

**Town of Southeast
Zoning Board of Appeals
Minutes of July 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	Absent
Willis Stephens, Jr., Town Attorney	Present
Victoria Desidero, Secretary	Present
Cathy Chiudina, Assistant Secretary	Excused

Work Session:

Regular Session:

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

Continued 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: This first item is being held over to next month at the applicant's request.

**2. Tony Hay and Susanne Galya
60 Meridian Drive, Tax Map ID 56.28-1-30**

Public Hearing to review an application for an east rear setback variance of 15.6 ft. where 20 ft. is required and 4.6 ft. is proposed for the replacement of an existing shed.

Tony Hay was sworn in.

Chairman Froessel: OK, a shed.

Mr. Hay: A shed close to the property line. It's been there for... I bought the property in 1999 and it was there and I'm looking to replace it.

Chairman Froessel: It's been there forever.

Mr. Hay: I never use it.

Chairman Froessel: OK, so you're going from a 7 x 7 shed to a 10 x 16?

Boardmember Cassidy: You're not bringing it any closer to the property line?

Mr. Hay: No.

Chairman Froessel: I'm going to say that it looks like none of your neighbors have objected to this.

Mr. Hay: No, I have 12 neighbors and I went to visit each person; they signed off individually. I made them aware I have to send them the green cards and sign off as well and all did that.

Boardmember Vink: It looks like most of your neighbors actually have these sheds... this size.

Mr. Hay: Yes.

Chairman Froessel: Quite a few.

Mr. Hay: I know you're always interested in if it's in the character of the neighborhood and I think that shows we're all characters.

Chairman Froessel: I agree.

Boardmember Corozine: Are you putting a foundation in as part of this?

Mr. Hay: No, it costs more and serves no purpose.

Boardmember Vink: You said the shed is not currently being used?

Mr. Hay: No, it's too small; 7x7. I have some firewood in there but don't have a fireplace so... It was built way back in 1999 before I got there. The gentleman that lived there had a daughter and the grandfather built it for his grandchild for a playhouse and that's all it's been used for.

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

Boardmember McNeill: Is there a rendition of the new shed in here? There are like 1000 pages here.

Mr. Hay: No but here. It looks exactly like it with the color; I'm doing everything with blue. It looks a little better than it does now.

Boardmember McNeill: Yeah, that's a bad shed you got there.

Mr. Hay: When you're not home much you don't pay much attention. I can throw in the house and move into the shed.

Chairman Froessel: I think I'm obligated to tell you that you need Health Department Approval for that.

Boardmember Vink: Hey Tony we all know you're here all the time so... I drive by here every morning and your car is always in the parking lot.

Chairman Froessel: It's pretty straightforward to me. It's pretty much like every other shed application we've ever had. If we're all set, we'll close the Public Hearing. Before I close the Public Hearing, do you have any final comments you'd like to make in support of your application?

Mr. Hay: No, I think it says it all in the application.

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

Mr. Hay: Yes.

Chairman Froessel: OK, thank you. With that we will close the Public Hearing. I will entertain any motion that anyone would care to make about this application.

The motion to grant the application was introduced by Boardmember Cassidy, seconded by Boardmember Vink. The Criteria:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the variance.
Absolutely not. Virtually every neighbor has a shed that is similar to the shed that is desired here.
2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.

No, he needs a shed at the size he is requesting to make it usable and he's not making it any closer to the property line.

3. Whether the requested variance is substantial.
Well, it might be considered substantial in some manner, but I'm going to say no because it's not getting any closer to the property line.
4. Whether the proposed variance will have an adverse effect or impact on the environmental conditions in the neighborhood or district.
No, there's been no testimony to that fact and it's just a shed like all the other sheds in the neighborhood.
5. Whether or not the alleged difficulty was self-created.
Well, not really because the shed was already there when he moved in many years ago and again, he's no closer to the property line.

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	Absent
T. Froessel	Opposed

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

**3. Bryan S. Smith and Elizabeth M. Smith
22 Red Fox Lane, Tax Map ID 68.19-1-24**

Public Hearing to review an application for a side yard setback variance of 8.6 ft. where 20 ft. is required and 11.6 ft. is proposed for the replacement of an existing shed.

Brian Smith was sworn in.

Chairman Froessel: OK, so you are also here for a shed.

Mr. Smith: Yes sir. My shed has been there, I'm going to guess, since about 1975. It looks like it's one out of the Sears Catalog back in the day. It was there when I moved in. I'm only the third owner of the house. The first owner only lived there about four or five years. That shed was built and set on a railroad tie foundation. When I moved in it was rusty and disgusting so I actually painted it brown and it held up for eight years; I've been there for eight years now.

Chairman Froessel: I didn't have the chance to drive by your home, but I did look on Google Maps; it's right at the end of the driveway there?

Mr. Smith: Yes sir.

Chairman Froessel: OK.

Mr. Smith: And basically I have a 48 in. deck tractor, I have a bunch of snow tires from my wife's van, my kid's bikes and stuff so I wanted to take down the 10x8, I think it was, and the

water used to run through it because there was no floor in the shed so basically it was just rotting out the back. I decided finally after my mom and dad passed away a couple years ago that we're going to do some home improvements and the shed was one of them. I spoke to my neighbors; Judge Vercollone lives on the side that I need the variance for and then all the other surrounding neighbors and they really had no problem with it. We have a great street over there.

Chairman Froessel: OK.

Mr. Smith: So, we picked a shed and then you guys have a picture in there I think and it's a little bigger than the 10x10 that the Town allows for so I asked for a variance for a 10x14.

Boardmember Cassidy: Is the new shed going to be any closer to the property line than the old shed?

Mr. Smith: No sir. It's exactly the same width that it was.

Chairman Froessel: You're going to put it on the same railroad ties?

Mr. Smith: No, I took it down. I had chimney issues so we put in a new cinderblock foundation. They tamped it and they put 12 in. diameter by 24 in. sonnet tubes in the ground and then I shaded it and then when the guy comes, he'll just drop it. It's a straight shot so it will be pretty nice.

Chairman Froessel: OK, yeah, the railroad ties don't last. When I bought my house, it had brick and railroad tie steps in front and a patio in the back and (inaudible).

Mr. Smith: You know, it was neat here what they found. He put chains underground to hold them from going out because we had to cut them to do the sonnet tubes. I thought that was pretty cool.

Chairman Froessel: Industrious.

Mr. Smith: Yeah, he was digging the thing and he says do you have any cutters? I thought that was pretty neat.

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

Boardmember Corozine: You did say that the metal shed was still on the property?

Mr. Smith: No, I took it down. I knocked it down. My daughter took a cool video of it. I took it to the dump in Somers. It was about 600 lb. maybe of metal.

Boardmember Cassidy: And do many of your neighbors also have sheds?

Mr. Smith: Most, Mr. Vercollone... I call him Mr. Vercollone I apologize; he doesn't have one. He put an addition on his house. The neighbor opposite him, Mr. and Mrs. Wartell, they do and theirs is actually really close to... they backed up together because he needed a variance for his addition and then the shed so they kind of shared that. The other side, the Ryan's, they have one that's kind of falling down so hopefully he'll do something with that but there are sheds there. Our neighbor down the street actually has a really beautiful two bay garage, which I would love to have that but...

Chairman Froessel: All comfortable voting? Anyone need to go see it? OK. We will close the Public Hearing. Do you have any final comments you'd like to make in support of your application before we close the Public Hearing?

Mr. Smith: No, I think I'm good.

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

Mr. Smith: Yes sir.

Chairman Froessel: OK, thank you. I'll close the Public Hearing and I'll entertain any motion.

Boardmember Vink: I assume the mailings are in order, we forgot to ask?

Secretary Desidero: They are.

Boardmember Vink: I assume they were for our last applicant as well?

Ms. Desidero: Yes, they were.

Chairman Froessel: A 62-page application for a variance (inaudible).

The motion to grant the applicant a 9 ft. variance from the side yard setback was introduced by Boardmember Vink, seconded by Boardmember Cassidy. The Criteria:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the variance.
No, I don't believe there would be any change whatsoever to the character of the neighborhood as he is replacing one shed with a nicer one. Although that's a change it's certainly not undesirable.
2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.
No, it can't. The shed is going in the same location and not getting any closer to the property line than the old shed was so I don't believe there's a method to do that without a variance.
3. Whether the requested variance is substantial.
Under these circumstances, again because the shed was already there, I don't believe that the request is substantial.
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 in fact taking the old shed away is an improvement probably in the environmental conditions of the neighborhood.
5. Whether or not the alleged difficulty was self-created.
No, it was not. The existing shed has been there for several owners and for 40 or so years so I don't believe the difficulty was self created.

Roll Call Vote:

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

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

4. Dax Colasacco
4 Turk Hill Road, Tax Map ID 67.11.-1-5

Public Hearing to review an application for a height variance of 3 ft. for a fence in the front yard where 3 ft. is permitted and 6 ft. is proposed.

Dax Colasacco was sworn in.

Mr. Colasacco: I'm looking for a 3 ft. height variance on a wood fence that I want to install. I took a few pictures to show you guys the house so you can get a better idea. This is the front. This is Turk Hill Road. I installed a 3 ft. stone wall on this side. This is Route 22.

Boardmember Cassidy: And where is the fence going?

Mr. Colasacco: The fence is going to go... I'd like to go from the wall down 22 to the end of the property there.

Boardmember Cassidy: On the grass, not on the wall?

Mr. Colasacco: On the grass, not on the wall. From the wall to the other side it's really kind of like my back yard. Let me just show you that.

Chairman Froessel: In the application I got through the mail showed (inaudible) along 22. (Talking amongst multiple board members.)

Mr. Colasacco: That's the back side of the house, so where the stone wall is in the front that's like the back so where I want the fence is really the back yard and yes, they call it two front yards.

Boardmember Corozine: Yes, I drove by it the other day.

Mr. Colasacco: That's the stone wall there so the fence would go there. This is kind of like what I'd like to install. See the wood picket fence that would taper down to the end of that stone wall.

Boardmember Corozine: OK, so that's a 6 ft...

Mr. Colasacco: And it would taper down to the 3 ft. stone wall to make it look nice and whatnot. There's a couple things: there's a no turn on red there and a stop light so nothing is going to...

Boardmember Vink: He's using this as his back yard.

Mr. Colasacco: I don't think it's going to impede anybody.

Boardmember Vink: It looks like he comes in here and that's basically back yard back there but it's technically a front yard because it's on Route 22.

Chairman Froessel: Yeah, he has two front yards.

Mr. Colasacco: Every week I have to wash that front part out very close to the road. I just wanted to show you guys dirt kicks up on it every day.

Boardmember Corozine: Was that your primary issue, the dirt?

Mr. Colasacco: No, that one thing is the dirt but the second reason is the noise. It's gotten really noisy. I moved into the house in 2002 and it's progressively gotten worse over the years and now Route 22, if there's any traffic on 84 or 684, it's a mess. 22 is like a cut-through route.

Boardmember McNeill: It's like a bypass.

Mr. Colasacco: Yeah, and it's just so noisy. Another thing too: in one of the pictures you'll see the back yard, when I have company my friends... the kids go there, they play there. It's like a

football field. They play lacrosse, football so that's my main issue too. They're at the age now where they're running around and I'm a nervous wreck when I have a party. I feel that the variance with the 6 ft. fence... I'll feel a lot safer than the 3 ft. I have to put something up.

Boardmember Vink: The picture with the stockade fence is what you're looking to put up?

Mr. Colasacco: Yes, I was driving around looking for a picture and that's... it'd be cedar, it would taper.

Boardmember Vink: That was taken in this Town?

Mr. Colasacco: No, no, no. I was working in White Plains and saw it and pulled over and took a snapshot of it. It would taper down like that, that's something that I would like to do into the stone wall with a 3 ft. stone wall wrap around so the fence would taper down like that.

Boardmember Wunner: Do you think you could address your concerns with a lower fence, a 4 ft. maybe?

Mr. Colasacco: I don't think I can.

Boardmember Wunner: With maybe some pine trees for screening noise?

Mr. Colasacco: Yeah, I would definitely like to put some trees behind it. I'd feel a lot safer with a 6 ft. or even a 5 ft.

Boardmember Wunner: My only thought is when you're coming out the bottom of the hill there's going to be some sight line issues going up 22.

Mr. Colasacco: From where? From Turk Hill, coming down Turk Hill?

Boardmember Wunner: It's a relatively busy intersection, there's a light there, but you're not going to have a good line of sight. You're kind of blocking off that.

Mr. Colasacco: It's really not going to block it off.

Boardmember Wunner: This is what about 6 ft. back from the curb maybe?

Mr. Colasacco: Yeah, they took a lot of property so that's by the traffic light and it's going to be far back. It's a no turn on red and it's a light. I have a picture of that too somewhere.

Boardmember Cassidy: The survey says that.

Mr. Colasacco: So, when you get to the end, you're going to be able to see because the fence is going to run... you've got plenty of room. It's not going to be in anyone's vision.

Boardmember Wunner: It's kind of more of a historic neighborhood and that fence being 6 ft., in my opinion, it going to be a little more not in keeping with the neighborhood and maybe something a little more with camouflage. I'm not trying to knock down the fence altogether but maybe lower it and address the sound with vegetation.

Mr. Colasacco: Yeah, that's one way to do it but I guess so. What were you...?

Chairman Froessel: That's my issue. I'd continue the 3 ft. stone wall around.

Mr. Colasacco: I would have loved to do that. It was very, very costly into the front. It was like 100 and something feet of stone wall I put in the front of the house. I would have loved to swing it around but it's a lot of money. I spent a lot of money on the wall. But I think a fence would look nice, especially a nice cedar fence and taper it in. I really have to do something. It's really bad now, the traffic is bad now. I can't even open the windows on the porch side with the dust and stuff flying in there.

Boardmember Vink: I live on Milltown Road; I don't open the windows on that side of the house.

Mr. Colasacco: I know but I used to be able to and now I can't open it when it's nice out. It's tough to go on that side of the porch. We've got a lot of issues now. It was never like that.

Boardmember Corozine: Just in terms of 3 ft. versus 6 ft., I'm just trying to understand what benefit you get?

Mr. Colasacco: Well, I get benefit when the kids are there and they're playing and a ball goes over. A dog can jump over a 3 ft. fence. A 3 ft. fence, that's nothing.

Boardmember Corozine: I see you've got balls going over the fence at 3 ft. but how does the 3 ft. help you with the cars and the dust versus a 6 ft.?

Mr. Colasacco: Well, the dust flies with the curb here... see all this stuff along the curb. They never clean it and it comes flying into the lawn so I think it will block the dust hopefully.

Boardmember Corozine: But you don't think a 3 ft. would be sufficient?

Mr. Colasacco: No, I don't think so, 3 ft. is low, it's like right here. I don't think it's going to do anything. That's why a 6 ft. will block some of it from blowing around. This stuff flies all the time, flies up on the lawn.

Boardmember Wunner: I'm just thinking with a snowplow when they dump the snow on the front, will it come close to that fence?

Mr. Colasacco: Umm, there's enough room where the snow can tumble on. I have these bushes here, there's some bushes here at the end and it never gets into the bushes. It goes to about here so the plow won't have a problem at all because it's set back far enough. So, the fence is actually... that's the property line, it's going to be like right there.

Boardmember Wunner: In the middle of the bush.

Mr. Colasacco: Yeah, so there's plenty of room.

Boardmember Vink: Wouldn't a big set of bushes do the same thing as a fence would? I mean you already have a start on the bushes.

Mr. Colasacco: Well, I want to do both for the kids because like I said... put bushes behind it.

Boardmember Wunner: How about a clear wire behind the fence that's not so visible.

Mr. Colasacco: A what?

Boardmember Wunner: A clear, you know a 2x2 (inaudible) wire?

Mr. Colasacco: I don't understand.

Boardmember Wunner: Rather than have a big stockade fence that looks like you're blocking out the world, you have some vegetation with a wire fence behind in it, chain link or something similar black so kind of like you lose it in the vegetation.

Mr. Colasacco: Yeah, personally I don't... I know what you're saying but I don't like chain link fences.

Boardmember Wunner: Well something similar.

Mr. Colasacco: Is there any other fence that you guys would prefer that I could put up? That would look nicer with the neighborhood? Like a different type of cedar fence or any suggestions?

Chairman Froessel: I'm less concerned about the materials than I am about the height.

Boardmember Vink: I like the idea of the 3 ft. stone wall continuing around the entire property with vegetation.

Mr. Colasacco: I'd love to do that, believe me, but it's very expensive. That's 160 ft. of stone wall, I can't afford it.

Boardmember Cassidy: Yeah but 3 ft. of stone wall provides you with no more protection than 3 ft. of stockade fencing.

Mr. Colasacco: Yeah, I'd like to do the stone wall and then the fencing on the top is what I really would have loved to have done. You know?

Chairman Froessel: There's a guy on Drewville Road that put one up without a permit and we made him cut it down.

Mr. Colasacco: Who's this?

Chairman Froessel: The guy right on the corner, on the big curve on Drewville Road.

Mr. Colasacco: I remember that, yeah.

Chairman Froessel: If you drive by there today you can still see a little bit of the fence.

Mr. Colasacco: I remember when he put the fence up. I do.

Boardmember Vink: And he did that without a permit, it's not there anymore.

Mr. Colasacco: That's why I'm here.

Town Councilman John Lord (in audience): Ellsworth.

Boardmember Vink: Is that the name? That's right you live over there.

Chairman Froessel: Oh OK. Is there anyone in the audience that has any comments or questions about this application? No? OK.

Boardmember Vink: Am I correct, we turned down an application for a 6 ft. fence along the driveway of a guy right across the street from here a few years ago?

Chairman Froessel: We did.

Boardmember Vink: He wanted to do a 6 ft. in the front yard setback and we wouldn't let him.

Chairman Froessel: Correct.

Mr. Colasacco: Who was that, Rob?

Boardmember Vink: I don't recall, it was the corner property, one of the first two houses.

Chairman Froessel: Does anyone feel that they want to go take a look at this?

Boardmember Vink: I've driven by this house all the time.

Chairman Froessel: OK, so I guess we're OK with this unless anyone has any other questions?

Town Attorney Will Stephens: Did this go to County referral?

Chairman Froessel: Oh, good question, it's on a State road.

Ms. Desidero: No.

Mr. Stephens: It should have. It's on Route 22.

Ms. Desidero: Yes, it is sir but it came in as Turk Hill Road and I don't think that Cathy picked that up to send it.

Boardmember Wunner: Turk Hill is a County Road.

Ms. Desidero: I thought that she looked at that. It has to go then. My apologies but Cathy checks them now and she usually just looks at the list. I thought Turk Hill was too but when I looked at the list, I didn't see it but I didn't even think about 22, clearly a State road, so it has to go.

Chairman Froessel: OK, we can't vote on your application tonight.

Mr. Colasacco: And why is that?

Chairman Froessel: There is a provision in the General Municipal Law that says if you live on a State Road or County Road it first has to go to the County Department of Planning and they have to give their yay or nay and then come back here.

Mr. Colasacco: The County has to?

Chairman Froessel: Yes, we refer it. You don't have to do anything. Victoria (Desidero) will send the paperwork. They usually get back to us fairly quickly. I guess next month you'll back on the agenda.

Ms. Desidero: They have 30 days and 30 days will be up by August 19.

Mr. Colasacco: Route 22 is a State Road?

Chairman Froessel: Yes.

Mr. Colasacco: Oh, so it has to go to the State.

Ms. Desidero: No, it goes to the County.

Mr. Stephens: The Law provides that if you abut a County or a State road and you're I think on both, then this referral has to be made. If the County Planning Division says that in their opinion it should be denied this Board can still act on it but it has to act with what they call a Super Majority meaning five out of the seven Board members have to vote in favor of the variance rather than just four.

Mr. Colasacco: OK, so I have to wait for that.

Chairman Froessel: Yes, you don't have to do anything, we'll do it. You'll be on next month and come back and we'll vote on it then.

Ms. Desidero: The next meeting is August 19.

Mr. Colasacco: Should I take these or do you guys want them?

Chairman Froessel: Do you have any copies?

Mr. Colasacco: No, I don't. You guys can keep them.

Boardmember Cassidy: Should we close the Public Hearing?

Boardmember Vink: No, we have to keep it open until we hear from the County.

Ms. Desidero: If you have one set for the record, he could keep the others and bring them back next month, no?

Chairman Froessel: Do you mind if we keep these?

Mr. Colasacco: No, go right ahead.

Ms. Desidero: I will bring them back next month so (Boardmember) Andres (Gil) can see them if he wants.

The motion to approve the Meeting Minutes of June 17, 2019 meeting as corrected was introduced by Boardmember Vink seconded by Chairman Froessel 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
Victoria Desidero