

**Town of Southeast
Zoning Board of Appeals
Minutes of January 20, 2021**

Timothy Froessel, Chairman	Present
Paul Vink, Vice Chairman	Present
Roderick Cassidy	Present
Greg Wunner	Present
John McNeill	Present
Steve Corozine	Present
Andres Gil	Present
Ashley Ley, Town Planner	Present
Will Stephens, Jr., Town Counsel	Present
Victoria Desidero, Board Secretary	Present
JoAnne Ciralli, Assistant Secretary	Absent

Work Session:

Regular Session:

Pledge of Allegiance.

Chairman Froessel: OK. Good evening. Welcome to the January 20, 2021 Public Hearing of the Town of Southeast Zoning Board of Appeals. My name is Tim Froessel. I'm the Board Chairman. Our Vice Chairman Paul Vink is also with us this evening. Because we're proceeding by video conference as permitted by the Governor's executive order, as part of that... that procedure, I have to ask each of the Board members to state that they're present. So, I'll do sort of a roll call and I'd ask each Board member to just say 'present' after I call your name. (Roll Call Taken. Results above.) OK. So, we've got all seven Board members present this evening and we have five applications on the agenda and I'll run through them. Number one is Frank and Carla Bueti. Number two is John Newell and Karen Gress Merritt. Number three is Sergiy and Danielle Dnes. Number four is Convince Realty Corporation and the Law Office of Andres Gil, and number five is Jasen Hernandez. So, we'll... we'll take them in that order.

1. Frank & Carla Bueti, 12 Hill Lane, Tax Map ID 88.8-1-2

Public Hearing to review an application for a proposed portico and an existing deck requiring the following variances:

1. East Front setback: 18 ft. where 82 ft. is proposed and 100 ft. is required;
2. North Side setback: 94.28 ft. where 5.72 ft. is proposed and 100 ft. is required;
3. South Side setback: 82 ft. where 18 ft. is proposed and 100 ft. is required;
4. Total Side setback: 76.28 ft. where 23.72 ft. is proposed and 100 ft. is required;
5. West Rear setback: 100 ft. where -3 ft. is proposed and 100 ft. is required (the deck encroaches onto the neighboring parcel by 3 ft.)

Carla Bueti represented the application and was sworn in.

Chairman Froessel: We'll start with number one, Frank and Carla Bueti. Anyone here on that application?

Carla Bueti: That's me. Carla Bueti.

Chairman Froessel: Hi, ma'am, how are you?

Ms. Bueti: Hi. I'm good, thanks. How are you? Does... do you need my husband?

Chairman Froessel: If he's going to speak, yes, because actually I'm going to ask the Vice Chairman to swear you in. So, if your husband's going to speak also, then we'd want to swear him in as also... as well.

Ms. Bueti: Yeah. We're fine. We're good.

Chairman Froessel: OK. Paul, can you swear the witness in please?

Boardmember Vink: Sure. Ms. Bueti, can you raise your right hand for me please? Do you swear the testimony you're about to give is the truth to the best of your knowledge?

Ms. Bueti: Yes, sir.

Boardmember Vink: Thank you.

Chairman Froessel: OK. Ms. Bueti, why don't you go ahead and just sort of give us an overview of your application; what you're looking to do?

Ms. Bueti: We bought our house in 2005 and there was an existing deck on the back of it and there was no Certificate of Occupancy for it. So, I'm applying to have that... get the variance for the deck.

Chairman Froessel: OK. It also... it also said something about a proposed portico? Is that part of your application?

Ms. Bueti: It is, but we're not going to proceed with the portico at this time.

Chairman Froessel: Oh. OK. Do you want... do you want us to not consider that then? Do you just want to do the deck?

Ms. Bueti: Would it be easier if... if... maybe it would... we could proceed with the portico... just that way in the future if we want to do it, then we're okay doing it?

Chairman Froessel: That's fine. I mean... you... you brought the application. It's properly before us. So, I don't see why... why you wouldn't go ahead now.

Ms. Bueti: OK. OK.

Chairman Froessel: OK. So, now, I'm looking at the survey of your property, which I apologize in advance, because the copy that I got is really dark. It's hard to read. It looks like the deck is behind your house, on I guess it's on the west side?

Ms. Bueti: South side... south, yeah, south. I guess. I don't know. If you think it's on the west side, then it's on the west side. I'm not really sure to be honest.

Chairman Froessel: South and west, I guess.

Ms. Bueti: OK. OK. That's a good compromise.

Chairman Froessel: OK. And you said the deck was there when you bought the house in 2005?

Ms. Bueti: Yes.

Chairman Froessel: Have you made any changes to it since you've lived there?

Ms. Bueti: We have not.

Chairman Froessel: I'm having a hard time telling whether... does the... does your deck actually extend over the property line onto the neighboring property?

Ms. Bueti: It does.

Chairman Froessel: That's a little bit of a problem.

Ms. Bueti: So, is it still a problem even though the neighbors behind us know and, you know, basically signed off and it can be here and all that stuff?

Chairman Froessel: We've had a policy in the past of not granting variances for any structure that encroaches over a property line.

Boardmember Gil: I think the... I think the issue really is that, and correct me if I'm wrong here, Tim, but because of that, I mean even if its... the... they would need a... a correct survey done and then if they want to purchase a portion of that land, you know, from your... if you wind up purchasing a portion of the land from your neighbor, depending upon the size that you purchase, you may... you might not even need the variance but it's... it's really that you don't own the property. How can we grant a variance on a piece of land that you don't own?

Chairman Froessel: Yeah. I... I think they're going to need a variance no matter what but you may not need to buy a sliver of your neighbor's property. It's possible if you just had an easement or a license or some sort of written agreement from the neighbor permitting it to be there, then we could do it. We've done that in that past where an applicant came to us seeking to legalize a structure that was over a property line and not on their property and they've obtained, you know, either a license or a written easement that gets filed in the land records, and at that point, then we can... then we can act.

Boardmember Cassidy: Because without that, Mr. Chairman, I don't know that we have jurisdiction.

Chairman Froessel: We certainly... we certainly can't grant a variance to put something on someone else's property.

Boardmember Vink: Right. We could... we could grant... we could grant the zero... a zero setback. You know, we could grant a 100% setback and make it at the... at the property line but that wouldn't technically legalize the porch... the patio... so.

Boardmember Wunner: I have a question. Would they be willing to alter the deck and cut it back slightly in that one section?

Ms. Bueti: I... it... I think that would be really hard to do just because of, you know, where... where it is. I mean, yeah, you see... you can see the picture of it there, right? And it just... I... I don't think that would be feasible to be honest.

Boardmember Wunner: I'm just looking at this survey that... that is dark and it looks like it only encroaches just slightly. Maybe you could just... if we were to offer you a zero setback, you may be able to just trim the back of the, you know, the deck... just trim a foot off of it or whatever it would be. The surveyor would probably have to determine that but it's... it's... it would just make it... I know it's a little bit of work, but it might be the easiest way to go.

Ms. Bueti: Right, because it does encroach. It's... it's really not that much. It's probably... I think it's a foot or two, isn't it?

Boardmember Wunner: It's hard to read on this plan, but it just seems as though if you were to trim that corner of the deck off, which I've seen done before, and we were to entertain a zero setback, then you wouldn't have to deal with your neighbor and a lot of other expense. It may... it may simplify...

Boardmember Corozine: The... yeah, the Inspector's letter indicates that it's a 3 ft. encroachment.

Ms. Bueti: Three foot. OK.

Boardmember Wunner: What's the size....

Boardmember Corozine: That's what's indicated.

Ms. Bueti: So, then the deck would have to be cut back how many feet? If... well, would it be three feet if it's... if it's three...

Boardmember Wunner: You have to get back inside the property line.

Ms. Bueti: Right, and then when you say a zero setback, is that the deck would be cut three feet back to then just be right on the property line?

Boardmember Wunner: If you're inside...

Chairman Froessel: Zero... zero setback is on the property line.

Boardmember Wunner: Yeah. If you were inside your property line, then would... I think it would be a real simple decision to entertain the zero or, you know, 6-inch versus involving your neighbor.

Boardmember Vink: I think... I think the problem they're going to have with that is that's the downhill side of that... of that patio. I... I... I didn't look at it but there's probably a pretty big drop off there, isn't there?

Ms. Bueti: On the end of the deck. Not on the... not on the end that you're looking at, but on the far end of the house, there is a big drop off there, yes.

Boardmember Vink: And... and that's... that's the side that encroaches, I think.

Ms. Bueti: That is the side that encroaches, yes.

Boardmember McNeill: Yeah. The front... the front left portion that we had on the picture there that's shown right now; that's actually like on the property line.

Boardmember Vink: Right.

Boardmember McNeill: And then it encroaches as it goes back. Was there a... was there a... was there a Building Permit pulled out for this deck at any time back in the day?

Ms. Bueti: I have no idea. I have no idea.

Boardmember McNeill: It didn't come up in the closing?

Chairman Froessel: I would guess, John, that there probably was. Not only because of my personal experience when I bought my old house in the Town of Southeast. It turned out my garage... a Building Permit had been pulled but the Certificate of Occupancy had never been granted.

Boardmember McNeill: Right.

Chairman Froessel: I had to pay for a renewal permit then get the Certificate of Occupancy, and that was all that was required. So, my guess...

Boardmember McNeill: OK.

Chairman Froessel: ...is if there was a permit on record, this probably would have been easier for her, although if it wasn't constructed in accordance with the permit, it was over the property line, then that would probably be a problem.

Boardmember McNeill: Sure. OK.

Chairman Froessel: I... I'm going to suggest, ma'am, that maybe we table this until next month and give you a chance to figure out how you want to deal with this. I think you've got a couple of options. One is, as some have mentioned, altering the size of the deck to get it on the property line. Another option would be trying to get an easement from your neighbor, but we would leave your application 'pending' and just adjourn it for a month.

Boardmember Gil: I would... I would recommend... I'm not sure how long ago that they purchased the home but I would really recommend speaking to Counsel between... your attorney that represented you at the home closing... between now and the next Board meeting so that we actually could... you know... You can make an informed decision about how you want to go about doing this so that we can actually move forward with something at the next meeting because we would need something right... soon... between now and the next meeting to have a resolution at the next meeting.

Chairman Froessel: Yeah. I mean we'd want to... it would be helpful for us to know, you know, before the next Public Hearing, you know, kind of what the status is, because if it's something we can vote on if we... if we know what's... if we know you've resolved it in a way that we can vote on it, we can go ahead. If it hasn't been resolved, then obviously we... we wouldn't want to proceed.

Ms. Bueti: Sure, sure. So, I... I feel like an easement from my neighbor... I think they would be cool with that. Is that like... could... what's the... what is... how do I go about that?

Chairman Froessel: You would need to have an attorney draft up... you'd have to... it's going to... you need a surveyor and a lawyer at the very least because a surveyor is going to have to draft a description of... of where the property line is and how much you... you go over it. So, it'll be a specific description and then a legal written document that grants that easement, and it'll have to be filed in the Land Records. And again from personal experience, I have a little bit of experience with this because the house I live in now when it was originally built in the 1970s, long before I owned it, the developer put part of my driveway on my neighbor's property, and it wasn't discovered until subsequent real estate transactions, and it was resolved with a deed...I have a deeded easement on my neighbor's property to use my driveway.

Ms. Bueti: And, funny you say that, because our neighbors have that on, right, on our road. Don't they have that? Something... we have something like that, too.

Chairman Froessel: It looks like... it looks like their road crosses through the middle of your property.

Ms. Bueti: Pretty much. It does. Yeah. Yes. So, my neighbor... the neighbor behind us has to go on our property to get to their house. So, it's, you know, and I mean, you know, like I said, we're... we're fine with them, you know, we're friendly and everything so I don't think that would be an issue. So, is it a matter of approaching them and asking them if they would be okay with it and then going to the surveyor and the lawyer and kind of getting it done that way?

Chairman Froessel: I... I think that's the proper order in which to do it because you don't want to engage the surveyor and lawyer only to find out that your neighbor is going to say, 'no way.' So, I... I think you probably take it up with the neighbor first. Then, if they're amenable, then... then you go and incur those costs.

Ms. Bueti: OK. And then, obviously, the survey that is already on file because it's dark... is that one reason why it doesn't work or you're just looking for more detail from the surveyor as far as the property line goes?

Chairman Froessel: You're going to need... you're going to need the surveyor to essentially define the scope of the easement. The easement will have a property description on it of just how far your deck goes over and from what... what spot on the property line to the other.

Ms. Bueti: OK. OK and so, then the next meeting is at the end of February.

Chairman Froessel: Yes. Victoria, what's the date on that?

Secretary Desidero: Third Wednesday. Give me a second.

Chairman Froessel: The 17th?

Ms. Desidero: Yes.

Chairman Froessel: February 17th is our next meeting.

Ms. Bueti: OK. So, what happens if things don't get done in that time?

Chairman Froessel: You... you give Victoria a call. Tell her that you've got it in process and that you're not ready for us to vote on it yet and we'll adjourn it another month.

Ms. Bueti: OK. So, then, one more question, if... if I do all this and then come back to you guys, you're going to... you still have to vote on it? So, you just...

Chairman Froessel: We still... we still have to vote on it but at least then we can vote on it.

Ms. Bueti: OK.

Chairman Froessel: One of the criteria we apply is sort of the character of the neighborhood, whether or not your deck adversely affects the character of your neighborhood. If you're adjoining next door neighbor has agreed to an easement and allows it to stay, that's a pretty good indication that it's... it... it fits within the character of the neighborhood, at least from my point of view. I'm one of seven members of the Board but I think that's a good indicator.

Ms. Bueti: OK. That makes sense, Tim. Thank you.

Chairman Froessel: You're welcome.

Ms. Bueti: Thank you so much.

Chairman Froessel: OK. If you have any questions about the process as you're going through, give Victoria a call. She can always reach out to me or what have you, and hopefully you can get this straightened out in...in a matter of a month or two.

Ms. Bueti: OK. I appreciate it.

Chairman Froessel: You're welcome.

Ms. Bueti: You guys have a good night. Thank you.

Chairman Froessel: Thanks. Take care.

Ms. Bueti: You too. Bye, bye.

2. John Newell & Karen Gress Merritt, 190-192 Route 22, Tax Map ID 78.-1-37

Public Hearing to review an application for a proposed renovation of an existing structure in the GC Zoning District for the purpose of residential occupancy where this is not a permitted use in the district and requires a Use Variance. The property is located in a Split Zone (R-160/GC) however the building is located in the GC Zone.

John Newell and Karen Gress Merritt represented the application and were sworn in.

Chairman Froessel: OK. Number two, John Newell and Karen Gress Merritt. Who's here on that? Hello, nice to see your smiling face in the box. OK. OK. The applicants are here. OK. Why don't you folks... first of all, let me have the Vice-Chairman swear both of you in please.

Boardmember Vink: Would you raise your right hands please? Do you swear the testimony you're about to give is the truth to the best of your knowledge?

John Newell: I do.

Karen Gress Merritt: I do.

Boardmember Vink: Thank you.

Chairman Froessel: OK. Why don't you go ahead and give us a description of... of the variance you're seeking and what it is you'd like to do?

Mr. Newell: OK. The route... 190-192 Route 22 property for many decades has existed as a light manufacturing use which was non-conforming to the R-160 Zoning. The property has had many maintenance issues over the years. In 2015, the Town of Southeast created a new GC Zone and split the property. However, unlike other business and commercial zones in the Code, there was no residential accessory uses provided for in the GC Zone. Although one of the buildings has been used for residential occasionally, it could not qualify under the Extension of Use 138-8 nor 138-11 Nonconforming Residence, since it was not residential at the time. While a property owner seeking a variance no longer... excuse me... while a property owner seeking a variance no longer needs to provide hardship reasons for the request, a variance for the residential accessory use of this property would allow for the owners to monitor and approve maintenance for a long... for... maintenance of a long-neglected address. Basically, we're looking for Accessory Use for the GC Zone.

Chairman Froessel: OK. This requires... this requires a Use Variance which is a different standard than an Area Variance. First of all, let me just go through... I've looked at your... your plans, and it looks like there is just one bedroom that you're doing? Or is that... is the upstairs a second bedroom?

Mr. Newell: Yes.

Chairman Froessel: OK. But there's an office in the front?

Mr. Newell & Ms. Merritt: Yes.

Chairman Froessel: What is... what is the office for?

Mr. Newell: Just a personal business office.

Ms. Merritt: We haven't really made any... nothing definite. We're just trying to make it conforming so then we can move forward.

Mr. Newell: Yeah. Nothing. Nothing.

Chairman Froessel: OK.

Ms. Merritt: In the past, it's been used as many different things including a residence but...

Chairman Froessel: There's another building on this property. Am I correct, to the left of it?

Mr. Newell & Ms. Merritt: Yes.

Chairman Froessel: And you own that as well?

Mr. Newell & Ms. Merritt: Yes.

Ms. Merritt: It's one piece.

Mr. Newell: It's all one piece of property, 190 and 192.

Chairman Froessel: OK. What are you doing with the other building?

Mr. Newell: Nothing as of yet.

Chairman Froessel: OK.

Ms. Merritt: We only bought it a few months ago, and it needed a lot of work.

Chairman Froessel: OK. And had you... had you explored a, you know, some kind of commercial... a conforming, commercial use for the property?

Mr. Newell: No. We wanted to do the accessory use that way we have... it gives us options.

Ms. Merritt: Yeah. We're not looking to change it to an entire residential... yeah, home. We're trying... we just want the residential... I guess there's some other... what is it in the GC Zone? There are... they were given an accessory use in other areas, whether it be in the historic district...

Mr. Newell: Yeah. Or the business district.

Ms. Merritt: ...business district. They were also had residential... a residential use as an accessory use.

Mr. Newell: Listed in the Code.

Ms. Merritt: Correct.

Chairman Froessel: Yeah. That's not the case in the Zone you're in.

Mr. Newell: Yes.

Ms. Merritt: Correct and we don't know why they left it out of this particular Zone, whether they didn't realize it or whether they did realize it. The one thing that you can't see in the survey... so we quickly go the survey done prior to this meeting... so it was kind of a little fast but in the back of this property...

Mr. Newell: Is residential.

Ms. Merritt: ...is residential. We can't really build on it because it's a complete hill but it is... the last $\frac{3}{4}$ of the property is residentially zoned. We can't build on a...

Mr. Newell: On a hill...

Ms. Merritt: ...on a hill, yes.

Boardmember McNeill: Question, does this... does this entire property share a well and septic?

Mr. Newell & Ms. Merritt: Yes.

Boardmember McNeill: It does. So, one well, one septic.

Mr. Newell & Ms. Merritt: Yes.

Boardmember McNeill: OK, and... but you're looking to do residential on the one-story wood frame, yet...

Ms. Merritt: Partial, yes.

Boardmember McNeill: ...something different on the one-story condo?

Mr. Newell: Yes.

Ms. Merritt: Correct. On the one building to the left if you're looking from the street view is clearly like a warehouse type.

Boardmember McNeill: Yeah. That used to be a... was a Butler... Red Butler used to....

Mr. Newell: Yankee Pioneer actually did their... yeah...

Boardmember McNeill: Yankee Pioneer furniture. Yeah.

Ms. Merritt: So, they had their showroom in the building to the right and then they had where they create... they made their furniture in the building to the left. It worked perfectly for them.

Boardmember McNeill: Yes. Right.

Ms. Merritt: Now, trying to find a suitable need for it, is not... it's just... it's not that... you know, we don't have a business to put in both buildings, and unlike, you know, the Butlers did.

Boardmember McNeill: Correct. Thank you.

Ms. Merritt: And the last owner didn't have much luck getting tenants and I think that's why the property went into such disrepair.

Boardmember McNeill: So, you... you would... you would obviously be looking to rent this not... not to owner occupy?

Ms. Merritt: We've thought about both. We're not sure, and plus we have a young daughter that's graduating from college soon and I'm sure she'd rather not live with us. (Laughter.)

Mr. Newell: Gives her options. Give us options as well.

Ms. Merritt: Yeah. So, there... we've thought about a lot of different ideas of what to do with it.

Boardmember McNeill: Thank you.

Boardmember Gil: But I... can you just walk us through? I think we kind have like a partial vision of what you want to do with this property, but I mean what is your overall vision, for not just the one building, for the entire area that's Zoned GC right now? I mean, what's your vision?

Ms. Merritt: OK. So, the... to the building to the right is the easiest one. It actually looks like a home from the outside. It looks like a home from the inside... sort of... I mean it looks like a, you know, modern home, you know, a half office... it looks like a half-office, half-home. There's always been a kitchen. There's always been a full bath and the office is in the front area. Like I said, originally it was a showroom. So, you would enter into the front, you know, area and then the different offices that you would go into, which over the years, I guess were not used as offices and then recently it was a daycare and so, we see that being partially an office. We have, you know, businesses ourselves that easily could go partially go in there. We have an insurance agency. We, you know, you know, so we... we've had conversations about, you know, adding... we have an office in Westchester, adding an office into Brewster...

Mr. Newell: Putnam.

Ms. Merritt: Yeah, into Putnam and then...

Mr. Newell: With Abigail graduating as well, it gives her the opportunity if she wants to open a business, she has an office. She already has her insurance license as well. Just gives us all options.

Ms. Merritt: And then the building to the left, we've had multiple conversations... We had a lot of positive feedback from the Building Inspector, you know, about possibly putting a deli in there. We've had... so, we've had people approach us wanting to put a deli in there...

Mr. Newell: Crossfits.

Ms. Merritt: Crossfits, so, it's... you know, it has options but we just wanted to get everything conforming first before we start.

Mr. Newell: Right now, with COVID... with COVID, it's very difficult and nobody wants to invest any money right now. Nobody wants to start a business, and a lot of businesses can't be started.

Ms. Merritt: Yeah. So, you know, we cleaned up the place, we're going to, you know, we'll keep it that way and hopefully sooner than later, we can end up finding a tenant for the building and warehouse.

Boardmember Gil: So, is it fair to say that your... that the general purpose of land, it's going to be used for commercial?

Ms. Merritt: I'd say it's 50-50, yeah.

Mr. Newell: 50-50.

Boardmember McNeill: The blueprint that we have now in front of us, is that how it... it sits existing or this isn't a proposed... This is how it is current... right now? (Inaudible.)

Ms. Merritt: Yeah. The prior photo is exactly how it sits now.

Mr. Newell: Yes.

Boardmember McNeill: OK. Thank you.

Chairman Froessel: I'll note for... that under... under State law, it's not... not our rule, it's the State's rule, that to get a Use Variance, you have to show that you can't realize a reasonable return as demonstrated by competent financial evidence on the property as its presently Zoned, for the uses for which it's Zoned and that the hardship isn't... is... is unique to that piece of property.

Ms. Merritt: I wouldn't say it wouldn't be very difficult to rent the building to the right as an office.

Mr. Newell: Especially with... right now, I mean there's offices vacant everywhere. I work across the street from the Pepsi... the corporate headquarters from Pepsi, which has one floor currently rented and they cut the rents in half for that one floor for the tenants that have stayed. So, as office space seems to be a very bad investment for investment property and would probably stay vacant, we have probably a very big issue paying the taxes, you know.

Chairman Froessel: Yeah. That's... that's a product of COVID. It's certainly not unique to your property. It's...

Mr. Newell: I agree. I agree.

Ms. Merritt: Correct, but I also think COVID has changed where a lot of industries are going.

Mr. Newell: Yeah. I agree.

Ms. Merritt: Besides the fact that the building itself... on the prior photo that was up with everything that was in there, it... yeah, that one... it looks more like a home. When I walked in, I... I... it... to me, it looks more like a home.

Boardmember Wunner: I... I have a question. Does the Assessor's card reflect this as a residence or a commercial space?

Ms. Merritt: (Inaudible.)

Mr. Newell: I'm sorry. I don't understand your question.

Boardmember Wunner: The Assessor's card for the Town of Southeast Tax Office, the Assessor's card. How is this...

Ms. Merritt: (Inaudible.)

Boardmember Wunner: ...how is this space... is it... is it shown as a residence with a bedroom count or is it shown all as just commercial space?

Ms. Merritt: It's... it states 'commercial.' Yeah. We're not looking for a residence, just an accessory use as our... you know, so we have all options. So, we can, yeah...

Mr. Newell: Yes. Yeah. Keep it commercial with a residence... with an accessory use.

Boardmember Wunner: OK. So, it's...

Boardmember Corozine: I have a question about the Oh, go ahead, Greg.

Boardmember Wunner: I was just going to say currently it does not reflect it as that, right?

Mr. Newell: No. No, it's just commercial right now.

Boardmember Wunner: OK. Thank you.

Boardmember Corozine: Question about the diagram that's being shown right now. Is that the proposed version or is that how it exists today?

Mr. Newell & Ms. Merritt: That's how it exists today.

Boardmember Corozine: OK.

Chairman Froessel: Have you attempted to market the property for commercial use at all since you've owned it?

Ms. Merritt: We have had... Yes. We've had a sign up since day one, and we've had no luck so far.

Chairman Froessel: Just... just a sign, that's all, on the building?

Mr. Newell: Well...

Ms. Merritt: It says, 'For Sale, For Lease' and...

Mr. Newell: ...our realtor is the one we bought the...

Ms. Merritt: And yeah...

Mr. Newell: Our realtor as well... we bought the building from has also been trying to show the building to rent.

Ms. Merritt: Yeah, and I think he's only shown it twice in six months... when did... when did we close? August?

Mr. Newell: August 4th, end of July. Yeah.

Ms. Merritt: Right, we closed August 4th. Yeah.

Boardmember Corozine: How long have you owned this particular building?

Mr. Newell: Five months.

Boardmember Corozine: Five months. OK.

Boardmember McNeill: When... when you purchased... when you purchased the property, what was, you know, your general intention for that particular building that we're looking at right now?

Mr. Newell: Well, it was a jewel in the rough. I mean, it really was. I mean, we'd been driving it by it forever, and every year the building got nastier and nastier. The property got more overgrown, and then we both had a vision and said this place could be beautiful, and you know, the guy was asking way too much for it. He'd been asking way too much for a long time. He'd been just sitting on the building, and you know, we thought it would be a great project for us to take on and, you know, beautify... bring back, you know, make it look great. If you're driving up and down Route 22... Route 22 is a great road. It's a beautiful road, and, you know, you drive by this dilapidated... looked terrible. I mean, it was overgrown. It, and you know, it's a... it ought to be a great project and something for us to work on together and something to keep in the family and we could put one... one of our businesses in there... future... in the future, and you know, it just had a lot of potential. You know... I think it still has a lot of potential.

Boardmember McNeill: OK. Thank you.

Boardmember Vink: Route 22.... 22 is a State road, or... do we need to get anything from the County on that?

Chairman Froessel: We're all good on that, Paul.

Ms. Desidero: (Inaudible.)

Boardmember Vink: OK.

Ms. Desidero: We did get an approval from the County on this one.

Chairman Froessel: Any of the other Board members have any questions for the applicant?

Boardmember Gil: The only question I had is would you be able to produce the... as... as the Board President said, the law is pretty specific on the Use Variance, and it has to meet certain criteria to obtain the Use Variance. With that said, would you be able to produce that analysis, that financial analysis, to show and meet that criteria that there's a no reasonable rate of return utilizing the premises as its Zoned currently?

Ms. Merritt: So, I don't know what.... I don't know how you would make that analysis. Like, how long would we have to hold onto it losing money, because right now there's nobody in it. There's no... we're... we've paid up the taxes in full. We paid the mortgage on time so... so far it's... it is 100% loss, and we've spent a tremendous amount of money....

Mr. Newell: And time.

Ms. Merritt: ...Cleaning and just, you know... So, you know, could we show you a... you know, balance sheet that says we've lost a lot of money so far? Absolutely.

Mr. Newell: Oh, yeah.

Ms. Merritt: So...

Boardmember Gil: Well, I think it's... I think the law requires more than that, and I'll defer to the Board President, but I think the law requires, you know, that we have evidence presented to us at the Public Hearing specifically showing that analysis and a demonstration of that analysis. We can't... they're just words themselves that 'COVID impacted this' or 'COVID's impacting things' alone, unfortunately, does not meet that level of evidence required for the Use Variance. So, I... I think what I'm trying to ask if we did adjourn this, would you be able to produce that evidence in the future? That's what I'm...

Chairman Froessel: And... and... and Andres is correct, and I... I think what really what we'd be looking for is some type of analysis of the expected return on the property as purely commercial property versus the expected return with a residential use.

Ms. Merritt: OK. Being said that way, I think that would be... you know, understanding it, you know, with the... You know, versus one versus the other, I think that'd be a lot easier to show an analysis on and I'm sure our real estate and our attorney would be happy to help us with that.

Mr. Newell: Yeah.

Chairman Froessel: OK. Before I move on, just while I have you here, is there anyone from the public that's on this conference that has any questions about this application? (Pause.) OK. It looks like the answer is no. OK. So, here's what we'll do. I... I think we should adjourn for a month. We'll leave your application open and allow you some time to try to get us that type of analysis that will satisfy the State law that requires some showing of a... of an inability to get a reasonable financial return from a property as it's currently Zoned.

Mr. Newell & Ms. Merritt: OK.

Chairman Froessel: OK. So, we're... you may have overheard from the prior applicant, our next meeting is, I think, February 17th. If you have something to... to submit, it would be great if we could get it before... before the hearing. If you could get something produced and get that to Victoria beforehand. If you're having trouble getting it together and you won't be ready for next month, also give Victoria a call and let her know and... and we can give you some more time.

Mr. Newell & Ms. Merritt: OK. Perfect.

Chairman Froessel: OK. OK. So, this application will be continued. It's on... it'll be on for February, and touch base with Victoria before then and let her know where you stand.

Mr. Newell & Ms. Merritt: Thank you. Thank you very much. Thank you.

Chairman Froessel: You're welcome. Take care and have a good night.

Mr. Newell & Ms. Merritt: Goodbye.

3. Sergiy & Danielle Dnes, 626 Route 312, Tax Map ID 46.9-1-36

Public Hearing to review an application for a proposed addition of a garage that requires the following variances: 19.5 ft. on the south side yard setback where 10.5 ft. is proposed and 30 ft. is required; and 19.4 ft. on the total side yard setback where 55.6 ft. is proposed and 75 ft. is required.

Sergiy Dnes represented the application and was sworn in.

Chairman Froessel: OK. Moving along, application number three, Sergiy and Danielle Dnes? Am I not pronouncing that correctly?

Sergiy Dnes: That's... that's fine.

Chairman Froessel: OK. Hi. How are you?

Mr. Dnes: Good. How are you?

Chairman Froessel: Just fine. Are you the only person who's going to be speaking on this application?

Mr. Dnes: Yes. Yes.

Chairman Froessel: OK. I'm going to ask the Vice Chairman to swear you in please?

Mr. Dnes: Yes.

Boardmember Vink: Mr. Dnes, would you raise your right hand please? Do you swear the testimony you're about to give is the truth to the best of your knowledge?

Mr. Dnes: Yes.

Boardmember Vink: Thank you.

Chairman Froessel: OK. So, why don't you go ahead and describe to us what it is you'd like to do and what you need a variance for?

Mr. Dnes: OK. So, I would like to add a three-car garage to my property. The... my wife and I bought this house three years ago and the reason we bought it was actually because I live next door to my... my parents. So, we were hoping to start a family and, you know, be close to the grandparents, and now we have the two-year-old son, and so I need a garage. Unfortunately, this property doesn't have a garage and that's... it would be a lot easier for my wife to come with groceries or with my son and not be out in the rain and so... so... so forth, and then be able to get him in quickly into the house. And not only that, we also need some room for storage. I'm sure many of you know that when you have kids, you need quite a bit of storage; especially with grandparents buying a lot of toys for him. So, basically, that's it.

Chairman Froessel: OK. To your... this'll be sort of a... if I'm looking from Route 312 to your property, it'll be on the right side of your property?

Mr. Dnes: OK.

Chairman Froessel: Are your... are your... are your parents on that same side of that property where you're going to put the garage?

Mr. Dnes: Yes.

Chairman Froessel: I'm going to assume they're not objecting to this?

Mr. Dnes: No. No, they're not. They actually built a two-car garage not a couple of years back, and they had to get a variance from the owner that previously owned this house.

Chairman Froessel: OK. Yeah. I think... I think I actually remember that one. So, you're proposing a garage with unfinished workshop above?

Mr. Dnes: Well, that probably was just a typo from the architect. That's... that's mainly just for storage essentially. There's a stairwell... staircase that goes from the garage as you can see right there on the left that would go up to the attic space where we can store some stuff. My basement currently is very low. It's about 6 ft. 4 in. and sometimes we get a little bit of water

on, you know, rainy days, heavy rainy days and so storing, you know, kid's stuff and we're actually planning on having another kid, so we're storing all the stuff he grows out of there, but it's not really the best place to put it. Basements get moldy and so and so forth.

Chairman Froessel: OK. You're not planning on running a business out of this garage, are you?

Mr. Dnes: Absolutely not. I... I work for a... for a contractor. I don't work for myself, and, you know, I'm happy where I'm at, and I don't plan on doing any sort of business at all out of my house.

Chairman Froessel: OK. Any other Board members have any questions? (Pause.)

Boardmember Gil: Yes. The only thing I'd like to say is that just so the applicant understands, if the variance was granted and... well, where the Board President was, I think, was going with this is that if you did run a business out of there, you'd need the same type of variance that we just kind of went through with the last applicant, which would be a Use Variance compared to just the Area Variance that you're seeking now.

Mr. Dnes: Right. No. There's no... no business whatsoever.

Boardmember McNeill: Question, Mr. Dnes. Your... the above the garage, that will not be heated, cooled or anything? That's just going to be storage?

Mr. Dnes: That's just going to be storage. Correct.

Boardmember McNeill: OK. And, you have what... proposed a three-car garage?

Mr. Dnes: Yes.

Boardmember McNeill: OK. Connected through a breezeway to the home?

Mr. Dnes: Yes.

Boardmember McNeill: OK.

Mr. Dnes: Just a little bit of a mudroom.

Boardmember McNeill: Sure. I understand.

Mr. Dnes: Get your clothes off and get in.

Boardmember McNeill: So, you can get from the garage into the main residence.

Mr. Dnes: Right. It'll go right into the kitchen, where... a little off to the kitchen area.

Boardmember McNeill: OK. Thank you.

Mr. Dnes: Yeah.

Chairman Froessel: Is there any... any member of the public that's on this conference that has any questions for the applicant, comments about the application? (Pause.) OK. Not seeing anything so I'm going to assume no.

Boardmember McNeill: One... one last question, Mr. Dnes. This is slab on grade garage, I assume?

Mr. Dnes: Yes.

Boardmember McNeill: OK. Thank you.

Chairman Froessel: OK. I'll... I'll ask the Board members. Is everyone comfortable voting on this application this evening?

All Board members: Yes,

Chairman Froessel: OK. OK. No... no opposition to that. Before we close the hearing, do any of the Board members have any additional questions? (Pause.) No. It looks like no. OK, so Mr. Dnes, the procedure is I'll close the Public Hearing and then we'll vote on your application. Before I close the Public Hearing, do you have any... any final statement you'd like to make in support of your application?

Mr. Dnes: No.

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

Mr. Dnes: Yes.

Chairman Froessel: OK. Great. Thank you.

Mr. Dnes: Thank you.

Chairman Froessel: OK. So, with that, I'll close the Public Hearing. I'll entertain any motion that anyone would care to make on this application. It's a side yard setback variance.

The motion to grant variances of 19.5 ft. on the south side yard setback where 10.5 ft. is proposed and 30 ft. is required; and 19.4 ft. on the total side yard setback where 55.6 ft. is proposed and 75 ft. is required was introduced by Boardmember Gil and 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 will be created by the granting of the variance.
I don't believe so. Specifically speaking, the applicant did testify that his neighbor, his parents, did do the... did, excuse me, seek a similar variance, and he's actually building a similar structure that's going to abut their structure at the property line and it appears from the plans that the siding, the roofing, everything is going to conform to the same type of materials that are being utilized in that area. I think, if anything, you're actually going to have a positive impact as you're driving down Route 312 in the Town of Southeast, and essentially produce a uniformity with the... with the neighbor.
2. Whether the benefit sought by the applicant can be achieved by some method feasible to the applicant to pursue other than the variance.
I don't think so. Looking at the property survey and the... looking at the actual physical photo of the property, the street view of the property, it's somewhat of a narrow lot, and there's really no place for him to go with this garage other than the place that he's kind of putting it right now, and having access to that. Also, looking at the side that he's going to, by going to his parents' side alongside, it's actually abutting an existing garage like that so I don't think it's... it's... it's not affecting the neighbor on the left side of the property line.
3. Whether the requested variance is substantial.
I don't believe it's substantial when looking at the overall scope of the project, and the size of the lot and what the applicant is attempting to do. I think we met that criteria.
4. Whether the proposed variance will have an adverse effect or impact on the physical environmental conditions in the neighborhood.
I don't believe that's the case simply because the... if anything, he's actually utilizing some of that storage, working on some of water issues in the basement, really doing more of an area beautification and I believe that meets the criteria.
5. Whether the alleged difficulty was self-created.
Knowing that, with respect to this factor, consideration of this factor here is not determinative. One could argue that its self-created. In essence, when he bought the home, he didn't, you know, it did not have a garage on the property, but I think that as families grow, I think this is an issue that we're looking at and, you know, if anything, he's attempting to increase the health, safety and welfare of his family by developing this project, and also having a positive impact on the community, with limited storage, not

having that storage... having things exposed on the exterior or stored exteriorly, but actually storing them internally where you can't see them from the road itself. Thus, having a positive impact on the community.

Roll Call Vote:

R. Cassidy	In Favor
J. McNeill	In Favor
A. Gil	In Favor
P. Vink	In Favor
G. Wunner	In Favor
T. Froessel	In Favor
S. Corozine	In Favor

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

Chairman Froessel: Now, it's official. It's 7 to 0. So, you've got your variance. Ordinarily when we meet in person, Victoria fills out the... the variance sheet and I sign it right there and hand it to you and... and you can take it to the Building Department. But because we're doing it remotely, the procedure takes a day or two, but you'll have your signed variance in... in a day or two and the Building Department will be (inaudible.)

Mr. Dnes: Thank you. Appreciate it.

Chairman Froessel: You're welcome. Right. Take care. Have a good night.

Mr. Dnes: You, too. Thank you, everybody. Thanks. Have a good one.

4. Convince Realty Corp. & Law Office of Andres D. Gil, 973 Route 22, Tax Map ID 68.8-2-1

Public Hearing to review an application for a proposed wall sign that requires a variance of 20 sq. ft. where 40 sq. ft. is proposed and 20 sq. ft. is permitted.

Andres Gil recused himself from the application review and represented himself after being sworn in.

Chairman Froessel: OK. Item number four, Convince Realty Corp. and the Law Office of Andres D. Gil.

Andres Gil: That's... that's me.

Chairman Froessel: That is you, and I'm going to get you to recuse yourself. (Laughter.)

Mr. Gil: Absolutely.

Chairman Froessel: OK.

Boardmember Vink: Mr. Gil, can I swear you in?

Mr. Gil: Absolutely.

Boardmember Vink: Would you raise your right hand, please? Do you swear the testimony you're about to give is the truth to the best of your knowledge?

Mr. Gil: Absolutely.

Boardmember Vink: Thank you.

Chairman Froessel: OK. Andres, you know the drill. Why don't you describe your application for us and what you'd like to do?

Mr. Gil: Absolutely. So, many of you may be familiar... I operate a law practice in Brewster since I returned from my last deployment in 2017. I've occupied 973 Route 22, Suite 3 since, I believe, June... May or June of 2018. Within the community, I've worked to bring small... bring

and expand small business and bring jobs to the community. Actually, we expanded, before COVID hit, we entered into a lease agreement which went into effect in October where we took over Suite 2 which was right next to it. So, as you can see, the sign... sign says, 'Styles by Monica.' We outgrew our initial space so we took over two suites rather than one. Since that time, we were able to hire an additional person, bringing positive high-paying jobs to the community. Currently, we employ two paralegals, an office manager, and myself as an attorney. Knowing that, having the positive... you know, we look around the community... across the street, we had, I think there are like two or three stylists. Down the road by Carvel, I think there's one stylist. You see hairstylists popping up all over the place. The people... the woman next to us in Suite 2 was a single... a single hairstylist who didn't employ anyone but herself. So, we have increased growth within the community economically. Our employees do... two of them do live in Brewster, one lives in Carmel, and then I myself live in Brewster. So, in essence, what happened was when we expanded and took over Suite 2, now we occupied two suites. As per the Sign Code, I... recently I applied for a Sign Permit to put one sign up in the sign box that's lit now. The landlord does want to keep the two suites so that... we signed a five-year lease with a five-year (inaudible)... five-year renewal option, but in the future if we do expand further, which we plan on expanding further, she... the landlord, Convince Realty, does want to be able to have two suites, so they want to keep the existing sign box. We want to use... just replace the mylar plexi-whatever it is type sign that's... that's there right now. So, we're going to take our one sign and the two signs there, replace 'Styles by Monica' and then just expand out our sign. In essence, I (inaudible) talking to (Building Inspector) Mike Levine because of the... and I think I have one in there with the heights and the square footage, and based on the square footage of the suite, the Code authorizes for a single... a business or single suite to have a minimum sign of 20 sq. ft. Because we expanded and... and we are now occupying two suites by one business, Mike's interpretation of the Code is that we would need... now, now, we're only authorized that 20 sq. ft. because we have one business occupying two suites, and with that and because of that, we are now seeking the... the... a variance so we can put that one sign in that sign box, that pre-existing sign box. So, in essence, when we think about... when we think about the criteria, I mean I'm just going to make a... make a proper... what I believe is the proper record here. Bringing in an undesirable change, I'm not... I'm not so sure we're bringing an undesirable change simply because what we're doing is we're using a pre-existing box. When we're using the pre-existing box, it... and... we're not changing anything that is there. In essence, what we're doing is actually trying to rebuild the community and we're really trying to bring higher-paying jobs to the area, which... which we're doing, and this allows us to... to promote this business accordingly. As far as the substantiality of the variance, in essence is what we're doing, we're not saying... we're not saying, 'hey, we're taking this sign box' and we're like expanding it out and making a... a... a new sign box that's completely different than what's already there. In essence, we really just want to occupy what's there already. But rather than having two separate business signs, we're going to have one sign that occupies that entire sign box.

Chairman Froessel: OK. So, what's... what's critical for me here is, you're not expanding the actual sign box at all from what's currently there, correct?

Mr. Gil: Not at all. That's... that's completely staying.

Chairman Froessel: So just... your sign will go across where it is currently and also the 'Styles by Monica' part, correct?

Mr. Gil: Exactly.

Chairman Froessel: OK.

Mr. Gil: We occupy that building all the way up to where that red line stops. In essence, we occupy half of the... half of the building.

Chairman Froessel: Gotcha. OK. Any other Board members have any questions?

Boardmember McNeill: Yeah. Yes, Mr. Gil, you're just... you've, you've now occupied the second space that had that existing sign and now you just want to incorporate both of your spaces with the existing outline of the... of the full sign, correct?

Mr. Gil: Absolutely. Yes.

Boardmember McNeill: OK. Thank you.

Boardmember Corozine: Yeah. One question, Andres, just to piggyback upon the Chairman's question: the current sign that belongs to the stylist is 20 sq. ft. Is that correct?

Mr. Gil: Yes, it is.

Boardmember Corozine: OK. So, your proposal is an exact replacement.

Chairman Froessel: Anyone else? Any questions? (Pause.) Is there any member of the public on this conference that has any comments or questions about this application? (Pause.) I'll take the silence as a no. To the Board members, are we... is everyone okay with voting on this tonight? No one feels like they need to go see it? OK.

Boardmember McNeill: Yes.

Chairman Froessel: We've probably all driven by it, you know, dozens of times. OK. Andres, I'll turn it back to you. Before we close the Public Hearing, do you have any final statement you'd like to make in support of our application?

Mr. Gil: The only thing I'd like to say is we're just working really hard to try to improve the community, attract people to our area. Our *pro bono* really focuses on veterans and people with disabilities. Our other areas of our practice are elder law, estate planning and real property, and you know, we're just working really hard to try and create better jobs in the community, given where we're located. I think we have a great opportunity at I-684 and I-84 to bring more high-paying jobs to the community.

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

Mr. Gil: Absolutely.

Chairman Froessel: OK. Great. Thank you. OK. I... I, you know, I don't see much of a need to deliberate on this one. There's an existing sign box there. He's taking over the existing... over the adjacent space and simply wants to use that... the signage that was allocated for that... for that adjacent office space. To me, this is fairly elementary, but if anyone has any contrary comments, we'll entertain them. Otherwise, if anyone would care to make a motion, we'll... we'll entertain that.

The motion to grant a variance of 20 sq. ft. where 40 sq. ft. is proposed and 20 sq. ft. is permitted was introduced by Boardmember Cassidy and seconded by Boardmember Wunner. The criteria:

1. Whether an undesirable change will be produced in the character of the neighborhood.
No. It's... it will be virtually identical to the character of the neighborhood as it is now. It will actually look better than having two incongruous sign or having one sign which would be changed into dead space.
2. Whether the benefit sought by the applicant can be achieved by some other method.
No, not realistically. All he's doing is adding a sign to fill the current sign box.

3. Whether the requested variance is substantial.
I would say 100% is generally substantial but, again, in this instance, all he's doing is expanding a sign to fill the existing sign box.
4. Whether the proposed variance will have an adverse effect or impact on the physical environmental conditions in the neighborhood.
Absolutely not. It will remain virtually identical.
5. Whether the alleged difficulty was self-created.
Well, to some extent, every application arises out of self-creation. But again, in this instance, he's expanding his business, and all he's applying to do is to (inaudible) signs.

Roll Call Vote:

S. Corozine	In Favor
R. Cassidy	In Favor
J. McNeill	In Favor
P. Vink	In Favor
G. Wunner	In Favor
T. Froessel	In Favor
A. Gil	Recused

The motion to grant the variance as stated in the motion passed by a vote of 6 to 0 with 1 recused.

Mr. Gil: Thanks.

Chairman Froessel: You're welcome, Andres. We'll... same drill. Once Victoria gets me the variance, I'll sign it, get it back to her and then you'll be in business.

Mr. Gil: Thank you.

Chairman Froessel: All right. You're welcome.

5. Jasen Hernandez, 45 Lincoln Road, Tax Map ID 56.14-3-42

Public Hearing to review an application for a proposed addition of an entrance portico to a single-family dwelling that requires a variance for the west front setback and yard depth of 17.5 ft. where 17.5 ft. is proposed and 35 ft. is required.

Stephanie Fox, Architect and Owners Patricia & Jasen Hernandez represented the application and were sworn in.

Chairman Froessel: OK, and applicant number five, Jasen Hernandez. Hi, folks.

Stephanie Fox: Hi. I'm the architect as well, Stephanie Fox.

Chairman Froessel: OK. And I'm assuming Paula Hernandez is the actual applicant?

Ms. Fox: Paula and Jasen, yes.

Chairman Froessel: OK. Very good. (Inaudible.)

Boardmember Vink: Could the three of you... I'm sorry.

Chairman Froessel: Go ahead, Paul.

Boardmember Vink: Could the three...

Chairman Froessel: If you're all going to speak, I suggest we have the Vice Chairman swear all of you in.

Boardmember Vink: Could the three of you raise your hands please? Do you swear the testimony you're about to give is the truth to the best of your knowledge?

Paula & Jasen Hernandez: I do.

Ms. Fox: Yes.

Boardmember Vink: Thank you.

Chairman Froessel: OK. Before... before you start your application, I'll just tell you that I lived in Brewster Heights when your house was built. So, I'm very familiar with the neighborhood. I used to walk my dogs by there all the time, and... and I can specifically recall probably, maybe a dozen years ago or so, your neighbor across the street. We gave a variance to expand his house out the front. So, against that background, go ahead and tell us about your application.

Ms. Fox: Just a quick formality question. Do I do the screen share or will Ashley be doing it?

Chairman Froessel: Probably best if Ashley does it

Ms. Fox: OK. All right. So the application in front of you is to build a new portico off the front of the existing residence. The portico is going to be 7 ft. 6 in. by just about 10 ft. wide and that's... that includes the overhang of the existing roof. As you can see by the Site Plan, the existing residence was built non-conforming, especially in relation to the front yard requirement, which is the variance we're seeking. The front yard required setback is 35 ft. The house is set at 25 ft., so already 10 ft. deficient and with the addition of the portico, it would... the proposed front yard setback would 17.5 ft. requiring a 17.5 ft. variance. It should be noted that there is an existing stone stoop there. To construct the new portico, we're proposing to add two 18 in. by 18 in. pillars in front of the stoop to support the... the columns because we don't really know what the foundation holds off of the existing stoop and we're not, you know, I can't load it properly, and also, it's also an aesthetic reason. If you look at the pictures of the front elevation, you can see that, you know, we're going to have just a bit of a raised stone pier on which the new columns will set and that's also similar but not identical to the adjacent house on... on... on Lincoln Road and so, sort of to, you know, a little bit different but... but similar to the neighbor to the south there. It should be noted also that the neighbor to the west directly across the street, which may be the one you're referring to about the variance, also does have a portico. So, it's a pretty common occurrence in the neighborhood, and it really does just come down to the fact that it would be nice to have a covering over the front door of your home to protect you from weather and so forth. On the Google map, you can see that the adjacent house, that house to the south, is set exactly the same as pretty much as my... the proposed property and they also too have the portico. You can also probably gather by the Google map that many of the other homes in Brewster Heights have similar setbacks and so, this is not uncommon for the area.

Chairman Froessel: As a person who lived in Brewster Heights for nine years and has been on this Board for 20 years, I will tell you that it is virtually impossible to do anything in Brewster Heights at all without getting a variance because all of the houses are pre-existing, non-conforming within... within the lots that they're on.

Ms. Fox: And this is one of the newer houses... lots.

Chairman Froessel: Yeah.

Ms. Fox: So, just to go over the criteria in which you sort of evaluate the project. Whether or not there's going to be an undesirable change to the neighborhood, no, we don't think so as the adjacent residences both have portico structures. It won't be the same, so it won't be too uniform, but as I said, it is a common occurrence in the neighborhood. Can the benefit of the applicant be achieved by some other means? Unfortunately, no, given the siting of the existing home and the non-conforming existing front yard. Is the variance substantial? Well, the variance is substantial in number but given the proximity of the other homes to their property lines as well, we don't feel that this would be out of character for the neighborhood. Would

there be an adverse effect on the environment of the neighborhood? Well, we certainly feel that, you know, the portico would be an enhancement to the neighborhood and in terms of an environmental point of view, there would be a very limited amount of additional impervious area due to the existing front stoop already being there. And was the difficulty self-created? Certainly, because, you know, they are desiring to add this structure where a structure doesn't exist. However, I think given the non-conformity of the existing house, there are no other options, you know, better... viable that they could achieve the same results without receiving any type of variance.

Chairman Froessel: OK. Thanks very much. Any... any... I'm... I'm satisfied on this one. Any other Board members have any questions? (Pause.) OK. Is there anyone on this Zoom conference, any member of the public that has any comments or questions about this application? (Pause.) I'll take the silence as a no. Are the Board members all comfortable voting on this tonight? Nobody feels that they have to go... go look.

Boardmember Wunner: Yes.

Chairman Froessel: OK. I think... I think we're all good. As I've said, I've walked by it hundreds of times, so I'm very familiar both with... not just that house but with the entire neighborhood. I can tell you that what the applicant is proposing to do is not out of character with the neighborhood in... in my view as someone who lived in that neighborhood for nine years. So... so, I guess we're... we're comfortable voting. So, before I close the Public Hearing, do you have any final comments or statements you'd like to make in support or your application?

Ms. Fox: No. I just... thank you for your consideration and I hope that, you know, you like the design.

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

Ms. Fox: Absolutely. Yes.

Chairman Froessel: OK. Great. Thank you. All right, so, we'll close the Public Hearing. I'll entertain if anybody wants to deliberate over this, we can do that or if anyone cares to make a motion, we can entertain a motion.

The motion to grant a variance for the west front setback and yard depth of 18 ft. for the purpose of the proposed addition of an entrance portico to a single-family dwelling was introduced by Boardmember Vink and seconded by Boardmember Corozine. The criteria:

1. Whether an undesirable change will be produced in the character of the neighborhood.
I don't think I can do a better job than Ms. Fox did but I will do so. I don't believe that there will be any change to the character of the neighborhood. If anything, it will be an improvement as it will add to the depth of the features of the house. So, I think it would be an improvement, certainly not a detriment to the character of the neighborhood.
2. Whether the benefit sought by the applicant can be achieved by some other method.
No, it can't. The house is already sitting in the setback. They... they couldn't do anything, and as the Chairman pointed out, you can't do anything in Brewster Heights without needing a variance. And certainly in this case, where the property is already sitting in the setback, you can't do it. So, there is no other method.
3. Whether the requested variance is substantial.

I do not believe it is given the character of the neighborhood. So, while the number itself may seem to be large, it's half the setback. Because of the way the area is structured, I do not believe the number is substantial.

4. Whether the proposed variance will have an adverse effect or impact on the physical environmental conditions in the neighborhood.
I don't believe it will and there's no evidence that it will.
5. Whether the alleged difficulty was self-created.
No, I don't believe so, because the property is again sitting within the... within the setback in the first instance.

Roll Call Vote:

J. McNeill	In Favor
R. Cassidy	In Favor
S. Corozine	In Favor
A. Gil	In Favor
P. Vink	In Favor
G. Wunner	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: So that's seven votes for and zero against, so your variance is approved.

Mr. & Mrs. Hernandez: Yay.

Chairman Froessel: I'll explain the procedure but just to be clear, Victoria will... will prepare the paperwork on it. She'll get it to me probably tomorrow. I'll sign it and turn it around as quickly as I can. We'll get it to the Building Department and then you'll be able to get your Building Permit.

Ms. Fox: Wonderful. Thank you so much.

Mr. & Mrs. Hernandez: Thank you.

Chairman Froessel: You're welcome. Have a good evening.

Ms. Fox: Have a good night.

Mr. & Mrs. Hernandez: You too.

Chairman Froessel: All right. Take care.

The motion to approve the Meeting Minutes of November 16, 2020 was introduced by Chairman Froessel, seconded by Boardmember Corozine and passed all in favor.

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

Respectfully submitted,
JoAnne Ciralli
Victoria Desidero

FULL VIDEO RECORDING OF THIS MEETING AVAILABLE AT: <https://www.southeast-nj.gov/335/Zoning-Board-of-Appeals-Audio-Files>