

**Town of Southeast
Zoning Board of Appeals
Minutes of April 15, 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	Present
Victoria Desidero, Secretary	Present
Cathy Chiudina, Assistant Secretary	Excused

Work Session:

Regular Session:

**1. GTY NY Leasing, Inc. (Mobil Gas Station)
978 Route 22, Tax Map ID 68.5-2-25**

Public Hearing to review an application for the following:

1. Sign Area Variance of 6 sq. ft. where 30 sq. ft. is permitted and 36 sq. ft. is proposed;
2. Sign Height Variance of 3 ft. where 15 ft. is permitted and 18 ft. is proposed;
3. Freestanding Sign Variance to allow an additional 3 freestanding signs where 1 is permitted and a total of 4 are proposed;

Eric Battis of Stationwell, New England was sworn in and the mailings were verified to be in order.

Mr. Battis: So, we have orders from Mobil and their pushing across the country to install these fueling apertures on their fueling stations. It's a freestanding sign. There are three pumps at the site so the first one would have this wave that comes over the pump itself. You guys should all have a copy of this, correct?

Chairman Froessel: Yes, but before we get too deep into this...

Mr. Battis: OK.

Chairman Froessel: Let me stop you for a second.

Mr. Battis: Yup.

Chairman Froessel: The decisions you're appealing from, there are four of them, and the most recent one is July 9, 2018. State Law, in particular Section 267A of the New York State Town Law subsection 5 paragraph B says that "an appeal from a Building Inspector's Determination has to be within 60 days of the filing of the determination." So, you are late. Is there any reason why this wasn't brought last year?

Mr. Battis: To tell you the truth I do not have that answer. I know I'm told there are permits for it, for everything that we install I just come to the meetings so I had no idea about that actually at all. I'm not sure why she was so late on this.

Chairman Froessel: Well who signed the application?

Mr. Battis: Lizzy Holloway, she's in our office.

Chairman Froessel: That's the one that's in your office that signed the application?

Mr. Battis: Yes sir.

Chairman Froessel: OK. I don't think we can consider this, Will?

Town Counsel, Willis Stephens: The law is pretty clear; we're without jurisdiction to review an application that is technically late. The remedy would be for you to go back to the Building Department and make a new application for whatever it is you submitted that was denied and you could then appeal if that's what you need to do within 60 days.

Chairman Froessel: So, I think what we'll do; I don't want there to be a Determination on the merits of your application because that would preclude you from making another one so what I think we should do is make a motion to dismiss it as untimely and then that leaves you freely to go back to the Building Department and start over again.

Mr. Stephens: That would be appropriate.

The motion to dismiss the application as having been untimely was introduced by Boardmember Vink, seconded by Chairman Froessel.

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

Chairman Froessel: So, the application is denied as untimely but you can go back to the Building Department and start again. When you get a determination from the Building Department go right to Victoria's (Desidero, Secretary) office and file the appeal.

Mr. Battis: OK, thank you.

Chairman Froessel: You're welcome.

**2. Robert Nikaj / Nikaj Estates LLC
784-790 Route 312, Tax Map ID 46.-3-8**

Public Hearing to review an application for a Use Variance to utilize an existing building for apartments and increase the number of dwelling units by 5 to allow a total of 28 dwelling units on the property where there are currently 23 dwelling units in an R-160 Zone.

Robert Nikaj of Station-Glo, New England was sworn in and the mailings were verified to be in order.

Chairman Froessel: OK, Mr. Nikaj, before we get started, I will just let you know because your property is on Route 312 it's a State road. State Law tells us your application has to go to County Planning before we can vote on it and they have 30 days from the time they get it to render a determination and then it comes back to us. What that means for you is you can present your application tonight; we just can't vote on it yet.

Mr. Nikaj: OK, I am just trying to follow the rules.

Chairman Froessel: So, you can present your application...

Mr. Nikaj: I don't know much about this thing.

Chairman Froessel: OK, you can present your application and then we can continue the Public Hearing to next month and then we should be able to vote next month. We will have it back by then. So, go ahead, present your application.

Mr. Nikaj: When I bought this property it was multi-family, existing, all the units used to be a factory property. I was told when I bought it and it is vacant now. For four years I tried to improve the property, protecting the areas condition and have a lot of money in it. I now finally have all of them rented, 23 units, and I have a lot of people asking for and since the building is there and is very good condition, I thought with your permission to add another five units there. It can help the community, myself and everyone around me and with taxes also. I started with \$30,000 and it's almost \$45,000 now I think or \$42,000 or something like that. I just need your help to lead me in the right direction with what I can do with the building.

Chairman Froessel: There are a lot of buildings on that property.

Mr. Nikaj: Yes, there is.

Chairman Froessel: How many are there?

Mr. Nikaj: Seven I believe.

Chairman Froessel: And they're all kind of clustered in one area?

Mr. Nikaj: Yeah, it's like a small circle and this particular building is attached on both sides with other apartments. It's a complete building. It used to be a factory. It's the best building on the property actually as a structure because it's all property over there. I'm learning every day. I'm a broker of real estate but I never deal up here; this is the first time. I try with Victoria (Desidero) and all the inspectors to work around and see how I can get help.

Boardmember Vink: What was the building being used for before?

Mr. Nikaj: I was told it was a factory.

Boardmember Vink: When did you buy the property?

Mr. Nikaj: It's got to be 5 years in June.

Boardmember Vink: Has it been used at all in the five years?

Mr. Nikaj: No, I'm just trying to find my way here and there and now finally I get the right way from Victoria (Desidero) and the inspectors. I am trying to follow the new procedures and they are telling me what to do and see if we can make it work. My rent is very affordable for everybody; probably the cheapest rent around.

Chairman Froessel: I will let you know that the type of variance you are applying for is a Use Variance.

Mr. Nikaj: Yes, a Use Variance.

Chairman Froessel: The vast majority of the variances that we see here or applications we see here are area variances from bulk requirements; distances from setbacks and things of that nature. The criteria for granting a Use Variance are different and a bit more onerous. One of the things you have to prove is that you can't realize a reasonable return on the property without the Use Variance. It basically requires dollars and cents proof that the property is not financially viable without the Use Variance.

Mr. Nikaj: Again, my opinion is because there are already families there. I think they lost the right of a commercial as it was used before and even with the commercial, I don't like the trucks coming there and I am in front of you to give me any advice so I can make it work. It's five years already and I've not used it for anything and if you help me...

Boardmember McNeill: Have you approached the Health Department yet regarding the septic for the property?

Mr. Nikaj: OK, I hired an architect and I am working with that but everyone tells me...I don't have any problem, whatever they tell me for septic or whatever is there but I don't mind to build whatever they ask me.

Boardmember McNeill: Water supply also?

Mr. Nikaj: Yes, water supply. There are wells there; I have like 3 or 4 wells on the property. There is a company that takes care of the water and that stuff. I live in the City; I'm from

Queens. I don't even live here but I try. My rents start from \$450 and the highest is \$1500 because it's a big apartment. I try to be fair.

Boardmember Corozine: Sorry, I think the question is: do you have a pending application with the Health Department for a septic system?

Mr. Nikaj: I was told, I went to the Health Department and also with the architect. For the septic they came and gave me some estimates but they told me it's too early until you're going to know if they're going to allow you to use the apartments. You don't want to build the septic and they're going to say they deny your application.

Boardmember Gil: What type of environmental impact would the additional 5 units have given the septic system that you have there right now?

Mr. Nikaj: The septic system, whatever was there was for the factory. It was for leather and they used a lot of water to clean it. But again, I know have to upgrade to the Codes today and I don't have a problem with that.

Boardmember McNeill: How many bedrooms with the 5 units would there be?

Mr. Nikaj: I'm trying to make one a walk-out basement, 1 unit 2 bedrooms, and the first floor 3 apartments.

Boardmember McNeill: Three apartments: 1 bedroom each and one 2 bedroom.

Mr. Nikaj: One bedroom each and whatever works for you guys. I'm glad to have any kind of...

Boardmember McNeill: Well, our Health Department goes by bathrooms.

Mr. Nikaj: So, I need a ruling; that's why I'm here. I want to follow any rules you tell me and go in any direction you tell me.

Boardmember McNeill: Sure.

Boardmember Corozine: How many buildings on the property are vacant?

Mr. Nikaj: Are vacant? Only just the one.

Boardmember Corozine: Just the one?

Mr. Nikaj: Yes. I have some pictures if you want to see it.

Chairman Froessel: Well, there are a couple of buildings that are sheds or garages or something?

Mr. Nikaj: Yes, there's one garage and two sheds for tools and stuff, but whatever is apartments is all occupied. We've met with inspectors and it's all good.

Boardmember Gil: Sir, do you have any financials to submit to the Board with respect to rate of return as a factory compared to rate of return as apartments.

Mr. Nikaj: I never know what the factory brings in because I never use as a factory.

Boardmember Gil: No, I mean if you leased it as warehouse or storage area what would you rate of return be and could you even do that. Could you just lease it out in the condition that the buildings are in now?

Mr. Nikaj: Actually, as the way I see it, I have good tenants and they are all excellent to me, some have kids. Even going commercial I not prefer because it's going to trucks there. It's going to be more traffic but even if you allow me commercial, I don't mind, I'll think what I can do. But, my expertise as a realtor is just with residential and I make a living on it. When I bought it that was one of the potentials I saw there to increase and I put a lot of money in the last 4 to 5 years there, over \$300,000 on top of what I paid for it. Now I am looking for some return and I see a shortage in your inventory of apartments too, which people need. Every day I come upstate and they tell me "oh I have a cousin or a friend looking for apartment. Do you have any?" That's why I think probably can do to help. The building is in very good condition.

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

Morrie Kaplan 1 Fischer Lane was sworn in.

Mr. Kaplan: I have two questions, some of them you've already asked but it's still unclear to me. How many bedrooms and bathrooms are for each unit that he's building?

Mr. Nikaj: The building is an existing building. It's not like we are building anything. We are just going to work on what is there. There is nothing to build, the building is there. I have the pictures here if you want to see.

Mr. Kaplan: Yeah but I'm just wondering how many bedrooms you're going to have.

Mr. Nikaj: It's going to be 5 apartments; 4 one-bedroom and 1 two-bedroom.

Boardmember McNeill: Do you have any preliminary drawings?

Mr. Nikaj: Yes, I present it to the Building Department. I probably have some in my bag too, some copies.

Chairman Froessel: So, basically, you're talking about 6 bedrooms for the 5 units.

Mr. Nikaj: Yes.

Chairman Froessel: OK.

Mr. Nikaj: Six bedrooms and six bathrooms.

Mr. Kaplan: And another question: is he supposed to get for the septic; he has to get approval from the Department of Health?

Chairman Froessel: Even if we grant the variance, he would still have to get the approval from the Department of Health.

Mr. Kaplan: And the other thing I was going to ask you: since this is one single dwelling zoning with one accessory building, how does this conform to that and how do the other 23 apartments conform to the zoning?

Chairman Froessel: I'm assuming that the other 23 apartments are pre-existing non-conforming and that's why they are allowed to continue. The expansion to 28 is not conforming and is not in compliance and that's why he is here seeking a Use Variance.

Mr. Kaplan: OK, and if he wants more apartments after that he has to come back or does this automatically give him an open door to do other apartments?

Chairman Froessel: Well, the variance would be limited to the number of units he is seeking so if he wanted to do more theoretically, he would have to come back, but that's all hypothetical.

Mr. Kaplan: OK, do we know if fire trucks and fire apparatus have access?

Mr. Nikaj: They do, they have room.

Mr. Kaplan: OK, that's it. Thank you.

Chairman Froessel: Thank you very much Mr. Kaplan.

Mr. Nikaj: I have some pictures so you can see.

Chairman Froessel: Sure, we'll take a look.

Mr. Nikaj: So, this is view, and this is one side...

Chairman Froessel: One second ma'am. While we pass the pictures down, ma'am did you want to come up and make a comment?

Elizabeth Cypher 772 Route 312 was sworn in.

Ms. Cypher: I'm your neighbor and my question is: how many people are actually living up there now?

Mr. Nikaj: People or apartments?

Ms. Cypher: People.

Mr. Nikaj: There are 23 apartments and most of them are singles.

Ms. Cypher: Well, I think that's one of the concerns, zoning and everything around here is that a single apartment could have one person; we don't want four people in it.

Mr. Nikaj: I don't want that too.

Ms. Cypher: I noticed there's not much traffic coming in and out.

Mr. Nikaj: No, there's not. I screen every tenant. I make sure, first for my interest and then for everybody. I kicked out two of them already during my time for their behavior, just because whatever was going on there, I see it and I kicked them out.

Ms. Cypher: I have to say in his favor it has been over the years, even when Mr. Fine owned it. I have lived there 54 years and never had a problem with anyone. If they continue...I understand he wants to make money and that's fine. I personally don't think I have any objections to it because he has been a good neighbor, but my question is: there are 56 acres there.

Mr. Nikaj: Yes, there are.

Ms. Cypher: Do you know if any of them are buildable?

Mr. Nikaj: So far, I never have time to go there. I know it's three parcels but I'm not concerned with that now.

Ms. Cypher: Well, it's all landlocked if you're not aware of where it is and you only have access through me.

Mr. Nikaj: Off 312. It's a difficult property.

Ms. Cypher: Well, I have a difficult property too, but he also has an easement over New York City.

Mr. Nikaj: Yes, I get permit every year for that.

Ms. Cypher: Oh, is that what they require?

Mr. Nikaj: Yes.

Ms. Cypher: I was just surprised that they were out surveying again.

Mr. Nikaj: I can let you know that our driveway, I would like to put another one to make it work. It's another road nearby.

Ms. Cypher: Is that the utility road that goes up next to my property?

Mr. Nikaj: Maybe, I don't know.

Ms. Cypher: That's a utility road. That's what Mr. Fine called it. But you don't have Right-of-Way to go up there is what they told me the other day; that you would have to have an easement to go up that driveway.

Mr. Nikaj: It's not I need only for City. It's Water City Well Department as part of my driveway and I get permit for that.

Chairman Froessel: The actual driveway that's in use now an easement with the City is required for that?

Mr. Nikaj: Yes, the DEP.

Ms. Cypher: Now they told me the other day that he would have to have an easement for that other road.

Mr. Nikaj: I know it's totally on the property.

Ms. Cypher: It's totally on the property? That was my question because they tell me that you don't.

Mr. Nikaj: No, that is totally my property.

Chairman Froessel: Actually, it looks like it's not according to your survey.

Ms. Cypher: It's in that little 23 ft.

Mr. Nikaj: I'll show you where she's talking about. You see the driveway here? That is mine. You see this part here and my driveway here? This part of the driveway is the DEP and this is me.

Ms. Cypher: See, I understood it too because Mike Levine, Building Inspector, said he thought he that he owned those 23 ft. too but the surveyor said the other day they doubted it.

Mr. Nikaj: That's why I pay for it.

Chairman Froessel: The survey certainly makes it appear that you have to have cross someone else's property to go in.

Ms. Cypher: Well, it's not on his.

Mr. Nikaj: This is the one we're talking about, it just wraps around, and this is what I use now. My property runs through (inaudible). For this part here I get permit every year and I pay for the easement but this is totally my property.

Chairman Froessel: Your property comes down and ends here. It's funny because I looked at this on Google Earth and you can see this road starts out this way and then disappears into the woods here.

Mr. Nikaj: That property was rundown. I don't know why, but I started putting in money and make it work.

Chairman Froessel: You pay a fee to the DEP every year for the easement?

Mr. Nikaj: Yes.

Chairman Froessel: How much is the fee?

Mr. Nikaj: \$120.

(multiple people talking)

Willis Stephens, Town Attorney: Those are standard revocable license fees. They charge the same thing to the Town for like our Highway Garage, it's the same type of permit.

Chairman Froessel: They key word there is it's revocable.

Mr. Stephens: It is revocable.

Chairman Froessel: So that could be landlocked.

Mr. Nikaj: I was told by lawyers and everybody that this driveway is on the property but the one I use now is part of DEP and that's why I have a permit for that.

Mr. Stephens: The one point that should be addressed is if the access and the use for this property is the one that crosses DEP property, the additional usage would probably have to be approved by the DEP before it could ever become a reality.

Chairman Froessel: OK.

Mr. Stephens: You're giving further burden to the easement by adding the five units up there.

Mr. Nikaj: Again, I'm not that expert and when I bought it, I don't know all these things now come to me. Now, I'm going to sell it or try to make it work, but I still need the permits.

Chairman Froessel: Mr. Stephens, in your experience do these permits have some type of limitation on the in terms of their use?

Mr. Stephens: They typically do. My understanding...as I said they're revocable licenses and their based on what you use it for. For instance, if the Town were going to increase or put another building for instance on Palmer Way, we'd have to get the approval of DEP before we could do that.

Boardmember Wunner: Do you know of any that have ever been revoked?

Mr. Stephens: Yes, one on Route 22 with a private owner. I think they wanted to develop it and DEP wouldn't give them the OK.

Boardmember Wunner: Further south of like Palmer Road?

Mr. Stephens: It was actually more south of Turk Hill Road.

Mr. Nikaj: These are the rules, I follow them.

(multiple people talking)

Mr. Nikaj: I pay. I don't play with the rules. I try to follow the rules.

Chairman Froessel: I understand.

Mr. Nikaj: I really appreciate it if you can help me make it happen. It helps me and everybody.

(multiple people talking)

Boardmember Wunner: Do you have the size of the factory building you want to use. Is it this building?

Mr. Nikaj: Yes, that building. I think it's 50 across.

Boardmember Wunner: You will be using both floors?

Mr. Nikaj: OK, let me explain. This is the back of the building and the basement. There's one apartment over here. I try one on top but it will be one bedroom. I see most people are single so.

Chairman Froessel: Serving multi-family dwellings is what it says.

Mr. Stephens: The only reason I raise this is that it would be prudent for Mr. Nikaj to go back to the DEP.

Mr. Nikaj: OK, I deal with them. I don't have problem, but my next project is if I am able to make this one, my driveway I want to use that driveway; pave it and make it accessible because now there is rock and it's not where we can use it.

Mr. Stephens: Is it your hope to make that the main driveway for the property?

Mr. Nikaj: Yes.

Mr. Stephens: Well you're going to have a number of other concerns if you do that.

Mr. Nikaj: Again, it depends whatever requires to do it, gravel whatever it takes.

Mr. Stephens: That's a state highway so you would need to, you will probably have to get a state road cusp permit.

Mr. Nikaj: I'm not ready to go there because this driveway I'm using, it's enough. There are probably less than 30 people living there in 23 units. I mean it's not really busy.

Ms. Cypher: I just have another comment: being that it's a state road, he might want to talk to them because that is the curb of 312 and even if it were, the only way they would ever allow it would be a right-hand turn. Mr. Fine spent 50 years trying to get a...

Mr. Nikaj: I'm learning everything myself. Wherever they lead me, I try to go this way, that way.

Ms. Cypher: Because it's difficult. I always thought that Mr. Fine had put that in as a precautionary thing for should there be a fire or anything that residents would have another entrance to come out of.

Mr. Nikaj: The fire trucks and UPS trucks, they still use it, the big trucks. But the small cars it's not really good.

Ms. Cypher: There's a concern of the location of the area is that I'm conscious of whether there are kids/adults drinkers, people using drugs going up there at night. Don't worry I watch it. And, that's a concern too of having that many people up there and making sure that we're safe in our areas too.

Mr. Nikaj: I explain one thing: I have so far 5 evictions just because the troublemakers were there. I have a super up there and he watches what's going on and I am there on Saturday and Sunday 90% of the time.

Ms. Cypher: I'll be over to see you then.

Mr. Nikaj: I'd like to meet you there and if you see the property and you seen it before, you're going to see the difference.

Ms. Cypher: Well I think if you're a longtime resident...God bless Mr. Fine; he was an interesting person.

Mr. Nikaj: I never met him but I heard about him.

Ms. Cypher: He was an interesting person but he did keep that place under control.

Boardmember Corozine: I just have a question for her if I may? Is there a present concern with behavior on this property?

Ms. Cypher: No, never has been. I've never heard of the police going up there. No concern whatsoever.

Mr. Nikaj: I'm a tough landlord. I kicked out the last tenant, he was paying \$1200 first of the month but I see some suspicious cars around. The father calls me and says 'why you kick my son out?' I said 'listen, don't ask me. He was paying me every month.' As his landlord, I don't like to kick someone out who pays me unless I have a reason for it and he didn't say anything. He paid the first of the month every month, but something the tenants complained and said at nighttime somebody comes and goes. I spoke to him once, twice and then you gotta go.

Boardmember McNeill: Do you have leases for your occupants or are they month to month?

Mr. Nikaj: Month to month and that's why I make it clear to them that what helps them helps me. If you continue paying the lease you can stay but if you don't pay or you create a problem you are duly noticed and so far, I don't have a problem.

Chairman Froessel: Anyone else have any questions? OK, Mr. Nikaj I think what we will do is we will continue the application to next month. We should hear from County Planning by then. What's the date next month, Victoria (Desidero)?

Ms. Desidero: May 20.

Chairman Froessel: May 20 we will be back here, we should have that back from County Planning, and we should be able to vote then.

Mr. Nikaj: OK, thank you. I take pictures or leave them?

Chairman Froessel: Do you want them back?

Mr. Nikaj: It does not matter.

Chairman Froessel: We'll give them to Victoria for our file.

Ms. Desidero: I'll put them with the record.

Mr. Nikaj: Thank you. She is so helpful to me because I don't much about this.

Chairman Froessel: She really helpful to us too.

3. Dennis Santucci

5 Shady Lane, Tax Map ID 47.-3-9

Public Hearing to review an application for an Appeal of the Determination of the Building Inspector dated March 22, 2019 where it was determined that the height of the proposed fence at 6 ft. exceeds the permitted 3 ft.

Boardmember Gil: I'm going to recuse myself from this matter. For the record I have represented Mr. Santucci's neighbor for a Code Violation and at the last court date and Mr. Santucci complained to the prosecutor on that matter because I was on the Zoning Board of Appeals and that it was a conflict. That matter is now pending for April 26 for me to be potentially relieved from that matter and because of that I'm going to recuse myself. It's not that I can't be fair and impartial, I will always be fair and impartial but just to eliminate any appearance of impropriety or any appearance on the integrity of this Board I want to make sure that I am protecting the integrity of all of you here.

Chairman Froessel: I appreciate that Andres (Gil).

Dennis Santucci and Michael Liguori, Attorney at Hogan & Rossi were sworn in.

Mr. Liguori: With Andres (Gil) having recused himself I just want to ask Steve (Corozine) if you were here for some or all of the previous matters with Santucci because if you haven't I'll

give a little bit more of a background but if you have then I can kind of just cut right to the chase.

Boardmember Corozine: I haven't, I've read all the material but if you want to summarize quickly.

Mr. Liguori: OK.

Chairman Froessel: There's no way to summarize quickly but I appreciate it.

Boardmember Corozine: I have read through it so it is not a blank slate.

Mr. Liguori: This is the Santucci property and I think the rest of the Board is intimately familiar with it. Milltown Road is over there. There is a private road, Shady Lane, where if you head up Milltown towards Connecticut and make a left onto Shady Lane. Shady Lane consists of 4 properties, the first is up here, and the Heinecke property, the Santucci property, and the Skalaski property have access from Shady Lane. So, what we're looking at is basically a survey of the path of the Santucci property. It continues around behind the Skalaski's, looks like a boomerang. The property has been improved by the construction of the stone wall and fencing on top of the stone walls. The Zoning Board had made a Determination back in 2016, after an analysis of the north wall; this is north, south, east, west. They had reviewed the north wall and the south wall and made a determination that those were not retaining walls; hence the determination in the resolutions that were presented to the Board as part of this. Certain variances were granted to permit Mr. Santucci to build on top of those walls; we needed certain height variance to permit the construction of the fences that he has and so the property right now has a fence on the north, a fence to the south, a fence to the west, and there's no fence currently in the front. This is a picture of the front wall, which is the eastern wall. We took some pictures of Dennis (Santucci) standing along the wall to just point out the grade because it undulates, it's not perfectly straight across. The wall is straight but not the grade behind it. The matter of the wall and the fill behind the wall was the subject of a lot of scrutiny. It made its way to the Planning Board...it was referred to the Planning Board under Chapter 69, which is a Code provision that governs filling in your property here in the Town of Southeast. The question that was referred to the Board was a predicate question, which is if there is a questionable project the Building Inspector has the authority to refer it to the Planning Board for it to determine whether or not a Special Permit is required, OK? After meeting with the Planning Board and I attached the minutes of the Board; they had reviewed the matter, taken a vote, and a vote was that the project did not require a Special Permit. Dennis (Santucci) has recently submitted an application to the Building Department to build a fence on the front, the eastern wall. After some clarification, there were a few questions back and forth on the project: was it 3 ft. on top or was it 3 ft. from grade. We had clarified that it was proposed to be 3 ft. from grade. It was out position that based on the prior determination of the Zoning Board that given the fact that the Planning Board had determined no Special Permit was required that we were in conformance with Chapter 69. Chapter 69 says, and I brought copies in case...just to make it easier. Chapter 69 says that if you have a validly issued Building Permit you can alter the grade. You cannot alter the grade precisely on the property line but within 10 ft. you can alter the grade up to 2 ft. and after the 2 ft. mark, if you exceed the 2 ft. mark then you would require a Special Permit. I brought copies just to have, so if you want to just slide them down.

Chairman Froessel: I already have a copy.

Mr. Liguori: OK. The first page is a copy of the relevant section of Chapter 69. The second page is from the definitions, it defines a fence. The third page defines a retaining wall. The fourth page, I pulled a copy of the section of the Building Code, The International Building Code, which makes reference to fences under 4 ft. do not require a permit. What that means is

if you're dealing with the International Building Code it identifies matters that require a permit from the Building Inspector and matters that don't. It's general knowledge that retaining walls under 4 ft. are not required to be designed by an engineer. While they may require a building permit...

Chairman Froessel: Whoa, whoa, whoa, whoa, let me read that.

Mr. Liguori: Yeah, sure. Greg (Wunner) can tell you. Greg's (Wunner) a building inspector.

Chairman Froessel: What section is this?

Mr. Liguori: 105.

Chairman Froessel: 105 of what?

Mr. Liguori: The International Building Code of 2015.

Chairman Froessel: The 2015 IBC, Section 1807.2 has requirements.

Mr. Liguori: Retaining walls under 4 ft. do not require a permit.

Chairman Froessel: From the bottom of the footing.

Mr. Liguori: From the bottom of the footing.

Chairman Froessel: OK, but he still didn't apply for this as a retaining wall. It was a landscaping wall and existing grade. That was my recollection of what the permit said.

Mr. Liguori: Understood, understood, so we.

Mr. Santucci: In 2016 they gave a variance. We go to the Planning Board and the Planning Board ruled in 2018 so the variance was actually valid in 2016, maybe perhaps we needed a variance of the other walls and fencing but in 2018 the Planning Board ruled that we were in compliance and the grading on that property was 100% to par and the fill that was brought in or not brought in...

Chairman Froessel: The only thing that the Planning Board ruled was that you didn't need a Special Permit.

Mr. Santucci: Right.

Chairman Froessel: And reading the minutes Mr. Rossi's argument was that a Special Permit was not required because exemption 1: *'changes in contour directly related to the bona fide construction alteration of a building or structure authorized by a valid building permit.'* That was his position.

Mr. Liguori: It's their position.

Chairman Froessel: And that's the only thing the Planning Board said.

Mr. Santucci: And thereafter Mr. Levine removed all the violations so we're 100% in compliance.

Chairman Froessel: OK, and by the way the 2015 IBC did not become effective in New York until October 3, 2016.

Mr. Liguori: OK, anyway, the point of raising the...I know we didn't apply for a retaining wall. However, we could have been told to mark the plan to say retaining wall and that would have been our application for a retaining wall; we wouldn't have had to hire an engineer to design a retaining wall because...I don't think anyone was arguing at the Town that we needed to have a designed retaining wall.

Chairman Froessel: Because you didn't say you were building a retaining wall.

Mr. Liguori: It was built to grade. But, look, after coming out to the property and looking at it we could have had that discussion with the Building Inspector. "Would you like to amend your permit to say retaining wall if it's intended to retain?"

Chairman Froessel: Don't let the Building Inspector fill out your permit.

Mr. Liguori: I'm not putting it on the Building Inspector, but the logic it...let me make an alternative argument. I have a house on Route 22 that's in use as a residence; I'd like to use it as an office. That logic would say 'well you didn't apply to build an office so I can't let you use

an office there.' It's the same logic but it fails so, anyway it doesn't...what we'd like to do is finish the fence. That's what we would like to do. We think that there is enough information for the Zoning Board to determine that that wall is retaining. The definition of a retaining wall here in the Town is very simple. It says "*a vertical or inclined structure designed to restrict the movement of soil, fill material, or water, stabilize soil or fill material, impede erosion or terrace a parcel or site.*" We believe that that clearly does that. It's 2 ft. in width, it's 3 ft. tall. Dennis (Santucci), how far does the footing go down?

Mr. Santucci: I think 30 inches.

Mr. Liguori: It's a significant sized footing underneath the wall. It retains the soil. It terraces the site. There is no definition of the word defined. The International Building Code, if it's applicable here in the Town of Southeast, says it's exempt from design requirements so we believe we clearly fall within the scope of a retaining wall here in Town. If the Board disagrees then our alternative is to go back to the Determination that was made by this Board as to how do you measure height when you are lawfully permitted to change grade and we think that you guys ruled specifically on that in August as to how to measure walls and you determined them not to be retaining. You said, I'll read from the resolution of the Board "*The Board resolves that..*" this refers to applicant's property to the north...I'm sorry, the Heinecke property to the north and the Skalaski property to the south; those walls, the north wall and the south wall. The Planning Board held "*the height of the fence on top of the stone walls constructed by the applicants*" and recall the height was built...the fence was built prior so we were measuring the top of the fences to determine the actual height of the what we were looking at. "*that the height of the fence on top of the stone walls constructed by the applicants in or about 2014 between the applicant's property and the Heinecke property to the north and the Skalaski property to the south should be measured as the vertical distance between the top edge of the fence and the base of the stone wall at either the lowest grade on either side of the stone wall as it existed before the construction of the stone wall and prior to the addition of any fill not lawfully placed pursuant to Chapter 69.*" So that event, that first measurement is if your fill is not lawfully placed you go to the lowest point of the grade because that would put you on the side where there would be no fill. The alternative is "*the lowest grade of any fill placed lawfully pursuant to Chapter 69 of the Town Code or by Special Permit duly issued by the Planning Board.*" And so, what that would say is if you had a valid Building Permit, which we did, and you were allowed to place fill on your property and you built a fence on top of that fill...so here's just a diagram. Let's say this is the property line and you were allowed to grade up this way and you put a fence on top of that grade. This fill was lawfully placed that means that you would measure from here as opposed to here at the property line. You would have the ability to lawfully alter the grade and the Building Inspector would measure after the grade had been altered.

Chairman Froessel: I disagree with that interpretation. The reference to the fill lawfully placed was basically intended to give an applicant on the low side that if fill was added and it was legal, they should get the benefit of that.

Mr. Liguori: That's what we're...

Chairman Froessel: In other words if someone had let's say I don't know a garbage structure on their property and the driveway on one side was a certain level and it seemed pretty clear that that driveway hadn't been altered, it was what it was, and there was an issue of whether or not there was fill on the other side of that; if it was and it was lawfully placed you would get the benefit of that lawfully placed fill in terms of measuring the height. It was intended not to penalize someone who had followed the Code and had placed fill lawfully under 69 or gotten a Special Permit or what have you.

Mr. Liguori: But we have that Determination.

Chairman Froessel: You have it but you still have a lower grade on the other side of the fence.

Mr. Liguori: Yes, but were not building at the bottom of the grade. We're not building down here. That's not where were putting the fence.

Chairman Froessel: That's where you measure from Mike (Liguori).

Boardmember Vink: If you're putting it on top of the existing fence.

Mr. Santucci: How I read the Code, it says the high side of the wall. So, the high side of the wall is back here. If you make any measure from here, this is a retaining wall. There was lawful fill placed back here so therefore it's retaining so you have to take it from the high side, which is back here.

Boardmember Vink: It's game playing to take a decorative wall and throw fill behind it and then claim it's retaining so you can put a 6 ft. fence on top. That just feels like game play.

Mr. Liguori: It's not game play.

Mr. Santucci: In 2019, today, the property is 100% in compliance. It's 100% to Code. What's out there is existing condition.

Chairman Froessel: Let me ask you a question: why do you want the fence?

Mr. Santucci: There are multiple reasons.

Chairman Froessel: I'd like to hear them.

Mr. Santucci: Kim (Santucci) would you like explain why we want a fence?

Mrs. Santucci: (inaudible)

Mr. Santucci: Multiple reasons.

Mr. Liguori: We have a fence program for the property. We have the north wall, we have the back, and we have the south wall. We'd like to have a fence to the east to complete that. We have an issue apparently with dogs. We'd like to make sure that that doesn't become worse. That would complete that and have the property completely fenced in. And, aesthetically we believe it's an improvement and it's what the Santucci's want to do on their property.

Boardmember Vink: I don't think there's any way you can legitimately claim if you're not inside that fence that it's an improvement aesthetically. It's certainly not an improvement if you're standing on someone else's property looking at it; you're staring at a 9 ft. wall. That's not...

Mr. Liguori: It's not a 9 ft. wall.

Chairman Froessel: It is from the other side.

Mr. Liguori: It would be 6 ft.

Mr. Santucci: 6 ft. would be the maximum from the other side.

Mr. Liguori: Now ironically the neighbors to the south could build a 6 ft. wall. In fact, they could start right here for the first 50 ft. it would be 30 ft. and for the rest of it they could build up to 6 ft., that's well within their right.

Chairman Froessel: And it would show as 3 ft. on your side of the property.

Boardmember Vink: It would show as 3 ft.

Mr. Santucci: It would be the same fence.

Boardmember Vink: No, it wouldn't. It wouldn't be the same fence.

Mr. Liguori: It would be their fence.

Chairman Froessel: It's different, but wouldn't that count as...I know the property layouts are kind of unusual over there, but wouldn't that count as Skalaski's front yard? Would he be limited to 3 ft. there also?

Mr. Liguori: For the first 50 ft., yes. Then after that, after the front yard he would be able to build a 6 ft. fence.

Chairman Froessel: OK, how long is his driveway?

Mr. Liguori: It's about 200 ft. So, after 50 ft. we could...any day of the week we could be looking at the Skalaski's 6 ft. fence. It's totally lawful. It's what the Code permits. But look if we have to go back and amend the original permit to have it say retaining, because it didn't say retaining, we could go do that.

Boardmember Vink: But it wasn't retaining.

Mr. Liguori: But it retains.

Chairman Froessel: We're in a circular argument here. It's retaining because it retains. I remember specifically the application that was submitted for that wall said we want to build a 3 ft. high landscape wall with existing grade on either side of it.

Mr. Liguori: Yep.

Mr. Santucci: In 2014. This is 2019. What's there right now is 100% in compliance.

Chairman Froessel: I understand that and I also know what your application said in whenever it was, 2014.

Mr. Santucci: We're here today.

Mr. Liguori: So, should we apply to build a retaining wall? I guess that's the question because if that would make the Board feel better about it, we could go do that.

Mr. Santucci: So, you put a house on someone's property and then a year later say 'you know the house doesn't belong there, rip it down.' This is in compliance. It belongs there.

Chairman Froessel: No one is telling you to rip it down.

Mr. Santucci: We're asking to improve what we have.

Boardmember Corozine: I'm trying to understand what the hardship is about having the fence. I know you mentioned dogs. I don't know about dogs jumping that 3 ft. but what exactly is the purpose of the fence?

Mr. Liguori: Well, number 1 we'd like to have a fence. That's the desire. We're allowed to improve our property. We don't have to provide a rationale for wanting to do that but that's what we want.

Boardmember Vink: It's a self-created hardship.

Mr. Liguori: We're not asking for a variance so we don't have to go there. We're interpreting the Code and the variance criteria don't apply. The dogs apparently have been getting off the property; it's been an issue with the Skalaski's. Having a fence there would resolve that.

Boardmember Corozine: So, the dogs got out.

Mr. Santucci: It's alleged that the dogs got out of the property. It was alleged. So, this would stop that; there wouldn't be no alleging.

Boardmember Vink: A fence farther in would do that too. It doesn't have to be right on top of this one.

Mr. Santucci: It would also look absurd.

Boardmember Corozine: Or an invisible one.

Mrs. Santucci: We have one.

Mr. Santucci: We have an invisible fence.

Boardmember Corozine: It doesn't work?

Mr. Santucci: It works. I think it works fine but it's been alleged that the dog got off the property so this could satisfy that. It's a pretty big hardship. As far as putting the fence further in, I guess you could put the fence by your front door but you're cutting your property in half, which we're perfectly entitled according to your resolution, in my opinion, this is a very legal act that we're asking for.

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

Woman in audience: Hi, perhaps I could start?

Chairman Froessel: Sure, come on up, state your name and address, and we'll have the Vice Chairman swear you in please.

Kathleen Skalaski of 3 Shady Lane was sworn in.

Ms. Skalaski: OK, so first off on my phone I'd like to show you the alleged attack.

Mr. Santucci: No, that's not...

Ms. Skalaski: Uh?

Mr. Santucci: No, this is...

Ms. Skalaski: You're alleging that it was alleged.

Mr. Santucci: You're saying he was off the property; he wasn't.

Ms. Skalaski: So, can I show you what happened to me? I was bit by the Great Dane when I was putting my garbage out. It flew over the wall. It was a pretty substantial bite and it's not alleged; it happened. We went to the ER, OK? So, that's not truthful.

Chairman Froessel: OK, let me ask you follow up question, which is why wouldn't you want him to have a fence then if he has the dogs there?

Ms. Skalaski: I certainly would but not on my property line because as I drive down it will be like Interstate 95 with the sound barriers. You know sure, put up a fence, and put it 20 ft. in.

Chairman Froessel: It would have to be 50 ft. in.

Ms. Skalaski: Or 50 ft. in. He's got 5 acres.

Mr. Skalaski: We definitely would not object to it if it were 20 ft. in.

Ms. Skalaski: Yeah, I have no problem with it, I would love those dogs contained but not on my driveway. As it is, when I come out, I have to stop. I can't see them coming out with that garbage structure. Just recently someone was backing into me. You know, there's no visibility. So, I have no objection but have him do it in 50 ft. That's where I'm coming from.

Chairman Froessel: OK.

Ms. Skalaski: My husband has a little more technical expertise.

Jerry Skalaski of 3 Shady Lane was sworn in.

Mr. Skalaski: I'd like to thank you for some of your comments to Mr. Santucci and Mr. Liguori. I guess they finally admitted they put fill behind the wall within 10 ft. of the property line. This is the first I've ever heard this, right? I mean we've had this discussion time and time again. Just so everybody understands what a 6 ft. fence on top of a 3 ft. wall looks like: this would be along my driveway.

Chairman Froessel: What I think what he's asking...you're asking for a 3 ft. fence on top of the stone wall?

Mr. Liguori: 3 ft. from the measurement of the grade so instead of here, it's going to slope down.

Mr. Skalaski: How high is the fence?

Mr. Santucci: 3 ft.

Mr. Liguori: The total? 3 ft.

Mr. Skalaski: That going to retain the dog, a Great Dane dog?

Chairman Froessel: I will tell you a personal anecdote. I had a dog that was half golden retriever and half chow and my 4 ft. fence did not keep it in. I had to have the fence raised.

Mr. Skalaski: I have a fence around my deck. My daughter comes over with her dog; it's about that big of a dog and just jumps over the fence. OK, so let's put the fence back. If he goes back 50 ft., he can put a 6 ft. fence up, protect the dog, protect his animals and I can have my own protection and it won't be an eyesore driving down my driveway. I just did a little rendering of if he wanted to go 6 ft.; that's what it would look like.

Chairman Froessel: I just want to be clear; you guys are not talking about putting 6 ft. on top of the stone wall.

Mr. Skalaski: All you want is a 3 ft. fence? We're talking about a dog; this is the second time the dog has come over. This time my wife was attacked, OK. So, Victoria (Desidero), I just have to go through this very quickly.

Ms. Desidero: Got it, thank you.

Mr. Skalaski: Are we talking about a 3 ft. fence?

Chairman Froessel: That's I believe...3 ft. from the top of the grade on the Santucci side of the soil.

Mr. Liguori: 3 ft. measured from the high side of the wall.

Mr. Skalaski: And that's going to protect me from dogs? Give a variance to offer protection from animal bites.

Mr. Liguori: We're not here for a variance though, just so we're clear.

Mr. Skalaski: What are we here for?

Mr. Liguori: We're here for an interpretation.

Boardmember Vink: They're looking for us to say that what we did last time allows them to do this.

Mr. Skalaski: Oh, OK. I'll go back to the original discussions, all right? It wasn't a retaining wall, it's a freestanding wall. That's what the permit said. Mr. Santucci filled behind that wall illegally; maybe that's all been straightened out with the Planning Board and everyone else, but there was fill put behind that wall. It was never there, all right? So, now we're going to take 3 ft. and measure another 3 ft. It's not a retaining wall. It really wasn't. It wasn't from day one. If he wants to go through the Board and the Town and apply for permits to get retaining wall permits and everything, let him do it, but it wasn't built. And, I do take exception when he said he went down 30 inches building that wall, I live there. I saw the wall being built. The stone was laid on ground, right on grade, maybe down 6 inches; that's what it was. I saw it every day. So, we're not talking about a height variance; we're talking about a retaining wall. Well, it's not a retaining wall.

Boardmember Vink: Which that's a standard decorative wall to be excavated to.

Mr. Skalaski: Yeah, that's what it was built for. So, I guess if we're not talking about a variance, right? For higher than 3 ft.? Is it a retaining wall, that's the question? Then if it's a retaining wall, what happens? We put a fence on top of that? I still have a sizeable wall coming down my driveway. I may drive right into it; it's right on the property line. Let's do some commonsense here Dennis (Santucci), put the fence up, protect your house, protect your dogs, protect everything else and give a little courtesy toward your neighbors. I get you want to build a fence. Why you want to build it? I don't know. It's not a detriment for your side. You don't see it; I see it every day. It's not a decorative fence for you. You have pine trees; you have evergreens right along the whole length of the driveway. Put it on the other side, very simple. Well, I guess if it's not a variance on height, right? We won't deal with that. It's still in my eyes, and I guess some of the people on the Board already said it's not a retaining wall; it was never intended to be a retaining wall. It's down on my grade. The driveway is right there, grade level. Some of you have been out at my house. You know what it looks like. I don't have to describe it again. So, that's it. My question is: he says he needs a fence to protect himself or the neighbors from his dogs and he is going to put a 3 ft. high fence up? Let's be real here. Let's call it for what it is. You have any questions for me?

Chairman Froessel: I do not, does anyone else? No?

Mr. Skalaski: Thank you for your time.

Boardmember Corozine: I have a question. The wall that Mr. Santucci is standing on in that picture, not the grade but the actual wall, what's the age of that wall?

Mr. Santucci: In 2014, it's 5-6 years old.

Boardmember Corozine: What was there prior to the wall?

Mr. Santucci: There was, according to an old survey, there was a semi-drywall there and when we dug it out a lot of those stones came out. We used them. So, basically it was replacing the wall that was there.

Chairman Froessel: Was there a standing wall there before you started the work? Did you have to remove a wall to put up this wall?

Mr. Santucci: There were remnants of a retaining wall that was there. It wasn't 100% there. It was in disrepair. That's why we built a new wall.

Chairman Froessel: How high were those remnants?

Mr. Santucci: I remember back in the day when I was in front of the Zoning Board, I explained at one point when I was working in this area, the grade was right up to where it was and Mike Levine and Tom Fenton came there. We were talking and I said 'you know this is a retaining wall.' They shrugged their shoulders and that was it. If I had known I would have taken many pictures. I would have had the evidence. It wouldn't have been five years of hell, but it is what it is. We're here. What's there right now is 100% in compliance. We've been to the Planning Board. All the violations have been taken off the property and as far as protecting for the dog, when the dog sees a visual; first they have the invisible fence it's about 20 ft. back. Then they see a visual of a fence, they're not going to jump over it.

Mr. Skalaski: Can I just comment on that? I owned dogs; my daughter has owned dogs. We know people with invisible fences. The issue with an invisible fence is you have this visual and there's the little sting they get. These dogs are this big, OK. Once they get over, they're not going to want to come back. I've got three grandchildren that come over my house weekly. I'm concerned about the safety of my family. If he has an invisible fence up, which didn't protect the dogs from getting off the property the first time, did it?

Boardmember Vink: That goes back to the Chairman's earlier comment that you should want them to have a large wall.

Mr. Skalaski: I want a fence. I would love for them to put a 6 ft. fence up but on the other side of the evergreens. I don't even care about the 50 ft. if he would just put it behind the evergreens, it would be great for me. He'd still have most of his property, he's got 5 acres. I grew up in lower Westchester, 50 by 100, that's what our property was. Five acres and he's worried about 'oh I'm going to lose 10 ft. or 20 ft. of my property. He still has it; he still owns it. It's his, nobody is taking it away from him, but I shouldn't have to look at a visual of a fence right along my driveway with my neighbors and family coming over. It shouldn't happen.

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

Mrs. Skalaski: I have one other thing. By filling the dog is standing up higher. Do you understand what I'm trying to say? So, the dog...I'm down here because he has built his property up so the dog is looking like more aggressive at someone who's looking lower. Do you understand what I'm trying to say?

Mr. Skalaski: He's 3 ft. above; he's 3 ft. above where my wife was standing.

Mrs. Skalaski: So, it's not like we were on a level playing field and he just wandered out. He's already up on a plateau, flew over that wall, you know, so, that's all I want to say.

Chairman Froessel: OK.

Boardmember McNeill: I have a question: this pre-date me a little bit even. Was there at some point a Building Permit for the wall itself or...

Mr. Liguori: Yes.

Boardmember McNeill: Was that signed off? Do you have a CO for this wall?

Mr. Santucci: Yes.

Boardmember McNeill: You have a CO for this wall?

Mr. Liguori: We have a Certificate of Completion.

Boardmember McNeill: Of completion or compliance or whatever.

Mr. Liguori: Yes.

Boardmember McNeill: OK, then the fill was brought in that didn't require...

Mr. Liguori: No, the fill was brought in connection with the construction of the stone wall, OK?

Boardmember McNeill: OK, so they were done simultaneously.

Mr. Liguori: The Building Inspector had roughly calculated the amount of the fill and said 'I believe you have too much fill.' You can bring up to 100 yards.

Boardmember McNeill: OK.

Mr. Liguori: He said to Dennis (Santucci), I think you have an issue with the amount of fill, Chapter 69. There was some confusion over the applicability of Chapter 69 at the time.

Boardmember McNeill: OK.

Mr. Liguori: At time it was thought that the fill would have to go 10 ft. back. It would have to start 10 ft. back.

Boardmember McNeill: OK.

Mr. Liguori: As opposed to being able to be placed within the first 10 ft. so Dennis (Santucci) had an engineer prepare a plan, Harry Nichols, to show that fill start at the 10 ft. mark.

Chairman Froessel: And there's a little bit of a dispute over that.

Boardmember McNeill: Again, this pre-dates me a little bit.

Mr. Santucci: But that was all resolved, 100% resolved.

Boardmember McNeill: What I'm looking at in this photo, is this completely signed off?

Mr. Liguori: Yes.

Mr. Santucci: Yes.

Chairman Froessel: That stone wall is legal and has always been legal.

Boardmember McNeill: OK, and the building behind it, is that...

Chairman Froessel: Whatever is behind, whether it's fill or not fill, the Planning Board didn't say. The Planning Board just said he didn't need a Special Permit for it.

Boardmember McNeill: OK.

Chairman Froessel: So, whatever is there is not in violation.

Boardmember McNeill: OK.

Boardmember Wunner: Was the fill in place when the final inspection was done on the wall.

Mr. Liguori and Mr. Santucci: Yes.

Boardmember Wunner: So, there was no problem with the fact that it was holding back dirt when the CO'ed the wall?

Mr. Santucci: The Planning Board resolved it. The Building Inspector resolved it. He took all the violations off my property. What's there is 100% compliant.

Boardmember Wunner: Does the Building Department not recognize that as a retaining wall now or has that question not come up?

Mr. Liguori: It does not recognize it by virtue of its determination of the denial of the permit.

Boardmember Wunner: But on the CO it says ornamental wall?

Mr. Liguori: No, it just says wall.

Mr. Santucci: The Town Code is clear about what a retaining wall is.

Boardmember Wunner: The fill was there when the Building Inspector came out and looked at the wall and said the wall is complete, it's done to my satisfaction. The fill was in place on that side and it was retaining the fill at that time.

Mr. Liguori: Let me just give you the history. So, in 2014 the Building Permit gets issued. We had basically three years of a period where we're in violation.

Mr. Santucci: Work is stopped.

Mr. Liguori: Work is stopped.

Boardmember McNeill: What was the violation at the time?

Mr. Liguori: That we violated Chapter 69, which is the section of the Code that you're looking at in front of you; that the grade was in excess of the 2 ft. that was permitted to be brought in.

Boardmember McNeill: OK.

Mr. Liguori: In May of 2018 it finally made its way to the Planning Board. It was referred by the Building Inspector because he has the authority to refer questionable projects to the Planning Board. They took a vote. The motion was 'motion to refer to the Planning Board for a Special Permit' and it failed 4 to 3, split vote, which meant that it was not to be referred...that no Special Permit was required.

Boardmember McNeill: OK.

Mr. Liguori: And the Certificate of Completion was issued after that point.

Boardmember McNeill: OK.

Mr. Liguori: So, they were in receipt, they looked at everything that you looked at plus more.

Boardmember McNeill: OK.

Boardmember Wunner: There were no as-built drawings?

Mr. Liguori: There are as-builts. This is, that is an as-built with typography.

Boardmember Wunner: Yeah, but how about the elevation...

Mr. Liguori: It's on there.

Boardmember Wunner: I'm looking at a plan view of the wall. Did the elevation view of the as-built showing that the dirt was on the back side of the wall?

Chairman Froessel: I don't see foundation or footings of the wall as well.

Mr. Liguori: We haven't had an as-built done of the plan view. That isn't an as-built; it measures the bottom of the grade, the top of the wall, bottom of the wall height. We have topography going out 10 ft. to this guy's property and behind the wall and the width of the wall. We had that all topo'd out. We just didn't have the plan view created.

Mr. Santucci: The Building Department didn't require those otherwise I would have made it, but again that is 100% in compliance at this point and time and the resolution from you guys, the Zoning Board, was in 2016. So, at that point in time we were still waiting to go to the Planning Board, we were working with the Planning Board. Actually, we had gone to the Planning Board once and they voted 3 to 3 so it was a tie vote, but it took until 2018 to get everything cleared up. But we're 100% cleared up and the Town Law is clear and your Resolution is pretty clear: you measure at the high point of the grade. It doesn't merely; I don't understand why we're in front of the Zoning Board again. It should have been handled in the Building Department. We have a resolution.

Mr. Skalaski: Can I just add one thing? I think we're missing an important component of this. The wall was built. Fill was placed behind the full length, 200 ft., of the wall at level; right level with the wall. The Building Department instructed Mr. Santucci to dig it out. So, if you go there today you can see the area that he excavated and he had to do that or else they weren't going to approve it. So, you're not getting the full story. It was put up, taken out. Now you can go there you can see...what the Building Department wanted to do was find the original grade and there were large pine trees and the stumps were there. So, he was instructed to dig

down so they could get to the original stumps and see where the original grade was. That was the purpose of it. We're not hearing that part of the story, right? We're hearing that the wall was approved because complied with what the Building Department requested. That's all. Tell the honest, straight-forward facts.

Chairman Froessel: To be fair, I think we were told that in the past that there was dirt that was backed out of there.

Mr. Liguori: In 2015...

Mr. Skalaski: You can say it again tonight.

Mr. Santucci: Mr. Skalaski is 100% right.

Mr. Skalaski: You can say it, there are new members on the Board, there are new members.

Mr. Santucci: We're compliant at this point.

Mr. Skalaski: There's a history here. You should hear it.

Mr. Liguori: It was rejected by the Building Department. They rejected it.

Chairman Froessel: The removal?

Mr. Liguori: The removal. It was rejected. Mike Levine came out and said 'I don't agree, go get topo' and we did.

Mr. Santucci: What he actually said 'he looked at the stump and he looked at the (inaudible) and said I don't see it' and he walked the other way but that's beside the point. That's history.

Boardmember McNeill: Was that fill brought back in then?

Mr. Liguori: No, it's the same fill.

Mr. Santucci: No, that's why you can see here...

Woman in audience: It's woodchips.

Mr. Santucci: The wall is about a foot higher in the back of the grade and in some of the areas the wall is 100% level with the top of the grade. So basically, from the...

Boardmember McNeill: I can see down the lower part of the driveway there I can see much more of the wall in the background.

Mr. Liguori: That's right.

Boardmember McNeill: OK so...

Mr. Santucci: So basically, by the garbage dumpster, for the first 30 ft. is the wall and the grade is 100% level and then it dips down for another section midway and then it goes back up again and is perfectly level. So, maybe the fence would be 3 ft. for a good 50 ft. from the beginning, dip down a little bit, and then go back up. Similar to this picture. I mean that's what I should be entitled to build, a fence that similar to that picture.

Boardmember McNeill: Can I see that down here?

Boardmember Cassidy: Michael, do you have a picture of the gate?

Mr. Liguori: I can see. I don't. Do you have a picture of the gate?

Mr. Santucci: No, I don't. It's a nice-looking gate though, but that's my opinion.

Boardmember Cassidy: No, I've seen it but I just don't remember...

Mr. Santucci: Do you have a picture?

Boardmember Cassidy: I have been to the property when the gate was there and I frankly don't remember.

Mr. Santucci: We got them electrified now.

Boardmember McNeill: OK, thank you.

Chairman Froessel: OK, well if we are...I just want to have you guys give us anything else you want to offer.

Mr. Liguori: I think the one thing I just want to reiterate is that...

Chairman Froessel: There's one more person, come on up.

Eric Savitch of 1 Shady Lane was sworn in.

Mr. Savitch: I'm here simply to say that I know that there's a lot of animosity going back and forth. I wanted the Board to know that, and I think you alluded to it, that it's a difficult area. It's 4 households on what is essentially one gigantic lot and it's sliced up. Mr. Skalaski's driveway goes right my backyard. It goes right in front of the Santucci property. From my perspective, the fence that he's talking about putting up doesn't really bother me. I'm really the one who sees it. I understand their concern. I'm glad to hear it's not a 6 ft. fence. I think that would be too much, but the point of this is that because of this intersecting property lines there are a lot of privacy concerns. I am, where I stand in my backyard, I can see cars going back and forth, I can see dogs going back and forth, and I can see people going back and forth. Me personally, I wouldn't mind putting up a fence on top of my stone wall. I can't afford to do that and I'm not going to, but there is a reason for this and I think there is a privacy concern. I think that if it's a low enough fence it might deter the dogs, I don't know, but I don't think that...and I think that it will give Jerry and Kathy some comfort to know that the dogs probably won't get past it and I don't see it being that onerous in terms of its aesthetics.

Chairman Froessel: OK.

Mr. Skalaski: Just one more comment: we went through this I guess last year or the year before. He built a fence on the sides of the property and he was instructed by Mr. DePaolo that 'it's in violation; you may have to take the fence down. He said why don't you get an approval before you do it?' He chose to build the fence anyway. My concern, and for the record, if he says he's going to put a 3 ft. fence up it better be 3 ft. and not 6 ft. and come back to you guys for a variance. He's done this before. This is what we do.

Mr. Liguori: We specifically negotiated that with the Building Department. We spoke to Mike Levine and Joe (Hernandez) specifically about the building the fence and what the variance was going to be.

Mr. Skalaski: Right, and what did he say?

Mr. Liguori: Did they violate us for it? They did. We...

Boardmember Vink: None of this is actually before us today.

Mr. Santucci: It's a wooden fence and when you guys said 'well we can measure it' I took a skill-saw and that was it.

Mr. Skalaski: But it was a variance that was approved.

Chairman Froessel: To be honest with you Mr. Skalaski, if he did that, he would be far from the first person to ever come to the Board after the fact.

Mr. Skalaski: You said, you said that in the minutes and I read them in detail. I read that in detail but here we are. We've got a history now, OK. So, if we say we're going to build a 3 ft. fence and it morphs into a 6 ft. fence and then he goes before the Board again saying I would like a variance.

Chairman Froessel: We're not strangers to that situation.

Mr. Skalaski: Yeah but we can't just dismiss it because millions of people as you quoted do this because this is what...this is self-imposed.

Chairman Froessel: We'd never grant anyone a variance.

Mr. Skalaski: This is self-imposed. He knows what the rule is. If he wants to get a variance let him go before the Board before he builds the fence.

Chairman Froessel: Well, he's here and he hasn't put up the fence yet, OK? He's got a position on whether his wall is or isn't retaining and our prior ruling what have you. The Building Inspector didn't accept it and now he's here. He hasn't built anything yet.

Mr. Skalaski: OK, so tonight is just about the stone wall.

Chairman Froessel: Yes.

Mr. Skalaski: OK, so when we see the fence being built it's another issue.

Chairman Froessel: Yes.

Mr. Skalaski: Thank you.

Mr. Santucci: I'd just like to say one thing: Eric's house, Mr. Savitch, is right here close to the back property. He's looking right in and he has no complaint about the erection of this fence.

Boardmember McNeill: Do you have photos...is there an existing wall with the existing fence on top of it right now or is it just a wall on the other sides that you're talking about?

Mr. Liguori: Oh, you mean to the north and the south?

Boardmember McNeill: Yes. That's just a wall?

Mr. Liguori: No, that wall and a fence.

Boardmember McNeill: Do you have a picture of that or no?

Mr. Liguori: We do, yes. As a matter of fact, I brought one with me. Right there.

Mr. Skalaski: This is what was constructed on the side of the property. My fear is the same thing is going to happen to the front of the property, that's my fear.

Boardmember McNeill: Now that way more than 3 ft., that fence.

Mr. Skalaski: Thank you! It's 6 ft. on top of a 3 ft. wall. It's 9 ft. high.

Boardmember McNeill: But Michael (Liguori), what you're proposing is 3 ft.?

Mr. Skalaski: We're not talking about fences now. We're talking about retaining walls.

Chairman Froessel: OK.

Mr. Santucci: This is not a great picture but this is the back of the property. You can see the piece of fence.

Boardmember McNeill: OK.

Mr. Santucci: It's a nice-looking fence. One other thing...

Boardmember Wunner: He gave them the crummy side out.

Mr. Santucci: If we're not allowed to build a (inaudible)

Multiple people: Well that's his property.

Boardmember Wunner: How much land do you own?

Mrs. Skalaski: 3 acres.

Mr. Skalaski: He has 5 acres.

Boardmember Wunner: You're close to his fence? You're looking at that directly?

Multiple people talking at once.

Ms. Desidero: I can't take notes if everyone is going to talk at once.

Mr. Skalaski: I'm sorry. You had a question for me?

Boardmember Wunner: I was just asking if this was in direct view of your house?

Mr. Skalaski: Partially in view, OK. It's not as offensive as when you drive down your driveway. This is what it would look like driving down my driveway. It's hidden by; I mean there's shrubbery, trees. It is what it is. I was opposed to it because of the height.

Chairman Froessel: Thank you. OK.

Multiple people talking at once.

Chairman Froessel: Does anyone on the Board have any additional questions for the applicant? Mike (Liguori), my plan is, what I'd like to do is close this Public Hearing tonight and we will vote on a resolution next month. If you have any reason why you would want to keep the Public Hearing open, I'll consider it.

Mr. Liguori: No, we were kind of hoping to resolve it tonight if we could.

Chairman Froessel: Yeah, I think this is probably going to require a written resolution.

Mr. Liguori: Let me just ask a question: if we were to apply for a permit to build a fence right here.

Mr. Santucci: 3 inches away.

Mr. Liguori: 3 inches away from the wall; would you measure on the other side of the wall or would you measure on the dirt?

Boardmember Vink: You're not here for a request for a variance.

Mr. Liguori: No one asking for a variance. It's the point. The point is if you move off the wall where do you measure? Where do you measure?

Boardmember McNeill: Because you're saying you'd be allowed the 3 ft. wall if you built it to the inside grade.

Mr. Liguori: I'm saying if... (multiple people talking)

Boardmember McNeill: I hear ya.

Mr. Santucci: It's the same thing that we're asking for. Just saying to put it on the wall, it's a nicer look.

Boardmember Vink: The difference is that you've create the situation now by backfilling that area, creating a retaining wall that was not a retaining wall in order...in my mind and this is really the way it appears to me, to justify building a higher wall, which is what you wanted in the first place. You've always wanted to build a high fence there. You couldn't get on one that wall so you back fill it in order to create a situation where you can justify it. This is the way it appears to me and I went through all this years ago. I've been on this Board a long time.

Mr. Liguori: I know, I know.

Boardmember Vink: And that's why I said it feels like gamesmanship to me. This is the way it comes across to me because this is not the original condition of that property. You've created this situation and whether or not that's something that you can do is different from how I feel about it.

Mr. Liguori: But that's where I think we should look at the Code and the Code says 'if you're allowed to do that then regardless of how it looks then you're allowed to do it.'

Mr. Santucci: Mr. Vink, if you don't mind, back in 2016 when you guys made the resolution, we didn't like the resolution to be quite honest with yous. You guys are talking about if you measure from the high point of the grade and we asked 'well how do we determine this?' The Planning Board didn't make their determination yet and basically you said; these were your words 'then you measure from the highest point of grade.' That's what your resolution explained. That's how I read it.

Boardmember Vink: Those aren't my words; that's the resolution and the Board.

Mr. Santucci: No, no but...all right OK. As far as, you guys are saying maybe I put fill in, I didn't put fill in. We're 100% in compliance at this point.

Chairman Froessel: At this point, it doesn't matter because the Planning Board did what they did so the status of whatever the dirt is behind that is what it is. It's legal and at this point to me it doesn't matter what it is.

Mr. Liguori: Well it seems like it really does like you didn't agree with the Planning Board. I mean, you know...

Chairman Froessel: Whether I agree with them or not is irrelevant Mike (Liguori). They did what they did. They said you don't need a Special Permit. It's done.

Mr. Santucci: Can I make a suggestion? In lieu of hardship and financial hardship and time and everything else, let's resolve it tonight. Make your decision.

Chairman Froessel: Were not voting tonight. We're doing a written resolution.

Mr. Liguori: We'd like you to take note of that section of the International Building Code, it applies you don't need to design a retaining wall. It should have been in the 2016 resolution but it wasn't. We think it's important.

Chairman Froessel: The 2015 International Building Code was not in play in New York on the date we did that resolution.

Mr. Liguori: But you incorporated it into the resolution.

Chairman Froessel: I incorporated the 2010 New York Building Code into the resolution. The 2010 New York Building Code did not sunset in New York until 10/3/2016.

Mr. Liguori: But in 2010 a retaining wall didn't need to be designed if it was under 4 ft. This is...

Chairman Froessel: You're reading to me from the 2015 Code that wasn't in place...

Mr. Liguori: I'll go get the 2010 Code; it's in the 2010 Code. Right you're a building inspector in 2010...

Boardmember Wunner: I'm going to be looking at this tomorrow morning because there are always exceptions and when you get a piece like this it's kind of not fair.

Mr. Liguori: That exception...

Chairman Froessel: Yeah, the 2010 Code specifically refers to the safety factor of 1.5 and that to me indicates an engineer's stamp.

Mr. Liguori: I pull you the section and send it tomorrow from 2010. The same exemption was there.

Mr. Santucci: I'm 99% sure and I've been a mason contractor since I was 20 years old, I'm 57 and when you build a wall...I thought it was 3 ft. or lower you didn't need an engineer's stamp. For a retaining (inaudible) you didn't need an engineer's stamp.

Mr. Liguori: Well we're sending the Code. I'll pull it right off the internet. I know that it's out there.

Mr. Santucci: There's one other point. You're talking about quoting something from 2015; well today in 2019 we're 100% in compliance.

Chairman Froessel: You've said that 5 times. I understand that. OK, are we done? Does anyone else have any questions? OK, I will close the Public Hearing and we'll be back next month with a vote.

The motion to approve the Meeting Minutes of March 18, 2019 meeting was introduced by Boardmember Vink, seconded by Boardmember Cassidy 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,
Cathy Chiudina

Revised as per comments 5/20/19 by Victoria Desidero