know, that road, already everybody -- nobody goes and turns around on that road. All delivery trucks

12-12-2019 - Case No. 19-21

back down, if the garbage truck comes down and then it backs up. So there is, you know, there is not a lot of space as there is, so it's just, I just want to make sure everything is safe and good to go.

And that's pretty much it.

MS. BUNTING-SMITH: Okay. Thank you. Come up, sir.

MR. UGOJI: Jason Ugoji. Right across from the street from --

MS. BUNTING-SMITH: Do you want to spell your last name?

MR. UGOJI: U-G-O-J-I. And just to add to the point that he makes, three houses that front that street there and barely anywhere to park on that street without blocking somebody's driveway. If you're going to restrict parking to one side of the street you are creating a major, major discomfort for the neighbors. There is no place to park. And to now block one side of the street from being a side you can park on, what do you do? It's a very -- somebody needs to actually come there and see that road. It is not an easy road to navigate.

MS. KNECHT: I think he meant the new road.

MR. UGOJI: Excuse me?

MS. KNECHT: I think he meant the new road.

MR. UGOJI: I'm talking about Windham Street.

MS. KNECHT: I don't think they are restricting parking on Windham.

MR. UGOJI: Oh, I'm sorry. Okay. So that was my concern, that you'd have maybe six to nine cars driving down the --

12-12-2019 - Case No. 19-21

not in. How do you get them there? Okay.  
Thank you.

MS. BUNTING-SMITH: Anyone else?

(No response.)

MS. BUNTING-SMITH: Does the applicant feel they need to add anything this evening? I mean, the remarks were fairly --

MR. SENOR: Yes. (Elliot Senor.) I did have one quick comment about what the neighbor just brought up. We do have an area. So right now he said -- he talked about backing down a street because right now the street ends here (indicating). So they have got to back down Windham all the way down to there (indicating). When this street goes there is -- there is a hammerhead here (indicating), so they could drive down.

People drive down and back up and go out. But we also have another turning area here (indicating), so that they do come all the way down the street. There is a turning hammerhead here, and that is the one that is acceptable to the Fire Department for the fire apparatus. So that would also be available for people not having to back down the street or being able to turn around.

MR. TUREAUD: Good evening. My name is Andrew Tureaud. I'm an attorney at the firm of Keane and Beane in White Plains. We represent the Scaparottas in connection with this application. I do have some materials that I'd like to submit to the Board at this time to consider.

MS. BUNTING-SMITH: More?

MR. TUREAUD: Yes. Thank you. So our firm currently represents the Scaparottas in an adverse possession action



12-12-2019 - Case No. 19-21

that is pending in Westchester County Supreme Court. The copy of the Summons and Complaint and the Answer and the Reply are appended to the applicant's engineer's papers that he submitted on December 10th.

Van Cott Avenue was never dedicated to the Town. It's not a town road. They don't own it. They don't own any portion of it. It was never dedicated and there was never any affirmative act on the Town to establish dedication and never any use of the road by the Town. So it's not a town road it was never dedicated to the Town. It is still owned by the developer, the Teachers Land and Improvement Company. We have commenced an action against them, and against the Teverbaughs, to establish ownership of a significant portion of the paper street by adverse possession.

Now, the deed issued to the Teverbaughs, it's our position that they don't grant rights to the paper street, because the Town doesn't own any portion of the paper street and thus cannot grant rights to what they do not own.

Now, both the Scaparottas and the prior owner of their property of 1800 Saw Mill River Road, they adversely possessed a significant portion of Van Cott Avenue for more than 10 years, and certainly for sufficient amount of time to establish a case for adverse possession.

Now, the encroachments on Van Cott Avenue by the Scaparottas are established first and foremost by the engineer survey of the property and the survey reading he did for them in 2009. So Mr. Senor represented my client when they purchased that property in October 2009. And I believe the last page of this submission to this Board from the December 10th date and submission is a copy of the survey that he did when they purchased the property.

12-12-2019 - Case No. 19-21

However, what was not appended to that survey was a survey reading, and survey reading was actually attached to what I gave you as page three.

And on page three of that attachment, you can see that Mr. Senor gives a survey reading which actually confirms the encroachments the Scaparottas have on the paper street; encroachments on to Van Cott Avenue. Stone curb, seven feet, more or less. Steps up to seven feet. Railroad tie wall up to four feet. Retaining wall, an undetermined distance.

So by virtue of their own survey they have established that encroachment existed at the time of 2009 and prior thereto. So the Scaparottas believe they have a very good case for adverse possession, and they are in the midst of proving that in Westchester County Supreme Court.

Now, I'm not sure, but I believe the Teverbaughs' engineer claimed that the Fire Department was okay with the 20 foot road. But as you heard from Mr. Cook when he got up here, they said they'd like a 25 foot road. That is just something further that I wanted to add.

Really what we're talking about here is a shared driveway. It's not a private road. We're just talking about a shared driveway; although the Town has objected to shared driveways in the past. At this point I'd like to ask the engineer for the Scaparottas to come up and comment on some of the other concerns we have. Thank you.

On page one. On page one of the submission, it's a memo from the Town of Greenburgh to the Town Engineer, basically asking for proof of ownership of Van Cott Avenue by the Teverbaughs.

Now, I did address this previously.

12-12-2019 - Case No. 19-21

Their deeds actually read that they own to the center line of any street or roadway, which is common language in any deed. The Town doesn't own that property so it can't give rights to it. That's my point. Thank you.

Yes. If you look on the back of our submission, too, we have pictures of the encroachments as they exist at this point in time. So we're looking at the Scaparottas' property in all four pictures.

MS. BUNTING-SMITH: Do you want to put it up on the screen, please?

MR. HARRISON: Show us where the encroachment.

MR. TUREAUD: So in this picture, everything to the left of that stake is the paper street. That stake outlines the paper street, so we're looking at the encroachments on to that paper street in these pictures. If you turn to the next picture, again, everything to the left of that stake is paper street. And we can see the Scaparottas have significant improvements on that paper street as well as did their predecessors in title.

MR. HARRISON: Stop a minute. When you say to the left, coming back this way (indicating) or where the swings are?

MR. TUREAUD: Towards the swings and the play set.

All right, okay. You can see that in at pictures in fact the third picture if you take a look it shows you how close the paper street actually goes to the Scaparottas' house. It's within 10 feet of their house. That stake outlines the borderline of that paper street. So clearly they have adversely possessed a significant portion of it for a significant period of time, sufficient to establish a case by adverse possession given that the Town

12-12-2019 - Case No. 19-21

doesn't own the paper street.

MS. KNECHT: Do you know how many feet approximately they are encroaching?

MR. TUREAUD: It actually says so in the Senor Survey reading, on page three of my submission. At that time stone curb up to seven feet; steps up to seven feet; railroad tie wall up to four feet; retaining wall, an undetermined distance.

So clearly, you know, these encroachments have been there since well before my client owned the property, and actually can establish that they go back to 1996. Thank you.

MR. MCGARVEY: Good evening. I'm Mike McGarvey, professional engineer. Just a couple of quick notes from the last meeting.

In speaking with the applicant's engineer at the last meeting -- or before the last meeting, actually -- we were discussing a Perc Test for the Cultec Retention Storm water Retention for the subdivision. And I asked if you guys ever did a perc test? Ever did a deep hole test to determine the porosity of the soil, to see how good the soil is, to absorb the storm water? He says he doesn't have to. He said that you just use whatever it says on the soils map.

Well, you can't do that. The soils map is a general piece of information. That's it. It is not anything particular to any particular site.

You have to do a deep hole pit. You have to determine how close you are to the rock and how close you are to ground water. You also have to determine through the perc test how fast the existing soil can absorb the water from a storm. If it can't absorb like a hundred year storm then

12-12-2019 - Case No. 19-21

the Scaparottas are going to get flooded out. No doubt.

In fact, not only that they have their Cultec infiltrators right at the property line, right at property line. It's supposed to be 10 feet off the property line. That's standard engineer practice; it has to be 10 feet off.

Another issue I personally have -- or everyone should have -- is that the Fire Department access is on private property. So if I decide, you know, that I'm going to park my car and I'm going to forget and I'm going to go away for the weekend and there is going to be a fire, the fire trucks are going to come down here blazing and sirens blaring and have no place to turn around. Then he's got to back up. The road on Van Cott is about 400 something feet long he's got to back up make that turn go up that hill again. It's ridiculous. It's too long. It's too much.

You know, again, I mentioned this last time, that lot with the turnaround, the fire access turn around that should have been bought -- I agree it should have been bought, but it should have been bought for a real turnaround. Anybody comes down there -- and a lot of people come down there and hike -- sure, the neighbors can tell you how many people come down, get lost, have to turn around. That should have been a regular turnaround.

Now, the engineer there was just talking about there is an acceptable turnaround. It's the minimum standard with what the State is referring to. That's the minimum. We have standards here in Greenburgh; the size of cul-de-sacs for turnarounds. They should be met. They absolutely should be met. They are standards for a reason, and just because, you know, they don't have the property or they buy property instead of making it more accessible with the property, they make

12-12-2019 - Case No. 19-21

another lot out of it. I don't see that as being very neighborly.

At the end of day, seriously, all you have is a long driveway. This is all this is. It's a very busy driveway. 20 foot wide is nothing. I'm sure some of your homes, your driveways are probably more than 20 foot wide.

I can't believe that the Fire Department said that 20 foot is accessible, is okay. There is no way. Absolutely no way. I cannot believe they did not give anybody anything in writing to say that. I don't know what the date of the letter is that the engineer was referring to when he was just up here.

MR. MARTIN: July 10th.

MR. MCGARVEY: July 10th?

MR. MARTIN: Yes.

MR. MCGARVEY: The plans have been revised since July 10th. According to the Fire Department they have not seen the updated plans. We spoke to the Fire Department; they have not seen any updated plans. The last time they saw the plan it was a 25 or 26 foot wide road. That was it. So someone is misleading somebody here.

MR. MARTIN: At the time of writing this letter, July 10th, the only concern the Fire Department has re such and such would be the placement of the pipe. The hydrant. In other words, the location of the hydrant. Had the hydrant been on the far corner would mean they would have to have a hose cutting across the street. That's the only thing they mention on that letter. I don't know subsequent --

MR. MCGARVEY: What was the year of that letter?

12-12-2019 - Case No. 19-21

MR. MARTIN: 2017.

MR. MCGARVEY: That was the original plans, sir.

MR. MARTIN: Thank you for pointing that out.

MR. MCGARVEY: That is when the road was 25 or 26 foot wide. I thank you for your time. Okay. Thank you very much.

MR. SENOR: Elliot Senor. Just a couple of quick things. This was the letter from the Fire Department dated August 7th, 2018. Zen Herter, who is the planner, "the parking in the road as the road appears to be 20 feet wide, we would have a difficult time with our apparatus if parking would be allowed."

I can read it up there. I mean, "the closest hydrant" -- it talks about the closest hydrant, and then it says "Number three. If there is a hydrant to be added the road needs to be expanded to 26 feet in the area of the hydrant per the State Code."

So clearly this is based on a 20 foot road. It's August 7th of '18, not '17, and it's signed by "Thanks, Chief Reiss," R-E-I-S-S.

So that is the Fire Department seeing the current plan and talking about the expansion of the road at 26 feet, at the hydrant, which we did.

A couple of other items that I wanted to just clarify. We didn't say that Perc Rates or Perc Tests or Town Deep Test Pits weren't proper. The Town Code requires us to do that. What we had said at this time for the planning, it's required at the time of the Building Permit.

All right. And also the Village Code for the turnaround, the cul-de-sac of

12-12-2019 - Case No. 19-21

80-foot pavement doesn't meet the minimum requirement per the State Code for fire apparatus access.

Also, as far as the survey is concerned, if you notice in his pictures and in his write-up he talks about the survey reading from '09 saying that the stone curb is seven feet more or less into Van Cott.

The steps are seven feet. The railroad tie wall is four feet. All of those things in his pictures are more than 40 feet or more than 30 feet into Van Cott. So clearly those items weren't there at the survey reading in 2009.

So I think it's disingenuous that he refers to a survey that we did -- which is correct; it does show some encroachments here (indicating.) Some encroachments here (indicating), right, and a little railroad tie there that's encroaching, that's not anywhere near the amount of encroachment that she's showing in the picture of the fenced in play area and the jungle gym and all that other walls and walkways. So these are all newly added. They are not mentioned in the survey reading from 2009. And they are not near the -- certainly not near the effect of -- these encroachments aren't in our area of our proposed common driveway private road.

MR. FINGER: All right. Good evening. Daniel Finger. I'm the attorney for the applicants. I know that you want to get through this application and I'm going to try and keep my comments very brief. And I'll try to reserve most of what I say for after you've had a chance to review all the materials you received.

I did want to address a couple of points. Mainly that, yes, there is an adverse possession issue, that the neighbors have brought a case that's being litigated in court. That's not really relevant for



12-12-2019 - Case No. 19-21

what you're deciding. You're deciding what the best plan is, the best site plan for this property. There has been a couple that were proposed to the Planning Board. This is the one that they endorsed; that they felt was the best plan; really all that you need to look at in terms of the variance is the same thing.

What's the best way to accomplish what needs to be accomplished for the community and based on various possible plans? This is it. It not only works for my clients but it absolutely improves the area, it improves the area for the people that are on -- it's better than for the people that are on Woodland. And it's certainly better for the people that are on Windham. You know, given what they said about the access for garbage trucks, fire trucks, emergency vehicles, this would be a lot better for those people.

And again I will be happy at the next meeting to address any questions you might have on the litigation at that time. Thank you.

MS. BUNTING-SMITH: Do you have any questions?

MR. HARRISON: No.

MS. BUNTING-SMITH: Okay. I see hands in the back. Come up, sir.

MR. COOK: (Jason Cook approached the Board again.) One other thing I wanted. I forgot to address the fact that it is going to be a private road now, it will have to be maintained and salted by the property owner. Therefore, trucks come down for deliveries, you know, it's not the City's responsibility to take care of that.

So I just hope that it will be properly maintained. And, again, like, if snow is on it it's plowed, ready for

12-12-2019 - Case No. 19-21

emergency vehicles to take charge and be ready to get in there at all times. So I just wanted to address that issue.

MS. BUNTING-SMITH: Just add your name again.

MR. COOK: Jason Cook.

MS. BUNTING-SMITH: Okay.

MR. COOK: Thank you.

MS. BUNTING-SMITH: Come up.

MRS. SCAPAROTTA: Good evening. Name is Anna Scaparotta. I'm a resident at 1800 Saw Mill River Road. I'm also here to add a couple of comments to my last speech. But the one thing I have, the prior owner of my home took these pictures, just to show you how long the encroachments have existed. They do look different, but I still have encroachments back in 1997.

That's part of where the playground sits now. But you can see it wasn't an exact wall but it stayed along the same lines. It's still just feet away from my home.

The second picture, 2001, still the backyard showing the encroachments. Pretty much as things are now. Just, it looks prettier, but the encroachments were there.

The other thing I'd like to say is, when an applicant submits an application to a town, we'd like to know that they have submitted proof of ownership. It's just what is accurate and what needs to support the application. Okay.

In this case the Engineering Department issued a memo, okay, asking for ownership proof, of which Mr. Senor sent a letter dated September 2017. It's the second page in the handout you received.

12-12-2019 - Case No. 19-21

Okay? And it is in paragraph where he addresses the Engineering Department. And he said "Owner has submitted the requested information regarding the proof of ownership and title search documentation associated with Van Cott."

My question is, at that same time we were approached by Mr. Teverbaughs and told that the road was owned by the Town of Greenburgh and that road was going to end just feet from our back door, at the same time that they were showing proof of ownership at the Town.

My husband and I had to legally research this to determine the true proof of ownership, which was not the Teverbaughs. It still remains in the Land Trust or the Land Improvement Co. That is who the true owners are. So we need to set an example and let others know that, if they do not own land you can not build unless you have ownership or approval of some sort; otherwise there would not be an organized application.

And I feel this this entire process has just been one thing after the next of misrepresentations. And we are asking for someone to see through all of this and only approve for what you can build on, what you own. You don't own it. We have done the legal research and that's why we are in court now; and we are asking the Town to look through this and see what is fair here.

I have other pictures, but I think what we've submitted pretty much shows the current impact if something like this were approved. We went through our series of issues that, you know, would potentially happen to us. The fact that it's right outside our back door and that there's just been a whole slew of just misrepresentations as to ownership.

The sub-development should be sent

12-12-2019 - Case No. 19-21

back to the Planning Board to look at plans to build within your parameters, what you own.

Thank you very for your time. I appreciate every minute. And we'll see, you know, hopefully you'll consider all that's been said this evening. Thank you.

MS. BUNTING-SMITH: Anyone else?  
(No response.)

MS. BUNTING-SMITH: All right.  
Thank you.

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12-12-2019 - Case No. 19-28

MS. BUNTING-SMITH: Moving on to the next case on tonight's agenda, Case No. 19-28, Ferncliff Cemetery.

ZBA Case No. 19-28 - Ferncliff Cemetery, for property located at 280 Secor Road (P.O. Hartsdale, NY). Applicant is applying for area variances from Section 285-36(B)(1) of the Zoning Ordinance to increase the maximum building height from 28 ft. (Permitted), 43.9 ft. (Existing) to 43.9 ft. (Proposed); from Section 285-36(B)(3) to increase the maximum building coverage from 5 % (permitted), 6.93 % (existing) to 7.03 % (proposed); from 285-36(B)(6) to increase the maximum building footprint from 5,000 sq. Ft. (Permitted), 91,587 sq. Ft. (Existing) to 94, 512 sq. Ft. (Proposed); from Section 285-36(B)(6) to increase the maximum building length from 100 ft. (Permitted), 347.2 ft. (Existing) to 347.2 ft. (Proposed) and to increase the maximum building depth from 100 ft. (Permitted), 295.8 ft. (Existing) to 295.8 ft. (Proposed); and from Section 245-42(C)(1) to enlarge a nonconforming structure so as to increase such nonconformance, in order to build an extension to the existing second floor of a mausoleum. The property is located in an R-30 One-Family Residence District and is designated on the Town Tax Map as Parcel ID: 8.171-123-1

MS. BUNTING-SMITH: Is there anyone here that wishes to add anything further to this matter? And I do mean further.

MR. CARIS: Good evening. I just want to wait a second or so to see if this comes up on the screen here. I have a Power Point presentation for you.

MS. BUNTING-SMITH: Is this going to show us something new?

MR. CARIS: Yes.

MS. BUNTING-SMITH: Something new

12-12-2019 - Case No. 19-28

that's not on your plans?

MR. CARIS: This is the first -- well, this is the first time we're appearing before you. Even though it's not appearing under new business on the agenda, we were adjourned from the November meeting.

MS. BUNTING-SMITH: Okay.

MR. HARRISON: Okay.

MS. BUNTING-SMITH: We do have your plans.

MR. CARIS: You do?

MS. WALKER: Yes, you have everything.

MR. CARIS: All right. Good evening, Chairwoman and Members of the Board.

My name is James Caris, Planner and Project Manager with JMC. I'm here this evening on behalf of Ferncliff Cemetery Association for six area variances in association with an amended site plan approval for an expansion to an existing mausoleum known as the Shrine of Memories.

Before we get into the application, I want to give a brief overview of the project history before the Town.

In July we had a work session with the Town Board, followed by September 25th declaration by the Town Board as Lead Agency. They then referred that to the Planning Board. In October we appeared before the Planning Board at a work session, and were back to that on November 6th where they unanimously adopted a positive recommendation on the amended site plan application.

Then on November 13th we appeared

12-12-2019 - Case No. 19-28

before the Town Board for a public hearing on the amended site plan, and on the 21st of November we were adjourned from the Zoning Board of Appeals to December. And then on November 25th the Town Board also adopted a Negative Declaration under SEQR for the amended site plan. And that brings us to tonight for the first appearance before your people are ready.

So this slide is going to show an overview of the whole 63.4 acre north parcel of Ferncliff Cemetery. It's located along Secor Road, and comprises numerous ground burials and most notably three existing mausoleum buildings on the western portion of the property we have the existing Ferncliff mausoleum, which is the original structure constructed on the site, in the center of the property mausoleum. More towards the eastern side we have the existing roads with mausoleum which was constructed in the 1990's and then finally on eastern portion of the property we have the existing Shrine of Memories building which is the subject of the application before you this evening.

We are seeking six area variances in conjunction with in application.

This slide shows an artist's rendering or architectural rendering of the existing Shrine of Memories building, looking head on. You can see that it's pretty monolithic in nature; pretty clean masonry building, but you can begin to see the existing second story rising to the rear of the building in front of the first story in the front.

Next we see an aerial photograph looking top down at the existing Shrine of Memories building. I want to direct your attention to the lower right-hand corner of this slide which shows a bird's eye isometric view of this building. And what I want to point out here is that the building

12-12-2019 - Case No. 19-28

is comprised of what's known as seven different units. Units one, two and three are in front of the building and they are currently one-story in height. Units four, five, six and seven are the rear of the building and those are currently two-story units.

The footprint of this building is 91,000 square feet approximately and this mausoleum structure in addition to the existing originally constructed mausoleum were all rendered non-conforming under the 1994 Zoning Code amendments specific to Cemetery properties.

The proposal before you this evening is an expansion of the mausoleum by adding a second story over units one, two and three in front of the building. This would complete the building envelope. It would match the existing height of the second story and the rear of the building and it would not exceed any of the other dimensions of the structure, in bulk, or the maximum dimensions. And it would be approximately 40,000 square feet of new mausoleum space.

This is a architectural plan view enlargement of units one, two and three in the front.

What I want to point out here is units -- excuse me. The blue shaded areas on either side of the facility represent the minor increase in building footprint that's required to accommodate code required egress stairwells to provide egress from the new second story. Additionally, the blue area along the front of the building is structural support that's needed to support the second story.

These additional building footprints fall within the maximum length and width of the building and are just under 3,000 square feet in size.



12-12-2019 - Case No. 19-28

This is an architectural rendering of what the proposed shine would look like after construction. We have an opportunity here for a grand two-story glass entrance, lots of the architectural interest and intrigue some nice wrought iron faux windows along the front. And another thing I want to point out here is, you see two large existing oak trees on either side of the building. Those are 42 inch oak trees. They are very old. And in consultation with an arborist and landscape architect the applicant is working very hard to preserve those during construction so that they remain in the future. We think that's an important component of this plan.

This slide just points out that there is a 100-foot setback around the entire property for the front, side and rear. This is common to all cemetery properties.

This facility meets all of the building setbacks under existing conditions and will continue to do so under proposed conditions; does not exaggerate any of the setbacks, does not increase them at all.

There is a very minimal site disturbance associated with them. There is no Steep Slopes or other environmental constraints that we're up against here. It's a pretty straightforward building expansion when you look at it on the surface.

We are requesting six area variances which I want to go through now. Variance number one is for the maximum permitted building height, Cemetery Code permits 28 feet, the existing non-conforming structure id 43.9 feet in height. We're approaching to match that height, not to exceed the existing height with the new second story over Units 1, 2 and 3. But that requires relief of 15.9 feet.

12-12-2019 - Case No. 19-28

Variance number two, is for the maximum building coverage. There are three mausoleum structures on this property, five percent building coverage permitted. Under existing conditions 6.93 percent represents the building coverage. This minimal under 3,000 square feet foot increase in building footprint would represent a 0.1 percent increase in the permitted building coverage, bringing the total to 7.03 percent for the 63 acre north parcel.

Variance number three is for the maximum permitted building footprint. The Cemetery Code permits a 5,000 square foot building to be constructed. 5,000 square feet is represented approximately, but that blue box in the center of the 91,000 square foot facility, the 3,000 square foot building footprint increase is minimal when compared to the scale of this building and the other buildings on this property.

Variances number 4 and 5 are essentially the same. They are for building length and for building depth. Building length is exceeded 100 feet is permitted and 347.2 feet is existing. Similarly building depth is permitted at 100 feet, and 295.8 feet is existing, and we were seeking relief for the difference in those dimensions.

I want to point out that the proposed egress there stairs in the front structural support wall doesn't exceed any of these maximum dimensions in the overall building envelope.

When we think about -- excuse me. Variance number 6 is not associated with any bulk criteria or numbers. They're simply enlarging a nonconforming structure so there's a variance. So those are the six variances that are requested as part of this action.

So when we think of the impact of

12-12-2019 - Case No. 19-28

expansion like this of this facility, it doesn't represent a change in use. It doesn't represent an intensification in the use. What it really does is it prolongs what's occurring there today. As you know, supplement ground burial space and mausoleum space is finite; once it's used and occupied, it's gone.

So there is a finite number of those available in the region. There is a demand for it and Ferncliff is hoping to meet that demand with this facility.

The other impact, when you think of this building, because there is no change of use and because the building is already two stories in the rear is simply visual in nature. The impacts are visual. We've consulted the landscape architect, registered arborist. There are things that need to be removed around the foundations of the facility to accommodate the construction. 19 trees probably will have to come out. Some of those will likely be relocated; two at least, more if possible.

The landscape architectural has provided a plan that replants flower and trees and shrubs around the foundation. We preserved those two 42 inch oak trees as well. But most notably, the applicant is committed to providing 6 large tulip trees which represents significant plantings largely in the realm of 20 to 30 feet at the time of planting, which is abnormal; but they are committing to that. And those are proposed to immediately screen the new facility on the eastern and western side of the building, upon completion of construction.

And this represents where those plantings would go on the east and west (indicating.)

Next what I want to touch upon is, during our time with the Planning Board, one

12-12-2019 - Case No. 19-28

of the questions they asked us was, so if this gets approved how are you going to build it? How does this get constructed?

So we worked with the applicant to develop the detailed construction management plan. And this plan really accommodates -- we're able to do two things here because of the large size of this property. It has many entrances and exits. It also has many interconnected driveways and avenues that go through the site a lot of times for staging on site, for doing detours and doing just alternative ways of accessing different parts of the property. So we presented to this to the Planning Board and they considered it in their positive recommendation.

Next I want to just go through a couple of points that the Planning Board and the Town Board wrote into their Positive Recommendation and Negative Declaration for the record.

First the Planning Board stated that "The project will not substantially increase the intensity or scale of any aspect of the current on-site uses. Further, the Planning Board finds that the proposed improvement appears to be aesthetically pleasing, blend in with the architectural style of the existing mausoleum buildings and do not appear that they result in negative impracticality to the surrounding residential communities." That was from the Planning Board.

The Town Board writes in their Negative Declaration, "The existing vegetation between the project area and nearest adjacent residential property and the roadways largely obscures the visual impact of the proposed expansion. In areas where the expansion would be able to be viewed from outside the site or from the indoor of the site, the front facade of the proposal represents an improvement over

12-12-2019 - Case No. 19-28

existing conditions."

They go on to say, "Due to the infilled nature of the proposed expansion, where the proposal will not represent an increase in height in relation to the existing building, and due to the existing mature landscaping in the area, the visual impact of the proposal is deemed small." They also go on to say that "The proposed use is not anticipated to generate a noticeable change in the level of traffic or effect existing infrastructure."

And they also included in their Negative Declaration that, "With respect to existing storm water runoff conditions, the applicant is willing to address the condition, and condition final approval on implementing additional drainage mitigation measures to address prior known runoff occurrences in the northeast corner of the property."

And the Neg Dec goes on to conclude that "the proposed action will not have a significant effect on the environment, will be mitigated to the greatest extent practicable as proposed to be mitigated by the applicant, will not have a significant effect on the environment."

So those are documents that hopefully were circulated to your Board ahead of the hearing from other departments.

I want to briefly touch about the five balancing act that we go through in New York State to consider variances, will this cause an undesirable change in the character of the neighborhood?

I think we heard from the Town Board and the Planning Board in their text that this will not negatively affect the neighborhood. "The existing building in fact already appears to be two stories in height when it is viewed from most angles."

12-12-2019 - Case No. 19-28

"Second, can the benefit to be sought by the applicant be achieved by some other method? And are there other ways to do this?" And we submit that there is no other method to achieve the benefit sought by the applicant. There is a continuing demand for a finite amount of interment space in the region. And given the legal and land use constraints imposed on the cemetery development by State and the local law, there is no alternative to meet the demands. This presents a unique opportunity to do so over an existing structure.

Third, is the requested variance substantial? We submit that because the requested variances do not expand the overall building envelope the proposed expansion cannot be deemed to be substantial.

Fourth, will the project have an adverse effect on the impact or impact of the physical or environmental conditions in the neighborhood? And once again, I think the Town Board, in the Negative Declaration, and the Planning Board opined that "proposed action will not have an adverse effect on the surrounding neighborhood."

The development of the landscape, has been a park-like cemetery for decades and decades, and they are committed to maintaining that forever with their high quality maintenance, and visual impacts will be limited and minimal.

Was the alleged difficulty self-created? The difficulty is not self-created insofar as that there is a continuing demand for cemetery space, and that demand is beyond Ferncliff's control. And it's what I wanted to put into the record here this evening for the applicant.

We did also submit a visual analysis of surrounding views in the area as part of the application package. I can go through

12-12-2019 - Case No. 19-28

those here, obviously, look at the slides if the Board desires, but other than that I'm happy to answer questions.

MS. BUNTING-SMITH: Any questions?

MR. MARTIN: No.

MR. HARRISON: No.

MS. KNECHT: No.

MS. BUNTING-SMITH: All right. Can we hear from the audience, please? This lady first.

MS. WILKE: I'll be right with you. Good evening.

MS. BUNTING-SMITH: Good evening.

MS. WILKE: Thank you for your good wishes earlier in the evening to lift the spirits of everyone.

Good evening, Madam Chair, members of the Zoning Board, I'm Carol Wilke. You can hear me. Right?

MS. BUNTING-SMITH: Yes. Can anyone in the back hear?

MS. WILKE: Because the mic.

MS. BUNTING-SMITH: Just a short mic.

MS. WILKE: The one at the Town Board comes right up here, so.

I'm Carol Wilke, Vice-President of the Secor Home Civic Association. I also live on Jean Lane, which abuts Ferncliff Cemetery and have for years been considerably harmed by significant water runoff and torrential rain coming from the existing and severely inadequate drainage system at Ferncliff Cemetery.

12-12-2019 - Case No. 19-28

The extension of a second roof on the mausoleum, which may seem benign, can only significantly increase the water damage to my property.

I believe that I have the right -- as do my neighbors -- to enjoy my property free from such impediments by the neighboring cemetery. Ferncliff is well aware of this flood situation, has over the years made some reasonable if halfhearted attempts to address the flood waters coming from their property.

I in turn have attempted to contain the Ferncliff waters as well. And in November 2018 I invested in an earthen berm costing \$2,500 to deflect the Ferncliff flood waters away from my home, which I experienced in the torrential rains on September 25th and October 2nd in 2018. On both of those occasions my basement had two or three inches of water all coming through the basement windows.

I also had considerable mulch and fill with deep edge, kind of mimicking a small trench, so to speak, applied around the foundation of my home to keep the water from infiltrating my home.

I'm fully aware that each property owner is responsible for containing water on their own property. I can and have taken measures to deal with my own water. However, I'm unable to deal with the massive amounts of water coming from two drain systems, one running along the southerly and westerly portions of Ferncliff property, all of which dump into the catch basin on Ferncliff's northeast corner and which regularly overflows on to my property in torrential rain events; not regular rain but torrential.

Back in 2004 I dealt with the vice president of Ferncliff Joanne Alberto, when



12-12-2019 - Case No. 19-28

Westchester experienced the remnants of a hurricane Ivan and the Ferncliff storm system -- sewer system overflowed resulting in flooding, basically in a flooding river in my backyard, which crossed my property and flowed out on to Jean Lane along the privet hedge.

I don't have any -- I don't recall any remediation by Ferncliff at that time. I have a couple of pictures which are not great because I don't have a color printer. They look much better on my phone. You don't have something up there? There is nothing up there. I don't know. He didn't put it back in.

Ferncliff is right behind. I don't know if you can see the water there the but the black and white. Maybe the next one. Ferncliff is -- behind right. Just show them the next one, please.

This is my back of my property. That's my bird bath which is almost subsumed by water. This is not all water just coming on my property. This is the flood coming from Ferncliff.

This also you could see (indicating.) There is a lot of water. You could swim in this water when it was flooding. And that's again my back yard. And this is my house right over here (pointing).

Okay. If I just may offer you a further understanding of the situation. My home sits on the northeast corner of Ferncliff Cemetery. The mausoleum sits a top of Steep Slope. They are saying noise the steep slope and maybe in terms of the regulations it isn't. But I look up, my neighbors look up to that mausoleum and water flows down and it flows on to the westerly side where there is a storm -- I think they called it conveyances -- an that's along Westchester View Lane. And on

12-12-2019 - Case No. 19-28

the southerly side -- it's along Jean Lane, the properties, Jean Lane, Westchester View Lane.

In October -- this is a longstanding problem, because in October 1960 my neighbors the Wisner family experienced water runoff from Ferncliff, and they granted an easement to Ferncliff in whichever the storm drain and the northeast corner of Ferncliff was constructed to run under the Wisner property and connect to the Town of Greenburgh storm drain on Jean Lane. So all the water coming from Ferncliff, and that part of the property goes under my neighbor's property and goes out to the storm drain on Jean Lane, which can't handle it at this point.

As part of the 1960 Agreement between Ferncliff and the Wisner family, Ferncliff attested to maintaining the pipe in good condition and "continue necessary steps at Ferncliff's expense to maintain and replace the said pipe as may well be necessary." Since that time 60 years ago Ferncliff has cleared land for graves, built and expanded the mausoleum and has otherwise created impermeable conditions in which its existing storm sewer system cannot cope.

It is important to note that all the water on this corner dumps into those two collection points and then goes into the catch basin, into Ferncliff's catch basin, which seems to be big but obviously can't cope with this. And then it's, you know, whatever it can collect it collects, and pipes it out to Jean Lane.

What is not collected during torrential storms it spills out on to Jean Lane properties such as mine and as well as up on to Jean Lane itself. In 2016 I sent pictures and a video of the flood waters on Jean Lane to Anthony Zacarolli of the Building Department, as you know, which showed cars traveling on Jean Lane,

12-12-2019 - Case No. 19-28

splashing through the overflowing storm sewer on Jean Lane. So this has direct impact on Jean Lane during certain flood events. Certain rain events.

In fact on July 7th, 2014 Kevin Boyd himself was president of Ferncliff advised me that water coming off the mausoleum roof the one whose roof they now want to expand dumps into this inadequate Ferncliff drain system, so I'm concerned that you're expanding the roof and they are saying, well, it doesn't really matter much but it can't handle the water at this point coming from the roof and from that part of the Cemetery.

In 2016 it did look like Ferncliff was seeking to mitigate the situation by meeting on the site behind my home with engineering and staff, et cetera, and they were assessing the problem. At that time the assistant building inspector Mr. Robert Dam was seeking some enforcement action to encourage Ferncliff mitigation of the floodwater. Mr. Dam did inform me on March 30th, 2016 that Ferncliff had requested additional time to correct the problem pursuant to a violation issued by the Building Department then nothing happened.

It was not until this November 13th the Town Board meeting when I raised some of these issues that Mr. Caris -- who is here tonight -- for this application stated that I was corrected and that Ferncliff had lots of discussions and there was one of three scenarios to be implemented to correct the flooding problem. He even noted that evening that Ferncliff would be willing to attach a condition to remediate the water issues pursuant to approval of the requested variance. So that's movement on Ferncliff's part and I -- I welcome it.

But this has been going on for years. Subsequently the Town Board, when they took note of this, adopted a resolution

12-12-2019 - Case No. 19-28

as Mr. Caris has pointed out -- issued a Negative Declaration for the SEQR determination. It noted the proposed action is -- this is quote the proposed action is expected to create storm water runoff from impervious surfaces. The applicant has indicated that the runoff of the buildings roof will be collected via a net work of the roof drain leaders and directed to the existing storm water conveyances system. There is a proposed increase in building roof area of 2,925 square feet.

Notice it says existing. But resolution continues. "With respect to existing storm water runoff conditions, the applicant's planning and engineering representative has acknowledged the condition and stated the applicant is willing to address the condition and condition final approval on implementing additional drainage mitigation measures to address prior known runoff occurrences in the north east of the property."

So I'm just hoping with this condition from the Town Board and with the acknowledgement of the property that their applicant their representative their representative makes, that they will follow through on this.

But I do want to point out that in filing their applications they make certain stipulations that I find problematic. Even given the applicant's acknowledgement to the Town Board that Ferncliff is well aware of the longstanding water runoff problems on the site and it's effect on neighboring properties, Ferncliff made no effort to directly address these problems in its application to the Zoning Board of Appeals and as late as November 6th, 2019, in an additional submission to the Zoning Board of Appeals via a Planning Board request that the construction plants be more clearly delineated stated "operations can be supported with no impact to neighboring

12-12-2019 - Case No. 19-28

properties or local streets."

I say that is disingenuous. Other example of these less than up front responses to the Zoning Board of Appeals's required application forms include the September 16th, '19 letter to the ZBA" -- this is from their application the alteration -- "will not substantially intensify. Exposure to hazard from fire, flood, drainage or in any other way have a substantial impact upon the environment of the surrounding area."

In at least two or more instances this letter attests to the lack of detriment to the nearby properties, which I disagree with.

In the short environmental assessment form page two, item 17, the applicant dismisses any creation of a storm water discharge system by stating that the runoff "will be collected via a network of roof drain leaders and directed to the existing storm water conveyance system on site."

They know full well their present system can't cope with the existing conditions and yet they are going to add to them. So I really think they should be a little more careful in what they say and what they stipulate in some of their application statements.

And there is another item on page 18, page 3 of the SCAF where they basically say that they responded in the negative, that there is no reason that there would be an impoundment of water such as retention pond, et cetera, et cetera.

I did pass some on March 10th, 2017 in an e-mail to Anthony Zacarolli, a suggestion by my neighbor Peter Wisher who, you know, whose family was the ones who granted the easement -- that he suggested

12-12-2019 - Case No. 19-28

that Ferncliff installed about halfway up on its westerly water current storm conveyance system which is along Westchester view line a deep water drain to be piped under a property in Westchester View Lane to a storm sewer on Westchester View Lane. That would relieve some of the pressure of all the water coming on to Jean Lane.

I consider Ferncliff's lack of transparency in this application process to be problematic and believe that an up-front acknowledgement of the water runoff issues would have better served both Ferncliff and the community, and I wouldn't even have to be here tonight.

Considering that the water overflow problems on this part of Ferncliff Cemetery have been known by the applicant for many years, and mitigation has not been forthcoming, and in accordance with the Zoning Board of Appeals rules of procedure this Board has the authority to impose conditions and restrictions, "for the purpose of minimizing any adverse impact that such variance may have on the neighborhood or community."

I'm sorry to read you your own rules and procedures back to you, but I wanted to connect my issue to your potential action. Accordingly, I ask the Zoning Board of Appeals to require a plan from the applicant prior to start of construction as to how the existing and increased water runoff will be handled going forward and a time table for start and completion of the water mitigation project. I further request which is proper procedure should have plan be reviewed and approved by the Town's Engineer or appropriate town staff.

I'm deeply concerned that a major construction project will begin with all the concomitant disruption of land and all the permeable areas which are going to be created in which only my home and the other

12-12-2019 - Case No. 19-28

homes on Jean Lane will stand in the way of another tumultuous flood event.

I thank the Board for its attention and courtesy to the matter, and I hope you will advise accordingly.

MS. BUNTING-SMITH: What efforts have you made with the applicant to specifically address these concerns and to view as a Civic Association and to compare what their plan is to mitigate in with respect to what you feel should be done in mitigation?

MS. WILKE: Well, I've worked with the Town mostly, to some effect and then, you know, it kind of dissipates because Mr. Dam, back in 2016, looked like he was really on top of the situation, and issued a violation and was making suggestions and then kind of nothing happened. I wasn't necessarily working directly with Ferncliff. I did have conversations with Ferncliff when they showed up behind my house and my neighbor's house and my neighbor came out as well. And he probably would be here tonight but he's been ill lately.

So we had discussions but Ferncliff never approached me.

MS. BUNTING-SMITH: No, no, I understand that.

MS. WILKE: I certainly -- I kept back -- it's happened so often. I think my first contact with the vice president Joanne Alberto was back in 2003. And at one point with whatever event it was she did build up the berm. There was, you know, catch basin and she put a lot of rocks there and then some sort of cover around everything. And that helped a bit, but that was back in 2003. Then if and when this event 2013 and she kept getting back to me and said we're going to, you know, we're looking into this, and it seems so promising and then it kind

12-12-2019 - Case No. 19-28

of nothing ever happens.

MS. BUNTING-SMITH: Well what I'm saying is, now that they have a new application and your argument is it that this new project could cause further or increased flooding.

MS. WILKE: Yes.

MS. BUNTING-SMITH: The question is, can -- and you had this with other situations with people installing, you know, mitigation to not only address what has been I guess termed as natural flooding that -- which happens, and then when you build on the site you know that you're going to increase it because of the impermeability. Whether you could perhaps try to come together with a means of suggesting and then offering what could be done to obviously not cause any increase but perhaps to have some effect that might be of help.

MS. WILKE: Most of what I've covered tonight, you know, I've shared with Ferncliff. I've talked to them. The very fact that I guess it was 2016 when they showed up behind -- they never let us know they were coming. But we were glad to see them and we talked to them. I think Kevin Boyd was back there at that point and they talked about, well, they weren't too sure whether they would put -- I don't know -- these deep drains in certain parts, they weren't too sure. So it sounded very positive. I stand ready to talk to Ferncliff at any time.

MS. BUNTING-SMITH: Okay.

MS. WILKE: I'm not against Ferncliff. I'm not against this particular building. I mean, some of -- I mean, some of the other representatives in, you know, members of my Civic Association are here and they may have some other concerns. I just want it, you know, fixed. As I said, I'm



12-12-2019 - Case No. 19-28

doing what I can as an individual property owner but I can't, you know, I can't do this on my own.

MS. BUNTING-SMITH: Right.

MS. WILKE: The water is coming from their property. They should do something about it. If I flooded my neighbor's property it's my responsibility to do something about it.

MS. BUNTING-SMITH: If what you had done caused it that's one thing.

MS. WILKE: What?

MS. BUNTING-SMITH: If what you had done to your property caused flooding to your neighbor's property, that would be perhaps more accurate.

MS. WILKE: Oh. Well, so you're suggesting that Ferncliff has not done anything to their property therefore --

MS. BUNTING-SMITH: I don't know.

MS. WILKE: -- the flood is all my fault? Come on.

MS. BUNTING-SMITH: Some of it is natural flooding because of the elevation.

MS. WILKE: That's a bit much.

MS. BUNTING-SMITH: The question is, you know, what can be done? And our concern is that this is a development. Will this new development create an additional problem or is this new development something that can be mitigated in a way that this won't create any additional burden, not necessarily solve your problem?

MS. WILKE: Well. I really don't think as a civic person, you know, association person for like 25 years now,

12-12-2019 - Case No. 19-28

living in the community 35 years, that it's the responsibility of the individual owner to somehow work out something with, you know, a neighboring entity that doesn't seem very willing to work with you. And quite frankly, this has taken place in the context of, you know, a lot of legal suits. Right.

I understand the Town is probably pretty skittish about making the situation any worse. But Ferncliff has not been a good community member. They have not worked with the community, not only in my situation but in other parts of other Civic Association -- I think Hilltop -- and that, you know, there was all sorts of things going on at that point.

Our Civic Association had problem because -- and that's the problem, the subject of the lawsuit. We think we, you know, we were representing our community so. So, I mean, again, I have no particular problem with this building. I just don't want them to make it worse.

MS. BUNTING-SMITH: I understand.

MS. WILKE: You know, I would hope that the zoning would not look at its role and the Zoning Board would not look at its role and its way of approaching this in such a way as to grant them all these additional variances so they can increase whatever their property value and whatever they need to, you know, in order to keep going as an organization, that you would not look at it so narrowly that, well, you know, we can fix something that it won't get worse but you're still going to have the floods.

I was told it wouldn't -- I think it was through Anthony Zacarolli's office. I think it was back in 2016, that if there is any impact on Jean Lane itself with all these flood waters -- and there is, and there have been videos and pictures and everything. The videos and the pictures --

12-12-2019 - Case No. 19-28

and I can supply them again -- that videos well that would be considered a public nuisance and, you know, the Town has to be involved in that.

And, you know, the Town is busy with a lot of other things too. And it looked like -- Mr. Dam was doing a great job and somehow he seem to get pulled. I have no idea.

MS. BUNTING-SMITH: Have you spoken to him again at all?

MS. WILKE: No. I usually deal with. No, I haven't.

MS. BUNTING-SMITH: All right.

MS. WILKE: Not in the -- you know, after a point you figure you're being ignored so you do what you can, so you spend extra money to try to hold back the flood. And that berm that I built on my garden says it's going to work, it will form of the question some water goes on it will have a -- direct this straight out away from my property, but if it's a torrential flood, you know.

You know, we've had a lot of these flood events now. It's not as if this is ones every 25 years. We have them on a regular basis now. So I think Ferncliff has to take that into account and I still hope they are willing to do something even considering the context of this situation, you know, in which we find ourselves, with the dispute between the Town and Ferncliff. And they have acknowledged it. I mean, I'd like to ask him right now if you're interested in us working together.

MR. CARIS: I'd gladly work together.

MS. BUNTING-SMITH: It sounds like you've asked.

12-12-2019 - Case No. 19-28

MS. WILKE: Yes. I'm hoping. Are you willing to deal with the existing situation -- which he seems seemed to say in which the Town Board Resolution says "including whatever additional water might come from this expansion." Are you --

MS. BUNTING-SMITH: You can answer.

MR. CARIS: The answer is, yes, and it's been acknowledged in the Town Board Negative Declaration, which we read earlier, that conditioned final approval on implementing additional change mitigation measures to address prior known occurrences in the property.

MS. BUNTING-SMITH: The important word there is "prior."

MR. CARIS: All right. Whenever we propose a new building or parking area or road or anything, you have to address runoff from that. That's a given. That goes without saying. This is something that we have an opportunity to look at now as well. So.

MR. MARTIN: Okay.

MS. BUNTING-SMITH: I think they appreciate that.

MS. WILKE: Are you suggesting, Madam Chair, that I start trying to meet with them?

MS. BUNTING-SMITH: Yes, I think you should have a collaboration.

MS. WILKE: Are you willing to do that Mr. Caris?

(Mr. Caris shook his head in the affirmative.)

MR. HARRISON: With the Town when

12-12-2019 - Case No. 19-28

they go out there to make sure they keep on top of them.

MS. WILKE: You know, Mr. Rohan, don't put this on us.

MS. BUNTING-SMITH: But you can't put it on us either. We're just the Zoning Board sitting here.

MS. WILKE: But you're about may give them six variances and that's substantial. And you have to -- I'm sorry.

MS. BUNTING-SMITH: I'm not suggesting it's not --

MS. WILKE: Madam Chair, you have to take into account what the situation is, the larger situation. If I didn't come and talk about this water problem you wouldn't even know about it.

MS. BUNTING-SMITH: We'll, we have heard about it before.

MS. WILKE: Well, I brought it up, I think, you know.

MR. CARIS: Yes. We'll just say then --

MR. HARRISON: Are you now the Civic Head -- the association head now?

MS. WILKE: Well, I've been all along.

MR. HARRISON: No. Finished as a homeowner and now you're back to the Association?

MS. WILKE: Oh, yes.

MR. HARRISON: I'm in your neighborhood, so I'm right there near Ferncliff, so you have to represent me.

12-12-2019 - Case No. 19-28

MS. WILKE: All right. What do you want?

MR. HARRISON: Work with the Town. I'm right there. I drive down. I see the cemetery. Follow up with the Town. Make sure it gets done. Get it done.

MS. WILKE: All right.

MR. HARRISON: I get the neighborhood.

MS. WILKE: Part of trying to get it done is that I need help getting it done.

MR. HARRISON: I'm here. I'm here. I'm here.

MS. WILKE: I want to see if nine months -- nine months with some of my other community members.

MR. HARRISON: I'm going to make myself available.

MS. WILKE: And also working well with --

MR. HARRISON: Carol.

MS. WILKE: I know.

MR. HARRISON: We're going to get it done. All right.

MS. WILKE: And so now we'll all go and be happy.

But don't forget, Madam Chair and Members of the Board, the Town had a resolution which Ferncliff agreed to that they were going to work to correct the prior situation. That's key. All right.

MS. BUNTING-SMITH: Yes.

MS. WILKE: Thank you. Thank you

12-12-2019 - Case No. 19-28

very much.

MS. BUNTING-SMITH: There was a former board member who always used to focus on an application coming before us considering what could he encourage the applicant to do that would be a good neighbor. And that's really what we're talking about here. Because there is only so much we can do.

Does anyone else want to address the issue? Yes. Come on up, sir.

MR. CAVALUZZI: My name is Nick Cavaluzzi. I'm a resident of Secor Woods area. I live right on Edgewood Road. I originally came tonight because I am very close to Ferncliff, and within walking distance; and I like to know what's going on with that. It's a huge area and it's very close to our houses.

Originally I had actually a minor question, sort of. You know, there was item number one here on the Zoning Board of Appeals questions, and it asks that there is no change or use of utilization intensity of the property because what's proposed is not an increase in sales.

I don't understand. Maybe explain to me, you're adding 40,000 square feet of area for interments. They are not eliminating -- I assume they are not eliminating interments.

I look at it from -- it's not a lot of big traffic problem, but you are adding more interments. Christmastime, the holiday times. I don't understand how they say there is no impact. It may be minor. There's people -- I mean, I go visit my grandma at the cemetery -- which was seven years ago. After a period of time don't look. But adding 40,000 and implying here there is no change in utilization, no increase, it's just an add. It seems like

12-12-2019 - Case No. 19-28

it's forgetting about -- there are internments there that people have to visit. So I don't understand that statement. Maybe.

MS. BUNTING-SMITH: We'll let the applicant explain it.

MR. CAVALUZZI: Maybe you can explain it to me. Then I have actually a larger question. Actually ask for suggestions. I'm a licensed professional engineer. I live in the area. To me, the Town has a real interest in this existing problem. To me the only way to address this is that the applicant should provide, yes, you know, say that they are going to fix it but provide a hydraulic engineer to review the whole situation.

This water is running into the town's system and overflowing. It's been like that for a long time and it's going to -- 3,000 square feet, granted, is not a lot of square footage, but it's not taking water away. The last thing you want to do is any more water here. And the only way you're going to solve this whole thing is get a licensed professional engineer in hydraulics and to review the whole situation.

Where you stated natural condition; that land a hundred years ago was woods. It absorbed the water. It didn't need runoff. It didn't need pipes. When they granted a pipe to be put in, that pipe was put in for a certain situation. It's by, well, you know, overloaded now. Totally overloaded.

It goes into the Town system, that overloads the Town system downstream. I mean, it's a long -- miles and miles. We're talking about that, you know, it goes Jean Road. So the only way to look at it. You just, you know, throw in -- guys come up, look up the hill.

Yes, I mean, I can't build anything



12-12-2019 - Case No. 19-28

in Greenburgh without recharge with a box on my property to contain my storm water. Is there a huge box on -- I mean, it would be, like, an enormous box to absorb the water. And that's all rock up there so it's not going in. It's flowing. So the real true way to look at the situation -- and, you know, granted, 3,000 square feet is not a lot of square footage to collect water -- but there is, you know, you get two or three inches of water adding to a problem you've got already. Unless you look at those pipes, you know, re-chart basis, this is not a little problem. This is something that an engineer should be looking at, and it should be part of their --

MS. BUNTING-SMITH: Are you going to make yourself available?

MR. CAVALUZZI: I'm retired. I do babies' boats and cars, and nothing else. My granddaughters.

MS. BUNTING-SMITH: Anyone else in the audience? Come up.

MS. CENDALI: Hi. I'm Jean Cendali. C-E-N-D-A-L-I. 37 Crest Drive. We have terrible drainage problems as well as Jean Lane. We are at the back of that building on the far corner, away from Jean Lane. Our back yards flood whenever it rains. There is a big tree right in the floodplain and I'm very worried that the roots of that tree are going to be compromised and the tree is going to fall down. The problem has been getting worse over the years.

MS. BUNTING-SMITH: Is it on your property or theirs?

MS. CENDALI: It's on our property. But it's a huge problem. Her photos are what my backyard looks like. We have this much water in a large area. We can't use a big part of the back yard. And as I said,

12-12-2019 - Case No. 19-28

it's gotten worse instead of better. And this doesn't have to do with anything with this main issue, but I just had to comment on the whole thing about the beautiful park-like setting with the neighbors. Nonsense.

The back of that building what's known in the brochures is a giant dumpster and lots of trucks. There is no trees. Not one. Not a bush, not a fence. Nothing. And that's what we see from our back yard. And it's ugly and it does not fit in with our neighborhood. Thank you.

MS. BUNTING-SMITH: Is there some -- did you see the plans that are being presented?

MS. CENDALI: Yes, I have.

MS. BUNTING-SMITH: Is there a way that you would suggest that screaming could be done to alleviate why the issue.

MS. CENDALI: I think it would be kind of tough. Because it looks to me on the plans that their parking area, the concrete on the side of it is right up to the property line and there is other property behind it. But as I said, it's really ugly. And I have sent photos to Paul Feiner and other commissions and nothing seems to be done. But it's not being a very good neighbor. But the water is the main issue now. Thank you.

MS. BUNTING-SMITH: Anyone else? Come up, sir. One more.

MR. PALLONE: My name is Rocco Pallone. P-A-L-L-O-N-E. I'm at 35 Crest Drive. I'm next door neighbor of 37. And I have also experienced a lot of water coming from the cemetery through the Cendali family. And in my back yard when we have this torrential rain I cannot walk on my back yard. There is sometimes several

12-12-2019 - Case No. 19-28

inches of water. And I have six grandchildren. They want to play in my back yard, and when it rains I have to keep them inside.

I'm also here today to speak against allowing the Ferncliff Cemetery to increase the size of the building. I am really a next door neighbor of the Ferncliff. My two parents are resting in Ferncliff, so I'm not against Ferncliff. But those buildings -- especially in the winter time when the trees have no leaves, when I'm sitting in my living room watching TV the building is right there. In the summer time I don't see them, but in the winter.

Now, if we allow those buildings to grow up, to allow another floor, I consider that to be an invasion of privacy, those buildings.

MS. BUNTING-SMITH: Well, you said you're on the rear; correct?

MR. PALLONE: In the back.

MS. BUNTING-SMITH: And the back is already two stories. They are adding two stories.

MR. PALLONE: I know. But this also -- I want -- it's not a pleasant sight. Personally I -- it continues to be an ugly looking side of the building. So allowing the building to grow in size, the building will be coming closer to my property, and I consider that to be an invasion of privacy.

MS. BUNTING-SMITH: Well, it's not really going to move.

MR. PALLONE: I know it's not going to move.

MS. KNECHT: You won't see it.

12-12-2019 - Case No. 19-28

MR. PALLONE: I will see it.

MS. BUNTING-SMITH: You won't see any more than what you're seeing now.

MR. MARTIN: It's being built away from your house, towards the front of the building, which is away. You're looking at the back of the building.

MR. PALLONE: Back of the building.

MS. KNECHT: Your view won't change.

MR. PALLONE: And also we bought the house on Crest Drive 52 years ago because it was a beautiful neighborhood. A one-family residential house. It still is a one-family residential house, but what has changed, it's Ferncliff.

There has been building -- practically every few years they increase the size of the building, and I think it's time to say that this is enough. Because the value of the properties has been decreasing lately.

My wife are and I are both retired, and we cannot really afford to pay the taxes of Greenburgh. And last year we were talking to a real estate agent, talking about the price of present house, and she told us that the houses have been losing value. And I don't know how true this is but she did mention the presence of Ferncliff.

So I'm not really blaming Ferncliff, but that's what the real estate agent said. And she did say that my house today is worth \$100,000 less than it was 10 years ago. I was hoping that we would get more money, but I don't think I want to sell it because I like the neighborhood, I like my neighbors. I like Crest Drive. And I would like to stay there for many, many more

12-12-2019 - Case No. 19-28

years, but I think before a decision is to be made by the Zoning Board they have to take into consideration the best interests of the neighborhood of all of us and not only the best interests of Ferncliff.

MR. MARTIN: That's what we try to do.

MR. PALLONE: Okay. I really appreciate you listening to me.

MR. MARTIN: Thank you.

MS. BUNTING-SMITH: Come on up.

MS. CENDALI: (Jean Cendali.) Jean Cendali again. We will see the building. We see the back and the side from our houses, so we will see the elevation raise, okay, from Crest Drive. I just wanted to clarify that. And I also would hate to see anything there grow. It's ugly.

MS. BUNTING-SMITH: One moment. Is there anyone else that wanted to address this?

(No response.)

MR. CARIS: Well, I appreciate the photograph. From the public, it's always good to hear what their concerns and what we can potentially do to make the situation. We've heard that storm water is a concern and the Town Board heard that as well.

They have added to their negative declaration as far as adding it as a condition of approval, to look at it and to potentially improve the situation, so that. And by the way, amended site plan approval lies with the Town Board. So, variance or no variance, the Town Board still has to review this application one more time before anything is finally approved.

With regard to the intensity of the

12-12-2019 - Case No. 19-28

use and adding additional internment space, yes, there will be more sales, however, it could be decades before these crypts are used.

MS. BUNTING-SMITH: How many?

MR. CARIS: How many crypts?

MS. BUNTING-SMITH: Yes.

MR. CARIS: I have to get back to you with that information.

MR. MARTIN: Ballpark idea?

MR. CARIS: It's a couple thousand. But like I said, this does not intensify. It's adding to the longevity and vitality of the property.

MS. BUNTING-SMITH: We understand.

MR. CARIS: For the next generation. And regarding landscaping, the rear of the Shrine, you know, you heard that we're not changing anything along the rear of the property, but that's something I can go back to the applicant and see if we can take a look at.

MS. BUNTING-SMITH: I was going to say, obviously, it's one thing to look at just a building, it's another thing to look at other things that somewhat detract from the beauty of what you're trying to create perhaps from the front. So, therefore, I assume that any, you know, improvement that might help the neighbors would certainly be beneficial, overall. Because it is their property values that are also being affected.

MR. CARIS: Thank you.

MR. MARTIN: Thank you.

MR. HARRISON: Thank you.

12-12-2019 Case No. 19-29

MS. BUNTING-SMITH: The next case is Case No. 19-29, Jose Bejar.

ZBA Case No. 19-29 - Jose Bejar, for property located at 8 Lark Avenue (P.O. White Plains, NY). Applicant is applying for area variances from Section 285-40(C)(5) of the Zoning Ordinance to increase the maximum height of an arch wall in the south side yard from 6 ft. (Permitted) to 11 ft. (Proposed) and to increase the maximum height of an arch wall in the north side yard from 6 ft. (Permitted) to 10.083 ft. (Proposed) in order to legalize a combination of wall and fence. The property is located in an R-10 One-Family Residence District and is designated on the Town Tax Map as Parcel ID: 7.520-319-33.

MS. TOMM ADDONA: Good evening, Madam Chair and Members of the Board. Christie Tomm Addona, from Silverberg, Zalantis, on behalf of the applicant. The applicant is also here this evening.

As you know, we were before you last month. We're seeking two area variances for the height of two arches on the north and south side of the house on the property. We thank you for giving us the opportunity to revise the plans and appear before you again this evening.

After hearing the Board's comments and receiving your memorandum, the applicant consulted with his engineering contractor to try to look for solutions to reduce the height of the arches. You did receive revised plans which reflect the best engineering solution we were advised we could come up with, which is reducing the height of each arch at the top by half of a foot.

We were advised that we can't cut into it anymore, that because there is a rebar in the center of the arch that gives it its structural integrity, to go any lower

12-12-2019 Case No. 19-29

than that would cut into that rebar and it would impact the integrity of the structure as a whole.

On the south arch -- which is the one that's up on the screen right now -- the larger arch, the applicant is also proposing to regrade that, the soil in that area to add a foot so that there will be only 9 feet 6 inches of visible arch in that area, thus reducing the variances by 6 inches and 1 foot 6 inches respectively for the north and south arches.

In addition there has been some discussion about the utility of the arches, because currently there is nothing else there on the original plans. It had showed a large solid fence. We revised that to reduce the size of the fence and to make it a wrought iron fence so that there is still a level of openness and visibility, and so then the arches would have a level of utility in protecting and reinforcing those gates.

As we explained last month, we understand the frustrations of the neighbors throughout the lengthy construction process. We're really at the end of that process. The CO has been issued and it's just pending a resolution of this application. And so we're just trying to work with the Board, and again we thank you for giving us another opportunity to appear before you, to come up with a mutually agreeable resolution that will I guess reduce the necessary construction to the extent possible.

The applicant has been advised by his contractor that if this plan were to be approved it could be completed in less than a week, weather permitting, so it would be relatively quick.

I would also just like to address, I did have a conversation with Mr. Fraietta earlier this week regarding our revised



12-12-2019 Case No. 19-29

proposal. And he advised, because of the proposed regrading, it was his opinion that we would need to do a Steep Slope clearance form.

I conveyed that information to Steven Costa, who is the applicant's attorney; and I believe there was a conversation between Mr. Costa and Mr. Fraietta. Mr. Costa's position was that right now we're not authorized to do any regrading because we have not gotten any sort of approval from this Board. And so because the regrading would be part of the Building Permit process the Board, if it were inclined to approve this plan, could condition any approval upon a Building Permit being issued, which would require the approval and processing of that Steep Slope clearance form.

In addition, Mr. Costa has already done the calculations. We were only advised of this on Monday. There was also that short time-frame between meetings because of the holiday and because of Thanksgiving, so we were kind of scrambling a little bit. So we decided we would like to still appear before this Board and hopefully have it possibly be a condition to the Building Permit, if the Board is inclined to have us process the Steep Slope clearance form first, then we thought it would be -- it would at least be productive to present the plan to you, see if it's something that's palatable, that you would be willing to consider; otherwise it wouldn't really make sense to take up the Town's time processing that application.

MS. BUNTING-SMITH: Has there been any consideration given to the runoff with respect to this additional build-up of soil that you're planning on doing now that could affect the neighbors?

MS. TOMM ADDONA: Well, I think that would be part of the Steep Slope

12-12-2019 Case No. 19-29

clearance form process, to look at if it would affect drainage.

MS. BUNTING-SMITH: The problem we have, we're not certain that the neighbors have had an opportunity to really review what is being proposed now to see if there are any complaints. I will certainly ask if there is anyone here that can address it but --

MS. TOMM ADDONA: We received the letter from the Zoning Board. Again, it was a short time-frame. I believe it was the day before Thanksgiving. And we were directed to get our plans in by Thursday September -- excuse me -- December 5th, which was a week before the meeting. So that's what we did; because that's what we were directed to do. And we hope that a week would be a sufficient amount of time, because it's only a one-page plan and it's really just a couple of depictions right there (indicating) with respect to each arch.

MS. BUNTING-SMITH: Let me ask you is there anyone in the audience here to comment on this case tonight.

(Raised hands.)

MS. BUNTING-SMITH: A couple of people of the -- let's see what they have to say.

MS. TOMM ADDONA: Thank you.

MS. BUNTING-SMITH: Come up sir.

MR. VARKEY: Hi. My name is George Varkey, V-A-R-K-E-Y, 7 Lark Avenue. The last meeting we had asked about this thing and that the picture didn't have a gate or anything.

Now, if he's putting a gate, how is that approach going to be? Is there going

12-12-2019 Case No. 19-29

to be a road or some sort of an approach? What is the purpose of the thing? Is it just a fashion thing? It's something that keeps changing by the day. So that's something that we have a problem with. That I believe at the last meeting it was don't let -- the variance was not approved and it still is sitting there.

So, I mean, this is like an ongoing thing that never gets resolved. He has an issue which should have kicked in as of October 31st. There are no signs of moving into the house. So I don't know what that issue was for. And, again, I said at the last meeting, this is a door that opens out into nowhere. I don't know what the status of that is.

So those are concerns that we have, and I still don't believe that this should be approved. Thank you.

MS. BUNTING-SMITH: Thank you.

MR. MARYNOWSKI: Good evening. Stephan Marynowski. If I'm hearing right -- and I wasn't at the last meeting, and I didn't know anything about the gates. But it sounds like on one of the arches they are cutting off six inches from the top because they don't want to cut into the rebar because then they have to redo it. Well, redo it, and put it down to the size it's supposed to be.

So cutting 6 inches of the top, you're basically saying, so you save yourself some money, cut into the rebar, remove the rebar and redo the rebar. That's my position.

MR. MARYNOWSKI: Marynowski.  
M-A-R-Y-N-O-W-S-K-I. First name is Stephan  
S-T-E-P-H-A-N.

MR. MARTIN: Thank you.

12-12-2019 Case No. 19-29

MR. HARRISON: Thank you.

MS. BUNTING-SMITH: Anyone else?

MR. KURIKOSE: My name is Eldtho Kurikose, 5 Lark Avenue. K-U-R-I-K-O-S-E. Good evening to the Chair.

I'm coming here for the third time for this property. And what I notice only six inch difference from the previous request. So, like, this is totally out of the appearance of our neighborhood. So I request this Board to disprove this request. There is a law saying 6 feet, there is a reason for that. You know, it goes like this. That's why the rules are set for six feet. People shouldn't be starting any work then come for the variance. They should go through the proper way and should set an example. That's all I have to say. Thank you.

MR. MARTIN: Thank you.

MR. HARRISON: Thank you.

MS. BUNTING-SMITH: Did you give any thought to the fact of not only the 6 inches, but the fact that they are talking about raising the ground level so that visually --

MR. KURIKOSE: I have no problem for they want to do anything else as per the rule, as per the County or Town Water Rule. If you want to know why is the rule like that? This a lot of sectors can come on that rule. You have to stop at some point. You see, if this is only for, you know, 10 feet, 11 feet, the next one will come 15 feet, then comes for the variance. Again we are stopping.

MS. BUNTING-SMITH: We try --

MR. KURIKOSE: Okay, we appreciate it.

12-12-2019 Case No. 19-29

MS. BUNTING-SMITH: Thank you. Come on up, whoever is next. We don't want to be here for the holidays.

MR. HARRISON: I don't know what's coming up the same people twice.

MR. VARKEY: Twice. Again, I'm sorry, but I didn't realize the fact that when it going to raise the ground level up.

MS. BUNTING-SMITH: That's why we were talking about it. We wanted you to know they are trying to visually -- it's not visually -- it's actually make the top of the lower because the ground is higher.

MR. VARKEY: So how is that going to have -- what's going to be the impact of the water running into my property?

MS. BUNTING-SMITH: Well, that's what we're going to find out. I wanted to know if you have any comments on this.

MR. VARKEY: This is really -- you've got to put -- I mean, it's eight years plus, he still is not decided what I wants to do.

MS. BUNTING-SMITH: But you don't want him to have it the height it is. So he is trying to do something to mitigate.

MR. VARKEY: How is that, the height is a problem so, now he's trying to lower the thing?

MS. BUNTING-SMITH: He's trying to raise the ground.

MR. VARKEY: Well, raising the ground, it's just ridiculous. I don't see how it is going to work out. This is just nonsense. I think you have to shut that thing down.

12-12-2019 Case No. 19-29

MS. BUNTING-SMITH: I think that maybe you should look at the plans. And I know that you don't want to discuss this with them, but I think they are trying to make an effort that will at least to some extent comply with what it is they are trying -- you're trying -- we're trying to accomplish as well as what you would like to see.

MR. VARKEY: I will definitely look at it, but we don't want an okay at this point without really seeing what it is.

MS. BUNTING-SMITH: Well, we'll trying to give you an opportunity.

MR. VARKEY: All right.

MS. BUNTING-SMITH: Okay.

THE COURT REPORTER: Please spell your name.

MR. VARKEY: George Varkey,  
V-A-R-K-E-Y.

MS. BUNTING-SMITH: Come on up.  
Come on up, ma'am.

MS. LIVSON: Good evening. My name is Dorrine Livson. D-O-R-R-I-N-E. L-I-V-S-O-N. I'm president of the Worthington Woodland Civic Association, and I have been involved with the neighbors in concerning this property.

I had requested -- I don't know when -- when did it say you received these new drawings?

MS. LIVSON: December 4th.

MS. BUNTING-SMITH: December 5th.

MS. LIVSON: I had requested if there were any revised plans that I would like a digital copy of them, and I have not

12-12-2019 Case No. 19-29

received any of them, which I was going to pass on to the neighbors.

MS. BUNTING-SMITH: Okay.

MS. LIVSON: This is the first time that we are all seeing it.

MS. BUNTING-SMITH: We understand that.

MS. LIVSON: But even seeing this, I don't think this should be approved. It does not conform to the Zoning Ordinance. Thank you.

MS. BUNTING-SMITH: Anyone else? Come on up.

MS. STABELL: Hello. My name is Laura Stabell. S-T-A-B-E-L-L. I've been working with Jose as the designer to help him with the landscaping on his property, only recently. I had no clue what I was stepping into also.

I do have experience with this in my own neighborhood, unfortunately. And I think after the last meeting I was kind of shocked by what I was experiencing, and took quite a few hours of talking with Jose to find out just what happened from beginning to end, that we got to this point.

And some of this has kind of been brought up, but apparently there was an issue with the contractor who was a relative of a neighbor who Jose did not care to hire. He did not feel comfortable with this person. And a lot of this has come about from that individual, it appears, that it's just kind of ballooned up. You know, in the words of one of the people who spoke last time from the Community Association, it's kind of gone on long enough. It's been really tough.

I also want to say that I was kind

12-12-2019 Case No. 19-29

of surprised that nobody in the Town had ever directed Jose to where the building regulations were.

MR. HARRISON: Did he have a contractor?

MS. STABELL: He was his own contractor.

MR. HARRISON: Oh, he was his own contractor?

MS. STABELL: I asked him, didn't anybody ever give you a book? Because in my town, you go up there, you ask questions, they hand you a book. I know things are digital now but there were some words the last time about him being a repeat offender. I think it would have gone a lot easier with his understanding of the rules and law had somebody just handed him the book.

You know, coming from a different place there is different ways things are done. And it's unfortunate that in some countries the people who rule those countries they actually make up the rules as they go along.

MS. BUNTING-SMITH: Go along.

MS. STABELL: Is there a written ordinance? There is not such written law? So that I was kind of like --

MR. HARRISON: Is there a fence in the back? I don't mean -- I mean to cut you off. Is there a fence in the back?

MS. STABELL: Is there? There was an existing older fence in the back.

MR. HARRISON: I've asked him but I haven't inspected it. I'm familiar with it. I've passed the area quite a few time and I've seen it. It does stick out. I've seen never seen an arch in our town at all.



12-12-2019 Case No. 19-29

MS. STABELL: Actually on the way driving here just down the street I saw two arches that were over six foot. One is at a condominium and one was a little further down, it was more of a gateway. One was a condominium sign. So I told Jose and talked to --

MR. HARRISON: On a single-family that sounds like you're talking about?

MS. STABELL: I was a fencing contractor and I used a wholesaler on Long Island who is regional. And there is not an arch that you walk under in the whole state of the area unless, you know, in this whole area unless dwarves owned the property. That would be 6 feet because you have to be able to get under. So we brought up this before, that your own regs do not seem to specifically cover arches.

And as a matter of fact, Jose had said at the beginning of all this, he had gone to -- I'm probably going to get the name wrong. But the head of your Building Department -- not Mr. Zacarolli -- is it Mr. Fraietta -- in his office and kind of explained to him what he was doing and they said yes, you're good. So.

MR. HARRISON: Oh, really.

MS. STABELL: I think a lot of things.

MR. HARRISON: We had --

MS. STABELL: A misunderstanding.

MR. HARRISON: Because I've never seen it in that neighborhood, in and around. And now that he explained he's his own contractor -- I figure this is something a contractor would know.

12-12-2019 Case No. 19-29

MS. STABELL: Yes, and he's not a contractor. He's his own contractor, because he bought the house through a buyer.

MR. HARRISON: You're saying that he consulted the Building Department and they --

MS. STABELL: Talking to people many times and no one has ever said --

MR. HARRISON: And they told him to go ahead and build this structure the way they were?

MS. STABELL: Yes.

MR. HARRISON: Okay, we'll find out.

MS. STABELL: That's my understanding of a meeting that had gone on.

MR. HARRISON: We'll get testimony.

MS. STABELL: It was a long time. I think two or three hours or more that we were talking. Because this is -- I was curious. This isn't a usual situation also, but I have been in a neighborhood situation where it did get kind of ugly. And, I know, so in my -- I'm in Connecticut. So I did go through in my State and look at the stalking laws.

You know, as a person, as a homeowner, when your neighbors are opposing sometimes it can get very ugly. I had like vandalism and police calls and, you know, cameras and, it was kind of not a good situation. And this is what goes on in my town. I've seen it happen before. So I did go and take the time and go through all of your criminal laws in the State of New York to see what I could find that kind of matched some of this as far as harassment or stalking.

12-12-2019 Case No. 19-29

MR. HARRISON: You are say that the neighbors are harassing him and stalking?

MS. STABELL: I feel that there is some bit of --

MR. MARTIN: Harassment?

MS. STABELL: This is some bit of areas where I'm not quite sure. It does seem like there is certain --

MR. HARRISON: All right. Let's talk about the wall.

MS. STABELL: Anyway, I just wanted to say something in the defense of the situation that sometimes these happen and also there might be some way that your Town can create a criteria where you can kind of identify where that line is.

MR. MARTIN: Okay.

MS. STABELL: This would be my suggestion in bringing this up. I can't even determine because I haven't been here, where that line is between an incident that is a criminal or something that's just.

MR. HARRISON: Still going off the scope. Let's stick to the arch. Stick to that.

MS. STABELL: I think it actually comes into it because as a design person I'm driving by. Like, please move into my neighborhood.

MS. BUNTING-SMITH: I'm not sure how this is contributing to us trying to come up with a solution.

MS. STABELL: So my suggestion was for him to fill and also to cut down -- again, the ability to cut down these arches is not great, and I think structurally, but

12-12-2019 Case No. 19-29

also like financially it is somewhat of a hardship. Again, I don't know your laws in New York. I'm from Connecticut --  
(Cross-talking)

MR. HARRISON: It's not a feasible alternative, which one of the proposed --  
(Interrupted)

MS. STABELL: (Interrupting) the stone, pretty easily --

MS. BUNTING-SMITH: I thought the stone was the veneer?

MS. STABELL: No. That was -- again, that was -- one of the neighbors came last time, told a story of it being wood structures that were covered with stone. I said to Jose, do you have pictures? Jose has got pictures of everything. So we have great pictures here 12 copies. We don't need 12 I guess, right?

MS. BUNTING-SMITH: Not tonight. But you can give the spares to our secretary.

MS. STABELL: You can see from our pictures --

MS. BUNTING-SMITH: Give them to our secretary.

MS. STABELL: -- that it's not going to be an easy thing. And I might look like a woman who is dressed well and beautiful, but I started my business -- I started my business at 19 and I had six men working for me full-time and I did a fair amount of stone masonry. So when I'm talking, I'm talking as a pretty good expert in stone masonry.

That they did do this correctly. The architect did design this. It's footed well. You can see -- this is pictures of the footings further in. You can see, this

12-12-2019 Case No. 19-29

one is showing the stone veneer being put on. That's the cement and rebar form. Those are the wood structures to pour the cement into. So you might have seen wood structures, but those are your forms.

That one, if you can see it on the picture -- you might not be able to see it on the blowup for the neighbors, but here you can see that's rebar sticking up above with pieces of, you know, there is some tape on them from when they were probably transported in the vehicle, so that's the footing (indicating.) The form for the footing, I should say.

I think that's a repeat (indicating). So those are the forms. And, again, you can see the poured cement with the veneers being put on. So it's fortunate he built it so well, but unfortunate as it comes to taking the height down. It's not easy.

MS. BUNTING-SMITH: What will be the approximate cost, in your opinion?

MS. STABELL: Wow. I know over this side of the line things are more expensive.

MS. BUNTING-SMITH: If you can give a range.

MS. STABELL: It's really kind of tough. I think it depends on the scope.

MS. KNECHT: What would it cost in Connecticut?

MS. STABELL: It's funny, I don't normally take things apart. I'm usually building things. For me, destruction is a very negative thing. So, you know, definitely I would say \$3,000 and up. You know, it's easy to knock the veneer. Off the top I think that would be my suggestion; if there was something done just knock the

12-12-2019 Case No. 19-29

veneer, if you really want to get it down. But, again, the stones you would have to actually take those stones that are the face and either cut them in place or you would have to pop them up, cut them, put them back up. So it might be even more up into the five range.

And it depends on who you get to do things now days. Because, you know, there is licensed contractors and there are non-licensed contractors that do this kind of work, you know. So if you're hiring the sub or you're hiring a contractor, you know, you'll probably go up by a third. So, you know, it's definitely a difficult thing.

Again, I don't know what your laws for hardship are in this state, you know, usually if something is, presents a considerable hardship, then that is a consideration.

MR. HARRISON: Feasible alternative, that's one of the criteria.

MS. STABELL: Yes. So that's why my suggestion was to build it up. The other thing is that, you know, the plan of building up would be to step it down with steps that probably were just etched in cobblestone or something.

And then a third alternative we talk about, too, because the neighbors are opposed to it, is there really isn't any landscaping here now to speak of. May be it could be screened, the property could be screened in such a way that maybe they wouldn't see this any longer.

MS. BUNTING-SMITH: Well, do you have a suggestion that you could present?

MS. STABELL: Yes, yes. I could suggest, you know, a plan to, you know, lay out maybe an evergreen on the one side, large evergreen. It would be a little bit

12-12-2019 Case No. 19-29

tough to screen it along that side, you know. This is talking about, you're facing the house, the left side. You know, one big tree would screen it face on, but as you're driving by, and, you know, people aren't just stopping to look, they are driving by and not seeing changes. But on the other side you have enough room that probably some trees can be put on that road edge and maybe put some other things kind of in a half circle around a bit. It might actually tie in really nicely to raising that area outside the gates, so that I have like a level plateau, that may be a fountain or something, a bird bath could be put there, decoratively kind of tie that in.

One of the other things that had come up was the use for the arch; somebody had said there is no use. And, you know, there are a few uses. The gates when they are installed and they are heavy, the arches do keep them from sinking down over time. Over time they do that, they kind of gate themselves, sometimes rack. But the, you know, the pillars in some cases can go in.

In this case it seemed like it was footed down pretty well so that wouldn't happen. But the arch itself also offers protection from the elements. So if you were talking a wooden gate, it would definitely lengthen its life. In the case of the iron gate, it would lengthen its life. But not -- the iron usually has a longer life.

But the third thing is I use a lot of vines and these are kind of elements that are decorative, but also to grow vines. Vines need a support of some kind. So normally when I'm installing a archway it is to grow some type of a decorative vine over. Sometimes the grape vines, something, you know, depending on what the people like.

So, you know, to my eye it's a very beautiful element for this property. And,

12-12-2019 Case No. 19-29

again, I feel it would be a shame to kind of destroy this. I think it in time will be, you know, kind of fitting into the landscape more where now it's maybe sitting out due to the fact that --

MS. BUNTING-SMITH: Outstanding.

MS. STABELL: Yes, outstanding. And I think I have to say, I feel, you know, personally that there is some type of a something going on here a little bit deeper as far as, you know, the way the people are looking and scrutinizing shall we say, to be nice.

MS. BUNTING-SMITH: Well, they have been living with it for several years so.

MS. STABELL: Yes. It was a hard issue. And again, you know, finances aren't always there to do things overnight, and it's been a learning curve. I don't know if Jose is ever going to do another contracting job.

MR. HARRISON: Are you aware he came for a variance in 2012 and 2017?

MS. STABELL: Yes, I heard that. But I also was told that there is no restriction on the amount of variances you can bring.

MR. HARRISON: No. But what -- okay. I was looking to see who the architect is. I see the engineer. I don't have the prior file on those variances to see if it's the same engineer, to see if he at least listed Code requirements for the F.A.R., the height restrictions.

MS. STABELL: He's asking us questions like we don't know R-2 versus R-1.

MR. HARRISON: I want to -- because you're saying that he wouldn't know that the



12-12-2019 Case No. 19-29

height restriction -- I see the fence, the fence, the wall -- I'm sorry. The wall seems to be in compliance.

MS. STABELL: Yes.

MR. HARRISON: He's very familiar with our Building Department. He's very familiar with our Zoning Board. And your position is that he went inside the Building Department -- and we'll hear in a minute -- they somehow told him this is okay to go ahead and build the arch outside of the Code?

MS. STABELL: Yes, that's what I've been --

MS. BUNTING-SMITH: Despite the familiarity -- despite the applicant's familiarity with the Building Department, with this Zoning Board, and with at least some of the requirements that our Code requires, including a wall that is clearly there in the picture.

MS. STABELL: I think -- I think because of the people he's working with, they are coming and telling him -- the architect and other people --

MR. HARRISON: What people? I thought he's the one that his own contractor.

MS. STABELL: He took on the job as a contractor because he lost all the money.

MR. HARRISON: So he had contractors before?

MS. STABELL: He had. Someone had stolen the money that he had gotten from the insurance. So then he was stuck with no money and he didn't want to hand over the project to somebody else to be, you know, lose the money again. And he had met an individual who told him he could be his own

12-12-2019 Case No. 19-29

contractor. But he's not a contractor. He's somebody who took this job on because -- but I have to tell you, though, it's been a learning curve. Because I've heard this story, but I have never found somebody who like I spoke to him and before I could even get him an estimate on anything he had done. He's taking it very seriously, the speed of time that people want to see things done, and he just really want to get this over and done with.

MR. HARRISON: Okay.

MS. STABELL: You know, I think there has been some misunderstanding where people thought he was kind of like a contractor who was coming in and doing something first and trying to get away with it after.

He just really didn't have an idea of what these regs really were like. Had somebody handed him physically a book or something, I think it would have been something very helpful, from the get-go.

And I think when we are dealing with people that are coming from other places you want to make sure that they absolutely understand what the rules are. I don't know if they are bilingually, you know, presented anywhere also. I don't know if there is an effort made to make sure that they are comprehensible to all people.

They might -- it's just, again, I'm making a suggestion that they have a comprehension level -- sometimes even for me to read regulations and law, you know, I'm speaking English and my comprehension level sometimes can't grasp these things. But sometimes people are coming from other places and don't really know how things work. And I think that if there had been at the beginning somebody saying "This is how things work. Here is a physical book," or some, "This is what you have to know because

12-12-2019 Case No. 19-29

you're signing on as your own general contractor," I think that would have been helpful for everybody here.

MS. BUNTING-SMITH: Well, we don't know yet what did happen. We really -- it's getting late, and, believe it or not, we're only on our third case.

MS. STABELL: Do you want the rest of these copies to hand out?

MS. BUNTING-SMITH: Get them to the secretary, please. Just give us a second, sir. We want to hear from the Building Inspector.

MR. FRAIETTA: Good evening. I'm Steve Fraietta, the Building Inspector for the Town of Greenburgh. I categorically -- I just deny that statement. This gentleman never came in to me to talk to me about these arches that he was building. This gentleman has a history of doing stuff first then asking for permits later on.

If you notice, this is the legalization -- it's probably not his first; I can't remember off the top of my head -- where he's done work without getting the proper permits for it. Okay. So it's just totally, I mean, just a totally false statement. Okay.

To go on. This, he has an engineer that's been working on the project who knows our laws. Okay. He knows that we work with the Building Code of the State of New York. We have a Zoning Ordinance of the Town, and we also have our own little Building Code of the Town. So I just think that this whole scenario going on here for now, what, seven or eight years is just unfair to the neighborhood at this point. Okay.

And whether you grant this or not -- it's totally up to you; it doesn't affect me -- but that definitely needed a permit.

12-12-2019 Case No. 19-29

It's a structure, and it's attached to the ground. Okay. And it's over our height restriction. Plain and simple.

MR. MARTIN: Thank you.

MS. STABELL: Could I ask -- could I ask you a question? How are you --

MS. BUNTING-SMITH: You have to be on the mic if you want to do that.

MR. HARRISON: Go ahead. Go ahead.

MR. BEJAR: My name is Jose Bejar and I'm the owner. Two things. Like, for example, I spoke with Mr. Fraietta last year. He have asked me to meet him. Make sure your arch wide because neighbors start to calling after they approved my sunroom over here. Because, like you say, I have three bodies, my two first party this was on top of the garage, the two bedrooms. The neighbors coming here approved.

I have problem in my second variance because it was a sunroom. In the sunroom I saw the neighbors that, like, they don't want finally stop. Then I get prejudice for the neighbors.

After that -- this is 2016 -- booing, harassment. Whenever we are calling the police, even the police coming, they say, you know what? Even the neighbors chasing my car. They start to do this work here, even here they start to go talking whatever.

Finally we're calling the police. The police coming to my house. He told me -- I am nervous, I am, for my life. Because no matter what again, this house -- I arrive in this neighborhood 2004, I bought this house. I'm a resident of Greenburgh, paying taxes. Even I still pay everything. I don't owe any money. Two things.

12-12-2019 Case No. 19-29

Then after that -- first of all, was the sunroom approved, now I want to finish the house. And then now in the last minute approved the house. You see when the sunroom, I said, "Mr. Fraietta," when I was with him, talking face to face, he told me like this, make this, because they have more than 12, you have to knock out. I went over there even with the same work and make sure it's a large arch. It was little. It's no large. It was 10.6, 10 feet 6 inches. I come back to him. He told me, "You are okay. That's it. Keep going. Finish. As soon as possible because neighbors start to complain."

Then after that -- it's a sunroom. Sunroom is no easy. Sunroom, as soon as I approve variance they do a four seasons room in Tarrytown. Then it's taking six months, because he's a specialist, he's, you know it's a special glass.

Again, this house, in 2004 I bought for my mother. I am the last son. My mother brought to eight brothers -- five sisters and three brothers to United States in 2000. Everything with papers. We are now citizens. At least for the neighbor this guys is repeated offender, it's illegal, it's common, illegal coming, illegal things, illegal family.

Honestly, I know the things that I hear from you -- I am no contractor at all. I am working in the medical field. I'm very successful professional in United States in 2000 and in 2020. In 2016 my life changed completely. Because while it's in my work what I do I do with the probing tube. I working in the medical field with the frail kids. My life is completely simple. It's not, pero I taking care my mother like now is 95 years old.

I plan to bring her here, like she was in the last meeting. Even neighbors like the more age they thinking more age we

12-12-2019 Case No. 19-29

have to respect, but they laugh in my mother. Even I am 95, I am 97, I am 100, even you are witness for that. I say, you know what today her nurse called me and said, "Mr. Jose, do you want your mother in the meeting?" And then two things. And I told no because extremely cold and there is enough is enough.

I'll finish the house. The house is done, in and out. Mr. Fraietta and Mr. Anthony Zacarolli and Mr. Robert Dam. Like in this week they went to my house twice, like coming in, coming out. They always -- even Mr. Robert Dam the last time assumed that the meeting was here the 21st. He was in my house. And he attack to me, "What you plan to do?" "Mr. Robert Dam," I just come with Christmas decoration was near balcony. Because one of the neighbors point like I have a sliding door and my plan is to do balcony.

I call my architect and I said, Mr. Costa, you know that I need balcony, now is plan to install. And Mr. Robert Dam, he didn't understood what is balcony. I use the clinical word that I learned in my contrato. This period now, whatever I am here, like I saw Mr. Fraietta and Mr. Anthony. They know I consider their Building Department -- the Building Department is against.

Now, this is the point, like I mention, like a friendly. Because Mr. Pena (phonetic) know my mother. Because elderly. Because you lose your father, lose my mother. They was talking after that, he was helpful for me. Then people thinking like I always use for him, he said to me whatever he wants, but this is the thing that you start.

Overall I say, you know what? I am no contractor at all. The thing how I arrived like my first contractors. The first time when the house was fire, March

12-12-2019 Case No. 19-29

24th, 2012 we bought the house in 2004. My mother live in the house eight years and enjoy the house very nice. I never do any change in the perimeter. Even in the pool when the neighbors try to say, how can this guy do in the perimeter like barrier wall even permit the pool? I bought the house like this. I bought this from American Italian family. I bought in 2004. Then after that arrive Jose Spanish family.

MR. MARTIN: May I just ask you? One of the things that we may base our decisions on is factual things. Now I think we have heard from you that you have met with Mr. Fraietta twice to discuss the archway?

MR. BEJAR: I make concrete more than twice.

MR. MARTIN: More than twice?

MS. BUNTING-SMITH: On the arches?

MR. BEJAR: Even more than twice. No. No, for the arch one because he was --

MR. MARTIN: We're talking about the arches here, not the sunroom or anything.

MR. BEJAR: For the arches. For the arch. For the arch.

MR. MARTIN: You've spoken to them once about the archway?

MR. BEJAR: I was a person --

MR. MARTIN: Let me finish. Mr. Fraietta has said that he did not speak with you about the arches. So we have a difference of fact here, and we're not going to be able to make a decision unless we know whether you got the green light or not.

MR. BEJAR: Personally he say false

12-12-2019 Case No. 19-29

thing today when I meet with my lawyer outside. Because I know the issue what's going on with the Building Department say now. Because definitely I plan to move in this one to another level. Because no matter what I am bullied, harassment. They are, like, doing strange sign with me.

Like the other day I call already the police. Even the last date of the last meeting over here I had to call the police again. Because they start saying --

MR. HARRISON: You have a lawyer; I'm sure she will advise you.

MR. BEJAR: Look at this. Look at this. Look at this. This one I want to clarify. Because sometimes even you -- when you ask I am contractor they tell me -- I don't know to do next. Is you talking about medicine? Specialty? This is my field.

Now, I'm extremely competitive but they didn't want to recognize -- but I don't think. I keep going like I wanted. The house is for my mother. I want to finish the house. The house is ready inside and outside. Is the reason even -- I ask Mr. Fraietta go together with the house. They don't want to get in because I don't know why.

MR. HARRISON: Can you make it comply as one of the neighbors said? I know you hired an expert --

MR. BEJAR: The police --

MR. HARRISON: Let me finish. I heard what your expert said. I'm asking you directly. Can you cut it off and make it comply and this thing is over with? I'm asking you directly.

MR. BEJAR: No. I saw now that, like, for example --



12-12-2019 Case No. 19-29

MR. HARRISON: Did you hear my question?

MR. BEJAR: The Building Department is here like I saw --

MR. HARRISON: Did you hear my question?

MR. BEJAR: (Interrupting.)

MS. BUNTING-SMITH: She can't take this down.

MR. BEJAR: He won't let me talk.

MR. MARTIN: Wait one minute, please. You have been speaking now for almost a quarter of an hour.

MR. BEJAR: Everything I explain at the time even with the lady coming --

MR. HARRISON: Wait. Wait.

MR. BEJAR: They don't let me to talk. Everything I want to do. Please sit down and then you have your --

MR. HARRISON: She's your lawyer.

MR. BEJAR: I know, but my lawyer. But look, it cost me money. What was the thing? Whatever I see I want to finish this one. This is a house of my mother. Like I am the son to my mother, elderly and poor. Now is coming to many history is I plan to use the house, I plan to use the house. They don't see workers cleaning the house.

MR. HARRISON: Let me say something. As far as that, you have a lawyer for that. If you're getting harassed -- (Interrupted.)

MR. BEJAR: (Interrupting) No. No. No.

12-12-2019 Case No. 19-29

MR. HARRISON: Let me finish.  
(Interrupted.)

MR. BEJAR: (Interrupting) You're wrong. Because what happened, he's lawyer Rialto. I wanted -- I need another lawyer.

MR. HARRISON: You need to -- let's stay focused on this.

MR. BEJAR: (Interrupting) I am exactly focussed on this.

MR. HARRISON: I'm asking, can you make this thing comply so that you don't need a variance? That's a feasible alternative?

Your expert said what it would cost. I'm asking you because you want to get in. You have the temporary CO. You want to get in. You want your mother in there. So that's it. Can you make it comply? This thing goes away. Yes or no.

MR. BEJAR: Yes. I want --

MR. HARRISON: So you can make it comply?

MR. BEJAR: Yes. But this is in another department. In another -- when the, like, the police in Greenburgh now patrolling us twice a day.

MS. BUNTING-SMITH: Mr. Bejar. Mr. Bejar. We do have certain rules here. We've allowed a lot of time on this and although we had -- listen to me. Although we had two applications before yours tonight that were somewhat lengthy, they were the first time we were hearing those.

Now, listening to you tonight, we have spent a lot of time on this at the last meeting; we spent a lot of time tonight. It appears that we're getting off topic here. We're not going in the direction to try and

12-12-2019 - Case No. 19-31

narrow down a means of trying to resolve this. We're making it more and more complicated.

So, and I know there are people here who still want to speak. And I know you want to speak. And I think what we're going to have to do is to close your case tonight. Not close it, but to adjourn it. Because we still have other cases of individuals who have, what? One, two, three, four, five cases that are still waiting to be heard tonight. We have gone past the time that we usually have here to finish our cases.

MR. BEJAR: It's too many -- like they say, they call my repeat offender all the time.

MS. BUNTING-SMITH: That's not something that -- (interrupted.)

MR. BEJAR: (Interrupting) Even the Building Department coming to me and show me --

MS. BUNTING-SMITH: You're not here to tell about that -- (interrupted.)

MR. BEJAR: (Interrupting) I told today and besides --

MR. HARRISON: That's all outside. Consider what the feasible alternative that was mentioned by one of your neighbors. Consider that. We have to move on. All right. Consider that and this thing goes away. Move on with your life.

MR. BEJAR: This is --

MS. BUNTING-SMITH: We'll put you on the calendar next month. We can not deal with this anymore this evening. I apologize to the audience and to you.

MR. HARRISON: Okay.

\* \* \*

12-12-2019 - Case No. 19-31

MS. BUNTING-SMITH: Moving on. The next case on tonight's agenda is Case No. 19-31, Scott Krady.

ZBA Case No. 19-31 - Scott Krady, for property located at 16 Mulligan Lane (P.O. Irvington, NY). Applicant is applying for an area variance from Section 285-12(B)(3)(d) of the Zoning Ordinance to increase the maximum impervious surface from 29 % (permitted) to 31.6 % (proposed), in order to construct a patio. The property is located in an R-20 One-Family Residence District and is designated on the Town Tax Map as Parcel ID: 7.370-188-29.

MR. BERTE: Good evening. Paul --

MS. BUNTING-SMITH: One second, please. I'm sorry. Our magic number.

MR. HARRISON: I move that we continue the meeting.

MR. MARTIN: Second.

MS. BUNTING-SMITH: All in favor?

MS. KNECHT: Aye.

MR. HARRISON: Aye.

MS. BUNTING-SMITH: And the Chair votes aye. Now we can continue.

MR. BERTE: Paul Berte, B-E-R-T-E, representing the Kradys at 16 Mulligan Lane.

The application is before you for an increase in allowable impervious surfaces, approximately 10 percent variance that we're requesting.

This house is unique in terms of its setback from the street. It's over 200 feet, which of that there is approximately 1,700 square feet of additional driveway area, that's both in the shared driveway going to the house to the left as well as

12-12-2019 - Case No. 19-31

accessing 16 Mulligan.

The new impervious surfaces is for a new patio in the rear. Right now it's just grass. We have a Steep Slopes clearance that's been approved by the Engineering Department. It is not disturbing any Steep Slopes. We also have a Wetland/Watercourse clearance form that has been also approved by the Planning Department. We have done Deep Hole and Percolation Tests to mitigate the additional runoff from the patio, which we will be doing infiltration system adjacent to the patio, we're asking the Board to consider this variance for.

MS. BUNTING-SMITH: Do you have any complaints from any neighbors?

MR. BERTE: Not that I'm aware of.

MS. BUNTING-SMITH: And I think the significant thing here is the fact that this is a flag lot.

MR. BERTE: It's a long driveway.

MS. BUNTING-SMITH: Do you want to comment on that?

MR. BERTE: Yes. The driveway is actually 270 feet from the roadway.

So I just did some quick calcs. There is a shared driveway, both 16 and I think it's 14. I'm not certain of the address next to it. But I just did some quick calcs.

The neighbor's -- a portion of the neighbor's driveway is about 500 square feet in the 16 Mulligan property, and then the shared driveway in total, which is considered part of the impervious surfaces, is 1,235 square feet. So there is almost -- there is over 1,700 square feet just in driveway dealing with getting to the back

12-12-2019 - Case No. 19-31

yard before this happened, this property has any impervious surface including, sidewalk, house or driveway.

MS. BUNTING-SMITH: Any other questions?

MR. HARRISON: I'm looking quickly. Do you know the dimensions of the patio that you're putting up?

MR. BERTE: Yes. It's 15 and a half by --

MR. HARRISON: 28.

MR. BERTE: 28, yes. That grade, it's not -- it doesn't require any significant regrading. The back yard is flat. When the house was built it was contemplated for some type of a patio.

MS. BUNTING-SMITH: I understand that the improvements are, among other things, rear patio door?

MR. BERTE: Yes. So there is a patio door about a small step-out. So we're just adding a small deck that will extend to the patio. The deck is less than two feet. So it's not -- it doesn't have a railing there or wouldn't have any -- it's within all of our setbacks. All the setbacks are met for this lot. There is no variances required for that, just for the impervious surface.

MS. BUNTING-SMITH: Okay.

MR. HARRISON: What size is the deck?

MR. BERTE: The deck is 10 by -- 8 by 12.

MR. HARRISON: Okay.

MR. BERTE: It's in that left

12-12-2019 - Case No. 19-31

corner there, by the -- right over here  
(indicating.)

MS. BUNTING-SMITH: Any other  
questions? Anyone in the audience wish to  
comment on this case?

(No response.)

MS. BUNTING-SMITH: Okay. All  
right. Thank you.

\* \* \* \*

12-12-2019 Case No. 19-34

MS. BUNTING-SMITH: The next case on tonight's agenda is Case No. 19-34, our first new case of the evening, Clearbrook Cross, LLC, property at 135 Westchester Place.

ZBA Case No. 19-34 - Clearbrook Cross, LLC, for property located at 1-3-5 Westchester Pl. (P.O. Elmsford, N.Y.). Applicant is applying for area variances from Section 285-34(B)(4)(a). Zoning Board of Appeals Agenda December 12, 2019 of the Zoning Ordinance to increase the maximum building height from 6 ft. (Permitted) to 18.25 ft. (Proposed); from Section 285-34(B)(3)(a)(5) to increase the maximum impervious surface from 70 % (permitted), 82.01 % (existing) to 82.09 % (proposed); from Section 285-34(B)(94)(f) to reduce the minimum rear yard setback from 100 ft. (Required), to 10.58 ft. (Proposed) and to reduce the minimum side yard setback from 100 ft. (Required) to 17.31 ft. (Proposed), in order to construct a new storage building. The property is located in a PD-Planned Development District and is designated on the Town Tax Map as Parcel ID:7.120-19-8.

MR. VOGT: Good evening, Madam Chair, ladies and gentlemen of the Board. William R. Vogt, Junior, with L2A Land Designing. And I am a licensed professional engineer in the State of New York. I represent the applicant Clearbrook Cross, LLC. That's care of the Robert Martin Company, for -- it's actually 1, 3 and 5 Westchester Plaza.

Currently we're seeking four area variances for approval. What it is that we are trying to construct is an accessory structure for a salt storage shed.

The applicant recently took ownership of the property from Mack-Cali. They previously owned the Cross Westchester Executive Park, and as part of that purchase



12-12-2019 Case No. 19-34

they need to install this salt storage shed on the property.

When Mack-Cali owned the property they also owned the industrial park that's behind the Sam's Club on Warehouse Lane. There was a salt shed -- or there still is a salt shed on that property; however, it's not under the ownership of the applicant. It was sold to another entity. So they lost the use of that shed. So they'd like to construct a shed to service all of their properties at the office park.

It's approximately -- the property itself is approximately 7 acres, but the office park is approximately 60 acres of property. So this salt shed would service all of those properties within the park.

So there is four variances that we're seeking this evening. The one is for a maximum building height of 6 -- what's required is 6 feet. What we're proposing is 18.45 feet. There is a -- this is an existing nonconformity. The increase -- the maximum impervious surface permitted is 70 percent. Under existing conditions it's 82.01 percent; under proposed conditions we're actually reducing that slightly, to 81.95 percent.

And then the -- the remaining two are for a rear yard setback. What's permitted is 100 feet and what we're asking for is 10.58 feet. And the last one is for a side yard setback, what's permitted is a hundred feet and what we're seeking is 17.31 feet.

So I just wanted to give you a feel for where the property is. This is an aerial photo back in the southwest corner of the property. That's where the salt storage shed is proposed, and that's where it's in close proximity to the side and rear yard setbacks in that area. What we're proposing to construct is identical to the salt

12-12-2019 Case No. 19-34

storage shed which is at 1 Warehouse Lane. You can see in the top two pictures, that is the existing salt storage shed at 1 Warehouse.

We're going to build -- or we plan to build the identical structure -- it's a 30 by 30 structure. Again, it's 18 feet tall at the highest point, at the arc. It has a concrete segmental block base with an arched canvas roof that's reinforced. It's all pre-engineered. It's ready for permitting with the Building Department.

And then just if you can move up a little bit. That lower picture is the southwest corner of the property where the structure is going to go. So it's well screened. It's in an area that is very little disturbance. We can accommodate the shed in that area by simply just doing some curb work. It's going to sit right on the asphalt. We're actually creating about 200 square feet of more green space in that area.

So it's a good location. It's central to the office park, to service all these properties which make up the 60-plus acres. And, again, we're here for approval of these four area variances, one being an existing non-conformity.

As we, you know, approach farther into winter we'd like to get this constructed as soon as possible. We're ready to construct. We're seeking waiver of site plan from Planning Board. So we're just before the Zoning Board for these area variances. And we have our Steep Slope and our Wetland/Watercourse permits already approved. We're just waiting on -- I believe we have our Storm Water Permit that's either pending or it's soon to be executed.

MS. BUNTING-SMITH: Well, you used two words tonight, "arc" and "arch." You

12-12-2019 Case No. 19-34

might want to rephrase.

MR. VOGT: Crescent? How about crescent?

MS. BUNTING-SMITH: What dictates that height, of the 18?

MR. VOGT: Sure. So, in order to get the volume of material in there for that amount of property --

MR. HARRISON: Can you put that back up again?

MR. VOGT: Sure. The top one?

MR. HARRISON: Sure.

MR. VOGT: So outside is 30 feet, and from front to back it's 30 feet. So the inside dimension is roughly 25 by 25, and then you can see, they use a loader. That's correct. Just to the right. So we need to safely move the material in and out of that shed and keep it protected.

So getting that amount of volume there, it's close to about -- I think it's about 350 to 400 tons of material that goes in there that would service the property. That's the reasoning that we need that size structure for there. And, again, it functions right now on 1 Warehouse, and had the ownership obtained that property we wouldn't be before the Board, but we don't have access or ownership of that property, so we have constructed another shed for this site.

MS. BUNTING-SMITH: Could I have the light back on for a minute, please?

MR. MARTIN: You said back the trucks in. When you're getting low on material, the trucks have to back in to load up?

12-12-2019 Case No. 19-34

MR. VOGT: Sure. I mean, we can safely do that on the property. It's interior to the subject lot.

Again, the lot itself is a little over seven acres. We picked this location because it's safe. It has easy maneuverability for the deliveries. Deliveries are only made during the week, during, excuse me, during business hours. So delivery times are not an issue for the site.

And, again, the only times we access there are in inclement weather conditions, and usually we're loading the trucks that spread the salt prior to or in advance of the storm.

MS. BUNTING-SMITH: I'm showing you the exhibit that has the two color photos on the last page of it. And this appears to be -- from what you've described -- the proposed location. And I noticed when you had the picture up previously about the screening it showed the property at a different time of the year.

Looking at this photo that you have attached, it's clear that there appears to be residences that are clearly visible and would see the structure very easily.

Number one, has there been any I guess responses from any residents with respect to this? And of course, again, in your presentation I don't see the structure that you're showing us tonight, so I'm not sure that they would have seen what exactly it is that you're putting up.

MR. VOGT: Sure. The answer to your first question, no. We have not received any complaints or concerns from any of the surrounding neighbors. A majority of the neighboring property is within the same zone. We do border on one side the PH Zone, which is the scattered site public housing

12-12-2019 Case No. 19-34

district. But all of the other remaining adjacent properties are still on the PH non-residential planned development district. But there is a residential development in the PD zone that's adjacent to us.

MS. BUNTING-SMITH: But my question is, is there any -- because when you look at the greenery and the, you know, the leaves are up it looks great. But when you look at this picture it's pretty bare bones; and clearly it could be somewhat of an eyesore. Is there anything you could do?

Looking at this, it appears that you might have the property to do something with some type of deciduous trees that would be more -- not deciduous; which is evergreen.

MR. MARTIN: Evergreens.

MS. BUNTING-SMITH: Evergreen, that might offer some type of screening for this.

MR. VOGT: Absolutely. We'd be willing to install evergreen trees, that would help screen the area. Probably Green Giant arborvitae, they would grow to at least 20 to 25 feet tall. So we could absolutely line the side and rear side of that shed to further buffer proposed shed. Absolutely. And we can show that on a revised plan and work with your professionals to that extent.

MS. BUNTING-SMITH: I don't have any other questions.

MR. HARRISON: Would you mind going through the elements for me? Because I notice you left -- you have said it's not substantial. You said it's not applicable of tests that we use. The application. Please describe whether the requested variance is substantial and the responses not applicable. Please describe whether the

12-12-2019 Case No. 19-34

proposed variance will have an adverse effect or impact on the physical, environmental conditions in the district, not applicable, whoever completed the application. And same thing again on the other questions, not applicable, not applicable, not applicable. But those are what we use when we go to our balancing test.

MR. VOGT: Understood. Understood. Sure.

MR. HARRISON: Go ahead.

MR. VOGT: I can run through pretty quickly.

MR. HARRISON: It does seem like --

MR. MARTIN: Some --

MR. HARRISON: Two or three are substantial, extremely substantially. I don't know if he is that the word extremely substantially.

MR. VOGT: Sure. We looked at the site and some alternate locations, really, that based on the setbacks it would put us very close to the existing buildings that are on the site. It's that it's an industrial use and all of the loading is up against the buildings as well as all the parking. So the best location would be in the back corner.

And, again, like I said, it's a large office park and this property happens to be centrally located within the park. So we feel that -- in my opinion, I feel like that would meet that criteria.

MR. HARRISON: But it makes the request that you're looking for substantial. I see that, because I see it's a lot of space that you have. And I do see that, you know, you're willing to plant the evergreen.

12-12-2019 Case No. 19-34

So that's the most feasible location on the property.

MR. VOGT: That's correct.

MR. HARRISON: Okay.

MR. VOGT: I don't feel that there is any negative impact. We agreed that we would install the landscaping around the facility. Again, the actual building itself is a more of, like, a cream color. It would blend in with the surroundings. But it's not a bright color or metallic color so we feel it wouldn't be a negative impact on the surrounding neighborhood.

The other item, we are reducing the amount of impervious coverage on the site slightly. We have all the Storm water Management infrastructure already in place. We're not diverting water off-site to adjacent properties. It's always being contained within the subject property safely and effectively.

I don't believe it's a self-created hardship. Again, had the property at Warehouse Lane been available for purchase by the Robert Martin Company it would have solved this issue; however, that's not on the table anymore, so we're forced to find an alternate solution for this. So this property is, and location would address these concerns.

MS. BUNTING-SMITH: Any other questions? Anyone in the audience?

(No response.)

MS. BUNTING-SMITH: Okay. Thank you.

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12-12-2019 - Case No. 19-35 & 19-36

MS. BUNTING-SMITH: Thank you. The next case is Case No. 19-35, Columbia/Wegman, has been adjourned.

We will now move on to Case No. 19-36, Joshua Giardina.

I thought we had to do it after every case.

MR. HARRISON: I move to continue the meeting, Madam Chair.

MR. MARTIN: Second.

MS. KNECHT: Aye.

MS. BUNTING-SMITH: And the Chair votes aye.

\* \* \* \*



12-12-2019 - Case No. 19-36

MS. BUNTING-SMITH: We can move on with the next case here, which is Case No. 19-36, Joshua Giardina.

ZBA Case No. 19-36 - Joshua Giardina, for property located at 8 Hawthorne Way (P.O. Hartsdale, N.Y.). Applicant is applying for an area variance from Section 285-11(B)(5)(b) of the Zoning Ordinance to reduce the distance from the driveway to the side lot line from 18 ft. (Required), 13.83 ft. (Existing) to 13.83 ft. (Proposed), in order to construct a driveway. The property is located in an R-30 One-Family Residential District and is designated on the Town Tax Map as Parcel ID: 8.280-214-33.2.

MR. NARDECCHIA: I'm Larry Nardecchia. I am a licensed professional engineer in the State of New York. N-A-R-D-E-C-C-H-I-A. And I represent the client who purchased the house a year ago. It's the -- is there a way -- the subdivision -- the subdivision was originally a two acre subdivision, was sliced in half. It has an existing house. There is the existing house up there (pointing.)

So the driveway went through the other half of the lot so the driveway had to be relocated and it's shown on a proposed site plan on the right-hand -- on the left hand side of the drawing, showing the driveway. And it is labeled 18 feet off the property line.

The driveway, however, was drawn -- if you can slide that over a little so we get the left hand side. On the right-hand side the driveway is shown and it is actually 14 feet to 15 feet over, so it's three to four feet short.

It's a gravel driveway. And you see we've located the trees along the side, because the contractor is not here, and the

12-12-2019 - Case No. 19-36

driveway was built eight years ago, it's been working for eight years. But it's evident that the reason they came up short, instead of the 18 foot offset they used 14 foot to save the trees. And if you look on the chart you'll see that the last four trees -- nine, 10, 11 and 12 -- are right on the edge of that. They are major trees. They are not small. And the chart along the side shows you. And those four trees actually have their roots right up against the edge of the driveway. And at the curve -- right here at that curve the driveway only is 9 feet 3 inches wide, in fact, to avoid the roots there. So that's why this was done. We didn't know it at the time, nobody spoke to anybody about getting a variance at that point. So it was used and nobody had a problem until recent construction.

It's non-compliant, but in the whole neighborhood there are six other houses right adjacent and around it that either have common driveways or the driveways on the property line. And in fact the other one here, at the bottom of the lot, the existing driveway was down here (indicating), and that's for 75 and 59, which are right on the corner of the property.

So it's in character with the neighborhood, and in fact it surpasses it. There's 135 feet clear, clear site line, and there is no other driveway on that break in the road. So we're seeking a variance for that.

If you look at that picture, you're looking right up, and you see that even though the trees may be offset, you see that their foliage and the trunks are coming out on to the roadway. And if you look there is another one where it shows actually one tree leans over so you couldn't even -- you couldn't even take heavy vehicles in it.

12-12-2019 - Case No. 19-36

No neighbors have complained. It's in character with the neighborhood; and in fact this driveway is probably one of the better ones in the neighborhood. There are no obstructions on the street. You can see it. And when you turn you're clear, no turn. Are there any questions?

MS. BUNTING-SMITH: I don't have any.

MR. HARRISON: No.

MS. BUNTING-SMITH: Anyone in the audience?

(No response.)

MS. BUNTING-SMITH: Okay.

MR. NARDECCHIA: Thank you.

MS. BUNTING-SMITH: Thank you. Since we have one other case could I have motion to --

MR. MARTIN: So moved.

MS. BUNTING-SMITH: -- to continue?

MR. HARRISON: Second.

MS. BUNTING-SMITH: All in favor?

MS. KNECHT: Aye.

MR. MARTIN: Aye.

MS. BUNTING-SMITH: The Chair votes aye.

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12-12-2019 - Case No. 19-37

MS. BUNTING-SMITH: Let's move on to Case No. 19-37, Ivana Greenfield.

MR. HARRISON: The best for last.

ZBA Case No. 19-37 - Ivana Greenfield, for property located at 36 Manitou Trail, (P.O. White Plains, N.Y.). Applicant is applying for an area variance from Section 285-15(B)(5)(b) of the Zoning Ordinance to reduce the distance from a driveway to the side lot line from 10 ft. (Required) to .6 ft. (Proposed), in order to legalize the driveway. The property is located in an R- 7.5 One-Family Residence District and is designated on the Town Tax Map as Parcel ID: 7.350-182-15.

MS. GREENFIELD: Good evening. I'm Ivana Greenfield, and I am a resident of 36 Manitou Trail. And my husband and I, we're here for variances. He's going to help me to talk. Sorry.

MS. BUNTING-SMITH: That's okay.

MR. GREENFIELD: Good evening. Name is Lucas Greenfield. I'm the husband. That's my wife, Ivana Greenfield.

MR. MARTIN: It's late in the day.

MR. GREENFIELD: I'm tired. I worked late last night. We're seeking a variance for our driveway that has been the same way since we bought the house -- or since my wife bought the house -- back in about 2008. And so it recently came to our attention that it never had a variance. I don't know if the previous owner just did it and never got it. But we -- in our packet I think we show in this picture right here (indicating) is prior to us buying or to my wife buying the house, and it clearly shows that the driveway is already there. So, you know, we just need to make it legal and get the variance for it.

12-12-2019 - Case No. 19-37

MR. HARRISON: What made you want to do this now? Just curious. What made you want to do it now?

MR. GREENFIELD: The Building Department told us. They came in and did an inspection, and they told us that it wasn't up to compliance. So we needed to make it up to compliance, which we have no problem. We've had no problem doing. We didn't know that it wasn't in compliance.

MR. MARTIN: Are you planning to sell the house?

MR. GREENFIELD: No.

MS. BUNTING-SMITH: I do see in your application you mentioned that you have several cars.

But I also note that there was some violations that were presented because of additional people living in the house at some point fairly recently. Is that correct?

MR. GREENFIELD: That's all been taken care of, Ma'am.

MS. BUNTING-SMITH: Well, the connection I was making is that you appear to want the additional parking, and one would assume that it's kind of tied together. Because to legalize the driveway to the Code he would just reduce it, you know, slightly, and still obviously would have adequate parking.

So I would like to know what, if any, hardship would have been imposed to you to simply not just legalize the driveway at this point.

MR. GREENFIELD: Yes, because then we're tearing it up. We're tearing the asphalt up. We'd have to tear it up. And, you know, at this point our neighbors

12-12-2019 - Case No. 19-37

don't -- they don't, you know -- what is the word I'm looking for?

MS. BUNTING-SMITH: Complain?

MR. MARTIN: Complain.

MR. GREENFIELD: They don't complain about it. There is I think -- one, two, three or four houses down there is something very similar to it.

MS. BUNTING-SMITH: That doesn't help us.

MR. GREENFIELD: So, I mean, it's to me, you know, it also --

MRS. GREENFIELD: Compliance.

MR. GREENFIELD: It makes it so that, you know, if there is, you know, if we ever have family over or whatever there is plenty more parking.

MS. BUNTING-SMITH: I know, but the streets also in that area accommodate parking.

MR. HARRISON: That's in the side yard right there?

MR. GREENFIELD: From the back.

MRS. GREENFIELD: That's the side.

MR. HARRISON: The other one up there?

MR. GREENFIELD: Yes. Actually I hear what you're saying, ma'am, to that. But actually street parking is an issue on that street.

MS. BUNTING-SMITH: I know but everyone does have driveways.

MR. GREENFIELD: Correct. But

12-12-2019 - Case No. 19-37

there is people who have driveways that don't use their driveways and they use the street. Like, for example, I mean, I don't -- we sat here all night listening to nonsense. I know you want to go home and so do I.

MS. BUNTING-SMITH: It's not nonsense.

MR. GREENFIELD: So do I. My neighbor across the way, he has a driveway, he has like five cars. What does he do? You know, because you can't be on the street during the nighttime, so he puts all his cars in his driveway at night. But then early the next morning what does he do? He takes all his cars out and lines them, you know, along the street. So that when I'm backing out of my driveway, it's very hard.

So, you know, to be able to have the space to be able -- I like to be -- this way I can back, you know, my cars in or maneuver how I, you know, need to maneuver sometimes. Because it creates an issue trying to back out of the driveway.

MS. BUNTING-SMITH: Our concern is that, as you say, all the neighbors have driveways. But if we were to have every neighbor saying, well, you got a variance so that you could make yours wider, we want ours wider too. Because we have the same problem, then suddenly it tends to reverse the effect that we're trying to accomplish of having the neighborhood more improved rather than less improved.

So that's what our concern is. Is there anything you feel you could do? Is there anything you feel you could do to somehow come closer to compliance? Because you have a lot of driveway, really.

MR. HARRISON: And here is the thing. 22 years. I don't believe -- she's been here longer than I have. I don't

12-12-2019 - Case No. 19-37

believe I've ever seen where we've granted -- going to -- you're at .6. In the rare occasions that we've granted them, I don't remember granting it so that homeowner can park in the side yard. If you've done it it's been in the front. But I can't think of a case where we've granted a variance zero, not really to setback, so that the homeowner now can park in the side yard as opposed to in the front. You know, so this is the first time.

MS. BUNTING-SMITH: It's a bit extreme.

MR. HARRISON: This is the first for me in 22 years so.

MR. GREENFIELD: I understand that; but, I mean, at the same time, you know, it is convenient for us as the homeowner, right, so, you know, we obviously we pay the taxes here in Greenburgh, you know, what I mean? If it's something that is convenient for, us and, you know what I mean? And our neighbors on either side haven't complained about it, and it's been that way for --

MS. BUNTING-SMITH: Well --

MR. GREENFIELD: -- 10 plus years since we owned the home, you know. I would just ask that, you know.

MS. BUNTING-SMITH: All right. We haven't deliberated your case yet and we don't have all of our members here, but I'm going to stick my neck out and say it would be difficult for us to simply grant this application as you've presented it.

So my suggestion is going to be to give it some thought. But I'm willing to listen, once we deliberate, to our other members to see what their thoughts are.

MR. HARRISON: If you have the time you can go re-file the application, and



12-12-2019 - Case No. 19-37

ask to see some of the driveway cases that we've issued variances on and take a look at those. This way you'll see what our decisions have been. The precedent is what we call it. And this way you can come here and redress the situation. You can see what we've granted.

MR. GREENFIELD: Okay. And so --

MS. BUNTING-SMITH: We're not going to turn you down.

MR. HARRISON: Right.

MS. BUNTING-SMITH: But we're asking you to take a look at it.

MR. GREENFIELD: But you are turning us down?

MS. BUNTING-SMITH: No. We're turning down what you are specifically asking for, which we often do. But people do make changes so that they can accommodate, or make something that makes the variance smaller. It's a huge variance.

MR. HARRISON: If we turn you down you're going to have to wait to come back. We are giving you an opportunity to reevaluate rather than denying it tonight.

MR. MARTIN: Your application is alive. We're suggesting you go to the Building Department. Try to work with them, see what you can do.

MR. HARRISON: Because otherwise it's going to be denied tonight and you're going to have to wait. You're going to have to make it comply.

MR. GREENFIELD: Okay. I'm confused.

MR. HARRISON: All right. If you go they will gladly give you help. They are

12-12-2019 - Case No. 19-37

very helpful. As you can see when you filed the application, they are very helpful. And just ask for cases that we've issued variances on for driveway.

MS. WALKER: It's my job. I could provide some.

MR. HARRISON: All right. They will help you. Then take a look at it, what those are, and see if you can come up with something. But as it looks now, in the side yard -- that's what I was trying to tell you: I've never seen that. I don't think we want to start that precedent that we have where we're granting variances for people coming, parking in their side yard. And believe me, we've got a lot of variance requests for driveways.

MR. GREENFIELD: Okay.

MR. HARRISON: We have had four-car driveways and they want six cars in there.

MR. MARTIN: Eight.

MR. HARRISON: And eight car garages also. And we've turned those down.

MR. GREENFIELD: So no problem. All right. Because we want to comply, right. We didn't know this was an issue, so this is why we're going through the process of --

MR. HARRISON: Yes.

MR. GREENFIELD: -- trying to rectify the problem.

MR. HARRISON: That's why they sent you to us.

MR. GREENFIELD: So we definitely -- but I hear what you're saying.

MR. HARRISON: Right.

12-12-2019 - Case No. 19-37

MR. GREENFIELD: So that's fine. Right. But I think that then, if I hear what, Madam Chair, you're saying, is that, you know, you were saying that if you grant us the variance, right, then another neighbor down the street then says, well, you granted him the variance, I want the variance.

MS. BUNTING-SMITH: That's how it works, right?

MR. GREENFIELD: And then the next neighbor goes down the street and then it's chaotic.

MS. BUNTING-SMITH: And they would be testifying. That's why we have the Zoning Code to try and restrict and --

MR. GREENFIELD: Correct. So now --

MR. HARRISON: They pay taxes too, correct?

MRS. GREENFIELD: Correct.

MR. GREENFIELD: Correct. Correct. But, so now, if you want us to look at the way of complying, right, I mean, going down or whatever, that's fine.

MS. BUNTING-SMITH: Making your variance less.

MR. GREENFIELD: Making it less, but then at the same time what about neighbors three down?

MS. BUNTING-SMITH: They come before us, the same thing happens.

MR. HARRISON: They issue them a Summons, they have to come before us.

MS. BUNTING-SMITH: Then it's the

12-12-2019 - Case No. 19-37 & 19-21

same thing.

MR. HARRISON: You don't know if they have a variance. You don't know that. So, you know, find out.

MR. MARTIN: We're trying to help you make it less non-compliant, and the Building Department or Carol can guide you in that.

MRS. GREENFIELD: Okay.

MR. GREENFIELD: Okay.

MR. HARRISON: Something to work on. But as it looks right now we'll have a floodgate here in Greenburgh coming in and they'll want to park in the side yard also. Which, as I said, I've not seen before where we issued a variance, people park in the side yard.

MR. GREENFIELD: Did you say when I bought the house it was already there?

MS. BUNTING-SMITH: I know, but that doesn't make it compliant, unfortunately.

MR. HARRISON: Right, right. You could have had the person you bought it from made it -- legalize it and before you buy it.

MS. GREENFIELD: That was my first time I bought a house.

MR. HARRISON: We're not penalizing you.

MS. BUNTING-SMITH: If you were selling it you would have a problem.

MR. MARTIN: If you wanted to sell it you would have a problem.

MS. BUNTING-SMITH: You'd have to fix it.

12-12-2019 - Case No. 19-37 & 19-21

MR. HARRISON: I wanted to find out how you got -- that's why I asked you what you did, and we kind of assumed that there was a violation. I didn't want to, you know, our Chair got it out because you're here and we're going to help you make it right.

MR. GREENFIELD: Okay. Thank you. Thank so much.

MR. HARRISON: Go see them. They are very helpful.

MS. BUNTING-SMITH: With that, we are adjourned to deliberate. Hopefully come back the same day with decisions.

(Whereupon, at 10:58 P.M. the Board retired to deliberate. At 11:53 p.m. the Board returned to the auditorium to place their decisions on the record.)

MS. BUNTING-SMITH: We are back in session with the results of our deliberations from this evening. And don't tell me I left my -- I keep forgetting things. Do you have it? I'll just borrow it. I got it.

MS. BUNTING-SMITH: And the first case on tonight's agenda, Case No. 19-21, Michael Teverbaugh, is adjourned for all purposes to the meeting of January 16th.

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12-12-2019 - Case No. 19-28

MS. BUNTING-SMITH: And the second case on tonight's agenda is Case No. 19-28, Ferncliff Cemetery application.

Whereas, the Zoning Board of Appeals has reviewed the above-referenced application with regard to SEQR compliance; and whereas the Greenburgh Town Board, as Lead Agency, conducted a coordinated review and determined that the subject application is an unlisted action;

Whereas, the Town Board has determined that the proposed action will not have a significant adverse impact on the environment and issued a Negative Declaration on November 25th, 2019.

MR. MARTIN: Second.

MS. BUNTING-SMITH: All in favor?

MR. HARRISON: Aye.

MS. KNECHT: Aye.

MS. BUNTING-SMITH: And the Chair votes aye.

And I move that the application in Case No. 19-28, be granted, provided that:

1. The applicant shall obtain all necessary approvals and file same with the Building Department;

2. Construction shall commence within 12 months after the granting of the last approval required for the issuance of a Building Permit and proceed diligently thereafter in conformity with the plans Bates-stamped September 16th, 2019 and November 6th, 2019, submitted in support of this application, or as such plans may be modified by subsequent approvals obtained from other Boards or agencies having approval authority over this application, provided that such approvals do not require

12-12-2019 - Case No. 19-28

larger or different variances from the regulations set forth in the Zoning Ordinance.

3. The variances granted herein are for the improvements shown in the plans submitted in support of this application only. And any future or additional construction that is not in conformity with the requirements of the Zoning Ordinance shall require variances even if the construction conforms to the height, setbacks or other variances we have approved herein;

4. The applicant shall install drainage mitigation measures to the satisfaction of the Engineering Department and Town Board to insure that no additional runoff shall result from the additional footprint and coverage that will result from these variances, and to address existing known runoff occurrences from the cemetery to adjacent residential properties; and.

5. Applicant shall install screening satisfactory to the Town Forestry Officer to shield the view of the rear of the Shrine of Memories mausoleum from nearby residences. Applicant shall maintain such screening in a healthy growing condition and replace any plantings that become diseased, dying or dead in the next growing season.

MR. HARRISON: Second.

MS. BUNTING-SMITH: All in favor?

MR. MARTIN: Aye.

MS. BUNTING-SMITH: And the Chair votes aye.

The Chair is not going to read the Findings due to the lateness of the hour, but they will be available for the public and will also be made part of the minutes. Thank you.

12-12-2019 - Case No. 19-28

(The following findings have been inserted into the minutes:)

#### FINDINGS

Applicant operates a cemetery on the north side of Secor Road. The cemetery currently has three mausoleum buildings all of which were erected prior to a 1994 amendment to the Zoning Ordinance that rendered them non-conforming. The current application request permission to expand one of the mausoleums known as the Shrine of Memories which presently consists of a full first level and a partial second level. This application proposes to fill in the second level, thereby affording additional mausoleum space. As such, the proposal will not increase the existing height, length or depth of the building. The expansion will, however, require certain additional features to bring the mausoleum into conformity with current Building Code requirements as to safety and accessibility, including an access door and stairway from and to the second floor, and a structural wall to support the second floor addition. These features will increase the footprint of the building by 2,925 square feet, 3% of the existing building footprint, and add a 0.1 percent to the existing non-conforming building coverage. All the other dimensional variances are merely to account for the additional volume of the building, within the existing height, length and depth thereof, but not to increase such dimensions beyond what currently exists.

In granting this application, the Zoning Board has weighed the benefit to be derived by the applicant from the proposed variances against the impact that the variances would have on the surrounding neighborhood. We have found that:

1. Granting the variances will not result in a detriment to nearby properties, and will not adversely impact the character



12-12-2019 - Case No. 19-28

or physical or environmental conditions in the neighborhood or district, because there will be no change to the use of the building that currently exists and, as found by the Town Board as Lead Agency in its SEQRA Determination, there will be minimal, if any, visual impacts of the proposed expansion from nearby residential developments due to already existing vegetation and screening on site. Moreover, as found by the Lead Agency, any view of the proposed expansion will be an improvement over existing conditions due to increased architectural details in the new facade. For these reasons, the Lead Agency found that the proposed expansion "will not have a significant effect on the environment" and therefore issued a negative SEQRA Determination.

2. The requested variances are not substantial in relation to the requirement sought to be varied. As mentioned, although there are five dimensional variances requested, three are merely to fill in the second level of the mausoleum, and will not increase the existing non-conforming height, length or depth of the mausoleum. The other two variances are di minimis, comprising a 0.1 increase in building coverage, and a 2,925 square foot increase (3%) to the 91,587 square foot footprint of the existing structure. These minimal increases in non-conformity are mitigated by the fact that they are non-functional additions mandated by the updated building codes in furtherance of safety and accessibility.

3. The goal of the applicant can not be achieved by some other feasible means without requiring the variances we are granting, because this is one of the last -- and least impactful -- areas available for development in the cemetery to provide space for interments. Moreover, as noted, the reason for the variances that represent increased non-conformities are to bring the mausoleum into conformity with modern

12-12-2019 - Case No. 19-28

building codes.

4. The applicant's need for the variances is technically self-created, because it is proposing this expansion with knowledge of the requirement of the Zoning Ordinance; however, this is mitigated by the fact that the facility was legal when constructed and was rendered non-conforming by the subsequent enactment of amendments to the Zoning Ordinance as to the permissible dimensions of mausoleums. In any event, the fact that the applicant's need for an area variance is self-created does not, by itself, require us to deny an area variance.

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12-12-2019 - Case No. 19-29

MS. BUNTING-SMITH: The next case on tonight's agenda is Case No. 19-29 Jose Bejar, adjourned for all purposes to January 16th.

\* \* \* \*

12-12-2019 - Case No. 19-31

MS. BUNTING-SMITH: And the next case is Case No. 19-31, Scott Krady.

Whereas, the Greenburgh Zoning Board of Appeals has reviewed the above-referenced application with regard to SEQR compliance; and whereby, the Zoning Board of Appeals has determined the application will not have a significant impact on the environment, now therefore, be it resolved that the subject application is a Type II Action requiring no further SEQR consideration.

MR. MARTIN: Second.

MS. BUNTING-SMITH: All in favor?

MS. KNECHT: Aye.

MR. HARRISON: Aye.

MS. BUNTING-SMITH: And the Chair votes aye. Do I have a motion?

MS. KNECHT: I move that the application in Case No. 19-31, be granted, provided that:

1. The applicant will obtain all necessary approvals and file same with the Building Department;

2. That construction begin no later than 12 months after the granting of the last approval required for the issuance of a Building Permit and proceed diligently thereafter in conformity with the plans dated May 21st, 2019, submitted in support of this application;

3. The variances being granted are for the improvements shown on the plans submitted in support of this application only. Any future or additional construction that is not in conformity with the requirements of the Zoning Ordinance shall require variances even if the construction conforms to the height, setback or other

12-12-2019 - Case No. 19-31

variances you have approved herein.

MR. HARRISON: Second.

MS. BUNTING-SMITH: All in favor?

MR. MARTIN: Aye.

MS. KNECHT: Aye.

MS. BUNTING-SMITH: And the Chair votes aye.

MS. KNECHT: Findings. In granting this application the Zoning Board has weighed the benefit to be derived by the applicant from the proposed variance against the impact that the variance would have on the surrounding neighborhood. We have found that:

1. Granting the variance will not result in the detriment to nearby properties and will not adversely impact the character or physical or environmental conditions in the neighborhood or district because the proposed patio is located at the rear of the property off of an existing sliding door and small deck. The patio is at-grade and not visible to neighboring properties. The additional impervious surface will not adversely affect the environment because appropriate storm water controls have been proposed.

Finally, the neighbors do not object to the patio project.

MS. BUNTING-SMITH: Thank you.

MS. KNECHT: The goal of the applicant cannot be achieved by some other feasible means without requiring the variances we are granting because the property is a flag lot and is setback approximately 270 feet from the road with an approximate 1,700 square foot of additional driveway surface which contributes to the

12-12-2019 - Case No. 19-31

impervious surface on the property. In addition, approximately 500 square feet of the driveway is for access to the neighboring property but is located on the subject property. The patio itself is only 15 by 28 in size.

3. The requested variance is not substantial in relation to the requirements sought to be varied in that the requested relief is 31.6 percent, compared with 29 percent (permitted), a 9 percent increase in impervious surface. But, again, the fact that the property is a flag lot contributes to the need for a variance.

4. The applicant's need for the variance was self-created because he purchased the property with knowledge of the requirement of the Zoning Ordinance; however, the fact that an applicant's need for an area variance is self-created does not, by itself, require us to deny an area variance.

MS. BUNTING-SMITH: Thank you.

MR. LIEBERMAN: Wait one second.

MS. KNECHT: The requirement sought to be varied and the request relief for 29 percent compared with 28.3 percent (required.)

MR. LIEBERMAN: That's not what's in here.

MS. KNECHT: No?

MR. HARRISON: Yes. It is 29 and 31.

MS. BUNTING-SMITH: 29, 31.6.

MR. LIEBERMAN: 31.6.

MS. KNECHT: I don't know what I was looking at. I don't know what I was

12-12-2019 - Case No. 19-31

looking at. So 29, 31.6. 31.6 -- did it again.

MR. LIEBERMAN: She should straighten it out.

MS. KNECHT: Is the math all right, though?

MR. LIEBERMAN: It's di minimis.

MS. KNECHT: Okay, thank you. Do you want me to do it again?

MR. LIEBERMAN: Yes.

MS. KNECHT: All right.

3. The requested variance is not substantial in relation to the requirement sought to be varied in that the requested relief is 31.6 percent, compared with 29 percent (required), a di minimis increase in the impervious surface.

MR. LIEBERMAN: Permitted, not required, but we'll leave that.

MR. HARRISON: It's late, Kristy, don't worry about it.

MS. BUNTING-SMITH: Okay.

\* \* \* \*

12-12-2019 - Case No. 19-34

MS. BUNTING-SMITH: Okay. Case No. 19-34, Clearbrook Cross, LLC, is adjourned for all purposes to the meeting of January 16th.

MS. WALKER: I'm not sure when they are going to be adjourned to.

MS. BUNTING-SMITH: We're not sure.

MS. WALKER: No. Garrett was supposed to get back to me.

MR. MARTIN: Because he's doing a parallel with the Town Board.

MR. LIEBERMAN: Let's say February. When is the February meeting?

MS. WALKER: I didn't bring the February calendar.

MR. MARTIN: Oh, here. I have it at home. I already logged it in my calendar.

MR. LIEBERMAN: Probably the 20th.

MR. MARTIN: The third Thursday.

MS. BUNTING-SMITH: How about the 20th?

MR. LIEBERMAN: To satisfy Rohan there will be a special meeting.

MS. BUNTING-SMITH: The meeting of February. So going back, Case No. 19-34, Clearbrook Cross, LLC would be adjourned for all purposes to the meeting of February 20th, 2020.

The next case, of course, is Case No. 19-35, Columbia/Wegman. Is that going to be adjourned for all purposes?

MR. LIEBERMAN: No. That's the one you --



12-12-2019 - Case No. 19-34 & 19-35

MS. WALKER: Columbia/Wegman, yes.  
That's the one.

MS. BUNTING-SMITH: Oh, you said.

MS. WALKER: The other one, I  
thought you adjourned it to January.

MS. BUNTING-SMITH: I did but you  
said no. All right.

So, Case No. 19-34, Clearbrook  
Cross, LLC is adjourned for all purposes to  
January 16th.

Case No. 19-35, Columbia/Wegman, LLC  
is adjourned to February 20th.

\* \* \* \* \*

12-12-2019 - Case No. 19-36

MS. BUNTING-SMITH: The next case is Case No. 19-36, Joshua Giardina.

And whereas, the Zoning Board of Appeals has reviewed the above-referenced application with regard to SEQR compliance, and whereas the Zoning Board of Appeals has determined the application will not have a significant impact on the environment, now, therefore, be it resolved that the subject application is a Type II Action requiring no further SEQR consideration.

MR. MARTIN: Second.

MR. HARRISON: Aye.

MS. BUNTING-SMITH: All in favor?

MR. HARRISON: Aye.

MS. KNECHT: Aye.

MS. BUNTING-SMITH: And the Chair votes aye.

MR. MARTIN: Madam Chair, I move that the application in Case No. 19-36, be granted, provided that:

1. The applicant will obtain all necessary approvals and file same with the Building Department;

2. That construction begin no later than 12 months after the granting of the last approval required for the issuance of a Building Permit and proceed diligently thereafter in conformity with the plans received on November 19, 2019, submitted in support of this application.

3. The variances being granted are for the improvements shown on the plans submitted in support of this application only. Any future or additional construction that is not in conformity with the requirements of the Zoning Ordinance shall

12-12-2019 - Case No. 19-36

require variances even if the construction conforms to the height, setback and other variances we have approved herein.

MR. HARRISON: Second.

MS. BUNTING-SMITH: All in favor?

MS. KNECHT: Aye.

MR. MARTIN: Aye.

MS. BUNTING-SMITH: And the Chair votes aye.

MR. MARTIN: In granting this application, the Zoning Board has weighed the benefit to be derived by the applicant from the proposed variance against the impact that the variance would have on the surrounding neighborhood. We have found that:

1. Granting the variance will not result in a detriment to nearby properties and will not adversely impact the character or physical or environmental conditions in the neighborhood or district, (provided the conditions are fully complied with) because the property is isolated and has ample screening.

2. The goal of the applicant can not be achieved by some other feasible means without requiring the variance we are granting, because to move the driveway to be in conformity would require removal of several mature trees and damage to root systems.

3. The requested variance is substantial in relation to the requirement sought to be varied; in that the requested relief is 13.83 feet, compared with 18 feet (required) 23.1 percent decrease.

4. The applicant's need for variance was self-created because he

12-12-2019 - Case No. 19-36

purchased the property with knowledge of the requirement of the Zoning Ordinance; however, the fact that an applicant's need for an area variance is self-created does not, by itself, require us to deny an area variance.

MS. BUNTING-SMITH: Great job.

\* \* \* \*

12-12-2019 - Case No. 19-37

MS. BUNTING-SMITH: The last case on tonight's agenda is Case No. 19-37, Ivana Greenfield, adjourned for all purposes to the meeting of January 16th. With that, I wish everyone happy holidays, good tidings.

MR. MARTIN: Happy Friday the 13th.

MS. BUNTING-SMITH: Safe travels and whatever your heart desires, that someone else can afford.

MR. HARRISON: Happy holidays, everybody. Happy New Year.

(Whereupon, at 11:48 P.M. the meeting of the Zoning Board of Appeals was concluded.)

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#### INDEX

CASE NO.	CASE NAME	HRG	PGS.
19-21	- Michael Teverbaugh	1	20
19-28	- Ferncliff Cemetery	21	
19-29	- Jose Bejar	55	
19-31	- Scott Krady	84	
NEW CASES			
19-34	- Clearbrook Cross, LLC	88	
19-35	- Columbia/Wegman Hartsdale	97	
19-36	- Joshua Giardina	96	
19-37	- Ivana Greenfield	100	

#### DECISION/ADJOURNMENT

19-21	- Michael Teverbaugh	109	(adj)
19-28	- Ferncliff Cemetery	110	(dec)
19-29	- Jose Bejar	114	(adj)
19-31	- Scott Krady	116	(dec)
NEW CASES			
19-34	- Clearbrook Cross, LLC	121	(adj)
19-35	- Columbia/Wegman Hartsdale	121	(adj)
19-36	- Joshua Giardina	122	(dec)
19-37	- Ivana Greenfield	125	(adj)

12-12-2019

C E R T I F I C A T I O N

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IS TO CERTIFY THAT THE ABOVE TRANSCRIPT IS A  
TRUE AND ACCURATE TRANSCRIPTION OF MY  
STENOGRAPHIC NOTES.

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Debra L. Rinaldi  
Senior Court Reporter