

**Town of Southeast  
Zoning Board of Appeals  
Minutes of October 17, 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	Present
Cathy Chiudina, Assistant Secretary	Absent

**Worksession:**

**Regular session:**

**Henry Van Motel, 40 Sodom Road** – Continued Public Hearing to review an application for a pre-existing, non-conforming, second freestanding sign where only one is permitted and requires the following variances: 5 ft. variance where 10 ft. is proposed and 15 ft. is required; a 60 sq. ft. variance where 84 sq. ft. is proposed and 24 sq. ft. is required; a height variance of 2 ft. where 12 ft. is proposed and 10 ft. is required.

Lance Lavender of OCS Real Property Services approached the bench to address the Board behalf of the Henry Van Motel.

**Mr. Lavender:** I believe the last time we met your request was to see what Mr. Patel was intending to do and I have brought the sign. I don't know if someone would like to possibly help me with this. It's kind of big and very long and possibly...I don't know how far you want it out but pretty much it's going to be this all the way through to the L and he is going to put new border on the top. All the lattice on the bottom is going to be removed and he's going to put new lattice colored gray and that's the board. This is going to be in a binder, a wood binder on the top, sides, and bottom.

**Boardmember Lucchino:** It just says MOTEL?

**Chairman Froessel:** We know it's a motel.

**Mr. Lavender:** Yes and this is what he wants to do. He has the...he can probably get other things on there if you wanted. It doesn't have to say anything else for himself but right now this is what he wants to do: replace what it says on there as it exists now.

**Boardmember Lucchino:** And this fits over the existing?

**Mr. Lavender:** It's exactly the same size...no the other one will be coming down and this will be replacing it.

**Chairman Froessel:** You said the other one is coming down, is the other one sort of a vinyl mat like this is?

**Mr. Lavender:** No the other one is a regular sign. It's a wood sign.

**Boardmember Cassidy:** Is it as big as this?

**Mr. Lavender:** It's about that size, yes.

**Boardmember Cassidy:** So it's bigger than the sign I remember?

**Mr. Lavender:** I mean that one out there is 82...

**Ms. Desidero:** I have to put it down. I have to take notes. Everyone saw it yes? Everyone good?

**Boardmember Lucchino:** So the structure that's there now comes down?

**Mr. Lavender:** Yes.

**Boardmember Lucchino:** A new structure goes up and this goes on top?

**Mr. Lavender:** That's his intention at the moment, yes. He is going to put this up with a wood border just where the other one is and remove the lattice underneath, replace it with brand new lattice colored gray and that's where he stands. That's what he'd like to do.

**Boardmember Cassidy:** When we met last time I thought this was going over the existing...

**Mr. Lavender:** Well I asked him today and he said he's replacing it. Now if at any point he changes his mind or the idea was to put it over I'm unaware of that but if this was to go over it...he had said to me he was going to border it and put it up. It's going to be new. So I can certainly address that but as far as his words to me were that he is going to be replacing it with this, inside of a wood border.

**Boardmember Lucchino:** Is that vinyl?

**Mr. Lavender:** Yes it's...

**Boardmember Lucchino:** Do you know if the wood will be pressure treated?

**Mr. Lavender:** I'm assuming it will be, yes. I think it has to be to withstand the weather.

**Boardmember Wunner:** Do you know the dimensions of that?

**Mr. Lavender:** This is an 18 ft. by 4 ft., 72 sq. ft. printed 13 oz. Scranton Vinyl banner and the wood on four sides.

**Boardmember Wunner:** And what's there now is 18 ft.? The one that's in place down there right now is 18 ft. long? I don't think it is.

**Mr. Lavender:** As far as I know yeah but I don't have that dimension with me, I'm sorry. I don't have that dimension with me. This one was supposed to be the same size as that one so that's what we're going with.

**Boardmember Lucchino:** Will there be vinyl on both sides so it's visible from both directions?

**Mr. Lavender:** I think his intention is to put this on the one that's most visible to the road and that's where he's stopping right now because he believes the other side is not in as poor condition as the front side. I mean between us I think that if the Board wanted both sides to be done I can't imagine he would argue with it with a cost of what it is. If you wanted both sides done I can't imagine he would argue that.

**Chairman Froessel:** I just want to be clear on the variance dimensions: the setback from the front property line is going to remain exactly the same, correct?

**Mr. Lavender:** Yes the existing sign is 10 ft. from the property line and I know 15 ft. is required.

**Chairman Froessel:** And he is still proposing 84 sq. ft. for the sign?

**Mr. Lavender:** Yes that's...well this sign comes up as 72 sq. ft. so existing sign is 84 sq. I just saw the dimension on it Mr. Wunner. So this one is 72 sq. ft., which is actually smaller than the existing one. I think you might have to just...the border certainly would add on a little bit.

**Chairman Froessel:** And you're still seeking the height variance of 2 ft., correct?

**Mr. Lavender:** Yes sir. And again, if the Board decides that the second freestanding sign...we have no...we could keep it or we could get rid of it. If it would make it easier for the Board we certainly could remove that smaller sign which was, again, used just for deliveries and identification.

**Chairman Froessel:** Is there anyone in the audience that has any comments regarding this particular application? No? Okay. Does anyone on the Board have any further questions of the applicant?

**Boardmember Lucchino:** If you look at Michael Levine's (Building Inspector) April 16, 2016 letter it looks like with his new sign, the variances have changed. You asked if it was still a 2 ft. height variance: if 10 ft. is allowed and now the height is 18 ft.? I'm not sure.

**Chairman Froessel:** Well he says he's still asking for the 2 ft. variance.

**Mr. Lavender:** The variance on the existing sign in front of the property line is a 5 ft. variance.

**Boardmember Lucchino:** Right. I'm talking about the height of the sign.

**Mr. Lavender:** Oh the existing height is 12 ft. where 10 is allowed so yes 2.

**Boardmember Lucchino:** Right but I'm not clear: this new sign will still be 12 ft.

**Mr. Lavender:** The intention is to have it exactly where the other one is height-wise because that's where the poles stop.

**Boardmember Lucchino:** But it's a little bit smaller. You said it's 72 sq. ft.

**Mr. Lavender:** It appears to be yeah. I think this one is going to be a little smaller so...but again it's going to be bordered. I don't know how wide that's going to be and I know you count the whole sign if I'm not mistaken so we don't have the border yet and that's where I'm uncertain.

**Boardmember Lucchino:** Oh so you don't know the actual size.

**Mr. Lavender:** It's not going to be anything...but it's going to be a substantial solid border. I just don't know what that's going to add. I'm assuming he's probably going to get pretty close to the 84.

**Boardmember Sheil:** Is the sign going to be in one direction?

**Mr. Lavender:** So at the moment Mr. Patel was going to put this on the one that if you were driving north onto Sodom...that's the one that most people see...that's where he wanted to put it. His belief is that the other side, which is more intended for folks leaving is in okay shape and he would like to leave it but you know that's his take on it as I have just mentioned. I think if the Board wanted them to be the same for whatever reason I will be sure to go back to him and I don't think he would argue that.

**Chairman Froessel:** We could if someone was so inclined to make a motion of a condition in granting the variance on the removal of the other freestanding sign, the smaller one.

**Mr. Lavender:** The smaller one? We would be okay with that.

**Boardmember Keiser:** I have a question: how will that adhere to the surface of whatever it's going on?

**Mr. Lavender:** It's going to be pulled tight and I'm assuming they will probably put a backing...there would be backing obviously on both sides and then there will probably be a backing down the middle. It's going to be stretched tight. It's vinyl so they will stretch it tight so it's not going to be a glue situation, it's more going to be...I don't know if they're going to bracket it with on both sides or attach it to just one side but I'm assuming it's going to be on the inside because it will be much more aesthetically pleasing if they put it on the inside. So I think it's going to more of a...

**Boardmember Keiser:** What do you mean 'on the inside'? I'm trying to imagine how this whole thing is going to look. (inaudible) sort of a (inaudible). (Mr. Lavender talking over Boardmember Keiser).

**Mr. Lavender:** Yeah no what I was...yeah no I gotcha. I completely understand. I understand. What I'm saying is if there's a banner and you're looking at it, if the border to it is overlapping the sides it would look better so I'm assuming it's going to be something that's going to allow the border to be...the fascia to be...pleasant and then from the inside or however

they're going to do it they'll attach it. So it's not going to be an adhesive; it will be just more of a stretch and attached and then there will more likely be some sort of a middle if there was a wind situation that would stop it right there.

**Chairman Froessel:** Any more questions of the applicant? No? Okay.

**Boardmember Wunner:** I'm thinking based on the applications we've received in the past that his presentation is kind of lacking some detail of what you would expect as an end result. Rolling that thing out is fine but generally in the past we've received a little more detailed spec on the construction of the sign, whether it's going to be lit, and so on and so forth. This is kind of lacking some of those details.

**Boardmember Lucchino:** I agree. We're not really clear on the actual size. This will only be on the one side of a new structure that goes up. I don't think it's really in conformance with the look we want for that area so I think we need a little bit better description/picture of what is actually going to be or I don't think this is going to work.

**Chairman Froessel:** Before that I just want to ask you one question: you mentioned that there are existing posts on either side that are going to remain?

**Mr. Lavender:** The posts will remain. They'll be cleaned up and painted but they will remain. So he intends to work with what's there.

**Chairman Froessel:** Are they wood or steel? Do you know?

**Mr. Lavender:** I'd be lying to you if I said I knew. I do not know offhand.

**Chairman Froessel:** Okay.

**Mr. Lavender:** Something tells me they're wood.

**Chairman Froessel:** Carla and Greg, would you feel better holding this over for a month and asking the applicant to...

**Mr. Lavender:** More definition?

**Chairman Froessel:** A more...

**Mr. Lavender:** Absolutely.

**Boardmember Wunner:** I think it wouldn't be such a bad idea.

**Mr. Lavender:** That's a very fair...and I...

**Boardmember Lucchino:** Right now I would not be in favor.

**Mr. Lavender:** No that's fine, that's fine. That's absolutely fine.

**Chairman Froessel:** Just so you know, we'd be looking for details of the materials to be used, the exact dimensions...

**Mr. Lavender:** Border, color yeah and...

**Chairman Froessel:** Construction details.

**Mr. Lavender:** Whether it's...in terms of adhesive...how is going to...I got you. I would loved to have had that.

**Boardmember Cassidy:** I would like a picture of both sides of the sign as it exists right now.

**Mr. Lavender:** Yeah I brought that in the first time but that's all right. I'll do that.

**Boardmember Lucchino:** You brought a picture of one side in the material you originally provided but not of both sides.

**Mr. Lavender:** Gotcha. Okay. I think I know what you need and if it's all right with you another month. You keep putting us first...my wife is happy about that so I appreciate it.

**Boardmember Lucchino:** If you bring pictures could you make sure that they're clear? Sometimes pictures are dark.

**Mr. Lavender:** Yeah like I said I got pulled in on this and I used the picture that we had before but I understand what you're looking for and I definitively know what you'll need to make a decision. You need a lot more info. We certainly appreciate the opportunity to bring that before you.

**Boardmember Cassidy:** And color would be great.

**Mr. Lavender:** Fair enough. I gotcha.

**Chairman Froessel:** That's fine. We'll adjourn you over to next month.

**Mr. Lavender:** Thank you so much. Victoria thanks for the help.

**Chairman Froessel:** Just please make sure you have that construction information.

**Mr. Lavender:** Okay. Thank you so much. I appreciate it gentleman.

**Maria and Larry Schanbacher, 36 Peach Brook Lane** - Public Hearing to review an application for a deck, which requires a 14 ft. east rear yard setback variance where 50 ft. is required and 36 ft. is proposed.

Maria Schanbacher and Larry Schanbacher were sworn in and the mailings were found to be in order.

**Chairman Froessel:** Why don't you describe your application for us?

**Mrs. Schanbacher:** We have a deck, which is sort of half completed because we had a pool that collapsed so we removed the above ground pool. The deck went around the pool so now we just want to square off the deck because it's a little bit off and it drops off into nothing. We are seeking a variance of 14 ft. for the back yard. I guess the variance requires 50 and this is 36 ft. away but the footprint of the deck is actually smaller than what was there, which was the pool because the pool was bigger.

**Mr. Schanbacher:** The deck that's there was built when we put the pool in. The pool only came...

**Mrs. Schanbacher:** We have pictures we can show you.

**Chairman Froessel:** We like pictures.

**Mr. Schanbacher:** It's really just...

**Mrs. Schanbacher:** This is where the pool was and basically it's just to square it off.

**Chairman Froessel:** Okay.

**Mrs. Schanbacher:** You can see kind of this is from the side yard where there are no houses over there. The back yard...I mean people behind us can't even see it because there's this huge row of trees. This might be a good one to see the curve. We just want to basically straighten it out.

**Boardmember Cassidy:** Nice stonework too.

**Mr. Schanbacher:** That was the perimeter of the pool. The pool collapsed and the kids are gone so what we're doing is we're just trying to fill this back in there. It really is going to actually be a smaller footprint because this area was bigger with the pool and we are just going to extend it out and go straight across here so that we can fill it in.

**Secretary, Ms. Desidero:** Excuse me. I'm really sorry but I can't take minutes if they're having two conversations.

**Mr. Schanbacher:** It's simply a filler is what it is.

**Chairman Froessel:** Folks we have to do this one at a time because Ms. Desidero has to do notes here.

**Mrs. Schanbacher:** Oh sorry.

**Mr. Schanbacher:** So it's actually...where's the one? This is the best one. I don't know if you can see that or not but this is the east side, this is south, that's north, and this is west. When we had to put the pool in we wanted to be able to use the deck to get into it and so forth so we built this around it and that was all. Actually the footprint of the pool out here was bigger than the deck. The pool actually extended 3 or 4 ft.

**Boardmember Cassidy:** That's the end of the deck?

**Mr. Schanbacher:** Right. All we're trying to do is fill this in so we can use it.

**Mrs. Schanbacher:** There are two neighbors who can see...actually they can't see it because the people behind see only the trees and this is the view from my neighbor on the side and they can't really see that. This would be...

**Chairman Froessel:** That's not going to change their view.

**Mr. Schanbacher:** Actually if you look from the front of the house to the back when the pool was there it extended out this way. If you looked you saw part of the pool. You won't see that anymore. That's gone so it actually makes it easier on the eye so to speak or more balanced if you will because it's all going to be...the deck is going to be right back behind the house.

**Chairman Froessel:** The pool was closer to this rear setback than the deck will be, correct?

**Mrs. Schanbacher:** Correct.

**Chairman Froessel:** Now the \$64,000 question: do you have a variance for the pool?

**Mrs. Schanbacher:** Yes we had it when we built the deck around the pool.

**Chairman Froessel:** Okay I was wondering if it was specific to 'for a pool' or if it's just a more generalized variance.

**Mrs. Schanbacher:** I don't remember. It was a long time ago.

**Chairman Froessel:** I assuming it must have been specific to the pool or Michael Levine (Building Inspector) wouldn't have sent you here.

**Mr. Schanbacher:** It was for the pool.

**Chairman Froessel:** Okay.

**Mr. Schanbacher:** I put rocks in here. It was about 2 ft. outside the pool and filled it with rocks so that when you splash over or something like that it just wouldn't go into the yard.

**Mrs. Schanbacher:** Actually if you look at this rock, that's where that comes out to.

**Mr. Schanbacher:** It's going to be all inside where the pool was so it's actually a smaller footprint in terms of squaring it off.

(Inaudible - Multiple conversations going on at same time)

**Boardmember Lucchino:** This is the existing deck?

**Mrs. Schanbacher:** This is the one side of the deck, right. And then...

**Boardmember Lucchino:** This is not the side you're going to square off?

**Mrs. Schanbacher:** Correct. That's the back of it and then it would come...

**Boardmember Lucchino:** So it's the opposite side?

**Mrs. Schanbacher:** Correct. So that neighbor, their view doesn't change and there is no one on the other side.

**Mr. Schanbacher:** It really puts everything right behind that.

**Boardmember Lucchino:** That's what it looks like now?

**Mrs. Schanbacher:** Yes and it's downright dangerous.

**Mr. Schanbacher:** Right now we can't use it. There's no way you can go out there and have parties as someone could fall off the deck. It should look nice. It will look nice.

**Boardmember Lucchino:** The plan is to match the existing wood?

**Mrs. Schanbacher:** Yes.

**Mr. Schanbacher:** Pardon?

**Boardmember Lucchino:** You'll match the existing wood to the extended deck?

**Mr. Schanbacher:** Yes that's all water-resistant lumber that we put in there.

**Mrs. Schanbacher:** Some of it will have to be removed where the curve is so it's you know straight...

**Mr. Schanbacher:** The painting has to be redone. We didn't re-stain it because we didn't know if we were going to get the variance for it or not so it's all for the right reasons.

**Chairman Froessel:** Okay. Is there anyone in the audience that has any comments on this application? No? Okay. I think it's pretty straightforward. Any questions of the applicants? No? Can we go ahead and close the Public Hearing? Yes? Okay. We're going to close the Public Hearing. The Board will then deliberate and vote, but before I close the Public Hearing do you have anything else you want to state in support of your application?

**Mr. and Mrs. Schanbacher together:** No.

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

**Mrs. Schanbacher:** Yes. Thank you.

**Chairman Froessel:** Okay we will close the Public Hearing. This is a fairly straightforward deck application I think and by the applicant's representation they have had a prior variance for the pool so with this they are actually requesting one that's a little bit less intrusive than the one they previously had. I will entertain any motion anyone would like to make.

The motion to grant the requested variance of 14 ft. from the east rear yard setback where 50 ft. is required and 36 ft. is proposed was introduced by Boardmember Keiser, 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.  
I think there will be no undesirable change in the character of the neighborhood as it is in keeping with the house and the deck that's there so I think that's fine.
2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.  
Evidently not. There was a pool there that collapsed and the deck wasn't full in that space so filling it in solves the problem.
3. Whether the requested variance is substantial.  
I don't think it is. The structure is smaller than the pool was so that is not substantial.
4. Whether the proposed variance will have an adverse effect or impact on the environmental conditions in the neighborhood or district.  
There is no evidence of that. It's in keeping with the neighborhood.
5. Whether or not the alleged difficulty was self created.  
Only in that the pool is gone, the children are gone, and you need to make the adjustments for that so I don't think that it was 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.

**Brewster Retail Outlet, 1224 Route 22** - Public Hearing to review an application referred by the Planning Board for the following variances:

1. The proposed canopy would be a new structure within the front yard setback. A setback of 4 feet is provided where 100 feet is required. Therefore the Applicant is seeking a variance of 96 feet;
2. The proposed project would increase the pre-existing non-conforming lot coverage. Lot coverage of 80.6% is proposed, where a maximum of 45% is permitted. Therefore the Applicant is seeking a variance of 35.6%;
3. The proposed project would reduce the pre-existing non-conforming open space on the site. Open space of 19.4% is proposed where a minimum of 55% is required. Therefore the Applicant is seeking a variance of 35.6%;

The proposed project would reduce the rear parking setback on the site. A setback of 16 feet is proposed where 100 feet is required. Therefore the Applicant is seeking a variance of 84 feet.

Engineer John Folchetti of Folchetti and Associates was sworn in and the mailings were found to be in order.

**Ms. Desidero:** I would just like to point out that this application is waiting on County approval.

**Chairman Froessel:** Before you start I want you to know that we can't vote on this tonight because we need approval from the County Planning Department because you are on a County road but we can open the Public Hearing and at least hear your application and get started.

**Mr. Folchetti:** This is 1224 Route 22. It's the service station down here above the state salt building and below the Jehovah's. It's an existing half acre site. It's been a gas station for decades. It has had limited access to the front and side of the building, two pump islands, and very limited parking off to the side. The new owner procured this place last fall, about last October. We made our preliminary application to the Planning Board at the end of March on the 21<sup>st</sup>. We had the Public Hearing in front of the Planning Board on the 25<sup>th</sup> of April. The proposed site: I'll give you some architecturals here. He is proposing to convert the existing service station, which is a two bay garage to a convenience store. The existing parking lot line being what it is we're proposing 7 additional parking spaces for people who are going to be attending the store as retail customers to keep them out of the way of the people that are going to the pumps.

**Boardmember Lucchino:** So just gas and convenience store, is that right?

**Mr. Folchetti:** Gas and convenience exactly, but because of the way the lot lays out we proposed the parking basically along the south property line because they are worried about the curb cuts on the highway. What we would like to be able to do is take these convenience store customers, back them out, drive them around the building and then exit out northbound. This is a right in, right out proposal with no left turns across Route 22 from the southbound lane.

**Chairman Froessel:** How large is the piece of property?

**Mr. Folchetti:** It's a half an acre.

**Boardmember Lucchino:** Can I ask you something about driving people around the back of the building: is there a sharp drop off?

**Mr. Folchetti:** There is. There's a retaining wall proposed going to expand that and that's one of the reasons why we are here because of lot coverage. We're increasing the lot coverage.

**Boardmember Lucchino:** So you're leaving the existing structure and you're going to build up that back to create...

**Mr. Folchetti:** We're leaving the existing structure. There will be a retaining wall constructed around the backside of it and filled in behind the retaining wall to provide a drive-around behind the existing structure.

**Boardmember Lucchino:** I didn't think you had enough room today to drive around the back. You fall off into the abyss.

**Mr. Folchetti:** As it currently stands exactly you roll downhill into the reservoir. So, there are four variances: each tied to a proposed improvement. The first one is the front yard setback because there is no canopy and consequently no fire suppression existing over the tops of the existing pumps. Again we talked a little bit about the existing parking and the pedestrian access to the building to keep that out of the gas islands and the ability to get traffic around the back side of the building for convenience store customers without having to drive through the pumps. So that gives us a requirement for expansion of the lot coverage from 45 percent to almost 81 percent of the lot. That lot coverage then automatically triggers that we're not going to be able to provide the open space as the criteria exists at 55 percent. This rear parking setback variance is needed in order to provide the ability for folks to park. The owner has retained an architect here. The proposed front elevation, the rear which no one will see, the south elevation, and the north elevations and the building will all be hardieplank, synthetic stone, and glass. Those are the variances that we're looking for and the improvements that we have proposed on it.

**Boardmember Lucchino:** Are these the actual colors?

**Mr. Folchetti:** They are as they currently exist but then reviewed by the Architectural Review Board.

**Boardmember Lucchino:** And will it be Sunoco?

**Mr. Folchetti:** That's the current lease.

**Boardmember Lucchino:** Does this owner own another gas station?

**Mr. Folchetti:** He operates this station at the junction of Route 6 and Starr Ridge. He does not own it.

**Boardmember Lucchino:** Is that the Shell?

**Mr. Folchetti:** I don't know whether the Shell lease is his or the people who own it. He operates that station but I'm not sure about the lease arrangements in terms of who's the sponsor.

**Boardmember Lucchino:** But he will own this or he doesn't?

**Mr. Folchetti:** He does own this.

**Boardmember Lucchino:** Okay.

**Boardmember Cassidy:** Has there been any discussion about getting a freestanding sign closer to the road when this is all said and done?

**Mr. Folchetti:** The sign is conceived to be not closer to the road...it's actually going to be moved further south but not closer to the road, not closer out to the white line because the sign as it currently exists and where it's proposed is on the property line and unless he decides that he wants to go and mess around with DOT to get a permit to have his sign in their right-of-way the sign will be moving south but not further west.

**Boardmember Lucchino:** So your request for a variance doesn't include a variance for a sign, at least not at this time anyway?

**Chairman Froessel:** There is a pole sign on that property though I'm pretty sure.

**Mr. Folchetti:** Yes.

**Chairman Froessel:** That property was before us for a sign variance once before.

**Boardmember Vink:** Which we granted because he was running separate businesses. In other words he was running a separate business as an automotive repair and since that's not going to be the case anymore I wonder if we can dispose of that second sign. I don't think it ever had mechanics that were there and used it for a mechanics sign. Even after they got the variance I don't think they ever put up a sign there, the northern most sign pole, but if it's going to be a single business there I wonder if we can just get rid of that second sign; just something to consider.

**Mr. Folchetti:** He's not going to argue with it.

**Chairman Froessel:** Okay. Well we can't vote on this tonight but does anyone else have any questions before adjourn this application?

**Boardmember Lucchino:** No but it's a great idea to clean that gas station up.

**Boardmember Cassidy:** I just have one question: you said left in, right out so...

**Chairman Froessel:** Right in, right out.

**Boardmember Cassidy:** Right in, right out. Essentially how are you going to enforce that? I think it's a brilliant idea.

**Mr. Folchetti:** The same way we do it here.

**Boardmember Cassidy:** Yep. Okay. That's what I was afraid of.

**Mr. Folchetti:** It's as good as it gets. You know what the reality of it is: with the southbound traffic the way it is anyone that attempts to make a left hand turn is out of their mind.

**Boardmember Cassidy:** They think they can start on the shoulder and (inaudible)

**Mr. Folchetti:** I think the traffic patterns are going to heavily dictate how that business does their business and the successes they may or may not have.

**Chairman Froessel:** We will adjourn you until next month. We should have County approval by then. Usually they are pretty prompt.

**Mr. Folchetti:** We have a Public Hearing in front of the Planning Board, will there be another here?

**Chairman Froessel:** You will have to come back here again yes. November, what's the date?

**Ms. Desidero:** I'm sorry, Cathy didn't give me the binder but I think it's the 21st.

**Boardmember Vink:** It is November 21st.

**Chairman Froessel:** Okay. So you will have to come back then and if we have any other questions we will ask you those questions and we should be able to vote on it then.

**Mr. Folchetti:** Okay. Thank you.

**Victor Velasquez and Brunilda Colon, 142 Milltown Road - Public Hearing to review an application for an addition to a single family home, which requires a revision to the existing variances:**

1. West side yard setback variance of 14.32 ft. where 15.68 ft. is proposed and 30 ft. is required. (Variance approved previously on May 16, 2016 for 10.32 ft.);
2. Total side setback variance of 21.64 ft. where 53.36 ft. is proposed and 75 ft. is required. (Variance approved previously on May 16, 2016 for 17.64 ft.)

Engineer Victor Velasquez was sworn in and the mailings were found to be in order.

**Chairman Froessel:** You've been before us before.

**Boardmember Vink:** You're back.

**Mr. Velasquez:** Yes. As you know I submitted my application for 20 ft. out and then I realized after talking with my builder and the architect that I should have submitted for 24 ft.

for a two-car garage. It doesn't change anything as far as the screening between my neighbor and I and it's going to look a lot better in my opinion. That's basically why I'm back because I need an additional 4 ft.

**Chairman Froessel:** Yes, that's why it always pays to make sure you get that stuff right before you come to us the first time. In any event, it's essentially the same application as the last time for a two-car garage?

**Mr. Velasquez:** It is.

**Chairman Froessel:** You just need a greater variance?

**Mr. Velasquez:** Yes an additional 4 ft. instead of 10 ft. I need 14 ft. I also have a retaining wall there. I submitted pictures with the last application. I don't know if you still have them but I have a retaining wall that swings out 10 ft. and that's another reason why I need to come out a little bit more. Otherwise I'm going to have difficulty getting my cars in.

**Chairman Froessel:** Actually this is the same thing I told the last applicant, which is that since you're on a County road we have to get approval from the County Planning Board which has been submitted but we haven't heard back from them yet. They're usually pretty prompt but...

**Mr. Velasquez:** It wouldn't have been part of the old because they returned a response on that one?

**Chairman Froessel:** It's a new application so we have to do the whole thing all over again. We haven't heard back from the yet but we probably will by next month so at that point we can go ahead and vote on it then but we can't tonight. I'm pretty familiar with your application from the last time we were here. I think all of us were here then.

**Mr. Velasquez:** Yeah I didn't do anything. I just put everything on hold basically.

**Chairman Froessel:** So I think rather than go into a lengthy discussion on it tonight we'll just put you over until next month. We should have County Planning approval by then.

**Mr. Velasquez:** I don't need anything else for you for next month do I?

**Chairman Froessel:** No I don't think you do. Is there a survey in your application packet?

**Mr. Velasquez:** Yes.

**Chairman Froessel:** Okay that's good. So November 21st come back. You will probably be third on the agenda.

**Mr. Velasquez:** November 21st?

**Chairman Froessel:** Yes.

**Mr. Velasquez:** Wow.

**Boardmember Vink:** That's the next meeting.

**Chairman Froessel:** We only meet once a month.

**Mr. Velasquez:** All right so I'll try to make that date. If I'm not going to make it I should call?

**Chairman Froessel:** You should let Victoria (Desidero) know and we would probably put it over. I know it's close to the holidays so we have had people in the past ask for us to vote in their absence. I prefer not to do that because we sometimes have questions that we would like to have answered so if you could at all make it, you should make.

**Mr. Velasquez:** Can I have someone come for me?

**Chairman Froessel:** You could. Someone who could answer a question though, that's familiar enough with the project.

**Mr. Velasquez:** Maybe I'll have the architect come.

**Chairman Froessel:** Okay.

**Boardmember Cassidy:** And just remember, if you don't make November 21 the next is December 19th.

**Chairman Froessel:** We have cookies and eggnog though in December.

**Mr. Velasquez:** Sounds like a better one. Thank you very much for your time.

**Chairman Froessel:** You're welcome. See you next month hopefully.

**Boardmember Lucchino:** Tim (Froessel), I just want to point out that the variance requirements for this are like 1/10 of inches. We probably could round it up.

**Chairman Froessel:** Yes, we round it to whole feet because it's very hard to enforce and also gives him no leeway at all.

**Boardmember Lucchino:** Right, agreed.

**Richard and Patricia Morganti, 101 Cobb Road - Public Hearing** to review an application for a shed, which requires an 8 ft. east side yard setback variance where 20 ft. is required and 12 ft. is proposed.

Richard and Patricia Morganti were sworn in and the mailings were found to be in order.

**Chairman Froessel:** Why don't you describe your application for us?

**Mr. Morganti:** Well, it's just a matter of putting a standard shed at the end of my driveway. It's the flattest piece of property that I have. The majority of my backyard slopes down to the right. Putting it here where I want to put it at the end of my driveway sort of violates your 20 ft. rule so I need to cheat on it a little bit with an approved variance so I can place it in an area that's as flat as I can get it so I can get a level shed.

**Boardmember Lucchino:** The pictures were not easy to see because they were very dark.

**Boardmember Cassidy:** Very dark. Do you have the originals?

**Mr. Morganti:** Oh no. I have no idea where those are.

**Mrs. Morganti:** I can explain them if you like.

**Boardmember Lucchino:** See how they came out?

**Mrs. Morganti:** Oh yeah.

**Boardmember Lucchino:** Yeah we can't really see anything.

**Mrs. Morganti:** These might be better. This is one. Is that better?

**Boardmember Lucchino:** Oh yes that's much better.

**Mrs. Morganti:** There are several views. Oh my, that's horrible.

**Mr. Morganti:** That's just a picture of my neighbor.

**Boardmember Vink:** We need one at a time.

**Mrs. Morganti:** There's a house that goes...

**Boardmember Vink:** We need one person at a time.

**Chairman Froessel:** One person speaking at a time. She has to take minutes.

**Mrs. Morganti:** Oh I'm sorry. So this is taken from my property line which is here and here is my next door neighbor. There is that easement that goes all the way down the back, it's about a quarter mile. The next picture shows from the other side. This is their property line over here and this shows the view to the other neighbors back here. This is just another view from

my next door neighbor, from my property line to theirs and that's their shed there. This is from the other neighbor on the other side of me, their view of the property and the shed will be all the way up here because it's all uphill kind of thing so that's that view. This is from the road down our driveway.

**Boardmember Lucchino:** And where will the shed be?

**Mrs. Morganti:** Right in front of the tree. So this is the end of our driveway and it will be 15 ft. from the edge of our driveway in front of this tree.

**Boardmember Lucchino:** And what will the shed look like.

**Mrs. Morganti:** Oh I have pictures. We have a bigger picture to show you.

**Mr. Morganti:** You can either show that one or that one.

**Mrs. Morganti:** It will look like this.

**Boardmember Lucchino:** What color will it be?

**Mr. Morganti:** Oh probably...

**Mrs. Morganti:** This.

**Mr. Morganti:** That color.

**Boardmember Lucchino:** Okay.

**Mr. Morganti:** We haven't finalized any of that. They call it a red but it's more like a maroon.

**Chairman Froessel:** But the dimension you're looking for is 12 x 16?

**Mr. and Mrs. Morganti together:** 12 x 16.

**Mrs. Morganti:** I do have the (inaudible due to multiple conversations)

**Mr. Morganti:** No matter what shed I choose it's going to be no bigger than a 12 x 16.

**Mrs. Morganti:** But the size would not change.

**Boardmember Lucchino:** What is the color of your house?

**Mrs. Morganti:** It's like a Wedgewood blue.

**Mr. Morganti:** Yeah bluish or Wedgewood blue with black shutters.

**Boardmember Lucchino:** Are you going to do any landscaping around the shed?

**Mrs. Morganti:** Ummm.

**Boardmember Lucchino:** Certainly not in front of it because you are going to drive right up to it, right?

**Mrs. Morganti:** Well there's literally 15 ft. to the end of the driveway so...

**Boardmember Lucchino:** But the doors will be there facing the...

**Mrs. Morganti:** The front will be there and then the double door for the tractor will be on the side, our side.

**Boardmember Lucchino:** No other landscaping, just the shed?

**Mrs. Morganti:** No.

**Mr. Morganti:** I needed room for the snow plow so 15 ft. is fine.

**Mr. Morganti:** It will be minimal if we do anything but we're not even sure yet. We don't need to; it's a beautiful shed on its own.

**Chairman Froessel:** I'm looking at your septic diagram. Your tank is right behind the house here? That's the septic tank down there behind the house?

**Mr. Morganti:** It is, yes. It's right over here close to the...I have a deck over here so it is right off the post of the deck.

**Chairman Froessel:** Okay.

**Mr. Morganti:** If you're there at the end of my...you'd see that there's an enormous distance between, a good 40-50 ft.

**Mrs. Morganti:** Yeah it's a good 40 ft.

**Mr. Morganti:** Nowhere near the septic tank.

**Mrs. Morganti:** I think it's 15 ft. that's required.

**Chairman Froessel:** Is there anyone in the audience that has any questions about this application? Okay, I'll take that as a no. Anyone feel the need to go look at this one?

**Boardmember Lucchino:** I took a look.

**Boardmember Vink:** I did also.

**Chairman Froessel:** Did anyone have any additional questions for the applicants? No? Okay. If there are no further questions I will close the Public Hearing. Before we close the Public Hearing, do you have any final comments or statements you would like to make in support of your application?

**Mr. Morganti:** No. It's straightforward. I made an easy one for you. It's just a shed because we've got too much stuff.

**Chairman Froessel:** That's why we all have sheds.

**Mr. Morganti:** Too much stuff.

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

**Mrs. Morganti:** Yes.

**Mr. Morganti:** Yes.

**Chairman Froessel:** Okay. Thanks very much. We will close the Public Hearing. I think this is pretty straightforward for a shed. I will entertain a motion anyone would care to make.

The motion to grant the requested variance of 8 ft. from the east side yard setback where 20 ft. is required and 12 ft. is proposed for the purposes of building the shed as depicted in the drawings provided to us was introduced by Boardmember Vink, seconded by Boardmember Cassidy. The Criteria:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the variance.  
No it will not. In fact the shed at the end of the driveway is perfectly in keeping with that street and that neighborhood. There will be no undesirable change whatsoever.
2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.  
No it really can't. If you look at the topography and the layout of the septic there really isn't anywhere but there for it to go.
3. Whether the requested variance is substantial.  
It is 8 ft. on 25 ft. setback; I don't really think it's substantial given the layout and the character of the area and the fact that it's just a driveway on the other side that's a long driveway to a property behind it.
4. Whether the proposed variance will have an adverse effect or impact on the environmental conditions in the neighborhood or district.  
There is no evidence that it will.
5. Whether or not the alleged difficulty was self created.  
No I don't. Again it placed based really on the topography and the layout 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.

**David and Maria Rodriguez, 28 Forest Lane** - Public Hearing to review an application for an existing side deck, which requires a south side yard setback variance of 12 ft. where 8 ft. is proposed and 20 ft. is required; a total side setback variance of 16.14 ft. where 33.86 ft. is proposed and 50 ft. is required; and an east front setback variance of 9.64 ft. where 25.36 ft. is proposed and 35 ft. is required.

David and Maria Rodriguez were sworn in and the mailings were found to be in order.

**Chairman Froessel:** Please tell us about your application.

**Mr. Rodriguez:** We have an application for a deck that is a pre-existing deck. It was present on the house when we purchased the home in 1991. The need for the variance is that our neighbors did a survey of the property as they are considering selling their home and the property line is much closer to our house than both of us realized. We probably have some pictures there. There's a side deck and...I have one right here. This is the side deck and since doing the survey they put in a line of trees. This is their property and they put in a line of trees down the yard and so it's the distance from the deck to the trees is not the required distance.

**Chairman Froessel:** Okay and the issue is this side section of the deck here that's on the side of the house going back to the rear of the house?

**Mr. Rodriguez:** Right, that's the rear of the house.

**Chairman Froessel:** Okay.

**Boardmember Cassidy:** So this stake right here is the property line?

**Mr. Rodriguez:** Correct and then it goes down our hill. We have an old picture of the side when we purchased the home so you can see the difference. So that's the way it looked back in '91 and it's not even painted so that's the way it looked prior to painting it.

**Chairman Froessel:** Okay. Am I looking at the front of the house here?

**Mr. Rodriguez:** This is the front right here.

**Chairman Froessel:** Okay so that's the side. This is that walkway back through...

**Mr. Rodriguez:** So if you're standing in front of the house and you're looking at it that's the left side.

**Chairman Froessel:** Okay.

**Boardmember Lucchino:** Is your house for sale?

**Mr. and Mrs. Rodriguez:** No.

**Boardmember Lucchino:** Barbara Lay was the previous owner?

**Mrs. Rodriguez:** Yes.

**Chairman Froessel:** I see Ed Jasko's (prior Building Inspector) signature on the CO.

**Boardmember Lucchino:** When did your neighbor do the survey?

**Mrs. Rodriguez:** 2014 I think. Prior to the survey being done as you can see there is a line of trees which we thought was the property line so until 2014 we took care of all that property because we actually thought it was ours. So the issue did come up just recently and when it

was re-surveyed we suggested maybe doing a lot line adjustment that way the property line would go straight down the way we thought it was going down the backyard between the two yards with the trees that were already there but they didn't want to do that. When we did the title search when we purchased the house the deck never came into question. It was never an issue so we thought everything was in order because that's what came back.

**Boardmember Lucchino:** So what did your neighbor do to the property that you thought all along was yours but was really theirs? They planted trees?

**Mr. Rodriguez:** They have a line of trees going down the line because if you imagine the property being two straight lines and you're looking at the back of the house actually the one that borders their property goes like this and it cuts into what we thought was ours and then it makes kind of a left. It's a very odd property. We even have property behind their property.

**Boardmember Lucchino:** It's strange property lines.

**Mrs. Rodriguez:** Very strange.

**Boardmember Lucchino:** So they planted some trees to define their line?

**Mr. Rodriguez:** Correct.

**Chairman Froessel:** Have you spoke with your neighbors about this application and the variance you are seeking?

**Mr. Rodriguez:** Yes.

**Chairman Froessel:** Okay and did they express any objection to it?

**Mr. Rodriguez:** They just expressed...our idea was to make a lot line adjustment and just make the lines straight and they declined that.

**Chairman Froessel:** Okay.

**Boardmember Lucchino:** So they've seen your deck and they know...you're not changing the deck, right?

**Mr. Rodriguez:** We would rather not.

**Boardmember Lucchino:** Right. Do they know that? They know what it looks like now, right, with the new property line?

**Mr. and Mrs. Rodriguez:** Yes.

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

Mike and Kelly Kubenik of 21 Harmony Lane addressed the Board.

**Mr. Kubenik:** We're the owners of the property that are right next to them, Mike and Kelly Kubenik. We just want to state to the Court that when we had it surveyed we had no idea. When we saw where our marks were they were actually going into their lawn, but that's a straight line. If you look at the survey from the road straight down is our property line and then it cuts across and then up again.

**Mrs. Kubenik:** We have a rectangle property so our property is not misshaped; theirs is. The reason why we did the property survey is because a few neighbors were throwing stuff on our property. We had asked everybody to please stop. We found people cutting trees in our yard and I had to stop that so we had no choice. I ended up getting hit by a car five years ago so we had to put things on hold and this is when we did that so we went up to them and asked them nicely for the last two years if we could work things out to fix this problem. It's not only their deck; they built a rock wall on our property. They have all their drainage going in our property, probably about twenty feet.

**Mr. Kubenik:** Total water erosion of all our property that we gained from them.

**Mrs. Kubenik:** And into the property that's not questionable.

**Mr. Kubenik:** Right. And the rock wall came out about 6 to 8 ft. on our property, which they didn't know when they bought the house. It wasn't surveyed I guess.

**Mrs. Kubenik:** And I do want to say is that when we did buy the house we were not told...what was that thing that we said? We also had issues with the COs in our own house and we weren't told about that until a month after we bought the house.

**Chairman Froessel:** I bought my first house in Brewster with a garage that didn't have a CO and only found out about it when I sold the house nine years later.

**Mrs. Kubenik:** Exactly. We had a full basement that was done in 1960-something, furnished and that was on our dime so we're trying to catch up to...because we are selling.

**Chairman Froessel:** Okay.

**Mrs. Kubenik:** And we don't want problems when we sell.

**Chairman Froessel:** Okay. Do you have an objection to this particular application for a variance for that side deck?

**Mrs. Kubenik:** You know here's the thing: I never wanted to hurt them. I really did want to work with them. They were not willing to for obvious reasons, now we know. We don't have any objection for them with the thing. What we asked them to do is to put bushes up so that it is a privacy for both not only them...since it's only two feet from the property line. Their 10 ft. is probably from the house. I don't know where they're getting almost 10 ft.

**Mr. Kubenik:** Right.

**Mrs. Kubenik:** If you look at the picture, their deck is almost 2 ft...

**Mr. Kubenik:** It's like...

**Chairman Froessel:** I think they're saying 8 ft.

**Mrs. Kubenik:** Well it's two feet.

**Mrs. Rodriguez:** No it's 8 ft. The deck with the new trees is 8 ft.

**Mr. Kubenik:** It's not just trees by the way, it's deciduous trees.

**Mrs. Kubenik:** We built the trees into our property. It's not on the property line. We built them into ours but again if they want to say that they'll put up arborvitaes they can keep the deck. It's in the backyard.

**Mr. Kubenik:** It looks closer than the picture but anyway like I said, the water erosion on that piece of property is destroying...I don't even know what I'm going to do because all of their gutters and drains are draining into our property. The guy was over there the other day. I was looking at...I don't even know what to say. I don't even know how to fix something like that. It's very confusing to me.

**Mr. Rodriguez:** The wall that was previously...there's a retaining wall in the front. What was previously there was a railroad tie wall, which was dilapidated and coming down so we replaced the wall and the contractor who did it did make the wall extend 5 ft. onto their property but we didn't know that that was their property line.

**Chairman Froessel:** Do you have a Building Permit for that wall?

**Mr. Rodriguez:** No we had to get one. We just had to get it.

**Mrs. Rodriguez:** We had to get it because we were replacing the existing wall but we didn't realize we needed to get a permit and our contractor did not tell us that we needed to go get a permit. Otherwise we would have gone to get the permit.

**Chairman Froessel:** A contractor will never tell when you need a permit.

**Mrs. Rodriguez:** Yeah now we know.

**Mr. Rodriguez:** So now he put drainage underneath the wall that went down what we thought was all our property but now since the line has changed it's underneath theirs. Since then I've had my landscaper...he's removed that piece of the wall. That wall is now gone and it comes to the property line and now he's working on the drainage.

**Mrs. Rodriguez:** But the drainage, he showed us as well, all the drainage that was there was all there when he pulled it out. So now we looked and he showed us, walked us down our property and he said 'the only thing that he can think of where the drainage is coming from is from the house where all the drainage is coming down,' which was there before we even purchased the house and that drainage is what's going down. It even shows that the piece that is the extended piece that is in their property is dry. He said there's no water coming out of that.

**Mrs. Kubenik:** Ever since they built the rock wall was when the road started to be eroded. It was not eroded before that.

**Boardmember Cassidy:** I understand your position, I understand your position: we're just here to talk about the deck tonight so we don't want to waste your time.

**Mr. Kubenik:** No problem.

**Boardmember Cassidy:** We can stay here all night if you want to but it's really...

**Mrs. Kubenik:** No I just wanted to...you know he said a few things that were wrong. Otherwise we were just going to sit down. We wanted to you know...

**Boardmember Cassidy:** Next time. Today we're just here for the deck.

**Mrs. Kubenik:** No, no you're right, you're absolutely right. I just wanted to say they took down that piece of the wall but you're right, we're here for the deck.

**Chairman Froessel:** Anyone feel like they want to go out and look at this?

**Boardmember Cassidy:** Yes.

**Boardmember Keiser:** Yes.

**Chairman Froessel:** I think so too. We have a longstanding policy on this Board that if the members of the Board, upon hearing the application, want to go out and look at the property we will hold the application over and adjourn it for a month so it gives us a chance to go out and look at the physical conditions and then come back and make a more informed vote when it is time for that. I think based on what we've heard tonight I would like to take a closer look at it. The Vice Chairman said he would, Boardmember Lucchino too as well as Boardmember Keiser. So it think what we will do is hold your application open. We are not going to vote tonight. We are going to hold it open until next month. In that intervening month we will all go out and take a look, not at the same time, but we will all get out there at one point or another and then come back November 21 and hopefully we can vote on it then.

**Mr. Rodriguez:** Okay, that's fine. Thank you very much.

**Boardmember Keiser:** Can we just go out there and look? Do you have a dog or anything?

**Mr. Rodriguez:** No we don't except the address is 28 Forest Lane but the driveway is not. You would have to come up around the block and go down Curiosity Lane and that's where the driveway is.

**Deborah Bernstein, 8 Bradford Lane** - Public Hearing to review an application for a deck, which requires a 15 ft. north rear setback variance where 50 ft. is required and 35 ft. is proposed.

Sharon Sheil with Caldwell Banker, representative for Deborah Bernstein, was sworn in and the mailings were found to be in order. Boardmember Sheil recused himself due to a family member being involved.

**Chairman Froessel:** Please tell us about your application.

**Ms. Sheil:** I am here seeking ZBA (Zoning Board of Appeals) approval for an existing deck that has actually been here since prior to my client owning the house. My belief, per a CO that was issued by the Building Department is that this deck was here when the house was originally

built. There is a CO in the building file. However, upon further digging, we found there was no ZBA approval and it does not meet setback requirements so I am here seeking that ZBA approval. I do have pictures of the deck. I do also have a picture of the original CO that was issued in 1996 for this deck but unfortunately I only have it on my phone. I should have printed it. I apologize but I am happy to pass my phone around so you can see it. Here are pictures of the deck and the gazebo in question. The deck actually is in compliance. It is the gazebo that is not.

**Boardmember Lucchino:** Is this house for sale?

**Ms. Sheil:** It is. It's on the market. I'm representing it, yes. That's how we discovered the problem. It's been there since before my client bought it. She bought it with the knowledge that it did have a CO in the Building file. I will show you in the picture. Again I apologize. I should have had this printed. It was issued by Mr. Jasko (Building Inspector) on 5/6/1996 and it says finished basement, deck and gazebo.

**Boardmember Lucchino:** The CO says that?

**Ms. Sheil:** Yes it says it right there. I can enlarge it if that helps.

**Boardmember Lucchino:** Oh okay. I see. So then you just assumed that the Building Permit included the whole deck with the gazebo?

**Ms. Sheil:** It said gazebo, the CO.

**Boardmember Lucchino:** The Certificate of Occupancy but the Building Permit didn't say it?

**Ms. Sheil:** The Building Permit said it.

**Chairman Froessel:** The Building Permit leads to the Certificate of Occupancy.

**Ms. Sheil:** Right. So it was upon further investigation in the file that we realized there was a discrepancy because the file did say there was no CO going to be issued for the deck. Then when we went on to look further and see if there was any record with the ZBA and there was no record with the ZBA. Therefore we are here seeking compliance. But, this deck has been there since, like I said as far as I know, since 1995 when the house was built. In 1996 the whole house got a Certificate of Occupancy and it really does not...as you can see by the pictures there is nothing but land behind it. There is actually a camp that's behind the house. I actually took pictures both with foliage and without foliage so you can see that even with all the leaves down it would not impede or obscure...it's been there for 20 years anyway but it won't impede upon the neighbors behind or to the east or west.

**Boardmember Vink:** The CO certainly says what it says, deck and gazebo.

**Chairman Froessel:** And when did your client buy the house?

**Ms. Sheil:** 18 years ago.

**Chairman Froessel:** They are the original owners?

**Ms. Sheil:** No. There was one owner prior.

**Chairman Froessel:** Okay.

**Ms. Sheil:** So I mean I guess this could have easily flown under the radar and may have even upon review of title. Obviously they didn't do municipals 18 years ago but with the fact that there was none we didn't want to leave any stone unturned. We wanted to make sure that this was truly a CO and that we didn't have the clients in front of the ZBA because it does not meet setback requirements.

**Chairman Froessel:** It would certainly appear that your client got the short end of the stick.

**Ms. Sheil:** Yes completely and she's across the country so that's why I am here. It's not even like she is local unfortunately so I had to make that horrible phone call to her and I told her I would take care of it.

**Mr. Stephens:** Just out of curiosity, one of the photographs shows a shed.

**Ms. Sheil:** Yes.

**Mr. Stephens:** Whose property is that?

**Ms. Sheil:** That's on their property.

**Mr. Stephens:** How come that doesn't have a CO?

**Ms. Sheil:** Yes it does.

**Mr. Stephens:** It looks like it's closer to the property line than the gazebo is.

**Chairman Froessel:** I'm guessing Will (Stephens) it possible a variance was granted for the purposes of having a shed in a particular location as depicted in the drawing.

**Mr. Stephens:** Then the application should reflect that there was a prior application for a shed.

**Ms. Sheil:** I don't know but I can look through the pictures of all of the COs for the property so let me just scroll back.

**Chairman Froessel:** My question is: if there is a CO that has the deck and the gazebo on it why are they even here?

**Mr. Stephens:** Well my other question was: was the CO issued at the time before the setbacks requirements different back when this was built?

**Ms. Sheil:** I don't know.

**Mr. Stephens:** If it was conforming at the time it was built then we don't need for you to be here, correct?

**Ms. Sheil:** But there were conflicting notes in the file and that's why Mike (Levine) said that we had to come in front of the Board because in the file it was...I thought in my personal opinion obviously being not on the Board but that if you already have a Certificate of Occupancy, even if there were notes in the file contradictory to that, that the CO would supersede the notes.

**Mr. Stephens:** If a CO was issued in error it's not binding against the Town.

**Ms. Sheil:** Correct. So what his assumption was, was that the setbacks were the same and therefore this would be required to come in front of the ZBA for the...

**Mr. Stephens:** Over the last 20 years a lot of the areas in this Town have been up-zoned and what may have been an R-60 zone may now be an R-160 zone. The lots then are pre-existing non-conforming but the setbacks are greater, understand?

**Ms. Sheil:** Yes.

**Mr. Stephens:** And one of the things that the Building Inspector should have done is looked to see what the setbacks were at the time this was built and it could very well be that it's still perfectly legal and there's no need for an application but I don't have the historic zoning regulations in front of me so I couldn't say.

**Ms. Sheil:** Right. As we're discussing this I do believe there was some sort of notation made in the file saying that the deck CO would not be granted and that's why this whole question came up and it arose and that's why he pulled the CO back stating that it didn't meet setback requirements. I'm not sure if the notes in the file indicated that it didn't meet setback requirements and this was all in the packet stapled together with the gazebo, the deck, and the basement being COed.

**Mr. Stephens:** Well then I'd have the same question with regard to the shed.

**Ms. Sheil:** Okay. I was actually trying to scroll through my pictures to see if I have the CO. If that's...I mean...

**Boardmember Wunner:** Her title company relied on that CO...

**Mr. Stephens:** Isn't that...

**Chairman Froessel:** ...enforcing the...

**Mr. Stephens:** ...the owner to tell us...generally it comes...they just give you...they provide you with whatever documents are in the Town's records. They don't ensure them.

**Ms. Sheil:** If that shed is removable does it need a CO? I'm just still going through the pictures so...

**Boardmember Vink:** If it's under 100 sq. ft. it doesn't need a CO.

**Mr. Stephens:** That looks like it is literally right on the edge...

**Boardmember Vink:** Of the property line.

**Mr. Stephens:** So the shed doesn't need a CO doesn't mean it doesn't need a variance. That's probably an 8x10. If it's more than 4 ft. high it requires a CO, a Building Permit and a CO.

**Ms. Sheil:** She would be more than willing to take the shed down if that was an...

**Mr. Stephens:** I'm just saying if you're trying to get things done.

**Ms. Sheil:** Yes absolutely. I will look into that as well. If she needs to take that down she absolutely will. I think instead of going through the process she would probably just remove it at this point. Are there any other questions regarding the deck?

**Chairman Froessel:** No.

**Boardmember Vink:** It looks to me like Ed Jasko (Building Inspector) signed off on this when it was first built. I'm not going to make her tear down a deck that was signed off on by the Building Inspector.

**Ms. Sheil:** And at this point too as far as...you know even if it were a new deck that she was seeking to build, it really does not impede upon the neighbors whatsoever. Like I said the Alliance Camp is behind them. The neighbors to the right, you can see in one of my picture even with the leaves down, the neighbor that would be affected by this right side by the deck you don't even see home even when the foliage is down so it truly doesn't impede upon them. No one has questioned it or argued it in the 20 years that it's been standing.

**Boardmember Vink:** Victoria (Desidero) are the mailings in order? I don't think we asked.

**Ms. Desidero:** They are in order.

**Chairman Froessel:** But here's my question. Do we adjourn this and have a conversation with Michael Levine (Building Inspector) about whether or not she needs a variance in the first place or do we just gone on as a determination from the Building Inspector saying she needs a variance and we need to vote on it?

**Boardmember Cassidy:** I'm inclined to vote on it and not bring her back because of a legal formality especially since I think it's inequitable to grant a CO and then say "no backsies" rule should be in effect.

**Chairman Froessel:** Absolutely but because of the granting of the CO it makes me wonder.

**Boardmember Cassidy:** If it was legal back then?

**Chairman Froessel:** Well no. If we're granting a variance for something that doesn't need a variance.

**Boardmember Vink:** Let's say if we are there's no harm, no foul.

**Chairman Froessel:** Pretty much and that's why I'm kind of leaning the other way towards let's just vote on it as a variance.

**Boardmember Cassidy:** That would be my inclination.

**Boardmember Vink:** Shall we ask the applicant what her preference would be?

**Chairman Froessel:** We can. You would probably rather have us vote tonight?

**Ms. Sheil:** I would much rather that, yes, as would my client.

**Chairman Froessel:** I think we understand this pretty well. Anyone else have any questions for the applicant? Anyone in the audience have any questions about this application? Before I close the Public Hearing do you have any final statements or comments you would like to make in support of your application?

**Ms. Sheil:** No I think it's pretty clear, thanks.

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

**Ms. Sheil:** I have yes.

**Chairman Froessel:** Okay we will close the Public Hearing. This looks like a Building Department snafu from the Ed Jasko era. There were a few back then. I will entertain any motion that anyone would care to make on this application.

The motion to grant the requested variance of 15 ft. from the north rear setback where 50 ft. is required and 35 ft. is proposed to legalize the existing deck and gazebo was introduced by Boardmember Vink, seconded by Boardmember Cassidy. The Criteria:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the variance.  
No it will not. This is perfectly in keeping with the character of the neighbor and it has been there for 20 years at least and there has been no objection from any of the neighbors.
2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.  
It's existing and it was approved by the Building Department. I don't think there's a feasible way other than a variance.
3. Whether the requested variance is substantial.  
Due to the layout of this property and what's back behind it and the fact that it's at the end of a long driveway with no neighbors to speak of there in that area, no I don't think it's substantial.
4. Whether the proposed variance will have an adverse effect or impact on the environmental conditions in the neighborhood or district.  
It hasn't in this long and I don't think it will.
5. Whether or not the alleged difficulty was self created.  
No it appears to have been created by the Town's Building Department.

Roll Call Vote:

G. Wunner	In Favor
K. Sheil	Recused
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 6 to 0 with 1 recused.

**Bill Henry Tree Service, 47 Prospect Hill Road** - Public Hearing to review an application for the proposed renovation of a non-conforming residence in the ED Zone, which requires a Use Variance for a residential dwelling in the ED Zone.

Jamie LoGuidice of Insite Engineering and Bill Henry of Bill Henry Tree Service were sworn in and the mailings were found to be in order. This is a referral from the Planning Board

**Ms. LoGuidice:** Good evening. My name is Jamie LoGuidice from Insite Engineering, Survey and Landscape Architecture. We are here on behalf of Bill Henry Tree Service and I am here with the applicant. The variances we're seeking tonight are...there are actually three of them. These are for an existing building on a property located at 47 Prospect Hill Road. If you are not aware of where that property is, it's on Prospect Hill right before the road blockage where the MetroNorth service area is so as you are coming to it, it's on the right and it's the last property. It is the old radio tower parcel. There is an existing building that has been essentially condemned in the last year and half to two years. It was an existing residence. Mr. Henry would like to use it and basically rehab it back into a residence on the upper floor and then an office on the lower floor for his tree service that has been proposed with the Planning Board where there will be another building on site. The existing building is right here. The current building, other than it being condemned and needing some rehab, is conforming as far as setbacks go and the property is all set with lot coverage. So, the actual variances that we're looking for deal with having a residence within the ED Zone where it is not permitted and has not been in use for the last six months. The next variance is for a change in the existing structure of a noncompliant building. The last variance is to continue the pre-existing nonconformance of a residence in the ED Zone. So really we are looking for three use variances. The use itself of the residence will be rented out to one of Mr. Henry's employees basically as a caretaker residence so he can overlook the business and kind of keep a secure eye on the property itself as there will be equipment on site and his business will be there.

**Boardmember Lucchino:** Is there equipment on site now?

**Mr. Henry:** Yes.

**Boardmember Lucchino:** Does anyone watch over it?

**Mr. Henry:** No.

**Boardmember Lucchino:** Do you have reason to fear it would be damaged?

**Mr. Henry:** Well...

**Ms. LoGuidice:** We're hoping not.

**Boardmember Lucchino:** So why do you need a watch person?

**Mr. Henry:** Well once I get everything there...

**Boardmember Lucchino:** Oh I see you're going to add to what's there.

**Mr. Henry:** Oh yeah.

**Boardmember Lucchino:** You have cameras? Security system?

**Mr. Henry:** I have it. I haven't put it in the building yet. I'm waiting.

**Boardmember Cassidy:** Was this building condemned?

**Ms. LoGuidice:** Yes.

**Boardmember Cassidy:** So it was residential and then condemned and now you want...is it now uncondemned or not yet?

**Ms. LoGuidice:** Not yet.

**Boardmember Cassidy:** So you just want to restore it to what it was before it was condemned, correct?

**Ms. LoGuidice:** Right. We submitted to the Building Department for renovations to that building and then found out that it was condemned and was not compliant so that's why we're here.

**Boardmember Keiser:** Why was it condemned?

**Mr. Henry:** The roof, mold.

**Chairman Froessel:** If you look at it from the outside it looks like a perfectly good house.

**Ms. LoGuidice:** The inside not so much.

**Chairman Froessel:** Yeah, the outside looked like...you would say 'why was this house condemned?' But on the inside they have issues.

**Boardmember Keiser:** We looked at this before.

**Chairman Froessel:** Bill was before us for a Work Session some time ago.

**Mr. Henry:** It was a while ago.

**Chairman Froessel:** If I remember correctly on one side you're abutted by the MTA and on the other side there's a residence, correct?

**Mr. Henry:** Correct.

**Ms. LoGuidice:** Yes. There is an existing residence...essentially right here two residences about our property line and MetroNorth is here.

**Boardmember Cassidy:** Are those residences in the ED Zone? The neighbors?

**Ms. LoGuidice:** I don't believe that they are.

**Chairman Froessel:** You'll be doing work on the property such as run chain saws?

**Mr. Henry:** Oh yeah.

**Chairman Froessel:** It's going to limit your potential tenants I would imagine.

**Ms. LoGuidice:** He is looking for it for his employees essentially.

**Mr. Henry:** It won't be all the time, just an hour here an hour there. The trains alone there going on at 5:00 in the morning are loud.

**Boardmember Lucchino:** Can you describe what you're going to do to the building so that it's livable?

**Mr. Henry:** It's already gutted so I could take the mold out. Put in new insulation, re-wire it, put a new roof on to keep the water out, new gutters, and new sheetrock. Everything is new.

**Boardmember Lucchino:** So you did new walls, everything?

**Mr. Henry:** Oh yeah.

**Boardmember Lucchino:** And you already built it so that the top is residence and the bottom is an office? You set it up that way already?

**Mr. Henry:** It was already. It had a kitchen, bedrooms...

**Boardmember Lucchino:** Before it was condemned?

**Mr. Henry:** Before it was condemned yes.

**Boardmember Lucchino:** Was someone living there before?

**Mr. Henry:** Yes, a guy from the radio station.

**Boardmember Lucchino:** Oh. Did you own it then?

**Mr. Henry:** No. I bought it back in February.

**Boardmember Lucchino:** Can I ask you another question? In the letter from Michael Levine (Building Inspector) from September 28, it says you need a 'use variance for a residential dwelling in the ED Zone' from us but you're asking for three variances, correct?

**Ms. LoGuidice:** I believe in his letter he has three variances listed.

**Boardmember Lucchino:** That's how he wraps up at the end though.

**Ms. LoGuidice:** Right.

**Ms. Desidero:** May I just say that I asked Michael Levine about that because we had difficulty writing the agenda. Sometimes a question comes up. He conditioned it as one use variance to allow the continuation of the residence in the ED Zone.

**Chairman Froessel:** He is just outlining the reason why you need a use variance but I don't think it's three variances.

**Ms. Desidero:** Just one use variance. That's the way he explained it to me. That's why it's written the way it is on the agenda.

**Chairman Froessel:** Here's what I see as the critical issue on this application. As you know we apply criteria that are imposed upon us by State Law. We have no say in the matter. We have to judge every application by those criteria. For a use variance, one of the criteria is that 'the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence,' which basically means without this use variance you won't get a reasonable return on your investment in the property. In my 19 plus years on this Board we've granted exactly one use variance and I can tell you which one it was: Brewster Honda. They own a parcel behind the Scout Realty that is landlocked and you can't get to it any other way than through the current Brewster Honda property and because the property is landlocked and all that, they met the criteria for a use variance. The Board granted it. We haven't had a lot of applications for use variances. We usually try to avoid them where we can but I think we're going to need some kind of a showing with respect to return on investment if the current residence on the property were not allowed to be a residential dwelling. I don't know what you have tonight that could possibly have bearing on that aspect. There are other criteria too. I don't think in the context of this application that they're as important as the one I just mentioned but we do have to look at that. Basically whether or not you can realize a return on your investment without this use variance.

**Ms. LoGuidice:** Okay. We will have to come up with a game plan on that and get back to you.

**Chairman Froessel:** I think you do. It might involve some kind of property appraisal or something along those lines but there needs to be some sort of showing regarding the financial aspect. I will tell you what the other criteria are. The second one is: 'that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood.' The third criteria is: 'that the requested use variance, if granted, will not alter the essential character of the neighborhood.' You are considering adding on a residential dwelling in a place where neighboring properties are residential doesn't really alter the character of the neighborhood. 'The alleged hardship has not been self-created.' There's an argument to be said that it's not self created because of the circumstances of the condemnation of the building. The reasonable return is the tough one and from having done some zoning work over the years I can tell you that when use variances get overturned under Article 78, that's always the one or when failure to grant one is overturned and the person gets it is because that wasn't taken into account properly but that's probably the most important element.

**Ms. LoGuidice:** Okay.

**Chairman Froessel:** So I hate to send you packing and make you come back next month but I want you to give the opportunity to be able to address that.

**Ms. LoGuidice:** Okay. We will see you next month.

The Meeting Minutes of September 19, 2016 could not be approved and will be reviewed again at the November 21, 2016 meeting so that the voice file can be reviewed in reference to the section on page 5 where there was a conversation between Mr. Lavender and Boardmember Lucchino pertaining to the colors used on their sign.

Respectfully submitted,  
Cathy Chiudina