

**Town of Southeast
Zoning Board of Appeals
Minutes of May 17, 2021**

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

Work Session:

Regular Session:

Secretary Victoria Desidero: OK. I've got record going and I'll give you a flag if you like.

Chairman Froessel: OK. Well, I think we can get started and a flag would be great. OK. We'll start by reciting the Pledge of Allegiance as we start all of our meetings.
Pledge of Allegiance.

Chairman Froessel: OK. Good evening everyone. Welcome to the May 2021 Public Hearing of the Town of Southeast Zoning Board of Appeals. My name is Tim Froessel. I'm the Chairman of the Zoning Board. Our Vice Chairman Paul Vink is on as well our assistants, Victoria Desidero and JoAnne Ciralli. Because we are doing this meeting via video conference in order to comply with the Governor's executive order for... for doing these things in this format, I'm just going to ask each of the Board members... I'm going to do a roll call and just ask each one to say 'present' when I state your name. (Roll Call Taken. Results above). So, as of right now, we have five of the seven Board members present. We have a quorum so we can proceed. Chairman Froessel named the applications on the agenda.

1. Michael & Melissa Dillon, 1 Sycamore Road, Tax Map ID 56.12-3-22

Public Hearing to review an application for an existing fence that requires a front yard height variance of 3 ft. where 6 ft. is existing and 3 ft. is permitted and a front yard setback variance of 23 ft. where 12 ft. is existing and 35 ft. is required. Michael Dillon represented the application.

Chairman Froessel: So, why don't we start with number one, Michael and Melissa Dillon? How are you, Mike? (Pause.) You're muted.

Michael Dillon: Good. How are you? There you go.

Chairman Froessel: Very good. OK. o, you're here for a fence. \Why don't you describe your application to us?

Boardmember Vink: Mr. Chairman, can I swear the witness in first please?

Chairman Froessel: Oh, my... my apologies. I ask you to raise your right hand. I'll let the Vice Chairman swear you in.

Boardmember Vink: Do you swear that the testimony you're about to give is the truth to the best of your knowledge?

Mr. Dillon: Yes.

Boardmember Vink: Thank you, and, Victoria, can we assume the mailings are in order?

Ms. Desidero: Yes. The mailings are in order.

Boardmember Vink: Thank you.

Chairman Froessel: I... I jumped the gun there, Paul, because I know Mike. I know he'd never lie to us, so...

Mr. Dillon: That's all right. (Laughter.)

Chairman Froessel: So, why don't you tell us about the application please, Mike?

Mr. Dillon: Sure. I applied for... oh, boy... wrong paperwork... a fence to be put up that was... that needed a variance because it was closer to the road. It's on the side of the house but because my side... my unit's a corner lot, it's considered front as well.

Chairman Froessel: OK. I live not far from Mike's home and I drive by it all the time, and he's correct. It is a... it's a two front yard scenario and there's a stockade fence on the Tonetta Lake Road side which I... I don't think is intrusive and we've granted relief for... for similar applications in the past. The... the... the fence where it cuts back in towards your house, Mike, that goes into the... the rear corner... the back corner of the house?

Mr. Dillon: Right. It... it stops at the corner of the house. It like... they touch basically.

Chairman Froessel: OK. All right. Do any of the Board members have any questions of the applicant? (Pause.) OK. I'll take that as a 'no.'

Boardmember Vink: I... actually I did. I see the fences up before you... you came to us and I thought I saw something about it being or pre-existing but it's clearly not. When was the fence put up?

Mr. Dillon: It was not pre-existing. It was put up over... I don't have the exact date on me... just before the summer or just during the summer I should say. We had had a company come in. We checked about... they checked about permits and I was told I was fine but they didn't put anything in writing, so I was a little disappointed. Then I found out 'like, oh, no, that's considered the front, that's not the side.' So, when I got the notice from the Town, I was like all right and I went and did all the paperwork and everything I was supposed to do. Then it said that you still needed a variance, so I did that paperwork as well.

Boardmember Vink: Thank you.

Chairman Froessel: OK. Mike, just to let you know, we have... this is a seven-member Board and, as of this moment, we only have five members present. To get your variance, you need a majority of the Board, which is four votes, and you need four votes whether there's four of us present or whether there's seven of us present. So, your... your odds of getting a variance are greater when... when the full Board is here when there are seven people. So, what we... what we have done as a practice, and this precedes my time as... as Chairman, is we... we give the applicant the option of holding over until the next month in the hopes that we'll have more Board members present. If you're at all concerned that you won't get your four votes, we could hold it over if you want, but then again, if you want us to vote tonight, we can do that, too.

Mr. Dillon: I think that's more for the Board to decide than me, I guess. I feel like I... I mean if they're comfortable with it. They feel that it's OK to have the fence, that's fine. If not...

Chairman Froessel: Yeah. I have to... I have to explain that to you in... in advance.

Mr. Dillon: No. I understand.

Chairman Froessel: Yeah. (Pause.) I'm sorry... somebody speak?

Boardmember Gil: I just... I just had a quick question... real quick, Tim, if I could ask a question?

Chairman Froessel: Sure.

Boardmember Gil: So, Mr. Dillon, do you... do you have children in the area? Because I know... I live down the street from you... from where you put the fence up... It actually looks really nice and...

Mr. Dillon: Thank you.

Boardmember Gil: ...and stuff. So, I mean I can see like North... I live on North Brewster and people drive really fast down that road, so, you know...

Mr. Dillon: We have two small children. They're one and three and...

Boardmember Gil: Yeah.

Mr. Dillon: It wasn't just a privacy thing. It was a 'we don't want them running out towards the road' sort of thing, and also with the speed of some people, and also we've seen more and more people walking, most of whom we know live in the area and then some people we've seen, we have no idea who they are.

Boardmember Gil: Yeah. Yeah. Yeah, so, I think it actually looks really nice. I drive by it every morning, so it looks very nice, so. That's all... that's all I had.

Chairman Froessel: OK. Thanks, Andres. All right. Well, Mike, if you're comfortable with having us vote on this tonight, we can do that.

Mr. Dillon: Would I have to wait until next month? And what if not enough people are there?

Chairman Froessel: Well, that's kind of the... the risk you... I mean, if... if next month, we only had five members, I'd give you the option to go over another month as well.

Mr. Dillon: I... I don't think it's a problem to do it today then.

Chairman Froessel: OK. That's fine. OK. So, then the way the procedure works is we... I will close the Public Hearing. There will be no more testimony on the application and then we'll take a vote? Before I do that and before I close the Public Hearing, do you have any final statements you'd like to make in support of the application?

Mr. Dillon: We just put it up for the kids more than anything and a little bit of just to keep them safe. Had I had known that I needed to do this whole procedure, I would have done it beforehand. We just moved into Brewster recently and didn't know that we had to do that. How would we have known? We've also spoken to the company. We know that... we'll make sure to...anything we do will be posted from now on before.

Chairman Froessel: OK. Very good. You're... you're not the first person in this Town to be led astray by the fence contractor.

Mr. Dillon: Sometimes you find out the hard way.

Chairman Froessel: OK. Yeah. Exactly. OK. Do... one final question for you. Do you feel you've been given a fair and adequate opportunity to present your application tonight?

Mr. Dillon: Yes, but if there's any other questions, I can definitely answer them.

Chairman Froessel: OK. Thank you. OK. Very good. Well, I don't think there are any other questions, so we'll close the Public Hearing. This is a... a pretty straightforward application in my view of, and we've granted plenty of other variances on... on properties that had the two front yards so that they can fence in their backyard. So, unless there's any deliberation anyone has, I'll entertain any motion that anyone would care to make.

Boardmember Vink: I... I actually would just like to... to comment before we go to a motion. As the Board knows, I'm not generally a fan of fences in the front yard, large fences in the front yard. We had one last month. I voted against it, and when I saw this application on the... on the agenda, my first thought was 'jeez, another front yard' you know, in relatively the same area. It was like 'ok, wait a minute.' The address is 1 Sycamore Road. I'm going to... let's assume it's on the corner, one end or the other. So, you know, I pull up Google Maps and I'm like 'all right, which... which front yard', can't necessarily tell from the... from the agenda, so I'm like skeptical that it's going to be in the front because nothing shows on Google Maps. That

picture pre-dates when you put the fence up, and so... so I look at it. I'm like 'no.' I'm... I'm going to be skeptical about a 6 ft. fence in... in the front yard. Then, I drive by. You can't even see it, and look, I live on a main road and I wouldn't put a 6 ft. fence on my road. I don't have one and I wouldn't put one there, but there's really no reason for you to not have one there. You cannot see it. It's behind the tree line. It's up the hill. The only thing you can see is the small section of... of fence right where it attaches to the house. So, what I'm saying is as a general rule, I'm opposed to these applications. In this situation, there is no reason not to grant this application in my opinion.

Chairman Froessel: Yeah. I... Paul, I... I drive by it every day. Mike lives around the corner from me and, you know, particularly now with the foliage out now, you really cannot see it at all and even in the wintertime it's hard to see. So, I... I think the fact that there's a good amount of natural screening mitigates in favor of the application. So, once again, I'll ask if anyone has any motion to make on the application.

Boardmember Vink: I'll... I'll make a motion. (Pause.) Sorry, Andres were you in there?

The motion to grant a front yard height variance of 3 ft. where 6 ft. is existing and 3 ft. is permitted and a front yard setback variance of 23 ft. where 12 ft. is existing and 35 ft. is required for an existing fence was introduced by Boardmember Vink and seconded by Boardmember Cassidy. The criteria:

1. Whether an undesirable change will be produced in the character of the neighborhood or nearby properties.
No. I don't think there's any change to the character of the neighborhood whatsoever. You can't even see the fence from the neighborhood. It is set back from the road so it does not affect anybody who's driving by even, let alone the character of the neighborhood. So, there will be no undesirable change.
2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.
No. As a corner property, he'd have to move that fence back... back... halfway into his back yard to... to put a 6 ft. fence up to shield his kids from and the balls from going off the property. So, I don't think there's any method other than a variance.
3. Whether the requested variance is substantial.
It's twice the requirement. I think it's substantial but I think given the circumstances and the placement of it that offsets any substantiality of the... of the variance.
4. Whether the proposed variance will have an adverse effect or impact on the environmental conditions in the neighborhood or district.
There's no evidence of that and I don't believe that there would be any.
5. Whether the alleged difficulty was self-created.
Only to the extent that he's trying to protect his children and... and the fact that he has a corner lot. There's really not much he can really do about it.

Roll Call Vote:

A. Gil In Favor
S. Corozine In Favor

R. Cassidy	In Favor
P. Vink	In Favor
T. Froessel	In Favor
G. Wunner	Absent
J. McNeill	Absent

The motion to grant the variances as stated in the motion passed by a vote of 5 to 0 with 2 absent.

Chairman Froessel: So, that's five votes to none. So, the variance is granted.

Mr. Dillon: Thank you.

Chairman Froessel: Mike, the procedure now is Victoria will...

Ms. Desidero: Mr. Chairman? Tim, I'm sorry to interrupt but I... I may have missed this but did that motion include both variances that Mr. Dillon needs? The height and setback? I may... I may have missed that. I'm sorry.

Boardmember Vink: It did not. I addressed only the height variance. Although in the... when I was addressing the criteria, I did in fact address the setback so, if... if permissible I would amend my motion to include the variance for the... a 23 ft. variance on... on the setback.

Ms. Desidero: That works for me. I just wanted to make sure we got them both in.

Chairman Froessel: OK. That's curious to me why both are there because if we grant the variance for the height, that takes care of the setback. I've... I've never seen it written up that way before. It's a little strange to me. All the Board... all the Board members, are you... is your vote still the same?

Multiple Board members: Yes.

Chairman Froessel: Steve says 'yes.' Rod says 'yes.' Paul says 'yes.' Andres, your vote is still unchanged?

Boardmember Gil: That's correct.

Chairman Froessel: OK. That's good. OK.

Town Attorney Stephens: Mr. Chairman, Mr. Chairman, just for clarification, when the fence becomes a 6 ft. fence, it becomes a structure and therefore it can't be... the structure cannot be within the... the front yard setback. So, you have the setback variance as well as the height variance.

Chairman Froessel: OK. I just don't recall seeing that before. We've had other applications on fences and front yard setbacks. I just don't recall seeing it written that way, but... but whatever. So, the variance is granted. So, the procedure from here, Mike, is we'll do a written resolution. If we were all meeting in person, Victoria would write it up right there and I'd sign it but since we're all remote, she will do that. She'll email it to me tomorrow or the next day, and I'll sign it and get it back to her so you'll have your variance in a day or two.

Mr. Dillon: OK. Thank you very much.

Chairman Froessel: All right. You're welcome. Take care.

Mr. Dillon: You too. Bye.

2. Joseph & Sandra Racioppo, 67 Allview Avenue, Tax Map ID 67.12-1-26

Public Hearing to review an application for a proposed addition of a single car garage requiring the following variances: north side setback variance of 25.7 ft. where 4.3 ft. is proposed and 30 ft. is required, total side setback variance of 53.9 ft. where 21.1 ft. is proposed and 75 ft. is required, east front setback variance of 1.6 ft. where 48.4 ft. is existing and 50 ft. is required, and south side setback variance of 13.4 ft. where 16.8 ft. is existing and 30 ft. is required.

Joseph & Lindsay Racioppo represented the application.

Chairman Froessel: OK. Number two on the agenda, Joseph & Sandra Racioppo.

Joseph Racioppo: Is this us?

Chairman Froessel: Yes. Good evening.

Mr. Racioppo: OK. We're all set.

Chairman Froessel: Hi. How are you?

Boardmember Vink: Can I... can I swear you both in?

Mr. Racioppo: Before you do, there's been a, I guess, a miscommunication. My wife passed away. Sandra has passed away for 10 years, almost 11. I remarried. This is my new wife, Lindsay.

Lindsay Racioppo: But I don't own the house. So...

Mr. Racioppo: There's nothing to do on the deed or the property at all.

Boardmember Vink: Well, will you both be testifying at all with respect to this variance?

Mr. & Mrs. Racioppo: Yes. Yes. Sure.

Boardmember Vink: OK. Then I'd like to swear you both in. Do you swear that the testimony you're about to give is the truth to the best of your knowledge?

Mr. Racioppo: OK.

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

Mr. & Mrs. Racioppo: Yes.

Boardmember Vink: Thank you.

Chairman Froessel: Why don't you... I... I see your application is for a single car garage. Why don't you go ahead and explain to us what it is you're planning to do?

Mr. Racioppo: OK. I've lived in the house for over 31... just over 31 years and I have rejuvenated this old house. It was built in 1840 and I have... I've been in front of the Board before with a variance and they granted it and I've added two separate enlargements to the... to the property and it has been enhanced a great deal. Now, with me getting older and my wife getting older, we're trying to prepare for our later years and a garage would definitely help fighting the winters and just helping us combat the cold, I guess would be the big thing, when the snow falls. The one car garage is a modest enhancement. A two-car garage would definitely take away from the, I guess, the beauty of the house. So, I tried to make it as modest as I could so that's where I stand right now with it. It... my neighbor directly next to me has... we're on good terms, and we've... we've agreed that a one car is workable, so...

Mrs. Racioppo: It's also a security issue. Without a garage, we have one car. If the car's gone, someone knows or thinks there's no one home. So, it's also a security issue when my husband's gone, I'm here. He umpires every night, or if we are gone, someone could know that we're out if there's no car in the driveway.

Mr. Racioppo: Yeah, and the house has been broken into twice, by the way. So, that's where we stand now.

Chairman Froessel: OK. You... you mention your neighbor. Is that Mr. and Mrs. Alcott?

Mr. Racioppo: Yes. Yeah.

Chairman Froessel: OK. We have a letter from them. It's been submitted to the Board. I won't read the whole thing into the letter but it's from John and Martha Alcott at 65 Allview Avenue. The letter's dated May 3rd, 2021 and among other things, they state that they approve of your plans and they have... they have no objection. That's from John Alcott, A-l-c-o-t-t and Martha Alcott.

Mr. Racioppo: Right. OK.

Chairman Froessel: Assuming that they have no objection because they have a garage that's right on your property line.

Mr. Racioppo: Yes. Exactly.

Chairman Froessel: OK. And you will be... you will be on the north side 4.3 ft. from the property line?

Mr. Racioppo: Yes. Yes.

Chairman Froessel: I went by and took a look. I... I... it looks like your neighbor's garage is, kind of, in terms of the grade, it's lower down.

Mr. Racioppo: Yes.

Chairman Froessel: Yeah, than... than your property. Yours will sit up higher, correct?

Mr. Racioppo: Right.

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

Boardmember Corozine: Yeah. I have one question. Once the new garage that would be built, how close would that be to your neighbor's garage?

Mr. Racioppo: Three to seven... It's... it's... the garage that we're building... it's going to be set back. So, it's not going to be right near it. I... I... it's going to be away from it. So, they'll look like two separate buildings. There'll be a lot of space in between, probably 6-7 ft.

Boardmember Corozine: OK. Do you know approximately how far it would be set back? I'm just trying to get a picture of that.

Mr. Racioppo: From... from the house. I'd have to go check. Give me a second on that if you don't mind.

Boardmember Corozine: OK. Thank you.

Boardmember Vink: And there's the beauty of doing this by Zoom. He can go out and measure it. (Laughter.)

Mrs. Racioppo: He has the drawings. He has the drawings in the living room, but I think that's what he's getting.

David Rush: I'm also measuring it right now. So, give me half a second. (Laughter.)

Mrs. Racioppo: That's our other neighbor. (Laughter.) (Pause.) He's saying 16.

Mr. Racioppo: OK. At least 16 ft. from the corner of the existing... of my existing house.

Boardmember Corozine: OK. Thank you.

Mr. Racioppo: Sure.

Chairman Froessel: That's... that's the distance now without the garage there, correct?

Mrs. Racioppo: That's where the garage is going to start.

Mr. Racioppo: Yeah. The front of the garage will be 16 ft. back from the front of the house.

Mrs. Racioppo: Our house.

Chairman Froessel: Oh. OK. I... I see what you're saying. OK.

Mr. Racioppo: OK.

Mrs. Racioppo: Also, their garage is tiny.

Mr. Racioppo: It's a one-car.

Mrs. Racioppo: I mean, one car with no clearance almost... So, they don't even use it as a garage, so...

Chairman Froessel: Yeah. That actually prefaces my next question because the application... the application says you're putting up a 20 by 22 garage?

Mr. Racioppo: Yes.

Chairman Froessel: Is 20 the width?

Mr. Racioppo: Yes.

Chairman Froessel: Or is 22 the width?

Mr. Racioppo: 22 is the depth of the... of the... I have to go back.

Chairman Froessel: It'll be 20 ft. wide...

Mrs. Racioppo: Yeah.

Chairman Froessel: ...and then 22 ft. deep, correct?

Mr. Racioppo: Yes. Yeah. Correct.

Chairman Froessel: That's almost the width of a two-car garage. That's a pretty big one car garage.

Mr. Racioppo: We're looking to put an entrance in there... storage space... one door... one, I think, 10 ft. door is planned for it.

Chairman Froessel: A 10 ft. wide garage door?

Mr. Racioppo: I believe so.

Chairman Froessel: OK.

Mr. Racioppo: That really hasn't been established but I think it's going to be a 10 ft. or maybe I might be wrong. It might be 8 ft.

Chairman Froessel: Mine... mine are 6 ½ ft.

Mr. Racioppo: So, it's 8. It's 8 ft..

Chairman Froessel: OK. Any of the other Board members have any questions? (Pause.) No? Not seeing any questions. Is there any member of the public on this video conference that has any comments or questions about this application?

Mr. Rush: Mr. Chairman, this is David Rush. I'm the other neighbor and I... I support...

Chairman Froessel: Good evening.

Mr. Rush: I support their efforts to, you know, bring themselves into the modern age with a garage as well.

Chairman Froessel: OK and are you... are you an adjoining neighbor?

Mr. Rush: On the opposite side. Yeah.

Chairman Froessel: OK. All right.

Mr. Rush: And, you know, the width of the door, I think it's important that Joe and Lindsay are thinking about how to, you know, bring the... the... the comforts of, I'm going to say, maturing in their house. Having a little extra room on each side of a garage as you're driving in and out, as you can know with a 6½ ft. wide garage. I don't know how you do that. It's kind of important but...

Chairman Froessel: I've only broken off one side view mirror in 15 years, so. (Laughter.)

Mr. Racioppo: Oh, that's a piece of cake then.

Mr. Rush: Eight-foot, 8 ft. is pretty hard to negotiate, I think, but anyhow I just wanted to let everyone know that I support them and, you know, hopefully the Board will approve. Thank you.

Chairman Froessel: All right. Thank you. Mr. Racioppo, this is a one-story garage? There's going to be no space above it?

Mr. Racioppo: If it... no... no. It should be a... a crawlspace, if you will, maybe a 3 ft. clearance.

Chairman Froessel: OK. (Pause.) All right. It looks like we've exhausted all the... the questions on this one. You probably heard with... with the prior applicant.

Mr. Racioppo: Yes.

Chairman Froessel: The procedure is at this point is once all the... the testimony's been presented, then we will close the Public Hearing and the Board will deliberate or vote.

Mr. Racioppo: OK.

Chairman Froessel: And, before we close the Public Hearing, do you have any final statement you'd like to make in support of your application?

Mr. Racioppo: No. I think the... the reasons why are valid and I'll just rely on the... on the Board.

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

Mr. Racioppo: Yes. We have.

Chairman Froessel: OK. Very good. Thank you. OK. So, I'll turn it over to the Board members. If anybody wants to deliberate this, has any comments, what have you, we can do that or I'll entertain any motion that anyone would care to make on the application.

Boardmember Vink: I... I think just from just a commentary point of view, there's... there's not really much other space to...to do a garage on a property like this. It slopes fairly steeply down the hill. You know, you're... you're kind of limited on where you can do anything garage-wise. Certainly, you know, they... they could put it in the backyard I suppose down the hill but none of us want to be walking up that hill to get into the house either. So, so, you know, the location seems to make sense given this... the... the nature of the property.

Mr. Racioppo: Right. Thank you.

Chairman Froessel: OK. Thanks, Paul. And... and I'll agree with that. There's really... if you look at the property, there's really no other place to put a garage. That's where the driveway is and you couldn't do it on the other side of the house. That's really the only location. The only... the only thing I'm going over in my mind is whether a 20 ft. wide garage is, for a single car garage, is overkill or not.

The motion to grant the variances for a proposed addition of a single car garage: north side setback variance of 26 ft., total side setback variance of 54 ft., east front setback variance of 2 ft., and south side setback variance of 14 ft. was introduced by Boardmember Vink and seconded by Boardmember Gil. The criteria:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties would be created by the granting of the area variance.
I don't think there's going to be any change whatsoever. The neighbor's property garage is right on the property line as it is. This is not an uncommon set up in this neighborhood. So, I don't think there's going to be any change and if there were going to be a detriment, it would be to the property next door where they have said that they don't have an issue with the garage location where it's proposed.
2. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than the area variance.
As we discussed, given the nature of the land and the topography, you... you wouldn't be able to put a garage really anywhere else on this property except where they're proposing it. So, I don't think there's another method that could be... to achieve the result instead of a variance.
3. Whether the requested area variance is substantial.
These are substantial variances in... in total. But again, given the nature of the property, I don't think they are, and I think, given the neighborhood, I don't think they're substantial either.

4. Whether the proposed variance will have an adverse effect or impact on the physical environmental conditions in the neighborhood.
I do not believe it will and there's no evidence of that.
5. Whether the alleged difficulty was self-created.
Only to the extent that they want to build a garage, which is not something that is either out of the ordinary, or really, it's... it's good to have one as they explained in their presentation.

Roll Call Vote:

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

The motion to grant the variance as stated in the motion passed by a vote of 4 to 1 with 2 absent.

Chairman Froessel: So, the variance is granted. Again, the procedure on the paperwork, we can't do it in person obviously tonight because we're all remote, but Victoria will get me the resolution likely tomorrow or the next day. I'll sign and you'll... you'll have it and you'll be able to get your building permit in a couple of days.

Mr. Racioppo: All right. All right. Thank you very much. I appreciate it.

Chairman Froessel: You're welcome. Take care.

Mr. & Mrs. Racioppo: Goodbye.

3. Jean A. DeBenedetto, 26 Carillon Road, Tax Map ID 56.14-2-14

Public Hearing to review an application for the proposed addition of a garage and family room to an existing single-family dwelling that requires a west side setback variance of 15 ft. where 5 ft. is proposed and 20 ft. is required.

Jean & Mike DeBenedetto and James Nixon, architect, represented the application.

Chairman Froessel: OK. Number three on the agenda, Jean DeBenedetto.

Jean DeBenedetto: Here.

Chairman Froessel: Hi. How are you?

Ms. DeBenedetto: I'm good. How are you?

Chairman Froessel: Very good. Who's going to be speaking for this application this evening?

James Nixon: Mr. Chairman, James Nixon.

Chairman Froessel: Good evening, Mr. Nixon. We haven't seen you in a while.

Mr. Nixon: Yes. It's been quite a while. I'm the architect on this project. I'll be representing the DeBenedettos.

Chairman Froessel: OK.

Boardmember Vink: Jim... Jim, can I swear you in?

Mr. Nixon: Yes.

Boardmember Vink: Raise your right hand for me please. Do you swear the testimony you're about to give is the truth to the best of your knowledge?

Mr. Nixon: I do.

Boardmember Vink: Thank you.

Chairman Froessel: Very good. Will either of your clients be speaking tonight?

Mr. Nixon: Possibly.

Chairman Froessel: If so, we'll just swear them in and then they can...

Boardmember Vink: You know, why don't we swear you both in? Would you raise your right hands for me please? Do you swear the testimony you're about to give is the truth to the best of your knowledge?

Michael DeBenedetto: Yes.

Ms. DeBenedetto: Yes.

Boardmember Vink: Thank you.

Chairman Froessel: OK.

Boardmember Vink: Are the mailings in order?

Mr. Nixon: OK. Victoria, if we could start with the front photo that I sent?

Ms. Desidero: Hang on one second. You want the photo of the front of the house?

Mr. Nixon: Yes, please. (Pause.) OK. This is the house in its existing condition and what the applicants propose is to, as you see, they have a one car garage. Like... like most of the houses in the Brewster Heights area, this house has a compact, modest, and efficient floor plan but now in the 21st century it's more common to have a two-car garage. So, their proposal is to add one bay to the left of the garage that you see. It'll be somewhat extra deep but the issue is the width. We currently have 16 ft. from the left side of that existing garage to the property line, which is pre-existing, non-conforming therefore, and we're proposing an 11 ft. wide garage so that the side setback remain... left will be 5 ft., 5 ft. and maybe a couple of inches. Could we look at the survey for a moment please? (Pause.) Actually, this will do.

Ms. Desidero: Do I have a survey also?

Mr. Nixon: Yeah. I sent that later today but...

Ms. Desidero: I don't think I have that. Sorry.

Mr. Nixon: OK. This'll do. The Site Plan that you see is from the survey. The same orientation, so the left side where the hash marks go in the opposite direction is the proposed garage. You can see its proximity to the left side yard. There's also a proposed addition in the rear, a family room but that addition does not require any variances. The... that is... that is basically the whole proposed construction. Could we go to... there's one other drawing that has two elevations. Yes. OK.OK. The drawing on the top is the front. The one on the bottom is the rear. The... so, you see it's a simple one car garage added to the one car garage that we have, now a two-car garage. The height of the new roof will match the height of the existing roof. Everything remains as one-story. The drawing on the bottom you can see the addition in the rear... that is going in the rear, but as I said, that does not require a variance. I think that pretty well sums it up. Are there any questions?

Chairman Froessel: I have... I have a question regarding the... the survey shows a drainage easement...

Mr. Nixon: Yes.

Chairman Froessel: ...along that side of the property where you're going to put the garage. How wide is that drainage easement?

Mr. DeBenedetto: That was removed by the Town after this survey was done. That drainage easement was removed by the... by the Building Inspector. When... when we went for the variance for our shed in the back, that was brought up and they came out and inspected. The Highway Superintendent came out and the Building Inspector and they removed that... they said that they would never use that drainage easement.

Mr. Nixon: OK.

Chairman Froessel: The fact they said they would never use it doesn't mean it doesn't still exist. That's a little troublesome to me.

Mr. Nixon: It's the... yeah, I don't see a dimension for that easement. It scales approximately 2-2 ½ ft. So, I would say it should be comfortably within the 5 ft. yard that we're proposing.

Chairman Froessel: OK. (Pause.) And what's the purpose of having the new garage be 30 ft. deep? That's a pretty deep garage.

Mr. Nixon: It is extra deep.

Mr. DeBenedetto: (Inaudible.)

Mr. Nixon: You want to go ahead, Mike?

Mr. DeBenedetto: I... I just wanted room for my tools in the back because with the... the existing garage it's 24 ft. When you put a car in there, you can barely walk by the front of it.

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

Boardmember Gil: I do. I do, Tim. I have a question about the... you know, you're going from 20 ft. down to like, I think, 5 ft. on that side lot. This is what you're asking for, from 20 ft. to 5 ft. What about your neighbors? You got any feedback from them?

Mr. DeBenedetto: No. The one directly to our left, they don't have any problem with it. To the left of our house, I don't know if the picture showed, it's a... a large embankment going up to his property so he would never build on that. He had no objection to it. (Inaudible.)

Mr. Nixon: Right there, you can see it.

Boardmember Gil: I can see it, and also with respect to the... the easement... the drainage easement, when was the conversation that you had with the Building Department?

Mr. DeBenedetto: I believe it was in 2017 when we got the variance for the fence...

Boardmember Gil: OK.

Mr. DeBenedetto: ...that was installed.

Boardmember Gil: OK. So, Mr. President, I'm not... I'm not so sure about, as a Board member, if I feel comfortable voting on this this evening until we do some follow up with the Building Department to see... verify that drainage easement issue.

Chairman Froessel: I agree with you, Andres. There's certainly a question in my mind as to a) the dimensions of it and whether this encroaches on it, and b) you know, based on what the application... what the applicant is telling us, is it still a real thing or not? I mean, the Building Department doesn't have the authority to... to waive a... any easement. So, I'm... the status of it is a question to me.

Mr. DeBenedetto: The Highway Superintendent came out also.

Chairman Froessel: The Highway... again, the Highway Superintendent, I don't think, has the authority to give up... to give up a drainage easement.

Boardmember Gil: So, the issue becomes that easements are recorded with the County Clerk's Office...

Chairman Froessel: Yeah.

Boardmember Gil: ...and that's... that's kind of where it becomes... So, sir, I was wondering if you had an attorney, or anybody that represents you that would be able to look up that easement? I'm not sure, Mr. President, what our ability is as the Board to look into that easement... if we even have authorization to do that or not, or if that's the Town Attorney's? I'm not... I'm not really clear on that but I think there definitely needs to be some type of issue with that resolved and it's whether...

Chairman Froessel: Yeah.

Boardmember Gil: ...or not there's... there's an easement that's still existing. Or there's, you know, documentation filed that, you know, ends... ends that easement, you know.

Chairman Froessel: Yeah. I mean... I would imagine if there was, Andres, there would... you know, something would've been recorded in the County land records and those are public records.

Boardmember Gil: Yeah. Yeah.

Chairman Froessel: So, and we could certainly find out.

Mr. Stephens: I can... I can tell you there's been no discharge of easement recorded that I know of, and if it were to have happened, I probably would've drafted it or at least reviewed it. This easement most likely was on the plat when the subdivision known as Brewster Heights was developed and, which is not uncommon with all sorts of... all sorts of subdivisions throughout the Town. There was probably a belief at some point in time that there was going to be a need to run road drainage through that easement area. Now, it could very well be that the Building Inspector and the Highway Superintendent said 'oh, no, we probably would never run a, you know, a pipe there,' but until such time as that easement is extinguished, it's going to remain there. So, if they were to build something that encroaches on our easement, down the road conceivably we could require them to remove it. So, I think Mr. Gil makes a very good point that there needs to be something more formal done if you believe that what they're proposing is encroaching on this easement area.

Boardmember Gil: And that... and that... I think so, Will. I think that's the thing is that... look, with a 5 ft. variance, I'm looking at the thing and there's a concrete retaining wall... block retaining wall there. So, if the Town ever did use that easement to access... to even access that easement, it could cause the DeBenedetto's to have to, you know, remove that structure after investing a substantial amount of money in to... to build. So, what is the likelihood that the process for them to seek a discharge of that easement then if we... if we... one hasn't been done? Maybe that's the first step that has to happen. I'm not even sure if they're taking out, you know, if they're taking out a loan or something to do this if... if they're... if they're, you know... if there's any type of... I don't know. It's just going to become an issue I think. So, it's just one of those things. Maybe we need to just pause for a second to get the... get the... on the right track so it doesn't just evolve into something. So, if they do transfer the property and their transferring is subject to an easement, there's going to be an issue with passing clear title to the next owner. That's kind of what I'm seeing.

Chairman Froessel: Yeah. (Inaudible.)

Boardmember Vink: I was going to say, for their own protection, they're going to need to do that because when they try and sell the house, if they've actually got a garage on the easement, that's going to cause title problems for them. (Pause.) So, we need... so... so, at a minimum, we need better specificity as to whether or not this garage impinges on the... on the easement but also whether or not there's a way to extinguish the easement.

Chairman Froessel: Yeah. And I'll just... I'll... I agree with what everyone's said and I think we do need some clarification on... on the issue of the drainage easement; a) its existence and b) it's dimensions, and I'll also mention that of the original... I lived in Brewster Heights for nine years. I lived in a ranch exact same style as the one these applicants own. Among the original Brewster Heights houses, which is the houses that are off to the left of Lincoln Road and not the new ones to the right that were built in the 1990s and 2000s. I am aware of only one house with a two-car garage and I voted against that variance. Two car garages are... are not the norm in... in that neighborhood. If you're talking about, you know, what's within the character of the neighborhood, my view is and always has been that that's not within the character of that neighborhood and the... and the one variance that was granted, as I mentioned, I voted against. And I believe a the time, I was living in Brewster Heights. So, and to have a 30 ft. deep garage running along that property line, just 5 ft. from the property line,

that raises questions in my mind about the character of the neighborhood, which is one of the criteria we have to consider. So, I'll... I'll leave you with that thought, but I... but I think it sounds like there's consensus among the Board members that we need to put this off for a month and obtain some clarification on the drainage easement issue.

Mr. Nixon: OK.

Chairman Froessel: So, so, Mr. Nixon, if... I... I don't know if you have the ability to do... to do this, but if you could perhaps ascertain at least the dimensions of the easement, we may have to do some investigative work on... on... on whether the easement was extinguished or not. I... I believe our Town Counsel when he says that if it was, he probably would've drafted it so I think we'd know. We can look into that but to the extent you have any information on that. If your client has something in writing indicating that, please share it with us and let us know.

Mr. Nixon: OK. Yeah. That's what we'll research. At this moment, no, I have nothing more. But we'll look into the record and, you know, talk to the surveyor and whatever other information we can get.

Chairman Froessel: OK. That's fine. We'll... we'll put this over to next month. I'd tell you you'll be first on the agenda but I'm not sure because I think there's another holdover application. So, you'll probably be at least second on the agenda.

Mr. Nixon: OK.

Chairman Froessel: OK. All right. So, then we'll... we'll see you next month.

Mr. Nixon: All right. Thank you.

Mr. DeBenedetto: Thank you.

Chairman Froessel: OK. Thanks.

4. Thomas Zahn, 5A Crosby Avenue, Tax Map ID 56.15-2-29

Public Hearing to review an application for a Use Variance to permit two dwelling units in a single-family dwelling in the R-20 Zoning District.

Thomas Zahn represented the application.

Chairman Froessel: OK. Number four on the agenda, Thomas Zahn.

Thomas Zahn: Yes.

Chairman Froessel: Good evening. How are you, sir?

Mr. Zahn: I'm well. Thank you. How are you?

Chairman Froessel: Just fine, thanks. If I could have the Vice Chairman swear you in please.

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

Mr. Zahn: I do.

Boardmember Cassidy: Thank you. Victoria, are the mailings in order?

Ms. Desidero: Yes, they are.

Chairman Froessel: OK, and Victoria, this one had to go to County Planning and we received a response today, correct?

Ms. Desidero: We did. We got an approval today.

Chairman Froessel: OK. County... so, it's gone to County Planning and County Planning did not object. OK, Mr. Zahn, why don't you go ahead and, I believe it's a Use Variance application. Why don't you tell us about your application?

Mr. Zahn: I bought this house 15 years ago and everything that I was led to believe that it was a multi-family, two-family house. So, all this time I had been using the house as a... as a two-family house. Now that I am going to sell the house or trying to sell the house, it bounced back as a single-family and, in doing research, I found a lot of documents saying it's a two-family, but I understand according to the Building Department, it is not. I sent in a packet of

documents that I had collected over the years, which again led me to believe that I was owning a two-family house. So, I guess the bottom line is, if it is not a two-family, I would very much like to make it into a legal two-family. I have, I guess it's a 1910 pre-existing, non-conforming. It looks to me and any other building that... builder that has been in the house that it was built as a two-family. I've had potential buyers who did not want it as a single-family because it looks so much like a two-family. That's basically, you know, where I'm at. I have Assessor documents saying it's a code 220 and I have Building Department saying it's single-family in the R-20 Zoning. So, all this time, I've been paying my, basically, double taxes as a two-family and now come to find that there's this problem. I just... I'm sorry... I just...

Chairman Froessel: Go ahead.

Mr. Zahn: I don't know if you received the last scanned documents that I sent in. They were just today. Some of the neighbors attesting to the fact that going back as far as we can, 29 years, with the neighbors that lived there stating that they've always known the house to be a multi-family and rented and, I guess, that's... that's... that's the... that's the basis of it.

Chairman Froessel: OK. Do you live in the house?

Mr. Zahn: I do not now. I did for a time, and since then I've bought another house and I live about 10 minutes away.

Chairman Froessel: OK. And... and from the time you've owned the house, you've had two dwelling units and collecting rent for two units, at least when you weren't living there?

Mr. Zahn: Yes. I actually bought the house with... with it rented. It was advertised as a legal two-family and the real estate looked into it and determined it was two-family. The insurance insured it as a two-family, and I then bought the house I live in now. So, I was hoping to sell the house. I've... I've never had any issues with it as far as, you know, any adverse effects on the neighborhood or community. I don't believe there's ever been any complaints. There's ample room in the driveway. There's a large four car detached garage. No neighbors have ever complained about anything that I know of, definitely not to me. The ingress and egress out of the driveway seems safe. That's... it... it never indicated to me that there was ever an issue as a two-family. It just didn't occur to me. I had a... there was a Rental Occupancy Permit granted to me by the Building Department. Everything, I believed, everything that it was a two-family. So, this was kind of a shock to me.

Chairman Froessel: It sounds like the title company might have dropped the ball when you bought it.

Mr. Zahn: Obviously... obviously somebody dropped the ball.

Chairman Froessel: Yeah.

Boardmember Gil: I have... I have a question. How did you get here to us? Was there a violation issued or anything like that by the Town? Was there...

Mr. Zahn: No, not that I know of. When the real estate company, I guess, one of the real estate companies had a buyer that was about to buy, to the best of my knowledge, I think they contacted the Building Department and the Building Department advised them that it was a single-family, and that's how it got back to me. That's how the whole thing started. So, it's... it's kind of... I feel like I kind of got a bad deal here. It's probably the title company's fault but when I saw the Assessor's paperwork, I... I've come to realize that's not what determines it's a two-family... the Assessor. But at the time, I didn't know that, and I... that led me to believe it's a two-family. The Occupancy Permit led me to believe it's a two-family. The insurance company led me to believe it's a two-family. I mean, the insurance company actually stated, "attached please find binder showing that the house at 5 Crosby Avenue, Brewster, NY is a two-family rental dwelling." So, I... I... and that was in 2007, and I bought it in 2005. So, all this time, that was all I ever knew it as.

Mr. Stephens: Mr... Mr. Zahn, I'm Will Stephens. I'm the Town Attorney. When you purchased the property, did you or your attorney get what is known as a 'pre-date letter' saying that it was a pre-existing, non-conforming two-family residence?

Mr. Zahn: I cannot answer 100% either way on that. I don't really remember. I... I tend to say maybe 'no.' I looked through all my records and I haven't found anything that looked like that.

Mr. Stephens: OK. Well, it would've been helpful.

Mr. Zahn: I can look again.

Mr. Stephens: In your case, it would've been helpful if you had that. So, as far as we can tell from the record you presented, there's nothing from the Building Department to show that it's a pre-existing, non-conforming use.

Mr. Zahn: I spoke with Michael Levine and he said it was a pre-existing, non-conforming when I first started investigating what had happened here. He had told me that that's what it was.

Mr. Stephens: But he's not willing to give a letter that says it's a pre-existing, non-conforming use two-family in a one-family zone?

Mr. Zahn: I didn't know that that was (inaudible.)

Chairman Froessel: I guess not, considering his April 27th letter... his April 27th letter denying the applications for rental occupancy because it's a single-family and referring to the Zoning Board for Use Variance.

Mr. Zahn: Right.

Mr. Stephens: Let me ask another question if you... if you don't mind, Mr. Chairman. I'm just trying to understand the nature of this particular application. Mr. Zahn, you said earlier that you had received previous rental occupancy agreements... or... or permits from the Building Department?

Mr. Zahn: I have one that I included in the packet that I sent in. It was page three. It was from the Town of Southeast Building Department, permit number 21520. It was dated 6/3/2010 and it said... it was checked off as a multi-family and it was granted as a permit to rent. These are all the things that led me to believe that...

Mr. Stephens: At that time, were you living in that property?

Mr. Zahn: I'm... I don't believe I was. No, I bought the house I'm in now... No, I don't believe I was. I had... I had bought the house I live in now prior to that.

Chairman Froessel: Yeah, and just to clarify, a copy of that 2-year Occupancy Permit from... from 2010-2012 was included with the packet that was submitted to the Board. (Inaudible.)

Ms. Desidero: Would you like to see that, Tim?

Chairman Froessel: I'm sorry. I can't hear you.

Ms. Desidero: Tim, would you like me to bring that one up on the screen or any of the documents that Mr. Zahn had given you?

Chairman Froessel: You can. I... I think all the... all the members got them.

Ms. Desidero: I'm not sure Will saw them. That's my only concern.

Chairman Froessel: OK. No, you can pull it up. That's fine. It looks like it was signed by our former Code Enforcement Officer Bill Scorka.

Boardmember Corozine: There are tenant names on that document.

Chairman Froessel: Correct. That's it. (Pause.) I'll note that one of the... kind of the fundamental tenets of Zoning law is that a municipality can't be estopped from enforcing its Zoning Code, meaning the mere fact that the Town issued this permit doesn't mean that we can't, you know, that... that... it automatically makes it a two-family dwelling or what have you. The seminal case on this is a case called the Parkview case in Manhattan where they granted somebody a building permit to build a 15-story building. Then after they had about 12 stories of

steel up, somebody read the Zoning map wrong and realized that he was only allowed to put up a 10-story building and they made the guy take down steel to get down to 10 stories.

Mr. Zahn: Understood.

Chairman Froessel: So...

Mr. Stephens: And the... the other thing that I would point out on this rental agreement. It says it's a multi-family but it's only a permit for the second floor. So... which leads me to believe that there was a representation made that the owner was living on the first floor, which might be something that could be acceptable if they went through the proper proceedings and procedures to get a Conditional Use permit for an accessory dwelling. I'm not sure whether this particular house would qualify for it but it seems as though that might've been what... what happened here. Why would there not be a permit for the first floor?

Chairman Froessel: That's an excellent question.

Ms. Desidero: Well, just... I just wanted to let you know that... I don't know if this helps answer your question but I... I spoke to the Assessor today. She wanted to tell me a couple of things. She indicated that this was a... this was always a multi-tenant home. That there was an opportunity two owners ago for them to have that grandfathered but it didn't happen. So, apparently at some point, the Town had a period of time that was set aside for them to be grandfathered.

Mr. Stephens: That's correct, but for... for the Assessor to say that it's been there forever is a difficult statement to make.

Ms. Desidero: Oh. OK. Well, she said it was built as a two-family, is what she said.

Chairman Froessel: And... and... and I looked at the original... the assessment card for this which you can look up online on the Town's... Town's website and it clearly indicates that when the house was built it was a single-family dwelling.

Mr. Stephens: OK. So, when was the house built?

Chairman Froessel: 1910.

Mr. Stephens: As a single-family dwelling. We... we didn't have Zoning in the Town until 1955. So, if it were converted to a two-family dwelling before 1955, conceivably it would be a pre-existing, non-conforming use.

Boardmember Gil: Now, that only gets us to like one of the variance criteria though, right, doesn't it? Because, I mean that it's not self-created... because even if it's a pre-existing, non-conforming use, the fact that it was vacated by the... by the owner, doesn't that...

Mr. Stephens: It doesn't. No, it doesn't require it to be owner occupied.

Boardmember Gil: Right.

Mr. Stephens: If... if the... if the structure were built as a single-family residence but converted to a multi-family residence before the Town had a Zoning Code, it would be a pre-existing non-conforming two-family dwelling.

Boardmember Gil: Right.

Mr. Stephens: And... and unless... if he can't... if Mr. Zahn can't provide us with proof that that existed pre-1955, then it would be difficult for the... for the Zoning Board to come to a different conclusion.

Boardmember Gil: Because at that point then we would have to apply the... our criteria for the Use variance, right?

Mr. Stephens: Correct.

Boardmember Gil: And... and it's the... the one that I... we don't have any evidence of it right now before us is reasonable rate of return.

Mr. Stephens: Correct.

Boardmember Gil: Having evidence that there may have been... he relied on... it wasn't self-created possibly, you know, because he made a statement that he purchased it. He looked at the previous stuff from the Code Enforcement Officer. You know, I think we kind of nailed that one over and over again but we have no indication about any type of financial data or the reasonable rate of return criteria.

Chairman Froessel: Yeah, and to clarify that for you, Mr. Zahn. For a Use Variance application, there are several criteria that we have to apply to the application that are imposed by State law. They... they're not our rules. They're the State's rules, and one of those is... the first one is 'that the applicant cannot realize a reasonable return provided that the lack of return is substantial as demonstrated by competent financial evidence.' You'd have to show... you'd also have to show that the alleged hardship related to the property in question is unique and does not apply to a substantial portion of the district or neighborhood, that the variance will not alter the essential character of the neighborhood, and that the hardship isn't self-created. Obviously, the key one and the one, you know, that we always look for evidence on is the... the rate of reasonable return on the property, you know. Honestly, that requires some type of economic analysis and whether it's through a... an income-based in terms of rents or what have you analysis or... or just a gross 'I bought the house for X and I can't sell it for X anymore. I can sell it for Y.' Some type of evidence is required although for that latter analysis, I'll tell you I bought my house in 2005 and I couldn't sell it now for even a \$100,000 less than I paid for it because the market was so inflated in 2005.

Mr. Zahn: Exactly. I bought it for \$505,000, I believe, and I can't sell it for... I guess I was looking for \$470,000 and they offered me \$410,000. So, you know, and that was as a two-family. As a single-family, people are walking away. I can't sell it. The... there's a couple of pages at the end of the packet I sent from the realtor that basically had some comments that the last two people... Once I switched the listing from two-family to single-family with the real estate company, that was the end of the showings. They basically had a couple of showings and they... they walked away. The offers ended and the comments were 'didn't like it', 'they're looking for a single-family not separate apartments', and 'not sure if it's a single or multi-family, it showed poorly.' Before that when it was listed as a... as a two-family, I had quite a few offers, but like I said, the... their realtors, I guess, did research and came back with this single-family which this all came into question. So, now I can't even sell it.

Chairman Froessel: Well, I'll leave it up to you. Do you want to take a month to try to get us some information on the reasonable rate of return aspect of... of the criteria or? I'll give you that opportunity if you want... if you want it.

Mr. Zahn: I appreciate that. Just so you know, each month that goes by costs me quite a bit of money. I'm losing a lot of money each month. It's... the apartment... one apartment has been vacant since November so this all comes out of my pocket each month. I would hate to be too hasty if... if the information you require... if you don't have what you need from me, I would be happy to get you whatever it is I will have to get you. I'll be happy to do that. I'm just hoping that we can do this in... in a timely fashion because it... it's costing me a lot of money that I'm really not... I just don't really have right now, so.

Chairman Froessel: In terms of time limits, we... we meet once a month. That's... that's the best we can do.

Mr. Zahn: I understand that. So, exactly what is it you're looking for? What can I get you?

Chairman Froessel: You want... you want to get us evidence that you cannot realize a reasonable return on the property as a one-family dwelling.

Mr. Zahn: OK.

Chairman Froessel: I'll leave it up to you to... to, you know, determine what that is. You can talk to an accountant, a lawyer, whoever. I don't want to tell you exactly what the evidence should be because I'm not your lawyer. I'm one member of a... of a seven-member Board that's going to vote on this, but I will tell you know that we... we need some type of evidence along those lines.

Mr. Zahn: OK. I'm happy to get you whatever you need. I just want to do this the right way. I want it to work out for everyone so this is nice and clean and neat and I will take another month to get you what you need.

Chairman Froessel: OK. Before I let you go, I'm just going to... before we formally adjourn, is there anyone else on this videoconference that has any comments or questions on this application?

Mr. Stephens: Mr. Chairman, I would just point out for Mr. Zahn. If there is some way you can come up with... with solid proof that this two-family set up existed prior to 1955, you may not have the problems that you think you've got. I don't know what you've done as far as research and I don't know whether there's anything that you can find that would substantiate the existence of the two-family set up prior to the adoption of Zoning in the Town of Southeast, but if you can, then you would qualify for a pre-existing status.

Chairman Froessel: In which case then you would not need a Use Variance.

Mr. Stephens: Correct.

Boardmember Gil: I... I think there's a caveat here that we really need to make Mr. Zahn aware of that this is a quasi-judicial proceeding. There is certain evidentiary criteria that needs to be met for the application variances. If time is of the essence, and from what he indicated about not being able to... wants to make a decision or wants to present to the Board, make... to make sure that you're producing the proper evidence and the proper... you should seek legal counsel and because of that, you know... that might mitigate some of the things that you're looking for. We might be speaking two different languages here. You know, on the Board there are several attorneys. So, we look at evidence and there are certain criteria that needs to be met. From what Mr. Stephens is talking about, he's the Town Attorney. So, he can do what he's been doing, but you really should... and it's not a must, but you really should seek someone who... who's familiar with land use and variances that can give you the right advice so when you come before the Board, you will have the right information presented to us in a... in a manner that makes sense.

Mr. Zahn: Thank you. I appreciate that.

Chairman Froessel: OK. So, Mr. Zahn, we'll keep the Public Hearing on this open and we'll adjourn. We'll have you come back next month and hopefully you'll have some more evidence for us on... on either the... the issue of the pre-existing, non-conforming use or... or the financial evidence.

Mr. Zahn: OK. I've looked into some of this and, unfortunately, most of the people in the area that go back to 1955 have passed on, but I will continue searching and I do appreciate both your advice and your time. Thank you.

Chairman Froessel: OK. Thanks very much. We'll see you next month.

Mr. Zahn: OK.

Chairman Froessel: OK.

Mr. Zahn: Take care.

Chairman Froessel: Very good. All right. So, that leaves us with the... the minutes from the prior meeting back in April, which I have here somewhere. Here they are.

The motion to approve the Meeting Minutes of April 19, 2021 was introduced by Chairman Froessel, seconded by Boardmember Corozine and passed by a vote of 4 to 0 with 1 abstaining and 2 absent.

The motion to adjourn the meeting was introduced by Chairman Froessel, seconded by Boardmember Cassidy and passed by a vote of 5 to 0 with 2 absent.

Respectfully submitted,
Victoria Desidero
JoAnne Ciralli

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