

**Town of Southeast
Zoning Board of Appeals
Minutes of March 18, 2019**

Timothy Froessel, Chairman	Present
Paul Vink, Vice Chairman	Present
Roderick Cassidy	Present
Greg Wunner	Present
John McNeill	Present
Steve Corozine	Present
Andres Gil	Present
Willis Stephens, Jr., Town Attorney	Absent
Victoria Desidero, Secretary	Present
Cathy Chiudina, Assistant Secretary	Excused
Patricia Bohrman, Assistant Secretary	Present

Work Session:

Regular Session:

**1. Six Southeast Corp. / RE Landscapes Inc.
2525 Carmel Ave, Tax Map ID 67.6-1-35**

Public Hearing to review an application for a Use variance from Town Code Section 138-13(c) to permit a shipping container to be located on the property. Carmine Labriola was sworn in.

Chairman Froessel: Mr. Labriola, before you get going, I just want to let you know that because you're on Route 6 this had to go to County Planning. There's a State Statute that requires us to give them notice and they get to chime in on it and basically give it a yay or nay. We haven't heard from them yet; they get 30 days and the 30 days hasn't come yet. The consequence of that is that we can't vote on your application tonight, but we can open the Public Hearing and you can at least state your case so we can get the process started.

Mr. Labriola: Well, I leave it up to the Board's discretion. I just feel that the case of us being there...there's a fence and anything behind the fence was approved in the last Site Plan and our use isn't to extend any of the building, our use for that container is basically a material and tool transporter. We do very large jobs and we have our employees drive to the jobs and we move those containers so it's very much an intricate part of our operation. It's not, you know...so I would think that would give some merit to giving us a variance for that.

Chairman Froessel: Just to back up a little bit: are you the owner of the property or tenant?

Mr. Labriola: Tenant representing the owner.

Chairman Froessel: OK and you're operating a business on that property?

Mr. Labriola: Yeah.

Chairman Froessel: OK, what kind of a business is it?

Mr. Labriola: General landscaping.

Chairman Froessel: OK.

Mr. Labriola: We're also consultants for a lot of the corporations around.

Boardmember Vink: The containers contain equipment that you move from site to site and when they're not on the site they come back.

Mr. Labriola: Yeah.

Boardmember Vink: OK.

Boardmember McNeill: They're not containers; they're actual trailers? Are they registered?

Mr. Labriola: It seems to me that there's a general law that you're not allowed to have sea containers in that particular area, it's a Southeast...that's what the Building Code Inspector explained to me.

Boardmember McNeill: But they have wheels on them?

Mr. Labriola: No, we move them with a flatbed truck.

Boardmember McNeill: Oh, OK.

Mr. Labriola: The reason we don't use the trailer containers because today there's such a market for power tools that they take the aluminum trailers and they slice the sides of those trailers and we were robbed five times last year so we went and bought steel sea containers because they're very difficult to break into.

Boardmember McNeill: And there was a landscaping company there prior to you, wasn't there?

Mr. Labriola: I think there was.

Boardmember McNeill: Yeah, I think 845 Landscaping was in there for a short time, maybe 6 months, because I have an office right next to there and I used to see their equipment parked back there also.

Mr. Labriola: I'm sure you're right.

Boardmember Corozine: How many containers are on the site at any given time?

Mr. Labriola: No more than two ever.

Boardmember McNeill: And the size of them?

Mr. Labriola: It's in the report but they're 28 ft. by 8 ft. and they're below the...I sent a picture to the Board so you can examine it. You can't see them from the road.

Boardmember McNeill: They're behind the fence.

Mr. Labriola: Yeah, behind the fence. We plan, I mean this has nothing to do with this, but we plan on upgrading the landscaping there and stuff and we feel we're a good use for that building because we're consultants and we work in a lot of towns and we're very diversified and I think Southeast and Brewster is going to have a tremendous amount of growth over the next 10 years. I think it's a wonderful place to be if that means anything.

Boardmember Gil: I'm curious about the condition of the containers.

Mr. Labriola: They're brand new.

Boardmember Gil: What's your plan to maintain those containers so they don't become rusted and become eyesores and then become an issue?

Mr. Labriola: Well, right off the bat they're painted, OK, but even more than that I put a green roof on them, a covered roof that's moveable that's like a blanket so they would be even more cosmetic to the area. I mean these are all-weather, steel containers that demo saws can't cut through. It's the only thing that we've found that's prevented robberies. There are a lot of people that are unfortunately in need of capital to survive and have created groups and they steal from contractors. They look for contractors with trailers and stuff and they're very professional at robbery so we have to become more astute at creating a...and its safety as well because sometimes we have tools, power tools and stuff, and we like to lock them up.

Boardmember Corozine: You have a picture as attachment C where you see the container just above the fence; is that the blanket on there?

Mr. Labriola: Yes.

Boardmember Cassidy: And how do you get the container out from behind the fence?

Mr. Labriola: There's a gate and it's the typical truck that moves a car, a flatbed, just pulls up to the container and has a winch on it, puts it on the container and drops it off at the next job.

Boardmember Corozine: Is it noisy when that happens?

Mr. Labriola: No, no noisier than if you pick up a...we have equipment there too. It's all behind the fence. I mean we have industrial Suburban Propane right alongside of us with tractor trailers all night long moving with gas trucks and going in and out so I mean I don't know if we are in like the most residential area in the neighborhood.

Boardmember McNeill: Yeah, that's a commercial area.

Boardmember Cassidy: When was the last time the containers were moved?

Mr. Labriola: Well, we just move in a few months ago and we had a violation and not to assume anything, before we entered the agreement with Southeast we asked if we could bring our containers and they thought because it was behind the fence it would be no problem. The company before us had containers there but they had two containers that were normal metal carrying containers with wheels. They were more of a lawn mower company cutting grass and mowing so they had these containers right where we have these, which were the same visual standards. Care Mount is moving into the area; I'm a civil engineer/landscape architect type of guy and so half of our office is more consulting than actually physically doing the work but we do have 10 guys that physically do work for us that are diversified; they're more like craftsmen than lawnmowers and so forth. Our job consists of a lot of; I don't know what you'd call it, but we don't need as much equipment as the regular landscape company to that end. The landscaper that was previously there had a lot more equipment there than we have.

Boardmember Cassidy: You have two containers worth of equipment?

Mr. Labriola: Yeah.

Boardmember Cassidy: So, have the containers ever been moved since you moved in?

Mr. Labriola: Yeah, once, not both of them though, one of them. We moved it from Fairview Country Club.

Boardmember Cassidy: Moved it from there to here? Or moved it from your place to there and now back?

Mr. Labriola: We moved it from Fairview to our shop.

Boardmember Cassidy: OK, and once it was put down at your shop has it been moved?

Mr. Labriola: No, once we got the violation I pretty much did not work in there. We would probably purchase aluminum normal containers with wheels on them like the previous guy had, which seems kind of redundant here, doesn't seem practical but we still need something to transport our equipment. I'm under the impression that there's a strict law against those containers for some reason.

Chairman Froessel: There is a strict law against them and it's not just the Zone you are in, it's the entire Town.

Mr. Labriola: Yeah, that's why I leave it up to your discretion. The last thing we want to do is cause any complication or confusion with the Town or the Village Board.

Chairman Froessel: There's a little bit more here than just our discretion. You're seeking what's called a Use Variance which is different from an area variance. Area variances are dimensional in nature and it's not very hard to get one. A Use Variance is very difficult. In my 21 years on this Board we've granted exactly one Use Variance. One of the criteria that you have to show is that you can't realize a reasonable return as demonstrated by competent financial evidence. So, basically you have to demonstrate to us that without the container on the property, the property can't be used for a reasonable financial return. It's a high bar to meet.

Mr. Labriola: Well, I don't want to spin my wheels either and spend more money on a variance that I'm not going to get. On the other hand, there have been a lot of people who have tried to make it in that building and haven't made it there.

Chairman Froessel: Is it because of the property or because they didn't run a good business, that's a hardship we have to ask ourselves.

Mr. Labriola: I don't know that the answer but I'm going to say as an opinion, that for the use we seem to be a good match for that property for a long sustainable period. I can't demonstrate that in the beginning of our stay there but it seems like there was a sign place there, then there were a number of landscape companies there. I mean we're more of a half consulting firm/professional building. We've actually turned the building into half a professional building rather than just a contractor shop. We do a lot of consulting for like Albert Einstein in the Bronx; you know that big facility down there. I think it's going to be very difficult to demonstrate...well like the biggest problem I've had with economics is over the last three years we've been robbed three times, \$5,000 to \$10,000 worth of power tools, pumps...we specialize in storm water and erosion control and water quality so we had all kinds of pumps stolen. We have electric 2-inch, 4-inch pumps stolen. That's why we rented. I mean I had no idea there would be a problem with these containers. Everywhere I go, I mean Yonkers Contracting is doing a job on 684 and you've got five of these containers down in Town here. There are containers all down the road.

Boardmember Vink: The Code specifically says that during the course of a project you can have a container onsite but once the CO is issued or the job is done it has to be gone within 30 days so that's the way that works.

Mr. Labriola: So, if I move the containers once every 30 days does that give me...

Boardmember Vink: No, they're allowed to be brought in and placed in a construction site.

Chairman Froessel: They have to be on a construction site.

Mr. Labriola: No, I'm only kidding. I mean it seems to me that you've given me a chance to speak. I think you all do understand my circumstances and I certainly understand your stance. I mean there's a rule, there's a law. It came to fruition for many reasons that I'm not aware of. You know I'm not going to profess that I have the answer to it, I just thought I would give it a shot, ask for a variance and if not, I'll take the containers out and I'll find a place for them and I will work it out.

Chairman Froessel: Well, the good news for you is you have another month to think about it because we can't vote on your application tonight.

Mr. Labriola: That's good, thank you very much for 30 days.

Chairman Froessel: Thank Putnam County for that because the Putnam County Department of Planning didn't get back to us.

Mr. Labriola: I was just hoping that they would possibly, maybe when this law was made there was a reason for it, but as time goes on, I think there's going to be a lot of situations that might allow these kinds of containers. They're popular and a real pertinent use for contractors.

Chairman Froessel: Well it's something that the Town Board would have to review to change the Town Zoning Ordinance on that, that's not us.

Mr. Labriola: Well, thank you very much for your time.

Chairman Froessel: Victoria (Desidero), when is next month's meeting?

Ms. Desidero: April 15, Tax Day.

Chairman Froessel: April 15.

Boardmember Vink: Do we want to ask the audience?

Chairman Froessel: Does anyone in the audience have any comments about this application before we adjourn? No? OK. I'm going to leave the Public Hearing open Mr. Labriola, so if you have anything you want to present to us next month you are welcome to do so. Otherwise, next month we will have heard back from County Planning by then, we'll reconvene, and we will vote on it then.

**2. John and Kristen Connolly
28 Rockledge Drive, Tax Map ID 79.12-1-21**

Public Hearing to review an application for a proposed garage expansion requiring a Total Side Yard Setback variance of 2 ft. where 75 ft. is required and 73 ft. is proposed. John Connolly was sworn in.

Chairman Froessel: OK, I see you're doing a three-car garage, correct?

Mr. Connolly: That's correct. We're looking to expand an existing two-car garage and make it a three-car garage.

Boardmember Cassidy: Do you own three cars?

Mr. Connolly: We do. My son just started driving so.

Boardmember Cassidy: Do any of them have commercial plates?

Mr. Connolly: No.

Boardmember Cassidy: And none of them have TLC plates, correct; as in limousine plates?

Mr. Connolly: No.

Chairman Froessel: So, it appears...I looked at the pictures of this over the weekend and it appears that you're moving the garage a little further away from the house and then toward the back of the house.

Mr. Connolly: Correct. The extra/third bay will go into the back side of the house but in the dimensions, there are exhibits, attachment 2. We're going to be looking at 1 of 2 or 2 of 2, on the back end there you'll see a little bump out on the very back where the third bay will be, that's where we have a family room there so that actually extends into where the existing garage is. So, to be able to fit a car into that third bay we effectively have to move the garage out as well as adding the building on the back side of the garage.

Chairman Froessel: It looks like there's maybe a shed back there now?

Mr. Connolly: Yes.

Chairman Froessel: OK, that shed is going to be moved?

Mr. Connolly: Yeah, we'll probably just slide that further out and it will stay next to the house.

Chairman Froessel: Just be forewarned that there's a provision in the Town Zoning Ordinance that prohibits an accessory structure from being within 15 ft. of the main structure.

Mr. Connolly: Is that new? Because I had gotten a permit for the shed way, way back.

Chairman Froessel: No, that's been in the Code for as long as I can remember.

Mr. Connolly: OK, but good to know.

Chairman Froessel: Yes, keep that in mind. It appears that all that is needed here is a 2 ft. variance from the total side yard setback requirement.

Boardmember McNeill: It appears that you are just squaring the end of that house off, is that correct? You're just moving kind of to the left of the garage?

Mr. Connolly: That's correct. It will come out to where that first cone is and it will go straight back and then attach to the very back of the house.

Chairman Froessel: Anyone in the audience have any comments or questions about this application? It looks like the answer is no. Anyone on the Board have any other questions? No? Everyone OK with voting on this this evening?

Boardmember Vink: Yes.

Boardmember Cassidy: I am.

Chairman Froessel: OK, do you have any questions for us before we close the Public Hearing and take a vote?

Mr. Connolly: No, I'm good.

Chairman Froessel: OK, do you have anything else you'd like to say in support of your application?

Mr. Connolly: No, I think it's all covered in there.

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

Mr. Connolly: I do.

Chairman Froessel: OK, very good, thank you. With that we will close the Public Hearing. I think this is a pretty straight forward application. I'll entertain any motion that anyone would care to make on this application.

The motion to grant the applicant a 2 ft. variance from the total side setback for the purpose of constructing a 3-car garage as requested 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, I don't think there will be any change whatsoever to the character of the neighborhood. A 3-car garage is perfectly in keeping with the area. It's a very small change from what currently exists on the house as it is so I don't think that there will be any undesirable change.
2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.
No, it can't be. The lot width is not sufficient to allow for the construction of anything on either side so I don't believe it can be achieved by any method other than a variance.
3. Whether the requested variance is substantial.
It's 2 ft. on a 75 ft. requirement and that is not substantial under any test.
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 do so and I do not believe it will.
5. Whether or not the alleged difficulty was self-created.
I don't believe it's self-created to want to add a third bay to your garage.

Roll Call Vote:

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

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

3. Charles Howe II Revocable Trust

37 Vails Lakeshore Drive, Tax Map ID 79.-1-40.-22

Public Hearing to review an application to replace an existing dwelling with a modular home. The following variances are required:

1. East Front Yard Setback variance of 25 ft. where 25 ft. is required and 25 ft. is proposed;
2. North Side Yard Setback variance of 12 ft. where 50 ft. is required and 13 ft. is proposed;
4. South Side Yard Setback variance of 12 ft. where 25 ft. is required and 13 ft. is proposed;
5. Total Side Yard variance of 44 ft. where 70 ft. is required and 26 ft. is proposed;

Ken Rhuda and Anthony Amitrano were sworn in.

Chairman Froessel: OK, why don't you fill us in on your application?

Mr. Amitrano: Sure, so we have a proposed new 1-1/2 story residential house on the existing property that we are replacing an existing house now and we have a front and two side yard variances and a side yard total variance.

Boardmember Cassidy: How does the footprint change?

Mr. Amitrano: Yes, the footprint does change.

Boardmember Cassidy: How?

Mr. Amitrano: So, we're setting the house back roughly about 12 ft. from where the original house so from 18 ft. to 25 ft., roughly 8 ft. and we're making the house wider. So, the house is getting wider on both ends by roughly 15 ft.

Boardmember Corozine: 15 ft. on each end or 7.5 ft. on each end?

Mr. Amitrano: No, 15 ft. on both ends.

Boardmember Corozine: OK, so that's a total of 30 ft.

Mr. Amitrano: Correct. So, we're looking for a 16 ft side yard setback on the one side and 13. ft. on the other side. The south side would be 12 ft. and the north side is 15 ft.

Boardmember McNeill: Vail's Grove has already approved this?

Mr. Amitrano: Correct.

Boardmember Corozine: Vail's Grove approved a renovation so at the time were you planning to renovate prior to where you are at location-wise? Where you going to do a rebuild?

Mr. Rhuda: Yeah, so Vail's Grove knows we were demolishing the existing structure and putting up a new home, a modular, so that's what they approved. Vail's Grove requires a 10 ft. side yard setback because everything is existing non-conforming on those lots so what you're seeing is what they approved.

Boardmember Corozine: OK, just wondering why they used the word 'renovation.'

Mr. Amitrano: Yeah, that might have been my fault writing it down instead of...

Boardmember Gil: Do you know when they did your approval? There's no date on the letter.

Mr. Amitrano: It was...do you remember the date?

Mr. Rhuda: February 27th.

Mr. Amitrano: February 27th I believe.

Boardmember Vink: So, you are moving the house closer to the lake?

Mr. Amitrano: Yes.

Mr. Rhuda: Yes, that was one of the things that Vail's requested us to do, was to move it away from the road.

Mr. Amitrano: They require 25 ft. from the front party of the property.

Boardmember Vink: OK.

Boardmember McNeill: Are there sewers there now?

Mr. Rhuda: Yes.

Boardmember Corozine: What will you be doing with the shed on the front left side of the property?

Mr. Rhuda: That's going to be taken down.

Boardmember Corozine: Removed?

Mr. Rhuda: Yes, removed.

Boardmember Gil: Have you heard anything from your neighbors at 35?

Mr. Rhuda: They're excited for it, they're very good family friends on either side so they're all for it.

Boardmember McNeill: The existing dwelling is one of the original type houses that are down in that area?

Mr. Rhuda: Exactly, yes, so we had originally just wanted to renovate it but the bones of the house are just kind of rotted away.

Boardmember McNeill: Right, yeah, it's typical for down there.

Mr. Rhuda: No foundation currently.

Boardmember McNeill: Right, right. No foundation?

Mr. Rhuda: It's on piers.

Chairman Froessel: Anyone in the audience that has any comments or questions about this application? No? OK.

Chairman Froessel: We've had several applications for some of the lakefront homes down at Peach Lake for the last couple years. Are any of your immediate neighbors folks that have done recent renovations?

Mr. Rhuda: The Tolan's at 35 have recently bumped out their kitchen in the last year, year and a half and two doors down Dennis Ryan just put up a modular home, my neighbor at 39 is constantly updating his home and whatnot so they've done quite a few.

Chairman Froessel: OK. We've had several people adding second floors at least.

Mr. Rhuda: Actually, the neighbor across the street from us is now I think adding a second story to theirs.

Chairman Froessel: Anyone on the Board have any additional questions about this? Are we OK voting on this tonight? Everyone is comfortable?

Boardmember Cassidy: I think so.

Chairman Froessel: OK, any final comments you would like to make in support of your application?

Mr. Rhuda: No sir.

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

Mr. Rhuda: Yes.

Chairman Froessel: OK, with that we will close the Public Hearing. I'll entertain any motion anyone would care to make with respect to this application. There are four area variances required.

The motion to grant the applicant a 25 ft. east front yard variance, 12 ft. north side yard variance, 12 ft. south side yard variance, and a 44 ft. total side yard variance 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.

There is no evidence of that as we've experienced. Vail's Grove does their own investigation into anything that's going to impose on the neighbors. Since we have an approval from Vail's I don't think there's any evidence there will be an undesirable change.

2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.
No, just no. They can't even do what they have there without a variance so there is no other method.
3. Whether the requested variance is substantial.
Yes, it is. It is 50% or greater variances but, in the circumstances, and for this area this is not particularly substantial. It's not up against the property line and in this area, this would not be considered necessarily substantial.
4. Whether the proposed variance will have an adverse effect or impact on the environmental conditions in the neighborhood or district.
It will probably improve both the securing of the building and it will be structurally more sound.
5. Whether or not the alleged difficulty was self-created.
No, I don't believe so. Again, they would need a variance to put a new deck up so I don't believe this was self-created.

Roll Call Vote:

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

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

The motion to approve the Meeting Minutes of January 16, 2019 meeting was introduced by Chairman Froessel, seconded by Boardmember Vink and passed all in favor with Boardmember Gil abstaining.

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

Respectfully submitted,
Cathy Chiudina
Victoria Desidero