

**TOWN OF SOUTHEAST
ZONING BOARD OF APPEALS
CIVIC CENTER
67 MAIN STREET
BREWSTER, NY 10509
NOVEMBER 21, 2005**

Board Members

Edward Colello	Chairman	Present
Thomas Costello	Vice Chairman	Present
Timothy Froessel		Present
Kevin Sheil		Present
John Gallagher		Absent
Joseph Castellano		Present
Paul Vink		Present
Willis Stephens	Town Attorney	Present
Richard Honeck	Town Board Liaison	Present
Linda M. Stec	Administrative Assistant	Present

Ed Colello – Let’s stand for the Pledge of Allegiance. Pledge of Allegiance said. Welcome everyone to the November 2005 meeting of the Town of Southeast Zoning Board of Appeals. Let me introduce the Board to you. Members introduced. We have one Board member missing and our Town counsel is here tonight. We have nine items on the agenda tonight six of them are carry overs. Number one is Mallory-Kotzen Tire, number two is Connie and Paul Lavelle, number three Richard Feuerman and Cherie Ingraham, **Andrew Suozzi**, Vivien Landau, **Julie Sackett**, **Kenneth Marcellus** and Nancy Decker and **John Wahlers**. First application is Mallory-Kotzen Tire.

**1) Mallory-Kotzen Tire
North Brewster Road
TM# 45.16-1-25**

Michael McGrath appeared for this application.

Ed Colello – Mr. McGrath to remind you are still under oath obviously this is a carry over and just review the highlights of the application.

Michael McGrath – We already have a variance for the size of the sign and we are going for the height. The original height for the sign was 19 feet which was approved with the first variance and now that the ordinance has changed I am going for 16 feet. But now after measuring the sign that it is 14 1/2 feet tall from the center of the sign to the ground and it would be last of the improvements I have made to the property which includes paving, painting the property, cleaning up the mess that was there when I first came here. Which between the landscaping, the painting, we spent about \$35,000 to make the place more presentable that it was. And the last thing is the sign that is there now is past its prime and pretty old and it says Firestone which is not one of my brands

that I sell anymore and it says Brewster Tire so it doesn't identify who we are. Basically we are just trying to put a presentable sign up there.

Ed Colello – The original application was for 19 feet and you talked about 16, last month we weren't sure about the height.

Michael McGrath – We had it measured it is 14 1/2 feet from the center of the sign.

Tom Costello – If I recall the 19 foot was permitted at that time so it was not a variance that was granted?

Michael McGrath – It was a permitted height at that time.

Ed Colello – Do we have any questions or comments from the audience?

Michael Kivel – What is the bottom of the sign now? You said is 14 1/2 to the center?

Michael McGrath – From the pole to the very top in the center is 14 1/2 feet. I originally thought it was 12 or 13 feet.

Ed Colello – Any other comments or questions?

Lynne Eckardt – What is the new regulation?

Ed Colello – Eight feet.

Lynne Eckardt – My question is this. I think it is a residential neighborhood. I think anytime you can improve a residential area I think they are known the yellow pages and through word of mouth as doing great work I think no one is going to pull in there because they see a sign. So the more in conformance they can be I think the better off we all will be. I would ask the Board if possible to try to work out a compromise I think 14 feet is still tall for that area and I think that area would be improved a great deal if we could get them to come down in height. I think a compromise can be reached I think 14 is really high for that area.

Ed Colello – Let me give you my opinion.

Lynne Eckardt – I know you like this one.

Ed Colello – I will tell you why. We estimated if I remember correctly it was about 12 feet high that is what we talked about last month but no one had a tape measure on it so we didn't know and one of the comments was just leave it as is. Now the applicant knows it is 14.5 and wants to leave it the same as is the size of the sign is not really an issue at this point it is just the height. I don't know I hear what you are saying.

Lynne Eckardt – You have the opportunity now to do something for the residents of this area. That is within this Board's power to improve the look of an area and I think that is what should be taken under advisement. I still believe should the sign where as they need a decent size sign they are not really pulling in a whole lot of traffic because of their sign in this area.

Ed Colello – Mike, let me ask you this question, where do you draw your line in the sand? It started at 19 then it went to 16 and now it is at 14.5 and you are allowed eight.

Lynne Eckardt – I would like it to be at eight. I think it should be less than what it is now because you can improve upon the situation and given the location I think it will stand out and it would be fair to scale it back. Should I beg anymore?

Ed Colello – No, so noted. It is not me there is a bunch of us here.

Lynne Eckardt – I think the neighbors might want to speak again. I think they are a good neighbor they fixed the place up. I think that is terrific but I don't know that asking for an oversized sign makes the area nicer.

Ed Colello – Anything over eight feet is an oversized sign. I guess what I am trying to say what is that number. For you that is 7.9. And so on. I appreciate what you are saying.

Lynne Eckardt – I really believe I am in the same boat and I am going to have to redo my sign and come before you guys but I do think...

Ed Colello – I hope I live that long.

Lynne Eckardt – But I think that eight feet now that you have had an opportunity to go by new ordinances and do better for the neighborhood so I would really like to see...

Ed Colello – I have always believed and you have heard me say this a million times before there are areas in our town where residential and commercial bump into each other and that is the rub, that is the difficult part, when you both parties have to try to be good neighbors. That is where compromises happen. And that is when people have to either it be plantings which we have recommended a lot and buffers and things like that and that is very important. You bring a valid point.

Lynne Eckardt – You have an opportunity to really improve the neighborhood and I would strongly urge you to do so. Thank you.

Michael Kivel – I was upset at the last meeting about the 14 feet. I would like to see the eight feet too so the closer you get to that would be better as an area resident. I went around to the neighborhood and got 16 more signatures so I would just like to submit that if I could for the record.

Ed Colello – Anyone else?

Diane Kever – I live on North Brewster Road and I think it should be closer to the eight feet also. Everyone knows that it is there.

Ed Colello – I will say one thing and I am not in the tire business I don't know there business but Brewster Tire was there for many years and as the applicant has stated he has tried increase his sales obviously and spruced the place up and so on, so I think that everyone that knew it as Brewster Tire knows it is there but I don't think there is as many people, how do I say this, I don't think Brewster Tire was as landmark in our town, I think a lot of people knew it was there, and I think the applicant is trying to change the image a little bit as far as making it a little bit better and so on and you are right compromises always work better that leads me to you. Do you think if you shorten the sign somewhat that is going to hurt the effectiveness of the sign? The reason I say that is because we gessimated the sign at about 12 feet? 12, 13. And at that point people said leave the sign the way it is and so on. Hypothetically if you could bring it down.

Michael McGrath – The only problem I would have I don't know if I mentioned last time is the co-op part of the sign I have squeeze it down anymore it is going to be a problem.

Tom Costello – You are not asking for a reduction in the size of the sign it is just the height.

Ed Colello – Just the height.

Michael McGrath – As it is coming down it would be laying more and more closer to the ground.

Ed Colello – Do you have a copy of the sign?

Michael McGrath – We thought about a possible a third on the bottom depending on what the ARB says.

Ed Colello – This is the approved sign?

Michael McGrath – Yes.

Paul Vink – From top to bottom how big would that be?

Michael McGrath – The same size as this is now, 14.6 would.

Paul Vink – The sign itself.

Tom Costello – The dimensions of the sign.

Ed Colello – What they are saying is this section is this about 32 inches.

Michael McGrath – The main part of the sign is about 32 inches on top.

Ed Colello – This looks approximately 18 inches.

Paul Vink – Top to bottom?

Ed Colello – What he is asking for is to go from here, from ground level at 14.5.

Paul Vink – I understand that, how far is it from the top of the sign to the bottom of the sign not to the ground.

Ed Colello – That is what I am trying to figure out right now.

Paul Vink – 5.5 or 6 feet?

Ed Colello – Six feet. This is showing from here to here is 72 inches.

Tim Froessel – From this part here I get 22 inches. Six feet from here to here.

Paul Vink – And that is what you are anticipating right now?

Michael McGrath – Right.

Ed Colello – And how wide is it?

Michael McGrath – Ten feet.

Ed Colello – I see where you are going with this if you are going six feet from the top of the sign down to here and if we estimate that these are 18 inches in width these signs so now we have 18 inches let's assume the spacing is 10 inches let's say a foot, it looks like it is smaller than the sign so you have then another 28 inches so if you bring it down to here you are at about 7.5 feet total. It would be eight feet. So if the whole sign is eight feet this is on the ground.

Paul Vink – That is where I was going if we lower it or if we ask him to lower it we are basically putting it all the way down to the ground if we lower it.

Ed Colello – Here hypothetically I think you can't go with another name you can't increase the square footage of the sign.

Michael McGrath – That we knew because we didn't know if we were going to keep the Michelin sign on the building. It was the total square footage of everything.

Ed Colello – So let's assume there is two companies here so that means from here to here is eight feet. So if you put it at eight feet the sign is at the ground.

Paul Vink – And if you put it at ten it looks kind of silly being at two feet off the ground and if you put it at 12 we are talking four feet off the ground. Where it is is the place where it seems to me to make the most sense. At 13.5 you have five feet underneath it still it actually looks like a sign not a wall it is just the way it seems to me.

Tom Costello – Under the co-op agreement for the co-op signs are you obligated to place them in any particular location?

Ed Colello – I am trying to think if we can trim a couple of feet off and have it work.

Paul Vink – From the top of the sign you can trim a couple of feet off and still get the same visibility having I think having driven down that road often enough and going down 312 also you can see it fine if you drop it off a couple of feet after 12 and 12.5 you might not see the bottom of that sign if something is blocking it but you will see the top. You will certainly know there is tire store there.

Ed Colello – And maybe the spacing can be a little less. I am only estimating there is a foot spacing between the two brand names so if that was squeezed in a little bit. What do you guys think?

Kevin Sheil – Is that part of the sign needed the “MK”.

Michael McGrath – That is there whole logo design.

Kevin Sheil – I am just saying their name is clearly spelled out below if it would bring it down if that was taken off.

Paul Vink – But I think that helps if that is there because it is taking up less space at the top of the sign it is leaving more open space at the top of the sign.

Tom Costello – I don’t see any particular problem with having the brand signs low if you look at the signs where McDonald’s is on 22 they are on a short pier and the sign start two foot off the ground you can make it attractive looking even though it is low.

Tim Froessel – Just a few minutes ago on the way home on the train I ran into Town Board member Paul Johnson and Paul mentioned that he wanted to come to the meeting but he had another meeting to go so he didn’t think he was going to get here because this was first on the agenda but he stated that he asked me to convey his view he would like to see because it is on the border of a residential neighborhood the sign conform to the eight foot. He also mentioned to me and I wasn’t aware of it that Section 138.75 b of the ordinance requires non-conforming signs to either be put into conformance or removed within seven years of the effective date of the statute. As I said I wasn’t aware of that tonight but I think that is probably something that we need to think about because if we grant him the variance I don’t know if we are removing him from.

Ed Colello – We are absolutely are. Since we are talking about conversations we had with people. I had a conversation this evening with our Town Supervisor about other things and this sign did come up and his question to me was he said “Ed the Board should do what they want to do” I am not telling you what to do because they read the minutes but as a applicant coming for a 100% variance from eight foot to 16 feet but as I said to John and as I would probably would say to Paul maybe do a little homework before they voice too many opinions because they weren’t aware that the applicant was here two years ago. They didn’t know that the applicant started at 19 feet and now we are down to 14.5 feet. They thought it was 16 feet and then John said “I didn’t know all that”. I said “OK, get your facts straight before you call me.” I am not knocking John he had no way of knowing that and obviously he doesn’t follow it like we do.

Paul Vink – If we are going to talk about conversations that we had I had a conversation with Board member Dick Honeck today about this sign who lives right behind this piece of property and he indicated that he would also like to see the zoning enforced that he did not see a need. He expressed a lot of what Lynne expressed that people use the services know it is there, that it doesn’t need to be higher than eight feet to know it is there, that if you have an eight foot sign you are going to know there is a tire store there and he did think because it bordered on his residential property that it wasn’t appropriate to grant it a variance of any significance.

Ed Colello – Who did you talk to?

Tom Costello – Nobody talks to me.

Joseph Castellano – I have a question if he put up this sign two years ago and he didn’t need a variance whenever it was when was it changed to eight feet?

Ed Colello – Recently. So he would be grandfathered on the seven year rule.

Joseph Castellano – But in seven years he would have to remove the sign?

Ed Colello – He would have to lower the sign. Not change the size of it because the size of the sign is grandfathered because of the variance but he would have to lower the height of the sign back down to eight feet or come in for a variance. That is not true Willis?

Willis Stephens – In seven years he has to remove the sign. He can keep the size of the sign but in seven years like every one else the whole sign is going to have to conform.

Ed Colello – So you have a variance why wouldn't the variance be permanent?

Willis Stephens – Because the code changes and there is an amortization provision in it requiring a non-conforming sign to comply in seven years.

Ed Colello – So unlike if the applicant put up a shed and got a variance for his shed and then the rules change he never has to move his shed hypothetically?

Willis Stephens – Only if there was an amortization provision in the code, it is common where they try of town of certain things, if they were trying to rid the town of sheds they would build an amortization provision into the code that would require after a certain amount of years they would have to get rid of it or make it conform.

Ed Colello – So no matter what we do tonight this sign is seven years old?

Willis Stephens – Yes.

Lynne Eckardt – I think it is only going to be there six.

Willis Stephens – There is a provision that they get actual notice of the code the town is in the process of putting everyone in actual notice of the change and they are in the process of doing that.

Lynne Eckardt – I understand that but the code was enacted last year.

Ed Colello – Let me go back to my question again. The neighbors if I am wrong jump out and yell at me are asking for some sort of a compromise package to some degree. You know this Board has always tried to work with compromises especially when you have residential bordering commercial properties. After the conversation we just had do you think you can bring it down.

Michael McGrath – I don't have much of a choice.

Ed Colello – You do have a choice.

Tim Froessel – If we do give a variance for the height in six years if the rest of the sign isn't conforming it has to come down anyway. He could put up another sign to that height but it would have to conform to the code. It is almost like we are doing the guy a disservice if the think is going to come down.

Ed Colello – But even if he puts it at eight feet he still has a problem. So in any event it is a six year old sign. I don't know how long signs usually last. But if it brings in business you never know. As we said earlier we estimate we don't have the dimensions here but from the top of your sign to the bottom of this Bridgestone stone is eight feet in height. Using that as an example how far do you think you could bring the sign down?

Michael McGrath – And have four feet under, it would be a twelve foot sign.

Ed Colello – So if it went down to twelve feet that means this is four feet off the ground. Any other comments from the audience before I go any further?

Andrew Johnson – Is there any of moving those two signs off the bottom somewhere else?

Ed Colello – No, we can't because it is the same square footage and this was approved a couple of years ago and if he is going to move things away and putting it in different spots and locations then he would probably have to start the whole process over again.

Michael McGrath – There was so much building square footage and so much road.

Ed Colello – It is a good idea but unfortunately it doesn't work in this application.

Lynne Eckardt – I didn't remember from last month what is the sign going to be made of?

Michael McGrath – Some type of hard plastic I would assume.

Ed Colello – It is not going to be lit.

Lynne Eckardt – The sign hasn't been made yet I assume.

Michael McGrath – That is correct.

Lynne Eckardt – It seems like conforming now makes a whole lot more sense. I know it means six years more of business.

Tom Costello – Willis can I ask you a question about the comment you made my reading of the section it says "in the event that a sign lawfully erected prior to the effective date of this article does not conform the provision is a standard that this article then such sign shall be modify to conform to be removed according to the following regulations" and then it goes on to the seven year rule. So this sign is being constructed after the effective date so does this really apply?

Willis Stephens – That is a good question. Inaudible.

Tom Costello – The reason I point out that it may not be gone in six year.

Ed Colello – My view on that is that it is the applicant's responsibility the fact that he wants to put up a sign they he might have to tear down in six year. I don't know much about the sign industry I don't know much about what the shelf live of the sign is so be it he can stay with the same sign whatever. Do we have any other questions of the applicant from the Board members?

Michael Kivel – He already has a variance for sign itself is he grandfathered in because it was done a few years ago.

Ed Colello – We are not sure. Is that correct Willis?

Willis Stephens – The height variance might very well survive.

Tim Froessel – It is hard to imagine it is kind of unusual situation having gotten a variance under the old code and not erecting the sign until the new code.

Ed Colello – Do we have any other questions of the applicant before I close the public hearing? I don't know if you answered my question. Did you see you would like to amend it down to 12 feet?

Michael McGrath – Yes.

Ed Colello – Are there any other comments you would like to make before I close the public hearing.

Michael McGrath – No.

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

Michael McGrath – Yes.

Ed Colello – We will close the public hearing please have a seat.

Public hearing closed.

Ed Colello – I will open it up to public comments. I know we were joking before about what Board members said but just let me reiterate the last thing that John said to me was that we should vote the way we see it. Here we have I will give you my ideas here we have an applicant that started at 19 feet before we had height regulations then it came to 16 then it came to 14.5 now we are down to 12 now we have gone to over 100% above the

maximum allowed limit to 50% of the maximum allowed limit and I honestly think if we go much below that Bridgestone or whatever that second sign is going to be will be very close to the ground and I don't know if it will have an effect if it is two feet off the ground personally. And again it would be now 2.5 feet longer than the existing sign that is there and as you brought up Paul I like the fact that it is not one big block that it is just a circle so there is some openness inside and there is openness underneath so that is all I am going to say.

Tim Froessel – I will tell you what I think Ed the applicant got this approval for that sign several years before the code changed and I think for whatever reason it didn't get built and now he is here and he needs a variance for the height and obviously he wants to get to get the sign up that was approved several years ago and I can't blame him for wanting to do that of course but given the fact that the code has changed and that there is this amortization provision in the new code which may or may not although my common sense would be that it should apply. It is time for a new sign I don't think that sign is going to work under that code it is going to have to come down in six years. I don't see the point.

Ed Colello – That is his decision. He may decide after going through this he doesn't want to put up a sign. That is prerogative. I am not defending the applicant here he was tied up because of the moratorium that is what put him off that he couldn't get the sign permit because of the moratorium even though he had the correct variance that is what delayed the process. What do you think?

Tom Costello – My feeling is the Board granted him a variance for the application for a variance on the size of the sign I think he can probably work within the height to put a nice sign. He has a variance to allow 204 square feet of signage which more than would be allowed by right and he can do a very attractive sign and there is a lot of signs around town that are not up on a pole that are lower and mark the property for what it is and it is not a sign that is going to attract people off the highway or off a major road it just has to be visible enough so that people that are looking for it will notice it and I think it can be noticed at eight feet. And considering there are a lot of residential neighbors that have talked about it and would rather have a minimal impact I think we have to listen to their views. I don't know what more he gets out of a sign that is 14 or 12 feet that he can't get from an eight foot sign.

Joseph Castellano – I agree we are talking about four feet here he might not be able to put up that sign but he can put up a nice sign at eight feet. If you are going to go to the tire place you are going to see it on cable TV or the newspaper. In Mapquest you can go there. For four more feet you are not pulling people off the road.

Paul Vink – I do have to say I didn't know this place was there, I wouldn't know this place was there if I was driving down 312 if this sign was eight feet high. At 14 high I can see the sign, at eight feet high I don't think I would even notice it. I am actually very comfortable with this at 12 feet on this I was not comfortable with this at 16. But I am actually comfortable with this at 12. I think it serves a purpose as well a reducing the current height at a more manageable level.

Ed Colello – I am comfortable with the 12 because I just think the neighbors have echoed their thoughts and the applicant has tried to come down to meet somewhere and I think this Board has had a history of trying to do that in the past and I just think everyone has

given a little bit. I feel much better about the 12 than the 14.5 I will give you that. I think compromise is a good thing. Kevin what do you think?

Kevin Sheil – If I was him I think I would stay with the eight feet.

Ed Colello – I will entertain any motions either in favor of or opposed to the application.

Tim Froessel – I will make a motion to deny the requested variance from the required sign height requirement of four feet.

Ed Colello – Second?

Joseph Castellano – 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).

I think there would be an undesirable change in the character of the neighborhood it is right on the fringe of a residential area the other businesses in the area all have smaller free standing wooden signs there is nothing really like this except for the existing Firestone sign and that is past its useful life and I don't think just because you have a sign that is there that has to come down you necessarily get what you had particular when the code has changed.

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

I think he can put up a smaller sign.

3. Whether the requested variance is substantial.

It is 50% more than what is required I think that is on the borderline of being substantial.

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

No, I don't think it will.

5. Whether the alleged difficulty was self created.

It is arguable part of it certainly is the fact that the code changed in the interim but I still don't think that mitigates the character of the neighborhood issue.

Ed Colello – The motion is to deny.

Roll Call Vote:

Paul Vink – Opposed

Tom Costello – In favor

Tim Froessel - In favor

Kevin Sheil – In favor
Joseph Castellano – In favor
Ed Colello – Opposed

Ed Colello – The motion passes by a vote of 4-2. The motion is to deny the application.

2) **Paul and Connie Lavelle**
72 Bloomer Road
TM# 56.14-1-35

Ed Colello – We swore you in last month. Can you give us the tree top version of the application again walk us through it once again.

Connie Lavelle – Very simply we wish to replace and slightly enlarge our existing deck. The new structure would come within 12 feet of the property line and we are looking for permission to do that.

Tom Costello – Do you have the diagram of the deck on the survey?

Connie Lavelle – Yes.

Tom Costello – Do you recall this from last month they have an existing deck they want to extend it out to the rear because the house is on an angle to the side property line and the extend it out to a parallel line comes closer too the property line.

Ed Colello – One question is the existing deck going to be taken down or just added on?

Connie Lavelle – Completely redone.

Ed Colello – Any other questions from the audience. So what the applicant is looking for is three variances, one from the north side, the south side and one from the total.

Tom Costello – The north side is not changing.

Ed Colello – But they are ripping it down and building a new one.

Tom Costello – The north side is over here.

Ed Colello – You are right is right there. We can deal with just the south. So the applicant definitely needs a side yard setback for the south side of the property where 20 feet is required with the new deck they will only have 12 feet so they need a eight foot variance there and obviously from the total the requirement is 50 feet they will have 27 so they need a 23 foot variance from the total side setback.

Tim Froessel – I think that it is important to note that is only five feet less than what they currently have.

Ed Colello – Do we have any additional questions of the applicant? Any questions from the audience? Any final comments you would like to make before we close the public hearing?

Connie Lavelle – No.

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

Connie Lavelle – Yes.

Ed Colello – Please have a seat.

Public hearing close.

Ed Colello – Personally I have no problem with this application there is nothing this applicant can do without getting a variance.

Tim Froessel – The fact of the matter is they are doing something that is pretty common in Brewster Heights which is going out the back of your house as the side setbacks are so narrow.

Ed Colello – Right now they impact the side setbacks as you said it is an additional five feet.

Tom Costello – Ed the reason I would prefer not to grant a variance on the north side is because even though it is pre-existing non-conforming if you grant the variance then they have a variance on that side of the property line.

Paul Vink – Are they going to be back here when he turns them down next time because they don't have a variance for the north side setback.

Ed Colello – He won't send them back. It is really how we define it. 138-11 when you have a pre-existing non-conforming structure we have always done it one way and Ron Harper thinks it should be done another it doesn't care as long as we are on the same page. I thought we were but looking at this denial letter I am not sure we are either. If there is no other discussion either in favor or opposed to the application. I will make a motion. I would like to make a motion to grant two variances for the proposed deck and that be one for relief from the south side setback where 20 feet is required they will have 12 so they need a 8 foot variance and from the total side setback requirement of 50 feet with the new expansion they will have 27 feet so they will require a 23 foot variance from the total side setback. Do I have a second?

Tim Froessel – 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).

No, number one as Tim said this is very common they are trying to increase the space in the back they are going off the back it is tough especially where the applicant has somewhat of a pie shape it is not a perfect rectangle lot size and again they are only coming in a few feet closer to the property line so there will be no change in the character of the neighborhood.

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

No, because anything the applicant does looking at the map with upzoning that has happened over the years there is nothing that can be done in most of Brewster Heights without a variance today.

3. Whether the requested variance is substantial.

I don't think it is substantial you might look at it percentage where it might be a bit but I think when you look at what is there and how the original home was built and where it is located I wouldn't call it substantial at all.

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

I think it will have none.

5. Whether the alleged difficulty was self created.

The applicant wants to increase the deck you could make the argument that yes it is self created because they want to build the deck but at the end of the spectrum as I said earlier with upzoning there is nothing they could do without a variance so I think it is unfair to say that this is self create with that said we will have a roll call vote.

Roll Call Vote:

Joseph Castellano – In favor

Kevin Sheil – In favor

Tim Froessel – In favor

Tom Costello – In favor

Paul Vink – In favor

Ed Colello – In favor

Ed Colello – So the variances are approved by a vote of 6-0, 1 absent. I am going to give you something to give to the Building Department.

3) Richard Feuerman and Cherie Ingraham

366 Allview Avenue

TM# 67.19-1-31

Richard Feuerman, Cherie Ingraham and Vince DeMarco, general contractor appeared for this application.

Ed Colello – You were here last month everyone was sworn in you are still under oath if you could just give us an brief version.

Vince DeMarco– It is a two story addition on the west side where there is no homes at all only woods. A greenhouse exists and foundation walls exist already as far as this is concerned. The greenhouse exist within the 30 feet area that was existing already what we want to do is extend the foundation walls that have been there since the house was built which would be 18 feet from the side setback. I have some photos here to clarify what we plan on doing and what I did I drew the addition in a black and white photo so that you could see what we plan on doing and here we go that photo is very similar to that photo right here and that outline that you see are the proposed addition.

Ed Colello – You are the same footprint

Vince DeMarco – We are using the same footprint. The greenhouse as you can see it occupies part of the existing foundation so what we are asking to do is to remove the greenhouse and build a two story addition utilizing the same foundation.

Richard Feuerman – And the use is an art studio

Vince DeMarco – It will an art studio on the second floor.

Ed Colello – The proposed addition what side of the property line will that be?

Vince DeMarco – The west side.

Ed Colello – Do we have any questions or comments from anyone in the audience?

Kevin Sheil – I am a neighbor so I am going to recuse myself.

Ed Colello – Do we have any other questions of the applicant?

Joseph Castellano – Sloping down to the hill there are no homes on this side?

Vince DeMarco – No, it is all vacant.

Tim Froessel – What is the current setback on the west side? It is conforming now?

Ed Colello – From here it is 18 feet. What I like about this application, why was that foundation there?

Richard Feuerman – I don't know, I have been there 17 years that foundation was built with the house.

Ed Colello – What I like is the fact is that if you want to call that the footprint they are not increasing the footprint. Any other questions of the applicant? Any other final comments you would like to make before I close the public hearing?

Richard Feuerman – No.

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

Richard Feuerman – Yes.

Ed Colello – We will close the public hearing.

Public hearing closed.

Ed Colello – I will just start by saying I looked at the property and the biggest think is that I liked the fact is while I don't know what was there originally or if anything was there but I like the fact that he is using the existing foundation and he is not really increasing the footprint if you want to call that part of the footprint. That appeals to me in applications like this. Plus he is taking down an older greenhouse and replacing it with a new one and a second story of course. Personally I have no problem with this application.

Tim Froessel – I don't think it changes the character of the neighborhood.

Tom Costello – We did received some letters last month from neighbors that were in favor of it. I will make a motion to grant the variance of 12 feet against the requirement of 30 feet on the west side of the property.

Ed Colello – Do we have a second?

Paul Vink – Second.

Tom Costello – 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 it will have no impact to the character of the neighborhood and from the letters received from various neighbors I don't think they believe it will have any detriment to nearby properties in fact some of them indicated that the change would be an enhancement.

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

I guess there is other places he could build on his property which require no variance or less of a variance I think that is mitigated by the fact that there is already a foundation in place and he is going to take down a greenhouse and build on an existing foundation that is there.

3. Whether the requested variance is substantial.

I think it is a 40% variance against the standard and that is marginally substantially but I think it is mitigated by some of the other factors.

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 so.

5. Whether the alleged difficulty was self created.

I don't think it was self created the house was built close to the property line and the foundation was built many years ago and the applicant is trying to build a structure on the existing foundation.

Roll Call Vote:

Paul Vink – In favor

Tom Costello – In favor

Joseph Castellano – In favor

Tim Froessel – In favor

Ed Colello – In favor

The variance was approved by a vote of 5-1, 1 abstain, 1 absent.

Ed Colello – You can take this to the Building Department.

4) Andrew Suozzi

4005 Route 6

TM# 69.1-12

Andrew Suozzi and Bob Howe, Bibbo and Associates, who first appeared for this application and was sworn in appeared for this application.

Linda Stec – I got the letter from the county on this and they approved.

Bob Howe – I haven't appeared in front of the Board before my name is Bob Howe.

I am with Bibbo Associates and am here in Joseph Buscynski stead he had to go another meeting this evening.

Ed Colello – Can you walk us through the application again?

Bob Howe – Yes, what we are asking for is a variance to allow to the aisle which would allow for access around the proposed building to encroach on the front parking setback.

Basically as you can see the front property line is extremely irregular. Whether that was created in various road takings I am not sure but it is irregular it does cause some of the encroachment I would like to point out that the edge of the access aisle will be approximately 60 feet off the edge of Route 6.

Tom Costello – Was there some additional information we asked you to bring back this month?

Andrew Suozzi – No, I don't think so this is basically it.

Tom Costello – I think we talked about the location of a retaining wall that is close to 84 and you were going to determine if that was on the property or not.

Andrew Suozzi – It is right on the property at this point and then it is 2.2 feet off on the 84 side. So it goes right on the property on the state side.

Tim Froessel – If I am not mistaken I think there was some talk last month that there was going to be a second retaining wall?

Bob Howe – Yes, it is necessary along the back.

Paul Vink – And as I recall in your alternative plan if this isn't approved your building comes over to the west side here and spreads out that way.

Andrew Suozzi – The Planning Board subdivided this with the other piece of property it was as narrow piece from the back it is all frontage and it would require some kind of a variance but this is the only variance we need everything fits.

Tom Costello – How long have you owned it?

Andrew Suozzi – About four years.

Tom Costello – Have you been before the Planning Board with this?

Tim Froessel – It was referred to us.

Tom Costello – Did they express as preference for this plan or the other plan? The other plan that you showed us last month that had the parking at this end where you didn't need a variance.

Andrew Suozzi – No, I don't think they said anything about that.

Ed Colello – Do you have the other plan what it would look like if you shifted it down?

Bob Howe – Yes.

Ed Colello – I guess what I am trying to say is I would like to see them side by side again if you don't mind so everyone can see the difference Plan A needs a variance Plan B needs no variance?

Bob Howe – Plan B needs no variance. That is correct.

Andrew Suozzi – It shifts all the parking to one side. It makes it cumbersome for people and handicapped to get closer to the building.

Ed Colello – Your handicapped spots are here and here they can't be any closer than that. Where would the handicapped spots be there?

Bob Howe – They are right in front.

Ed Colello – And how would they get in the building?

Bob Howe – In the front.

Andrew Suozzi – It is as two story building if the door is in the rear.

Ed Colello – These two handicapped spots can come in here.

Andrew Suozzi – This spot is further away. It is 200 feet away.

Ed Colello – It is. Understand that one of the criteria that this Board has to follow is “whether the benefit sought by the applicant can be achieved some feasible method other than a variance.” It is the responsibility of this Board to do two things to A) grant

minimal relief and B) if there is another way to do a variance do it that way. Now I am not saying that is a perfect solution I understand that if I was you I would want plan A.

Andrew Suozzi – It is a minimum variance and the basic reason is the front and back is slight, the front is because of all the jogs in the property now why the state took the property this way I don't know.

Bob Howe – I think the road also used to go this way.

Andrew Suozzi – It might have.

Bob Howe – And that is why the right of way line is here and if this right of way line that is in this location here that is causing the problem and again as I said it is going to be quite a distance off the road and as I understood the intent of the setbacks it is to establish a buffer between the traveled area and parking areas and parking islands.

Ed Colello – Don't we have the same buffer over here?

Bob Howe – Yes, you do but I am still speaking in terms of the real distance from a traveled way as opposed to the right of way line which is the former property line.

Tom Costello – Does the plan the building in a different location or a different side?

Bob Howe – The building is slightly shifted to the east in order to accommodate the parking. With the building here there is no way we can get parking in the front of the building.

Tom Costello – So your variance is really to create parking in front of the building.

Bob Howe – Parking in front of the building close to the structure.

Andrew Suozzi – And the handicapped is the way these jogs area otherwise we wouldn't need this if this was a straight line.

Ed Colello – And again this is going to be used for office space?

Andrew Suozzi – 50% retail and office in the back. They will own have their own entrances.

Bob Howe – Another thing I would like to point out that as a result of this plan there is more paved surface I think you can see this cover a great deal more of area. It is essentially the same amount of impervious area as it is here as it is there but now you have this area that is stuck up from the side so you have significantly increased the impervious which requires more extensive storm water management which has all its other impacts. We would like to keep that at a minimum.

Tom Costello - Where is the storm water management?

Bob Howe – It is going to have to be in this area we are going to try to some infiltration basins we have to meet the state requirement. All of those features would have to be located on the property. If we do have to get involved with the city they do not like these practices to be under the pavement.

Ed Colello – And at the other end of the spectrum they would like to have the least amount of pavement as possible too. Can I ask you a question one of problems is and this is not the problem of the Planning Board because it is not their job to do this when we get applications referred to us by the Planning Board it is very difficult to see exactly what you are asking for can you figure that out from this application?

Tim Froessel – The big one is the 18 feet in the front when you keep in mind one of problems that doesn't bother me so much when you look at the amount how much the state owns on either side of Route 6 while he is only a few feet from his property line he has 60 feet I think it is unlikely I hope it is unlikely that Route 6 will be widened.

Ed Colello – I agree with you but I will say this but the only reason as I said before addressing the criteria that I would somewhat lean toward we will call this Plan A for a moment is because of the extra paving that has to be done under Plan B because I don't think personally the granting of a variance because some parking spots are going to be as convenient to others is enough to warrant alone a variance in my opinion, again, I am only one Board member when you weigh the fact in my opinion that you are putting in a fair amount extra paved surfaces on there which obviously less is better than that bodes well to me that maybe Plan A is the solution not Plan B. Do we have any questions or comments from anyone in the audience?

Lynne Eckardt – What is the actual percentage of the impervious surface?

Ed Colello – I knew she was going to ask that. Can you give us that?

Bob Howe – I don't think I have that number here unless it is on the schedule here. I can give you a ballpark number

Joseph Castellano – Are there the same amount of parking spaces in both?

Bob Howe – Yes. What happens on this plan we also in addition to having the parking over here we basically have to create an aisle going all the way around the building here to have the circulation. So whether it is this pavement over here or this here that is the increase.

Ed Colello – Would the coverage answer that?

Bob Howe – The coverage would probably answer that. Coverage lot we are talking about 43 – 44%, we are almost at the maximum here. I think to be honest with you I don't think this chart was changed it is exactly the same amount on here as it is on here. I think we may exceed coverage with this plan. You did ask a question let me see if I can give you a ballpark. This is 43% which is what we have there. I think this area let me see what we have as a distance there.

Tim Froessel – There is no change in the schedule.

Bob Howe – I think this was an alternative sketch and I think by the time we had to get this thing submitted we didn't get this table completely updated but right now we are at 320 feet across and 320 feet from here to here so I essentially have this extra parking so that is 110 feet by 65, that is going to be 65 by 110.

Ed Colello – 7,100.

Bob Howe – That may throw us over.

Ed Colello – The total on that?

Bob Howe – The total impervious on this site the percentage is 43.4%.

Ed Colello – This doesn't tell me what is the difference, percentage wise? What is the total square footage you think of that? You see what I am saying?

Bob Howe – Right, let's do a ballpark. I said 320 feet this way so if I did this let's do kind of an average here because I have some green space in there and green space in there so if it is said roughly 110 by 320.

Ed Colello – 38,000 sound about right to you.

Bob Howe – Plus 7 is about 45000.

Ed Colello – About 20% more. 20% more Lynne is your answer.

Bob Howe – And since we have the 80,000 square feet total this second plan would in fact exceed the coverage.

Ed Colello – The allowable coverage would be exceeded by this plan?

Bob Howe – That is right.

Ed Colello – So that means you would need a variance for this plan?

Bob Howe – We would need a variance for that plan as well.

Ed Colello – That is news to us.

Tom Costello – Or it could be scaled back.

Bob Howe – The size of the building made smaller and the total coverage made smaller that is always an option but that is not the desired option. And in any event this would still be the preferred layout to keep the parking as close to the building as possible. The building really can't be much narrower than what it is.

Andrew Suozzi – The Planning Board when they subdivided this road and knew this property would require some small variances because of the shape.

Bob Howe – In fact this did get a depth variance when this was a different zone. I am sorry I didn't have the schedule correct.

Ed Colello – Any other questions?

Lynne Eckardt – Just a comment. Given the schedule issues and that everything is not completely accurate and that the Board didn't know that they needed a variance needed for Plan A and Plan B I think what should happen they should come back with the exact calculations. I like the idea of impervious surface but I know we can't grant a variance based on that.

Ed Colello – Why can't we?

Lynne Eckardt – If he scaled back even more they you wouldn't need to give him a variance.

Ed Colello – Does that fit under the heading of environmental conditions?

Lynne Eckardt – You would have to give him a variance for either plan right?

Ed Colello – The way it looks yes.

Lynne Eckardt – And you didn't know that.

Ed Colello – These numbers are far from perfect I understand that.

Bob Howe – Understood.

Tim Froessel – What are the dimensions of the building?

Bob Howe – 40 foot front to back and 125. If the building were to be 30 feet front to back it gets kind of narrow.

Tim Froessel – You would still need some kind of variance probably not as much.

Bob Howe – If we knocked 10 feet off we still need this and this portion here.

Ed Colello – I agree with you Tim that doesn't bother me because it is far off the road. Lynne brings up a good point she doesn't believe that but we have to have better numbers I hate to make you keep coming back but I would really like to see the difference. As one Board member if I am going to base my vote on this based on the fact that there is less pavement on Plan A than Plan B I really have to know how much I can't expect you to give us right now. You are probably close. It is important. And again I am one Board member I would rather give a variance because you are so much distance between the road and the building and the front and have a less paved area then grant no variance but no we are figuring out that you probably do need a variance that is another we need you to figure out I need what you need on Plan B. And if you need a variance both then we need to revalue that.

Andrew Suozzi – Then it would be two. The setback and the total.

Ed Colello – This one would just have a setback this one has a coverage problem.

Paul Vink – And a setback problem.

Ed Colello – No.

Bob Howe – The intention of this plan was to eliminate that. I didn't run the numbers on the square footage.

Ed Colello – We have to decide three things which is the lesser of two evils or shrink the building which the applicant doesn't want to do because I understand that so we have to get our numbers straight so what I would like to do is hold you off to next month and come back with both those numbers on both Plan A and B so we can take a look and make a decision.

Tom Costello – Can you answer a question on that plan you show some loading spaces in the front of your building? But I don't see any on this?

Bob Howe – I believe they are in the back.

Tom Costello – So even though the retail would be in the front the loading would be in the back? You have office in the back retail in the front you would need the loading in the retail space I assume which should be in the front?

Bob Howe – Where we can reasonably fit it. I don't disagree with you.

Tom Costello – If I am reading this it looks like the stairs that go down from the back to the front so you wouldn't have someone go down the stairs.

Bob Howe – As an improvement to that plan we could provide a walkway around this way to get down to this level we can certainly work that out if it isn't feasible to get a loading space. This a rather steep portion of the driveway here but it might be conceivable to put a loading space over on this side up here. But I think that is as detail that I think we can work out whatever plan we use. But you do make a good point.

Ed Colello – Any other questions? So we will see you next month.

Bob Howe – With the tables correct.

Ed Colello – We will take a 10 minute break.

5) Michael Walsh
79 Lakeshore Drive
TM# 79-1-40.97

Michael Walsh appeared for this application.

Ed Colello – Mr. Walsh you are still under oath if you could just walk us through the application.

Michael Walsh – I have a residence at 79 Lakeshore in Vails Grove it is a cottage. It is not winterized. I am asking for a variance so I can put a new house in the spot and it needs a side variance to the north side and last month I submitted the letters of support from the neighbors as well as from the Vails Grove Co-op. That is what it is. I think you wanted to come take a look at it.

Tom Costello – Is the proposed house going to be built exactly on the footprint of the current house?

Michael Walsh – Very close to it?

Tom Costello – Is it going to be any closer to the property lines?

Michael Walsh – Marginally yes. A couple of feet. A few feet on the one side.

Ed Colello – If you look at the denial letter on the north side 20 feet is required he is going to have 11.

Michael Walsh – That includes the deck by the way. If I have to lose the deck on the side of the house it is very marginal.

Ed Colello – And the total side setback it seems hard for me to believe it is this close 50 feet is required and you will end up with a little over 46 feet so you only need four feet on the overall. And as we have dealt with Vails many times it is impossible to do anything without a variance. And while we I don't want to make a statement that we let Vails govern Vails your Board we have known over the years looks at applications very closely and the neighbors get involved and things like that as one Board member I can tell you that bodes very well that you almost have to answer to a high authority to some degree.

Michael Walsh – I have been there for 30 years I am familiar with how it works.

Ed Colello – And this is an older home with no heat in it.

Michael Walsh – One of the few and far between.

Ed Colello – I didn't think there were any left there.

Michael Walsh – Three years ago I lucked out.

Ed Colello – Do we have any questions or comments from anyone in the audience in regards to this application?

Tom Costello – How wide is the deck?

Michael Walsh – Five feet, it runs along the side of the house to access the back so people don't show up at the front door.

Tom Costello – So really it is a walkway it is not designed for sitting?

Michael Walsh – No, absolutely not.

Ed Colello – Do you know what the square footage of the house is inside, approximately?

Michael Walsh – It is 30 by 42 feet, about 1,200 feet.

Ed Colello – I did drive by I would have guessed it was smaller than that. Any other questions of the application? Any final comments you would like to make?

Michael Walsh – No.

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

Michael Walsh – Yes.

Ed Colello – Have a seat.

Public hearing closed.

Ed Colello – Once again I will give you my opinion I don't know if you had a chance to get a look at it, it is a small home and I think if you look at a lot of the houses, obviously I don't remember what Vails looked like twenty years ago when I came to Brewster there has been a lot of remodeling and additions and so on and Vails Board does a very good of supervising and making sure that changes fit in the character of the neighborhood and that has already gone through approval to their Board. Personally I am in favor of this application. I will open it to other comments.

Tom Costello – I just want to point out that there were a number of letters in the file from residents nearby to the house in support of the application.

Ed Colello – If there is no other discussion I will entertain any motion either in favor of or opposed to the application.

Tim Froessel – I will make a motion to grant a nine foot variance from the 20 foot required side setback on the north side and a four foot variance from the total required side setback.

Ed Colello – Second?

Kevin Sheil – Second.

Ed Colello – Will you address the criteria.

Tim Froessel –

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).

No, I don't think there will be change in the character of the neighborhood Vails Grove Co-operative approved the neighbors all spoke in support of it and if you go and look at it the house that are now existing there are very similar to what the applicant is proposing to build.

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

No, it can't because the lot size is just too small anything you wanted to do will need a variance.

3. Whether the requested variance is substantial.

Certainly the four foot variance from the total setback is not substantial the nine foot variance on the north side is borderline but given the tight quarters I think it is admirable he is only encroaching by nine feet.

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

We haven't heard any evidence of that.

5. Whether the alleged difficulty was self created.

I really don't think it is self created the house that is there is not livable certainly not year round and as I said before anything that the applicant chose to do would need a variance.

Roll Call Vote:

Joseph Castellano – In favor

Kevin Sheil – In favor

Tim Froessel – In favor

Tom Costello – In favor

Tom Costello – In favor

Ed Colello – In favor

The variances were approved by a vote of 6-0,. 1 absent.

Ed Colello – Mr. Walsh you are all set I will give you something you can give to the Building Department.

6) Vivien Landau
Landau Subdivision
299 Joe's Hill Road
TM# 58-1-38& 39

Richard O'Rourke, attorney, Keane & Beane, Theresa Ryan, Insite Engineer, appeared for this application.

Ed Colello recused himself and **Tom Costello** Vice Chairman was the Acting Chairman.

Richard O'Rourke – I will give you the tree top version once again to revisit what this is all about. I know that most of you by this time are familiar with this. Mr. Vink was here for one of the meeting. This is 51.2 acres. If you do the computation under the Town Resource Protection formula theoretically you can get five lots. This is has been the subject of extensive review on the part of the Planning Board. You have probably seen our written submission which chronicles the 10 or 12 month period of time that the Planning Board considered a variety of alternatives. What is being proposed what it is an application pursuant to Town Law 280 A , open development area, it is four lot subdivision.

Tim Froessel – Can I stop you a second?

Richard O'Rourke – Sure.

Tim Froessel – Has the Town Board declared this an open development area?

Richard O'Rourke – No.

Tim Froessel – I am looking at 280 A 4 which says the Town Board may by resolution establish a open development area.

Richard O'Rourke – Right, you can go either through or the Zoning Board of Appeals

Tim Froessel – Except if you go through, as I read it may be semantics I don't think if you go through the Zoning Board of Appeals I don't think it is open development area it is entirely different it is just seeking a variance.

Richard O'Rourke – Well, you certainly can apply the criteria. When you read 280 A 3 which is the statute.

Tim Froessel – Believe I spent a lot of my own time research it.

Richard O'Rourke – Just for the rest of the Board it talks about variances or exceptions in zoning regulations for a) for a exception of the circumstances of the case do not require the structure to be related to existing of proposed streets and highways and/or an area variance pursuant 267 B of the chapter and the same provisions are hereby applied to such appeals. It is unusual it is not a strict garden variety variance we are requesting. That is what the proposal is it is a four lot subdivision under the Resource Protection Plan theoretically you can get five lots we are attempting to get four lots.

Tom Costello – When you say theoretically you get five lots what does that mean?

Richard O'Rourke – What that means when you do the calculation under the Resource Protection Plan of the Zoning Ordinance there is a deduction for steep slopes, for wetlands and things of that nature.

Tom Costello – Does that include frontage and area and so forth as well?

Theresa Ryan – There is a number that track out and there is number that you divide that by to get the lot count and that is something that the Planning Board requires under the Resource Protection Plan to get the lot count. That includes the frontage for the lot.

Richard O'Rourke – However, one of the plans that was reviewed by the Planning Board and then there after rejected in favor of the 280 A application is this plan. This is the plan which shows a four lot subdivision and it shows the requisite frontage for the four lots that is conforming. However, the Planning Board looked at recognized and realized that this doesn't make sense because of the environmental sensitivity of this area and so consequently Graham Trelsted in consultation with Jim Lawlor in consultation with Jacobsen made certain recommendations to the Planning Board and the Planning Board thereafter concluded and it is worded in the written submission that this was the superior plan pursuant to the sound planning design. So that is what we have and that is the application. I was trying to think of some other illustrations I don't know if anyone has been down to Adam Levy's house that is up in Indian Wells the access to his house is through Indian Wells but to satisfy the road frontage there he has road frontage on Milltown Road he doesn't use it. I asked him where was his frontage, he said this is my frontage on Milltown Road. You understand what the application is we have been here a few times.

Tom Costello – If you are turned down for the variance request can you apply under 280 A to the Town Board?

Richard O'Rourke – I don't think you could. I never looked at that because it seemed to me that there may in fact be some estoppel there if one Board it almost like you are almost forum shopping. I don't know.

Tom Costello – The sketch that you showed us that indicated that the Planning Board preferred because of the shared driveway...

Richard O'Rourke – Among other reasons, yes.

Tom Costello – Did they give an opinion on moving the frontage from that one rear lot? In order words you could still share a driveway on the left side of the subdivision to the one rear lot.

Richard O'Rourke – Among the various iterations of the plan including at least four alternatives which they examined I think they may have looked at that but as a practical matter I have been doing this for a couple of years all over the place and there is one practical consideration to think about and that is let us suppose you do a common driveway and then you have the frontage that is over there which is not used for the driveway presently. Fifteen years from now, thirty years from now, you are on your third or fourth building inspector here, I don't know who the zoning enforcement officer is, and the guy who owns the lot in the back decides he wants to have his own driveway and he says this is my subdivision I am going to put in my driveway it becomes an enforcement issue as well. Where if he doesn't have the frontage he doesn't have the alternative. And the reason why I think the Planning Board as well as Mr. Landau they don't want to have that is for a variety of reasons and one of that is to make sure never ever will there ever be a road through that area where you have Norway spruces a beautiful stand of trees and this way that will insure that will not incur. And there is wetlands as well.

Theresa Ryan – This area here there is a wetland running through here that runs behind the Landau's house and this is the where the associated buffer is the whole area where

they would not prefer the disturbance that is why we ended up with the common driveway.

Tom Costello – I can understand all the reasons for trying to preserve those trees it is beautiful section of road and the property but couldn't it be achieved like an environmental easement that would preclude any further development on that section of the property without having it continuing to be parceled as part of the Landau's homestead and be part of the new lot and still preserve while being part of the rear lot.

Richard O'Rourke – Could you put an easement on it? It becomes an enforcement issue. If the concern is to protect against further subdivision should he be able to go forward with the application as proposed to the Zoning Board of Appeals which is of course the preferred alternative of the Planning Board he would add a note to the plat and consent to no further subdivision shall occur with respect to this property. That is in the minutes, he has said that. We are protected, provided we can go forward with this application.

Tom Costello – I guess from my prospective if we are looking to provide minimum relief if the desire of the Landau's is to preserve that piece of land in a way that would never be developed is there a way to get it done without a variance?

Richard O'Rourke – The correct answer to that is yes. With a big but! And the big but being again in terms of maximum protection and preservation of that property I don't like the idea of 50, 75 years from now someone unfamiliar with these issues and I am not suggesting that there would be anything wrong with the Building Department but I do know from time to time records get misplaced by this municipality or others or this boards or whatever I think perhaps the most prudent course and the one that the Planning Board seems to think worked best was to make sure that it was never used for a driveway for access. And that won't happen given the fact that property owner has no frontage. So I can't say I set forth in the written submission the quote from the letter of Graham Trelsted his discussions when he talks about in consultation with Tom Fenton, the town engineer and Jim Lawlor, so they all took a look at it and that is what they came up with.

Tom Costello – Any other questions?

Tim Froessel – On the nature of your application. I spent a bunch of time looking at this only because every variance application is on a 267 B and I never even read Town Law Section 280 A until six, eight weeks ago. As you discussed before it has this kind of two pronged approach the first one being that the circumstances of the case do not require the structure to be related to existing streets or highways. On my research I don't think there is a single reported case construing that phrase anywhere.

Richard O'Rourke – If I could just say one thing about that if you looked you saw that there is presumption if you have seen some of the annotations that are involved with that it was about 13, 15 years ago there was an article written on 280 A for the Westchester County Bar Journal and I happened to be the articles editor at that time and the article that was submitted the person who submitted it initially had it all wrong and the problem is he was a very fine attorney the problem is the statute is one of the most obtuse obscure statutes that I have seen in New York State Town Law it seems like you agree. The point is there was a thought that you couldn't file a plat with this but of course you can file a plat.

Tim Froessel – You can see why because it says “you can appeal from the decision of the administrative officer have charge of the issue of permits” it almost you getting a

denial but you have gotten to the stage of getting a building permit and Ed Jasko tells me no. That doesn't make any sense because obviously it has to be part of the planning phase or it should be a tool of the planning phase.

Richard O'Rourke – I know of other communities that use it as a planning device successfully there are many subdivisions.

Tim Froessel – In reading in some of the other cases it seems that the courts haven't construed it that way where people got to this point through a variance application that came down through a planning board through a planning process so as I read it it doesn't seem like actually getting that denial is a prerequisite but in any event. I didn't find any cases but if you look at the legislative history and the policy reasons in the statute it is all about access and access by emergency vehicles and what not police, fire, and other similar things. I can't imagine anything that needs to be more related to those things than a residence. If you were putting up a cell tower which is going to have a little unmanned substation maybe that doesn't require that type of access. A residence I think does and I am speaking totally on behalf of myself. I would not be inclined to say that a residence does not require access to proposed streets or highways which flips us over to subsection B which is an area variance pursuant to section 267 B which is something I am a little more familiar with. That part of it I am a little bit more conflicted with. This application has pluses and minuses I think it has some merit some things that aren't so great but as part of subsection A I really don't on behalf of myself I don't see myself voting favorably under that subsection I am just letting you know. You can try to talk me out of it is you would like.

Richard O'Rourke – I know the public hearing is still open I think I am certain that I you wanted to you could have walked the property I know Mr. Landau had the hay cut in the back so you could walk around you have seen the written submission you have seen the arguments, obviously if you read the letter from Graham Trelsted, we are the point where we have to make a decision, and we have to make a decision and in fairness to you and to us that is where we would like to go one way or another and we would like to answer whatever questions you might have.

Paul Vink – Couldn't you concerns about the environmental impact be address by a three lot subdivision instead of a four lot subdivision?

Richard O'Rourke – It could be address by doing a two lot subdivision but if you familiar with the zoning ordinance you will not that every single one of these lots is at twice the size that is required by zoning. We can do a conforming application with a common driveway but again I don't know what purpose it serves since 30 years from now nobody is around and I am not suggesting anything untoward but somebody owns that back lot say I want my own driveway.

Paul Vink – You can write all kinds of restrictions into deeds that prevent use of the parcel or whatever you don't want it used for down the road and it is certainly something you can do in selling the lot.

Richard O'Rourke – That is true but I have seen very peculiar things happen over time and a perfect illustration is Brewster Heights as you drive up there are new homes on the right they are fee tail pieces of strips of septic systems and Robert Martin, a major developer, years ago put all of those strips together, those were all septic fields put them all together. Those were attached to other lots and they were not to be developed. Guess what they put in a sewer. That is just an illustration.

Tim Froessel – There is two cases that went to the Court of Appeals on the development of Brewster Heights. The Trimark case and there is another one. And that area was never envisioned for housing and those are steep slopes and everything else but guess what there are houses are. Those are all factors to consider it seems not only to us. We showed how many alternatives to the Planning Board, four or five different sketches. It is not like this is the only thing we are going to do. They looked at the four or five sketches, they wrote the letter, they are the ones that said go this way recognizing what the zoning ordinance was but from a planning prospective felt that was the best thing to do. Those are the facts. That is what it is.

Tom Costello – Any other questions?

Richard O'Rourke – One last thing. What I was going to say there were deeds for houses over time that had restrictions and actually conveyed a lot on one side of the street of Brewster Heights with the septic field on the other side of the street and over time after conveyance and conveyance after conveyance the issue became they dropped the lot from across the land so this became no man's land. It was always supposed to be attached to one of the lots and so yes there was as restriction in deeds. They were insured title and those pieces just fell by the waste side. That was my point about deed restrictions.

Tom Costello – That sort of works against your argument that the Landau's would agree to a deed restriction to prevent further subdivision.

Richard O'Rourke – We will put it on a plat though. I don't think put it on a plat. I don't think they did very much of anything early on when they allowed for the development of Brewster Heights.

Tom Costello – Are there any other questions?

Ed Colello – Are you asking the audience I can't say?

Tom Costello – Yes.

Ed Colello – I have two minor comments and then I will stop talking about this. First of all I talked to Willis when this application first came up even though I knew I was going to recuse myself I was concerned about what criteria the Board should use, etc, and unveiled to me that in his opinion you use the area variance criteria in this application I don't know if you agree with him or disagree with him. I probably talked about this more than I should have and more than I really wanted to and make no bones about it I have never been opposed to the development of that land it is prime real estate it is beautiful land it should be developed and I have said that from day one. Over the last 60 days I have had a chance to think of alternatives and so and on and what things can happen and again I have recused myself so I am surely not a Board member at this point I am just a guy that owns land across the street and while I have to tell you my ego would never, ever, publicly admit that Mr. O'Rourke is correct, because that is not going to happen, I will say that after looking it and looking at a bunch of alternatives as a neighborhood I am going to tell you my opinion this might be, will I don't think it is a perfect application, by any stretch of the imagination, I think this option and what they are trying to do might be the best of the options they put there. Again I am not telling you that it is the perfect one in my opinion either but I will say that this it is the better of the other ones. And that is because I am very concerned about the trees and the front of the property, as you have seen, it is very striking, it is absolutely beautiful and anything that can be done to eliminate the amount of cutting those down would be a benefit to the new owners, the current owner and the neighbors.

Tim Froessel – Just in response to what Ed said one of the concerns that I have had in the back of my mind about this application if it is denied will they flip the property to some developer who will get five lots out of it so the fact that they are seeking the four lots as opposed to the five they could get under the Resource Protection Plan is one of the things that you would put in the mitigating factor column.

Tom Costello – Lynne?

Lynne Eckardt – I still don't like this. There was a Planning Board member who was really concerned about this as well. They felt they couldn't do the shared driveway and have the additional lot. There is nothing that could prevent a new owner from cutting the trees down we don't have a tree ordinance. So you should bear that in mind. There is no guarantee that 75 years from the spruce will even be alive. We still have the wetlands to protect the crossing of that property to put in the driveway. And I just don't think in this case is warranted. I think it would be very difficult to get five lots correct me if wrong but because of the setbacks and the watershed. So I really think because it can work with proper frontage it should work that way and have the shared driveway. When we are talking about trees I am all for preserving the trees but we have town law with any teeth in to protect any of this so to me it is almost a moot point.

Tom Costello – Any other questions or comments? Any other questions from the Board? Any closing comments you would like to make?

Richard O'Rourke – No, I think we have beat the proverbial horse to death which is probably good in some respects and yes a Planning Board member did not particularly care for the application that is why it is a not a dictatorship it is a democracy and everyone is entitle to his or her opinion whether a member of the public or a member of the Board. It was never our intention to have to go to the Planning Board and spend ten months going to through four or five iterations of plans and doing engineering and everything else but we did and we recognize that we thought that might be the best solution for everybody and that is exactly what we did and that was reviewed and that was what recommended and that is why we are here so with that thank you.

Tom Costello – Do you think you have had a fair and adequate opportunity to state your case?

Richard O'Rourke – Yes.

Tom Costello – We will close the public hearing.
Public hearing closed.

Tom Costello – Any comments.

Paul Vink – It seems to me that they can get what they need without a variance. They can either get the frontage the way they want with four lots or they cut down the number of lots and get the environmental impact that they want. It seems to me that they really don't need a variance for four lots it is convenience more than anything else.

Tom Costello – Kevin?

Kevin Sheil – I think four is better than five if five is a viable option that four is certainly better than five. I think the trees will be there in 75 years and maybe even in 100 years.

Tom Costello – Joe do you have any thoughts?

Joseph Castellano – I think if we deny the variance they are basically planning the shared driveway. I like the fact that if we approve it it is a really scenic road I am sure they are going to put in some beautiful homes I think it might be the lesser of two evils to grant the variance.

Paul Vink – Is that one of our criteria the lesser of two evils?

Tom Costello – I am sure if they took the plan to put the driveway through the stand through the wetlands it would get through the planning process more than likely they would not be able to do a five lot subdivision I think they need that frontage to be part of that.

Tim Froessel – My scenario there was basically based upon selling whole 50+ acres they sell their house to a developer and they raise it to get the maximum that is speculation obviously we don't know if that is going to happen. I keep coming back to number two of the criteria for an area variance, whether it can be achieved by some other feasible method other than a variance.

Tom Costello – What do you think they are trying to achieve?

Tim Froessel – More lots.

Paul Vink – They acknowledged they can get four lots and if they wanted to get it with these other restrictions they could probably accomplish that too.

Tim Froessel – As I see it that is the benefit that the applicant is seeking.

Tom Costello – He is seeking the benefit of doing four lots without the variance.

Tim Froessel – That is what I said that is why number two keeps popping into my head. I also think we need to do two votes on this because the application is under 280 a 3 and 3 b. The first part being the exception of the circumstances of the case do not require the structure to be related to existing or proposed streets or highways and the second being the same criteria that we consider. But they have made the application under both so I think we need to consider both.

Tom Costello – 280 a 3 and 280 a 3 b.

Tim Froessel – In their written submission they clearly made application to both.

Tom Costello – Does anyone want to make a motion?

Tim Froessel – I will make a motion to deny the request for a variance under 280 3 a under that subsection.

Tom Costello – Second?

Paul Vink – Second.

Tom Costello – Will you address the criteria?

Tim Froessel – The criteria doesn't apply because this is section 267 b but I will just state my reasons for it which is that to grant an exception we would have to find that the structure is now required to be related to existing or proposed streets or highways. As I stated before my view is a residence has to be related to existing or proposed streets or highways for access for emergency vehicles.

Roll Call Vote:

Paul Vink – In favor

Tim Froessel – In favor

Joseph Castellano – In favor

Kevin Sheil – In favor

Tom Costello – In favor

Tom Costello – So the motion to deny the variance requested is approved by a vote of 5-0, 1 abstain, 1 absent.

Tom Costello – Do we have a motion on the second one?

Tim Froessel – I will make a motion to deny the applicant's request for a variance under section 280 a 3 b.

Paul Vink – Second.

Tim Froessel – 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).

This is a close one the key part being the common driveway which I am not aware of any other being in that vicinity there may be one or two but primarily you are talking about an area of larger lots where each lot has its own access.

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

As I said before this is probably the one that swings it for me to the denial side we have seen the diagrams it can be achieved by some method other than a variance. It may not be the one that the planning people liked the best it may not be the one that the applicant liked the best but it can be done.

3. Whether the requested variance is substantial.

Absolutely it is substantial the required frontage is 200 and there would be none.

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

Among the various alternatives that were presented this one might even have less environmental impact as it was explained to us but I don't think that is a substantial in favor of denial.

5. Whether the alleged difficulty was self created.

I think you have to conclude that it is it seems that the applicant they are choosing to subdivide the property and setting the lot lines as they see fit and seek approval for what they want to do so I would conclude that it is.

Tom Costello – I want to remind you that this is a motion to deny the request for a variance.

Roll Call Vote:

Joseph Castellano – In favor

Kevin Sheil – Opposed

Tim Froessel – In favor
Paul Vink – In favor
Tom Costello – In favor

The motion to deny the variance was approved by a vote of 4-1, 1 abstain, 1 absent.

7) **Julie Sackett**
14 Green Acres Lane
TM# 47.4-32

Julie Sackett and Kurt Johnson, architect, Zarecki and Associates, appeared for this application and were sworn in by **Tom Costello**.

Ed Colello – Can you walk us through?

Kurt Johnson – Basically this is an existing survey of the site. We have a parcel that is in the R-60 zone that is off Milltown Road which is on Green Acres Lane. The site itself has no frontage on the road it is existing site. I am not sure you are familiar with where it is Settlers Hill Road comes down here, Milltown on the bend is here. Basically what they have is there is an existing structure, a single family residence on the site and it comprises one story portion which is the yellow and a two story addition that was put on some years ago which is in red here. The existing house is 15.6 feet from the side property line here on the western side of the property at its closest point. This portion of the building in yellow is very substandard and has a lot of damage and rot. There is all kinds of insect infestation. That section needs to be torn down and be built. What we are proposing to do and I apologize they are not the same scale is to remove that section that was in yellow that is shaded here. There is deck on the property which has since been removed that came within 13 feet of the property line. And we are proposing to put an addition on the house here which would be 18.3 feet from the front line so it is actually lessening the non-conformity on the structure. The reasons why we can't build totally this way into the building envelope is that we are constrained by the existing septic system which is here and it is a little deceiving with the site here. There is a small flat portion here that rises up of here. There is a lot of ledge so this is all steep slopes here. There is another residence down here which actually is quite a bit downhill from the site so really there is this flat area here. Here are some photographs. This is the existing structure. This is the two story that will remain. This is the one story that will be removed.

Ed Colello – That is the yellow on the first one?

Kurt Johnson – This is being removed. This is some of the damage here. This is actually the house which is down hill. There is a driveway that accesses it up here which is the closest thing to the house.

Ed Colello – What is the square footage of the lot?

Kurt Johnson – Just under an acre. .92 of an acre. So with that 30 foot side setback here we are actually we are existing at 15.2 and we are actually proposing to put it at 18.3. I do think you have a letter in the file from Ed Jasko.

Tom Costello – Can you go through what those different colors mean?

Kurt Johnson – This darker section here is to remain. That is a two story section. This area here is being removed as well as this area that is overlapping the pink this is all to be

removed and this area here is the deck that is being removed as well it actually has been removed.

Tom Costello – This one story building in this picture?

Kurt Johnson – That is right here. And you can see a portion of the deck right here. And we are proposing to bring it further this way with a new section falling between here. So we are further away from the property line with the proposed new construction.

Ed Colello – Do you have a drawing of what it is going look like when it is done?

Kurt Johnson – Yes. This is the view as you drive up the house here this is in the background here and this is driving up the site.

Tom Costello – Is part of the addition putting in a garage?

Kurt Johnson – No. They have a six foot basement.

Tom Costello – The square footage of the current buildings is?

Kurt Johnson – About 800.

Tom Costello – Both buildings?

Kurt Johnson – And when we are done it will be about 1600 and change so we are actually doubling the size of the house. But really in keeping with the rest of the houses there a 1600 square foot is not too large.

Tom Costello – It looks bigger than 800.

Kurt Johnson – It is basically three rooms. A small kitchen and bath, bedroom, living area.

Ed Colello – The whole second story is one bedroom.

Julie Sackett – 15 x 14.

Ed Colello – Is there bath on the second floor?

Kurt Johnson – No.

Julie Sackett – There is a spiral stair so that eats up some of the floor space.

Tom Costello – How many bedrooms will you have?

Kurt Johnson – It will remain at one bedroom.

Julie Sackett – It is just myself and my fiancé.

Tom Costello – You are going through all this for one bedroom and no garage.

Kurt Johnson – Unfortunately the site constraints are such that there is no area to increase the septic system on the site so we are constrained. We would love to have a three bedroom house but it is not going to happen with this site. As you can see it is all rough and does rise up quite a bit.

Tom Costello – There would be room for a garage?

Kurt Johnson – There would probably be room for a garage at some point in time. We are really looking for living space.

Ed Colello – It will a nice looking one bedroom.

Kurt Johnson – No matter what happens this section of the building needs to be taken down because it is so damaged to put something back up you might as well as increase your floor area a little bit if you can.

Julie Sackett – One of the main beams is totally rotted. It used to be a cottage.

Tom Costello – The above ground section of your drawing.

Kurt Johnson – That is OK that was built in '85.

Tom Costello – And the proposed pink area that is going to be one level or two levels?

Kurt Johnson – It is going to be two levels here the rest is going to be one level where you had to raise up a little to get on top of the ledge with a living room here and this will be a kitchen area. That is all one level.

Tom Costello – How long have you owned the property?

Julie Sackett – Two and half years.

Ed Colello – It is hard to think on an acre of land you can only have one bedroom.

Kurt Johnson – It is flat and goes like this, it drops right off.

Tom Costello – The common driveway you showed us how many houses share that.

Julie Sackett – Five.

Tom Costello – Is there a maintenance agreement?

Julie Sackett – Everyone gets along.

Ed Colello – Can I look at the drawing one more time of what the house is going to look like? So there is your front door right there? That covered area?

Kurt Johnson – Yes. And this is raising up a couple of feet over here to get on top of the ledge as much as we can that is one living room. This is the kitchen over here.

Ed Colello – And the existing part is where?

Kurt Johnson – This here and here.

Tom Costello – Do you have a floor plan?

Kurt Johnson – Yes. This is basically that existing room on the first level, we have a kitchen, dining room here, there is your front entry, foyer and this living room. And on the second level there is the existing bedroom and a bathroom and closets.

Tom Costello – No garage but lots of closets.

Ed Colello – There are two closets there?

Kurt Johnson – Yes.

Ed Colello – How big are those walk in closets?

Kurt Johnson – 6 x 7 or so. They are under the eaves as the roof comes down.

Ed Colello – Which one is bigger one?

Kurt Johnson – 7 x 11 maybe. That is the floor plan the roof comes down and has lower head room.

Ed Colello – So you are going to a one walk in closet that is 7 x 11?

Kurt Johnson – That is the floor itself with the roof coming down it is less.

Ed Colello – And the other walk in is what?

Kurt Johnson – 7 x 8 or so.

Julie Sackett – You can only enter that through the master bedroom.

Ed Colello – But the other walk in closet you can get in through the hallway?

Kurt Johnson – No, through the bathroom.

Julie Sackett – I have a lot of shoes.

Ed Colello – See, I am not accusing you of this but and maybe you would never do this and I don't have a major concern but I am going to voice it that when I look at this nice master bedroom, but two closets one of which could be big enough if you had to for another bedroom.

Julie Sackett – You would have to be really short.

Kurt Johnson – And it is accessed through the bathroom. We worked very closely with the Building Department to make sure that we are not doing... Again we are talking about a 1,600 square foot house.

Ed Colello – I am just voicing my concerns and if we sound a little suspicious it is because we have seen almost anything. This is not a personal attack.

Julie Sackett – Do you want to see my shoes.

Ed Colello – No, and I certainly don't want my wife to see that closet. I have no further questions. So can we go back to the first page so what you are telling me is that you are really getting further away from the property line?

Kurt Johnson – We are 15.2 now to the existing structure that is being removed, that is this corner right here being taken down. The proposed construction is 18.3, I am calling it 18 so we are actually decreasing by a little less than three feet the non-conformity.

Ed Colello – Have we established where the front yard is?

Kurt Johnson – Since it has no frontage, yes Milltown is over here, you access the drive this way that that is where the front door, we are calling that the front setback because it has no frontage anywhere else.

Ed Colello – So you are measuring from the sideyard?

Kurt Johnson – So we have 30 here and we are getting 45 across.

Ed Colello – And what do they need?

Tim Froessel – 30 feet per side and a total of 75.

Ed Colello – So your overall is still under?

Kurt Johnson – We are 45 here and we need to be 30 here we want to reduce it by 12 feet to 18.

Tim Froessel – And that yellow on my left?

Kurt Johnson – Is all being removed.

Ed Colello – Any questions or comments from anyone in the audience? Any other questions from the Board members? Is this something you would like to take a look at? Please understand that this Board has always worked on the basis that if the one Board member wants to look at it we hold it over till next month. Personally I don't know what I am going to see if I went there. And I don't mean that in a bad way. I don't know what I am going to see that I can't see on the map especially since you are decreasing the distance from the property line. What do you think do you think you want to see the site?

Tim Froessel – I don't need to see it.

Ed Colello – So let me just take a note of it. Give me those measurements one more time.

Kurt Johnson – 15.2 existing.

Ed Colello – Right, what do you want to go to?

Kurt Johnson – 18 feet from the west.

Tom Costello – Where 30 is required.

Ed Colello – So obviously there is a 12 foot variance there. And the total is 75.

Kurt Johnson – We can apply it over here we can certainly do that if you want to take the 12 feet and add it to this we are not going to do anything in the woods over here.

Ed Colello – Are we all in agreement that that should be the front where the front door is?

Tim Froessel – Where is the front door now, currently existing?

Kurt Johnson – It is off the deck which is over here where you come in, so it is being moved over here, but it is still along this space.

Ed Colello – So the distance from the property from the corner of where you are going to the eastern point how far is the distance?

Kurt Johnson – What are you asking, I am sorry?

Ed Colello – On the west side you have 18 feet, on the proposed, how far do you have on the east, I need the other side?

Kurt Johnson – We will call it 184.

Ed Colello – You have 184, you only need 75.

Tim Froessel – I think Ron is looking at this is the front.

Kurt Johnson – I think that is what he was looking calling this is the front yard to my mind isn't because Milltown really comes around here because you access the site this way.

Ed Colello – Are we all in agreement that the front side of the property is going to where the new front door is going?

Tim Froessel – That is where the front door is.

Ed Colello – So you don't need relief from the overall.

Kurt Johnson – Right we have ample room.

Ed Colello – So you only need one variance.

Ed Colello – You need a 12 foot variance from the side yard setback on the west side of the property.

Kurt Johnson – And the other thing Ron mentions and I don't know if that needs to be cleared approving the non-conformity of the addition.

Ed Colello – No. Any final comments you would like to make before we close the public hearing?

Kurt Johnson – No.

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

Kurt Johnson – Yes.

Ed Colello – We will close the public hearing.

Public hearing closed.

Ed Colello – So what we have again the applicant needs one variance relief from the side yard setback on the west side a 12 foot variance. I will entertain any motion.

Ed Colello – I will make a motion to grant a 12 foot variance relief from the side yard setback which we have established is the west side of the property. Do I have a second?

Tom Costello – Second.

Ed Colello –

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).

No, obviously what the applicant wants to do will better the property it will certainly not be an undesirable change, it will be a positive change, they had a problem obviously with part of the housing having to be ripped out.

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

No, because it is within the setbacks but I think it is important to know they are getting further away from the property line by the ripping down of those decks.

3. Whether the requested variance is substantial.

They have 18 feet they need 30 they are looking for a 12 foot variance you might call it substantial but it is a reduction as I said from what is there previously.

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

I think it will have none.

5. Whether the alleged difficulty was self created.

Again, we can talk about this all we want any time some wants to put in an addition or a garage or anything you could call it self created but again where the house is located on the lot where it is way over to the west side of the property it would be virtually impossible to do anything without a variance.

Roll Call Vote:

Paul Vink – In favor

Joseph Castellano – In favor

Tim Froessel – In favor

Kevin Sheil – In favor

Tom Costello – In favor

Ed Colello – In favor

The variance was approved by a vote of 6-0, 1 absent.

8) Kenneth Marcellus and Nancy Decker

37 Turk Hill Road

TM# 67.12-1-1

Kenneth Marcellus and Nancy Decker appeared for this application and were sworn in by **Tom Costello**.

Kenneth Marcellus - I am seeking two variances one to modify the existing garage and the second is seek a variance for the setback. I wish to install a 2.5 by 11 foot extension to the rear of one bay of the garage on the property. There is a plot plan with the survey with the location of the project in the upper right hand corner of the property.

Ed Colello – So what you want to do is that jot right there.

Kenneth Marcellus – That little jot there.

Ed Colello – You bought a car that doesn't fit.

Kenneth Marcellus – Unfortunately, yes. There is a picture of the truck if you look back here a little further. There is the truck, this is the garage. The usual space in garages is 21.9 the truck is 22.4 inches so it is 7 inches too long. The addition of this proposed addition I will be able to park the truck inside and close the door. I would have about 15 inches of space behind the truck to walk. The photographs shows you the view of the

property this portion of the driveway is not visible by the neighbors with the exception of one to the west. I have drawn the sketches of the nearest property.

Ed Colello – So the extension will jut out 2.5 feet and it will be 11 feet across?

Kenneth Marcellus – Yes.

Ed Colello – And how high will be the height of the garage?

Kenneth Marcellus – The height of the extension?

Ed Colello – Yes.

Kenneth Marcellus – About 6 1/2 feet.

Ed Colello – The garage is higher than that though?

Kenneth Marcellus – The garage is 23 feet high. On drawing number two which is attached to the back there is a profile view. Drawing four shows the height of the extension to be 6 foot 3 inch from the top of the foundation.

Tom Costello – From the photographs it looks you almost have to dig out, it looks like the garage is almost nestled against the hill a little bit?

Kenneth Marcellus – The land is level behind the house for about 15 feet and in that particular area there is a former shed that was built there and that has since been removed about ten years ago. The extension cannot be built without having to build out the ground there it will be about six inches above the ground. It will be country post and rails to support the outer edges and 2 x 6 on top of those posts. I talked to five of my neighbors including the ones immediately adjacent to the property no one has any concerns or voiced any concerns about the property. Other neighbors included two, three developers and St. Lawrence.

Tom Costello – Did you say how long you have owned the house?

Kenneth Marcellus – Ten years, purchased it in 1995.

Ed Colello – Any questions from the audience at all? Any other questions from the Board? Let me ask you this do you think this is something you want to look at?

Linda Stec – I sent this to the county because this is Turk Hill Road.

Ed Colello – We can't vote on this tonight. You are on a county road or within 500 feet, state or county, the county has to be notified and the county office of planning looks and 99.9% they come back and see they have no issues but legally we can't vote on this till we have their response. We have to give them 30 days.

Kenneth Marcellus – It would helpful if the handouts for an application like this would put a note in it to that effect so I could contact them.

Ed Colello – You can't we have to that. We have to hold you over to next month. You will be number two on the agenda. That is December 19th.

Kenneth Marcellus – Very good.

9) John Wahlers
40 Tonetta Lake Way
TM# 56.12-3-45

John Wahlers appeared for this application and was sworn in by **Tom Costello**.

Ed Colello – Let me say for the record that I have served on the Little League Board with John over the years. He has coached my daughter in softball but for the record I feel that I can be impartial with regards to this application.

John Wahlers – What I am asking for is a variance on the two sides so that I can keep the shed that you see here. It is very close to property line. It is closer than I would have put if I had understood where the property was when I put it in. The problem is back here there is a drop off and I put this well away from the drop off and I didn't understand wasn't where the property ended. It isn't over the property line but it is close. The only place I could put the shed where it would be out of all the setbacks would be in the center of the yard and I would have to put it the other way.

Tom Costello – How large is the shed?

John Wahlers – It is 150 square feet, it is 15 x 10. It is 6.10" high and the drop off down from the road down the shed is 4 or 5 feet so the top of the shed is almost at road grade right now. If I move it any closer to the road it would rise up. It is painted barn red so it blends in.

Ed Colello – How old is the shed?

John Wahlers – The shed is about a year old.

Ed Colello – Did you make it or did you buy it?

John Wahlers – I bought it I have a description here and bill of sale. I have letters from the two property owners that are affected by the setback you can read those.

Ed Colello – The first one:

“**John Wahlers** is a good neighbor and a great person. John and I don't really have a problem with the shed where it is. It is close it doesn't create a problem with this. John is doing a lot of work on his house and working very hard to make it look really nice. It is really nice.

John and Janice Cipriani”

Ed Colello – Where do they live in regard to your property?

John Wahlers – They live right here.

Ed Colello – To the north. And the second is:

“I understand John Wahlers is asking for a zoning variance to keep his shed inside the setback from our common property line. I have no objection to the shed remaining in its current location.

Mrs. Doris Ross”

Ed Colello – Where does Mrs. Ross live?

John Wahlers – They live way out this way but they own this land back there.

Ed Colello – What about here?

John Wahlers – They also own this here. I have the tax map here so you have an idea of what is going on.

Ed Colello – The people that own this piece gave you a letter and the people on this side gave you a letter?

John Wahlers – Yes.

Tom Costello – Where is Tonetta Lake Way?

John Wahlers – It is in Tonetta Lake Park, it is the lower road, the first house on the right. All this is empty land.

Tom Costello – Where is your lot?

John Wahlers – This is my lot.

Tom Costello – And this is Ross?

John Wahlers – Yes, and this is Cipriani.

Ed Colello – And your lot is how many square feet?

John Wahlers – 96 and change by 70.

Tom Costello - .16 acres

John Wahlers – If I was going to put the shed outside all the setbacks it would have to be dead center in the yard. Do you have any questions about this application?

Tom Costello – I would like to look at it.

Ed Colello – You will be number three on the agenda. Any other questions of the applicant?

Tom Costello – Bring this back next month.

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

Ed Colello – Do I have a second.

Joseph Castellano – Second.

Ed Colello – All in favor.

All in favor

Meeting ended at 11:30 PM.

Submitted by:

Linda M. Stec