

**Town of Southeast
Zoning Board of Appeals
Minutes of July 20, 2020**

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

Work Session:

Regular Session:

Town Planner Ashley Ley: Just for the Boardmembers, you should see a little blinking cloud. There's a little red dot in the middle during the entire meeting saying 'record.' If at any time you see that recording stop or if you see it say 'pause,' please interrupt the meeting to let us know so we can re-start the recording. We've had a couple of situations where it's paused without explanation.

Chairman Froessel: Where will I see that blinking cloud, Ashley?

Ms. Ley: In the upper left-hand corner of your screen.

Chairman Froessel: Oh, I see it. Yes.

Ms. Ley: You'll also see it next to your name in the participant box. So, yeah, so if you ever see that stopped, just speak up.

Chairman Froessel: OK. All right. Well, it's 8 pm so I guess we can get started. Welcome everyone to the July 2020 Public Hearing of the Town of Southeast Zoning Board of Appeals. My name is Tim Froessel. I'm the Chairman. With me are six... five of the six Boardmembers. John McNeill will not be here this evening. For procedure purposes and because of the recording, I just want to go through and have each one of the Boardmembers who's here say 'present' after I say your name. Vice-Chairman Paul Vink?

Boardmember Vink: Present.

Chairman Froessel: Rod Cassidy?

Boardmember Cassidy: Present.

Chairman Froessel: John McNeill... John is not present. John let us know before the meeting that he would not be here. Greg Wunner? I can see Greg. I can't hear him... OK. He's waving. He gave us a thumbs up. Greg is here.

Boardmember Wunner: I am here.

Chairman Froessel: OK. Steve Corozine?

Boardmember Corozine: Present.

Chairman Froessel: OK and Andres Gil?

Boardmember Gil: Present.

Chairman Froessel: OK. We have six of the seven Boardmembers here. We also have our Administrative Assistants; Victoria Desidero and JoAnne Ciralli. I think JoAnne was on. I saw

her. There she is. Also here with us we have... oh, first, why don't we do the... we do the Pledge of Allegiance even though we're doing this virtually. So I'd ask everyone to please stand... please rise for the Pledge of Allegiance. There's the flag on the screen and we'll recite the Pledge. OK. Thanks everyone. OK. We have four items on the agenda tonight. Four applicants on the agenda. First is Arturo and Jacqueline Tavarez. Number two is Las Mananitas. Number three is Dennis and Kimberley Santucci, and number four is Home Depot.

1. Arturo & Jacqueline Tavarez, 4 Spruce Road, Tax Map ID 56.20-2-19

Public Hearing to review an application for a proposed addition of pool to a single-family home that requires the following variances: 12.0 ft. on the east side setback where 8.0 ft. is proposed and 20 ft. is required; and 12.0 ft. on the north rear setback where 8.0 ft. is proposed and 20 ft. is required.

Owners Arturo and Jacqueline Tavarez represented the application.

Chairman Froessel: So, anyway, why don't we get started with number one? Is anyone here on application number one; Arturo and Jacqueline Tavarez?

Mr. Tavarez: We are here. Present. Hello, everyone.

Ms. Tavarez: Present. Hello, everyone.

Chairman Froessel: Good evening. How are you?

Mr. Tavarez: All right, and yourself, sir?

Ms. Tavarez: Hot but we're doing well (laughter.)

Chairman Froessel: I think we're all in that... the same boat there.

Ms. Tavarez: Yes.

Chairman Froessel: Why don't you go ahead and just describe to us your application?

Boardmember Vink: May I swear them in first please, Mr. Chairman?

Chairman Froessel: Oh, yes, I'm sorry. Please raise your right hand and let the Vice Chairman swear you in.

Boardmember Vink: Do you swear the testimony you are about to give us is the truth to the best of your knowledge?

Mr. Tavarez: Yes.

Ms. Tavarez: Yes.

Boardmember Vink: Thank you very much.

Mr. Tavarez: Thank you.

Chairman Froessel: Thank you. Victoria, the mailings were in order?

Board Secretary Victoria Desidero: Yes, the mailings are in order.

Chairman Froessel: OK. Thank you. OK. Mr. and Mrs. Tavarez, why don't you go ahead and describe your application to us.

Mr. Tavarez: You want to go?

Ms. Tavarez: No, you do it.

Mr. Tavarez: OK, pretty much... My name is Arturo Tavarez and pretty much what we're trying to do is to set up a 12-inch pool in our backyard.

Ms. Tavarez: 12 feet.

Mr. Tavarez: Oh, 12, oh, 12 ft. round pool. I'm sorry, I apologize, and pretty much what we're trying to do is to set it up in our backyard. Well, we adopted two kids and, with everything that is going on, all the camps and pretty much everything is closed, so we're trying to give them something for them to be able to do over the summer and we did the mailings. We did everything that we were supposed to do as far as the application and, in fact, two of our neighbors which are the closest ones to... to us, they actually gave us and you guys should have a copy of it, a letter, a written letter notified, notarized I believe.

Ms. Tavaréz: Not notarized.

Mr. Tavaréz: Oh, it's not notarized.

Ms. Tavaréz: It's just signed by them.

Mr. Tavaréz: Just signed by them stating that they don't have any issues or any problems or any objections. I believe we did how many mailings, honey?

Ms. Tavaréz: 11.

Mr. Tavaréz: 11 as we were told in the... in the application and so far, I believe no one has objected because pretty much all the neighbors they have come forward and they have asked us 'oh, do we have to reply to this? Oh, what's going on?' You know, they... they thought we were leaving the neighborhood. You know, and I'm like 'no, we're not leaving.' We're just trying to get a permit... get a permit and do it the right way and just be able to set up a pool in our backyard for the kids.

Ms. Tavaréz: And we provided pictures as well and from our shed out to the grass is 20 ft. and then our deck is 20 ft. out and then I circled where we would like to have the pool set up; which is the 12 ft. round, 12 ft. round pool. It's just 8 ft. in the back and on the side, it's just 8 ft. away from our neighbor's; which we provided a letter just, you know, just getting a letter from them indicating that they don't object the pool being so close to their, you know, property line.

Mr. Tavaréz: To the property line.

Ms. Tavaréz: So, we have a shed there and then a deck and then it's 20 ft., 20 ft., and then 8 ft. from the side of the property line for each side of the neighbors.

Chairman Froessel: OK. Thank you and I took a drive by and, for the other Board members, I'll just note that this is a corner property. So these applicants have the problem of having two... two front yards. So if they put the pool on the other side of their yard where they could maybe get a little bit... get a little bit more breathing room, they would need relief from the front yard setbacks which are more restrictive, obviously.

Ms. Tavaréz: We have the septic there too.

Chairman Froessel: OK. All right. I noticed you have a very shallow backyard, by the way. It slopes up from the back of your house towards the neighbor behind you. Are you going to have to remove any soil to put the pool in?

Ms. Tavaréz: Yes.

Mr. Tavaréz: Yes.

Chairman Froessel: OK. You going to cut into that hillside a little bit?

Mr. Tavaréz: Just... just a little bit; not as much.

Ms. Tavaréz: Level it out.

Chairman Froessel: OK.

Mr. Tavaréz: Just to level it out. That's the only reason. I would not touch the neighbor's bushes or anything like that, or the property line.

Chairman Froessel: OK and is the neighbor directly behind you one of the ones who gave a letter saying they have no objection?

Mr. Tavaréz: Yes.

Ms. Tavaréz: Yes.

Mr. Tavaréz: Yes, and the one next to us as well.

Ms. Tavaréz: Four, sorry, 10 Spruce Road who is Thomas King and then Mark White is 34 South Road.

Mr. Tavaréz: Which is the one directly behind us.

Ms. Tavaréz: The bushes, yeah, where the bushes are.

Mr. Tavaréz: The bushes.

Chairman Froessel: OK. Thank you. I'll open it up to any of the other Board members if you have any questions for this applicant.

Boardmember Corozine: Yeah, just to clarify, one of neighbors that was... that sent you a letter of support of you getting a variance for the pool, is that the neighbor to the left of your house as you're facing your house, to the left of your driveway?

Ms. Tavarez: Yes, yes.

Mr. & Tavarez: Yes, yes.

Ms. Tavarez: And then the one that's right behind us.

Mr. Tavarez: As well.

Boardmember Corozine: That would be south, right?

Ms. Tavarez: Yes, yes.

Mr. Tavarez: The two closest neighbors.

Boardmember Corozine: Right. Thank you.

Ms. Tavarez: Thank you.

Chairman Froessel: Any other questions from any of the Board members?

Boardmember Gil: I have a question. I just... I pulled it up on... on satellite and it looks like you had... maybe you had a pool there before? Did you have like a structure there or something that is similar to a pool?

Ms. Tavarez: We had like one of those inflatable ones.

Mr. Tavarez: It was a kiddie pool.

Ms. Tavarez: Yeah.

Mr. Tavarez: One of the little... tiny, little kiddie pools that I believe it was like maybe 2 ft. or so.

Boardmember Gil: Right.

Ms. Tavarez: Yeah. This one's much bigger so this is why we're asking for a permit and it's going to be stationary, you know. It's not one of those that you take down.

Mr. Tavarez: Exactly.

Chairman Froessel: It's got the... does it have the standard 4 ft. sides? It's 4 ft. high? They're above ground pool, right?

Ms. Tavarez: Yes, yes.

Mr. Tavarez: Yes. It's an above ground pool and it also has the lock, stairs, and everything.

Ms. Tavarez: The ladder gate, the ladder gate.

Mr. Tavarez: The ladder gate to lock it up and that wouldn't be no issues or any problem.

Ms. Tavarez: And it's a removable gate, too, so you can move it.

Mr. Tavarez: Right.

Chairman Froessel: OK. I don't see any other Board members with their hands up. So I'm going to ask is there any member of the Public that's on this Zoom call that has any questions or comments about this application? (Pause) Speak now if you do, folks.

Ms. Ley: Please use the raise your hand feature on the bottom of the participant box or *9 if you're on the phone... I don't see anyone.

Chairman Froessel: OK. It looks... it looks like there are no... no questions or comments. OK. Well, I'll just put it out to the Board members. Is there anyone who is not comfortable with voting for this application tonight? OK. It looks like everyone is... is comfortable with voting tonight. So our procedure, Mr. and Mrs. Tavarez, is we'll then close the Public Hearing then there's no more comment after that, and then we can deliberate and vote on your application. So, before I close the Public Hearing, do you have any final comments or statements you'd like to make in support of your application?

Ms. Tavarez: No, no, just... just basically 'thank you' to Victoria and JoAnne for assisting us too and explaining what we needed to get and thank you all for your time and we appreciate it.

Chairman Froessel: Victoria and JoAnne see us through too so we're... we're also appreciative. Do... do you feel you've been given a fair and adequate opportunity to present your application this evening?

Mr. Tavarez: Yes, yes.

Ms. Tavarez: Yes.

Chairman Froessel: OK. Thank you. With that, we'll close the Public Hearing. Anybody have any desire to deliberate this? It's a pretty straightforward application, I think, a residential pool.

Boardmember Vink: No, I... I agree. It's very straightforward. It's... it's notable that both neighbors that would be affected who are... have... have given their consent to it. I think your point that any place else on the property would be in the front yard, which would require more of a... of a variance than is being requested here, I think goes, you know, to the heart of, you know, part of the application so.

Chairman Froessel: OK. Thanks, Paul. With that, I'll... I'll entertain any motion anyone would care to make on this application.

The motion to grant the applicant a 12.0 ft. variance from the east side setback where 8.0 ft. is proposed and 20 ft. is required; and a 12.0 ft. variance from the north rear yard setback where 8.0 ft. is proposed and 20 ft. is required 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 grant of a variance.
No, I do not believe that there'll be any change at all to the character of the neighborhood and, judging by the consent of the neighbors, I don't think they think there's going to be a detriment to their properties. So I don't think that there will be.
2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.
No, it can't. There simply is no space on this lot to build a pool... to put a pool without requiring a variance of one form or another and this is the more minor of the variances that they could... that they could be seeking.
3. Whether the requested variance is substantial.
It is substantial in a percentage matter only, but as far as the nature and the character of the neighborhood, I don't believe it is a substantial request.
4. Whether the proposed variance will have an adverse effect or impact on the environmental conditions in the neighborhood.
I don't believe that there will be any and there's no evidence of any.
5. Whether the alleged difficulty was self-created.
I do not believe so. It's because of the Zoning on the property and the layout of the lot and the house requires that it be put in this position.

Roll Call Vote:

A. Gil In Favor
S. Corozine In Favor

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

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

Chairman Froessel: So that's a 6 to 0 vote. Your variance is granted.

Mr. & Mrs. Tavarez: Thank you.

Chairman Froessel: You're welcome. The Board normally... if we meet in person, I would sign a piece of paper and hand it to you and you would take it to the Building Department. Because we're working remotely, it's not quite that efficient. So Victoria will get me something in the next day or two. I will sign that and get it back to her and at that point, you'll be able to pick up your... your piece of paper that says you got a variance. Take that to the Building Department and get your Building Permit.

Mr. & Mrs. Tavarez: Thank you.

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

Mr. & Mrs. Tavarez: Thank you. Thank you all. We appreciate it. Stay safe everyone. Good night.

2. Las Mananitas, 1250 NYS Route 22, Tax Map ID 57.-2-40

Public Hearing to review an application for a Site Plan Amendment as referred by the Planning Board which requires the following variances:

1. Environmental Conservation Buffer/Parking setback of 95.0 ft. where 5.0 ft. is proposed and 100.0 ft. is required.
2. Rear yard setback for new shed of 59.7 ft. where 40.3 ft. is proposed and 100.0 ft. is required.
3. Rear yard setback for proposed restaurant deck of 49.7 ft. where 51.3 ft. is proposed and 100.0 ft. is required.
4. Rear yard setback for proposed residential deck of 7.5 ft. where 92.5 ft is proposed and 100.0 ft. is required.

John Folchetti of J.R. Folchetti & Associates represented the application.

Chairman Froessel: OK. Application number two, Las Mananitas. Anybody on for that? Who do we have? Sir, can you identify yourself please?

Mr. Folchetti: John Folchetti of Folchetti & Associates. I'm the applicant's engineer.

Chairman Froessel: OK. Mr. Folchetti, can I ask you to raise your right hand and let the Vice Chairman swear you in please?

Boardmember Vink: Mr. Folchetti, do you swear the testimony you are about to give is the truth to the best of your knowledge?

Mr. Folchetti: I do.

Boardmember Vink: Thank you.

Chairman Froessel: OK. Thank you. Victoria, the mailings are in order for this as well I assume.

Ms. Desidero: Yes, they are. We also sent this to County Planning and we got an answer back already. It was approved.

Chairman Froessel: OK. Wow, they're very efficient lately. (Laughter.) OK, Mr. Folchetti, I... I've reviewed the paper application but why don't you kind of run us through and give us a description of what you're... what you're doing here.

Mr. Folchetti: OK. Ashley, if you could put up that Sheet 5?

Ms. Ley: Sheet 5?

Mr. Folchetti: Yes, ma'am, Sheet 5. Since this application started out as a violation on his recently paved parking area several years ago and when we applied to the Planning Board to get that issue resolved, Mr. LaPerch (Planning Board Chairman) suggested that we put in kind of a Master Plan approach for all the things that he would conceivably desire to do on the property, in part because of his history of similar actions. There's four proposed improvements. The first as you can see is the... is the final paved and permanently marked parking spaces in the upper left-hand red mark there; requires a five... we're only 5 ft. off the property line. The second one is a proposed new storage building. That's about 45 ft. off the back-property line, and he's contemplating that just because there's no room left in the basement. He's having a very successful business there and his storage space is limited. There's a proposed rear deck and fire escape off the back of the... back of the actual restaurant proper. Anyone who has been in there, in the bar area, will recognize that there is only a single, one-door escape with a set of timber stairs leading to the back-parking lot. The proposal here is for a set of double fire doors that open out onto obviously a somewhat larger deck and a 6 ft. wide fire escape set of stairs down the back of the building, and then the final improvement is a proposed deck on the back of the residence. There's again only one exit from the front of the residence at this point. I think there's a sliding glass door at the back but the drop down to grade in that area is about 4 ft. The... the... you may recall this from previous applications, the site's pretty severely constrained. There's a light dashed red line here in the center of the... of that sheet... of that particular plan that shows what the... the setbacks are because the lot geometry is obviously quite awkward and... and it's 100 ft. all the way around. So... so that's the basis for the four various variances that we're seeking. I'm here to answer any questions that you may have.

Chairman Froessel: I guess my first question is... the one thing I'm not entirely clear on is the environment... environmental conservation buffer parking setback. Where... where is that on screen? Is that all the way up on that... is that the north border?

Mr. Folchetti: It's the... it's the... yes, all the way up on the upper left is the... is the call out. We're only 5 ft. off of the property line at that point.

Chairman Froessel: OK.

Mr. Folchetti: Right there.

Chairman Froessel: I see it now. OK. Any of the other Board members have any questions for the applicant? Not hearing any. OK. Is there any member of the public that's on this Zoom conference that has any comments or questions about this application? You can use the raise hand feature, or if you're on camera, wave your hand, shout your name, something, anything. No? It does not appear there are any questions from the public. All right.

Boardmember Wunner: Tim? I'm sorry. Tim, I have one question.

Chairman Froessel: Go ahead, Greg.

Boardmember Wunner: The environmental conservation buffer, who is that imposed by? Is that in our Zoning or is that by the Department of Environmental Protection? Who's...?

Mr. Folchetti: I'm going to defer to Ashley on... on what that actual buffer requirement is.

Ms. Ley: That is in the Town Zoning Code.

Boardmember Wunner: OK, and that has to do with the fact that it's adjacent to watershed or is that standard language in every?

Ms. Ley: No, it's not applicable everywhere. I believe it's because it's specific to the RC Zoning District.

Boardmember Wunner: OK, and I guess one other question is how's the stormwater being addressed because I'm looking at the topographical back on that last page? Where's that going to? Is that going to go directly into the reservoir or is that being addressed?

Mr. Folchetti: Some of it... so there's... so there are some improvements to the driveway, Greg.

Boardmember Wunner: Yeah.

Mr. Folchetti: And some of the... some of the stormwater from... from the parking area is going to get diverted in that direction. The bottom line here on this site. I think you're probably familiar with it.

Boardmember Wunner: I am.

Mr. Folchetti: Most of that is rock anyway. So what we're... we're taking away rock and changing the grades in the parking lot and adding asphalt. So it's, in my opinion, it's already impervious. If we were tearing up grass, that'd be a different story.

Boardmember Wunner: So they're already parking in that area at this point today, right?

Mr. Folchetti: Yes, they are. If you see where the... where the large cul-de-sac is at the bottom, all of that is essentially rock shelf. It comes out. Rock comes out right at grade in that spot. So we're going to break rock there. We're going to break rock where the... where the new storage building is and we're going to break rock on western most parking spots in order to just create level ground, or more level ground where we can pave and have reasonable parking.

Boardmember Wunner: OK, and not that long ago, we gave a variance for an outdoor refrigeration freezer building. Is... is that shown on this... this plan?

Mr. Folchetti: It is. So if you see the handicapped parking spots?

Boardmember Wunner: Yes.

Mr. Folchetti: It's right... it's just due north of them, right there where Ashley's showing.

Boardmember Wunner: OK. So we're going north of that with parking.

Mr. Folchetti: Right.

Boardmember Wunner: OK. That's it.

Chairman Froessel: Any other members of the Board have any other questions or comments? OK.

Boardmember Gil: My only question, Tim, is... is how many... are they... is there expected to be an increase in the number of parking spots compared to what... what's being utilized right now? I mean, I know everyone who's gone there realizes that parking over there is kind of a disaster but with respect to the amount of area that's going to be utilized for parking, one item of our criteria about the substantial change. Are we changing anything as far as the increase in the number of parking spots?

Mr. Folchetti: We're actually providing more specified parking. So, these are permanently marked spots because the parking lot will be paved as opposed to today where it's some combination of rock and... and... and old millings. So they'll be permanently marked spots and we have discussed with the Planning Board the potential for a specific valet parking plan that is part of this Site Plan application that will get us up to I think it's 115 spots total. So, yeah, there's a substantial increase in... in the normal parking and there are specific conditions that will trigger the valet parking and will go from 93 normal spots to I think 115 in the valet configuration.

Boardmember Gil: My last question is about safety considerations. What, if anything, because the way the parking is now, it's not... it's not designated or anything like that and did

you believe the way that it is now, it poses a safety hazard compared to what it will reflect once the proposed changes are made?

Mr. Folchetti: Well, the... the proposed parking... I believe it's shown on this plan, OK, has designated parking spots with appropriately sized travel lanes, OK. All... all the way around the lot and it... it'll be, you know, obviously, it'll be marked with travel directions. OK? That's about as good as I can guarantee it in a place that serves alcohol to people on a... on a routine basis.

Boardmember Gil: Thank you. I don't have any further questions.

Chairman Froessel: OK. I have one question; the proposed deck on the back of the restaurant. Will that just be an expansion of the bar? Will... will they be seating patrons for meals back there?

Mr. Folchetti: There are high top tables proposed. It's really designed to be a seasonal waiting area to relieve some of the pressure in the bar when people are waiting for, you know, waiting on their tables. It's not intended to be a table service eatery. It's just designed for people to go out there and relax and wait... while they're waiting to be seated at their table to eat supper.

Chairman Froessel: Very good. Thank you. OK. Any other questions? I think we're all familiar with the property. I mean I've been there many times and I'm... I'm guessing most of the other Board members have too. So we're all pretty familiar with it. Is there anybody... do all the Board members feel comfortable voting on this application tonight?

Boardmember Wunner: Yes.

Chairman Froessel: OK. Anybody who's not comfortable? OK. Like I said, I think we all... we've all seen it and we're familiar with the property. All right, Mr. Folchetti, before we close the Public Hearing and take a vote, do you have any final statements you'd like to make in support of the application?

Mr. Folchetti: No, sir, as long as I've answered all your questions then we're... we're all set.

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

Mr. Folchetti: Yes, sir.

Chairman Froessel: OK. Thank you. So we'll close the Public Hearing. Anybody have any comments on this one? I mean I'm, you know, this is a pretty remote property, way back from the road. I think a lot of these improvements, no one is going to see them. The parking improvements, in my opinion, are... are needed. If you've ever parked there, particularly in a rainstorm, it's... it hasn't been great. Anybody... if anybody has any conflicting views, please feel free to speak up. (Pause) OK. I guess not. So, I'll entertain any motion that anyone would care to make on this application.

Boardmember Gil: I'd like to make a motion to grant the easement number one; the environmental conservation... conservation buffer/parking setback of 5.0 ft. where 100.0 ft. is required; variance number two, a rear yard setback of 40.3 ft. where 100.0 ft. is required. Number three, the rear yard setback of 51.3 ft. for the proposed restaurant deck where 100.0 ft. is required; and variance number four, the rear yard setback 92.5 ft provided where for the residential deck area where 100.0 ft. is required.

Chairman Froessel: OK. Do I have a second?

Boardmember Wunner: I'll second.

Chairman Froessel: Was that Greg? I think Greg... Greg has seconded the motion. Andres, please...

Boardmember Wunner: Yeah, I'll second.

Boardmember Vink: But before... before we do, can I... I would just... Can we clarify? Can we have a discussion to clarify before we do the vote or address the criteria?

Chairman Froessel: I'm sorry... no, we... I'm sorry. Is there something with the motion that you want clarified?

Boardmember Vink: Yes. Yeah, I'd like some clarification because it... it looks just... I want the record to be clear. We're actually granting a 95 ft. variance on the environmental conservation buffer. So... so reading down, it could have been confusing either way. We're granting a 95 ft. variance on the first one; a 60 ft. variance on the second one; a 49 ft. variance on the third one, and an 8 ft. variance on the fourth one.

Chairman Froessel: That's correct to my reading.

Boardmember Vink: OK. All right, I just wanted to make sure that's what we were doing.

Chairman Froessel: OK.

Boardmember Vink: I just wanted to be clear on the record. I thought that's what everybody was doing. I wanted the record to be clear.

Chairman Froessel: OK. Understood. Thank you, Paul.

The motion to grant the applicant a variance for the environmental conservation buffer/parking setback of 95.0 ft. where 5.0 ft. is proposed and 100.0 ft. is required; a variance for the rear yard setback for a new shed of 59.7 ft. where 40.3 ft. is proposed and 100.0 ft. is required; a variance for the rear yard setback for a proposed restaurant deck of 49.7 ft. where 51.3 ft. is proposed and 100.0 ft. is required; and a variance for the rear yard setback for a proposed residential deck of 7.5 ft. where 92.5 ft. is proposed and where 100.0 ft. is required was introduced by Boardmember Gil, seconded by Boardmember Wunner. The criteria:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance. With respect to all four variances as stated, I don't believe that the, from the facts provided along with the drawings, the comprehensive drawings submitted, I don't believe an undesirable change will be produced in the character of the neighborhood, and there will be no detriment to nearby properties. If anything, (inaudible) the safety and security of the actual people, the restaurant patrons, themselves.
2. Whether the benefit sought by the applicant can be achieved by some feasible method for the applicant to pursue other than an area variance. I think Mr. Folchetti did a great job with his overlay showing where those setbacks would be impacted for the... where the setback requirements would impact the actual business itself and it really produces and demonstrates to the Board that there really is no feasible alternative for the applicant to pursue.
3. Whether the requested variance is substantial. I think the reality is when we're looking at the... the numbers, we're seeing 95 ft. variance for the environmental conservation buffer and an actual 60 ft. variance for the rear yard setback for the new shed and the 49 ft. variance for the rear yard setback for the restaurant deck and the... 90... and excuse me, the 8 ft. variance for the proposed residential deck, rear yard setback for the residential deck. I think when looking at them all together, one can say that it is quite substantial but when peeling back the onion and looking at the project holistically along with the size of the property itself and the adjacent properties, I think then it leads us to believe that the area variance is not substantial.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

I think we addressed that. Especially Mr. Folchetti talking about to Mr. Wunner's questions about the types of soil that are existing and that the runoff that exists now is actually going to be controlled better by the project itself.

5. Whether the alleged difficulty was self-created.

I don't believe it was self-created in the sense that... I don't believe it was self-created in the sense that this... this has been a, you know, in use for an extended period of time, and that the... and that the property itself being utilized as a restaurant facility does require parking... parking spots and to reduce the risk of... of exposure to litigation, I believe that this project is actually a good project moving forward.

Roll Call Vote:

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

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

Chairman Froessel: The variances will be granted. Mr. Folchetti, this came to us obviously as a referral from the Planning Board, so Victoria will do the... the necessary report and will... will report that back to the Planning Board and they'll... they'll have that in advance of the next meeting.

Mr. Folchetti: Thank you very much, sir, and my compliments to you and your Board on the Pledge of Allegiance. There are actually Boards in this State that do not say the Pledge of Allegiance at the outset of a meeting. So thank you very much for that. Have a good night.

Chairman Froessel: Good night.

3. Dennis & Kimberley Santucci, 5 Shady Lane, Tax Map ID 47.-3-9

Public Hearing to review an application to utilize an existing barn for the keeping of horses that requires the following variances: 3.4 ft. on the north side setback where 96.6 ft. is existing and 100.0 ft. is required; and 4.6 ft. on the north side rear setback where 95.4 ft. is existing and 100.0 ft. is required.

Attorney Michael Liguori represented the applicant.

Chairman Froessel: OK. Moving right along, give me a minute to clear up my desk here... OK, number three on the agenda, Dennis and Kimberley Santucci. Who's here to speak on that application?

Mr. Liguori: Hi Chairman. Michael Liguori on behalf of Dennis and Kimberley Santucci.

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

Mr. Liguori: I'm well. I'm well. I hope you guys are all well too.

Chairman Froessel: We... we're well here at my house.

Mr. Liguori: Same here.

Chairman Froessel: Here's my copy. OK. Will... will anyone else be speaking on behalf of the Santucci's for the application tonight, Mike?

Mr. Liguori: Not that I'm aware of.

Chairman Froessel: OK. In that case, I'll...I'll ask you to please raise your right hand and let the...the Vice Chairman swear you in.

Boardmember Vink: Mr. Liguori, do you swear the testimony you are about to give us is the truth to the best of your knowledge?

Mr. Liguori: Yes.

Boardmember Vink: Thank you.

Chairman Froessel: OK. Thank you. Why don't you go ahead and fill us in on the application?

Mr. Liguori: OK. I... I guess the first question is, Tim, does everyone have an electronic copy of what I submitted? It's the... my cover letter, the relevant application form, a... a... some survey components, and then pictures of the... the barn.

Chairman Froessel: We actually... we actually do that one better, Mike. Our Town Supervisor prints out hard copies and personally delivers them to our homes, so we all have them.

Mr. Liguori: Wow! I wonder if he's looking for a job. I could use a guy like that. (Laughter.)

Chairman Froessel: He's... he's... he's very diligent and very efficient.

Mr. Liguori: All right, so... I don't want to assume... I don't want to take up all... you know, too much time, but I think we have a... a pretty straightforward application to the Zoning Board. Dennis and Kimberley intended to construct this structure, made application directly to the... to the Building Department to construct or... or to renovate the existing shed that was on this property. I'm going to call it a shed structure because previously, as the Board has been to this property before, it was not in use as a barn when the Zoning Board had been out there looking at the... the side stone walls and the front stone walls. But they made application to the Building Department, submitted a drawing scaled to... to show compliance, believed they were in compliance, were issued a Building Permit, also issued an amended Building Permit to permit the fencing that exists around this... this structure, and when it came time to make application for the Certificate of Occupancy, (Building Inspector) Michael Levine asked them to go get an As-Built to... to be certain that we were in compliance. They obtained the As-Built and the As-Built revealed that they were too close to the... to the north property line and too close to the south property line, which are both side lines. The north is the Heinecke property. The south is the Skalaski property and the east, which is technically their front yard, is what... what is parallel to Milltown Road. I'm... I... I believe the... the current configuration of the Board may have... may be identical to our... to when we were previously in front. I... I'm not sure if... if Andres might have been out there but I think everyone else might be familiar with this property, but at the end of the day, the... this structure was... thank you, Ashley, for... for converting to the survey, this structure was... was out there and then the application was made to increase its size and the addition is what is the extension of this structure as it goes towards the house. So, the... the east side of this structure was... the east side of the structure is... remains in place. It was unchanged other than the... the renovation and the west side is... is what was expanded. It's my understanding that... that the structure was previously in use to house horses, two horses, and there was a Certificate of Occupancy issued for that. I attached a copy of that with the application and we are respectfully requesting variances for that... that... that east side and that... I'm sorry for the north side and for the south side to permit it's use for the housing of three horses. Between the submittal of the application and the giving of

notices, I know there was a... a number of comments; some allegations about violations. Mr. Levine was out there today to inspect. He confirmed that there's three horses. He didn't indicate there were any other violations on the property to my knowledge. I was forwarded an email from Michael to Victoria. I would've suspected if there... there... there were violations, any of the violations out there that they... they would've been indicated but... but that is really the gist of this application. I believe the use of this structure in of itself would offset any impacts, any potential impacts. Regardless of whether the structure exists, the Santucci's are allowed to have up to three horses on their property as of right. The structure provides respite for... for the animals and I think as you guys are aware, the property is very well buffered and screened from all the properties around it. The... there is... there are the fences and very mature landscaping now which surround this property and we would respectfully request that the... the variances be granted.

Chairman Froessel: Thank you, Mike. Appreciate it.

Mr. Liguori: Thank you.

Chairman Froessel: Any of the Board members have any questions for the applicant on this application? Anyone? OK. Is there any members of the public who are on this Zoom conference that have any questions or comments on this application?

Ms. Desidero: Mr. Chairman, I believe we have a few people on. I was just going to ask Ashley if she could give us the screen back so we can see who's raising their hands.

Chairman Froessel: Yeah, I think that's a good idea.

Ms. Desidero: Thank you.

Chairman Froessel: OK. I... I see someone with the name Heinecke on the screen with their hand up... Can you please identify yourself? Oh, you're muted. You have to unmute your...

Ms. Desidero: I have to unmute them one at a time, Mr. Chairman, and it some... just a minute but she is unmuted.

Chairman Froessel: Sorry about that. OK. I think you're good.

Debbie Heinecke: OK. Debbie Heinecke.

Chairman Froessel: OK. Can you state your address please?

Ms. Heinecke: Yes, 7 Shady Lane in Brewster, New York.

Chairman Froessel: OK. Thank you. Can you just raise your right hand and I'll have the Vice Chairman swear you in please?

Boardmember Vink: Do you swear the testimony you are about to give us is the truth to the best of your knowledge?

Ms. Heinecke: Yes.

Boardmember Vink: Thank you.

Ms. Heinecke: Thank you.

Chairman Froessel: Thanks very much. OK, ma'am, go ahead.

Ms. Heinecke: We are not going to grant the variance for Mr. Santucci, and you stated that they're having three horses? To our knowledge, they had two ponies that they put in the barn after they redid it. Well, it was a lean-to barn, it wasn't a barn-barn and now he's completed it into a full barn, which is much bigger than it used to be. Then they had brought in two full-grown horses, which pictures were sent to the Town. I don't know if Victoria... Mike Levine... We all sent a... pictures.

Chairman Froessel: We've... we've got numerous emails over the last...

Ms. Heinecke: (Inaudible) that there's three horses on the property now?

Chairman Froessel: Our information is there are three horses on the property.

Boardmember Vink: Yes, yes, there... there are three horses and the... and the Town Code allows for them to have three horses.

Chairman Froessel: Yeah.

Ms. Heinecke: OK, because I know there was two ponies and two regular, full size horses at one time. I had sent pictures.

Chairman Froessel: Mike Levine was there today and the report is that there are three horses on the property, which is within the number that they are permitted.

Ms. Heinecke: OK, but the... the barn. Now they had permits to make that much bigger than it was, correct?

Chairman Froessel: Much bigger than? Well, they...

Ms. Heinecke: Yes, much... the old... it used to be a...

Chairman Froessel: They got a building permit, I think, for a 15' by 15' addition.

Ms. Heinecke: Yeah, it used to be an open horse shed... open, and now he has enclosed it and made it much longer and bigger, and moved... and moved the position of the barn. We had sent pictures of the old and then the new, but we never heard.

Chairman Froessel: OK. We... we got everything you sent.

Ms. Heinecke: OK. Well, that's it.

Chairman Froessel: OK. Thank you.

Ms. Heinecke: Thank you.

Chairman Froessel: Is there anyone else on this conference that would like to have a... that has any comments or questions about this application?

Boardmember Vink: Bailey Santucci had her hand up for a while.

Chairman Froessel: OK. Miss Santucci, we'll wait a second for... now you're unmuted. OK.

Bailey Santucci: Hi.

Chairman Froessel: If you could please just raise your right hand and let the Vice Chairman swear you in, please?

Boardmember Vink: Do you swear the testimony you are about to give us is the truth to the best of your knowledge?

Ms. Santucci: Yes.

Boardmember Vink: Thank you.

Chairman Froessel: Thank you.

Ms. Santucci: So I'd like to clarify. Mike had spoken earlier that the barn was originally a shed. It's been a two-stall barn for as many years back as we can remember. Before the Bobbers owned it, it was used as a horse barn. It's been taxed as a two... a two-stall barn since before the Bobbers owned it, which were the owners before my parents. It was originally two stalls and we added a second stall and a small 4 or 5 ft. storage area onto the barn. So it's less than double the size and we do only have three horses. We had two mini's that we got in the fall of 2019 and my quarter horse that I brought to this property in June... beginning of... in the beginning of June. So there are only three and, like was stated, Mike Levine was out there today and looked and there are only three horses.

Chairman Froessel: That's... that's our understanding.

Ms. Santucci: I just wanted to clarify that.

Chairman Froessel: OK. Thank you, and we do have the... the application did include a copy of the original Certificate of Occupancy for the structure describing it as a...as a 'two-stall stable' so we're aware of that.

Ms. Santucci: Thank you.

Chairman Froessel: OK. You're welcome. Is there anyone else on the call that has any comments or questions?

Ms. Ley: There's a 'Cathy' with her hand raised.

Chairman Froessel: OK. Is there someone in 'Cathy' who has... who has a comment?

Ms. Desidero: She's unmuted.

The song "Why Can't We Be Friends" playing can be heard until the caller is muted again.

Chairman Froessel: OK. That was a nice musical interlude but... why... why don't we move on if there's someone else who has a comment?

Ms. Desidero: I think Mr. Skalaski has a comment. He seems to want to speak but I can't unmute him, Ashley. He seems to be... no sound.

Chairman Froessel: Is it possibly muted on his end?

Ms. Desidero: He doesn't have any sound.

Ms. Ley: No, he doesn't.

Chairman Froessel: No.

Boardmember Vink: He's on his phone. If he's on his phone...

Ms. Ley: You can... you can either call in on your phone...

Boardmember Vink: Yeah, that could be the problem.

Ms. Desidero: Mr. Skalaski, you can call into the phone number on the agenda with your phone and then we would be able to hear you. Maybe we could see if there's anybody else while he does that? I'm not sure.

Boardmember Vink: So if I could ask... if I could ask Michael a question while we're waiting for him to do that? Michael, or Bailey, whichever one feels like answering this. The... the original barn or stalls, you didn't... you didn't expand that to the... to the west side... to the, God, I'm not even sure... you expanded on the one side which brought you closer to the... to the property line by accident. You didn't improve... you didn't do anything else to that. I mean, you didn't expand the footings on that or the... you didn't expand anything about that except in the direction that the... boy, I'm really not saying this well... in the direction that the Building Permit allowed you. Are you... you rehabbed that existing section, so you... so looking at this photo, you... you would... you rehabbed the existing section that's on the left hand side and you extended it with a 15' by 15' structure basically per... per the permit on the right side, is that correct? Do I understand correctly? Michael was trying to answer but he didn't get unmuted.

Mr. Liguori: Yes, sorry, I'm unmuted now. OK. So... so Paul, the... the structure as it's laid out, the east side... I'm sorry, the south side... the side closest to the Skalaski property was not altered in dimension. It wasn't moved in any dimension. That was in place.

Boardmember Vink: OK.

Mr. Liguori: And... and the reason why... the reason why a variance is needed for the south side is that my understanding is that at the time that structure was constructed, that 100 ft. setback was likely not applicable. Maybe it wasn't in the Zoning Code at the time, but there was a recognition that for a period of time there were not horses in there. And so, in order to put horses back into the structure, the Building Department had advised that we would need to get a variance for that side as well. It wouldn't be entitled to pre-existing nonconforming status. So, we... we didn't want to argue that point. We didn't want to request a, you know, an interpretation or appeal the... the legal question. We just felt it was easier that we just apply to that variance.

Boardmember Vink: OK, but I understood it correctly. That part didn't change. The footings didn't change. That section... it got rehabilitated obviously, but it didn't... but the dimensions...

Mr. Liguori: That's right. The location...

Boardmember Vink: But the dimensions and the location are the same?

Mr. Liguori: That's right.

Boardmember Vink: OK.

Boardmember Corozine: So just to clarify that, Mike, it sounds like in 2019 when the permit was granted, there was an intent to use the structure as a shed and then somewhere thereafter there was a change of intent to use it for horses. Is that a right understanding?

Mr. Liguori: No. So, I... I... I... so the... it was applied directly for use as... as... let me just pull up the permit. My apologies, I... I... Let me just get my paperwork in front of me.

Boardmember Corozine: Yeah, sure, because on the permit it says, 'add a 15' by 15' shed to existing shed.'

Mr. Liguori: Right. Attached to the permit, and I probably should've had those pages attached, but I was trying not to have a too voluminous submittal to the Zoning Board. It was specifically stated on the permit to amend the existing two-stall structure, to add an additional stall and a tack room to match. It... it was direct and at the time when I submitted the application, I... I... I thought the... the intent was really to convert the use and that's not the case. It was... the Santucci's made a direct application with attachments to... to make that addition to this structure. I can't speak for the nomenclature of the permits but... but that was the intent. Those were the attachments that were attached to the application for the permit. At... at the end of the day, I... I think the... you know, the real lynchpin would've been if they were required to, you know, have a surveyor go out there and pin the corners right at the beginning, obviously, we wouldn't be in front of the Zoning Board of Appeals, but I think what happens is, you know, you make your application. Dennis had scaled it out on paper but when they did get their As-Built survey, it showed that they... they were over, and... and, frankly, you know, if you make an application to the Building Department and you sit with the Building Inspector and scale it out, you know, I think there's instances where it's just not obvious. You... you know, or maybe there are instances where it's obvious you don't comply and you get sent to the Zoning Board or go get a survey first. This was a... I think it was quite a bit of a surprise that they were over and here we are, in front of the Zoning Board.

Chairman Froessel: OK. Is Mr. Skalaski able to get through?

Ms. Desidero: Yes. I believe he is this phone number right here. I am unmuting him.

Chairman Froessel: OK.

Mr. Jerry Skalaski: Can you hear me now?

Ms. Desidero: Yes.

Chairman Froessel: Yes, we can. Mr. Skalaski, before you start, if I could just ask you to please raise your right hand and let the Vice Chairman swear you in?

Boardmember Vink: Mr. Skalaski, do you swear the testimony you are about to give us is the truth to the best of your knowledge?

Mr. Skalaski: Yes, I do.

Boardmember Vink: Thank you.

Chairman Froessel: OK. Please go ahead.

Mr. Skalaski: Yeah. I passed my comments onto the Board. You know, I think you've covered some of them already, but I do have an additional comment. I've put in a complaint to the Building Department about the dumping of horse manure on my property line. I've sent pictures. I saw... I actually saw Michael Levine coming out there today. He said he was going out to survey the property to address my complaints. I do have an issue with the storage of horse manure on my property line.

Boardmember Wunner: Can I... can I...

Mr. Skalaski: I've sent the department pictures...Yeah, yeah, go ahead.

Boardmember Wunner: Can I... Can I ask for clarification on that?

Mr. Skalaski: Yes.

Boardmember Wunner: Was it purposely dumped there or was a horse passing by and left it behind?

Mr. Skalaski: Almost every morning at 7 o'clock in the morning, Dennis Santucci loads his lawn cart up with a little trailer behind it and dumps the horse manure on my property line. It goes on every day. You know, horses generate about 7 tons of manure a year. It's a lot of manure.

Boardmember Wunner: OK, but do they have a container to remove it?

Mr. Skalaski: I think it's important. No, they just leave it. I sent the pictures right... just dump in the area. There's... there's piles of it. You know, I'm... I'm concerned about that, all right? And that's right out in the open. It's not hidden, it's not, you know, there's no effort to hide it or bury it or do anything. It's piled up. Mike... Mike has all the pictures, you know, of the dumping.

Boardmember Wunner: So is this... is this stuff that they cleared out of the stalls? Is it mixed with... is it... is it mixed with...?

Mr. Skalaski: It's mixed with hay.

Boardmember Wunner: And wood chips?

Mr. Skalaski: Mixed with hay.

Boardmember Wunner: And... OK.

Mr. Skalaski: Hay, wood chips, and you can see the large, you know, manure and... and the odor and also the flies.

Boardmember Wunner: So is the manure incidental to like a small amount or is it the more prominent feature?

Mr. Skalaski: There's a... the... the pictures I sent Mister, you know, Mike, the pile appears is about 10 ft, off my property line. It's about 20 to 25 ft. long and about say 15 to 20 ft. wide. It's, you know, piled up there.

Boardmember Wunner: OK. Thank you.

Mr. Skalaski: And again, my... my other concerns are addressed and I... you've addressed most of them. So that's all I have. Thank you.

Chairman Froessel: All right. Thank you, Mr. Skalaski. Mike, do you have any response on the manure issue? Honestly, I don't know how the Code treats that or if the Code treats that.

Mr. Liguori: I... I...unfortunately, I... I don't. I... I... I was under the impression that the manure would... goes to the back. You guys are familiar with how the property's configured in kind of like a boomerang in a sense? There's a back part. I thought that's where the manure was spread. I am not familiar with the particular requirement when you don't have a commercial boarding operation. I... I think in those instances where you fall under the equestrian center under the Town Code, you... you typically have a, you know, more of a commercial operation where there's a container requirement and provisions that... that... that surround that but... but not as the residential accessory use for the... for... for the use. I'm just saying I... I... Nothing sticks out to me as far as a requirement of the Code. I have the Code up. I'm taking a look right now to see if I can find something.

Mr. Skalaski: There... am I... am I still on mute? Hello?

Chairman Froessel: No. We can hear you, Mr. Skalaski.

Mr. Skalaski: OK. Yeah, you know, again, nine tons of manure a year times three horses; 27 tons of manure. OK? On my property line. I understand what Mr. Levine said about the boomerang property, but it is against the back part of my property.

Boardmember Corozine: And just to clarify...

Mr. Skalaski: I mean, he's got five... there are five acres there... five acres.

Boardmember Corozine: Right, and just to clarify, Mr. Skalaski...

Mr. Skalaski: Why is it dumped on my property line? That's what... you know, it's a simple question.

Boardmember Corozine: Yeah, I had a question, Mr. Skalaski. Just to clarify, is the manure on your property or your concern is that it's close to your line?

Mr. Skalaski: It's 10 ft. from the property line.

Boardmember Corozine: 10 ft. from the property line.

Mr. Skalaski: The wall is there. I sent pictures of the wall, the property line. It's... it's... well, it's spread out. It's about 6 to 8 inches high but it's 20-something ft. by 20 ft. You know, it's a pretty big area and that's... You know, you know, I mean, the horses have been there for... for that long. I can imagine what it's going to be two years from now. My... I... I understand the Code and everything else, but there should be some provisions that do not allow dumping of animal waste on the property line. It should be hauled away and... and deposited, you know, at a... at a landfill or a composting station. This is... this is an ongoing daily thing that happens.

Chairman Froessel: I'm... I'm not disagreeing with you, Mr. Skalaski, but I think in the instance of a... of a non-commercial horse property, I don't think the Code even addresses that.

Mr. Skalaski: But then it's nuisance then. Let's call it a nuisance. It smells, attracts flies, and the pile will just get bigger if this isn't addressed now.

Chairman Froessel: OK. Do you think if the barn was 5 ft. further away from your property line that the manure would be put somewhere different?

Mr. Skalaski: I don't think... I think he has to find a way (inaudible), OK? As far as (inaudible)... not only concerned about that. What I was concerned about was the fact that it was built without, I guess, this is what happens all the time. Go... go apply for a permit, build it, it's not in compliance... oh, let's go to the Zoning Board. I mean, I... I... I... that's an ongoing issue I have, but that's not going to (inaudible). All I want to know is what's going to happen to the animal waste, the daily animal waste?

Chairman Froessel: I'm... I'm afraid we can't answer that question. I mean, it's...

Mr. Skalaski: Well, who can? Who can?

Chairman Froessel: I don't know I don't know. If the... if the Town Code doesn't address it, it sounds like it's a, you know, possibly a civil issue between you and your neighbor.

Mr. Skalaski: So we'll let the... we'll let the manure pile up. Simple thing. You've got a horse barn. You've got horses and you have to get rid of the manure. Simple. I'm not trying to complicate this but I'm... I'm the one getting affected by it.

Chairman Froessel: Understood, but I don't... I don't think it, you know, the fact that the barn is... is... needs a 5 ft. variance on a 100 ft. setback really affects that issue.

Mr. Skalaski: But he's storing horses in the barn, right? In a non-compliant structure, first off. OK. So this has been going on since January.

Chairman Froessel: That's why he's here.

Mr. Skalaski: It didn't happen yesterday. It happened in January. Yeah, understood, understood, but this has been going on for, you know, six months now. Michael, can I ask you? Can you contact the Putnam County Board of Health to see if Putnam County has any ordinances on cow manure storage, I mean horse manure storage?

Mr. Liguori: Chairman, I... I don't know if Jerry thinks that it's Michael Levine or if it's me. That's... that's... I think there might be some confusion.

Mr. Skalaski: Oh, I'm sorry. I'm sorry.

Chairman Froessel: Mike Levine is not on this conference, to my knowledge.

Mr. Skalaski: Oh, OK. OK. Can somebody follow up with the Building Department and... and find out about... are there any other codes that could apply?

Chairman Froessel: You are certainly free to inquire.

Mr. Skalaski: I'm sure this is not the first time... So it falls back on me as the property owner that's adversely affected by this.

Chairman Froessel: Well, if there's a... if... if there's a provision of the Code, you can bring it to the Building Inspectors. We're... we're... we have... our jurisdiction is appellate in nature only. We hear determinations from the Building Inspector. A couple exceptions to that are interpretations which often are... are... are taken in response to an action taken by the Building Inspector or referrals to the Planning Board but... but in a situation such as this, we have appellate jurisdiction only. We're not the enforcement arm. So, we... we can only deal with the issue that's been appealed and is in front of us. So, if there's an enforcement action that needs to be taken, you know, that's when you bring it to the attention of the Building Department.

Boardmember Vink: Which isn't to say we don't hear you, Mr. Skalaski, because I wouldn't want that on my property line either.

Chairman Froessel: (Inaudible) you know.

Mr. Skalaski: I know you hear it loud and clear and I know you wouldn't want to live next to it either. I understand that.

Chairman Froessel: No, I wouldn't. I wouldn't. If my neighbor was dumping horse manure on my property line, I wouldn't be happy either. I don't disagree with you.

Mr. Skalaski: So can we... maybe somebody can talk reasonably to the Santucci's about the impact on their neighbors. A simple question. You... you're controlling the variance and the approval. I mean, nicely ask... can we say 'hey, listen, can... can you handle this problem as part of the approval?' They got to... they've got to find... there's got to be resolution somehow.

Chairman Froessel: You know, all... all we can do is... is make a suggestion that...

Mr. Skalaski: Yeah. I would appreciate that. I would appreciate that included in any... any approvals that you give. That would... somehow, it'd be a nice thing to do is to deal with the manure issue.

Chairman Froessel: Yeah. I just don't see that there's any way that we can deal with that on this application but...

Ms. Desidero: Mr. Chairman, Bailey Santucci does have her hand raised.

Chairman Froessel: OK. Ms. Santucci, if you're unmuted...

Ms. Desidero: I'm unmuting her.

Chairman Froessel: OK. OK. I'm sorry. Go ahead.

Ms. Santucci: So I just want to clarify. I know everybody likes, the Skalaski's like to say, 'my Dad does things then asks for forgiveness.' When we submitted the permit for this addition to the barn, we all thought when we scaled it, it was right there. It was within the setbacks and it was going to be fine. Even Mr. Levine thought that and that's why he issued the Building Permit. Had we known, like we said several times, that it wasn't going to be within the setbacks, we could've not added so much to the barn, not done so much of an addition. We would've worked within, you know, the setbacks. It is what it is. That's why we're here. The reason that we're here for the variance now is, even though Jerry is saying that it's been done since January, the permit that was opened had several different things on it. It wasn't just the structure of the barn. So, my father waited for all of those other things to be completed before he went for the Certificate of Occupancy, which shouldn't be an issue. Once Mike got the surveying plans from Terry, he easily applied for the variance. It's not that it was maliciously intended to take months and months and months and store the horses there and then say 'oh, let's get some forgiveness.' As far as the manure goes, it's not really anything that should be addressed tonight anyways. It's not part of getting the variance. However, the manure is driven to the 2.5 acres that my parents have over their bridge that goes over the waterway and we spread it over the 2.5 acres of land that's over there. It's not on the property line. It's at

least 10 ft. off our property line and from our property line, there's at least a 50 ft. buffer of land and then the waterway and then the Skalaski's actual backyard in which they sit uphill. Mike Levine was out to the property today. We walked him down to where the manure is placed. He was standing there so we said 'Mike, so this is where the manure is placed.' He said, 'I'm standing right on it and I don't even smell it.' There's no flies. I ride my horses on the back lot and my quarter horse is petrified of flies. So, we make sure that the flies are well-managed and, like I said, Mr. Levine had no issues at all with smell or flies when he came out today. So I just want to clarify.

Chairman Froessel: Is the manure treated in any way?

Ms. Santucci: No.

Chairman Froessel: It's just spread out?

Ms. Santucci: It's spread out.

Chairman Froessel: OK.

Ms. Santucci: In a few weeks, manure turns into topsoil anyway so it's... it's...

Chairman Froessel: And where that... so it's taken over that bridge and onto the back part of the property, correct?

Ms. Santucci: Correct.

Chairman Froessel: Does... does... does that back property border Mr. Skalaski's property?

Ms. Santucci: It does but, like I said, there's at least a 50 ft. buffer. The Skalaski's property goes down and then there's the waterway which is got to be at least 15 ft. wide and then there's another 35 ft. of land which they can't access unless they were to walk through the water and then our property line and then the manure's put at least 10 ft. off of our property line. So it's... it's quite a ways from where they actually can even walk to it. It's all screened and landscaped. I mean, there's no... it's not like it's just an open...

Chairman Froessel: And... and how far is that area from the Skalaski's actual house?

Ms. Santucci: At least 100 ft. I would say it's 100 ft., 200 ft. probably. It's at least minimum 2... 100 ft.

Chairman Froessel: OK.

Mr. Liguori: Tim, I don't have it scaled out but there is definitely a... a distance between the two.

Ms. Santucci: If you look right where that... that satellite imagery says the 'Salmon's Daily Brook', the manure is probably dropped around the end of that right...

Chairman Froessel: OK. OK. Is there any other members of the public that have any comments or questions? We may need to switch the screen to see if anybody's got their hand up. Mrs. Heinecke? Wait a minute, you're... you're still on mute. Hang on one second. OK. You're unmuted. Go ahead please.

Ms. Heinecke: OK. As Bailey's stating her father Dennis is bringing the manure across the stream, we have pictures that it is not across the stream, unless they just decided today or yesterday to remove the manure across the stream, because the pictures I've taken and it seems to me that the manure is on the Skalaski side before stream. So, they could've potentially moved it as of yesterday or today to make it look like it's across the stream, but the pictures that are taken, they're not across the stream where they were dumping it.

Chairman Froessel: Hmm...

Ms. Heinecke: And Mr. Skalaski has submitted those pictures. So, and like you said, if this isn't for tonight, the Department of Environmental Protection, is it too close to the stream to be dumping manure?

Mr. Liguori: Ag operations are permitted within the Department of Environmental Protection setbacks.

Ms. Heinecke: OK.

Chairman Froessel: OK. All right. Thank you, ma'am. Any other questions from members of the public?

Ms. Santucci: I mean, I'd just like to clarify. It is over the brook, over the stream on my parents' property and the Department of Environmental Protection has been out to the property several times since the Skalaski's like... to have them come out and look at everything and they have had no issues with anything that my parents have done on the property.

Ms. Heinecke: Such a (inaudible.)

Boardmember Corozine: OK. Was the manure always across the stream?

Ms. Heinecke: No. No.

Ms. Santucci: Yes. We like to drive it across the stream so it doesn't attract flies and that we're able to spread it in a larger area of land so it will eventually turn into topsoil and be able to use as fertilizer in the garden and around the yard.

Boardmember Corozine: OK. So, just to...

Ms. Santucci: It is always brought across the stream.

Boardmember Corozine: Yeah. OK. So, just to clarify, you've been put... the manure has been put across the stream since January when the shed or barn was built?

Ms. Santucci: Yes.

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

Boardmember Gil: The only comment I have, Mr. President, is....

Chairman Froessel: You just gave me a promotion. (Laughter.)

Boardmember Gil: Is... you know... why would they (inaudible) jurisdiction? You know, our... our jurisdiction really is limited to the Zoning Code. I did look at the Code prior to this evening and it's my understanding that there's actually (inaudible) zone. Is that right, Mike?

Mr. Liguori: I... I... Andres, you cut out just... just as you... if you could just repeat the question?

Boardmember Gil: I... I believe the Santucci's actually own four acres of property. Is that correct?

Mr. Liguori: It's four plus.

Chairman Froessel: 4.77 according to the application.

Boardmember Gil: So according to the Code... I mean according to the Zoning Code, they're... they're... they're entitled to four... up to four horses on that property. So one of my concerns actually coming into tonight was...

Chairman Froessel: Actually, I think it's three horses.

Boardmember Gil: It was... they get two... excuse me, you're right. One horse for two acres, then two... one horse for each acre as thereafter.

Chairman Froessel: Each full acre. Yeah.

Boardmember Gil: So... so the... so the question really was how, you know, how does this... how many horses can they fit in the stable? You know, and... and... and are we by, you know, by granting this... by granting this variance are we creating a situation where we'll have physical and environmental impact on the neighborhood and district because, you know, they could exceed what they're authorized. I think the record's clear that there have actually been... that they can stable three horses and that's... from the... from the evidence supplied from Mike Levine by his inspection today, from the testimony that there's actually three... three stables and a tack barn or tack area, you know. And... and the question before us really is whether or not this structure... we should be granting a variance for this structure. I believe that these issues... other issues that are sidetracked are outside the scope of our Board and these are issues that reflect what the right of quiet enjoyment along with other issues that, you know, Mr.

Skalaski and any other neighbors... They should consult legal counsel on their own and, you know, and they can take that route but this Board is not the 'end-all-be-all.' We have to... we have to abide by our jurisdictional limits. So I just wanted to make sure that the record was clear on that.

Chairman Froessel: No, thank you, Andres. And... and... and for the record I... I agree with what you said. I mean, you know, we're... we're kind of bound in what we can consider here and it... I've been doing this now for over 20 years and we've gotten into, you know, we've seen it a number of times where there are disputes between neighbors who don't like each other and... and I can remember one shortly after I got appointed to the Board in 1997 where the neighbor was complaining that the person who was the applicant before us, the dog did its business on their lawn. You know, and... and, you know, it's like I'm sorry, that's... that's a person who's not very neighborly but it doesn't really have any impact on... on... on whether we can grant a variance or not. Sometimes there are issues between neighbors that, you know, need to be resolved either amicably or... or not amicably but... but they... but they can't really be resolved here unfortunately. What this comes down to is it's a request for variance of... of 5 ft. and 100 ft. setback and earlier tonight we granted a variance of 12 ft. on a 20 ft. setback. So, you know, it comes down to the... the practicalities of what we do. Anyone else have any comments, questions, what have you? (Pause.) I'm not seeing any hands up. OK. Are all the Board members comfortable voting on this tonight? We're all... I think we're all pretty familiar with this property at this point.

Boardmember Wunner: Yes.

Chairman Froessel: OK. So, Mike, do you have any final statement you'd like to make in support of the application?

Mr. Liguori: I think the only thing I would just add is... is that there is significant buffer material in place. Mature plantings on each sides of the property lines where the variances are requested and I just want to have that in the record because my experience in front of the Zoning Board is that's always been something that's been very critical for the Board's review is, you know, what in fact is in place and I think this is a situation where there... there... the appropriate measures are... are already there and that's the only final comment I have.

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

Mr. Liguori: Yes. Thank you.

Chairman Froessel: OK. Thank you. OK. I'll open it up for any deliberation if any of the Board members have any comments. I think I've already made mine and if there's no deliberation, I'm... I'm happy to entertain any motion from anyone who would care to make... Oh, before we make a motion, there was, and Victoria, I may need your help on this one. Mike did the corrected denial letter, and I just want to make sure we get the property lines correct.

Ms. Desidero: So, I would actually... I would defer to Michael Liguori on that because there was some confusion again, I believe, after the second letter went so, and I was away last week, Mr. Chairman. So, I think it's just the one variance but I would rather that Michael Liguori answer that, if possible.

Mr. Liguori: OK. So the... we were... I... I didn't know there was any issue until... until it was pointed out that the first denial letter made reference to two north side property lines, but they're in fact the variances... the distances were correct but there needed to be a revision to the... the denial letter and thus a revision to the notice to reflect that there's a variance from the north side property line and from the south side property line.

Chairman Froessel: OK.

Mr. Liguori: So the... the notice was corrected. The... there... there was a... a... I think Mr. Skalaski had indicated that he found that there was additional deficiencies. I did not find them. And... and so I would ask the Board if they would continue to vote this evening based on that amendment, which is the... the second set of notices I sent out and for which we submitted the... the proof of notices to Victoria this evening.

Ms. Desidero: I can say, Mr. Chairman, that the Building Inspector did confirm today that he did not think the discrepancy that Mr. Skalaski pointed out was correct.

Chairman Froessel: OK.

Ms. Desidero: It was just the first change they made to the letter.

Chairman Froessel: Yeah. I mean when you look at the... the survey, the As-Built survey, it... it... it's pretty clear that these are not... both variances aren't from the north side. It's obvious that one goes north and one goes south. So, you know, while there was a discrepancy in the wording, the measurements were correct and the survey makes it pretty clear what we're voting on but I just wanted to be sure that all the Board members were clear on that before we... before we vote. So with that, I'll entertain any motion that anyone would care to make on this application.

The motion to grant the applicant, for the purpose of legalizing the As-Built structure, a variance of 4 ft. from the north side setback where 96.6 ft. is existing and 100.0 ft. is required and a variance of 5 ft. from the south side rear setback where 95.4 ft. is existing and 100.0 ft. is required was introduced by Boardmember Vink, 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.
I don't think it will be a change to the character of the neighborhood. This is, in many respects, horse country. I can see that there could be considered a detriment to... to nearby properties based on the disposal of the horse manure and, you know, we'll... we'll say that is something that could probably be worked out but is not before us as an issue. But I don't think it's an undesirable change to the character of the neighborhood. I think it's within keeping. It's horse country and it's specifically provided for in the Code.
2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.
No, the south side setback was existing, that was the existing shed. The north side setback was arranged sitting down with the Building Department. To the extent that a... a change is needed, a variance is needed, I think it's a result of... of a misunderstanding and nothing more.
3. Whether the requested variance is substantial.
No, it is absolutely not. In this context, certainly we've got less than 5% variances on the... on these setbacks.
4. Whether the proposed variance will have an adverse effect or impact on the environmental conditions in the neighborhood or district.
No, I don't believe so. Again, the variances themselves will not. What is done with the manure from the horses may, but that's an issue that's not before us.

5. Whether the alleged difficulty was self-created.

I do not believe it was. Again, this is a... a project that was permitted by the Town and it was only after it was... it was built that the... that the need for variances was brought to their attention.

Roll Call Vote:

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

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

Chairman Froessel: Mike, I'm sure you're aware by now, but because of the... doing this remotely, it's going to take us a day or two to turnaround the... the actual physical piece of paper for the granting of a variance. You'll have it in a day or two.

Mr. Liguori: Oh, that's OK. Thank you for having us tonight.

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

Mr. Liguori: You too.

4. Home Depot, 80 Independent Way, Tax Map ID 56.-1-23.-1

Public Hearing to review an application for a Site Plan Amendment as referred by the Planning Board that requires the following variances:

1. Rear yard setback for palette storage: 35.0 ft. variance where 0.0 ft. is proposed and 35.0 ft. is required.

2. Rear yard setback for overstock palette storage: 35.0 ft. variance where 0.0 ft. is proposed and 35.0 ft. is required.

3. North side yard setback for mulch and soil storage: 35.0 ft. variance where 0.0 ft. is proposed and 35.0 ft. is required.

4. South side yard setback for outdoor shed display area: 35.0 ft. variance where 0.0 ft. is proposed and 35.0 ft. is required.

5. South side yard setback for overstock fence panel area: 35.0 ft. variance where 0.0 ft. is proposed and 35.0 ft. is required.

Omar Mansour, Rich Procanik, and Rob Smith represented the application.

Chairman Froessel: OK, so moving right along. Item number four on the agenda, Home Depot. Is anyone on here for that application?

Mr. Omar Mansour: Yeah. Good evening, this is Omar Mansour from Greenberg Farrow on behalf of Home Depot and with me tonight I have Rich Procanik, our engineer, to walk us through the proposal and Bob... and Rob Smith, the store manager, just in case of any operation questions. Just very briefly, we have been...

Chairman Froessel: Before you get started, can I just have you gentlemen raise your right hands and let the Vice Chairman swear you in?

Mr. Mansour: Absolutely.

Boardmember Vink: Do you swear the testimony you are about to give us is the truth to the best of your knowledge?

Mr. Mansour: Yes, sir.

Mr. Rich Procanik: I do.

Boardmember Vink: Thank you.

Mr. Mansour: Sure. Just... just a very quick introductory. We have been in front of the Planning Board; were referred from the Planning Board to this Board for... for the variance. I would say this is more of a technical variance dealing with setbacks related to a commercial condominium lot. The actual property line... lines are much further away and with that, I will just turn it to Mr. Procanik to walk us through the application. Thank you.

Mr. Procanik: OK. Great. Thank you, guys. Can everyone hear me OK before I start?

Chairman Froessel: Yes.

Mr. Mansour: Yes.

Mr. Procanik: OK. Tremendous. So, what you see on the screen is the plan we've submitted for... for variance relief. Before we get into the actual variance, I'd just like to give a very brief overview of... of what we're trying to do on... on this Home Depot application. As... as you may know, I'm sure you've even seen it, Home Depot does have a bad habit of storing some merchandise outside of the building, in maybe not the best located places. So, we are trying to help clean that up. We're asking to reallocate portions of the parking lot to accommodate certain types of storage and staging material temporarily or... or long-term, depending on that designated area. So, we've been in front of the Planning Board and we've worked very closely with them to help identify and resolve some... some issues they had with the overall site; how it functions. Some of those items we've addressed with additional striping to help limit the potential conflict between a vehicle and a customer. We've also added additional striping designating the fire lanes, just to prevent anyone from possibly storing something in an incorrect area and we've also added additional signs to help control the traffic from going around the back of the building by accident. So as... as Omar had alluded to, what we're here to ask for relief from five variances; all of which are setback in some capacity, either side or rear. So as... as Omar just mentioned, we are being... we have a... a lease line essentially shown in a... in a dark red line, I'm sorry, dark black line; identified as Home Depot Metes parcel line. That line was carved out by the landlord and... and given to Home Depot for their... for their use. The overall property had that darker line you can kind of see at the bottom left corner. That's the overall property line for the entire parcel of land. So we are asking for relief for the rear and side yards to 0 ft., but in actuality we're closer to 65 to that main property line for the overall property.

Chairman Froessel: OK. Do you... do you have measurements of, for each of these five variances, of what the distance would be to the actual property line... not at the lease line?

Mr. Procanik: I have approximate. Yes, understood. I have approximate. Let me just pull that up on my screen. We didn't submit this as a document. I do have it in an email ready to go. I could send it to Ashley if she wanted to post it up but we range at the closest point where you see on that north side of the building by the garden, that's about 64 ft. and then from there it ranges anywhere from 325 ft., 543 ft., and 350 ft., respectively, moving towards the south.

Chairman Froessel: OK. With the actual distances are all greater than that 35 ft. measurement if you were measuring to the actual property line, correct?

Mr. Procanik: Yes, significantly more.

Chairman Froessel: OK. All right. Is... is the purpose for the... for this variance to sort of expand the business a little bit?

Mr. Procanik: Yes. Exactly. We had a similar application in front of the Planning Board back in 2006. I wasn't necessarily part of it, understand, collectively for Home Depot. We received approval and, on the plan, you'll see those areas designated in a lighter striped hatching, and we're looking to expand that. So, we... we are still compliant with the parking, and it's just the setback variances that we need some relief from. The... these outdoor storage areas... it's... it's the mulch in the summer. That's probably the bulk of what we're here for and you...you'll see on the bottom of the page in front of the Garden Center just a little bit more to the... to the right there what we're shutting down that entire bay of parking. That's primarily going to be mulch. It's just... can't keep enough of it on the shelves. So, unfortunately, we need a little bit more space than the store has for those three or four months in which mulch is a... is a hot item. Some other areas, we're going to be putting in an outdoor display area for sheds. So, there'll be some models built so that someone who may be looking to purchase a shed can actually see it in person and not just on a picture.

Boardmember Wunner: Doesn't that already exist, the outdoor storage?

Mr. Procanik: It does.

Boardmember Wunner: OK.

Mr. Procanik: We're just trying to legalize it and keep it contained to the... the correct area. We're approaching this in the sense that... we're going to stripe out with a solid 4-inch white line the... the approved areas, should the Boards be so grateful to give us approval, to allow the store to understand that this needs to be the designated area and only the designated areas for that storage. We've done many of these with Home Depot, probably close to 50, and just having the understanding, the store understanding what's approved. We did see great improvement on... on the overall site conditions.

Chairman Froessel: And you... and you bring up a point that is sort of the primary point of concern which is, when... you when you get approval to sort of legalize these areas that you're already using, once they get approved, they start to kind of bleed out and get a little larger.

Mr. Procanik: Yeah and I... we accredit that to the employees not really understanding what's approved. You know, if we just came to you with the normal approval and asked these areas to be designated without striping it, I... I don't think the Garden Center employees are going to understand, which is why we implemented the solid white stripe. Home Depot also takes additional measures. They have something called an 'ORSP.' It's a... it's a Site Restriction Plan that they keep posted in the store, and it just highlights the areas, the fire lanes, the emergency exits, what can and cannot be done in the parking lot. So, they have two layers to try to help educate, for lack of a better term, well, the employees so they understand what's permitted. Home Depot tries to be the good neighbor but sometimes they do get a little busy and can overlook some minor items. So, we're here to try to give them some guidelines.

Mr. Mansour: And, Mr. Chairman, we... we do have the Store Manager with us just to, you know, make sure that he's part of this... this process so we understand what's going on. Mr. Smith has been with us from the first application with the Planning Board and he's the... he's the one who enforces that internally to his employees.

Chairman Froessel: OK. Well, I... I like the idea of doing the striping, to sort of delineate those areas because a) it'll help your employees, and b) if...if things do start to expand a little bit, it makes it easier for our Code Enforcement people to... to bring it to your attention, let's put it that way.

Mr. Mansour: Exactly.

Mr. Rob Smith: Yes.

Mr. Procanik: We always say, 'if you can't see the white line, you're in violation.'

Chairman Froessel: OK. Any other members of the Board have any questions about this application?

Boardmember Wunner: I... I have one other question.

Chairman Froessel: Sure, Greg. Go ahead.

Boardmember Wunner: The... has this been reviewed by the Fire Department and for...for the path of egress for the First Responders to get around the building, because it appears a little bit tight, which I think would be on the south end of the building near your rental area. It looks like you got a cage out there and it's kind of getting a little crowded, a little tighter, but has this been reviewed by, I guess, our Fire Department and the Building Department?

Mr. Procanik: If, Ashley, if you could be so kind as to go to that last page. We did... did do a truck turn analysis for fire engines. I mean I believe it was reviewed by the Fire... Fire Department and, if I mis-state, I apologize. I'm pretty sure it was part of their review. So, other than laying out these individual areas for storage and staging and so forth, that was our primary concern and constraint on where we could store or stage products.

Boardmember Wunner: So that's C-3 you're talking about, that page?

Mr. Procanik: Yes, yes, C-3.

Boardmember Wunner: OK.

Mr. Procanik: You'll see there's a little... a little turn analysis here, and then on this sheet, we show the (inaudible) the actual WB-67, which is the largest truck that Home Depot would be (inaudible.)

Boardmember Wunner: Yeah. My, my only concern, I mean, I'm a frequent buyer at Home Depot and I think it's a great store, but that area there tends to have guys with trailers parking there. You know, it's kind of an informal large vehicle area where guys can't park in traditional spots. They tend to pull over there like where you have your mailbox and it's between the sheds and the rental area. (Inaudible) your... your line layout as well because that... that is... that tends to get congested in that area there.

Mr. Procanik: So, I... I think that kind of comes back to just not understanding what these constraints are. So, that was an issue that the Planning Board had raised and we were able to work through that by putting down additional pavement markings. It's a Fire Lane, no stopping.

Boardmember Wunner: Yeah, that's what I'm asking. I just didn't see them shown on this drawing, that's all.

Mr. Procanik: Yeah, I'm... I'm sorry. Can we go back to the page you were just on, C-2.0? We... we do have, I think it's four different locations identifying the Fire Lanes. No parking (inaudible.)

Boardmember Wunner: OK. I just didn't see pavement markers... markings there. So, that's fine.

Mr. Procanik: It's the dark... those dark texts; that's proposed.

Boardmember Wunner: OK. I'm good with that. As long as it's addressed.

Chairman Froessel: Thanks, Greg. Any other members of the Board have any questions for the applicant? (Pause.) I'm not hearing anybody so I'll take that as 'no.' Is there anyone on the Zoom call among the public that has any questions or comments on this application?

(Pause.) Nope. I'm not seeing any hands raised so I'll take that as a 'no.' To the Board members, is everyone comfortable voting on this tonight?

Boardmember Wunner: Yes.

Chairman Froessel: Thumbs up from Rod, from Andres. It looks like everyone's ready. Steve's ready. OK. We're all pretty familiar with, I think, the Home Depot property.

Ms. Desidero: Mr. Chairman, I would just say for the record that this application also went to County Planning because of its proximity to I-84 and it was also approved as submitted.

Chairman Froessel: And 312. OK, good. Thank you, Victoria. OK. So the procedure, gentlemen, is that we'll close the Public Hearing and then... and then we'll take a vote. Before I close the Public Hearing, do you have any final comments or statements you'd like to make in support of your application?

Mr. Procanik: I just want to thank everyone for their... their time tonight, and Ashley and Victoria for helping us through this process. So, I would turn it over to Omar or the Store Manager if they would like to say anything.

Mr. Mansour: No, I... I second that. Thank you again for... for... for everybody's help and pushing through this application. Ashley and Victoria have been a tremendous help, obviously, with every step of the way.

Chairman Froessel: OK. Thank you. Mr. Smith, you had a comment?

Mr. Smith: Yeah. No, obviously I would like to say (inaudible) everyone for your time tonight and (inaudible) the store as the manager and (inaudible) and just be a good partner for you guys in the Town and, you know... you know, this is a good business for you guys to have. I do really just appreciate your time tonight, so thank you.

Chairman Froessel: All right. Thank you. OK, and I'll pose the question since you did most of the talking, Mr. Procanik, do you feel you've been given a fair and adequate opportunity to present the application this evening?

Mr. Procanik: Yes, sir.

Chairman Froessel: OK. Thank you. Any comments among the Board? We have any... anybody want to make any comments or any deliberations? I mean, the big thing for me is they've got to get a variance from their lease line when the actual property line is further extended out, and... and that's not to say that the lease line should be ignored completely but at least on the north and east sides of the property where they don't really have anyone bordering them immediately, it's... it certainly mitigates the variances that are being sought here.

Boardmember Vink: Yeah. I... I agree. I think it's also relevant that they're really using the property this way already and we can see it's not causing any problems. So, I mean I'm there, I'm sure we're all there, often enough to recognize that you can't park in the two lanes of parking in front of the (inaudible) in front of the Garden Center, and we know they've got the sheds out there on the far side. So, so, you know, they're already using it and it's not causing any problems.

Chairman Froessel: That's... that's true. That's a good point, Paul. OK. Anyone else? Any comments? No? OK. Then I'll entertain any motion anyone would care to make on this application. It's a... actually, it's five separate variances. I think we can handle them all at once. So, if anyone has any... has a... would like to make a motion, we'll entertain that. (Pause.) All right, I'll make a motion.

The motion to grant the applicant five variances with the first being a variance on the rear yard setback of 35.0 ft. for the palettes; and number two variance on the rear yard setback for overstock palettes of 35.0 ft.; and a third variance on the north side yard setback for mulch and soil sale operation of 35.0 ft.; and two variances on the south side yard setback; one for the outdoor shed display area of 35.0 ft. and another for the overstock fence panel area of 35.0 ft was introduced by Chairman Froessel and seconded by Boardmember Cassidy. The criteria:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the grant of a variance.
No, I don't think it will be an undesirable change. These operations are pretty much really already going on there. This is just a... to formalize what's... what's already happening. It's entirely a commercial area and the neighbor businesses aren't disturbed at all by these operations.
2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.
I would argue 'no' because the lease line really constricts them to their actual footprint, pretty much the footprint of the building and... and the parking lot, whereas the actual property line extends further out. So it would be difficult for them to... to do these things. You can't do it in the middle of the parking lot obviously and then it would be difficult to do it any other way.
3. Whether the requested variance is substantial.
It certainly is substantial. There's no question about that but again I think it is mitigated by the fact that the variances are being sought from the lease lines, whereas the actual property lines are... are set further away.
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.
5. Whether the alleged difficulty was self-created.
I don't think it is. I think it's a function of... of the nature of the business that Home Depot does and... and the way they have to kind of set up around a perimeter of a property to do these various types of sales. So I don't think it is self-created.

Roll Call Vote:

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

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

Chairman Froessel: So the variances are granted. This was a referral to us from the Planning Board, gentlemen, so what happens here is Victoria prepares a report and then that gets submitted to the Planning Board. They'll... they'll have that in advance of the... of your next date before the Planning Board.

Mr. Mansour: Thanks. Thank you so much for your time. We appreciate it.

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

Chairman Froessel: OK. We have to approve the Meeting Minutes from May and June. I've reviewed them both so I'm... I'm prepared to vote on those tonight.

The motion to approve the Meeting Minutes of May 18, 2020 was introduced by Chairman Froessel, seconded by Boardmember Cassidy and passed all in favor.

The motion to approve the Meeting Minutes of June 15, 2020 was introduced by Chairman Froessel, seconded by Boardmember Vink and passed all in favor.

Boardmember Wunner: I just... can I just take one minute to thank Victoria and Ashley for what a great job they're doing during this... this... It's getting better and I'm kind of enjoying it and they've really been 'johnny-on-the-spot.' They've really been on top of this stuff, so...

Chairman Froessel: Absolutely. I... I absolutely agree completely and I think that without their help we... we wouldn't be doing this.

Boardmember Wunner: Yeah.

Chairman Froessel: I mean not so smoothly. That's for sure. So, Ashley and Victoria, thank you very much for all your hard work and getting these remote meetings set up and operating so smoothly too. We really do appreciate it.

Ms. Desidero: If I could just also thank JoAnne for standing in for me for the last two weeks while I was off at our summer home upstate. She's become quite a help to the ZBA.

Boardmember Wunner: Nice.

Chairman Froessel: Yes, thank you, JoAnne. We appreciate it.

Ms. Desidero: So thank you, JoAnne.

Chairman Froessel: We appreciate it. Absolutely. OK.

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

Respectfully submitted,
Victoria Desidero
JoAnne Ciralli

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