

**Town of Southeast
Zoning Board of Appeals
Minutes of March 14, 2016**

Timothy Froessel, Chairman	Present
Paul Vink, Vice Chairman	Present
Kevin Sheil	Present
Roderick Cassidy	Present
Debra Keiser	Present
Greg Wunner	Present
Carla Lucchino	Present
Willis Stephens, Jr., Town Attorney	Absent
Victoria Desidero, Secretary	Present
Cathy Chiudina, Assistant Secretary	Present

Chairman Froessel: For the people that may be here for the Santucci application I am going to let you know now that Santucci's lawyer requested an adjournment over to next month because he is sick so we agreed to accommodate him and we will hear him next month. However, I am going to open the Public Hearing because it was publicly noticed and if any of you are present and want to make a statement while you are here, to the extent that you might not be available to come next month or what have you, we will hear what you have to say. We will not be doing any voting tonight though.

Richard and Charlene Zengel, 22 Seven Oaks Lane – This is a Public Hearing to review an application for an existing shed which requires a south rear yard setback variance. Richard Zengel and Charlene Zengel were sworn in and the mailings were verified to be in order.

Chairman Froessel: Why don't you give us a description of your application please.

Charlene Zengel: Our application is for a variance for a shed which on two sides it's fine but in the back it is only 13 ft. instead of 20 ft. from our closest neighbors.

Chairman Froessel: How long has the shed been in its current location?

Charlene Zengel: The shed has been there since '95 I believe.

Chairman Froessel: And is this one where you put the house on the market and then it became evident that it's not legal?

Charlene Zengel: Yes.

Chairman Froessel: That happens a lot.

Boardmember Cassidy: It's a beautiful shed.

Charlene Zengel: Thank you.

Chairman Froessel: The shed is okay on the side yard? It's the rear yard where you have the issue?

Richard Zengel: Yes, the rear borders on 125 acres of farmland.

Chairman Froessel: Okay. Ryder Farm is your neighbor?

Charlene Zengel: Yes.

Chairman Froessel: How big is your lot?

Richard Zengel: I think it's 5/8 of an acre.

Chairman Froessel: And there's just woods behind you?

Charlene Zengel: Yes.

Chairman Froessel: And your neighbors haven't complained about the shed?

Charlene Zengel: No.

Chairman Froessel: What are the dimensions of the shed?

Richard Zengel: 10 x 14.

Boardmember Keiser: I have a question. Why did you place it there?

Charlene Zengel: Because there was a shed there originally and we just put this one in the same place.

Chairman Froessel: How long have you owned the home?

Richard Zengel: 38 years.

Boardmember Lucchino: Is it just mounted on a concrete slab?

Richard Zengel: It's sitting on six cement blocks.

Boardmember Lucchino: So it could be moved?

Charlene Zengel: I guess it could.

Richard Zengel: I put down six yards of gravel and there's a labor barrier so I don't feel that's a good idea.

Boardmember Lucchino: Did you do the installation yourself?

Richard Zengel: I built it myself.

Chairman Froessel: I assume it's used for typical storage of lawn and garden items.

Richard Zengel: Yes.

Chairman Froessel: Does anyone else have any questions of the applicant regarding the shed? Is there anyone present in the audience with any comments or questions about this application? Okay, there are not. This looks fairly typical of applications that we see, although typically we prefer that you come get permission before you put up the shed, rather than ask for forgiveness after the fact.

Richard Zengel: I had no idea that something like that would need it.

Chairman Froessel: It's not all that out of the ordinary.

Boardmember Vink: When did you say you built it?

Richard Zengel: In the early '90s I think.

Charlene Zengel: I think it was '94-'95 and by the time we finished '95.

Boardmember Lucchino: Was the shed a self-contained unit and you just built the base and put it on top or did you also build the shed?

Richard Zengel: I built it from sticks from the ground.

Chairman Froessel: Does anyone feel the need to go out and look at this?

Board: No.

Chairman Froessel: If that's the case I guess we can close the Public Hearing. Do you have any final comments you want to make before we close the Public Hearing and vote on your application?

Charlene Zengel: No.

Chairman Froessel: Do you feel you've been given a fair and adequate opportunity to present your application?

Richard and Charlene Zengel: Yes.

Chairman Froessel: We will close the Public Hearing. I think this is a very standard application. I think we've seen many others like this in the past.

Boardmember Vink: It helps that they back up against Ryder Farm.

Chairman Froessel: Yes and from the picture it looks fairly densely wooded. Unless there is any further deliberation from any of the Board members I will entertain any motion anyone would care to make.

The motion to grant the requested variance of 7 ft. for the rear yard setback where 20 ft. is required and 13 ft. is proposed was introduced by Boardmember Vink, seconded by Boardmember Cassidy. The Criteria:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the variance.
No this is actually quite consistent with the character of the neighborhood. Obviously there's no detriment to any neighboring properties, the neighbors are not here to complain, and the rear property where it actually needs the variance is wooded and a substantial parcel that wouldn't even notice that the shed is there.
2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.
I suppose they could move it 7 ft. farther into the yard but given the length of time it's been in its current location and the fact that it replaced an existing shed that had been there probably pre-zoning and its location is appropriate for the lot I don't think it can be achieved by another method.
3. Whether the requested variance is substantial.
It's not substantial given the circumstances of this particular piece of property and it's not as though it's right on the property line and there is a stone wall that hides it even further.
4. Whether the proposed variance will have an adverse effect or impact on the environmental conditions in the neighborhood or district.
I think it's obvious that it will have none.
5. Whether or not the alleged difficulty was self created.
I don't believe so. They rebuilt a shed in a space where a shed had previously existed.

Roll Call Vote:

G. Wunner	In Favor
K. Sheil	In Favor
P. Vink	In Favor
R. Cassidy	In Favor
C. Lucchino	In Favor
D. Keiser	In Favor
T. Froessel	In Favor

The motion to grant the variance as stated in the motion passed by a vote of 7 to 0.

Brewster Ford, 1024 NYS Route 22 – This was a Public Hearing to review an application for the following variances:

1. 16% Building Coverage where a maximum of 15% Building Coverage is permitted;
2. 79% Lot Coverage where a maximum of 45% Lot Coverage is permitted [NOTE: the existing site is pre-existing non-conforming with 76% Lot Coverage];
3. 21% Open Space where a minimum of 55% Open Space is required [NOTE: the existing site is pre-existing non-conforming with 24% Open Space];

4. 15 ft. front yard parking variance is required for new parking spaces. The existing site has pre-existing non-conforming parking within the 15 ft. front yard parking setback;
5. 0 ft. side yard parking where 10 ft. side yard is required;
6. 19% outside storage where 5% outside storage is permitted [NOTE: the existing site is pre-existing non-conforming with 17% outside storage];

Jamie LoGiudice of Insite Engineering was sworn in and the mailings were verified to be in order.

Ms. Chiudina: Chairman, this was referred to the County due to it being on a County Road and we have not received a response as of yet.

Chairman Froessel: Okay.

Ms. Desidero: It has to be referred to County Planning because it's on a State road.

Jamie LoGiudice: Oh, okay.

Chairman Froessel: And we haven't heard back from them as of yet so we can't vote tonight. We are familiar with much of it from the Work Session two months ago but give us a rundown and we can ask questions but we will not be able to vote on it tonight.

Jamie LoGiudice: Okay so I will stick to background, general information?

Chairman Froessel: Was there anyone not here in January? No, we were all here? Okay so I think we have a general familiarity with it.

Jamie LoGiudice: Okay and feel free to ask any questions. I did bring some visuals. So, as everyone is aware, we are requesting six variances. They deal with the building coverage, lot coverage, open space, side yard setbacks for parking, front yard setbacks for parking and then outdoor storage. The site itself is very constrained so we feel that the variances we are requesting are not really that extreme. Six does seem like a lot and I will go through each of them so that we can kind of minimize what they are. The building coverage itself: we are requesting 16%, currently there is 15% and because Brewster Ford is requesting three additional areas to be built onto their existing building that pushes their threshold over that 1%. Their lot coverage: since their property is only 1.8 acres, anything extra that they do will push them further with their lot coverage. They currently have 76% and we are requesting a 3% addition to that.

Chairman Froessel: Which one was that?

Jamie LoGiudice: The lot coverage. So that is a total of 79% where 45 is permitted. The open space: we are requesting 21%, currently there is 24% and 55 is permitted and because the site is so constrained and so small any additional development basically reduces the open space dramatically. There are pre-existing non-conformances. With the parking in the front yard along Route 22, they have use permits with the DOT currently and we are looking to expand on that with landscaping along the front. In this area right here, where there is a current entrance, we are looking to close that off due to safety reasons with people trying to beat the light somehow. It seems ridiculous but they try to zoom through there and cut off the light so we would like to cut that off completely so that additional parking warrants the variance for the front yard.

Boardmember Lucchino: Does any other business use that entrance?

Jamie LoGiudice: No, it is solely for Brewster Ford's purposes and most of the time they have it blocked off with cars.

Chairman Froessel: I was going to say it's not really used as an entrance anyway.

Jamie LoGiudice: No, the DOT had requested that they take cars out of it and then as soon as people started to drive through it really fast they had put cars back and then called

someone out to review it and he basically gave the nonverbal okay that as long as you're not blocking the signs that are on the corner right here.

Chairman Froessel: The landscaping you were talking about, that is actually going to be done on the DOT right-of-way?

Jamie LoGiudice: It is, yes. All of the landscaping in through here is within the DOT right-of-way. Currently they do have the use permit, we're expanding upon that. As part of their original permit, there was landscaping proposed that has since either died or been plowed over. We are proposing guardrails be put through there as we're trying to not have landscaping die or be pushed over.

Chairman Froessel: How far back from the edge of the pavement does the DOT right-of-way extend back towards the Brewster Ford property?

Jamie LoGiudice: The edge of pavement, it varies, but basically it is in through here and here and the property line is here. It varies at zero here and here potentially 15 or 16 ft. The final parking setback we are requesting is the 0 ft. parking setback for the side yard. That's where these photos come into play. There is a retaining wall here where Ford borders with High Ridge Plaza. If you look at the photos, there is an existing fence on top of the wall. It's a very large retaining wall, between 10 and 15 ft. high. It is difficult to see the cars from that side.

Boardmember Wunner: The car storage here on the upper side, is that actually on State property?

Jamie LoGiudice: It is. It is part of the use permit now. So that is the side yard setback variance. The final variance deals with the 19% outside storage where 5% is permitted and currently there is 17% on the site so we are requesting an additional two so it's a lot to mull over.

Chairman Froessel: It's a lot to digest. As long as you are on the topic of High Ridge Plaza, there was some correspondence in the last week or two regarding a drainage issue.

Jamie LoGiudice: Yes, we are currently addressing that. We were requested by the Town Engineer to review some drainage issues that were coming off of this area here that is runoff from the site and running down this slope and then bypassing an existing structure there that it's not getting into and it's getting onto the driveway and getting very icy. Since then our office has come up with a proposal to mitigate that area by doing drain improvements and we are in contact with the DOT to formalize that.

Boardmember Vink: That's all on their property, whatever you do to fix the drainage issue will be done on their property, correct?

Jamie LoGiudice: Yes it's part of their right-of-way but it's part of the High Bridge Plaza's entrance.

Chairman Froessel: Do you have a timeline for when the DOT will be giving a thumbs up or thumbs down?

Jamie LoGiudice: We are meeting with them on Wednesday so I can give you a better idea after that.

Chairman Froessel: Okay, that's fine. Is that something that you are before the Planning Board right now for?

Jamie LoGiudice: We are actually kind of on hold with the Planning Board. We were referred to all the various Boards.

Chairman Froessel: But you have to go back to the Planning Board.

Jamie LoGiudice: Yes.

Chairman Froessel: That's probably more their issue than ours but I think as a Board we generally like to know that these things are taken care of before we grant a variance.

Jamie LoGiudice: As far as that being addressed, those improvements are being shown on the final site plans so when we do go before the Planning Board again they will be included.

Chairman LaPerch: Since we are not going to vote until next month I would suggest that at next month's meeting, or before, just let us know where you stand with the DOT.

Jamie LoGiudice: Okay I can do that.

Ms. Desidero: If you wanted to send me an email I can forward it to the Zoning Board members.

Boardmember Keiser: When was the building built originally?

Jamie LoGiudice: I honestly can't answer that. I know Brewster Ford has had it for multiple generations and there was a car dealership there prior to them but I cannot answer that sorry. I can find out.

Boardmember Keiser: I was just curious.

Jamie LoGiudice: I know with recent Zoning changes it was the NB-1 Zone and now it is the NB Zone that allows for the motor vehicle dealerships. I believe the Code has constrained that a little bit more so a lot of the non-conformances that we have tonight we are looking to see if we can best try and make as conforming as possible.

Chairman Froessel: With respect to your request for the 0 ft. side yard parking requirement, are there cars currently parking all the way up right to the edge?

Jamie LoGiudice: There are.

Chairman Froessel: And is that along High Ridge Plaza retaining wall?

Jamie LoGiudice: Yes.

Boardmember Vink: I am in that Plaza often and you cannot see them from down there.

Chairman Froessel: No you can't. I agree with you.

Boardmember Lucchino: Jamie, I'm not sure I remember from the January meeting but is there going to be some refurbishment of the front of the dealership? I thought I remembered that.

Jamie LoGiudice: Yes there is.

Boardmember Lucchino: It will improve the overall appearance, correct?

Jamie LoGiudice: Yes. They are doing improvements to a portion of the facade of the building, basically the portions that are along 22 and the corner of Argonne Road. They would be facading this portion here and painting the remaining portions of the building.

Boardmember Lucchino: It looks like the pavement is repaved. Will that also be done, do you know?

Jamie LoGiudice: At this time I don't know if they're looking to repave it. I am assuming when they get to that point they're going to want to. They put all this money into the building so it can look nice so they're going to want to maybe touch up the pavement as well.

Boardmember Lucchino: Because with all those cars there, it would be nice if they kind of cleaned the whole thing up and made look like a new dealership. It might even increase business a little.

Jamie LoGiudice: I believe that's their plan.

Boardmember Lucchino: If I recall correctly some of this was mandated by Ford Corporation correct?

Jamie LoGiudice: It is, yes. Portions of the interior to be renovated are mandated by Ford, the logos, the façade. I believe Brewster Ford's portion of it is the additions to the building because they need it to maintain their business.

Chairman Froessel: With respect to the service bay addition, how many bays are going to be in there?

Jamie LoGiudice: I don't think there are going to actually be bays going in there, it's basically just an entrance way to get in. It allows for the reorientation of the interior of the bays.

Chairman Froessel: Okay, so you won't actually be servicing cars in that area?

Jamie LoGiudice: In that particular portion, I don't believe so.

Boardmember Vink: It's more of a drive in and drop your car off kind of area.

Jamie LoGiudice: Actually it's quite nice I found. People will be coming in through here and either dropping their cars off in certain spots like here or they'll be driving in if it's raining or snowing. They can drive their car right in, get out, walk into the dealership.

Boardmember Vink: Green Tree Toyota over in Brookfield has the same setup where you drive your car in and then leave it.

Boardmember Lucchino: They have to keep up with the competition. A lot of car dealers let you drive right in.

Chairman Froessel: That seems to be the way of the future. Does anyone else have any questions?

Boardmember Vink: Is there anyone in the audience who has any questions?

Boardmember Lucchino: What are the next steps in order to vote on the variances?

Chairman Froessel: They need to get approval from the County Planning Department because they're on a State road and we don't have that yet, so once that comes in we could vote on it.

Boardmember Lucchino: Got it.

Chairman Froessel: I don't need to go and look at the site as I have been there many times, but if anyone else does, you would certainly have time in the next month to do so. I think really outstanding is the County Planning approval and I would like to know some more about that drainage issue too so we will see you at the April 18th meeting.

Jamie LoGiudice: Okay. Thank you very much.

Dennis and Kimberly Santucci, 5 Shady Lane – This is a Public Hearing to review a request from the Building Inspector for an interpretation of the Town Code in order to determine how and where to measure the height of a stone garbage pail enclosure.

Chairman Froessel: Item number 3 on the Agenda is Dennis and Kimberly Santucci. As I mentioned at the outset of the meeting, the Santucci's counsel had requested that the matter be put over to next month and we agreed to do that. However, the meeting was publicly noticed so I want to open the hearing so they don't have to re-notice again next month and, also, because there may be some folks here who have some comments and are maybe not available to come next month, who can at least get their statement on the record. But we are not going to vote on this application tonight. The application is for an interpretation of the Town Code in order to determine how and where to measure the height of the stone garbage pail enclosure so that's the single issue we have is the height of the garbage pail enclosure. If anyone has any comments that they would like to share with us on that one issue, please come on up. We will swear you in and you can put your comments on the record.

Jerry Skalaski of 3 Shady Lane was sworn in.

Chairman Froessel: Before you start, are the mailings in order for this application?

Ms. Desidero: Actually, this was a request for an interpretation from the Building Inspector, so the applicant was not required to send mailings but the Town Attorney noticed it as a part of the normal process.

Jerry Skalaski: Jerry Skalaski of 3 Shady Lane. In regards to the height of the garbage structure, I just wanted to give you pictures of before and after. The question is that it was filled up and then the height was trying to be measured from the filled part so there's a before picture along with the after picture.

Chairman Froessel: Why don't you explain to me which picture is which.

Jerry Skalaski: This is the before. You can see the location of the garbage can. It's approximately the same location and as you can see it's relatively flat, the driveway. If you look at the after picture, the difference is considerable. That's all I wanted to point out. If you take a measurement, I think if you can't determine the original spot, go to the nearest spot that's on the survey, that's the only comment I have. Just one more thought I had here, it's a garbage structure, is that garbage structure allowed a foot from the property line? I know it's not an issue for this tonight but it's an issue I have with the Building Department. It's a structure. It was built before he had permits, okay, so it's an illegal structure by the way.

Chairman Froessel: Well, that's why they're here.

Jerry Skalaski: Okay, that's all I have. Thank you for your time.

Chairman Froessel: Thank you. Does anyone else have any comments?

Dennis Santucci: How ya doing? My name is Mr. Santucci. Mike (Attorney Michael Liguori) isn't here obviously. Can I have a look at that picture?

Chairman Froessel: You can.

Dennis Santucci: Thank you.

Dennis Santucci of 5 Shady Lane was sworn in.

Dennis Santucci: Can I get a copy to give to Mike?

Chairman Froessel: What I will do is I will give them to Victoria (Desidero) and someone can stop by her office to get them. I want to make sure that they are in our file.

Dennis Santucci: Just so everyone knows, we had permits to build these walls. We have taken out permits from day one so everything was done permitted. It was the location shown on the plan. Everything was shown, everything was accepted. It's been very controversial. We have affidavits from the people I bought the property from saying that Skalaski's driveway was washed out at certain times. We've had grades from Bergendorff showing what the grades are where the walls now exist and these are nothing more than retaining walls. So the real question is: how do determine a retaining wall, how to a measure a fence on a retaining wall instead of where the dumpster is because it's really a stone fence on top of a retaining wall. So we'll get answers next month but we're going to the Planning Board first so we can resolve the grading issue.

Chairman Froessel: Are there any issues currently before the Planning Board?

Dennis Santucci: Yes, we're before the Planning Board because we have surveys from Bergendorff showing where these grades, the exact points are and then we're going to take those points and we'll have Ron Gainer here, which is my engineer, and we'll show the points versus the retaining wall and know what the differences are.

Chairman Froessel: Those affidavits don't appear to be a part of the package we have.

Dennis Santucci: I'll make sure that Mike (Liguori) has them for you.

Chairman Froessel: Any information obviously in that regard which has bearing on the height of the measurement, the height of the garbage structure you should submit those.

Dennis Santucci: It's very unfortunate but the driveway that's there has been washed out for numbers and numbers of years and it's a matter of putting a machine there and opening up that corner a little bit, which is part of the easement which Mr. Skalaski is concerned only about

his driveway and it's a concern but it's a matter of opening it up. There's 7 ft. more on the easement that can be widened and a little bit of item 4 and this thing is a done deal but everybody is making a major issue out of it and it's very unfortunate. I would really like the Board to come out so I could show it to you guys if you guys would like that.

Chairman Froessel: Okay. We may do that but we will not plan a field trip for all of us though because then we...(Mr. Santucci interjected)

Dennis Santucci: Well, you know, it's unfortunate that this is the second time I'm here and I understand about the Minutes and everyone has to be there and you have to take notes but I'm going to say that maybe it's worthwhile just to resolve this whole thing.

Chairman Froessel: What I'm saying is we may come out but we just won't all seven of us come out at the same time.

Dennis Santucci: If everyone comes out at one point, even though it's a Town meeting at that point, in this particular situation because of the live firecracker from Shady Lane it might be worthwhile, that's all I'm saying.

Chairman Froessel: Okay.

Dennis Santucci: Thank you.

Chairman Froessel: Victoria, I'm going to give you the photos. Put these in the file.

Ms. Desidero: What we can do is we can also scan those tomorrow and send them to all the Board members so you have them. We have no problem with that.

Chairman Froessel: When you scan them, you might as well send a copy to Michael Liguori as well.

Ms. Desidero: We will. We'll also send one to the attorney who is representing the Town. Just to clarify, I think the memo that you got was a referral for the interpretation. In that same memo, there was a referral to the Planning Board so that's what Mr. Santucci is referring to is that the Planning Board has been asked to make a decision as to whether or not a Permit was required for grading and excavation. It is in that memo that you got. One of the things that has been a little difficult for us is that we don't know who needs what in terms of the different Boards. We have a lot of files in the Town on this but it's hard to just make sure that you all have everything you need so if there is anything that you think you want, that we might have, just ask us and we'll provide it to you. We thought you were really focused on this particular structure.

Chairman Froessel: Well that is the issue before us.

Ms. Desidero: Right and we do have, for instance, a book here with a bunch of photos from the last time the Santucci's came. But it's a photo album so it's hard to scan them all and send them to you but if you guys want to look at it, we have it here.

Chairman Froessel: Okay, that's good to know. We will adjourn this hearing until next month and we'll take it back up at that time. That concludes the agenda for this evening.

The motion to approve the Meeting Minutes of January 20, 2016 was introduced by Boardmember Vink, seconded by Boardmember Sheil and passed 7-0.

The motion to close the meeting was introduced by Chairman Froessel, seconded by Boardmember Vink and passed all in favor.

Respectfully submitted,
Cathy Chiudina