

A regular meeting of the Board of Adjustment of the Township of Roxbury was held on Monday, June 13, 2022, at **7:00 p.m.** in the Municipal Building at 1715 Route 46, Ledgewood, NJ after a salute to the flag Dr. Kennedy, Chairman read the “Open Public Meetings Act”

BOARD MEMBERS PRESENT

Ms. Dawson, Mr. Klein, Mr. Overman, Ms. Robortaccio, Ms. Dargel, and Dr. Kennedy.

ABSENT: Mr. Furey

PROFESSIONAL STAFF

Mr. Larry Wiener, Esq.

Mr. Russell Stern, P.P.

MINUTES OF MAY 09, 2022

Ms. Dargel made a motion to approve the minutes of the May 09, 2022,

Ms. Robortaccio seconded.

Roll call: Ms. Dargel, yes; Ms. Robortaccio, yes; Ms. Dawson, yes; Mr. Klein, yes; Mr. Overman, yes; Dr. Kennedy, yes.

RESOLUTIONS:

ZBA-22-016 VANDERHOOF, Certificate of Non-Conforming Use for property located at 46 Main Street, Succasunna, Block 3702, Lot 2 in a B1-A zone.

Ms. Dawson made a motion to memorialize the resolution. Ms. Dargel seconded.

Roll call: Ms. Dawson, yes; Ms. Dargel, yes; Mr. Klein, yes; Mr. Overman, yes;

Ms. Robortaccio, yes; Dr. Kennedy, yes.

In the matter of Diane Vanderhoof

Case No. ZBA-22-016

**RESOLUTION OF FINDINGS AND CONCLUSIONS
BOARD OF ADJUSTMENT
TOWNSHIP OF ROXBURY
RESOLUTION**

Approved: May 09, 2022
Memorialized: June 13, 2022

WHEREAS, Diane Vanderhoof has applied to the Board of Adjustment,

Township of Roxbury seeking a Certificate of Non-Conforming Use for premises located at 46 Main Street and known as Block 3702, Lot 2 on the Tax Map of the Township of Roxbury which premises are in a “B1-A” Zone; said proposal required relief from Section 13-7.7 of the Roxbury Township Land Use Ordinance; and

WHEREAS, the Board, after carefully considering the evidence presented by the Applicant and having conducted a public hearing on May 9, 2022 has made the following factual findings:

Township of Roxbury
Board of Adjustment
June 13, 2022

1. The Applicant is seeking a pre-existing non-conforming certification for the subject premises which is located within the Historic district of the B1-A Zone on Main Street. The property was built in 1925 and is located on a 17,250 square foot lot with the following historical conditions as per the property record card on file with the Tax Department:
 - a. 1 bedroom apartment and 1 retail/office on the first floor
 - b. 3 one room apartments on the second floor (smaller apartment being a “studio”)
2. Diane Vanderhoof the owner of the subject property testified at the public hearing. She stated she had recently lost her husband (he was the operator of the small office on-site) and she was desirous of selling the building. She reviewed the history of the site (she was a long time Roxbury resident and lives at 106 Ford Road, Landing (Roxbury Twp), New Jersey 07850.
3. Ms. Vanderhoof testified as to how the site had been used. While it is in the B1A zone- it was nevertheless utilized as apartments and an office as far as she could remember.
4. Further information was provided by members of the township professional staff and copies of written documents demonstrating the continuing non-conforming use; to wit:
 - A. Tom Potere issued a revised report dated May 9, 2022 confirming the site conditions and his conclusion:

“In conclusion this area was at one time a studio apartment which will match the supporting documents from our office to include at total of four apartments and one office.”
 - B. Mr. Potere submitted an April 29, 2022 report which was incorporated into the May 9, 2022, There was also an October 8, 2002 response to a request further documentation- same made reference to the list of improvements and repairs on-site together with a list of permits.

WHEREAS, the Board has determined that the relief requested by the Applicant can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Township of Roxbury for the following reasons:

The within matter comes before the Board as a certification of an existing non-conforming use, The burden of proof rests with the applicant who must provide evidence that the non-conforming use preceded any subsequent changes in the Zoning Ordinance and that such non-conforming use has not been abandoned. Based upon the information provided to the Board; the testimony of the applicant; and the

reports submitted by the Zoning Officer the Board finds the applicant has met its burden of proof under the Municipal Land Use Law.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township Roxbury on the 9th day of May 2022 that the approval of the within application be granted subject, however, to the following conditions:

1. Payment of all fees, sureties, and escrows required by ordinance.

ZBA-20-004 SPEICHER, Minor Subdivision, “D2” Variance for property located at 280 Old Ledgewood Road, Flanders, Block 9303, Lot 1, 3 & 4 in a B1-A zone. *Resolution memorialization was carried to the July 11, 2022 meeting.*

APPLICATIONS:

ZBA-21-035 PIERSON, Bulk Variance relief for property located at 29 Sunset Lane, Landing, Block 11904, Lot 5 in a R-3 zone. *Request to be carried to the July 11th, 2022 meeting, with no further notice required.*

ZBA-21-004 BLACK RIVER HOLDINGS, LLC & MORGAN DEAN HOLDINGS, LLC, Use Variance, Bulk Variance, Lot Merger, and Preliminary Major Site Plan for property located at 1371, 1373, and 1393 Route 46, Ledgewood, Block 8701, Lot(s) 4, 5, & 6 in a B-2 zone. *Request to be carried to the July 11th, 2022 meeting, with no further notice required.*

ZBA-22-011 PEREIRA, Use Variance and Bulk Variance relief for property located at 1026 Route 46, Kenvil, Block 6501, Lot 24 in a B-2 zone.

Mr. Larry Calli, Esq. stepped forward on behalf of Mr. Costa and Ms. Pereira and stated that Mr. Pereira purchased the home in July of 2021 to move his family from Newark into the Roxbury community where there is a great school system. The parcel sits in the B-2 zone making it non-conforming, in addition, the house was dilapidated and an eyesore. Mr. Costa made improvements by taking out permits to replace the windows, siding, and roofing and upon making those improvements he made improvements on the interior of the home by adding a bedroom to the basement, and some remodeling the first. Mr. Calli stated that it was during the renovation inspection Mr. Costa found out he had expanded a pre-existing non-conforming structure. Mr. Calli further testified that there is a deck in the rear of the home and a pre-existing driveway encroachment that has been cut back moving it towards conformity. Additionally, there were significant improvements made to the exterior of the structure.

Mr. Wiener then swore in Mr. Eder Costa of 33 Carmen Court, Newark, NJ, the owner of 1026 Route 46. Mr. Costa explained he purchase the home to move his family to a better place so his children could attend a better school system. Mr. Costa stated he had been saving for the home for five years and then purchased it knowing it needed a lot of work. Mr. Costa explained once he owned the home, he was eager to get started on renovating and did not realize he needed permits to do some of the work. Mr. Costa stated he is hoping to move in the home as soon as possible, as his wife had to drive his children to school every day from Newark. Mr. Calli asked Mr. Costa to describe to the Board what renovations he has made. Mr. Costa explained he converted two rooms into bedrooms in

the basement and made a living room and dining room on the first floor. Mr. Costa explained the home was unsafe on the inside when he purchased it.

Ms. Robortaccio raised the question that the application differs from the testimony of the applicant. Mr. Calli stated that Mr. Oller, the applicant's attorney drafted the application and Mr. Costa would be providing sworn testimony. Ms. Robortaccio asked how many bathrooms were on the first floor. Mr. Costa replied one full bath and one-half bath. Ms. Robortaccio asked about the extra space in the basement and what would it be used for. Mr. Costa replied, a playroom for the children.

Dr. Kennedy brought up the fact that the property has some wetlands on it and did Mr. Costa encroach on the wetlands while grading the area. Dr. Kennedy asked if the applicant need DEP approval. Mr. Calli stated that DEP is not the inquiry for tonight. Dr. Kennedy added he believes it is an inquiry for tonight because the Board would not agree to a resolution that would not require the appropriate approval of the DEP. Mr. Calli agreed stating Mr. Costa may be exempt.

Ms. Robortaccio asked if there were adequate parking on site and how many spaces will be available. Mr. Calli replied that Mr. Costa is not before the Board for site plan approval and a mere residential application.

Mr. Overman stated that the driveway appears to be 10 feet wide according to the plans provided. Mr. Overman then asked how many cars could fit in the driveway and would it meet the parking standards. Mr. Calli replied, residential site improvement standards control parking demand for varied residential uses. Mr. Calli stated it his position that this property is a single-family use today and is a single-family use tomorrow making it a net change of zero as far as a parking demand goes.

Ms. Dargel stated the plan doesn't depict the parking and driveway situation very well. Dr. Kennedy asked if the Mr. Costa would be paving the driveway. Mr. Costa replied, yes.

Motion was made to open to the public for questions – none were made
Motion was made to close to the public

Motion was made to open to the public for comments – none were made
Motion was made to close to the public

Mr. Wiener swore in Mr. Alexander Dougherty of 101 Gibraltar Drive, Suite 1A, Morris Plains, NJ. Mr. Dougherty testified that the property is a small residential property on a narrow lot in the B-2 zone. Mr. Dougherty directed the Boards attention to page two of the application showing a photo of the home prior to renovations depicting the dilapidated state of the property. Mr. Dougherty then asked the Board to look at page three which was a photo of the exterior renovations. The building footprint of the dwelling did not change but the driveway encroachment has been moved to the zero lot line which still requires a variance. Mr. Dougherty stated that for parking purposes he reviewed the RSIS standards for parking and a three-bedroom house is required to have two parking stalls.

Mr. Potere replied, that may be the case but, Township Ordinance require three.

Mr. Dougherty continued his testimony on the original floor plan, which was two bedrooms on the first floor and two offices in the basement. Essentially, one of the bedrooms on the first floor was removed and reclassified, and the two offices in the basement were converted to bedrooms. The property has been a residential home since

1946 and part of the local landscape. The plan is one of home improvement with interior modifications and some exterior renovations, including the addition of a deck. The home falls within the B-2 district where it is sandwiched between the Midas shop and a strip mall. When it went up for sale, neither of those shops attempted to purchase it to make it into something conforming with the zone. Mr. Dougherty went on address site betterment, noting it is not whether the use belongs here in the first place. The positive criteria show the project improves the living environment with upgrades to a 76-year-old home improving the site aesthetics through its integration with the area. The site improvements will improve the site to contemporary standards, new landscaping will give the site a fresher look, noting, all of the above promote land use law especially purposes A, G, I and M.

Mr. Dougherty addressed the negative criteria which is the property is categorized as an expansion of a non-conforming use, but it is more of an alteration than an expansion. Mr. Dougherty reference COX on page 34 stating that when a lawfully created pre-existing non-conforming use cannot be eliminated, a municipality may and should seek to harmonize the use, to this end the municipality ought to require aesthetic improvement as a condition of expansion. Mr. Dougherty stated he believes relief can be granted without substantial detriment to the area or the zone plan.

Mr. Calli stated that Ms. Robortaccio brought up a good point on how much impervious coverage would be on site. Mr. Calli stated that 60% is allowed and could Mr. Dougherty opine on whether Mr. Costa will be liked to conform to this allowance. Mr. Dougherty replied, he believes Mr. Costa should be able to comply.

Dr. Kennedy asked about the two offices inside the home, noting that in testimony it was stated that the property was used as a residence. Mr. Dougherty replied that the dwelling has been used as a single-family home for 76 years.

Mr. Overman stated that when he is reviewing applications for certificates of non-conformance, he asks himself if there would be a better use suited for the site. Mr. Overman stated that with this site he could not think of a better use due to the narrow lot which abuts Route 46. Mr. Overman then asked if the wetlands were disturbed by Mr. Costa or in the history of the ownership. Mr. Calli replied not by the present ownership as he is aware but, he has no knowledge of prior ownership. Mr. Calli stated that if it was encroached upon by the current owner DEP will require restoration of the area. Mr. Overman asked what steps needed to be taken to find out if there was an encroachment. Mr. Calli replied, the site will need to be inspected by the applicants engineering as well as the Township Engineer to determine whether there was an encroachment and if so, then DEP will be notified, and the applicant will be required to satisfy the DEP as part of a condition of the CO.

Mr. Overman asked if the applicant has considered a widening of the driveway to be able to turn a vehicle around to face forward when entering onto Route 46. Mr. Calli replied the applicant is amendable to do so and then three cars will be able to park adequately. Mr. Calli stated that the applicant would rather not trigger DEP for any type of driveway expansion but would only consider it.

Ms. Robortaccio asked what would happen if the driveway expansion could not take place, and we still need to know the length of the driveway. Ms. Robortaccio asked would a variance be required. Mr. Calli replied, no, a waiver would be requested.

Mr. Potere asked Mr. Dougherty if he had a chance to review the survey. Mr. Dougherty replied, yes. Mr. Potere asked Mr. Dougherty if Mr. Costa changed the curb cut onto Route 46, noting it appears to be off the property line. Mr. Dougherty stated he had no knowledge of the curb cut. Mr. Potere stated the driveway as proposed will be 10 ½ feet wide where a standard parking space is 9 x 18, stating there would be a variance required for not meeting the five-foot set-back. Mr. Potere stated that the Township code requires 3 parking spaces on this site because there are 3 bedrooms. Mr. Potere stated that two cars could fit on the driveway as proposed, possibly three. Mr. Potere asked if the driveway ends at the front of the home. Mr. Dougherty replied it ends at the rear of the home. Mr. Calli replied that there is no standard governing a parking space on a residential property.

Dr. Kennedy asked about the wetlands and DEP approval. Mr. Calli stated that if indeed encroachment took place, then it is under the jurisdiction of the DEP where it would be a condition of the resolution for a CO.

Mr. Dougherty asked if expanding the driveway in the front of the home would be an option. Mr. Potere replied, yes. Mr. Potere asked the Board to look at survey where the applicant is proposing a driveway in the front, noting, the survey shows the driveway, but it was difficult to see due to a depiction of trees.

Dr. Kennedy asked if a garage was required by Ordinance. Mr. Potere replied, no.

Motion was made to open to the public for questions – none were made
Motion was made to close to the public

Motion was made to open to the public for comments – none were made
Motion was made to close to the public

Ms. Robortaccio made a motion to approve the application with conditions. Ms. Dargel seconded.

Roll call: Ms. Robortaccio, yes; Ms. Dargel, yes; Ms. Dawson, yes; Mr. Klein, yes;
Mr. Overman, yes; Mr. Furey, yes; Dr. Kennedy, yes.

ZBA-22-013 RUDE, Bulk Variance relief for property located at 61 King Road, Landing, Block 11912, Lot 4 in a R-3 zone.

Mr. Wiener swore in Mr. Richard Rude of 61 King Road, Landing, NJ and Mr. Ken Fox of Fox Architect and Design located at 546 Route 10, Ledgewood, NJ. Mr. Fox stated he would be testifying as Planner and Architect.

Mr. Rude testified that he had been before this Board before seeking variance approval for the modification of his home and now he is back seeking approval to install a new garage. Mr. Rude noted that the prior garage is in disrepair because the slab the garage sits on has split and is sinking. In addition to the garage, Mr. Rude would like to install an inground pool and walkway.

Mr. Fox stepped forward and asked the Board to address Exhibit A-1 which was a colorized version of sheet 2 of the plans submitted to the Board as part of the application. The existing garage was located one foot from the property line and was not wide enough to house two cars. The newly proposed garage will be three feet wider making it wide enough to fit two cars and some storage items such as a

lawn mower and snow blower. The height of the garage is conforming to the zone. Mr. Rude is also looking to refigure the curbing at the street.

Mr. Fox went on to testify about the pathway on the south side of the property that ends at the backyard, and it is the desire of Mr. Rude to extend the path to the boathouse. Mr. Fox stated there is a seepage pit in rear yard that keeps the back yard wetter than normal, and the paver walk allow to homeowner to walk on a dry surface. Mr. Rude would also like to install a fire pit and small seating area. The lake side of the home has an open porch and Mr. Rude would like to install an inground pool and hot tub. Mr. Fox stated that the building coverage presently exceeds that which is on the ordinance. The ordinance allows for 15% building coverage where there is currently 23.9% and 25.3% is being proposed. The increase is due to the expansion of the garage. The maximum lot coverage has decreased because some impervious coverage surfaces have been changed to pavers. The side yard setback is 2.2 feet where 5 feet is required for an accessory structure. Additionally, and accessory structure is not allowed in the front yard. The hardship is the lot is narrow and a bit undersized.

Mr. Potere stated that an additional variance would be required for the pool as it does not meet the 10-foot setback from the house. Additionally, the walkway does not meet the 50-foot buffer, requiring another variance.

Mr. Fox entered Exhibit A-2 a photograph taken by his office in December of 2021 showing the lakeside of the home, specifically, the open porch on the lower level. Mr. Fox noted the proposed pool would be abutted to the patio not the foundation of the home.

Mr. Potere asked if the raised deck and sheds were on Mr. Rude's property. Mr. Fox then entered Exhibit A-3 showing configuration of the structures at the lakes edge. Mr. Potere believes the sheds are not on Mr. Rude's property. The reason Mr. Potere brought it up was there are two accessory structures allowed on a property and it seems as though the sheds are not within the property boundaries. Ms. Robortaccio asked whose property is it. Mr. Fox replied, most like the State of New Jersey and that if the Board desires, he could file the proper paperwork with the DEP seeking approval.

Mr. Wiener stated that it would be in the applicant's best interest to do so and not be speculative on what is allowed on State property.

Mr. Potere asked Mr. Rude when he purchased the home. Mr. Rude replied, in 2007. Mr. Potere then asked if the sheds were constructed prior to the purchase of the home. Mr. Rude replied, yes and they were larger. Mr. Rude stated he removed the second story of the sheds and large deck that went into the neighboring area. Mr. Rude stated he would check with his Attorney to look at the deed to see if anything regarding the sheds were included.

Motion was made to open to the public for questions
Motion was made to close to the public

Motion was made to open to the public for comments – none were made
Motion was made to close to the public

Ms. Robortaccio made a motion to approve the application with conditions. Ms. Dargel seconded.

Roll call: Ms. Robortaccio, yes; Ms. Dargel, yes; Ms. Dawson, yes; Mr. Klein, yes; Mr. Overman, yes; Dr. Kennedy, yes.

ZBA-21-030 VANDE VELDE, Bulk Variance relief for property located at 20 Sunset Lane, Landing, Block 11903, Lot 21 in a R-3 zone.

Mr. Vande Velde failed to appear before the Board.

Dr. Kennedy made a motion to deny without prejudice. Ms. Robortaccio seconded.

Roll call: Dr. Kennedy, yes; Ms. Robortaccio, yes; Ms. Dawson, yes; Mr. Klein, yes; Mr. Overman, yes; Ms. Dargel, yes.

OLD BUSINESS: *None*

NEW BUSINESS: *None*

OPEN TO THE PUBLIC:

*No discussion of any pending application.

Motion to adjourn at 9:10 pm

ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF ROXBURY
Tracy Osetec, Board Secretary
May 09, 2022