

**Town of Southeast  
Zoning Board of Appeals  
Minutes of May 16, 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	Present
Victoria Desidero, Secretary	Absent
Cathy Chiudina, Assistant Secretary	Present

**Victor Velasquez and Brunilda Colon, 142 Milltown Road** – This was a Continued Public Hearing to review an application for an addition to a single family home, which requires a west side yard setback variance of 10.32 ft. and total side setback variance of 17.64 ft.

**Robert Cameron:** I'll just give a brief refresher. We were here last month and we had an issue that we did not receive the notification from County Planning; the 30 days had not been met. This project is a residential addition located off Milltown Road. We're proposing a 20 by 28 addition to the right side of the house. Last time I indicated that it's a very small lot and there's really no place other than encroaching on a required yard to expand the house and it makes sense to expand the house on the right side because that's where the driveway is. We want to expand the garage and put on a bedroom. We are going to reconfigure the floor layout. We're not increasing the bedroom count. Bedroom count remains the same. The architecture is going to be consistent with what presently exists on the house. It's a ranch style house.

**Chairman Froessel:** The referral from County Planning came back and they had no objection so we can go ahead and vote tonight. Just so I am clear, you are looking for a variance of 10.32 ft., we'll call it 11 ft., on the west side setback. That's the side where the addition is going, correct?

**Robert Cameron:** Yes.

**Chairman Froessel:** And a variance on the total side setback requirement of 17.64 ft., which we will call 18 ft., and that's the relief you are seeking, correct?

**Robert Cameron:** Yes. That was indicated by the Building Inspector that that was what we needed.

**Chairman Froessel:** Were we all here last month for this? Yes? Does anyone have any questions for the applicant? No? Is there anyone in the audience that has any questions or comments with respect to this application? No. I think we're pretty familiar with this from last month. I think it was pretty straightforward. Before we close the Public Hearing do you have any final comments you would like to make in support of your application?

**Robert Cameron:** No. I mean basically the hardship is that there is no other place to expand the house and in today's market you really just can't sell your house and recoup the cost and build someone place. It's his home and he likes it there so we have no other choice but to put the addition where we put it. We looked at other options but it just didn't work.

**Chairman Froessel:** Do you feel that you have been given a fair and adequate opportunity to present your application?

**Robert Cameron:** Yes.

**Chairman Froessel:** We will close the Public Hearing. Any deliberation amongst the Board members? No? Based on my trips up and down Milltown Road, it doesn't seem to be out of character with the neighborhood. This is probably a slightly smaller lot than we typically see on Milltown but it's not unlike other applications that we've seen. If no one else has any additional comments I will entertain any motion that anyone might care to make.

**Boardmember Vink:** I will make a motion to grant the applicant an 11 ft. variance from the west side setback and an 18 ft. variance from the total side setback for the construction of a garage and addition above. The motion to grant the requested variances was 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, I think this is in keeping with the character of the neighborhood. There is certainly no evidence that there is a detriment to the nearby properties. The neighbors have not complained on either side, certainly not the one where it's coming closest to so I don't think there will be an undesirable change.
2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.  
No, the lot size is fairly small for that area and given the topography, this site seems like the most logical place for this extension.
3. Whether the requested variance is substantial.  
In total numbers it could be considered substantial but for the area and for the design, it is not substantial.
4. Whether the proposed variance will have an adverse effect or impact on the environmental conditions in the neighborhood or district.  
I don't think it will have any. There is no evidence that it will.
5. Whether or not the alleged difficulty was self created.  
I think the explanation that you really need is that, with this type of room and garage, it is not self-created.

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.

**Chairman Froessel:** Next on the agenda, items 2 and 3 Dennis and Kimberly Santucci.

**Michael Liguori:** Chairman, do you mind if we put us off for a little bit? I just walked in. I don't know if you want to take the next one.

**Chairman Froessel:** Sure, I think the next applicant would be highly in favor of that.

**4. Victor and Andrea Forte  
116 Allview Avenue**

Public Hearing to review an application for a proposed pool and fence which requires a front yard variance of 58.5 ft.; front setback variance of 58.5 ft.; and a front yard fence height variance of 18 inches.

**Nathaniel Morse:** I just bought the Forte's property. I attached a letter from them allowing me to stand on their behalf.

Nathaniel Morse was sworn in and the mailings were found to be in order.

**Chairman Froessel:** Welcome. Why don't you give us a rundown on what you're seeking.

**Nathaniel Morse:** Sure. We just bought the property at 116 Allview and we are looking to put in an in-ground pool and we need three variances. One for fencing in the front yard exceeding the 36 inch height and a pool fence needs to be a little bit higher and it falls within the 100 foot line. We need two variances for the setback for the pool from the front yard and from the front setback. I attached a survey that is marked up for where the pool would go. The building is quite old, it's from the 1750s, so the entire building, as well as the previous ice house, all lie well within the 100 foot setback. It's an older property. The pool would fall right between those two buildings. I think it's a pretty logical area. If you look at the gray behind there are paddocks for horses and it gets pretty steep back there. We do plan on having horses so we will use those paddocks that exist. I believe that's about it.

**Boardmember Lucchino:** What color will your fence be?

**Nathaniel Morse:** The house is white so we're thinking about doing white for the privacy fence up front. We think we'll do our paddock fence in black. The house is black and white and black is generally better. The horses don't chew as they use a tar. It's kind of a typical paint that they use so the horses don't chew on it. That will be on the back but white will be up front to match the house.

**Boardmember Lucchino:** Will the fence completely surround the pool where you have the house and ice house?

**Nathaniel Morse:** Yeah, it's a little side building we are going to fix up as well. What we're going to do, I understand there are very strict rules surrounding pools with appropriate fencing, so we're going to incorporate some of the paddock fences that exist which are appropriate height and then put a mesh overlay behind them to make sure that nothing gets through. There is a certain size that it has to be used to comply with and it would comply with that and we would add additional fences and gates needed to encompass...

**Boardmember Lucchino:** What would we see from the road?

**Nathaniel Morse:** You would see just the one fence. The other fencing we're going to incorporate is already there and then add in two spots a fence line to enclose up to the house edge. So it would be fence, house, but from the road all you would see is one privacy fence.

**Boardmember Lucchino:** The white fence?

**Nathaniel Morse:** Extending from the front of the house over, across. This isn't very large but this stone wall comes up to the out-building on the right side is quite high on the end here so the fence will come across and join that stone wall.

**Boardmember Lucchino:** I'm your neighbor on Allview. You have a beautiful house.

**Nathaniel Morse:** Oh ok, thank you. Nice to meet you. We spent the day packing and tomorrow we will move in officially.

**Boardmember Lucchino:** When do you think the whole thing will done? When will it start and when will it finish?

**Nathaniel Morse:** We're hoping to start as soon as possible and then we heard we needed the variance so we hustled to get in front of you guys for this meeting with the hopes of going back to the Town with our variance in hand, getting our permits and started as soon as humanly possible. We have people who are going to come work on the barn a little bit and the riding ring as well to freshen that up and we would like to just do it all at once and not have to bother the neighbors for as little as possible. I have contractors and people ready to go as soon as we get approval.

**Boardmember Lucchino:** When do you think you will be done? Do you think it will be before the fall?

**Nathaniel Morse:** Oh yes. They can knock these things out in a couple weeks typically. It's not a very large pool, it's fairly small.

**Boardmember Lucchino:** It tends to be kind of rocky where we live so do you know if they will have to do any blasting?

**Nathaniel Morse:** I don't think they will but it certainly is a possibility. I can't say. It might not happen, it might.

**Chairman Froessel:** The stone wall that's behind the house, what's beyond that?

**Nathaniel Morse:** Paddocks. There is probably 20 to 30 feet of grass and then...

**Boardmember Lucchino:** You have a nearly vertical backyard. You have a really steep backyard.

**Nathaniel Morse:** Yeah, it's steep.

**Boardmember Lucchino:** That's why you can't put your pool back there.

**Nathaniel Morse:** Right, definitely.

**Chairman Froessel:** That's one of the things that we have to look at, do you have to put it in that spot.

**Nathaniel Morse:** Yes, sure. I attached in the application and although it didn't really come out that good, some vertical lines on where the pool would be and you can see towards the back side, as you approach the highway, it gets quite vertical.

**Boardmember Lucchino:** That's where the previous owner had horses?

**Nathaniel Morse:** Correct, yes. Those paddocks are out there. They kept their horses out there. It is definitely pretty steep but it's actually pretty good for the horses to walk up and down those hills. It keeps them fit and surefooted. I think overall it's just grass so it's a pretty natural spot for it to sit. They've done a pretty nice job of landscaping other parts and then to the right of where this survey is blown up, is going to be a working horse barn. There's a ring, the barn, and lead outs for the horses, etc.

**Boardmember Vink:** The sand area is a riding ring already?

**Nathaniel Morse:** Yeah that's a riding ring already. We're going to push the retaining wall back and expand that ring slightly but it will remain a riding ring.

**Boardmember Lucchino:** What's the size of your lot? Do you have an acre?

**Nathaniel Morse:** It's just over 4.

**Boardmember Lucchino:** Four acres? All going back on the hill?

**Nathaniel Morse:** No, as you come down from Turk Hill, down Allview and take the sharp left the property is basically what you see in front of you. There's a drive to the right and Allview leads to the left and it's kind of the big square that just laid out right in front of you, including the vertical part you referred to before, all the way back to the rock wall back there and then there are two rock walls going down and it's surrounded by one big piece of property. Beyond that is 84.

**Boardmember Lucchino:** So you couldn't have put that pool anywhere else?

**Nathaniel Morse:** I mean we walked around. I don't think so. I think that's the spot. There's a new septic in the front yard and that would be even closer to the road so that wouldn't work. We want to have as much space for the horses out back as we can and it's quite steep so I don't think any of that would work and the right side is pretty much riding ring and barn. There is also a significant amount of stone wall off to the right. Like you said, it is fairly rocky and it's all been excavated and laid out in pretty big walls.

**Boardmember Lucchino:** The reason I ask is because 4 acres is a lot of land but there was just no other flat spot?

**Nathaniel Morse:** Yes, that's right. I mean not really. There's a drive that comes sort of behind this house here and it's quite steep up the side. This is another entryway for if a truck is delivering hay it can come up that way and that bisects any usable strip where you could put it. The lower level of the little out-building here is going to be converted into an area that's next to the pool and we'll extend this flag patio as well so I think it all ties in nicely with the property. To your question about where else it could go, there is really not a place that it can go in my opinion.

**Boardmember Keiser:** How much distance is there between the pool and your closest neighbor?

**Nathaniel Morse:** Well it's 42 feet from the pool to the road and then as the crow flies it's probably a little over 100 to 150. Looking at this drawing here, there is a neighbor here and here. This distance is quite a ways and the view is blocked from the house so there's really nothing. Over here I am not sure of the exact distance to be honest but it's a good distance. It's across the street. They're on the corner as the road comes around, they're down tucked over there. There is a lot of vegetation and trees that we're going to keep in that are here and obviously that fence would provide buffer as a privacy fence.

**Chairman Froessel:** The part of the fence that's the closest in the front of the property, is that going to sort of continue on a parallel line from the front of the porch here?

**Nathaniel Morse:** Yeah, it's either going to be from the front of the porch, we put it there because that's closer to the road or the edge of the house but, yes, the idea is to have it be parallel, extend out, be very neat, and then join with that rock wall. That rock wall starts out at

the road maybe 10 in. and then finishes where it connects with that building at almost up to my chin so about 5-1/2 plus feet so it's quite high through there.

**Boardmember Wunner:** Is that a retaining wall?

**Nathaniel Morse:** It's a retaining wall, an old one.

**Boardmember Wunner:** The stone here by the building here is at grade?

**Nathaniel Morse:** It is a retaining wall. The land comes up with the wall.

**Boardmember Wunner:** You're going to need a piece of fence coming off the stone wall to guard from someone getting in. It does seem like it's all lined up pretty nice though.

**Nathaniel Morse:** Yes, correct. It's a nice little area.

**Chairman Froessel:** Typically, the only time we ever see an application for a pool in the front yard is for a corner lot where you have two front yards so this is unusual. The only other one I can remember, and this goes back into the 90s, was the house on Peaceable Hill that put the water fountain in the front yard and the Building Inspector told them that, under the Code it was a pool and had to have a 4 foot fence. Does anyone feel the need to go and see this?

**Boardmember Lucchino:** I've seen it.

**Boardmember Wunner:** I think the drawings were pretty good.

**Chairman Froessel:** Yes I think so. I think it gives us pretty good sense. To be clear you only want the 4 foot fence in the area that's depicted on the drawing just as a pool fence, correct?

**Boardmember Cassidy:** It's proposed at 54 in., 18 in. is the variance requested.

**Boardmember Wunner:** 4 foot is Code for a pool.

**Nathaniel Morse:** It's an 18 in. variance because I guess the fence height in the front yard needs to be 36, right? So 36 plus the 18 in. variance gets you to the 54.

**Chairman Froessel:** What my understanding is the Code for a pool is 4 ft. and you want 4-1/2?

**Nathaniel Morse:** I want whatever is the minimum to meet Code. If I went over then no, if 4 ft. is what we need for the pool then that's what we'd like to use.

**Chairman Froessel:** I am not 100 percent sure that is what you need to be compliant.

**Boardmember Wunner:** It is 4 ft.

**Nathaniel Morse:** Our goal is to use whatever is Code, but the minimum.

**Boardmember Wunner:** You might want that half a foot in there just for variation.

**Nathaniel Morse:** Yeah we were thinking about doing something like that.

**Boardmember Wunner:** While you're here you might as well go for the little bit extra.

**Nathaniel Morse:** Okay.

**Chairman Froessel:** It says the proposed is 54 in. so you are looking for a 4-1/2 ft. fence, correct?

**Nathaniel Morse:** That was based on my conversation with them about what was required for the Code. We saw this place and fell in love with it. We very much like the aesthetic of it. We want to keep it tidy and beautiful and in the spirit of the Town so we're excited about the project and we're going to make sure that it looks great.

**Boardmember Vink:** It's nice to see people come for permission rather than forgiveness.

**Nathaniel Morse:** We went through this once in North Salem. It was quite an experience.

**Chairman Froessel:** So you need two sets of variances. You need variances for the pool: you need a front yard setback and a front setback and then the variance for the fence.

**Nathaniel Morse:** That's right.

**Chairman Froessel:** You have a required 100 ft. setback and your house is only 40 ft. from the property line.

**Nathaniel Morse:** Yeah when they built it in 1750 they weren't thinking about setbacks.

**Chairman Froessel:** Yes, I would say it probably predated the Code.

**Nathaniel Morse:** It's funny because when I looked on here and ran the actual distances, every single structure on this property falls within the 100 ft.

**Chairman Froessel:** Is there anyone present in the audience that has any comments or questions about this application?

**Johanna Militano:** I do. My property surrounds all of his property.

**Chairman Froessel:** Ma'am could you state your name please.

**Johanna Militano:** Johanna Militano and my address is 136 Allview.

**Nathaniel Morse:** How do you do? I'm Nate. I'm your neighbor. Nice to meet you.

**Johanna Militano:** I just can't envision where it is.

**Chairman Froessel:** I would ask the applicant to show you a photo and the diagram.

**Nathaniel Morse:** Sure. This is Allview and coming down here and then you bend around to the left and this would bring you down to Brewster. This is the Forte's property. There's that colonial that's up on the hill right as you come around, which is right here.

**Johanna Militano:** Oh here.

**Nathaniel Morse:** That's the house.

**Johanna Militano:** Okay here's the house but where's the riding ring?

**Nathaniel Morse:** The riding ring is not this but it would be right over here.

**Johanna Militano:** I see.

**Nathaniel Morse:** Okay? And this is that other little building, the little out-building, and in between that is a little grass area and that is where we were hoping to put the pool, right there. Does that make sense? I drew in red right here on this map so that little square is where it would go. That's the riding ring, that's the barn, this is the main house, and that's the little out-building. It's right in between those two.

**Johanna Militano:** I see.

**Nathaniel Morse:** And then you'll see the fence because we have to have fencing and that would come and connect with that elevated stone wall that comes up.

**Johanna Militano:** Which stone wall?

**Nathaniel Morse:** This one that comes up to the out-building perpendicular to the road and the pool would be in there. It would be fenced in, that's what's required by the Town.

**Johanna Militano:** This is my stone wall right here, right?

**Nathaniel Morse:** Yeah so you're all the way around so that's correct. This is your stone wall here. Does that make sense? Do you want to hold onto this?

**Johanna Militano:** Yes sure.

**Chairman Froessel:** Anyone else have any other comments? No? Are there any questions from anyone on the Board for this application? No? We've already established that no one

feels the need to go and look. Before we close the Public Hearing do you have any final statement you would like to make in support of your application?

**Nathaniel Morse:** No, I'm excited to get my move done tomorrow and hoping to add to the property. It's a nice place and were excited about it.

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

**Nathaniel Morse:** I do.

**Chairman Froessel:** We will close the Public Hearing and I will open for any deliberation amongst the Board members. I will state that I think that the fact that the entire property is obviously pre-existing, non-conforming and the house is only 40 ft. from the road combined with the topography I think leaves the applicant without a lot of options here. The fact that the fence is technically in the front yard but really isn't extending past the house and further toward the front mitigates in favor of the application. Anyone else? No? I will entertain any motion anyone would like to make with respect to this application. Before we make a motion bear in mind that there are really three variances required. One is the front yard setback requirement, one is the front setback requirement so those are two separate things. The front yard setback required pertains to an accessory structure such as a pool. The fence height: the applicant is asking for 54 in. as opposed to 36 in. which is required by the Code. I will make a motion to grant the applicant the variance of 58.5 ft. from the front yard requirement, 59 ft. on the front setback requirement for the location of the swimming pool, and a variance of 18 in. for the height of the fencing in the front yard with the fencing to be constructed no closer to the front of the property than is depicted on the marked up survey that has been presented to the Board in support of the application. The motion was seconded by Boardmember Vink. 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, I don't think so. This is a property where the existing buildings predate the Code. The house itself is only 40 ft. from the road in a district where there is a 100 ft. front yard setback and obviously the pre-existing, non-conforming nature of the house effects where the pool has to go and also the topography for the remainder of the property. I don't think it would be an undesirable change and we had one neighbor who came here and doesn't think so.
2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.  
It doesn't appear that way with the riding area, the slope of the property behind the house just doesn't seem like that would be usable.
3. Whether the requested variance is substantial.  
Arguably, it is, although I think the location of the house and the other structures on the property mitigates that because, as mentioned before, the house is only 40 ft. from the road.
4. Whether the proposed variance will have an adverse effect or impact on the environmental conditions in the neighborhood or district.

I don't think it will and there's no evidence of that in the record.

5. Whether or not the alleged difficulty was self created.

I don't think it is self created by the applicant. I think it's due to the position of the existing structures on the property and the topography of the property.

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.

**Dennis and Kimberly Santucci, 5 Shady Lane –**

1. This was a Continued 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.

2. Public Hearing to review a request for an Administrative Appeal of the Building Inspector determination, as well as a request for Interpretation of application of Town Code.

**Michael Liguori:** Good evening members of the Board. My name is Michael Liguori. I'm an attorney at Hogan & Rossi in Brewster, NY and here representing Dennis Santucci. Dennis is the owner of 5 Shady Lane.

**Chairman Froessel:** Excuse me. Can I just have Vice Chairman Vink swear you in. Michael Liguori and Dennis Santucci were both sworn in and the mailings were found to be in order.

**Michael Liguori:** Two matters on the agenda tonight. The first was the subject of a referral from the Building Inspector, which is a question for the Zoning Board of Appeals on the application of the Zoning Code for purposes of measuring a structure. The particular structure that we're talking about is a garbage enclosure that Dennis (Santucci) constructed with stone. This is on the front corner of the Santucci property. You enter this property from Milltown Road. You come down a small, private right-of-way called Shady Lane and at the end of Shady Lane is the entrance to three driveways. To the left is Mr. Skalaski, which is actually to the south. Directly in front of us to the west would be Dennis Santucci and to the north is the driveway for Mr. Heinecke and that area is basically right in front of this garbage enclosure that's here. The question or the subject of the referral, the garbage enclosure, again this is a matter of a referral to your Board by the Building Inspector because the Zoning Code contemplates a number of situations but doesn't quite contemplate this particular situation, which is we have a 3 ft. stone wall that is located over here and then the grade varies as we go up and in the rear it varies as well. That's next to a second 3 ft. wall, which is this area here. There is a break in between the two stone walls. There's a connection here and we have a survey. There are a number of documents that I've submitted to the Board, one of which is a survey that was marked up by our engineer which shows portions of the property that have a retaining wall. I'll just point out the references. This survey captures that space between those two walls. That's one of the things that I wanted to point out is that they are certainly connected by the piece of stonework

that you see but generally that was just to not have the planted material not fall onto the ground.

**Boardmember Cassidy:** Can you show me here?

**Michael Liguori:** Sure. This area right here Rod so that this dirt comes to about, these (inaudible) are about 6 in.

**Boardmember Cassidy:** This is not part of the wall?

**Michael Liguori:** This is part of the wall. I'm just pointing out the fact that there is a gap in between there.

**Chairman Froessel:** If I can just ask you to clarify, the gap is where some sort of shrub is here?

**Michael Liguori:** Yes, that's the gap.

**Boardmember Lucchino:** When you say it's a 3 ft. wall, what are you referring to, height, width?

**Michael Liguori:** Height. If I could just grab the...

**Dennis Santucci:** You want to start with the retaining wall and do that first before we get to the structure?

**Michael Liguori:** Yep, yep, sure. Let me just give them a little bit more information about ownership of the property and the grades. When Mr. Santucci constructed his stone walls around the property, there are stone walls on...this is the east side when you come into the property so this is heading north. The front of Dennis' property is this east wall. We have the stone wall that Dennis constructed here. There's a stone wall that runs up the north boundary. There's a stone wall in the rear and there's a stone wall on the south side. It's a little easier to just show you on the survey so we can navigate and then we'll go to the pictures.

**Dennis Santucci:** It must be understood that all of these walls were constructed with proper permits, plans and we were permitted to do this work.

**Michael Liguori:** That's right. Dennis obtained building permits to build the walls. This is the half of the Santucci property. The property goes on further to the southwest but these are the walls that I'm referring to. This is the front that's over here, which is the east side. This is the south side wall. This is the north wall and this is the rear wall. The south side wall was connected to an existing stone wall that is still presently at the property so if you're on the Skalaski property and you're looking at the Santucci property you see the old stone wall. The manicured stone wall is on other side of it but it's connected to it. On the front, I don't know if I submitted a copy of the 1949 survey of the property but there was a stone wall that went up the front. Dennis had kind of rediscovered that wall when he was digging out the footings to put in the new stone wall. That's located on the eastern boundary. He then constructed the stone wall that's on the northern boundary and, although it's not shown on this one, there's a new stone wall to the rear as well which is on the last...

**Dennis Santucci:** That was existing.

**Boardmember Lucchino:** Can you point out the trash enclosure?

**Michael Liguori:** That is right here in this part. So, when the stone walls were constructed, Dennis constructed them in such a way as to retain ownership of both sides of the property so they're not literally on the zero property line. They are set back 6 to 8 in. from the actual property line and it's not clearly reflected on the survey in that the property line is this thick, black line and you can see the walls kind of touch it so with the printing at this scale it's a little difficult to see that but that is the characteristic.

**Dennis Santucci:** Some places even more than 6-8 in. about a foot. In the back it's almost 3-4 ft. away from the property line. We're not just on the property line, we're in a bit.

**Michael Liguori:** One of the issues and I think really the issue about the measurement of the garbage enclosure revolves around the Town Code's definitions of a fence and a retaining wall and what is characterized as retaining or what functionally retains. When you have a property that has grade changes, that's the area where we feel the Code is deficient and why I think the matter be referred by the Building Inspector to the Zoning Board of Appeals, which is why do you measure when you have someone that owns both sides of the wall and you have the grade difference on either side of the wall, what side do you measure it by? Well the Code doesn't tell you specifically what side you measure from. You're left to answer a question and the question is: well is it retaining? There's a definition in the Code for retaining. Retaining wall is defined as "a vertical or inclined structure designed to restrict the movement of soil," which this does. We have elevation changes and these walls do restrict the movement of soil. "Restrict the movement of soil, fill material or water; stabilize soil or fill material; impede erosion or terrace a parcel or site." We feel that when you examine what these walls do and, in particular this area over here which is part of the garbage enclosure and you have these grade elevation differences. The context for this is when you go to measuring a fence because a fence is defined as an "unroofed barrier constructed of materials other than living shrubbery erected for the purpose of protection, confinement, enclosure or privacy and excluding retaining walls. For the purposes of this Chapter, a stone wall shall be considered a type of a fence." So our stone walls are considered fences except for retaining walls. Retaining walls are not considered fences.

**Boardmember Cassidy:** So Michael are you saying the garbage enclosure is a retaining wall?

**Michael Liguori:** It retains dirt. It is...

**Boardmember Cassidy:** It's built to restrict the movement of the soil.

**Michael Liguori:** It has multiple functions. One is to be the garbage enclosure.

**Boardmember Cassidy:** It's primary function is to restrict the movement of soil, not to enclose garbage?

**Michael Liguori:** It doesn't say it has to be its primary function. It just says that it needs to retain dirt. It retains dirt and because we have this elevation change it functions as a retaining wall, much like the south side and the north side. Based thereon we have an ambiguity in The Code. The Code doesn't say it has to have a primary function, your wall could have multiple functions. It's our opinion and I believe the case law supports that if there's an ambiguity in the Zoning Code that it should be resolved in favor of the landowners. If you carry that through, and this kind of gets into number 3 on the agenda as opposed to number 2. It's our opinion that they're almost inextricable.

**Chairman Froessel:** Similar issues.

**Michael Liguori:** Yes, very similar issues which is...we have a wall that serves as a wall but it's also considered a fence.

**Dennis Santucci:** No, no I think you're misunderstanding. This section is a retaining wall clearly, clearly. This section, I'm holding the ruler from the top of this wall to here, is acting as a fence and it's a 26 inch fence but should the garbage enclosure be part of it as a fence? It could have been a wooden fence for that matter but it happens to be a stone fence and this area is retaining 100 percent and then there's a planting section that's terracing so it's dividing the two stone areas but this is a retaining wall with a stone fence, 27 in. high.

**Boardmember Lucchino:** So what are you requesting the variance for?

**Chairman Froessel:** They're not requesting a variance, they're here for an Interpretation.

**Dennis Santucci:** An Interpretation. It's unfortunate but we've been here last year also and we were asked by the Building Department to go for a 10 ft. fence variance. For some reason Mr. Levine wanted to measure any lowest point possible my property. I never intended to build

10 ft. walls or fences or walls. He wanted to measure from the lowest point possible and be able to say 'well you're not over 10 ft.' We came here for three to four meetings and it wasn't really a good event, all right? We'll just leave it at that but the law is clear, the Code is clear. A retaining wall, and in the front area the retaining wall is less than 3 feet, or at the 3 ft. point it's retaining. If half of me was a retaining wall and I was built out of wood, sooner or later I'm going to buckle but if I'm built out of stone I'm going to, it's going to stay there. Now the rest of me is a wood fence, well there's a 4 ft. fence on top of a 3 ft. retaining wall and that's what we have going on over here, clearly, and that's all we have going on. It happens to double as a garbage area. It always had garbage cans in that location. I thought it was a good spot for it. Like I said, it was on the plan and we got permits for it. I really don't know why we've been directed to come here but Mike (Liguori) you take over.

**Chairman Froessel:** I have a copy of counsel's letter dated December 15, 2005 and attached are a bunch of sheets from prior applications to the Building Department with respect to this property and looking at this section, it looks like it says section through landscape berm and it shows...

**Michael Liguori:** Can I see it?

**Chairman Froessel:** Yes, sure. It's an elevation view. I am assuming "neighbor's driveway," this is Skalaski's driveway? We're looking along that east property line here. There is an earth berm, an existing grade on either side of that earth berm and then a 3 ft...

**Michael Liguori:** The issue is, and this has been a lengthy subject back and forth between us and the Town which is...

**Chairman Froessel:** Well it also goes in with the issue that came the last time you guys were here with the 500 yards of fill that was delivered.

**Michael Liguori:** Well what does that have to do with the measurement of our wall?

**Dennis Santucci:** Mr. Chairman if I may, it was cleared out. There was only 200 and something yards of fill, okay. That picture that you're looking at, it was cleared in September of last year that the grade in that area was fine. They took the Stop Work Order off my property. They allowed me to work for three weeks and then they reapplied the Stop Work Order. Right now we're in front of the Planning Board and the Planning Board acknowledged that the grade in that area is fine but they want me to go for an additional permit to do a little extra work.

**Town Attorney Joseph DePaola:** I don't think that's a fair representation of what the Planning Board's... they haven't made any determination yet. It's my understanding, generally speaking, this issue regarding the grading in that area, my understanding is that it's still presently before the Planning Board generally. I don't know if there's been a Special Permit application. I thought that was...

**Dennis Santucci:** I think so sir. It's in writing.

**Michael Liguori:** The Special Permit... The point I want to make...

**Chairman Froessel:** I'm going to speak. Is there any file with the Town that alters this plan to have a berm and an existing grade to a 3 ft. stone wall?

**Michael Liguori:** The issue that we have is that reference to existing grade: it's essentially a misnomer in the fact that it was intended to be the existing grade that was out there. It wasn't perfectly flat all the way through but that wasn't the purpose of that plan. That plan was created by Harry Nichols. I have a letter to that effect, right to that point. It relates back to old topography for the property, okay? That plan is a landscape plan that Dennis had created by Harry Nichols when he had his fill delivered to the property. Dennis read the Zoning Code. When you're looking at fill you can bring in 100 yards of fill per acre in connection with a bonafide landscaping plan. Dennis was building his walls and landscaping. He's got 5 acres. He brought in over 100 yards of fill. I think we went over this particular point at the last Zoning

Board meeting and the Zoning Board was very clear at that point that, and this was after the fact, that it was 100 yards per acre to be placed on one acre.

**Boardmember Vink:** 100 yards per acre on that acre.

**Michael Liguori:** We got that point. It was after the fact but we had a determination by the Zoning Board as to how the Code would be applied. So that plan, that was prepared prior to anyone going to the Zoning Board. That was March or April of 2014 I believe. Dennis was issued a Stop Work Order in connection with the importation of fill. One of the ways of resolving the importation of fill was that the fill had to be essentially brought back to the 10 ft. line, anywhere between 10 ft. and zero you need a Special Permit by the Planning Board and the plan for the landscape berm was created. It was created by Harry Nichols who had preconstruction topography for 5 Shady Lane. Topography that was taken at the time of when I think it was the builders who constructed the house.

**Dennis Santucci:** I think it was in 2004 or 2005 or something. It was there before the house even started to be built.

**Chairman Froessel:** Did Harry Nichols come out and look at this property before he drew up this landscaping plan?

**Dennis Santucci:** It was just an artist's interpretation of a picture.

**Chairman Froessel:** When you take a plan to the Building Department it's a plan.

**Michael Liguori:** Yeah but it was a plan for purposes of getting permits for stone walls and then to resolve the violation for the materials for this berm. Look, the point is that we're not arguing about the whole front wall, we're talking about this one particular area where we haven't had a dispute with the Town as to the grades in that particular area. Going down, if we head down to the first tree, let's say over here. I know I've been there 100 times with inspections for Mike Levine, there is a significant area of dispute but this grade and we believe our topography, the pre-construction topography prior to the construction of the house that Dennis lives in and now has not varied significantly. What we've shown is that it has varied about 5 or 6 in. but that's about it.

**Chairman Froessel:** What came first, the garbage enclosure or the fill that came in?

**Michael Liguori:** The garbage.

**Dennis Santucci:** The fill.

**Michael Liguori:** No the fill.

**Dennis Santucci:** But the fill wasn't placed in this area at all. This area never really got changed and we've proven that out and our question to your guys is 'how do you measure a fence'? How do you measure a fence on top of a retaining wall? What is a retaining wall? We're not here to ask what the fill is and what the fill isn't. We're asking the questions that are on this list. We'll deal the other question with the Planning Board.

**Chairman Froessel:** I think it's relevant for us.

**Boardmember Vink:** Whether you created the necessity of a retaining wall because there are questions about the purpose of the retaining wall.

**Michael Liguori:** He could build a retaining wall all day. The necessity of a retaining wall, in my opinion, is irrelevant. We have permits that allow us to build walls.

**Boardmember Vink:** I think there are members of the Board that don't think it's irrelevant so...

**Dennis Santucci:** It's unfortunate that we're stuck in a political cog and not trying to get to the truth here.

**Chairman Froessel:** I will speak for myself. I will let the other members of the Board speak for themselves. For me there is nothing political about this. All it is, I want to get it right. If the Code gives us less than 100 percent guidance we have to apply the wording we have in the

Code and commonsense. That's all we have and if someone comes in and brings in an excessive amount of fill and then puts up a wall and this wall is retaining my fill, that might have an impact on our decision as to where you measure from.

**Michael Liguori:** It shouldn't have any impact. Let's take the same example except the fill was lawfully brought in. What's the difference?

**Dennis Santucci:** It was literally like 20 yards of fill on five acres of land and it didn't land here. It was distributed throughout that property ultimately and the Town accepted it in September and now the Planning Board accepted it again so it's a non-issue. The issue is: how do you measure a retaining wall? How do you measure a fence? Mike knows the issues.

**Joseph DePaola:** I would just suggest to the Board, in terms of the representation of what the Town has accepted, that perhaps communicating directly with the Planning Board and finding out what's been approved and what hasn't been approved at this point.

**Michael Liguori:** We had a meeting with the... first we had a meeting with the Planning Board Chair, the Planning Consultant, the Supervisor, Town Boardmember Eckhart, Planning Boardmember Armstrong, myself, Dennis, Ron Gainer. We met at a work session to review the issues about the importation of fill to the property, the grades. We still have a dispute as to this area over here to the front, all the way to this front wall. In that meeting, we presented the topography that existed. It was taken by Bob Bergendorff in approximately '95 or '05, I forget at this particular moment. That topography was taken in connection with the design of the septic system. The height of the soil was relevant at that time. The septic system is shown on this particular "as built" over here. Grades were then carried through and then off the property. We then had Terry Collins, at the request of the Building Inspector, fast-forward to 2014, 15, 16. We've been in this two-year dispute over grades of the front of the property. So Terry Collins, Bob Bergendorff's daughter, goes out, redoes the topography, and proves something that we thought, which was that, while the topography in this area is accurate for purposes of construction of the septic system, it doesn't appear that topography was then taken from where the septic system ends out to the beginning of the property. The reason why we can say that is because when Bob did his survey he didn't pick up any of the trees that were in the front. When Terry went out there and picked up the trees; what you do when you are taking topography or let's say forensic topography to determine where soil grades were at a particular time and you're dealing with trees, you look at where the trees curl down to the ground and that's typically an elevation that does not change, which is the curl of the stump. That's on advice of our surveyor who we don't think has any reason to be biased in any way. We go have those stumps measured out and it's clear that these grades vary between what Bob took 10 years earlier and then when Terry took now. Behind the landscape berm, which is behind these trees we're arguing about 4 to 6 in. of soil, elevation differences. That's what we're fighting over. In all the things that are out there, I mean that's really the meat of the dispute: is it 1 in. higher, is it 5 in. higher, is it 6 in. higher? But it's no different than those grades. When we get to the other side of the landscape berm which is this side of the landscape, the significant issue with the Town is: what did it look like before the berm was created? Was it perfectly flat all the way across? I know in our meeting, Tom Fenton, Town Engineer, presented a picture. It was taken in March of 2014. You might have it. It shows dirt pushed back to the trees. Joe, you know exactly the picture I'm talking about. We've taken that picture, analyzed it, showed it to Dennis. I called Dennis after Michael Levine sent it to me the first time and I said 'how do we argue this thing? It looks like it was perfectly flat the day you started construction.' Dennis said 'yeah well it was taken six weeks after I started construction. I own to this line. I don't have Jerry Skalaski's permission to do any work in his driveway so I took my machine and I pushed the dirt this way towards my house so that I can

go build my retaining wall which means I had to go dig out my footings, pour concrete, put the stones on top, and push the dirt back.' He pushed the dirt back in an attempt to get it to what was the original grade and then he put more material on top of that and got in trouble for that. I don't think anyone makes any bones about.

**Chairman Froessel:** Are there any construction progress photographs of that?

**Dennis Santucci:** Current?

**Chairman Froessel:** Yes.

**Dennis Santucci:** No, no everything has been stopped for two years. There's nothing going on.

**Chairman Froessel:** No, at the time the work was done? A lot of times contractors do progress photos.

**Michael Liguori:** It's Dennis. It's his own house, he's doing the work. No he didn't and at the time he didn't think it was going to be a dispute. I mean, had we known in advance, if he had called me up and said 'you know we're going to have some trouble' I would have said 'hey document everything. Take a picture of everything.' We didn't know at the time. It was February of 2014 and he was starting his work and at the time didn't have any issues. It wasn't until after that that we had issues. So, after the work session there's a site walk with Planning Board Chairman Tom LaPerch, Town Consultant Ashley Ley, Tom Fenton, Ron Gainer, I'm trying to think if I'm missing anybody from the Town.

**Dennis Santucci:** Well which site walk are you talking about? There's been so many.

**Michael Liguori:** Yeah but the last one.

**Dennis Santucci:** Yeah I think you got them all.

**Michael Liguori:** So they went out to the property and the conclusion that was reached at that meeting was we refused to concede that we have an issue. We don't believe that we have an issue and we're not going to concede that we have an issue and Chairman LaPerch said 'well all right I don't think the Town is going to concede so you have a choice: We can go to court. We can deal with this in court. You could apply for a Special Permit.' But we would not concede to applying for a Special Permit for the stuff that we didn't think we did wrong. His third alternative was to apply for a Special Permit for something different but the Town felt that if we applied for that it would satisfactorily resolve all of the open issues and that is what we applied for. That's what's presently pending before the Planning Board so as of now I think I've given you guys a pretty thorough history of the...

**Dennis Santucci:** I'd like to add one thing. Before any of these walls were built in this area Tom Fenton, Mike Levine, and myself were standing here and I explained it to them. I showed them pointblank. I said 'this area drops down. When I dig this out, this is going to be a retaining wall.' They looked at it and they shrugged their shoulders and that was it like it was no big deal and now three years later almost it's been a big deal every single day. This has been financial hardship. It's been a stress to the family. This is out of control because of a little bit of stonework that's a retaining wall. So what we're asking you guys and I will ask you again: what is a retaining wall? How do you measure a retaining wall? What is the terracing difference? What is a fence on top of a retaining wall? When the grades vary are you supposed to put a harmonious fence or are you supposed to have a fence that goes like this? These are the questions that are in front of this Board and we would like answers.

**Chairman Froessel:** I don't think all of those questions are in front of this Board. The question specifically in front of this Board is: how do we measure that garbage enclosure and, the second application, which is with the measurement of the fence on the stone wall that may or may not be a retaining wall. I'm not delving into a whole lot of hypothetical issues on this. It's not happening.

**Michael Liguori:** A number that we're dealing with, the question on the Heinecke side which is, on the Skalaski side we have the opinion of the Town that the wall is a retaining wall – part retaining, part not retaining. On the Heinecke side, it's determined to not be a retaining wall but it's part retaining and retaining so we're left kind of scratching our head, which I think you'd kind of have to go to zero and start from zero and make a determination. You end up tackling the questions anyway in the analysis.

**Joseph DePaola:** The issue on the fencing is, it's partially presented as an Appeal of the Building Inspector's determination as to how to measure those fences on top of stone walls on either side. He was of the opinion that on the Skalaski side of the property it looked as if the stone wall underneath the fencing was retaining. On the Heinecke side it was not but I would just say that the Board, in terms of evaluating the (inaudible) of that is it's of no (inaudible) view of the Board that you can agree to disagree with either determination and you don't have to give any weight to the Building Inspector's prior determination.

**Chairman Froessel:** Well, it strikes me that that is a part of the actual Interpretation is a preemptive strike because my understanding is the Building Department hasn't been permitted to go out and measure it yet.

**Joseph DePaola:** No, there they were in the process but haven't yet.

**Chairman Froessel:** In lieu of that, we got this application.

**Michael Liguori:** Well, we still have Joe's letter from February. I don't think that we can ignore Joe's letter, which was.

**Joseph DePaola:** The letter gives the...

**Michael Liguori:** It's the message from the Building Inspector.

**Joseph DePaola:** The February letter is the Building Inspector's letter that incorporates a letter that I had sent on behalf of the Building Inspector with this analysis about how to measure a fence on the Heinecke side versus the Skalaski side so there is a determination as to how we would like to measure the fence if we went out there but there's no actual numbers. I don't think there's a lot of dispute that certain portions of the fence would be higher and it should be measured the way that the Building Inspector proposed and I agree.

**Chairman Froessel:** My next question was 'if you think there's no problem why don't you let him go out and measure the fence (inaudible) agreement that...

**Joseph DePaola:** I think probably the biggest area of contention would be the area within the first 50 ft. of the property line on the Heinecke side. I think if it were determined that the stone wall underneath the fence was not retaining, almost all of that fence would have to be cut down or pretty close to it but I know Dennis knows the particulars of where he thinks he would have to cut it down.

**Chairman Froessel:** Michael, let me ask you a question, with respect to the fence height measurement issues in the second application, is that issue restricted to the first 50 ft. i.e., within the front setback?

**Michael Liguori:** No and I can speak to the issue and I think we're...

**Dennis Santucci:** We're (inaudible)

**Michael Liguori:** Yeah, that's just what I was going to point out to the Board. Just going back to the survey that was attached to Ron Gainer's letter, which was included in your packet: so the short answer is that after the 50 ft. mark I don't think Dennis has any.

**Dennis Santucci:** It's 190 ft. Even Ron Gainer's letter, which we had the surveyor take topos (topographies) of my driveway side of the stone wall and the Heinecke's side of the stone wall, which is higher. Topos clearly show that some of that stone wall is retaining. The Ron Gainer letter, which is my engineer, says that of the first 190 ft. some of that stone wall is retaining. That's what we're, it's not just 50 ft. really and it's clear in this document.

**Joseph DePaola:** What I was trying to point out is that I think the biggest change from what's there now would be in the first 50 ft. I think that after that, there still might be some sections, depending on how the grading undulates a little bit, that there would be some that would be over and some that would be under.

**Dennis Santucci:** That's why we're asking 'how do you determine a retaining wall.' I would consider, if it's retaining by 6 in. it's still retaining so that section wouldn't be a fence, that section would be a retaining wall. If it's retaining by 3 ft., well that section wouldn't be a fence, 3 ft. of it, it would be a retaining wall. If it's even on both sides of the stone wall then it's clearly a stone fence and that's what our question to this Board is.

**Chairman Froessel:** On which side is the grade higher? On the Santucci side?

**Michael Liguori:** What part are you talking about?

**Dennis Santucci:** The Heinecke side.

**Chairman Froessel:** With the Heinecke property, is it higher on the Santucci side or the Heinecke side?

**Michael Liguori:** The Heinecke side and then on Skalaski side, it's higher on the Santucci side.

**Chairman Froessel:** Okay.

**Michael Liguori:** The inside of the property on the south is.

**Dennis Santucci:** It's kind of clear, I mean this is a dark picture but it's kind of clear that you can see the grade on the Heinecke side is much higher than my driveway by at least 3 ft. in that area.

**Chairman Froessel:** Was any fill added on the Heinecke side?

**Michael Liguori:** Not by Dennis.

**Dennis Santucci:** You have the motorcycle picture?

**Michael Liguori:** Yeah, that's what I was going to tell them.

**Dennis Santucci:** And then the other question is, let's say you erect a fence that's 6 ft. high but this is (inaudible) which is below (inaudible) so this is a nice, continuous, harmonious outdoor fence. If some sections are 6 ft. and then some section might be 6 ft. 8. in. or 6 ft. 3 in., is that still a 6 ft. fence even though it's (inaudible)

**Chairman Froessel:** That's why we have a Zoning Board for things like that. Like you've got one spot in a fence where it ends up being a little bit higher because the topography is a little bit off, that's why you come to the Zoning Board. That's what we're here for.

**Dennis Santucci:** And this is a different part of my property down below by the brook. I am sure that any way you put this ruler it's 6 ft., but the top of this wall looks like shit. Excuse my language. It goes like this. I have seen any fence anywhere in Westchester, Putnam, Dutchess that the top of the fence goes like this. I think it's certainly ridiculous and to do this you'd have to custom make this. You can buy a section of fence and what are you going to do? Chop it up? Anyway here, this is to the letter of the Code. This is, in my opinion, to the intent of the Code. What do you do?

**Boardmember Lucchino:** So I thought the Zoning Code said and, correct me if I'm wrong, but with a fence you measure from, well you can measure both, the low and the high point and then the decision is in favor of the homeowner. Is that correct?

**Dennis Santucci:** That's what Mike was saying, yes.

**Boardmember Lucchino:** I thought that's what I read.

**Joseph DePaola:** I don't believe there's a provision of the Code that actually says that explicitly but...

**Dennis Santucci:** I remember being here last year and I forget which Boardmember said it but they said there's a provision of the Code that says it has to be harmonious and this fence is harmonious. This is not.

**Boardmember Lucchino:** I don't have it with me but I could have sworn I read that so I think that's right, you would not want a fence that was wavy. I mean you'd want uniform height and then the issue is how tall is it? Especially if the ground is different heights you measure from the ground.

**Dennis Santucci:** I'm not saying all of this is 6 ft., it's not. All of this is 6 ft. 100 percent. All I know is it's been three years we've been back and forth. The stress is amazing and the financial stress is amazing.

**Boardmember Lucchino:** I think, and this is my opinion, if you have a fence on top of a retaining wall, the height of the fence is from the ground. In other words, from the base of that retaining up because that's how high the fence is. When you're looking at it the fence is going to be up here if it's mounted on a retaining wall so be it, that's the total height.

**Dennis Santucci:** To the high point of the grade, not the low point and if there was a fence on top of this, yes it would be from up here not from down there.

**Boardmember Lucchino:** No, I'm saying it would be from the ground because that's the total height of the fence. I mean, you put it on top of a structure but when you're looking at it...

**Boardmember Wunner:** If my fence was say 2 ft. behind the retaining wall then you would start the 6 ft. from there.

**Michael Liguori:** The Code is clear on that particular aspect which is that when you have a fence and when you have a fence on top of a retaining, the retaining wall does not count. There's clarity in the Code. I don't think anyone...

**Chairman Froessel:** The Code seems to distinguish the retaining wall from the fence. In other words if it's retaining then it doesn't count as fence height.

**Michael Liguori:** Yes. That's the point.

**Chairman Froessel:** That's what it seems to say but the question for us is: what's it retaining and was what it's retaining there first? We have to have a commonsense resolution for this. I'll tell you flat out, the fact that the topography, with respect to the north side, the fact that the topography is higher on the Heinecke side suggests that yes this is likely a retaining wall because it is highly unlikely that Mr. Santucci would go and put fill on Mr. Heinecke's side of the property. He would get some sort of benefit out of that. It doesn't seem to be commonsense to me.

**Michael Liguori:** Yeah, but you're going to almost to the intent of why it's retaining. The Code is clear as to what is retaining. If it's retaining it qualifies. You're even before that point when the question is: is it retaining or is it not retaining? How it became retaining is not the subject of what's in front of the Zoning Board.

**Boardmember Vink:** By your definition, any wall can be made to be a retaining wall.

**Michael Liguori:** Yeah, that is true, as a matter of fact.

**Boardmember Vink:** If you put some dirt up against it, it's now retaining?

**Michael Liguori:** Well, we don't have just some dirt but that is possible and it's not intended to be a workaround. It's not. In this case, if you're out on the property and you look at the dirt up against the walls, I mean it's significant. I get the person that's going to go like this and throw some dirt up and say 'alright now I don't need a 3 in. variance.' That part I get but we're talking a lot more than just someone doing that. We're in an entirely different situation. We're not in a reward bad behavior situation. We're dealing with the Town with that part. Okay? That's why we're in front of the Planning Board. The question before this Board is: is it retaining or is it not retaining. That's what's before the Board.

**Boardmember Lucchino:** Just for the trash enclosure.

**Michael Liguori:** For the request for the interpretation by the Building Inspector? Yes, just for the trash enclosure. However, item number three on the agenda goes to the heart of that very point because we have disparate determinations essentially on different property lines. We want to resolve that because it doesn't seem to make a lot of sense to us. If it's retaining, it's retaining. So, for instance, just to get to that point, on the Skalaski side we have the letter from Joe DePaola indicating that the Building Inspector would measure from the Santucci property so they would measure from the high side of the wall but then in the same side of the wall, but then on the Heinecke side, we're going to measure from the low side. And we're saying well, if they're both retaining, how do you have different applications?

**Joseph DePaola:** Well, that's the distinction, Mike, was that the Building Inspector felt on the Skalaski side it clearly was retaining. That's why he's measuring from the high side.

**Michael Liguori:** No, we understand that. We get that, which puts the question before the Board, is the underlying question, which is 'is the Heinecke side retaining or not retaining?'

**Chairman Froessel:** Joe, do you have any insight into why the Building Inspector felt that that north side fence along the Heinecke property was not retaining?

**Joseph DePaola:** On the Heinecke side?

**Chairman Froessel:** Yes.

**Joseph DePaola:** Well, he based it on his visual observations from what he told me. He went out there and he looked at it. I didn't really press him on it specifically but it seemed kind of like a Justice Potter Stewart analysis 'I know it when I see it.' The grade differential on the Skalaski side I think is pretty severe, it's a couple of feet on either side because on the Skalaski side I think there was an existing stone wall there and Mr. Santucci rebuilt half of it that was on his property and then left the remainder of it in whatever state it was beyond there. So if you look on the other side of the wall of the Skalaski property where the stone wall hasn't been rebuilt, I mean you're talking a pretty significant distance. If you stand on Mr. Skalaski's driveway and look straight through it. If you look on the Heinecke side, I think, and I don't want to speak for the Building Inspector. If someone on the Board wants to ask him his opinion you can do that, but my recollection is that when he looked at it, is there a difference in grade between the two sides? Yes there is. It didn't appear that it was the result of anyone putting fill in there. It just kind of looked like the natural accumulation now pine straw and woodchips and things of nature that kind of grew up against the wall. It was what he was seeing when he was out there.

**Chairman Froessel:** On the Heinecke side of the property, was there any there before Mr. Santucci bought the property?

**Michael Liguori:** Historically?

**Chairman Froessel:** Yes.

**Dennis Santucci:** No, no but the grade went like this and it came down. When I did the cut for the new wall, I'm cutting into a bank so it's a retaining wall, most of it. But let's take this out of this proportion for a second. Let's forget about the Heinecke, Skalaski, my property. Let's say it's anywhere in Brewster: the question is how do you determine a retaining wall? It doesn't matter if it's on my property. Let's settle it for the whole Town of Brewster now and forever. That's the question. How do you determine a retaining wall? It doesn't matter if Skalaski's side, Heinecke's side, Mike's side. It doesn't really matter.

**Michael Liguori:** This is the picture of the Heinecke side. It's the beginning part of the Heinecke side.

**Boardmember Cassidy:** Michael, do you have a photograph of the back?

**Michael Liguori:** Yes, I do. This one gives you just a little bit more depth.

**Boardmember Lucchino:** This is what we're calling retaining and this is what we're calling a fence?

**Dennis Santucci:** Do you see where I'm holding the ruler?

**Boardmember Lucchino:** Yes.

**Dennis Santucci:** Right here. And you see when the ruler is set at like 26, 27 inches so this is a stone fence but this is a retaining wall with a planter, a terracing wall. There are stumps going down this way and the base of those stumps are showing 100 percent what the old grades were and that's what we've been proving out to the Planning Board. But in these grades in this area right over there, those boulders in this area when I started doing it there was an old wall there at one point.

**Boardmember Lucchino:** I guess I am unclear in what the Building Inspector is really saying.

**Chairman Froessel:** I think we're going to need some input from the Building Inspector because I'm a little bit unclear on that myself. Let me ask you a question, Mike, with respect to the garbage enclosure, is there any point at which you can put a ruler directly against the garbage enclosure and measure that's higher than 3 ft.?

**Dennis Santucci:** Yes, yes there is.

**Chairman Froessel:** Where's that?

**Dennis Santucci:** This gravel is rough gravel but if I'm maybe like right here and going to here, it's probably 38 inches, 2 inches more. I'm admitting that but this line here is retaining. It's where I'm holding this ruler. It's from here up so it's irrelevant that this area is more than 3 feet when the retaining part is not. The fence is. If this was a wooden fence going all the way down there it would blow out in the matter of a year. It would rot out because it's holding back dirt. If it was a wooden fence from here up it, would be fine but it happens to be a stone fence.

**Boardmember Vink:** You see in that picture exactly what is disturbing the Chairman and I about the creation of the retaining necessity. Because it appears to me that none of this is necessarily a retaining wall until you build this and by putting fill in there, you make it a necessary retaining wall thereby adding height.

**Michael Liguori:** Yeah but your inserting the word necessary into the Zoning Code. It's not there.

**Dennis Santucci:** When I dug this out it became a cut because my property line is a good 8 inches to a foot beyond this wall. The wall is 2 ft. so you got from the property line back to behind the wall a good 3 ft. The dirt was always up there and went down. When you dig into it, you're making a cut. It becomes a retaining wall automatically and I explained that to them before we even started with Fenton and Levine. They knew what was going on and this was back in 2014. Now we're back up to two and a half years later and this keeps coming back to haunt us. It's costing us a mountain of money and family, this is not helping us, over inches of a retaining wall. Here again Mr. Chairman, it's clear. Here's the retaining wall, terracing. That's all this is doing.

**Boardmember Wunner:** Question: you have a permit for the wall that goes down along the driveway and your neighbor's driveway?

**Dennis Santucci:** Yes. Everything was done with a permit from day one.

**Boardmember Wunner:** So that height was illustrated on a permit, more or less? You did it as-built or whatever?

**Dennis Santucci:** It says not to exceed 3 feet and it doesn't.

**Boardmember Wunner:** Okay.

**Dennis Santucci:** Yes, it does not to exceed 3 feet high.

**Boardmember Wunner:** I've been out to the site as you and the other side of that wall, the dirt doesn't come over the top of that retaining wall right?

**Dennis Santucci:** I didn't understand.

**Boardmember Wunner:** The retaining wall that goes down along the driveway perpendicular to your driveway, the dirt on your property side: does it come to the top of the wall? Does it come to the top of the wall all the way?

**Michael Liguori:** There is, it's a little confusing. When you look down the Skalaski driveway and you look at the stone wall that's on the front, there are woodchips that were there. The woodchips come up to the top. If you peel back the woodchips you find the grade is, Dennis attempted to get it back to at the time of construction. So it goes right to the wall.

**Boardmember Wunner:** So it is a retaining wall more or less all the way down that driveway?

**Dennis Santucci:** No, no it actually starts out retaining for about 40 ft. and then it dips down with the grade there when we started the job and then it goes back up again and it becomes retaining for the last 30 ft. but the center is an area that's maybe only 18 in. of it is retaining, not the whole thing.

**Boardmember Wunner:** But by the garbage container, that part of the original wall?

**Dennis Santucci:** Was always up there.

**Boardmember Wunner:** Was a retaining wall up there?

**Dennis Santucci:** Yes.

**Boardmember Wunner:** And you added the garbage container on top of the retaining wall?

**Michael Liguori:** Right that's the...

**Boardmember Wunner:** After the fact?

**Dennis Santucci:** Well there's mulch in there now but that can be brought down, it's just chips.

**Dennis Santucci:** And the tree stumps clearly show what I'm saying. When you look at the tree stumps, you see that the first part was retaining and then it dipped down and that's what it's doing now and then it went back up and that's what the tree stumps show and that's what Terry Bergendorff showed.

**Chairman Froessel:** The tree stumps on whose side of the wall?

**Dennis Santucci:** My side of the property.

**Michael Liguori:** Right so again we're...

**Chairman Froessel:** We're in the front now?

**Michael Liguori:** No, no, no. Yes we are. I'm sorry. We're in the front, yep, over here. It's the only way we could get a forensic answer, an after-the-fact answer as to what the grades could have been because after Dennis plowed out the dirt. I'll try to find the picture, I mean it's...

**Dennis Santucci:** We had to dig this area back a little bit to build the stone wall because I didn't have permission to go on the Skalaski driveway and it wouldn't be fair to them anyway when we're working on stuff so we were working it backwards so, yeah, when they took the picture, the Building Inspector took the picture does it look like it's flat? Maybe it did but that was just under construction.

**Michael Liguori:** That's this. That's what we're talking about, this picture. That area is over here. It from about here down and we pick up the tree stumps on the topographical survey and what we did was we went and got the Bergendorff survey. Then Terry Collins did her survey work. We overlaid them on top of each other, had our engineer prepare an analysis, and submit it to the Town. That's what has been pending before the Town for some time but we're now in front of the Planning Board as a matter of trying to globally resolve that issue.

But the point that we're trying to make is what's showing in the pictures, 45 days post day one of construction, but that tree stump is there and it has an elevation so...

**Dennis Santucci:** And that elevation is higher than the property line. And like I said when you cut back 3 feet in the back of that stone wall you're even into it more, so it's a cut. It's not too level like that little picture shows. It's not that. It was an artist's picture, that's all it was. That's been killing me for three years.

**Chairman Froessel:** I see there are some neighbors here this evening. Does anyone have any comments or questions regarding this application?

Eric Heinecke of 7 Shady Lane was sworn in and addressed the Board.

**Eric Heinecke:** I'm 62 years old and I'm not a very fancy talker. I think everyone knows what's going on here but I need to say a few things in relation to Mr. Skalaski's driveway and the silly stone wall and height and the hundreds of trucks that came in. I used to make \$10 on a Sunday afternoon mowing the lawn which was even with what used to be my house. It was even...

**Debbie Heinecke:** And no stone wall.

**Eric Heinecke:** Where Mr. Santucci's driveway is, which I never even started because I could sit here for hours and tell you about the changes. The only reason that wall is there, what he might call in front of his garage, retaining wall there which is fine with me. It's not a problem. It's because Mr. Seleck dug it out that way.

**Chairman Froessel:** Mr. Seleck? Who's that?

**Eric Heinecke:** Mr. Seleck. That's the guy that originally did all the work for Mr. Bober when he put his house up. And I was cutting the lawn when they demolished that house and it wasn't Mr. Santucci. I ran garden hoses to mix their concrete. They used my telephone. They had three generators to build that house. None of them ran. I fixed them all. I helped build that house and I feel, and I apologize if I'm getting loud and I'm sorry, but I'm getting really emotional. This is really wrong. It's not right. I tried to be a good neighbor. I just want to be left alone and I swear everything I'm telling you is the truth and there's probably a few people around in Town that know that. I don't know what else to say. I don't know what else to tell you. If you don't believe me I'm sorry.

**Boardmember Vink:** Thank you.

**Chairman Froessel:** Anyone else.

Jerry Skalaski of 3 Shady Lane was sworn in and addressed the Board.

**Jerry Skalaski:** My name is Jerry Skalaski and I live at 3 Shady Lane. In regards to the retaining wall, when Mr. Santucci moved in, he got permits to build a wall. It's a freestanding wall and he backfilled that, by the way, after he built it. We have a violation Code 69 right? He filled to the property line, right? You can't do that. You guys know that. He filled it. He's not disputing he had fill it. He's not allowed to do that. I contend that if he wanted to build a retaining wall and he went to the Building Department and asked for a permit for a retaining wall in the part along my driveway they would have said set it back 10 ft. Set it back 10 ft. How does this thing go from a freestanding wall and morphs into a retaining wall since it was built? I just don't get it. I just want to share with you, you asked about pictures during construction. This is the construction of the wall just prior to attaching the garbage structure to it. Alright? You see the property marker here. Here's a completed (inaudible) trucking. You see the property marker. That's level guys. It's level. There was never a retaining wall there. We never had enough hills for a retaining wall. That's his picture. That's during construction. I have other pictures too showing during construction. I didn't want to bring too many with me.

The other item and I brought this up during the request for a variance last year. I cannot see traffic leaving his property at the end of the driveway. I'm in a truck. I don't have a clear line of sight. You would never allow someone to do that on a main road or another road but he's got six adults living there with all cars. I have to creep my way out just to make sure someone isn't leaving. I just want a line of sight, that's the other thing. One more point on the garbage structure: it's a garbage structure. It's not a wall. It's a garbage structure. It was built without permits. He didn't have a permit for a garbage structure. He went to the Zoning Board and asked for a variance and it was denied. Garbage structure is still there and we're still talking about it, which is amazing.

**Chairman Froessel:** My recollection is, to be fair, is the application before the Zoning Board was that there was going to be a wood enclosure built up over on top of it.

**Michael Liguori:** On top of it. That's what the variance request was for. It was not for the bottom.

**Jerry Skalaski:** That was the foundation for a garbage structure that was built without permits. It was the foundation. He chose to go ahead and build it without permits. With regard to the side wall, the fence. You go on my property the wall is over 10 ft. high. I get there's a little variation difference but he's backfilled the wall. He's made that wall and he backfilled it and said 'okay, now I put 3 ft. of dirt here, now let's measure.' There was never dirt there. There may have been a slight variance but not 3 or 4 feet. We've been going through this. Mr. Santucci's are. We're spending a lot of time and effort to try to figure out 'how do I get this land back.' We're talking about five acres and we're worried about a few feet of property, the fill. Last comment: before the Zoning Board meeting last year, the excavator and all the fill he put in along the wall. Some of the Board members came out and took a look at it. What did he do in the Spring? He put it all back. And that's really all I have to say and I thank you for your time.

**Chairman Froessel:** Thank you.

**Michael Liguori:** Can we see those pictures?

**Chairman Froessel:** Anyone else? Yes ma'am.

Debbie Heinecke of 7 Shady Lane was sworn in and addressed the Board.

**Debbie Heinecke:** Mr. Skalaski probably showed you some of these pictures. This is coming down from our driveway before Mr. Santucci started his work. Clearly even. There's no...

**Boardmember Vink:** So, if I'm looking at this, the house that's on the left is...

**Debbie Heinecke:** That's Susan. That's the first house coming in. Dennis' house would be over this way.

**Boardmember Vink:** Okay.

**Debbie Heinecke:** And we're straight up. Then after he built, this is what it looks like now. Honestly it's much higher. He says he hasn't backfilled or made anything higher, he has. You can have all these pictures. Then, of course, here is coming down our driveway. Mr. Skalaski did say he can't see anything coming out of his. We have a little hard time seeing too because of his pillars. We can't see anyone coming out of his driveway either until they come right to the pillars. Then I don't know if this has any significance but these are fill that he says he put, he put more than he says he did. These are pictures of all the trucks and fill that came into that driveway. They were digging some trench in the front of the house. I don't know if that was where they put their water spicket down near the garbage structure. You can see there was mounds of it, trucks and trucks of fill. Yes, he does have high acres but most of the acres is over a little bridge that goes in his back yard. His backyard is now even. He filled the

backyard too because the stone wall in the backyard is very high and it used to be level. He says there was a stone wall going down to Skalaski's? There was never a stone wall there.

**Michael Liguori:** We have a 1949 survey that shows the stone wall.

**Debbie Heinecke:** My husband grew up there, there's no stone wall there.

**Michael Liguori:** We're not saying it was there when Dennis got there we were just saying there was a stone wall there in 1949. It's shown on a survey. Typically it wouldn't get on a survey unless it was there.

**Debbie Heinecke:** When they built the houses, there was no stone wall.

**Eric Heinecke:** I was born in 1954. There was no stone wall.

**Debbie Heinecke:** His grandparents owned all that acreage and sold it.

**Michael Liguori:** I get it.

**Debbie Heinecke:** So you can see the amount of big trucks that were coming up and down that private road and the stress that it put on that road. When they went for the permits for the stone wall it was a stone wall and now they're asking for a retaining wall? To me, why ask for a retaining wall if you put all this fill in so now they want to make it a retaining wall. And the fill.

**Michael Liguori:** This is the stone wall on the Skalaski side of the property. There is an existing stone wall and a manicured stone wall. The only difference before the date Dennis got there and after with regard to the stone walls is the fact that Dennis attached a manicured stone wall to a piled stone wall. You see the height of the pile?

**Boardmember Keiser:** How would he build that though? He would have to move the real stone wall.

**Dennis Santucci:** No, I went in front of it. Their other wall was a wide, old wall so I didn't want to destroy it in any way and it was a property line wall. I own most of the wall but there might be points where it's midway so we dug in front of it, put the footing in, and built the new wall.

**Boardmember Keiser:** And you would have to move those big rocks or any of that?

**Dennis Santucci:** No I didn't touch them, not even a one.

**Michael Liguori:** And they represent the height. The height of Dennis' wall does not exceed the height of the wall that...

**Debbie Heinecke:** Where is the wall that he's talking about?

**Boardmember Vink:** An old farmer's wall is not necessarily a retaining wall and it's not generally even used that way. Farmer's walls have entirely different purposes for this area.

**Dennis Santucci:** The Heinecke property is higher than my property. My property is higher than Skalaski's. That's the way the grade is over there, it goes down.

**Boardmember Vink:** This is clear.

**Dennis Santucci:** Is this the picture Mr. Skalaski gave you? You can see the trees are much higher than the stones being put in. Once it gets done it's a 3 foot wall, that's what it is. It's clear.

**Chairman Froessel:** This is the Skalaski property?

**Michael Liguori:** Yes.

**Dennis Santucci:** You can see it. It's clearly shown. I've been saying it from day one.

**Boardmember Keiser:** I have a question. I haven't been on the Board that long. The stone wall, you call it a retaining wall, is it built? Was the permit issued for a retaining wall or was it just for a stone wall?

**Dennis Santucci:** You know what, that's a good question. On the permit it says stone wall. I didn't know I needed a stone retaining wall. It's a stone wall. I'm a stone mason by trade. I've been putting stone walls up since I was 15.

**Boardmember Keiser:** But there is a difference between a wall and what you're saying and you have a permit for a stone wall, not a retaining wall.

**Dennis Santucci:** My point is clear in this picture.

**Michael Liguori:** My point we're making is that you don't have to make an application for a retaining wall. You can build a stone wall and it's allowed to retain. There are instances where you build stone walls on your property and they retain and under the definition of the Code it would (inaudible).

**Dennis Santucci:** It's a 3 foot high wall.

**Michael Liguori:** We're looking at the rubric of measuring a fence.

**Dennis Santucci:** It's very clear.

**Michael Liguori:** So when you're looking at it for the purposes of measuring a fence, you're looking at...

**Boardmember Keiser:** You mean what we're doing now?

**Dennis Santucci:** On the application, on the sketch that we made to get the permits, it says wall to grade. The intent of that meant anything that had to be graded that the wall would be retaining. That's what those words meant, all to grade. If the grade was higher the wall would be retaining. If it wasn't it would be a two face stone wall, which is actually a fence.

**Michael Liguori:** Under the Code. Under the Southeast Zoning Code.

**Dennis Santucci:** If you look at my permit application, that's what it says on it.

**Michael Liguori:** That stone wall falls under the definition of a fence.

**Dennis Santucci:** We're getting off track again. We need to know how to measure a stone wall.

**Boardmember Keiser:** I think that's what I'm trying to understand.

**Boardmember Vink:** She is trying to understand how a wall became a retaining wall or how a fence became a retaining wall.

**Boardmember Keiser:** Right.

**Jerry Skalaski:** He added fill behind, truckloads of fill. That's how it becomes a retaining wall.

**Chairman Froessel:** (inaudible) special rocks piled up here.

**Dennis Santucci:** If it was a wood fence, if it was retaining dirt it was going to buckle out within a year.

**Debbie Heinecke:** Mr. Santucci had a lot of rocks delivered to the house too.

**Michael Liguori:** It's irrelevant. Dennis didn't put any fill on the Heinecke side of the property.

**Debbie Heinecke:** We're not disputing that.

**Michael Liguori:** That's retaining dirt. It's a retaining wall.

**Chairman Froessel:** I wouldn't have suspected that he did.

**Michael Liguori:** Well, we think Mr. Heinecke put fill on that side of the property.

**Debbie Heinecke:** What?

**Eric Heinecke:** Those trees that are on my side of the property are older than I am.

**Dennis Santucci:** Here's an affidavit from the former owner that explains washouts and movement of the driveway and washouts of Skalaski's driveway.

**Chairman Froessel:** Yes, I saw that.

**Dennis Santucci:** If you look at the last page and the former owner had nothing to gain by giving me that affidavit at all.

**Boardmember Keiser:** When the original permit was issued for what is now a retaining wall, when was that meeting and could we see those minutes?

**Chairman Froessel:** It's not a meeting. It's the building application. They didn't need a variance for that.

**Boardmember Keiser:** So the Planning Board? Who would have a copy?

**Chairman Froessel:** The Building Department.

**Boardmember Keiser:** So the Building Department would have records and minutes as to...

**Chairman Froessel:** Well they would have whatever was submitted in connection to the application.

**Boardmember Keiser:** Could we see that?

**Chairman Froessel:** We could. I'll be honest with you, I don't think we're prepared. I know you gave a lot of background tonight and it was very helpful but I don't think we're going to be prepared to render an Interpretation. I think I would like to review with counsel and do some research on my own. I may want to look at those Building Department records.

**Michael Liguori:** Sure or we can deliver them to you. Whatever is easier for you.

**Boardmember Lucchino:** And we should talk to the Building Inspector. I think that would be helpful.

**Chairman Froessel:** Particularly with respect to the property line along the Heinecke property line. I'm curious to know what his thinking is there.

**Boardmember Lucchino:** But that's a good question about how do you measure a retaining wall. How do you measure a fence, stone wall. It would be good to get Michael's opinion on that too.

**Chairman Froessel:** I want to kind of research the Code a little too to make sure there isn't something that I'm missing. Unless you have anything else you want to tell us tonight I think my suggestion would be to adjourn and go ahead and come back next month. We'll do a little bit of research.

**Dennis Santucci:** I would just like to state that whatever the decision is here, it's not just for my property. It's for any property in Brewster. The questions are going to be the same: how do you measure a fence? If it's a retaining wall? Don't think of it as 5 Shady Lane's answers.

**Chairman Froessel:** I'm not. That's the reason that I want to take more time to think about it because obviously whatever interpretation we render is going to apply to everyone in this Town until such time the Town Board decides to possibly alter the Code, or what have you, because the other issue is, I suspect the Town Board may be accused of legislating and you may suddenly get a refined Ordinance, not that it would apply to you.

**Michael Liguori:** I'll take it. Anything is better than the gray area.

**Dennis Santucci:** We appreciate that the Board needs more time to review this but you have to look at our situation too. It's been almost 2-1/2 years, financial and mental stress for the same question. Take another month but please let's resolve it next month.

**Michael Liguori:** If the Board would consider closing the Public Hearing. I don't think we're going to have more comment on the matter.

**Chairman Froessel:** I'm going to leave the Public Hearing open only because if the Building Inspector decides to come and give us his input it's a Public Hearing and I want to hear that so I'm not going to close it but we may not entertain a whole lot of debate next month.

**Boardmember Cassidy:** So Michael the big issue is really regarding the garbage enclosure then right?

**Michael Liguori:** Well, that's what's been referred to you guys from the Building Inspector but I don't know.

**Boardmember Cassidy:** I assume your client needs the garbage enclosure desperately?

**Michael Liguori:** Well, this isn't a matter of need.

**Boardmember Cassidy:** I'm just asking a question.

**Michael Liguori:** He doesn't want to take it down.

**Dennis Santucci:** It's a nice spot for the garbage while it's waiting to be picked up. It's been there when I bought the property. There was always garbage in that particular spot.

**Boardmember Cassidy:** It's a beautiful piece of work. It really is.

**Dennis Santucci:** Before they had one of those plastic... This is stone. It's supposed to look nicer.

**Chairman Froessel:** So let's adjourn and we'll see you next month.

**Michael Liguori:** We can go last if there's a ton of applications.

**Chairman Froessel:** Let's see what comes up.

The motion to approve the Meeting Minutes of April 18, 2016 was introduced by Vice Chairman Vink, seconded by Boardmember Wunner and passed 7-0.

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

Respectfully submitted,  
Cathy Chiudina