

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.  
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JANUARY 16, 2020  
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  
William Losapio (NOT PRESENT)  
Daniel Martin (NOT PRESENT)  
Kristi Knecht  
William Bland  
Barbara Brennan

STAFF MEMBERS:

Carole Walker,  
Secretary

Anthony Zacarolli  
Deputy Town Building Inspector

Edward Lieberman, Esq.  
Deputy Town Attorney

Debra L. Rinaldi  
Official Court Reporter

1/16/2020

(Whereupon, at 8:12 p.m. the meeting of the Zoning Board of Appeals of the Town of Greenburgh was called to order.)

MS. BUNTING-SMITH: All right? Good evening, all. Glad to see you could all be here for this nice spring weather we have been having. And Happy New Year to everyone. The meeting of the Zoning Board of Appeals of appeals for the Town of Greenburgh will come to order at this time. We have six cases scheduled for tonight agenda.

Please note that our next regular meeting is Thursday February 13th. As usual, if we do not complete the hearing in any case tonight it will be adjourned for another meeting hopefully to be completed that the. Also as is usual to save time we waive a reading of the property location and the relief sought for each case for the record. However, the report will insert this information into the record and it also appears in the agenda for tonight's meeting.

After the public hearing of the cases the board goes to confer in the meeting room behind us to discuss the cases we've heard tonight. Everyone here is welcome to speak is language to listen to our deliberations but you can not speak or be participate at that time.

After our deliberations we come back into this room to announce the courts Board's decision and to broadcast it to the community. If you're going speak tonight you moss tomorrow up to the microphone clearly state your name and address or your professional affiliation. If you're not a named applicant please spell your name for the record.

We've heard testimony on some of the cases we're going to hear tonight and any prior testimony is already in the record and really should not be repeated.

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MS. BUNTING-SMITH: And the first case to be heard tonight is Case No. 19-21, Michael Teverbaugh.

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.

MR. SENOR: Good evening, Planning Board. Elliot Senor, engineer surveyor for the applicant.

Basically after the last meeting we were asked to submit a couple of items. I'm not going to go through the whole application, a couple of items.

What we did was we submitted a plan that showed the survey that was commissioned by the neighbor of that right-of-way that showed there (indicating) their play area and their encroachment. Their play area and the fence. And then we also did one that was our survey from 2008 showing the encroachments that were on that property at the time when we last did the survey.

So I prepared a better overlay, you could see it at the same time. So this is the survey that was commissioned by the neighboring property, done by role Roland link or by Link Surveying of the encroachments in Van Cott Avenue.

We have the stone wall here (indicating). There is a little plant area here (indicating). And a play area with a

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fence and a stone wall. All right. The survey reading that they had brought up talked about encroachments at the time. These are the encroachments (indicating) at the time of the survey and there was a stone curb here (indicating), and a railroad tie wall here (indicating).

So what I did was I took the clear acetate and overlaid it so that you could see where the original encroachment. Stone wall was originally a stone curb. It was not as long as it is now. And now they made it a stone wall and changed the stairs around, and then installed this fence all the way around the whole thing.

The blue line is the approximate center line of the right-of-way that I drew in. All right?

So you can see what was there before, what is there now, and how it affects -- how the our proposal affects the location of those items.

So if we go back to the original plan that we put on there, this is the -- this is our curb line (indicating) of our proposed street. And the property line or the center line of the right-of-way is approximately one foot towards this side (indicating). This side.

So it only affects -- so our roadway, the area that is affected is some of the fence and part of the play area. We are not affecting the stone wall that they built or the stone steps that they have built.

So we wanted to bring that all to your attention.

A couple of our other items that we may or may not having over before was have gone over before was, we talked about frontage. We're asking for frontage

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release, part one of the variances. Each house will have 100 feet of frontage, approximately 100 feet of frontage on our private road. So we are going to have frontage. It's not that we're going to -- it's not a town standard road and, therefore, it's not counted as frontage in the codes.

That was all I had, new information. If you had any additional questions?

MS. BUNTING-SMITH: Had you provided this information you're giving us tonight to the other property owners, or are they just seeing it for the first time now?

MS. WALKER: Well, not the overlay.

MR. SENOR: The only things that is new we didn't submit was this piece of overlay that I did here.

MS. BUNTING-SMITH: Okay.

MR. SENOR: But the plan that we did submit does show the original survey of the property plotted in -- sorry -- and their survey is the other half of that plan.

So tonight I just took it and put one on top of the other for your use.

MS. BUNTING-SMITH: Any questions?

MS. KNECHT: No.

MR. HARRISON: No.

MS. BUNTING-SMITH: All right. Is there anyone in the audience that wants to comment on this case.

MR. SENOR: I do.

MR. TUREAUD: Andrew Tureaud from Keane and Beane. We're attorneys from White

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Plains. We represent the Scaparottas. We have an adverse possession action pending of which I advised the Board last time I was here, and the basis of our adverse possession action is the encroachment listed in the survey reading provided by the engineer for the Teverbaughs.

So he's clouded out the area -- which I highlighted, which you can see -- which shows. So that's a survey reading from October 2009 which shows that that's the area of the encroachment. We don't dispute that. In fact, that's our case right there. He proves our case. We have adversely possessed at least two-thirds of that paper street since well before 2009, but this is proof positive of that fact. It comes from the engineer himself.

Now, remember the first time he was here he told us there were no encroachments, then it turns out, yes, there are encroachments. And here is a survey reading from 2009 performed by the engineer, which shows those encroachments. So, to us, this proves our case. It proves that those encroachments were there in 2009 and prior.

If you look at it, it takes up at least one third of that paper street, and seems to prohibit access to that third house, if you go all the way down to the left.

So in our mind, you know, this proves our case. This doesn't hurt us at all. Now, are the encroachments the same? No. But the encroachment area -- encroachment outline is the same.

If you look at our survey -- I couldn't do the overlay -- the nature of the encroachments are the same shape encroachments. It's the same. So while the encroachments inside have changed the nature we changed a wall, we added some steps. But the prior homeowner whose claiming we're

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tacking on to make our adverse possession case, that's actually outlined in the first survey reading provided by the engineer.

So, you know, in our minds this is -- now it's unquestioned that we've adversely possessed at least a third of that paper street. So based on his own submissions, you know, I'd say that that third house -- there is not going to be access to it. And we intend to use these documents in our case that's pending in Westchester County Supreme to prove our case.

Are there any questions?

MS. BUNTING-SMITH: No. Well, I guess I did have a question. I would assume -- accept the fact that that adverse possession claim is not something that this Board has the ability to make a determination on.

MR. TUREAUD: Correct.

MS. BUNTING-SMITH: Therefore should we decide to provide a variance it would be subject to whatever is still pending with respect to that claim that you have pending.

MR. TUREAUD: Understood.

MS. BUNTING-SMITH: Okay. All right.

MR. TUREAUD: Thank you.

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

MR. MCGARVEY: Before he gets second licks?

MS. BUNTING-SMITH: Sure.

MR. MCGARVEY: This should be

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quick. I know we don't want to rehash what's been told before in other meetings, but just a couple of highlights.

We still have never received anything from the Fire Department saying that this road is acceptable. We spoke last month. We said that it's not, because we spoke with the Fire Department and they said they have not seen the revised plan, down to 20 foot road. That's what they are saying, and we still have nothing to prove that we're wrong.

You know, you're coming down -- what's that side road coming down the hill it? Windham. Coming down Windham and making that left-hand turn, it is going from 20 feet on to 20 feet. You can't make that turn with a fire truck. You can't do it. It's impossible. You'd have to be on private property. You can not make that turn.

The other thing is, lastly, where they are shown to have the turnaround for the Fire Department or any turnaround to get out of there because it's a dead end -- it's on private property. I'm not even positive you're allowed to have a private turnaround -- a public turnaround on private property. I'm not positive about that.

Now, the thing is, what if the guy goes away on vacation and forgets to move his car? You're stuck there. Then the fire department comes down there -- something happened, the fire trucks are flying down the road, and they are stuck. You have to wait to get out of there because they cannot back up. I mean, not without a major traffic devices and stuff to back out of that dead end.

And I think that's about it. I just think it's -- I think what's requested is egregious, and I think it's -- I believe it should be knocked down. Thank you.

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MS. BUNTING-SMITH: In a similar vein, to the question I had asked previously to the opposition to your request, you would agree that this Board also cannot determine what would be appropriately safe from the Fire Department's point of view or adequate.

MR. MCGARVEY: I imagine that would be correct. But, I mean, I guess there is a certain sense of what the normal guidance is. What's the guidance? You have nothing? There is no guidance at all?

MS. BUNTING-SMITH: Something.

MR. MCGARVEY: I know the departments -- I know they are more than adequate to answer these questions. I don't know if they were actually made aware of going from 26 foot wide down to 20 foot wide road. I think that's a huge reduction. Doesn't sound like much but it's huge.

MS. BUNTING-SMITH: But you haven't been you have not taken these assumptions or predictions, I guess, to the Fire Department.

MR. MCGARVEY: Yes, we did.

MS. BUNTING-SMITH: But do you have something that --

MR. MCGARVEY: No. No. We've asked them, did you see the revised plan that from goes from 26 feet down to 20 feet and they said no. Correct.

MS. BUNTING-SMITH: So you show it to them and did you give get an answer that's different.

MR. MCGARVEY: They said no. Last time we were here we mentioned that, that the Fire Department said they never saw the revised plans, and I assumed that the applicant would have brought it to the Fire

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Department to make sure that they get a review on it.

MS. BUNTING-SMITH: Okay. All right. And now the applicable response.

MR. SENOR: Elliot Senor. We did submit to Carol the letter that we received from the Fire Department that was entered into the department on August 7th, 2018. And it says -- and this is from Chief Howard Reiss from the Fire Department use and in the planning department, The parking in the new road as the road appears to be 20 feet wide we would have a difficult time with our apparatus if parking was allowed."

Okay. And we had submit that we are not parking on that street or certainly not parking on one side of that street. So there is clearly information that they have seen it. You can have a copy if you want.

We did submit that to the department for their files. They didn't have it the previous meeting they seem to not have had it. Didn't give a copy.

MS. WALKER: Planning had tried to reach out, but they didn't get a response.

MR. SENOR: All right. So now, Elliot Senor. Put that back. I want to -- what the attorney had said is that the encroachments are the same as it was --

MS. BUNTING-SMITH: You're not on the record, so if you want to.

MR. MCGARVEY: Okay, good. I'll respond after.

MR. SENOR: So the encroachments are not -- the original encroachments is not this shaded area (indicating). The original encroachment is only seven foot -- well, the survey reading is done by a title company, not by me. So that wasn't my submission or

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my write-up. That was the title company. They go out and they -- when they do a survey reading they compare the survey with what's in the field. They may or may not go to the field, I'm not really sure.

MR. HARRISON: Do you mind using these and give me?

MR. SENOR: (Elliot Senor continuing). So this is a picture that the applicant had submitted showing the wall here (indicating). And that wall is in a similar place that we showed a stone curb originally, and that is about six or seven feet outside of their property into the right-of-way, all right.

This one shows a -- I guess this is the same wall here (indicating) and it shows a big fence and a big brand new relatively new fenced in area with a play set.

MR. HARRISON: Was the prior owner also using that area where the play set is?

MR. SENOR: No. All right. We had done several site walks. We actually did several site walks with the Planning Department on this property and those items were not there at this time.

MR. HARRISON: Meaning if not those items there but were they -- not necessarily that, a play area there.

MR. SENOR: No.

MR. HARRISON: I'll ask your opposition.

MR. SENOR: So those are the fences that encroaching, I guess the stake showing the property line. But we're not disputing the fact that there was a stone wall or a stone curb and some stairs although the stairs have definitely changed. The wall may have grown because we had it as a curb.

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But that is way -- a good distance away from where we're building. This is where the stone wall is (indicating). And then the blue line is the center line of the right of way, and we're using from the blue line to our side of the right-of-way. So none of those original encroachments have anything to do or are not near where we're proposing our construction.

Any questions?

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

MR. TUREAUD: So our adverse possession claim is based on the encroachments that existed by virtue of the prior owner, not us. We don't have 10 years, she did.

So we're not governed by the statute that says that we've got to build something -- a wall, a fence -- and close something in order have to adverse possession as long as we maintain the property as you can see. So that stone or -- I believe it's stone or railroad tie wall is what the engineer was referring to. If you can look you can see the planting area and the yard and the fact that all of that was developed by the prior homeowner so we're not just talking about one ball, one fence, one object. Adverse possession by definition -- by statute as applied to this case would involve not just the physical encroachments but the area that was maintained by the prior owner.

These pictures clearly show at that time prior owner used that area basically Van Cott Avenue as her back yard. And developed it according. And that's our claim. It's not just limited to a wall or a fence or stairs and that's just a matter of statute. Statute changed in 2008 our claim ripened prior to that so that's not the

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right measuring standard for our claim.

MS. BUNTING-SMITH: Any other comments? Sure. Come up.

MS. SCAPAROTTA: Good evening. I am the homeowner next to the property that is being planned for subdivision. I've been following these stories since 2016 --

MR. HARRISON: Would you state your name.

MS. SCAPAROTTA: My name is Anna Scaparotta, 1800 Saw Mill River Road.

I have been following your story, Mr. Senor, 2016 when you first visited with the Planning Board. You have continued to change your story each time you speak. The first meeting in October, 2016, I was not present but I did watch it. Okay. And you stated to the Planning Board that -- there were two options you presented. One was a shared driveway with access from North Woodlands, okay, with two homes. The other one was that street that you propose to develop, Van Cott.

Okay. With all of that, when they had asked you at that meeting who was across the street? Oh, it's an old home. You really created an image as if our home was dilapidated, gave them options as if they were two viable options. The viable option is the two houses with the shared driveway out of North Woodlands. Where we ended up today after all of these changes is still a shared driveway with a third home added to it, which really, I have the encroachments, I can prove it. There are original pictures here from the homeowner, Debra Paulman. You and Mr. Teverbaugh have entertained this since 2000 -- you know after 2000 and she sent me these pictures. I'd like to leave them only for the evening. They are my originals. I'm happy to show everyone the story of the home, the usage of

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the property. My home was built in 1908. It was renovated by Ms. Paulman in 2006. I might be off with dates, but that land was used. It's very close to my back door. I look at it every day. We play in the area. It's feet from our back door. The encroachments were there. Pictures don't lie. Surveyors that are doing the survey in 2009 for my closing that I retrieved from the title insurance company with the reading, okay, shows that the encroachments were there. He wrote it. But the story keeps changing.

So I'm here to tell you, the story is true. Okay, the encroachments were there. The usage is there. The prior homeowner owned the home for 20 years I think from 1986-'87. I'm still a homeowner and you need to -- as I said, you also never proved proof of ownership with the application with the Town. So with that alone it should have ended. We want to set an example so residents in the Town of Greenburgh, they building projects are going around on around them they are not left with the legal burden to research who owns what. You're looking at plans, who owns what. The teachers land improvement co-owns Van Cott. That's not been disputed. You don't own it. You don't have rights. The Town of Greenburgh doesn't have rights. You came to us, Mr. Teverbaugh, and represented to my husband that the Town of Greenburgh owned that road, and that's what created more confusion than not.

So we need to get clarity here. The Town of Greenburgh doesn't own the road. They don't own the road. The Teachers Land Improvement Company owns the road. That's what should have been submitted with your application when you're looking to build a subdivision, which is your proof of ownership. So that three years later the Scaparottas aren't footing a legal bill for the nonsense you've created. Okay? Three years.

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I'm asking you, please do not approve a variance because that will only allow them to start their project. And the project has no substance. It needs to go back to Planning Board so they could be educated as to what is proper, proper building. Okay?

This is a mess. To build a third home so that the third home could compensate for the road costs? Nonsense. That's my back yard. That's where my walls are. My playground was added, okay, but the walls were there. And we need to set an example and protect residents from this nonsense. Okay? Three years of following your story, two years of legal, okay, just build with what you own as I said in the least meeting, bald build within what you own and go back to Planning Board and revisit.

Thank you. Would you like to see any of these pictures? I look leave them with you but I will correct them at the end of the evening. They are originals. They have notes from the homeowner in the back. Feel free. I'm going to stay until you deliberate. Thank you very much for your time.

MR. FINGER: Good evening. My name is Daniel Finger. I'm an attorney for the Teverbaughs. I don't want to the rehash everything. I do want to make a couple of comments.

First and foremost, I think most of the opposition's comments have to do with the adverse possession claim which we are looking forward to litigating in court, or finishing litigating in court. And as the Chair pointed out, that's the proper forum for that, not this Board. So I don't really want to waste too much time addressing those. Because the simple fact is they are not proper for this Board too even consider.

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The proper thing for you to consider is the variance requested on its merits. My clients have put in an application. They went to the Planning Board. The Planning Board reviewed several options and this was the option that the Planning Board felt most comfortable with and thought was the best use and the best option for this project.

We feel that what we're asking for looking at all the different options -- that this is the minimum variance that would be necessary to accomplish the project, coming off of Woodlands wouldn't work because of the steep leap it doesn't have anything to do with whether it's two lots or three lots has to do with the sleep coming down there makes that an untenable situation.

The other alternatives are worse. This was the best alternative that had the minimum impact. It improves Windham whether it's you know private street or not it's created a hammerhead there that right now the fire trucks and garbage trucks can't get down that street. They have to back down that street. They can't go down that street. It is very difficult for them to access. This would improve that fan would make it safer and better for the houses that are on Windham not to mention my client's properties.

There is no other method for achieving the benefit that they are seeking to achieve. This is also going to improve-- as I think from our prior submissions this will improve the environmental conditions of that area, the improved road and the improved drainage for that area.

There has been no evidence that there is going to be an undesirable effect for this area. Quite the opposite. We feel that it will be a positive impact for that area. And just finally we think again that this is the -- that the variance that's

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required in this situation and the question for this Board is what will be the best variance with the least impact with the most benefit to the community and we feel that this variance will accomplish that. And again what I put overhead just to reiterate, the stone wall is the only thing that was there way back. Again, we don't feel it's necessary to litigate this because I want to clarify that --

MR. HARRISON: Could I interrupt for you to a minute counsel I don't want to get into the adverse possession but we're a Zoning Board, right, and other applicants are going to come up here before us and ask us for variances on their property. All right?

We have to make sure that the person who is coming and petitioning us for the variance have a nexus to the property whether they are renting it, whether they are the agent or whether they are the owner and received permission from the owner. In what capacity -- assuming your client doesn't own it-- the variance that your client is looking for, is it on properties that they own, they have a right to, they have a nexus to? Because we've got make sure. Are they coming in as an agent? Are they coming in as owners?

MR. FINGER: It's our position that it's property that they --

MR. HARRISON: I'm --

MR. FINGER: It's our position that it's property that they own, they have a right to it.

MR. HARRISON: Your client owns.

MR. FINGER: They have a right to it.

MR. HARRISON: They have the deed

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that shows their ownership of it.

MR. FINGER: And certain parts of it that they have a right to it.

MR. HARRISON: And they have the deed to that certain part of it that they want to develop. They have the deed showing them from their title company.

MR. FINGER: The deed shown that they own the property and the deed shows that Van Cott is a paper street.

MR. HARRISON: Not Van Cott. Just stick to what they have they have title to. Van Cott as well?

MR. FINGER: Van Cott is a paper street.

MR. HARRISON: So they are.

MR. FINGER: They are entitled to 50% of it.

MR. HARRISON: They have a deed that shows that they are entitled to 50% of Van Cott.

MR. FINGER: That's by operation of law.

MR. HARRISON: That's by operation of law.

MR. FINGER: Right by sun subdivision original subdivision plan didn't deed it do anybody but it's a -- that's the name of that.

MR. HARRISON: Of the subdivision whoever is it this that.

MR. FINGER: The issue is that they are claiming that they have adversely possessed a portion of it. We're claiming we're adversely possessed a portion of it.

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And that they are trying to claim they have adversely possessed more of it than we feel they are entitled to.

MR. HARRISON: And you want us as a board then to make a decision on this area that's in dispute? Because we don't know who owns it then right. Are you asking us to speculate and make a decision.

MR. FINGER: I'm not asking you to speculate to it. I'm asking you to approve the variance that we've requested. If it turns out from the court -- we're going to spin around in circles.

MS. BUNTING-SMITH: Let him finish.

MR. FINGER: If it turns out from the Court -- that the Court Rules with the neighbors we don't own it we won't be able to go for.

MR. HARRISON: We should probably then weigh that. That's what I wanted to flush out. We should probably wait for until the Supreme Court makes a determination of who owns it, how we're going to issue a variance of properties. We don't know who owns it. When the other applicants come before us, I know who owns it, because they are going to come and tell me they are the owner, the agent for the owner, or the person renting it.

MR. FINGER: Right.

MR. HARRISON: It's simple.

MR. FINGER: From our perspective it's irrelevant.

MR. HARRISON: How is it irrelevant?

MR. FINGER: Because you are approving the application for the variances. Not giving us Building Permit not saying we

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can go forward and start taking down their play set until we get through that portion of it with the Court.

There is no reason to delay it just for the sake of delaying it.

MR. HARRISON: But we don't know who it is. I've been here over 20 something years and I'm going to get an application to say, okay, just approve this application, and we don't know who the owner is. We don't know in what capacity you're coming before us. I can't think of -- in 20 years --

MR. FINGER: We're coming in on the capacity that we own up to the midpoint of Van Cott, and they haven't proven otherwise yet.

MR. HARRISON: We'll speak --

MR. FINGER: And that burden is on them.

MR. HARRISON: We'll speak to counsel about that. I'm not getting it. Go ahead.

MR. FINGER: That's it. I have nothing further.

MR. HARRISON: All right.

MR. FINGER: Any other questions? I'm happy and I'm here.

MS. BUNTING-SMITH: Anyone else?

(No response.)

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1/16/2020 - Case No. 19-29

MS. BUNTING-SMITH: Moving on tonight's agenda, the next case is Case No. 19-29, Jose Bejar, 8 Vark Avenue.

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.

MR. DIBBINI: Good evening, Chairperson and Board. My name is James Dibbini. I'm the attorney representing Jose Bejar.

I understand that this case has been before the Board two other dates, both on November 21st and December 12th, there has been extensive discussions on this, on this matter. So I'm not going to rehash all of those matters, but I would just like to touch upon a few points if I can.

First and foremost -- and if I remember, most the variance we're seeking is limited, we know, to just two archways -- I'm not going to go into the other.

We know that the wall is legal. We know work has been done. We have a TCO for the house. And we have been asked to address the variance to have the owner mitigate, and the last plans that were submitted by Steve Costa, the architect or -- correction -- the engineer submitted plans on December 5th, proposing a reduction

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to the overall archway as well as regrading the soil for the larger archway to the right of the house as you could see there (indicating), reducing the impact of the archway itself and the appearance.

What I'm also proposing is also to landscape the front of the house to also again soften the impact of the archways appearances on both the left and right side of the house. Without the landscaping clearly the archways are present but with proper landscaping we feel confident that in addition to bringing the height down on both of them by six inches and in addition to raising the regrading the soil on the right side, collectively, these changes, these mitigation efforts on the behalf of the applicant the owner will clearly change the look. And I think will be much more pleasing to the eye, to the neighbors and reduce any impact to the neighborhood.

We submit that there will not be an undesirable change, and it will not produce -- and it will not change the character of the neighborhood after reducing the height and raising the soil and adding landscaping as discussed.

We feel that the benefit sought by the applicant cannot be achieved by other means and that it would not create an undesirable effect and will be a positive effect, in fact, when fully completed with all the landscaping.

We also feel that the variance is not substantial. We're seeking what we feel to be a minor variance, when it's all said and done, and we're asking that the Board grant the application.

MS. BUNTING-SMITH: Do you have the landscaping plans to show exactly how this would mitigate as you described it?

MR. DIBBINI: I don't, but we'd be

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happy to provide that if the Chair deems that's appropriate.

MS. BUNTING-SMITH: Once we confer I would like to get an answer to that. I asked him whether or not these available.

MR. CRICHLLOW: Well, that kind of leads to the question I was going to ask as well. You were saying landscaping but the only thing that you were mentioning was regrading the right side of the property to add two feet, is it?

MR. DIBBINI: One foot.

MR. CRICHLLOW: One foot.

MR. DIBBINI: Yes.

MR. CRICHLLOW: Okay. But was there any other landscaping that you were -- that the applicant is intending to perform, to soften the --

MR. DIBBINI: The one foot increase along with the six foot drop will change the overall appearance of the right archway.

MR. CRICHLLOW: 6 inch.

MR. DIBBINI: The 6 inch drop on the archway on the right side along with the one foot increase will clear the reduce the appearance of the height. The landscaping -- if we are approved we'd be happy to submit the landscaping proposal to either the Board or the Planning Board for approval, and be able to proceed on that basis, unless the Board suggests otherwise.

MR. CRICHLLOW: Okay.

MS. BUNTING-SMITH: Any other questions?

MS. BRENNAN: I have a question. What is the archways on both sides

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stand-alone?

MR. DIBBINI: I'm sorry?

MS. BRENNAN: Stand-alone, there is no walkway to the archways. I understand that there is the intention of putting a wrought iron fence?

MR. DIBBINI: Correct.

MS. BRENNAN: So my question as it goes back to the landscaping is, what's the intended use of those archways?

MR. DIBBINI: I know in the prior meeting one of the residents were concerned that it would become a roadway. That is clearly not in the plans or in the applicant's desire to do that. There is absolutely no intention to make that available for any vehicles to go in and out of the back yard.

It was a design structure to stand in and of itself as a separation from the front and the back yard, but there is no intent for it to be a driveway of any nature.

MS. BUNTING-SMITH: Any other questions? Anyone in the audience want to comment? Come on up.

MR. VARKEY: George Varkey, V-A-R-K-E-Y, 7 Lark Avenue. Good evening.

MS. BUNTING-SMITH: Good evening.

MR. VARKEY: This has been going on for three sittings now. I don't know how many more times we have to go through this. This is a tactic that he's been using for the past several times.

I have a whole bunch of documents saying that this guy has a licensed practice, his current practice location is 8

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Lark Avenue. This is from medicationlist.com. So he has been running a business out of there from the web sites. I've given a copy so that's all there. He claims that he's a doctor in one of the documents, when he is only an L.P.N, which is less than --

MR. HARRISON: How is this relevant to the application?

MR. VARKEY: Well, he has been running a business. So his intention is to run a business there, which is the reason why he creates that arch and all that stuff so that nobody sees what's going on.

MR. HARRISON: How do you know that?

MR. VARKEY: That's the problem.

MR. HARRISON: How do you know that? You're stating this like it's a fact. How do you know that?

MR. VARKEY: Because in the past he claimed that he did not run a practice and here is the proof that he was running a practice. So we cannot trust this guy with what he's telling on one side saying that he's going to do this and that. He said that he's doing it for his mother. She's about 90 plus years, from his own account.

I mean, if I had a mother who was 90 plus years I would want her to move into the house as soon as possible, not prolong this thing for eight or 10 years. So the main problem is, we don't really know what his intention is. So with that kind of an uncertainty it's going back to, like, the previous case, who owns what and what is his intention? What are they planning to do? No idea.

So, I mean, there is not anywhere in that neighborhood someone has an arch in

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that neighborhood. So it clearly is in violation -- it's against the landscape of that neighborhood. So that's something that none of the neighbors seem to like it, although he claims that everybody likes it. All of us talk to each other. We don't like it. So that's the thing.

Now, this is already on the assumption that the arch is granted permit. From Steve Zacarolli's statement last week I got the impression that there is no approval for the arch to be built in the first place. So he has built something and he is asking for a variance for which he doesn't clearly have a permit, like the previous case, if he doesn't have the permit for the arch why is he getting a variance there?

So it's just confusing and it's been going on. He does something, then he goes to one Board and says, well, I need this one to get this one. And then he goes to the next board saying, "I need this one to get this one." So this is clearly something that he's playing a game on and trying to prove that he can get away with it, and that's the problem that we have, and eight plus years of inconvenience for the whole neighborhood.

MS. BUNTING-SMITH: I'm sorry. Do you have a question?

MR. BLAND: No. We're spinning our wheels. I get it. But right now from what I'm reading we're trying to see whether we're going to grant the variance on the arch but the new design that he said has been developed -- were you the owners get to see it. Doesn't change anything because that structure is the same.

MS. BUNTING-SMITH: But did you see the new design is the question?

MR. VARKEY: Attached to this document that he has submitted, yes.

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MS. BUNTING-SMITH: Okay.

MR. BLAND: And you are still in opposition to have him having any archways?

MR. VARKEY: Correct.

MR. BLAND: If we disapprove the archways and we're trying to get to the end of the road, whether he's running a business or not, that's not before us.

MR. VARKEY: Right.

MR. BLAND: Right now we're trying -- really trying -- to get to the end of the road as, like you say, it's been an inconvenience to the community. And it's probably the first -- one of the first cases when I first came here, and we're going on and on and on. So we really want to try to get to the end. And if you are saying as homeowners and that's your word "hate" and we decide not to grant it and if he's told to take it down, where do you go? Is what you're trying to say is that you're bringing another avenue or angle in terms of him running a business?

I think it was I who raised a concern about moving the driveway. You know, it is a concern to us. But we want to be certain that you decide you're adamant that whatever he does at this point you don't like it.

MR. VARKEY: Correct.

MR. BLAND: All right.

MR. VARKEY: Because the archway is something that we don't want there at all. Thank you.

MS. BUNTING-SMITH: Anyone else?

MR. MARYNOWSKI: Yes. Stephan

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Marynowski. And we're here and, again, almost eight years and it's like bringing up the to ground level by a foot so it makes the real space only nine and a half feet is -- it's not right. I'll use those words. And cutting a half inch or six inches off the top of -- this gentleman has done everything -- whatever he wants to do he put in fake grass with fake water sprinklers. He's done whatever he wants to do. The property is not appropriate for the neighborhood. Everyone does not like it. I'm use a nice words. Does not like it. It doesn't fit with the neighborhood. I don't know what he's going to do with the area but it doesn't fit in the neighborhood. And to say I'm going to build up a foot and a half or two feet of dirt and so it looks like it's only really the arch is only nine feet, in my opinion is ridiculous. That's cosmetic. That's ridiculous.

So we are completely against it. We have a number of our neighbors here who all agree with us and -- this has been going on for almost 8 years of the we've had Port-o-Sans in the neighborhood for almost eight years now. Workers on Christmas day, freezing cold, at eight clock in the morning in violation of the Code for the quiet Code and we're tired of it. We want to put an end to it. I don't care if it cost you money -- do you want to keep the arches cut them down to Code. Cut them down to Code. But you did it anyway. You went ahead and made -- you went against the Code. You did anyway now come for variance then I'm going to say, oh, it's about my mother. BS. If you really want it -- beauty is in the eye of the beholder be in Code.

MS. BRENNAN: I have a question.

MR. MARYNOWSKI: Yes.

MS. BRENNAN: Hypothetically.

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MR. MARYNOWSKI: Hypothetically.

MS. BRENNAN: Hypothetically let's say the applicant just because an archway or a trellis in Code?

MR. MARYNOWSKI: If he built an archway within the Code I can't stop him. I would think I can't stop him. Also adds we found out last -- December meeting -- this is December meeting now he's got iron wrought fence that we knew nothing about until we saw pictures last time we were here. I don't know if that's in Code, out of Code or whatever, but, again, that could be another thing that he's doing and then it's like after the fact, oh, oh, this is not? Well, let me go for a variance. So, we're all tired of this. Any questions?

MS. BUNTING-SMITH: No.

MR. MARYNOWSKI: Thank you.

MS. BUNTING-SMITH: I clearly get a sense based upon prior meetings and tonight there are individuals here who are neighbors who disapprove of this. Could I get a show of hands? So I see, one, two, three, four, five, six, seven, eight, nine.

Is my count accurate? Is it 10? Okay. I understand those are the only neighbors that are here tonight. There have been other people here previously.

MR. HARRISON: Any neighbor here in favor of it? Raise your hand.

(No response.)

MS. BUNTING-SMITH: Is there any neighbor here who has anything new to add that we have not heard?

(No response.)

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MR. MARYNOWSKI: Probably. But I don't want --

MS. BUNTING-SMITH: You're not on the record, sir. You mentioned the gentleman who was just called that there is work going on on Christmas day. Was that work on the exterior of the home?

MR. MARYNOWSKI: Yes.

MS. BUNTING-SMITH: Would you come up, please?

MR. MARYNOWSKI: Yes. Sorry. There was work going on continuously at the home. I mean.

MS. BUNTING-SMITH: I'm only talking -- you only mentioned Christmas day.

MR. MARYNOWSKI: That was the most egregious.

MS. BUNTING-SMITH: But was it outside.

MR. MARYNOWSKI: Yes, it was outside, yes. It was outside.

MS. BUNTING-SMITH: Do you know what it consisted of?

MR. MARYNOWSKI: It was probably building -- if you look at the walls up against they put the walls that are up against the sides of the house that are similar to the archways, the facing, that I don't even know what enclosure it is. It's not gold. I'm sure it would have been gold if it was if it was available.

MS. BUNTING-SMITH: Is there something on that picture that's up now that you could point to or have our secretary point to, that you're talking about?

MR. MARYNOWSKI: Again, it was a

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lot of -- it was -- I'm actually in the backyard. I'm behind him. So it's like, if you look all the way over to the left over here (indicating) that's where I am, so it could have been people working on the pool, on the cabana, the two story cabana that's in the back that I don't -- I don't know. He could have a family living in there. I don't know. But I'm back here and so these people were working, you know, continuously, whether it was freezing cold or whether it was boiling hot, they were there.

MS. BUNTING-SMITH: Okay. All right. Any additional comments?

(No response.)

MS. BUNTING-SMITH: Okay. The plenty wants to respond?

MR. DIBBINI: Yes, please. James Dibbini. Thank you. I just wanted to respond to a couple of the comments that were made earlier.

With respect to the wrought iron fence, it's an open concept. It's not put there to block or hide any type of business that's going on in the back as was alleged. My client does not conduct any business at this premises. He has never done that and he has no plans of doing that in the future.

Additionally, the fence does not require a variance, it's in compliance so we're not here before this Board seeking a variance for the wrought iron fence to be installed.

And finally there was no work being done on Christmas day. Thank you.

MR. HARRISON: How much of a challenge would it be then to put the arch in Code? How much of a challenge? We may

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have heard testimony before but now you're here and you can crystallize it.

MR. DIBBINI: If the limit is six foot and you build is arch you're not walking around it.

MR. HARRISON: Okay.

MR. CRICHLOW: Correct me if I'm wrong, Anthony, but is there any Code about arches?

MR. ZACAROLLI: There is no specific Code that addresses arch. An arch in this is considered part of a wall with a fence height, so it's addressed as a fence, fence height.

MR. DIBBINI: I would ask the board when they do deliberate to take that into consideration and understand where my client is coming from and the fact that there is no specific Code that addresses arches per se and his belief was that he was doing the right thing within Code and now we're before the board and my client wants to resolve all these issues. And I understand all the homeowners concerns and they are for years and years and years of issues. It's not my clients desire to drag this out costing him money aggravation stress just like everybody he was we would like to have this approved and we do seek the Board's understanding in that situation.

MR. HARRISON: Thank you.

MS. BUNTING-SMITH: Thank you.

MR. CRICHLOW: Couple of other things too.

MR. DIBBINI: Sure.

MR. CRICHLOW: The wrought iron is not just a fence but also a gate.

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MR. DIBBINI: Correct.

MR. CRICHLOW: So that it's open. And the purpose of the wrought iron is to actually lend transparency to it as opposed to being.

MR. DIBBINI: Solid.

MR. CRICHLOW: The original scheme which was a solid gate for or doors.

MR. DIBBINI: Right.

MR. CRICHLOW: Swinging gates which would have definitely obscured any vision into the back yard.

MR. DIBBINI: Agreed.

MR. CRICHLOW: So, actually, by putting a wrought iron gate you're actually opening up the back yard to view from the front.

MR. DIBBINI: 100% correct.

MS. BUNTING-SMITH: Okay.

MR. CRICHLOW: In both instances on the large arch and the small arch, those are gates that can open.

MR. DIBBINI: Yes.

MR. CRICHLOW: Okay. Thank you.

MR. DIBBINI: Thank you any other questions.

MS. BUNTING-SMITH: Well, side question based upon the mention of landscaping, which way would those gates open?

MR. DIBBINI: I'm not sure if the plans dictate that but I would marriage the larger one would there would be two gates

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that open up either inward or out ward maybe both and the one to the left of the house the smaller one I guess whatever would be where convenient to avoid hitting the house or any instructions I would defer to what the engineer would recommend if opening the case if the board had a preference to it opening inward as opposed to out ward I'm sure the owner would accommodate.

MS. BRENNAN: Is it the intent that the wrought iron gate individual would be able to open the gate whether it swings in or out?

MR. DIBBINI: An individual would be able to open it, correct, yes. Does that answer your question?

MS. BRENNAN: Yes. Wrought iron gates can be heavy.

MR. DIBBINI: Understood. I think the newer ones today may not be as heavy and I'm sure with the rate of the designs are today the sway it's situated on the hinges it would swing free enough for most people to open it without a problem.

MS. BUNTING-SMITH: Any other questions? Anyone else in the audience? Come up, sir.

MR. MARYNOWSKI: Mr. Crichlow, you mentioned about the wrought iron fences and how they could open up the back yard. Do you have the picture of it. It's wide open now. It doesn't need to be opened up further by putting a wrought iron fence or whatever you want to call it.

MR. CRICHLLOW: That's what I want to call it: A gate.

MR. MARYNOWSKI: A gate. A gate. It's not opening anything up. It's wide open now. It's wide open up until you get

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to the next wall to go into the pool, the golden pool. There is nothing -- and again, we still get variances -- my understanding is that the pillars for the lights are supposed to be -- I think it's 12 feet from the street. There originally were like right up against the street. He had to tear them down and move them back. This is his M.O. He does things and then says, "Oh, I've got to get a variance." And he falls -- throws himself on the Court and says, oh, I need a variance. There is still not -- I still don't think they are in Code. I still think they are only 4 or 5' -- 6 feet. I think it's 10 or 12 feet they have to be from the street on new pillars but that's the M.O. here. That's what we're dealing with. If he had come to us and went over this with us before he started doing things -- and, hell, I was still a young man in those days, it might have been a different story -- and shared it with the neighbors. And I'm really not trying to -- this is, like, this is like the third -- I think this is the fourth time we have been here. If he had done that it could have been a different story. But he does things and then asks for, "Oh, I'm sorry, can I have the variance? "

And it's -- so the neighbors and there are more neighbors. If you want more we can bring more. That's all I got.

MS. BUNTING-SMITH: Thank you.

MR. MARYNOWSKI: Thank you.

MS. BUNTING-SMITH: All right.

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1/16/2020 - Case No. 19-34

MS. BUNTING-SMITH: Let's move on.  
Next case on tonight's agenda, Case No.  
19-34, Clearbrook Cross, LLC.

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  
Chairperson, ladies and gentlemen of the  
Board. William Vogt on behalf of the owner  
applicant Clearbrook Cross, LLC.

We were here before you in December  
for proposed salt shed with a few variances.  
Since our last meeting it was requested that  
we provide some extra screening around the  
proposed salt shed. So if you look at the  
revised plans, what we proposed would be to  
fully screen the three enclosed sides of the  
proposed salt shed with 15 Green Giant  
arborvitae. Those are evergreen trees that  
are planted 8 foot on center. They will be  
planted at a planting height of  
approximately five to six feet tall, and at  
maturity they should reach anywhere from 20  
to 25 feet taller.

There are also deer tolerant so --

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and can survive in pretty much any soil type. So we're submitting that to further screen the proposed salt shed. And then in addition we just further elaborated on the area variances as part of our application. I can go through those if the Board still wishes, or if the Board has any questions.

MS. BUNTING-SMITH: If there is something additional that we have not heard.

MR. VOGT: No. It's just what I submitted in the application as far as the area variance really. So we're asking for the variances that were sought so we can move forward with building permits for this application.

MS. BUNTING-SMITH: Any questions from the Board?

MR. HARRISON: No.

MS. BUNTING-SMITH: All right. Any questions from the audience? Any comments from the audience.

(No response.)

MR. VOGT: Thank you very much.

MS. BUNTING-SMITH: Okay. Thank you.

MR. VOGT: Take care.

\* \* \* \* \*

1/16/2020 - Case No. 19-37

MS. BUNTING-SMITH: Next case is Case No. 19-37, Ivana Greenfield, 36 Manitou Trail. Do we have an applicant?

MR. HARRISON: They are not here.  
M.I.A.

MS. WALKER: Madam Chair, I sent them a letter asking them to reduce the size of their variance per the Board's request. And I've not heard from them.

MS. BUNTING-SMITH: Okay. Is there anyone here who wanted to comment on that case?

(No response.)

MS. BUNTING-SMITH: Thank you.

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1/16/2020 - Case No. 19-38

MS. BUNTING-SMITH: The next new case is Case No. 19-38, Ralph Corvino, 1164 Dobbs Ferry Road.

ZBA Case No. 19-38 - Ralph Corvino, for property located at 1164 Dobbs Ferry Road, (P.O. White, Plains, N.Y.). Applicant is applying for area variances from Section 285-14(B)(5)(b) of the Zoning Ordinance to reduce distance from a driveway to the side lot line from 12 ft. (Required) to 0 ft. (Proposed); from Section 285-14(B)(5)(c) to reduce distance from a driveway to the rear lot line from 12 ft. (Required) to 0 ft. (Proposed); from Section 285-14(B)(3)(d) to increase the maximum impervious surface from 37.25 % (permitted) to 45.66 % (proposed); and from Section 285-38(B) to increase the maximum driveway width from 30 ft. (Permitted) to 52.40 ft. (Proposed), in order to legalize a driveway. The property is located in an R-10 One-Family Residence District and is designated on the Town Tax Map as Parcel ID: 8.100-53-2.

MR. CORVINO: Good evening, everybody. Ralph Corvino, 1164 Dobbs Ferry Road.

Back in I want to say 2009 when my daughter -- I do have a personal statement that I submitted. The reason that we extended the driveway was that she was backing out one day when she was a brand new driver and almost got nailed by somebody speeding down Dobbs Ferry Road.

So what's not in the personal statement is that I went to my next door neighbor, George and Nina Pierpoint at that point, 1166, and asked about extending the driveway, putting in a driveway wall. They had no problem at that point. In fact, the discussion with them was that the property line was an additional four feet towards their property than what showed up on the new survey. So we talked about it. It was

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agreed -- I put in a rock garden, part of it that's in the plans, and extended the driveway, and put in retaining wall.

So we did the survey. Included in the packet is a note from the current owners, George and Mary of 1166 saying that they have no issue with the wall or the driveway.

MS. BUNTING-SMITH: What year did you do this again? I'm sorry.

MR. CORVINO: 2009-2010. And then we repaired it and we initially put in railroad ties. And the railroad ties were -- I listened to the wrong contractor and we replaced that in 2012 with the brick, and that's been a much better solution.

MR. CRICHLLOW: And you had a personal statement saying that your son is now living with you?

MR. CORVINO: Yes. Yes. He has Down's Syndrome. He did. We're very happy he was accepted into a program in Albany, a two year college readiness program. He graduated. He stayed up there. Had his own apartment, worked at a hospital in the dietary, and then he was hit by a car. So he's back. That was about -- that was three year ago.

So we need -- he was with a wheelchair when he came home. He was at Northeast Rehab Center in Kingston for a year after the accident. So we have him back for about a year now, and he's using a walker. We have -- you can see from the picture in the front of the house -- we put in a ramp for him. But --

MR. CRICHLLOW: How does that affect the legalizing of the driveway?

MR. CORVINO: Just from the

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standpoint of being able to have handicap access at this point. That's all. But it was Mideast live because it was built a while ago. It was built before his accident.

MR. CRICHLLOW: That is what I wanted to --

MR. CORVINO: We're in no way saying it was built because of his accident. Just that it's been helpful having access for the wheelchair and having the additional space since he came home.

MR. CRICHLLOW: Okay. That's what I was trying to get at is to what degree does your extended driveway assist in handicap access.

MR. CORVINO: Yes.

MR. CRICHLLOW: Is there any-

MR. CORVINO: Just that it's the additional space for maneuverability, that's all. We've have the handicap placard in the car for him. So.

MS. BUNTING-SMITH: But -- without the variance would there be a hindrance to using the wheelchair outside.

MR. CORVINO: I'm not sure what the implications would be of not having the variance. I was just trying to legalize the process.

MS. BUNTING-SMITH: Any other questions?

(No response.)

MS. BUNTING-SMITH: Anyone in the audience want to comment on this?

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(No response.)

MR. GROSS: One other point.

MS. BUNTING-SMITH: Go ahead.

MR. CORVINO: Just that there were four houses built -- houses built at that time in 1957 -- we're the southernmost. And it's interesting that the marker to identify where the property lines are -- I don't know when it was removed but it no longer exists, and so you are subjectively identifying where one property ends. And then it talks about -- I have the paper here for the title -- about 230 feet from that marker which is no longer there, starts the property line.

But we're only talking about a foot or two one way or the other in dispute, so it shouldn't really affect your decision on the variance. I just -- it was very unusual to look at these title statement that goes back to 1930 and things and roads that don't exist anymore that were we're still using for decisions.

MS. BUNTING-SMITH: Any other questions?

(No response.)

MR. CORVINO: Okay. Thank you very much.

MS. BUNTING-SMITH: Okay. Thank you. I did have a question. Was there anyone else who wanted to comment on this case?

(No response.)

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1/16/2020 - Case No. 19-39

MS. BUNTING-SMITH: Next case on tonight's agenda is case 19-39, Sachin and Pooja Kohli, 38 Sprain Road.

ZBA Case No. 19-39 - Pooja & Sachin Kohli, for property located at 38 Sprain Valley Road, (P.O. Scarsdale, N.Y.). Applicant is applying for an variance from Section 285-36(G) of the Zoning Ordinance in order to install an in-ground pool in the side yard, where only the rear yard is permit. The property is located in an R-20 One-Family Residence District and is designated on the Town Tax Map as Parcel ID: 8.520-356-29.

MR. COLLINS: Good evening, Members of the Board. My name is Dan Collins, House Engineering.

As you already know, we are here to request a variance of a pool in the side yard of a property at 38 Sprain Valley Road. As you're already aware, this is property of 1.05 acre of lot and R-20 district.

As you're already aware the existing site is approximately 1.05 acre lot, in the R-20 single-family residential zoning district --

MS. BUNTING-SMITH: You're really fast.

MR. COLLINS: I'm really fast? This is just how I normally speak.

MS. BUNTING-SMITH: But you're reading, so it makes it even faster.

MR. COLLINS: All right. So basically what we want do is -- I'll get to the point -- there are things that are going to be done as part of this application. The first the existing driveway was expanded at some point over the last couple of years. The Building Department has requested that

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we put that back to where it was when was a part of the originally approved plan. So that's going to be Put back into compliance with the Town's Code, the Town's approved plan.

The main part of the application is, of course, the pool on the north side of the building. I do have pictures provided by the homeowner showing the slopes in the rear of the property. So this is a view from the back of the property up towards the slopes where the wall bends around the flat area. (Indicating). This is a straight view back from the rear of the property (indicating). So basically we're looking at pretty much a vertical slope at that point, if not a one on one slope right between those walls. If it wasn't for those walls, they just have a small flat area right behind their house between the bottom of that wall and their house, with a small deck.

This is another picture. Towards the flat area, the pool, from the deck across, so you can get some scale and see how small that area is. And then this is the actual flat area where the pool is actually going to go. (Indicating.) Back towards the slopes in the same flat area where the pool will be proposed.

So we did look at the pool in the rear yard. There was a problem with that, obviously being that the Steep Slopes do exist in that area. If we do put the pool back there there would be significant excessive Steep Slope disturbance in order to install it. The limit the bearing on actual pool itself, the retaining walls that are existing would need to come down and be reconstructed. And it would actually need to be pushed into the hillside a little bit further than it does now, which we're trying to avoid. So in order to avoid that, again, we move the pool to the side, as you could see the flatter side of the building. In

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doing so we're actually able to limit the amount of grading in that area and actually eliminate any Steep Slope disturbance. So we have the benefit of pulling it out of the Steep Slopes, the environmental benefit of not disturbing any Steep Slopes, and then obviously we have the benefit of having the flat area on the north side of the building to put this pool.

This pool is actually set up -- will actually be set up higher, the existing property goes up into the hill. I've actually took some street view pictures from Google.

So looking up into the property the pool would actually be situated about 20 feet higher so when this is all fully grown out this actually was in May I believe you wouldn't be able to see anything on the side of that building.

The house is situated downhill from them on the other side of the road actually situated further down the slope so there would be you could see that there is limited view from this angle from the road itself from the houses any houses across the street there would be no way they'd be able to see the property.

I did also put together this wasn't submitted but I put it to go for this evening. This is an aerial plan just to show that in the relation to the neighbors on either side, there already is, as you could see, the between the two properties there is a landscape buffer, a landscaped area that's probably about 15 feet wide that's there that currently exists. The pool itself will be about 44 feet from that property line, and it's about between 114 and 130 feet from the neighboring property to the north. So with that distance combined with the existing landscaping that's already there, there is more than adequate screening -- I'm sorry -- from the

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neighboring properties to the north.

Again, I reiterate the point from the street, with the existing landscaping that's there that's already more than adequate screening from the pool to the street down below.

And just in conclusion, I wanted to address the five points to granting variances. Point A, since the location of the pool is properly screened, as previously mentioned, from the surrounding neighbors, since the homes in the neighborhood already have -- a majority of the homes in the neighborhood already have pools, the proposed improvement would not bring any undesirable changes to the neighborhood.

Point B. As previously mentioned, since the rear yard is encumbered by excessive Steep Slopes, the only feasible location for the pool in this property is the flat area along the north side of the property. Any other location would unnecessarily disturb the Steep Slopes in the rear of the residence.

Point C. Since the pool is setback approximately 85 foot from the front property line, it's also elevated 20 feet higher, again, with the screening. It is also outside the front -- the side yard building setbacks as well as behind the actual front plane of the building, actually well behind the front plane of the building. We do not feel like this variance is substantial by any means.

Point D. Since the pool is located outside the Steep Slopes, the proposed variance minimizes any negative impact to the physical or environment -- physical or environmental conditions in the neighborhood to the maximum extent possible.

Again, if we were to build a pool in the backyard we would be decimating the

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slopes up into that hill by probably proposing multiple terrace retaining walls, in this location. We're putting it in the nicest, flattest spot there is and not having to disturb the natural environment.

Point E, we don't consider this variance as self-created as the existing topography of the site restricts the location of the pool to where it's currently being proposed.

Also when the current owner purchased the property it wasn't anticipated that they were going to build a pool. They didn't buy a house to build a pool. That was something that occurred recently. That being said if there is any questions be more than happy to address them.

MS. BUNTING-SMITH: On this overlay that we're looking at, I can't tell where the screening is. I understand there is screening but whose property is it on?

MR. COLLINS: This was taken in the winter. Most of the aerials were taken during the winter, that we get from the State. So --

MS. BUNTING-SMITH: Trees don't move.

MR. COLLINS: No. No. But they lose leaves.

MS. BUNTING-SMITH: Yes. So the property on the hill.

MR. COLLINS: They are right down -- see this line in this area here? (Indicating.) That is the edge of the slope, the flat area. And then between here and there (indicating) and the property line (indicating) that's where the landscaping trees are on.

MS. BUNTING-SMITH: Well, you're

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kind of going on both sides of the property line. That's why I'm asking the question. Because you can not rely upon a neighbor's screening.

MR. COLLINS: The majority of the screening is on their property.

MR. CRICHLLOW: The applicant's property.

MR. COLLINS: The applicant's property, yes.

MS. BUNTING-SMITH: But in what particular location in relationship to the pool is that on the applicant's property? Is what I'm asking.

MR. COLLINS: Yes, actually that does. All these trees here (indicating), those are all on our applicant's property (indicating), basically between the lawn area and the property line.

MS. BUNTING-SMITH: And the few evergreens that we see there, are those on the applicant's property or the other property? It's hard to tell something behind it. I see that one I see.

MR. COLLINS: Is that on the --

MS. BUNTING-SMITH: You have to come up, please, up to the microphone. I'm sorry.

MS. KOHLI: My name is Pooja Kohli. I believe they might actually be on the neighbor's property. We are planning to put up an arborvitae privacy screen as well in addition to this.

MS. BUNTING-SMITH: Is it on the plans that you have?

MS. KOHLI: The pool plans? I do have the pool plans where it does show.

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MS. BUNTING-SMITH: Okay.

MS. KOHLI: Sorry.

MS. BUNTING-SMITH: We'll see it. While you're getting that, do you have any comments from any of your neighbors?

MR. COLLINS: I don't think we do. Nothing has been brought up to our attention.

MS. KOHLI: I have spoken with my neighbors that do live on that side of the home, and they have a pool as well, and they are okay with us building a pool.

MR. BLAND: This is still an in-ground pool?

MS. KOHLI: Yes, it would be an in-ground pool.

MR. HARRISON: He has a question before you --

MS. KOHLI: Sure.

MR. BLAND: Just, we're looking at a document now, we already granted this.

MR. HARRISON: What's the difference between two year ago and now?

MR. COLLINS: The previous variance was done actually at 57 Valley Sprain. That's actually a different property. I was going to bring that up as well. There was a similar variance that was done literally down the street. So we're asking for a similar variance that was previously granting at 57 Sprain Valley Road, which was --

MR. CRICHLLOW: Or 52.

MR. HARRISON: You're at 38. So you're at 38. All right. I thought it

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was --

MS. KOHLI: I would have been happy. Great.

MR. COLLINS: So it's not unrealistic. I know you guys have granted it before. I believe that was 2018, was on the application, the resolution.

MR. HARRISON: It was in a side yard that we granted it, the same slope issues.

MR. COLLINS: The same situation. Steep Slopes right behind the house and they couldn't build it behind the house.

MR. HARRISON: You did your homework.

MR. COLLINS: That's what I've got to do.

MR. HARRISON: You found precedent.

MS. BUNTING-SMITH: Let's us take a look at that. You haven't submitted what we're looking at now to us have you.

MR. COLLINS: This was not submitted to you guys.

MS. BUNTING-SMITH: Just so we can see it in total perspective. All right.

MR. COLLINS: Can I give them that copy? Do you want this copy for deliberation?

MS. BUNTING-SMITH: If we can get it, sure. Give it to our secretary, please.

MR. COLLINS: I believe that was it. Anything else that you guys have that we can answer?

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MS. KOHLI: Any other questions?

MR. HARRISON: No.

MS. BUNTING-SMITH: Anyone in the audience?

(No response.)

MS. BUNTING-SMITH: Okay. Thank you.

\* \* \* \*

1/16/2020 - Case No. 19-34

MR. LIEBERMAN: I have to reopen one of your hearings. Madam Chair, may it please the Court. I'd like to reopen Case No. Three, Zoning Board of Appeals case 19-34, Zoning Board of Appeals case.

There is a slight discrepancy between the application and the legal notice. The applicant -- the application and the denial letter set forth a height variance from 6 feet to 18.45 feet. However, there was a typo, which I missed in the legal notice that sets forth 18.25 feet. Because the variance is technically greater than what is advertised, there are two ways to deal with this. Either to adjourn it and re-notice it or I've spoken with the representative of the applicant and he's agreed to reduce the variance request to 18.25 feet to correspond to the legal notice. And that, of course, can be addressed by, as we learned this evening, raising the grade by two inches or lowering the height.

But I just want the representative of the applicant here. I want him to verify that that is his request.

MS. BUNTING-SMITH: Okay.

MR. VOGT: Daniel Vogt. Thank you very much. Again. Madam Chair, ladies and gentlemen of the Board. Yes, we would agree to address the discrepancy by adjusting the grade surrounding the proposed salt shed to adhere to the reduced height of 18.25 feet.

MR. HARRISON: And you are doing this of your own volition?

MR. VOGT: Yes.

MR. HARRISON: Of your own free will?

MS. BUNTING-SMITH: You're not under any duress, are you?

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MR. VOGT: No, I'm not under any duress. On behalf of the applicant and the owner.

MR. LIEBERMAN: I say we remove him from office.

MR. VOGT: Thank you very much.

MR. HARRISON: We stay out of politics.

\* \* \* \*

1/16/2020 - Case No. 19-37

MS. BUNTING-SMITH: Before we adjourn for our deliberations let's go back to Case No. 19-37, Ivana Greenfield, 36 Manitou Trail. Second call. Okay. All right. And we will return.

(Whereupon, at 9:38 p.m. the Board retired to deliberate.)

(Whereupon at 11:21 the Board returned to the auditorium upon completing deliberations.)

1/16/2020 - Case No. 19-21

MS. BUNTING-SMITH: All right. We are reconvened with the results of our deliberations for this evening.

The first case on tonight's agenda is Case No. 19-21, Michael Teverbaugh, which is adjourned for all purposes to the meeting of -- closed for decision only to the meeting of February 13th, 2020.

1/16/2020 - Case No. 19-29

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

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 to the subject application is a Type II Action requiring no further SEQR consideration.

MR. CRICHLLOW: Second.

MS. BUNTING-SMITH: All in favor?

MS. KNECHT: Aye.

MS. BRENNAN: Aye.

MR. BLAND: Aye.

MR. HARRISON: Aye.

MS. BUNTING-SMITH: The Chair votes aye. Do I have a motion?

MR. BLAND: Madam Chair, I have a motion. I move that the applicant in Case No. 19-29, be denied.

MS. BUNTING-SMITH: Do I have a second?

MS. BRENNAN: I second it.

MR. HARRISON: Did you skip over 21?

MS. BUNTING-SMITH: No. We did that already. I'm sorry.

MR. HARRISON: We did adjourn 21.

MS. WALKER: Closed for decision only.

1/16/2020 - Case No. 19-29

MS. BUNTING-SMITH: All in favor of denying the application?

MS. BRENNAN: Aye.

MR. BLAND: Aye.

MR. HARRISON: Aye.

MR. CRICHLLOW: Nay.

MS. KNECHT: Nay.

MS. BUNTING-SMITH: Aye.

Due to the lateness of the hour and the tiredness level that we have at this point -- because our this evening deliberations were rather heated and involved -- we are not going to read the findings into the record. However, they will be put in the record so that they will be available for all who wish to see them.

**DRAFT DECISION  
Z.B.A. CASE 19-29  
JOSE BEJAR**

**MOTION:**

I move that the application in Case No. 19-29 be DENIED.

**FINDINGS:**

In considering this application the Zoning Board has weighed the benefit to be derived by the applicant against the impact that the variance would have on the surrounding neighborhood. After doing so, we hereby determine that the variances requested should be denied. In making such determination we find that:

1. First and foremost, the variances requested are inarguably substantial with

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respect to the requirement sought to be varied. The request for the north side arch structure is to permit a height of 9 ft. 7 in., where 6 ft. Is permitted, 60% higher than what is permitted, and the request for the south side structure is 9.5 ft, where 6 ft. Is permitted, a 58% variance. The fact that these variances are substantial is exacerbated by the fact that the arches in question are not set back from the property lines; they extend to the side lot lines and are attached to the walls erected by applicant along both side lot lines, abutting the neighbors' properties;

2. The substantiality of the height variances is further exacerbated by the fact that the difficulty experienced by the applicant is entirely self-created. Applicant purchased the property with knowledge of the requirements of the zoning ordinance, but proceeded to erect the structures without seeking or obtaining a building permit in order to do so. Although applicant's representatives argued that he was acting as his own contractor and was not aware of the requirements of the Zoning Ordinance, such argument is belied by the fact that applicant obtained variances on at least two occasions in the past (2012 and 2017) in connection with this property, and on a third occasion removed a fence that he erected on top of stone walls he built along the side lot lines rather than seek a variance because they exceeded the same height requirement that is involved in the present application. The fact that applicant constructed the offending structures without first seeking a building permit negates any argument applicant has made with respect to the cost of reducing the height of the structures in order to bring them into compliance with the Zoning Ordinance or the alleged impossibility of reducing the height because of the materials used in the construction of the nonconforming structures;

3. There are feasible alternatives to the variances applicant is seeking. When asked directly what the purpose or goal of the applicant is in erecting the arches,

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applicant's representative replied that they are "a design structure to stand in and of itself as a separation from the front and back yard." Clearly, applicant can erect fences or walls from the side of his home to the side lot lines, using the same stone materials as those used in the principal structure and the arches at issue herein, in compliance with the height requirement of the zoning ordinance (6 ft.). Such structures would serve the same purpose -- as a "separation" between the front and back yards -- could include an opening, door or gate therein that affords access to the rear of his lot, and would not require variances.; and

4. Granting the variances requested would result in a detriment to nearby properties and will adversely affect the character and physical and environmental conditions in the community. Applicant has not pointed to other similar structures or variances for such structures in the neighborhood or district. Indeed, in our decision in Case 12-28 granting variances to the applicant, we explicitly stated that "the appearance of the modified house, per submitted plans, is consistent with that of the other houses in the neighborhood . . . ." In this matter, contrary to our findings in Case 12-28, the structures that are the subject of this application are entirely dissimilar and out of character with the other houses in the neighborhood. Moreover, to grant the variances would establish a precedent for erection of future structures in violation of the zoning ordinance without first obtaining building permits therefor.

For the foregoing reasons, we hereby DENY the application.

\* \* \* \* \*

1/16/2020 - Case No. 19-34

MS. BUNTING-SMITH: Therefore, moving on to Case No. 19-34, Clearbrook Cross, LLC.

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. CRICHLLOW: Second.

MS. BUNTING-SMITH: All in favor?

MS. KNECHT: Aye.

MS. BRENNAN: Aye.

MR. BLAND: Aye.

MR. HARRISON: Aye.

MS. BUNTING-SMITH: And the Chair votes aye. Do I have a motion?

MS. KNECHT: Yes. I move that the application in Case No. 19-34, be granted, provided that the applicant will obtain all necessary approvals and file same with the Building Department; that construction shall 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 December 20th, 2019, submitted in support of this application.

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

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variances we have approved herein.

Further, that the following conditions shall be met: Applicant shall plant arborvitae type evergreens to the satisfaction of the Forestry Officer in order to screen the salt shed from neighboring properties.

Applicant shall maintain same in good and growing condition.

MR. CRICHLLOW: Second.

MS. BUNTING-SMITH: Was there reference to the fact that they have presented us with a plan that shows roughly?

MS. KNECHT: That's the dated plan.

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

MR. HARRISON: Aye.

MS. BUNTING-SMITH: All in favor?

MR. CRICHLLOW: Aye.

MS. KNECHT: Aye.

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

Again we are waiving the reading of the findings but they will be included in the record.

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

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or physical or environmental conditions in the neighborhood or district, provided the conditions are fully complied with because the proposed salt shed is being located on an existing commercial property within the Cross Westchester Executive Park, which is within the non-residential planned development district (PD). No modifications to existing roadways or driveways are required; and there will be no increase in traffic to and from the subject site as part of these improvements. In addition, the proposed salt shed has been located in an area that will be adequately screened from neighboring properties by both existing and proposed vegetation and evergreens. Further, the proposed salt shed is a permitted use within the PD Zone, and will cause little disturbance to environmental features.

2. The goal of the applicant can not be achieved by some other feasible means without requiring the variance we are granting because the subject property was selected for the salt shed since the property is centrally located within the Cross Westchester Executive Park (approximately 35 acres) and will be utilized to service all the properties within the Park. The specific location of the salt shed within the subject lot was selected since it will provide safe and adequate access for operations. There is no alternative location within the subject site that the salt shed can be located due to the locations of the existing buildings and their associated parking and loading areas/operations.

3. The requested variances are substantial in relation to the requirement sought to be varied; however, the variances are mitigated by existing vegetation, and the proposed arborvitae add the amount or impervious surface will slightly decrease.

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The applicant's need for the variance was self-created because they purchased the property with knowledge of the requirements 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.

\* \* \* \* \*

1/16/2020 - Case No. 19-37 & 19-38

MS. BUNTING-SMITH: The next case is Case No. 19-37, Ivana Greenfield, property of 36 Manitou Trail, although it says Train, but it is trail.

There was no appearance by the applicant this evening. However, we will adjourn this matter over to February 13th to the next meeting to give them an opportunity to look to appear.

Simply because they had been in touch with the department.

\* \* \* \*

MS. BUNTING-SMITH: Next is Case No. 19-38, Ralph Corvino. And that is adjourned for all purposes to the meeting of February 13th.

\* \* \* \*

1/16/2020 - Case No. 19-39

MS. BUNTING-SMITH: The next case on tonight's agenda is Case No. 19-39, Sachin and Pooja Kohli, 38 Sprain Road.

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. CRICHLLOW: Second.

MS. BUNTING-SMITH: All in favor?

MR. BLAND: Aye.

MS. KNECHT: Aye.

MS. BRENNAN: Aye.

MR. HARRISON: Aye.

MS. BUNTING-SMITH: And the Chair votes aye. Do I have a motion?

MS. BRENNAN: Okay. I move that the application in Case No. 19-39, be granted, provided that the applicant will obtain all necessary approvals and file same with the Building Department; the 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 12/10/19 and date-stamped by Zoning Board of Appeals 12/12/19, and pool landscaping plan dated 1/11/2020, submitted in support of this application.

Findings: --

MS. BUNTING-SMITH: No.

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MR. HARRISON: Second. I'll second.

MS. BRENNAN: 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 variances we have approved herein.

MR. HARRISON: Second.

MS. BUNTING-SMITH: All in favor?

MR. BLAND: Aye.

MR. CRICHLLOW: Aye.

MS. KNECHT: Aye.

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

MR. HARRISON: Let her read the findings.

MS. BRENNAN: There is a similar application granted in Case No. 17-36 on January 18th, 2018, for a similar variance, for a pool installation.

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.

There is a similar application granted, Case No. 17-36 on January 18th, 2018, for a similar variance for a pool installation. Most of the proposed pool will be screened from view by the street, under the pool landscaping plan gives further screening. Homeowner shall replace any trees that become dead, dying or

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diseased within the next growing season.

Okay. The goal of the applicant cannot be achieved by some other feasible means without requiring the variances we are granting. The rear yard slopes upward and topography is and location is less and backyard location is less appropriate.

3. The requested variance is substantial in relation to the requirement sought to be varied in that the requested relief is for a pool in side yard versus a pool in the rear yard. Even though substantial qualitatively, the side yard is more feasible due to slope upward in topography.

The applicant's need for the variance was self-created because he/she purchased the property with knowledge of the requirement of the Zoning Ordinance; however, 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.

MS. BUNTING-SMITH: I thought you had mentioned something about the -- diminishing the impact of the environment because of the topography.

MR. HARRISON: Right.

MS. BRENNAN: I said that the rear yard slopes upward and topography makes it less appropriate. Do you want me to --

MS. BUNTING-SMITH: No.

MS. BRENNAN: Okay.

(Whereupon, the next meeting of the Zoning Board of Appeals of the Town of Greenburgh was adjourned until February 13, 2020.)

12-12-2019

(Whereupon, at 11:48 P.M. the meeting of the Zoning Board of Appeals was concluded. The next meeting of the Zoning Board of Appeals is February 13, 2020.)

\* \* \* \* \*

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# C E R T I F I C A T I O N

\* \* \*

IS TO CERTIFY THAT THE ABOVE TRANSCRIPT IS A TRUE AND ACCURATE TRANSCRIPTION OF MY STENOGRAPHIC NOTES.

-----  
Debra L. Rinaldi  
Senior Court Reporter