

**TOWN OF SOUTHEAST  
ZONING BOARD OF APPEALS  
Southeast Civic Center  
67 Main Street  
Brewster, NY 10509  
December 20, 2004**

**Board Members**

<b>Edward Colello</b>	Chairman	Present
<b>Ronald Kobbe</b>	Vice Chairman	Absent
<b>Thomas Costello</b>	Acting Vice Chairman	Present
<b>Timothy Froessel</b>		Present
<b>Kevin Sheil</b>		Present
<b>John Gallagher</b>		Present
<b>Joseph Castellano</b>		Present
<b>Willis Stephens</b>	Town Attorney	Present
<b>Richard Honeck</b>	Town Board Liaison	Absent
<b>Linda M. Stec</b>	Administrative Assistant	Present

**Ed Colello** – Let’s stand for the Pledge of Allegiance. Pledge of Allegiance said. Good evening everyone. Welcome to the Town of Southeast December meeting of the Zoning Board of Appeals. My name is **Ed Colello**. I would like to introduce you to our Board members. Board members introduced. I would like to run down the agenda for this evening. This is the order we will be following. Number one is Palmieri, second is Louis and Sylvia Pauta, Constance and Ronald Harper, Janette Phillips, Vails Grove Golf Course, Victor Valesquez, Anthony and Stephanie Fanelli, and Tim and **Billie Froessel**. Are you ready to get started?

**James Nixon** – I expected my client to be here so if you would like to go to number two and come back to him.

**Ed Colello** – Fine we will do that. Number two Louis and Sylvia Pauta.

Linda Stec – I don’t see them.

**Ed Colello** – OK, we will move to number three, Constance and Ron Harper.

**1) Constance and Ronald Harper  
395 Milltown Road  
TM# 58.1-2**

**Ronald Harper** – This is a second meeting of a presentation that was made two months ago. This represents the underline parcels that existing in 1971, 72, a 20 acre parcel, in 1972, 1973, this parcel in black was cut out for me to purchase. It was divided. The property owner used the then existing R-60 requirement which was 175 for the road frontage, 200 foot in width and he cut a 4 1/2 acre parcel out which extends all the way back at 200 feet wide, so basically we have dog leg that is almost 1,000 feet long and 200 feet wide, a 4 1/2 acre parcel. My house is located about a third of the way back. The

rear portion here has basically not been used for 30 years, ever since I first moved in. This remains unused. Because obviously from the length of the way the property is laid out it is really not useable. Topographically it is a gentle slope I have the topo in here there is about a 25, 30 feet distance in elevation from here in here. This is the region across. What I would like to do is get permission to utilize this area for horses and put a horse barn in this location. The setback for a horse barn is 100 feet for the barn which I can maintain on that side and that side here that is a piece of property formally owned by Jerry Gruen so we can maintain that setback. This is house in that land. There is already a barn over here, there is a corral here that abuts my property. This is a five or six stall barn. So I would be able to maintain the 100 foot setback distance that is required there. The barn is 24 feet wide which leaves 76 feet over here. This property here on the right is 50 acre preserve owned by the Town of Southeast. It was deeded to the Town about 10 years ago. And it has a restriction on it that it can only be used for passive recreation. The Recreation Commission has looked it over and decided that they really can't do anything with it because topographically it is rough, it is rocky so it is suitable for basically just leaving it alone as a conservation land. So there wouldn't be any impact on any neighbors on this side because they aren't going to be any. This is the typical structure that is involved. There are three examples of kick style barns that are available. The all tend to run 24 feet wide and the maximum is three stalls because that is the maximum population that is allowed on the land. That is basically all.

**Ed Colello** – Is there anyone in the audience that has any questions in regard to this application, opinions or thoughts. I have to tell you I didn't look at the site only because number one the variance request is very simple one, it is easy to ready on the map. And number two it borders the Town preserve I am not going to walk in the woods just to see where the land stops and the preserve stops. I didn't go look it at because I didn't see a need.

**Ed Colello** – So you are requesting a variance of 24 feet on the northeast?

**Ronald Harper** – On the southwest.

**Ed Colello** – Is this one that we can keep for our records?

**Ronald Harper** – Yes.

**Ed Colello** – Any other questions, again this is a carry over application. I am sure I don't have to remind you of this but the style of the barn really is not an issue to us obviously it is the location. You are requesting a 24 foot variance which would mean that you are limited to no more than an encroachment than 24 feet. I needed to say that for the record. Not that you wouldn't understand that but I want to make sure we are all on board here.

**Ronald Harper** – Twenty four foot is the standard width.

Joseph Castellano – You won't be able to see the barn from Milltown Road?

**Ronald Harper** – You can't see my house from Milltown Road. There is a ridge that goes right across. I see one other house.

**Ed Colello** – You can see Jerry's old house?

**Ronald Harper** – Only this time of year.

**Ed Colello** – If there is no other questions I will close the public hearing. Are there any other comments you would like to make?

**Ronald Harper** – No.

**Ed Colello** – Do you think you have had a fair and adequate opportunity to state your case?

**Ronald Harper** – Yes.

**Ed Colello** – Will you have a seat.

Public hearing closed.

**Ed Colello** – I will make a motion to grant the applicant a variance from the side yard setback requirement of 24 feet from the southwest border of the property as depicted on enclosed map A. Second?

**Jack Gallagher** – Second.

**Ed Colello** – I will address 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 the variance).

I think the answer is obviously no as the applicant has stated in where he has 4 1/2 acres off the road no one will even see this. To the left of the applicant is a nature preserve there will not be neighbors living there that even will be able to see it and to the right you can barely see anything.

2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.

I don't think because of the long narrow shape, it is not that narrow but somewhat shape of the property I don't think the applicant could put this barn anywhere and had the 100 foot setback on either side.

3. Whether the requested variance is substantial.

Well, it is approximately a 25% variance so I think you could call it somewhat substantial but again the applicant has tried to put it in the best spot where you only need it from one side.

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

None.

5. Whether the alleged difficulty was self created.

Once again as we say all the time you can make an argument that most variances are self created especially when someone wants to put an addition on or add to their home or their business or something. But in this situation I think that the fact that the applicant has no other choices other than putting in a spot where you wouldn't a variance there is not much you can do.

**Roll Call Vote:**

**Tom Costello** – In favor

**Jack Gallagher** – In favor  
**Tim Froessel** – In favor  
**Kevin Sheil** – In favor  
Joseph Castellano – In favor  
**Ed Colello** – In favor

**Ed Colello** – Mr. Harper could you just sign this? If you could just sign there and we will keep this with the application.

2) **Plinio Palmieri**  
**107 Peaceable Hill Road**  
**TM # 56.10-1.-10**

Plinio Palmieri and James Nixon, architect appeared for this application.

**Ed Colello** – Once again this is a carry over, I want to remind everyone they are still under oath. Mr. Nixon if you can give us the abridged version.

**James Nixon** – To recap the property in question is 107-109 Peaceable Hill Road, two houses on one lot. The variance requested is specifically for what is proposed for 107 Peaceable Road, the front house of the two on the lot. The property is located on the west side of Peaceable Road in the R-20 zone it is pre-existing non-conforming, has some pre-existing non-conformities in that there are two single family dwellings on that property. The front house the house in question is about 1,400 square feet in total and the second floor is smaller than the first floor. What Mr. Palmieri proposes to do is a second floor addition over the portion, one portion of the house that is one story only. There is another portion but that is not a part of this. Adding about just over 300 square feet to the total square footage, it is a two bedroom house and the proposed construction will maintain it as a two bedroom house. The addition will be a larger bedroom than the one that exists and one of the bedroom that exists will actually become part of the hallway and access to the stairs. It is not an enclosed room and does not qualify as a bedroom. For maintaining Health Department approvals which would come later assuming that the variance would be granted, it would have to be maintained as a two bedroom house. The reason that we are before this Board is the house as it exists as a side setback and side yard of only 9.5 feet where 20 feet is required. I want to point that the other house, the small cottage in back of the larger house that we are going to work on has a side setback of only about two feet. No work is proposed at that house. The second floor to be added would extend the non-conformity in that it would too have a side setback of only 9.5 feet where 20 feet is required. In addition to that variance a variance for the front setback as Mr. Harper noted that we have 30 feet, 30.5 feet existing, and that 30.5 feet will remain where 35 feet is required. The addition does not change that one way or another. In all other respects in terms in the density is conforming, the rear yard is conforming, and the floor area ratio existing and proposed.

**Ed Colello** – I have a couple of questions, I am looking at some of the data that you gave us. Let's talk about the coverage. In your notes you said that the existing property has a 15% coverage. Right?

**James Nixon** – Right.

**Ed Colello** – How did you figure the 15%, I have to tell you that is extremely low, 15%.

**James Nixon** – We have a 9,000 square foot lot and the coverage is the square footage of the footprint of the two structures.

**Ed Colello** – It just seems to me to be more. You are putting in the whole footprint including the porch?

**James Nixon** – Yes, that is correct, the porch is included in the footprint.

**Ed Colello** – I hope so because you are trying to include it the other way. You have to include it both ways.

**James Nixon** – Remember the front house is only 1,400 square foot including the second floor.

**Ed Colello** – And you included the cottage is that coverage?

**James Nixon** – I included the cottage. I don't have it handy.

**Ed Colello** – I believe you it just seemed a little low. The second thing is and we can debate how to do this in the rear yard again and we had this problem on Sodom Road a year or so ago when there were two houses on the same property you are saying that you are 26 feet from the rear of the property but once again we are not including the cottage, the cottage is real close to the rear of the property, correct?

**James Nixon** – It is close to the side of the property, but the rear setback, the 26.3 feet is from the cottage. I recall that discussion on the Sodom Road property.

**Ed Colello** – So if we look at this one time, if we could just look at your specs again. You do need a front yard setback?

**James Nixon** – Right, and although it was not noted on here it was noted in the public notice.

**Ed Colello** – So it is 4.5 feet in the front, correct?

**James Nixon** – Yes.

**Ed Colello** – And on the side setback you need 20 feet and you have two feet?

**James Nixon** – That is the cottage, 9.5 feet.

**Ed Colello** – And the overall you need 50 and you have?

**James Nixon** – Twenty if you take the two houses, but if it is the house in question, 27.5.

**Ed Colello** – You are going to need one either way. Before I open it up to the audience that is different, or any changes or anything?

**James Nixon** – Something I will add going back to the previous discussion one of the things we wanted to point out is the reason is that Mr. Palmieri wants to do this is that he wants to move into this houses. He owns other houses in town, he lives in a four family house, he would like to move into house but is currently not large enough and we have had some discussion about that. I would like to point out that the work that is planned is not a huge amount but a rather significant investment for this property. I would say if he was not to move into himself it wouldn't make a lot of sense. The added \$30,000 or \$40,000 worth of construction it would be a considerable amount of time to be realized through rental. And I put that into to add to our previous statement it is really his intention for him and his family to live in that house.

**Tom Costello** – I have one additional question, are any of the parking areas currently used by the house paved?

**James Nixon** – The front yard is paved.

**Plinio Palmieri** – You are talking about the front house.

**Tom Costello** – Do you have any paving?

**James Nixon** – There is paving.

**Tom Costello** – Because the calculation of lot coverage includes impervious surfaces which would include the driveway.

**James Nixon** – I looked for that and I didn't read it that way.

**Tom Costello** – It says "lot coverage the percentage of land area covered by the combined all building structures and impervious surfaces." It just seems the permitted 55% coverage seems on any lot so I know there had to be some other calculation.

**James Nixon** – That is under coverage?

**Tom Costello** – In the definitions under coverage, lot. I still think you are under the 55% just eyeballing it.

**James Nixon** – That wasn't true at this time.

**Tom Costello** – It was '03 that it was revised.

**James Nixon** – The Town doesn't give out the '03 anymore. That is OK.

Willis Stephens – There is going to be a '04.

**James Nixon** – But I think even with that we are well under the 55%.

**Ed Colello** – Jim I don't know if your argument about putting addition doesn't make a lot of financial sense because if you think about it. If I use your number of \$30,000 just pick that as a number, with mortgage rates today if the applicant financed that might change his mortgage payment by \$200-\$300 a month, maybe, less. Now if the applicant felt that he could increase the rent because the house is bigger now and it is better property know I don't know if that is a pretty legitimate argument the fact putting this addition guarantees the fact that it is not a rentable property at that point. I don't know what the applicant gets for it now, I don't want know, it is none of my business. But I can't believe that putting that addition and doing what you want to do doesn't increase the value of that property as a rental. And if it increases it by \$200-300 per month he is breaking even and with the depreciation of the house, who knows it might be a very smart move.

**James Nixon** – I didn't think about your point about the mortgage rates, that is good point. My thinking was if it were \$30,000, \$3,000 a year, 10 years, would you really gain another \$200-300 because it is still a two bedroom house.

**Plinio Palmieri** – It is still a two bedroom house. We going to live there. We need a one family home. We don't have a single family home. Intentionally we bought it to live there and since it was rented if is we have problems we could always rent it because it was rented. I will be honest with you. We intentionally bought it...

**Ed Colello** – I hope you are being honest you are under oath.

**Plinio Palmieri** – I am honest.

**Ed Colello** – But let me interrupt you for a minute. Were these the original people that were in the house when you bought the house?

**Plinio Palmieri** - No.

**Ed Colello** – Let me stop you right there. And if you argument is that if the house was already rented and that is why your family and you didn't move into it why did you get the other people out and bring in new tenants?

**Plinio Palmieri** – Because we find out that it was not for us and we start thinking what we do, money is needed, I always think with Mr. Nixon to think to give me ideas and we come up with to have an nice bedroom this way I can move there. This is honesty. I am honest. He knows me 15 years, 20 years he knows me. This is what the intention was when we bought. And at the same time it is not big enough it is rented and if we could do

this it would be very nice, we could live there because we do not have a one family home. This would be very good for us, for my wife and my kid. So it would be perfect for us.

**Ed Colello** – I am going to open it up to comments from the audience, all I ask this is not the first time we have discussed this application I would only ask that we not try to be redundant and if you have any new issues or anything else you would like to say but if the person before you has already said what you would like say if you could just get up and say my name is **Ed Colello** and I echo Mr. Johnson's hypothetical thoughts. So please state your name.

**Ronald Harper** – My name is **Ronald Harper**, who will be in the family that is going to be occupying this?

**Plinio Palmieri** – Three people, me, my wife and my son. So it is perfect for us.

**Betty Bottge** – I have one question, in America when we bear our children we look for an expansion of our home to bring up our family, now you have one son how old is he?

**Plinio Palmieri** – Sixteen, he is going to be 17.

**Betty Bottge** – This is what I don't understand, you raised your child, he is 16, 17 years old in an apartment someplace right?

**Plinio Palmieri** – We used to live in the Bronx, I used to live in the Bronx for a long time. We only moved up here a couple of years, full time, a couple of years.

**Betty Bottge** – You have been raising this young man in an apartment.

**Plinio Palmieri** – Not in an apartment.

**Ed Colello** – I don't know if that is really relevant in this application.

**Betty Bottge** – My whole point is now when his child is all grown up he is looking for an expanded home. This is what I don't understand. Most people when their children grow up they go the other, they are looking for a smaller house because the kids are off to college or they are out. He seems to be going backwards.

**Ed Colello** – Yes.

**Chris Nugent** – I am Chris Nugent, the neighborhood has a petition that they would like on record to not issue the variance setback for all of the reasons that we all been here two times in a row. I will give this to you Mr. Colello. My only suspicion if I were to buy a house that I thought we were going to eventually live in my husband and I would have looked at this house very thoroughly and at the time before purchase would have figured this house, my furniture is not going to fit it. We have no room, this house is not suitable for our purposes. So to say that they bought the house because they were planning to live in this house now they figured out that they don't fit it doesn't make any sense.

**Ed Colello** – Let me read this into the minutes. "We the undersigned are firmly opposed to the approval of a setback variance to add a second story addition being sought Mr.

Plinio Palmieri at the property of 107 Peaceable Hill Road. The proposed building plans presented to the Zoning Board of Appeals on October 18, 2004 and again on November 15, 2004 is a hardship for these neighbors signed below." And this is signed by 25 neighbors, I am not going to read them all but we will put this as part of the minutes.

Anyone else?

**Arnold Ratcliffe** – My name is Arnold Ratcliffe, I live at 111 Peaceable Hill, last time I was here I distinctly asked you about the shadow that would be casting on my driveway going from approximately ten feet to now 35 feet. Have you addressed that or looked into that?

**James Nixon** – I have looked into it. That is certainly a concern that I don't know how to mitigate. What I did look at is tomorrow is the solstice, when the sun is at its lowest. Believe it or not the US National Observatory has a website where you can find your sun angle for any city, whatever, every 10 minutes of the day. So I looked at that for tomorrow, I also looked at it for June, but it is the winter that is at the issue here. For people who were not here for the previous discussion, Mr. Ratcliffe concern is that Mr. Palmieri's house as it sits is directly south of Mr. Ratcliffe's driveway but that when the winter sun is in the south sky the house casts a shadow on the driveway. And admittedly it does. The sun should be at 24 1/2 degrees in the sky at noon low enough to cast a shadow more than twice the height of the house in question. I have to say that I don't believe that the Zoning Ordinance was ever meant to address that. It is a legitimate design issue from architectural standpoint the permitted height of a house in that area is 35 feet and we are not building near 35 feet, we are less than 25 feet. But a 35 foot structure would cast a shadow from 77 feet when the sun is at its lowest. Given that the side yard requirements are only 20 feet than this Zoning Ordinance was not written with the intent that we would make the houses so far apart that that wouldn't happen. Furthermore I will point part of the reason that this exists is that Mr. Ratcliffe's driveway, Mr. Palmieri's driveway the driveway south are all non-conforming in that they are in the side yards. They don't have 20 feet from the property line to the driveway as required. So yes it casts a shadow now and the portion of the house that is one story will cast a two story shadow. It is an issue but given that the Zoning Ordinance was anyway written with the intention of addressing that then I don't see that as a concern with regards to this application.

**Clint Fryer** – Clint Fryer, 101 Peaceable Hill. What are the modifications you are doing to the house according to your statement it is a two family house now?

**James Nixon** – It is a one family house.

**Clint Fryer** – There is two families living in it.

**Ed Colello** – No, there is a separate house, a separate cottage in the back.

**Clint Fryer** – He said there was two families living in the front house. And there was two gentlemen in the converted garage.

**Ed Colello** – I have to tell you I looked through the minutes I don't remember him saying that. I remember there is two one family houses.

**Clint Fryer** – What is he doing, why would you take a two family house and make it a single family?

**James Nixon** – There are two single family houses on the property.

**Clint Fryer** – I understand there are two single family houses but there was two families living in the front house. That is what everyone is concerned. The number of adults. He said there is a husband, wife and a child.

**Plinio Palmieri** – No, that is me.

**Clint Fryer** – No, we are not talking about you because you are not living there. There was a husband, wife and child.

**Ed Colello** – Who is living in the front house right now?

**Plinio Palmieri** – There is a lady with two kids.

**Clint Fryer** – He couldn't account for all the cars that have been there unless a child was driving.



**Plinio Palmieri** – How many cars do you count there. I am tired of listening to all this. Every other driveway has five, six cars, I don't understand this.

**Ed Colello** – Please one person speaking. Give the man his time, you had your time.

**Clint Fryer** – Because of the number of people living there.

**Plinio Palmieri** – What number of people living in the house, there are four people there.

**Tom Costello** – There was some discussion at a previous meeting about how many lived in the front house. I think the applicant represented that it was one family. There was a long discussion about why there was two meters on the house.

**Chris Nugent** – Three meters.

**Tom Costello** – Three meters, one is for the back house, one is for front house and one is for the basement. He says he controls the basement and the tenant did not want to pay for the electricity so he had a third meter installed to cover that. But to my recollection and we can check the minutes he never represented that there was more than one family living in the front house.

**Plinio Palmieri** – The tenant was complaining at times.

**Ed Colello** – We went through that. I don't have all night to rehash what has been done for the last three months. Next anyone else.

**Arnold Ratcliffe** – So you are telling me is OK for him to build a sunroom and also block out my sun now and my driveway.

**Ed Colello** – He is not saying. This Board is going to decide whether that is OK.

**Arnold Ratcliffe** – Rather than direct this towards you (**James Nixon**) how is this fair?

**Ed Colello** – I think Mr. Nixon brings up a very valid point first of all the neighborhood is a relatively tight neighborhood you have to admit that. The houses are pretty close. Both driveways are right on the property line. Right now you already getting some being blocked from the two story part of the home, correct?

**Arnold Ratcliffe** – Approximately ten feet.

**Ed Colello** – In the ten plus years I have served on this Board I don't remember anything that I have ever read or anything in the Ordinance to worry about shadowing the properties. That is not something we look when we look at criteria. We look at the character of the neighborhood which that might have a small portion of it but we are not going to look at that as one of the hard issues if I use that expression that we are going to vote on the application. I understand it is a concern of yours because you are the person next door.

**Arnold Ratcliffe** – Because now it goes from ten feet to a good 35, 40.

**Ed Colello** – Well if you listen Mr. Nixon's numbers I don't think it goes to 40. Your point has been heard. Yes.

**Peter Spannaus** – My name is Peter Spannaus, I live on Birch Avenue. As you said the character of the neighborhood. Mr. Palmieri stated that there are going to move in but we are concerned that they are not and from what we see what has been done to the exterior of the house it doesn't seem as though it is adding the neighborhood and our concern is that if he does not move in which most of us feel he will not be doing is that is only going to be kept up as it is kind of run down, these cars moving in there, you have a lot of children around the neighborhood the people that are living there are a big concern to us. I don't want to go into what has happened with the children and stuff and the people within the building I don't know if that should be brought up.

**Plinio Palmieri** – What are you talking about?

**Ed Colello** – Jimmy will you talk to your client please before I talk to him. And I am not going to be as nice. Mr. Palmieri let me explain something to you everybody has there moment to speak. You can't interrupting other people's moments when you had your moment. Please. If not sit down, do whatever you want, but please. Sit down.

**Peter Spannaus** – I think the point if the case if he first moved into the home for his family we would have all been happy that he is going to improve the neighborhood. Mr. Palmieri is in construction he knows very well the size of the buildings what can go into a room and to have done this later I think when most people purchase homes they think about ahead of time. We are just very concerned that he is not going to move in there. The house has been there renting for how long have the Palmieri's been living there, almost three years. And we feel that is what is going to continue there. And it has only gotten worse. And we are very concerned about this.

**Ed Colello** – Anyone else?

**Mr. Dellvalle** – I am on Hubbard Drive. I am directly behind Mr. Palmieri. Three issues, the first one is if the house is not suitable with two bedrooms when you move into it reconstructing it and still keeping it two bedroom how does that make it first of all any better or more appealing to the person moving in that is number one. Number two the cottage that is behind there was a question last time we were here that he must live on the property to rent that back property has that been addressed?

**Ed Colello** – Yes.

**Mr. Dellvalle** – I live right behind it and if people do move in and the septic fails guess where it is going to end up, in my back yard. So that is the three issues I have with the property. Other than that I have spoken to Mr. Palmieri he is very friendly, his family is wonderful but I have issues. I have only been here 1 1/2 year, two years, around the same time as Mr. Palmieri. I didn't make an investment also moving from the Bronx up here having problems where I do now. The questions regarding the cottage, I don't know if anybody addressed that.

**Ed Colello** – I researched that and the opinion is that a person does not have to live in the main dwelling to have a pre-existing, non-conforming cottage in the back. That would mean that if Mr. Palmieri tomorrow the next owner couldn't rent the house. That cottage was there long before we had zoning ordinances so we can't take part of a zoning ordinance and blend it in.

**Arnold Ratcliffe** – If that is the case and you are saying that the Zoning Board cannot do anything about it if the person is not living in there at the time when I moved in there was only one person in that house. Now there is three to five where do I go to complain about that?

**Ed Colello** – The Health Department. Exactly what you do. All right. Do we have any other questions of the applicant?

**Tim Froessel** – Is there any plan to change the use of the cottage or anything if Mr. Palmieri moves into the main house.

**James Nixon** – Right now the cottage will remain as is.

**Peter Spannaus** – I am just curious what he still continue renting it if he lived there?

**Ed Colello** – Yes, he just said he was. Any other questions?

**Betty Bottge** - Could he paint the cottage and do away with the three colors.

**Ed Colello** – Come on people, let's go. Jim do you want to make any final comments before I close the public hearing?

**James Nixon** – I just want to make a brief statement basically everything everyone has said are legitimate concerns in any kind of neighborhood. People care about the other houses that are around but the Board well knows what the criteria with regard to reviewing the variance. My professional and personal feeling is that the issues laid on the table here from the neighbor's are really not related to the variance request, granting the variance or not granting variance really does not change them and I would argue that in fact granting the variance increases the potential for addressing those issues. Because to not grant the variance leaves the house the way it is. And it would be up to Mr. Palmieri to continue maintaining it and some people have concerns about that. The variance is not a use variance. We are not proposing any kind of change in use, it is all related to the proximity of the house to the property line. Conceivably we could build on the other side of that one story kitchen and not need that side yard variance. We would probably still need the front.

**Ed Colello** – You would still need the front.

**James Nixon** – So there would still be a variance request. But the point is the reason we are here is related to the yard it is not related to the number of people in the house, we are not proposing to increase the number of bedrooms although admittedly if we could based on the septic we could then I don't see where that would require a variance in and of itself, if we could make it a three bedroom. But we cannot make it a three bedroom because of Health Department regulations. A two bedroom is what is being maintained. I do a lot of houses and many people add to their houses when they have a stable family. People often are not adding to the houses so they can increase the size of their families. Some times they do often they do not. Many, many times when I have done these large family rooms for people whose kids have finally grown up and gone away and they have the money to finally do the family room they have always wanted. I think it is a very reasonable request that we are making of the Board going back to the area variance. I don't not believe that variance in question is substantial we have 9.5 feet where 20 feet is required. It is the same as what exists there. I don't not believe that granting the variance in any way cause a change in the neighborhood character. Whether or not this house fits the neighborhood's character now it won't it make it any more or less in the neighborhood's character by making this small addition. The conditions that are there are certainly not of the owner's doing. It is not a self created hardship. It is also created because of his desire to improve the house.

**Ed Colello** – Do you think you have had a fair and adequate opportunity to state your case?

**James Nixon** – Yes.

**Ed Colello** – We will close the public hearing.

Public hearing.

**Tom Costello** – I will make a motion to deny the requested variances.

**Ed Colello** – Do we have a second?

**Kevin Sheil** – Second.

**Ed Colello** – Will you address the criteria please.

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 the variance).

We have spent a lot of time over the past three months discussing the current character and impact on the neighborhood of this house and although the applicant made a representation that the property would be improved by this variance and the construction that would be created I feel that if the applicant was serious about the upgrading there were some certain fairly minor changes that could have been done over the few years that he has owned it that would improve the property and made it more attractive and more desirable if he was truly concerned about the neighborhood.

2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.

Really with the size and the shape and the building on the lot there is no way to enlarge the house without a variance although the applicant did say there could be a proposal made to enlarge the house in a different way that would require maybe a little less of a variance.

3. Whether the requested variance is substantial.

I think clearly it is extremely substantial we went through a list of current non-conformities and the need for the variances and this is a small lot and in my view should not be enlarged in any way.

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

I don't believe we have had any testimony that there would be any impact on environmental conditions.

5. Whether the alleged difficulty was self created.

Yes, I think it was self created the applicant bought the property with full knowledge of what he was getting and although he testified that he was not fully aware of what the setup and the layout and the bedroom was when he bought it he is certainly knowledgeable about enough buildings to realize that the house would not have meet his family's need when he bought so the fact that he needs to now enlarge it is clearly a self created difficulty.

**Ed Colello** - Before we have a roll call vote let me remind the Board members is to deny so a positive vote is to deny.

**Roll Call Vote:**

**Tim Froessel** – In favor

**Kevin Sheil** – In favor

**Jack Gallagher** – In favor

**Joeseeph Castellano** – In favor

**Tom Costello** – In favor

**Ed Colello** – In favor

**Ed Colello** – So your requested variance is denied.

**3) Louis and Sylvia Pauta**

**19 Root Avenue**

**TM# 55.12-1-17**

**Sylvia Pauta** – Last time we came we were talking about covering the deck. This is the house, this is the deck that we want to cover.

**Ed Colello** – This is the front of the house.

**Sylvia Pauta** – And also we talked about water coming into the basement. We want to change the roof where the water is going.

**Ed Colello** – What do you want to do here on the side?

**Sylvia Pauta** – Like this one. To make all one side. We want to cover the deck.

**Ed Colello** – You are not covering the back of the deck?

**Sylvia Pauta** – Yes.

**Ed Colello** – Are you covering the front or the back?

**Sylvia Pauta** – Front and back.

**Ed Colello** – You are covering both decks. Did you know that?

**Tom Costello** – No.

**Tim Froessel** – When you say cover it do you mean fully enclose it with windows?

**Sylvia Pauta** – No.

**Tim Froessel** – Just a roof?

**Sylvia Pauta** – Just a roof.

**Ed Colello** – Mrs. Pauta I have to tell you I don't remember us discussing both decks last month.

**Tom Costello** – The minutes say nothing.

**Louis Pauta** – When we were here last time we said all decks covered.

**Sylvia Pauta** – All decks.

**Jack Gallagher** – It says the existing deck because the water is going into the basement.

**Ed Colello** – Right, that is the front of the house but I didn't know about the back of the house.

**Sylvia Pauta** – We never finished with the meeting because you sent us home.

**Ed Colello** – I have to send you home again because I have to go look at this now.

**Sylvia Pauta** – You told me that one day you were going to go look at it but so many mornings I was home and you never came up, I don't know if you went.

**Ed Colello** – We just usually do a drive by we usually don't even bother the homeowner. We are very quiet you won't even know we were here.

**Sylvia Pauta** – No, because my dogs are always out.

**Ed Colello** – Who is going to do this work?

**Sylvia Pauta** – A friend of ours.

**Ed Colello** – There is nothing wrong with your friends and your husband doing the work but usually when people are putting on any kind of addition when there is some sort of

shape of a home, roof lines, whatever, we really like to get a picture of what it is going to look like.

**Sylvia Pauta** – We have the plans from the architect.

**Ed Colello** – Can I have those?

**Sylvia Pauta** – These are the plans.

**Tom Costello** – Now in constructing the roof are you going to have to replace the deck?

**Sylvia Pauta** – No.

**Tom Costello** – So you are going to build on top of the existing deck?

**Sylvia Pauta** – Yes.

**Tom Costello** – Did you build the deck or was the deck there?

**Sylvia Pauta** – It was that way when we bought it.

**Tom Costello** – Are you sure the deck is structurally capable of having a roof on it?

**Sylvia Pauta** – Yes, because when the architect he came to look at it he said it was fine. We would have no problems.

**Tim Froessel** – The decks are on three sides of the house, the front, side and the back?

**Sylvia Pauta** – There are only two sides on the front and the left side.

**Tim Froessel** – So there is no deck on the side? I am looking on survey and there is something.

**Sylvia Pauta** – That is the side there is no back. Because in the back we don't have nothing.

**Tom Costello** – Did you look at this?

**Ed Colello** – No, and again I have to tell you I just remember talking about deck and the fact that you had water in the basement I didn't know it was the back deck either.

Louis Pauta – It is not the back, it is the side, on the left side.

**Ed Colello** – If you face the house it is the left side?

**Sylvia Pauta** – When we come through Carmel is it on the right side.

**Ed Colello** – Here is the front, is this the other deck?

Louis Pauta – Yes, it is the other deck, the left side.

**Ed Colello** – So you want the cover to go here and here.

**Kevin Sheil** – What kind of materials are going to be used?

**Sylvia Pauta** – My friend is going to buy all the materials.

**Kevin Sheil** – Plywood and shingles.

**Sylvia Pauta** – Shingles.

**Ed Colello** – What is the outside of the house right now? Is it vinyl siding? Is it clapboard?

**Sylvia Pauta** – Vinyl siding.

Joseph Castellano – So you are not expanding inside at all?

**Sylvia Pauta** – Nothing inside, just outside. We are not going to make any changes. We will change the roof, this is a little low and this is a little high so it will be all one plane.

**Jack Gallagher** – This will be one roof and the roof will continue over the deck? The roof line will continue over the deck?

**Ed Colello** – Ron Harper, were you under the impression that this was just the front or the side as well?

**Ronald Harper** – Just the side.

**Ed Colello** – You don't remember the front?

**Ronald Harper** – What does it say in the letter?

**Ed Colello** – I am reading it and it says insufficient side setback.

**Ronald Harper** – That is the side. It is the expansion. Because there is insufficient front setback too.

**Ed Colello** – And the roof will probably go out further than the deck a little bit right?

**Sylvia Pauta** – Yes.

**Ed Colello** – Here is what I need you to do. Number one and we always make it a practice in this Board if any one of the Board members wants to go look at the site we will put off the vote. And I have to believe that some of the Board members want to look at this property, I know I do. That is number one, number two, I suggest you meet with Mr. Harper again and make sure he understands exactly what you want to do. Because in his letter of denial it is pretty much on the side, the side portion not the front. I think he was under the impression; your deck is an “L” shape around the side.

**Sylvia Pauta** – We asked you about the deck, the deck is in the front and the side.

**Ed Colello** – I understand that but you have to very specific to let us know. Last month you were here for example you spent a fair amount of time telling us the problem you have with the door to the basement and the water coming down and that is in the front of the house. I was under the impression as I think some of the other Board members were that you were just looking to cover the front of the deck, not the side deck. Mr. Harper for example was just under the impression that you wanted to just cover the side deck, not the front. Now we are all in the same page. We all know you want to cover both decks. But I would like you in the next month to meet with Mr. Harper again so he is aware of this because I think you are going to also need a front yard setback. Because the front of your house is too close to the road, in the setback. If your deck stops here and even if you have a two inch overhang further than the end of the deck you are going to need a front yard too.

**Sylvia Pauta** – If we leave it the way it is and not cover the front, what I really want is to pitch the roof. If you don't want to give the permits, I would like to get the side covered.

**Ed Colello** – I am not saying you can't get both, I am not telling you can't.

**Sylvia Pauta** – I am worried because the time is running and running and we have to come next month.

**Ed Colello** – Hopefully next month we will be able to put this to rest either way but the problem is again but I thought it was the front, Mr. Harper who wrote the letter of denial thought it was the side. Now we didn't know it was both.

**Sylvia Pauta** – I presented that.

**Ed Colello** – Then something was lost.

**Sylvia Pauta** – In the plans I showed everything, the front and the side.

**Tim Froessel** – I will say in fairness to the applicant it does appear that it does depict on both the front and the left side. But at the same token I would also like to take a look at it. I have probably drove by this house a thousand times but I never looked at it.

**Ed Colello** – Let me state one more thing, weren't you the last person on the agenda last month and I think it was coming close to midnight and if we didn't open the public hearing this month I was going to have to be forced to push you this month anyway. I tried to squeeze you in and get you on the agenda so we can get it done this month and that is what happened. All right. In January when is our next meeting?

**Linda Stec** – The 24<sup>th</sup> in Town Hall.

**Ed Colello** – Not here, Town Hall in the village. You will be number one on the agenda 8:00 PM.

**Sylvia Pauta** – What do I have to bring?

**Ed Colello** – Right now I don't think you have to bring anything but what I would like to do is for you to meet with Mr. Harper some time in the next two weeks so that he can look at your map. I am pretty sure you are going to need a front yard variance along with the side yard. And it doesn't do you any good if we grant you the side yard variance. You need both to do what you want.

**Ed Colello** – Mrs. Pauta now you are not going to like what I have to tell you. I don't see the list of people that you noticed but it is probably long.

**Tom Costello** – It is not too bad.

**Ed Colello** – In your notice that you sent out to people you noticed on just a side yard setback variance you are requesting and now you are going to request a side yard and a front side which means you have to do the mailings. I hate to do that to you but it has to be done.

**Sylvia Pauta** – We could drop the front I don't want to send any more letters.

**Ed Colello** – If you want to drop the front, that is fine. You don't have to make that decision right now. Why don't you go home and talk it over. Let me give you my opinion, it is my opinion not a fact. But if you want the front and the back I would only recommend that you go for it now and try to do it the right way now and get it done with. Because I would hate to see you get approval do the side and a year later come back and have new plans drawn up to do the front.

**Sylvia Pauta** – By the time my money might stop.

**Ed Colello** – The mailings are not going to wipe out all the mailings. I am sorry to make you do it but that is the law. So meet with Mr. Harper, you are going to have to renote and we will see you next month. You see this let me show you the mistake. In the notice it went out as a side variance. When you want to do the front deck you are going to need a front and side and a front variance. Legally we can't accept that if you need two variance.

**Tom Costello** – She might need the front for the side.

**Ed Colello** – So I suggest you meet with Mr. Harper as quickly as you can so we can move ahead and we will meet next month. Is there anybody here in regard to this application?

#### **4) Jeannette Phillips 112 Sodom Road**

**Ed Colello** – I don't see them here.

Willis Stephens – This is the application for a request for re-hearing. I think you now take a vote as to whether you want to grant a re-hearing and it has to be done by a super majority. If you want to grant the re-hearing that has to be done by a super majority. But I have learned after the fact that this application that she is seeking for a re-hearing was in 2001, 2002 and the time to appeal it has long expired so I don't know that they are really properly before the Board but he is arguing that he is entitled to determination to whether this Board will re-hear it. To vote to re-hear you have to have a super majority.



**Ed Colello** – But we can make a motion not to re-hear which only needs four positive votes. In favor of a negative.

Willis Stephens – If somebody wants to make a motion to re-hear it and somebody seconds or you can make a motion not to re-hear it. In order to re-hear it has to be a super majority.

**Ed Colello** – I have to ask you a question you probably can't answer, why isn't he here though?

Willis Stephens – I don't quite know.

**Ed Colello** – All right. Let me ask you one more question. What if we do nothing?

Willis Stephens – I think that it leaves the question, they have the right to ask for a re-hearing, you have a right to either grant it or deny it.

**Tom Costello** – Did they pay a fee to put this on the agenda?

Willis Stephens – I don't think so. But it is not something that requires public notice or anything like. We didn't incur any publication fees. If we were indeed to re-hear it they would have to go through the whole process to renotice.

**Ed Colello** – Did everyone get a chance to read the letter?

**Tom Costello** – I would like to make a motion to deny the request for a re-hearing.

**Ed Colello** – Do I have a second?

**Ed Colello** – I will second it.

#### **Roll Call Vote:**

**Tom Costello** – In favor

**Jack Gallagher** – Opposed

**Kevin Sheil** – In favor

**Tim Froessel** – In favor

**Joseph Castellano** – In favor

**Ed Colello** – In favor

**Ed Colello** – So the motion passes by a vote of 5-1, 1 absent. We will be taking a five minute break.

#### **5) Vails Grove Golf Course**

**230 Peach Lake Road**

**TM# 1 -45**

Lucia Chiocchio, attorney, Cuddy & Feder, Shahed Husain, engineer, Bechtel Telecommunications, and Donald Leffert, of Taconic appeared for this application and were sworn in by **Tom Costello**.

**Lucia Chiocchio** – Good evening my name is Lucia Chiocchio, I am with Cuddy & Feder and we represent AT& T Wireless. We are here seeking a use variance for a flagpole wireless facility to be located at the Vails Grove Golf Course. We are proposing a flagpole facility at the golf course and here on the site plan, you come up Peach Lake Road, you go to the entrance of the golf course you go up that entrance driveway. The club house is to your right. Here. This is entrance drive, here is the club house, this is the parking lot and here in a wooded area is where we are proposing the flagpole. We are

proposing a flagpole with a total height of 128 feet. Within the flagpole we will have two separate antennas. So you won't be able to see the antennas they will be inside the flagpole. At the base of the flagpole we will have electronic equipment that will be used to operate the facility. Surrounding the flagpole and the equipment cabinet will be an eight foot high security fence and we are also proposing landscaping around the facility to screen it from any view. The tallest equipment cabinet is approximately six feet six inches tall so the fence and the landscaping will screen it from view. The proposed facility is needed to provide coverage along Peach Lake Road and 121. We have provided some information in our application which indicates that we currently don't have coverage along 121. Even with our existing site within the Town. We are co-located on two towers within the Town. We do look try and co-locate on existing towers or use existing facilities when we can. We are here tonight because there are no existing tall structures in the area we need coverage. And we indicate in our application that we did look at a lot of different properties in the area and the golf course was the only property that presented a solution for our coverage. We call this a radio frequency plot, what it shows you is the proposed coverage which is that peach color from our site, which is indicated right here, and the green is existing coverage from our existing site in the area. And to give you an idea, we are looking at any where there is a white area, here is our proposed site, along here we don't have any coverage, so this is what we are looking to do. So we would be able to do that with the proposed facility. We designed this facility to have a minimal visual impact. We designed a silhouette flagpole it obviously has to be big enough so we can fit the antennas on the inside. We have done a visual analysis which is included in exhibit G where we went out and flew a balloon at the site and drove around, took photos from areas around the proposed facility to try to determine what the visual impact would be. And then we have printed out what we call photo simulations, we put that photo where the balloon is here, this is what a flagpole would look like. And then what we also did is what we call a viewshed analysis which looks at, it is the very last map, and when we tried to estimate what the acreage the visibility would be using a two mile radius of the site.

**Ed Colello** – Let me ask you do you have an extra one of these do you?

**Lucia Chiochio** – I may, I may have an extra one, I can provide one.

**Ed Colello** – I am just saying you can pass it around to the people in the audience.

**Lucia Chiochio** – The proposed facility is unmanned, it doesn't require sewer/water hookup. Maintenance personnel will come about once a month to monitor. It doesn't emit any odors nor a vibration. Very minimal impact on the environment and as you can see from the visual materials. We designed the facility so that if there is a visual impact it is the very top of it you are looking at the top of flagpole. As you may know wireless facilities are considered public facilities so the standard for a use variance is the public acceptance standard. It is a balancing. You have to balance the need for the facility and we have to demonstrate that there is a need for this facility against its impact on the environment and the surrounding community. We will be able to provide wireless facilities with this facility along Peach Lake Road. One of the other things we will be able to do is to provide what we call enhanced 911 services. And you might of heard of this when a wireless caller makes a 911 call we can pinpoint their location. All the wireless carriers have been mandated by Congress to provides these services. So with this facility we would be able to provide this for people traveling along 121 or in distress

in this area. So we submit if you balance the need for this facility against the its impact on the environment and on the surrounding community that the variance is warranted. I would be more than happy to answer any questions from the Board and the public providing some explanation of some of the materials we have sent you.

**Jack Gallagher** – Will there be an frequency noise from the location?

**Lucia Chiocchio** – No.

**Shahed Husain** – Just the fans.

**Lucia Chiocchio** – Just the fans. The equipment has fans within the unit itself. I think with the landscaping around it I think that will dampen the noise.

**Ed Colello** – Do you have list of the other sites you have looked at?

**Lucia Chiocchio** – We have included in exhibit H some correspondence either emails or letters confirming that particular landowners were not interested. We did try to contact some folks that didn't respond we confirmed that there were not interested through correspondence. I can provide a list of names with the addresses of the property.

**Joseph Castellano** – Is there a similar structure near by here that we could take a look at?

**Lucia Chiocchio** – Not that I know of, but I can find out and let you know if you want to take a look. I really don't know. Not near by.

**Joseph Castellano** – I have never seen a flagpole structure. How new is that?

**Lucia Chiocchio** – The diameter of the flagpole is about 33, 34 inches.

**Joseph Castellano** – I am willing to drive.

**Lucia Chiocchio** – I will find out what is the closest one. It is not in Town.

**Tim Froessel** – I am sorry if I wasn't paying attention. Is it a straight monopole antenna, will there be panels on it anywhere?

**Lucia Chiocchio** – The panels will be inside.

**Tim Froessel** – So it is just a pole itself without anything on the outside?

**Lucia Chiocchio** – Correct. From the outside it is going to look like a flagpole.

**Tom Costello** – And the diameter at the top is about 33 inches?

**Lucia Chiocchio** – It is the same.

**Tom Costello** – Will there be an support wires or just the single pole with no support wires.

**Lucia Chiocchio** – Just the pole. There are no side wires or anything.

**Jack Gallagher** – What kind of surveys or evaluations do you do to determine the availability of the pole.

**Lucia Chiocchio** – Where we have existing sites and what kind of coverage we are getting and we develop what we call search rings. We like to find a site within this area because we don't have any coverage. So then you will start to look at what the area looks like. The topography. A total ridge would block the signal so we have to keep that in mind when we are looking for sites. We typically look for large parcels where we can maybe use like in this case vegetation for screening, a nearby property, we look to try to create something like a flagpole or the fake tree to try and minimize the visual impact. If there are existing structures obviously we will look at those first. From the design point of view it is easier to go on an existing structure.

**Jack Gallagher** – What area does it cover, how far away from the location?

**Lucia Chiocchio** – It depends, roughly one and half to two miles. But that depends a lot on the topography of the area. Because you can have site just for example if this is site

right here and there is a large ridge on the side of it, it will completely block the signal and you wouldn't be able to get coverage on this side. Ideally, if it was completely flat and I had a tower without any obstructions, it would be about a mile and half to two miles coverage. And you see on the visual materials that last map, the topo map and you get a little of an idea how challenging this area to be able to get over the existing ridges and get over the high areas along Peach Lake Road and 121.

**Jack Gallagher** – Maybe this was asked, do you have map of other locations that we up for consideration?

**Lucia Chiocchio** – I don't have a map, I can provide one if you like. That way you can identify. We did look at the equestrian center next door. We did actually look at commercial property right up here next to the existing site. What happened when we looked at them, this is great it is commercial zone, but it is hard to place an existing site and it didn't provide any coverage where we needed it. We contacted the co-op and they obviously they were not interested. I can provide map and identify those properties.

**Tom Costello** – Did you look at sites in North Salem?

**Lucia Chiocchio** – Yes, we did look at sites in North Salem.

**Tom Costello** – Can you provide them as well?

**Lucia Chiocchio** – Sure. Right now this tract here labeled here 595 that is a proposed site and it is actually just a search range which I was talking about earlier. We haven't identified any property there. We know we need coverage. We haven't done anything at this point that would work for us.

**Jack Gallagher** – Is the coverage being added because you have existing subscribers with AT & T phones or is this a marketing plan to develop the area?

**Lucia Chiocchio** – It is actually an obligation as part of our FCC license to provide ubiquitous coverage so we have an obligation to fulfill as part of our federal licensing to provide coverage. And we now also have a mandate to provide that enhanced 911 services. So any existing sites will get upgrading that and then new sites will have to provide that capability.

**Ed Colello** – So let's go back to this pole for one minute? It is how high?

**Lucia Chiocchio** – Total 128 feet.

**Ed Colello** – And it is 36, three feet in diameter?

**Lucia Chiocchio** – A little less, yes. About 33.

**Ed Colello** – And it doesn't taper at the top.

**Donald Leffert** – It does taper at the top.

**Lucia Chiocchio** – It does taper at the top to 18 inches.

**Tom Costello** – The flag that would be installed is a regular flag?

**Lucia Chiocchio** – Yes.

**Tom Costello** – What would be the size of the flag?

**Lucia Chiocchio** – We would size it to proportion to the pole. You can put a smaller flag on there if you want. Personally I think it is better if you proportion the flag to the size of the pole. Or we cannot put a flag on there. Some folks think that is a better option. There is some flexibility as to what we can paint the pole. If there is a preference to paint it a certain color.

**Ed Colello** – Personally, it make a lot of sense to put a flag on it. The color of the pole is not an issue. It is only an issue to the people playing golf there. Because from a distance away you are not going to be able to see the color of the pole you will see this flag

sticking up. The color is not that big of an issue. How is that supported in that you don't have a problem with heavy wind and things like that?

**Donald Leffert** – It is a steel pole. Typically they are 5/16 inches thick material.

**Tom Costello** – What are the locations that you have identified where you have coverage?

**Lucia Chiocchio** – We are currently at the tower at Joes Hill Road and there is another tower that we are co-located on.

**Ed Colello** – Where is that other one?

**Lucia Chiocchio** – This one is Turk Hill Road.

Willis Stephens – It is county route 55 it right next to 84. You can see it on 684. It is called Deans Corner Road.

**Ed Colello** – How tall is that one?

**Lucia Chiocchio** – We are located at the center line of 118 feet and we are co-located so I imagine that other carriers on there. I would estimate at about 150 feet but I can verify that.

**Ed Colello** – So those are the only two in the town?

**Lucia Chiocchio** – Right, currently existing.

**Tom Costello** – Is there a plan to co-locate anyone else on this flagpole?

**Lucia Chiocchio** – Right now, no. We can provide space and we have shown two slots for proposed antennas, space for other carriers. The space within the lease for their equipment also.

**Ed Colello** – This pole will not have antennas on it?

**Tom Costello** – Inside.

**Ed Colello** – If anyone else shared the pole with you there antennas would be inside as well?

**Lucia Chiocchio** – Right.

**Ed Colello** – There would never be anything sticking outside the pole?

**Lucia Chiocchio** – They would have to come back to the Town if they wanted to do something like that. If they wanted to come back and put antenna on the outside.

**Ed Colello** – See that causes a little bit of a problem though. Because as you said earlier you are a public utility when you said you wanted to have your balancing and balance the needs of the Town versus your needs and I am speaking as one person I think you take a flagpole concept and now you start sticking antennas on it you are almost like the ugly tree.

**Lucia Chiocchio** – I agree. And what we are looking for here is a use variance to allow this facility. If five years down the road another carrier came in and said I need a taller site here I want to put antennas on the outside they would have to come back to the Town to get approval for that.

**Ed Colello** – I understand that. I understand as you said earlier it is a lot easier for you to get a use variance than anybody else in this room, right?

**Lucia Chiocchio** – Right, I agree.

**Ed Colello** – That is the court saying that, that is not the Zoning Board of Appeals. Is there anyway you would be willing to agree that there would never be any antennas sticking outside the pole?

**Lucia Chiocchio** – You can condition the approval on that. That is one area where the visual aspect of the facility is an area where the local Zoning Board of Appeals has a lot of say.

**Ed Colello** – Until you take us to court.

**Lucia Chiocchio** – Let's put it this way you have a large say as to asking us to minimize the visual impact as much as possible.

**Ed Colello** – I am glad you said that word "ask".

**Lucia Chiocchio** – We didn't walk in here and say I want a 160 foot tower with platforms, we don't.

**Ed Colello** – I am not knocking you don't get me wrong I am just concerned about down the road.

**Lucia Chiocchio** – You can certainly condition the approval on that.

**Kevin Sheil** – Won't you be the sole proprietor of that facility when it is up? You will be sole owner of the facility?

**Lucia Chiocchio** – Yes.

**Kevin Sheil** – You can certainly grant the terms of how you would have a tenant come into your facility?

**Lucia Chiocchio** – True. We also want to provide a facility that can be used for co-location. We are not the only wireless carrier out there. I am speculating here we don't coverage along 121 I don't know if other carriers. Either they may because they have higher heights on the surrounding sites. We may have a gap here. The amount of coverage they would get I don't know what their network looks like.

**Kevin Sheil** – What is the benefit of putting the antenna inside as opposed to say outside?

**Lucia Chiocchio** – Visual.

**Kevin Sheil** – Maintenance or anything like that?

**Lucia Chiocchio** – I don't know if they are necessarily harder or easier to maintain, it is doable. All the cables and so forth internal to the pole so there is nothing on the outside.

**Ed Colello** – Is there anything else you would like to say before I open it up to questions there are some people in the audience.

**Tom Costello** – The site you identified in North Salem is a proposed site? Is the coverage that would created that pole indicated on that map?

**Lucia Chiocchio** – Yes.

**Tom Costello** – Is it designated by the pink or the green?

**Lucia Chiocchio** – The green. So as we show it here there would be overlapping coverage.

**Tom Costello** – If you got the approval for the pole in the vicinity of North Salem and this one in Brewster you still have some significant white areas that don't have coverage. So is that areas that you need also at some point provide coverage in order to met you required obligations to the FCC?

**Lucia Chiocchio** – We would like to. We would probably come back, I don't when, to look at those areas. What we are focusing on is trying to cover main roadways and main arteries. So if we have to sacrifice some coverage on residential areas or none main roads. It is not too easy because of the lot of different balancing having a piece of property or an existing site that we can use, the topography of the area and the kind of signal that is distributed.

**Tom Costello** – Topographical is there a better site if you could get permission from the landowners to locate?

**Lucia Chiocchio** – On the golf course?

**Tom Costello** – No, to cover that road that you are trying to cover. To cover 121 primarily, is there a better site anywhere in that vicinity than the site that you are proposing tonight?

**Lucia Chiocchio** – From a topographical perspective?

**Tom Costello** – Yes. Is there a more optimal location than the one that you are proposing?

**Lucia Chiocchio** – Probably but we have not been able to analyze because we haven't had permission from the property owner to lease space. What our site is a result of search where we did contact property owners ask them if we could use their site. We don't necessarily know if it would work unless we were able to get on the site and do an analysis.

**Tom Costello** – Do you have a lease on that property on the golf course already?

**Lucia Chiocchio** – Yes, we do.

**Tom Costello** – Have you started doing any site work?

**Lucia Chiocchio** – No.

**Tom Costello** – How far will the lease area that you are proposing be from the club house?

**Lucia Chiocchio** – About 100 feet from the clubhouse.

**Tom Costello** – How high are the trees in the vicinity that you are going to be located?

**Donald Leffert** – I state we took an average of 65 feet.

**Tom Costello** – And the pole will be how high?

**Donald Leffert** – 128.

**Tom Costello** – So about twice as high as the trees approximately.

**Jack Gallagher** – Do you have any other locations planned within Brewster, Southeast area?

**Lucia Chiocchio** – We are looking, we haven't had a search range up in this area. We haven't identified any sites. By search range I mean ideally we would like to have site here, but we don't have anything concrete, meaning that we don't have a property owner that has given us permission.

**Ed Colello** – OK, I would like to open it up for questions and everyone have their chance as we always do. I just ask that you state your name and your address so that we can keep it in the minutes. I ask that we try not to be redundant and try to just echo the person in front of us if we feel the same.

Gail Cousens – My name is Gail Cousens, 3 Coyote Court. I am adjacent to this property. I don't know whether you are totally trying to pull the wool all of our eyes but for several weeks this property has been under development. I have pictures to prove, I have the equipment shown here. We stopped in the Town and had the Zoning Enforcement Officer come out to the site. I am livid because you are lying you should not be working on this property nor should a variance be before you with the violations on this property.

**Ed Colello** – What violations?

Gail Cousens – There is a several hundred gallon gas tank on the property line with an electrical extension cord to run the pump is that Code?

**Ed Colello** – Is this in regard to the work that they people are supposedly doing on the site or is this part of the golf course?

Gail Cousens – This is part of site, this is part of the golf course. The site they have the equipment they have been pounding and pounding up there for weeks. Six days a week, eight hours a day.

**Lucia Chiochio** – Any kind of work that is being done on the property right now is not related to our facility. It is not from work AT & T Wireless is doing. I don't know what is going on at the golf course but we don't have construction folks out there doing any kind of work related to this facility. I will look into it I will contact the golf course and find out what kind of work is going on and determine if there are any violations.

**Ed Colello** – Have you been out there Ron?

**Ronald Harper** – I issued a stop work order, there was some excavating work going on that was presented to me as preparation of a parking area for golf carts. I don't have a physical survey that would allow me to compare where that was being done to the proposed site. It was just not available. That was the information that was provided to me for the stop order.

**Ed Colello** – Did you issue a violation?

**Ronald Harper** – Not a physical violation. I issued a stop work order.

**Ed Colello** – Can I ask you to do me a favor and talk to the people at the golf course and ask them if this is the site where the proposed cell tower is going?

**Ronald Harper** – I asked George Trembly who I believe is one of the members of the Board he said it was not they were doing work to park golf carts.

Willis Stephens – Do they have site plan approval for that?

**Ronald Harper** – That is why I made them stop working.

Willis Stephens – You should probably issue a violation if they did work without a permit.

**Ed Colello** – And you can get us some answers next month for that question?

**Lucia Chiochio** – I will contact them also and make sure.

Gail Cousens – Again this is a residential area and not the place for a cell tower. We all think of our homes as our main investment in life and this is not going to enhance any of our properties nor do we know down the road what the results can be from being exposed to a cell tower. I think a residential area is not the place for this to be considered and especially when the work is being done in total violation of the Town's rules and regulations.

**Mr. Becker** – 106 Vails Lakeshore Drive I would like to know if this were to be approved would the flagpole pose a health hazard to any of the residents in the immediate area. I am talking about electromagnetic fields things of that nature.

**Ed Colello** – Having listening to approximately four cell tower applications in the years that have come before this Board I am going to defer to the applicant because they are much more abreast of that than I am, do you want to take that question?

**Lucia Chiochio** – Absolutely. The Federal Government has issued standards by which all wireless carriers must meet for radio frequency in their facilities. And they have issued a methodology so we have provided in our application package is our analysis based on the federal standards. It is a worse case scenario, its effects, it is well below the federal standards. As long as we meet the federal standards or are below the federal



standards there is no zoning decisions to be made based on health effects. This information it is in Town Hall in the records. It is a full analysis.

**Mr. Becker** – Mr. Chairman for the record I think the name of the landowner should be corrected, Vails Grove Golf Course, Inc. is the name of the landowner, not LLC, and if you were to issue or deny the permit it would be to the wrong entity.

**George Calcagnini** – One Coyote Court. To describe Coyote Court it is basically due east of where this tower is going to be there is one property between the golf course site where this tower is going to be and that would be the Cousens house at 3 Coyote. I just want to point out that as many people these days I have a cell phone, Nextel, I have no problem with coverage whatsoever. If I can have coverage in my house with my Nextel it seems that some company has a tower that is being serviced right now that provides coverage for the area. I would ask why can't these co-locate on that tower and not have to have this ugly eyesore sticking up in our neighborhood. If there is already coverage there apparently from a different company there is coverage there, we have coverage, there is a cell tower, I don't know what that tower is, if they can put their antenna on that other company's tower. I am sure they are going to have to pay some rent but they are paying rent presumably to the golf course and we would then avoid on the impact on the aesthetic environment and their needs would be serviced also. The other thing I wanted to ask is this tower going to have a light on it, I would point this out because I have a concern about this, because we are in an approach pattern to the Danbury Airport. We are about 5 nautical miles or 4 nautical miles from the airport that is an approach to general aviation and something sticking up 128 feet into the area at the highest point in the area many times we have aircraft coming in on an approach or conversely ascending out of the airport. I would like to know if there is going to be a light on this because that is another thing that is going to disturb the residents if we have some sort of a light on top of this pole.

**Lucia Chiocchio** – To address your first concern about your existing coverage we are co-located on any existing towers in the area. Nextel may be able to provide coverage in this area because they are located at a higher height on existing towers. I don't know what Nextel's network looks like in this area. We have demonstrated that we don't have coverage along 121. We don't propose new towers unless we really need them. And if there is something that we can use we try and use it. As far as the FAA and Danbury Airport we have contacted the FAA and we will register the site we have not heard whether lighting is necessary or not that is something we would have to address.

**Ed Colello** – When will you know that?

**Lucia Chiocchio** – When they respond to us. I understand that is a concern.

**Ed Colello** – The gentlemen brings out a point we should know that. So can you press them to give you an answer.

**Lucia Chiocchio** – Absolutely.

Man in audience – I live right next to George and my AT & T phone works just as well as his Nextel.

**Shahed Husain** – To answer the first question also the reason your phone might work every carrier has different frequencies that they operate under. The lower frequency operators the signal travels further and that is why the Nextel works better and the reason your AT&T phone works is AT&T has roaming agreements with out carriers where they don't have service. They can move onto other providers for service. What happens is

that costs additional revenue in order to support that network which eventually gets passed on to our customers which we are trying to resolve by having our own network.

**Ed Colello** – So if you the tower you are going to lower his rates! I don't think your rates are going down.

**Lucia Chiocchio** – Well it is also part of our licensing obligation to provide coverage with our own network.

**Ronald Harper** – The golf course there was a letter addressed to Mr. Trembly and he was advised in writing of the violation, the violation of the site work without a permit. Secondly, if there is going to be a flag flying on this is it going to be flying 24/7?

**Lucia Chiocchio** – Yes.

**Ronald Harper** – Does that mean you will have search lights on it.

**Lucia Chiocchio** – I will be light at night. We can talk to the golf course about having it lowered and raised so that way it is not at night.

**Art Pennatol** – I live at 100 Coventry Lane. Didn't AT&T just merge with another carrier?

**Lucia Chiocchio** – Yes.

**Art Pennatol** – And what is there coverage in this area versus AT&T.

**Lucia Chiocchio** – Actually AT&T did merge with Cingular the new entity, Cingular Wireless, despite the merge, they still have an obligation under AT&T licensing under their frequency. So it doesn't matter Cingular coverage is right now. AT&T license is an obligation for whatever wireless carrier is the owner of the license to provide coverage.

**Art Pennatol** – At some point are they going to merge together?

**Lucia Chiocchio** – They may overlap.

**Shahed Husain** – Cingular does not provide service in this area. Before the merger they were roaming out to T-Mobile. The company plans for them to have their own network.

**Katina Shea** – Two Coyote Court. I have the same comments as most of the people here who are my neighbors. I appreciate that you took all of these photo, I am a direct neighbor of Cousens. I am concerned about the health issues. I have small children. And although we know there are standards and regulations we hear in the news oh well, 10 years from now, 15 years from now there is a health hazard. I am very concerned about that.

**Ed Colello** – If I could say one thing about that and I understand your thoughts we all have the same concerns. I believe and correct me if I am wrong that the Federal Government come out and said local boards, i.e., the Zoning Board of Appeals cannot, cannot use potential health hazards as a criteria in regard to issuing a variance. Is that correct?

**Lucia Chiocchio** – Yes.

**Tim Froessel** – The Telecommunications Act of 1996.

**Ed Colello** – Whether or not there could be health hazards the Federal Government has said don't dare use that as a criteria to not approve a cell tower.

**Lucia Chiocchio** – As far as the concerns of the visual impact. We can fly a balloon at the site at the proposed height for the Town and notice it if it is a concern...

**Ed Colello** – I think that would be a great idea.

**Lucia Chiocchio** – And that way they can get an idea of what it is going to look like from the homes and so forth. We can also look into potentially lowering the height of the

flagpole. If we do lower we are going to lose some coverage obviously and we are going to lose the ability to maybe co-locate with other carriers. We can take another look at that and see if maybe we go down 10 feet we lose some coverage but it is not coverage along 121 so we can live with it and perhaps what we can do with our balloon float tie a flag on the tether so that way you can see two different heights and that would give everyone a good idea of what it is going to look like.

**Ed Colello** – We have done balloon tests before for residents with other carriers and I think they have been very helpful to us, the neighbor's, etc. But we really need to have good notice on this.

**Lucia Chiochio** – I agree.

**Ed Colello** – It doesn't any good if you have on a Tuesday afternoon and the people find out in their mail Monday that tomorrow afternoon you are going to fly a balloon and no one can be there.

**Lucia Chiochio** – We can provide notice to the list of property owners that received notice of the hearing.

**Ed Colello** – That would be good.

**Lucia Chiochio** – And we will provide in enough time so that will know it is coming.

**Ed Colello** – Do you think you could do that before our next meeting?

**Lucia Chiochio** – The next meeting on the 24<sup>th</sup>?

**Ed Colello** – Yes.

**Lucia Chiochio** – We could try to make arrangements to do that. Typically what we do especially in the winter months we will have what we call rain date. If it is snowing or its very windy out it is not worth flying the balloon so we will try to arrange that before the next meeting.

**Tom Costello** – What is the size of the balloon?

**Lucia Chiochio** – The balloon is about three feet in diameter and usually a pretty bright color so you can see it in the horizon.

**Ed Colello** – Can you make sure you notice the Board as well?

**Lucia Chiochio** – Absolutely.

**Ed Colello** – And the Town Board as well. Will brings up a very good point, the Town Board adopted in Ordinance that we are not allowed to hear any applications if there is an outstanding violation that has not been cleared up. And while no violation has been given to AT&T if a violation is given to the golf course then technically we are not going to be hearing this application in January. I want to make you aware of that.

**Lucia Chiochio** – I appreciate that. We will look into it and let the Town know either way.

**Mr. Becker** – It is very interesting to know and let the Board my letter was dated, or postmarked the 10<sup>th</sup> of December. I received it Saturday.

**Ed Colello** – We have had problems and I have to tell with some of the mailings with people and I am not defending the applicant I am just sharing this with you, we had one a month where the applicant clearly brought in the letters to the post office in plenty of time and they were delivered three days before the meeting.

**Mr. Becker** – So when you are talking about flying balloons they can date it but if we don't get it!

**Tom Duffy** – 67 Lakeshore Drive. I am currently chairman of the board in Vails Grove I just wanted to bring up a couple of points and direct the Board's attention to some points

I would like to make. The first is AT&T did approach us and the 13 members of the Board reviewed and decided it was something that we didn't really want at all. That was an unanimous vote and we discussed it at length. The pros being the money we would get just as the golf course probably had at their meeting. As far as this particular application goes we received notice today I think my secretary received the mail whatever it was, there was some mix up what will all the Christmas cards and everything like that, but AT&T never contacted our Board at all or our office to let this know this was happening tonight. They never gave us a courtesy call or any kind of indication to review anything. If I was away on vacation my secretary probably would have just waited till I came back. It seems like the Board is going to postpone this and have time to review it so I would like to direct your attention to several photographs that AT&T was kind enough to take. This particular photograph I guess it is exhibit 1 or view 1 is directly across the way from our entrance. So we have five entrances this is our middle entrance or ramp two between two and three and this what you would come out to see. The flagpole concept I like and I am not veteran but my father was and flags have been a part of our lives since I can recall, Fourth of July too. So I love the flag concept it is a great selling tool, but this is still a cell tower. That is the first exhibit on the next page, exhibit two, AT&T went into our community and this in our Lakeshore Drive, this is in Vails Grove, and this is approximately 24 Lakeshore Drive. Just to give you an idea, 27 Lakeshore Drive for two month's we have been battling the people that want to build up to 28 feet so what we send you when we give our letter of reference so people can build we scrutinize it like you are tonight. This thing is 128 feet. We scrutinize 28 feet and believe people are screaming why do buy in the lake if you want view, you know all the arguments. But this is in our community and you can clearly see it. The real picture is 4, this is across the lake, so this is a house directly across the lake looking approximately northwest. Vails Grove being on the other side of the lake and you see the flagpole. If you go to the last page you show their rendition or maps we can see their yellow where they say the visibility criteria. Where it says yellow, year end visibility on the last page. That is the community across the way. But most of us are boaters, I am a boater, I have a pontoon boat, I take the little kids out, I take all my fireman friends up from the city who never get up and there are going to be saying "hey Tom great cell tower", think if you lived on a lake that you dreamed about living on having waterfront and now you go on your pontoon boat for the people over here and what are they looking at a cell tower. There are probably a number of areas that they could figure out that aren't as visually open like this. This is a real visually open and it is a lake. You can ice skate in the winter and you boat in the summer. The people across the way aside from Vails Grove which people have been calling my house all day, it is such just an open area. The flag is a great idea. But as we discussed earlier, you know what it is going to happen in ten years there is going to be things coming out it like the one on the Hutch, it is laughable. There is so many other areas, other people say they have different carriers. I have Verizon, my wife works for Verizon, we get cell phone use. This is such a large thing it is 128 feet, it is five times the height of anything else there and I would just hope you would all go out there and just kind of get an idea of the impact that it would have on our community. Thank you.

**Mr. Becker** – If you go back to exhibit 1, from New England Equine looking through the trees at this flagpole you take that same view today without the leaves there is a big

yellow excavator sticking up there right now, it will give you an idea of what the balloon is going to look like. It is there now and you can see it without the trees.

**Tom Costello** – In the photographs you took for your documentation is there any reason why you didn't take any from the east side, from the Coyote Court area that they are referring to. All the photos were taken from the west side.

Donald Laffert – The topographic surroundings prohibit us from viewing from the east and you will actually see the balloon that high. Are photo simulations were done in the middle of the summer so vegetation was at the top we couldn't discern or make out the balloon from a lot of the eastern side.

**Tom Costello** – Where you part of the team that took the photos?

Donald Laffert – I didn't take the photos but the team reports to us.

**Tom Costello** – So while the balloon was up did they drive up by Dingle Ridge Road and the other roads in the area looking to see if they could see the balloon?

Donald Laffert – They scoured as much as they could. One of the things they did prior to coming out is they do a computer modeling of this before they come to look at anticipated areas just based on topographic constraints and then they know where to focus in on their drive to take a look at and see if in fact if vegetation is going to obscure.

**Ed Colello** – I have to tell you something. They didn't take any pictures from Coyote and in essence what you are telling me these people in Coyote couldn't see the balloon. It is hard for me to believe it is really an exaggeration to say that your people scoured the neighborhood in looking for places to take photos when they missed the whole side. I would like to see when you do your balloon test if you could have your people scour a little better and try to get some pictures from where **Tom Costello** mentioned from some other area. Granted, listen, I am not going to accuse anybody of anything. But obviously these pictures look great it is a flagpole sticking out of a bunch of trees, it is in the middle of the summer. Now we are going to get a much better view of what it is going to look like and I would like to see some different pictures, you see what I am saying.

**Donald Leffert** – Going back to the balloon scheduling I do want to point out on the eastern side there are areas in yellow which do have year round visibility.

**Ed Colello** – But I don't have pictures.

**Donald Leffert** – Oh, pictures.

**Ed Colello** – You give me the good pictures you don't give me the ugly pictures. Like some of the blind dates I had in college.

**Donald Leffert** – We can provide them.

**Lucia Chiochio** – We can prepare additional photo simulations when we do the balloon test.

**Ed Colello** – I appreciate that. Any other questions?

**Claudia McGuinness** – I live at 115 Lakeshore Drive. I know you are not allowed to consider, I read that on the internet. I did get a letter, you didn't get a letter **Tom Duffy**, I received a letter last week and I said this must be important from an attorney but why did I get a letter from an attorney. So that is why I am here tonight. I know there are three other families in Grove that weren't able to come because they have small children issue and they just couldn't get away. In reading these stories on the internet and talking about health issues there were numerous studies done which couldn't prove health issues either way. Whatever studies were done they were flawed, they admit they were flawed, but there more anecdotal stories that talk about health issues and children getting

leukemia and people get cancer, blah, blah, and people waking up one day with eyes burning and ears ringing and they didn't know why and then they realize six month's ago a cell tower was installed. And you can't consider that, again anecdotal. But what I would like to request is there is 170 families where we live on Peach Lake and I got my letter last week. Many families did not receive a letter so I am interested in the range, is it just because it is Putnam, North Salem people didn't get letters.

**Ed Colello** – 500 feet.

**Claudia McGuinness** – What I would ask is that we could get a copy of the pretty little pictures for the office and we can let these members that are within 500 feet have the opportunity to look at it, I am a fast reader but I cannot read this tonight. And I know you are going to postpone...

**Ed Colello** – Do you have copies?

Donald Laffert – I can have copies where they can come to the office.

**Ed Colello** – Would you mind sending a couple of sets to his office?

**Lucia Chiochio** – We have extras.

**Claudia McGuinness** – And my other question is you did say you did say numerous other locations, and either they didn't respond or they weren't interested. I would like to know why they weren't interested and maybe you can't answer that but I am sure the golf course is being compensated for this and this is why they would like to have this, it seems a little greedy and self serving for them to do this without letting the members of the community who live across the road have the opportunity to review this information and make an informed decision and come to the meeting and just speak and have your say.

**Ed Colello** – Every cell tower you see they are a tenant just like you would rent an apartment, they are all tenants. And the landowner is paid a fee. And what she or he is paid is none of my business. I don't know what it is but they are all paid a fee. And their challenge, meaning AT&T for example is find A, a site that works for them and B, a site from the person who will lease them space. They may have a site that is perfect but the person says no. And I am guessing they go right down the line and then finally they get someone who says yes, I could use the money, I will rent you space. There are landowners that dream to be able to get this, they are pay their bills, they are quiet, they are not noisy, you never have problems, you don't have to worry about parking.

**Claudia McGuinness** – So the people who received that letter within 500 feet this is a bad time of year as well with Christmas, maybe I am a little cynical, this time of year this letter went out and this issue to be addressed?

**Ed Colello** – I don't know, I can't answer that.

**Claudia McGuinness** – It is the holiday season people have other things on their mind and figure that might not be that important. I think it is that important.

**Ed Colello** – Well understand that and again I have been in Vails a million times I have a lot of friends in there, but I can't tell you if everyone in Vails in within 500 feet and everyone isn't. Maybe there is some that are and some that aren't, that is number one, and number two, you don't have to be within 500 feet to be here and again we are holding this over till next month. I am not saying it is your responsibility to pass the word around let everyone know about the meeting. It is not here next month, it is in the Town Hall, we don't have this room next month. So it is going to be very cramped.

**Tom Duffy** – I have one technical question, it is not a hard one, on the site plan you say it is a 60 foot by 60 foot plot where the tower goes. And then on your rendition it says the

scale every inch is 200 feet, my question is where this is it says approximately from calculations from what your scale, that it is 200 to 121 and my question is to the chairman, she looks like she is set back 200, 300, 400 feet from the road. Does she have to send letters from 500 feet from the golf course itself?

**Lucia Chiochio** – Right.

**Tom Duffy** – Not from the site.

**Ed Colello** – In all directions.

**Tom Duffy** – So that would encompass quite a bit of our community.

**Tom Costello** – You can inspect the list of people that they noticed. If I could just address your comment in the back, I have been on this Board for many of these applications and the complexity of putting together a package I find it hard to believe to timed to coincide with Christmas and they have been through enough of these to know that it never goes through on the first meeting and these type of applications take several months. So there is plenty of opportunity for everyone to be heard and everyone to comment if they are in favor or in opposition to this application.

**Ed Colello** – So you are going to get us certain things. You are going to work on the balloon test. And you are going to check with the golf course. If our Town issues a violation to the golf course that is going to have to be rectified before we hear this application again.

**Lucia Chiochio** – I will provide you with a map with more information about the alternative sites that we looked. And you are going to send Mr. Duffy?

**Tom Duffy** – Are we going to get notification about the next time this is going to be spoke about?

**Ed Colello** – The tentative date is January 24<sup>th</sup> at Town Hall.

**Tim Froessel** – They are not required to send you a notice in the mail?

**Tom Duffy** – At 7:30?

**Ed Colello** – The meeting starts at 8:00 PM. All right.

**Lucia Chiochio** – Thank you very much for your time.

**6) Victor Valasquez**  
**142 Milltown Road**  
**TM# 57.-2-55**

**Victor Valasquez** was sworn in by **Tom Costello**.

**Ed Colello** – Do you have the mailings?

Linda Stec – I need the mailings.

**Ed Colello** – If you could walk us through your application?

**Victor Valasquez** – This little line indicates my size property line where I drew the arrow indicates where my fence. Where my property line it goes down on an incline in order for me to put a six foot fence there and get the effect of a six foot fence I have to use railroad ties.

**Tom Costello** – Is this built already?

**Victor Valasquez** – Yes.

**Ed Colello** – The fence just goes along that one side of the property?

**Victor Valasquez** – Yes, and one panel to the front. What comes up is that one part is my driveway and I have one panel this way and six panels coming back this one. I am

two feet in from the property line from the side, so that is not a problem. The fact I have the railroad ties underneath.

**Tom Costello** – Did you construct the fence?

**Victor Valasquez** – Myself and some carpenter friend I have.

**Tom Costello** – But it was while you owned the property?

**Victor Valasquez** – Yes.

**Tom Costello** – When was the fence constructed? Approximately?

**Victor Valasquez** – Six, seven months.

**Tom Costello** – So in 2004?

**Victor Valasquez** – So I would say at the end of 2003.

**Tom Costello** – So about a year ago.

**Victor Valasquez** – Yes.

**Tom Costello** – Are the railroad ties a retaining wall or are there free standing?

**Victor Valasquez** – No. It has what you call a deadman. I submitted detailed to Mr. Harper and as far as I understood every one was pretty satisfied with the way it was constructed it is just that it on top of the ties. When they were measuring how tall the fence is they considered the ties as well. If I didn't use the ties and I put the fence there I wouldn't achieve what I tried to achieve with the fence. I wouldn't have reasonable privacy. Also because it is kind of slanted that way for safety reasons I felt the fence was needed.

**Tom Costello** – What are screening? What is the purpose of the fence?

**Victor Valasquez** – It is my rear yard.

**Tom Costello** – You are trying to block your rear yard?

**Ed Colello** – What is behind the fence?

**Victor Valasquez** – Just my yard.

**Tom Costello** – On your neighbor's property?

**Victor Valasquez** – His rear yard.

**Tom Costello** – So you are just trying to provide screening between the two yards.

**Victor Valasquez** – Yes.

**Tom Costello** – Is there anything stored back there that is offensive.

**Victor Valasquez** – I wouldn't say that was my biggest concern.

**Tom Costello** – You said you need it to build with the railroad ties to give it the height to properly screen it, what were you trying to block?

**Victor Valasquez** – If I didn't have the ties would be very low.

**Ed Colello** – Six feet.

**Victor Valasquez** – Right.

**Ed Colello** – That is not very low.

**Victor Valasquez** – My land goes down like this.

**Ed Colello** – So you are saying from the middle of your yard it would have looked like a two foot fence, I am just taking that number.

**Victor Valasquez** – Right. Basically that is the whole idea.

**Ed Colello** – How did Mr. Harper find this.

**Victor Valasquez** – I believe Mr. Harper, this is all word of mouth, I can't tell you for a fact, but I believe that the issue was that the neighbor had a violation going in his yard of some sort.

**Ed Colello** – He happened to be in the neighborhood



**Victor Valasquez** – He happened to be in the neighborhood. I didn't know about it. I am new to the area I have been up here about three years. This is the first time I didn't anything like this on my property. He told me what I needed to do I submitted my paperwork. He told me he was going to deny it because of the height and then he advised of what I should do so that is why I am here today.

**Ed Colello** – What he is telling you what is the right thing to do to possibly correct what you should have done first. You should have filed the paperwork before you put up the fence. I am telling you this in layman's terms, before we gave you permission to do so. What you did do it first and ask forgiveness later. You built the fence it doesn't satisfy the Zoning Code and now you are coming in doing what should have been done before you built the fence. And it puts us in a very awkward position because if we vote to deny this you have to rip down the fence. Or take a chain saw to it, cut it in half

**Victor Valasquez** – Again I am sorry I wasn't sure of what I need to do prior to building the fence. I did speak to my neighbor about it and no one had a problem with it but I understand the rules now and if I decide to do anything you can bet you I am going to be here with all the paperwork.

**Ed Colello** – How are we doing with the mailings?

**Linda Stec** – OK.

**Jack Gallagher** – Do you put the fence up yourself?

**Victor Valasquez** – I helped it.

**Jack Gallagher** – Was it a fence company?

**Victor Valasquez** – No, it was two of my friends that are carpenters.

**Jack Gallagher** – Are you a carpenter too?

**Victor Valasquez** – No.

**Joseph Castellano** – So the fence is between your house and the neighbor's house?

**Victor Valasquez** – It is just on one side and it is two feet in from the property line. So I am two feet. The excessive height is not even along the whole section because it staggers and the ties are 6 by 6 and one is 5 1/2. So looking at the picture and looking before I came out it varies where it is higher than it should be. It is not a blatant disregard of what the rules are.

**Ed Colello** – I think I want to go look at the site. So we will hold this off

**Tim Froessel** – Have you talked to your neighbor is he opposed it?

**Victor Valasquez** – I talked to him before I put it up. He thought it was absolutely gorgeous till Ron Harper came by.

**Ed Colello** – You might want to get a letter from him saying it is absolutely gorgeous.

**Victor Valasquez** – Yes.

**Tom Costello** – Couldn't hurt. We always look at the input of the neighbors. If the neighbor says they are not opposed to it that would help us.

**Victor Valasquez** – I sent them a letter too.

**Ed Colello** – The fact that he is not here complaining is a good thing for. If he wrote a letter that is a good too.

**Tom Costello** – It would help if you could make copies of the survey for us next month.

**Victor Valasquez** – OK.

**Ed Colello** – So we will see you on the 24<sup>th</sup> at Town Hall.

**Victor Valasquez** – Where you pay the taxes?

**Ed Colello** – Yes.

**Victor Valasquez** – So on the 24<sup>th</sup> I will have a letter from my neighbor?

**Ed Colello** – It is up to you, it is not required.

**Victor Valasquez** – Thank you.

**7) Anthony and Stephanie Fanelli**

**40 Milltown Road**

**TM# 57.2-47**

**Anthony Fanelli** was sworn in by **Tom Costello**.

**Anthony Fanelli** – This is going to be a little difficult. Ron Harper just left, I was hoping he was going to say. I am in the building industry, I install fire sprinkler systems, I know about getting permits. I came before the Zoning Board of Appeals here in reference to getting a variance for getting my neighbor here, Joe, for a deck on the side of my house. I am aware of, that the house I bought had things that maybe should have not been approved, but they were. I have gotten a pool permit approved, a fence permit approved, an arbor permit approved, deck permits approved. When you come into the Town you have to pay a fee and you have to get Bonnie to call you a couple of weeks later and tell you that your application is approved and get your permits. I got a call from Bonnie and stated the premises where the shed is going. I marked my survey where the shed is going. I was told by Bonnie, Ed Jasko and Joe which they all thought at the present time that this shed was a side variance, not a front variance. My permit was approved by everybody. I was told to come pick up the permit. At that point I was told I could build the shed. The shed was build. Ron Harper who presently walked out, in about a week or two weeks later, when the leaves starting falling off the trees, because he didn't even notice the shed there even though it is right next to the road, with the leaves there hanging over had called up and said the shed was close to the road and he hadn't noticed the shed because of the foliage that is around the shed. That I had to come before the Zoning Board of Appeals here. Then they said why don't you come in and sat down with Ed Jasko's office with Joe, I don't know Joe's last name, and Ron Harper and they apologized. So it doesn't go through Ron Harper, Ron is Zoning. It goes through Building. So I am here in front of you gentlemen not know what to say when me as a resident comes before the Building Department asking what has to be done. Now I have a couple of thousand dollar shed built.

**Ed Colello** – So help me out here. You go for the application, you get a call saying come down and pick up your permit. They had looked at the site, they give you the permit?

**Anthony Fanelli** – Yes.

**Ed Colello** – Was it built on site or built somewhere else and brought to your place.

**Anthony Fanelli** – It was put on site.

**Ed Colello** – So it was built somewhere else in a factory and delivered?

**Anthony Fanelli** – You have the prefab ones that are totally prefab which they drop on a flatbed.

**Ed Colello** – I understand. But the thing was put up in a day?

**Anthony Fanelli** – It was two and half days. It was Jeff Rowlings, I am sure you guys Jeff Rowlings in the Town.

**Ed Colello** – Now it is up and approximately how long before you get a call saying we have a problem here?

**Anthony Fanelli** – I tell you...

**Ed Colello** – Guess.

**Anthony Fanelli** – Two months. At least two months. The shed was built, paid the guy. The shed was constructed probably in September. I got my permit approved in August, Bonnie said come pick it up. September, October, November, that is about two months before the leaves start falling off. Now Ron Harper passes by there every single morning. So for Ron Harper to say that he hadn't notice the shed when the shed was up to six or eight weeks means that at the point the shed is pretty well, even though it is close to the road, I have pictures here in this envelope. I know you live across the street as well?

**Ed Colello** – Yes.

**Anthony Fanelli** – The shed is sitting down from the road, there is a stone wall right there probably sits 5 1/2, 6 feet up if you are standing on the road to the stone wall and the shed is sitting down in a valley. That is why Ron Harper didn't notice it even though when you are coming up from Milltown from Ralph Burdick's farm there is not so many trees in that one area. I am in front of you gentlemen here not knowing what to say because the Building Department made a mistake here which is a very costly mistake because I wouldn't have put the shed up. Technically you have to come here first before you build anything if you need a variance. Now we have a situation here where Ed Jasko in front of Ron Harper and in front of Joe said you go to the Board and you tell them exactly what I am telling you right now. That they made a mistake and approved the permit and the shed was built and now they are saying that I need to go for a variance.

**Ed Colello** – I see your shed every morning. The first time I saw it I said, looks close. It is a good looking shed. It was me that reported it because it is a good looking shed.

**Anthony Fanelli** – It matches the house.

**Ed Colello** – It is close. It says 24 feet in the letter?

**Anthony Fanelli** – Ron Harper makes it 24 feet and I was out there yesterday with the tape measure and it is 26 feet, but either way it is supposed to be 50 if you consider it in the front. You are supposed to have a 50 setback. Now we sat there with Ed Jasko and Joe right in the office there is no where on my property, because when you come in my driveway on the left that is my whole septic system. So right off the bat if they said to me there is no where to put it I wouldn't have a shed built on that property. I wouldn't have bothered putting in the shed because my back has the pool and the deck. I would have put a shed in the back.

**Ed Colello** – So we got that? Mailings?

**Linda Stec** – I did the County on this and the last one.

**Ed Colello** – County responded on this one? Favorable?

**Linda Stec** – Yes.

**Ed Colello** – So there is no problem with the county. You guys want to go see it? You can't miss it. I don't mean that in a bad way it is a good looking shed.

**Anthony Fanelli** – I spent so much more on the shed putting the rooftop. I didn't want to put a drastic angle so the angle came down. It is a regular shed that is higher. They have the picture of it in the Building Department back, the color was supposed to match the house and the singles being the same and if they wanted to paint the door green. It was just weird, I was called in after this was done rocked me.

**Ed Colello** – Let me ask you this question, would you be open to putting up some sort of vegetation between that and the road.

**Anthony Fanelli** – I thought about the vegetation when you are looking at the pictures, when you are coming up to see the back of it, so putting up six foot or eight foot arborvitaes or whatever you need to do is fine but then just hear me for a second. That is not the problem, the problem is this thing already cost me thousands of dollars. So now I don't know if you guys are aware of how much it costs to buy six or eight feet trees and put in eight or ten of them, it could cost over \$1,000 easily, if I plant themselves. I wish Ed Jasko was sitting here, and Ron Harper was sitting here and Joe.

**Ed Colello** – I understand. Let me interrupt. Not to get into legaleze but we are human, everyone makes a mistake. So let's assume they made a mistake which if they did give you a permit they did make a mistake obviously that doesn't admonish you in any way. Now all I am trying to say, and I wouldn't put arborvitae there because the deer would kill them, I am not saying you have to spend a \$1,000 but I just thought of that because a small amount of vegetation, I am not talking ten trees, would make a world of difference on that, and just make it hidden a little bit more. Just for that one side facing Milltown Road. Not on the back, not on the other side.

**Anthony Fanelli** – I would think you guys would want it more on the back because of the trees that is the part if you lived there.

**Ed Colello** – Personally I could give a hoot. But the more shielding you do the better it looks. If you put some pines, three of those, whatever, I am not telling you what to do.

**Tom Costello** – If I could add, if you had come to us before you built it and said there is no place on the property reasonable to build other than this corner it is an odd shaped lot, we would still probably propose vegetation.

**Ed Colello** – That is a good point.

**Tom Costello** – Screening.

**Ed Colello** – We would probably have made that a criteria for the variance that you at least screen that side facing Milltown Road. Well, we are going to hold this off till next month anyway, the shed is not going anywhere, you don't have to do anything about. What I would like you to do is think about some screening for that side.

**Anthony Fanelli** – Would I do it right now. Right now spending money in January. I would wait till spring.

**Ed Colello** – We are not telling you to put them in now.

**Anthony Fanelli** – In April. I have no problem with that.

**Ed Colello** – You think about what you might like to do for screening. We will see you on the 24<sup>th</sup>. In Town Hall.

**8) Timothy and Billie Froessel**  
**20 Clematis Road**  
**TM# 56.14-2-63**

Timothy and **Billie Froessel** were sworn in by **Tom Costello**.

**Tim Froessel** – Our proposal is to do a second story addition on a ranch style house. If I can find here the site plan drawings.

**Tom Costello** – Are the mailings in order?

**Linda Stec** – Yes.

**Tim Froessel** – I have an issue with the mailings. In the Town Code if you live in an R20 zone the Town Code only requires you to notify people within 100 feet and there are people in Town Hall setting policy saying they want you to do 500 feet.

**Tom Costello** – We have 138-90 D “shall be mailed by the applicant or appellant at 10 days prior to all owners of lots located within the proximity to the subject premises as set forth in Section 138-44 B 3.” 138-44 B 3 says” if the subject property is located partially when within an R-20 Zoning District: 100 feet.”

**Ed Colello** – I thought it was New York State Law.

**Tim Froessel** – It has nothing to do with the State.

**Tom Costello** – So you are telling us we are wrong.

**Billie Froessel** – Town Hall is wrong.

**Tim Froessel** – So I decided to suck it up play the game.

**Tom Costello** – You know how onerous to do 500 feet in an R20. It probably would be helpful to talk to Willis.

**Billie Froessel** – I just talked to Willis.

**Tom Costello** – He doesn’t want to change it.

**Billie Froessel** – He said it has always been 500 feet that was his explanation.

**Tom Costello** – That is true it always has been but if the Town Ordinance says otherwise.

**Billie Froessel** – Ruth Mazzei said to me it doesn’t matter what the Code book it is what is on the application. If that is the fact then why do we have a Code book?

**Tim Froessel** – This is the site plan. All the footprint you see here is existing except we have a front porch addition right there in the front, this is the front, which will not go out further than the existing front of the house. This is our existing porch in the back. There will be a small landing that we are proposing that is going to be built here. The way the architect has depicted he has it because that side of the house and the property line are not completely parallel he has this little landing he built out all the way to the corner and it is going to come in on three inches, 1/4 of a foot. I don’t know if it is actually going to be built that way because there is dry well right in that corner and I don’t think he can go over that. I am pursuing the application that way. So we would encroach another three inches on the west side of the property. As to the footprint of the building these are the only changes the front porch and this little landing right here. As you can see we are pre-existing non-conforming which is the reason why we are here. Currently in the west side we have 15 foot setback to the west side property line and we have 21.87, call it 21 on the east side property line. I have for you gentlemen these are some photographs of our existing home. Take a look at those. It is the typical Brewster Heights ranch. You are looking at the elevation there. We neglected to include with the application and I have made copies for everyone tonight those are the hand drawn elevations that the architect I had the computer elevations that were prepared.

**Tom Costello** – Do you have any letters from neighbors?

**Billie Froessel** – No. Everybody I talked to didn’t have a problem with it.

**Tim Froessel** – I also put together there are numerous houses in Brewster Heights that have already done the second story addition as much as it impacts on the character of the neighborhood. I took some photographs. The first house in there which is 21 Bloomer Road we granted a variance for that addition about two years ago, two and half years ago. He did exactly the same thing I am looking to do except he didn’t do the front porch.

**Tom Costello** – Is anything changing on this sun room in the back?

**Tim Froessel** – No, that is going to remain exactly as it is. At some point we may enlarge that but we would enlarge it sideways not toward the rear yard because there is a maple tree behind it, that is the only shade tree we have left.

**Ed Colello** – When are you proposing to start this job?

**Billie Froessel** – March 15.

**Tim Froessel** – If you would like to come and take a look at I have no objection to taking another month if you want to go see it.

**Ed Colello** – I don't know if I need to go see it.

**Tim Froessel** – There is another issue. In his denial letter Mr. Harper missed we submitted this to and he just plain missed the floor area ratio the permitted is 25% we are going to be at 29.4%. I want to be upfront about that.

**Ed Colello** – So the only problem is the total side setback correct?

**Tim Froessel** – The total, we don't meet it on the one side, we don't meet the total, we exceed the floor area ratio by 4.4%.

**Ed Colello** – Which way is north?

**Tim Froessel** – That way. The front of the house has southern exposure. So we would need 5.3 feet.

**Ed Colello** – Six feet on the west side.

**Tim Froessel** – I guess 15 from the total if you round it off to 14 and 21.

**Ed Colello** – He has 21.87 same difference. Do any of you guys want to take a look?

**Tom Costello** – I think there is a lot of evidence submitted. I feel comfortable.

**Ed Colello** – Is there anyone in the audience that has an objection?

**Ed Colello** – We will close the public hearing. Do you feel we have enough information to close the public hearing? Any other final comments you want to make?

**Tim Froessel** – I think I have had a good opportunity to state my case.

Public hearing closed.

**Ed Colello** – I will make a motion to grant a six foot side yard setback variance on the west side of the property and relief from the overall requirement which is 50 feet where as the applicant a 14 foot variance and relief from the area requirement of .25 to .30.

Second?

**Kevin Sheil** – Second.

**Tom Costello** – Does the denial letter talk about the enlargement of the non-conforming.

**Tim Froessel** – Yes, 11 C and 138-11 C.

**Tom Costello** – Does he refer to that?

**Ed Colello** – I talked him about that, he is not going to use that anymore. He is not going to use the term “use” anymore in his letters. He understands the problem. Here is what he said he talked to the person who is writing the new notes on the Code, our Code was written wrong that is the bottom line. So until they rewrite it I told him every time you use the word “non-conforming use” it confuses us. If they are side yard setbacks indicate that.

**Ed Colello** – I will address 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 the variance).

I don't think that will be a problem I think the applicant has shown us numerous photos of other people who in their neighborhood who have done pretty much the same thing maybe different styles. Second stories. That neighborhood is a growing neighborhood in our Town and a lot of the homes were built for people as starting homes or one level homes and now people want to add to I think it will fit very well into the character of the neighborhood.

2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.

It is impossible because the applicant is pre-existing non-conforming structure so no matter what the applicant did he would need a variance.

3. Whether the requested variance is substantial.

I don't think it is substantial for the simple fact as the applicant as stated he is not extending the footprint of the property except for a little piece of the porch which is not getting any closer to the front of the property and to a proposed deck to the rear which gets approximately four inches closer to the property line so I don't think it is excessive at all.

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

None.

5. Whether the alleged difficulty was self created.

When a person has a pre-existing non-conforming structures as we all know anything they do requires a variance so I don't think in any way we can look at this as the difficult is self created.

#### **Roll Call Vote:**

**Kevin Sheil** – In favor

**Jack Gallagher** – In favor

**Joseph Castellano** – In favor

**Tom Costello** – In favor

**Ed Colello** – In favor

The variances were approved by a vote of 5-0, 1 absent

**Tom Costello** – I will make a motion to approve the minutes.

**Ed Colello** – All in favor?

All in favor.

Meeting ended at 11:20 PM.

Submitted by:

Linda M. Stec