

**Town of Southeast
Zoning Board of Appeals
Minutes of December 16, 2024**

Timothy Froessel, Chairman	Present
Roderick Cassidy, Vice Chairman	Present
Greg Wunner	Present
John McNeill	Present
Steve Corozine	Present
Scott Seaman	Present
Anthony Zito	Present
Will Stephens, Jr., Town Attorney	Present
Victoria Desidero, Secretary	Present
JoAnne Ciralli, Assistant Secretary	Present

Work Session:

Regular Session:

Pledge of Allegiance

Introduction

1. Robert & Marguerite Leder, 186 Starr Ridge Road, Tax Map ID 68.17-1-14

This was a Continued Public Hearing to review an application for an Accessory Apartment renewal in the R-60 Zoning District requiring an Interpretation as to whether the Accessory Apartment is subject to Section 138-22 of the Town Code which requires either the Accessory Apartment or the Primary Dwelling to be owner occupied; or if subject to Town Code Section 138-22, a Use Variance to permit the Accessory Apartment renewal to be issued without the requirement for either the principal dwelling or Accessory Apartment to be owner occupied, which is not permitted in the R-60 Zoning District. Attorney William Shilling and Owner Robert Leder represented the application and were sworn in.

SEE ATTACHMENT A FOR TRANSCRIPT OF PUBLIC HEARING

Town Proclamation by Town Supervisor Nick Durante in Honor of Tim Froessel's Retirement

2. Christie & Eric Johnson, 419 Allview Avenue, Tax Map ID 67.18-1-8

This was a Public Hearing to review an application for a proposed shed in the R-60 Zoning District that requires a west rear setback variance of 16 ft. where 4 ft. is proposed and 20 ft. is required, and a south side setback variance of 12 ft. where 8 ft. is proposed and 20 ft. is required. Owner Eric Johnson represented the application and was sworn in.

Mr. Johnson: Sure. I'm just trying to have a shed built in my backyard, in the rear left-hand side corner of my backyard. It would be kind of nestled in the corner. It would be... it would be the, I think, the 20-25 ft. that your... that the (inaudible) says needs to be... the distance from the corner of the property.

Chairman Froessel: OK. And the application shows a 10 by 16 shed. Is that correct?

Mr. Johnson: Right. Yeah. That's the picture in front of (inaudible) exact shed I'm putting.

Chairman Froessel: Is there.... is there a house behind it? I drove by. It looks like there's just trees (inaudible).

Mr. Johnson: There is. It's (inaudible). They're deceased. They've been deceased for eight years now. It's... no one... I think the daughter owns it and she lives in Connecticut somewhere. It's unoccupied. It has been for years.

Boardmember Cassidy: Is your gazebo by your deck?

Mr. Johnson: The gazebo?

Boardmember Cassidy: Yes.

Mr. Johnson: Oh, no. It's... it's to the right.

Boardmember Cassidy: (Inaudible).

Mr. Johnson: Yeah. That's... that was another... that's not why I'm coming for this... that's...

Boardmember Cassidy: Is there a gazebo on your property?

Mr. Johnson: Yes. On the right-hand side. Yeah.

Chairman Froessel: (Inaudible) setbacks. You're looking at the 4 ft. from the rear property line and 8 ft. from the side. Is that correct?

Mr. Johnson: Right.

Chairman Froessel: All right. Anyone on the Board have any questions for the applicant? No? OK. Is there anyone in the audience that has any questions or comments on this application? No? OK. Everybody OK voting on this this evening?

Multiple Board members: Yes.

Chairman Froessel: OK. All right. Our procedure is, after you make your presentation and we ask our questions, we then close the Public Hearing. We don't take any more testimony and... and then the Board will... will vote. We may deliberate before we vote. Before I close the Public Hearing, do you have any final statement you'd like to make in support of the application?

Mr. Johnson: Just both my neighbors, well, my one neighbor that's currently the shed would impact, if you will, has no issues with the shed being there.

Chairman Froessel: And the neighbor has a shed in the same corner, I think, right? (Inaudible).

Mr. Johnson: (Inaudible) I wasn't going to say.

Chairman Froessel: I... I thought I could see that from the road. OK. Very good. Do you feel you've been given a fair and adequate opportunity to present your application?

Mr. Johnson: Yes.

Chairman Froessel: Thank you. It's a shed. I don't think it requires a whole lot of deliberation. If anyone has any motion they would care to make on this application, I will entertain it.

The motion to grant the west rear variance of 16 ft. and a south side variance of 12 ft. for the application was introduced by Boardmember Cassidy, seconded by Boardmember Corozine. Boardmember Cassidy addressed the criteria:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties would be created by the granting of the Area Variance.
No. Absolutely not. Having a shed is completely consistent with this neighborhood as evidenced by the fact that your neighbor has a shed himself.
2. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than the Area Variance.
I suppose so, but that would require you to place the shed in the middle of your backyard.
3. Whether the requested Area Variance is substantial.
I'd say substantial, but not so substantial that it should be denied.

4. Whether the proposed variance will have an adverse effect or impact on the physical environmental conditions in the neighborhood.
There's been no testimony to that effect.
5. Whether or not the alleged difficulty was self-created.
Yes. It was, but only to the extent that the applicant wants to have a shed like many of his neighbors.

Roll Call Vote:

J. McNeill	In Favor
G. Wunner	In Favor
R. Cassidy	In Favor
S. Corozine	In Favor
T. Froessel	In Favor
A. Zito	In Favor
S. Seaman	In Favor

The motion to approve the variance as stated passed by a vote of 7 to 0.

3. David Palaia, 75 Vails Lakeshore Drive, Tax Map ID 79.-1-40.-78

This was a Public Hearing to review an application for a proposed single-family dwelling in the R-40 Zoning District that requires an east front variance of 11 ft. where 39 ft. is proposed and 50 ft. is required, a south side variance of 8.5 ft. where 16.5 ft. is proposed and 25 ft. is required, a north side variance of 10 ft. where 15 ft. is proposed and 25 ft. is required, and a total side setback variance of 38.5 ft. where 31.5 ft. is proposed and 70 ft. is required. Architect Richard Vail represented the application and was sworn in.

Mr. Vail: Good evening. My name is Richard Vail and I'm the Palaia's architect. We're proposing to demolish an existing house at 75 Vails Lakeshore Drive, right on Peach Lake, and we'll be constructing a new residence, five-bedroom residence. It's about 5,800 sq. ft. not counting the garage. The lot is .41-acres. So... so, it's a decent sized lot for Vail's Grove.

Chairman Froessel: For Vail's Grove, that's a big lot.

Mr. Vail: Yeah.

Chairman Froessel: I see you're... you're just under the lot coverage, like 39.8%.

Mr. Vail: Right. Yeah. We just made it under. So, we didn't have to ask for that variance. So, we've been pretty thoroughly vetted by the Co-op. They've reviewed. We had some back and forth. So, we came to a place where they could approve it. So, we had the... I think I submitted that with the application... the approval letter, and the Co-op has a more stringent rule on building height. It's 30 ft. from the average grade to the peak of the roof, which is quite a bit more strict than the Town Code on building height. So, we're... we're just at the 30 ft. height, but you know. So, from the street, it's... it's a sloping site so, it... I think we're about 20... from the actual street, we're at 21... probably peak about 20-22 ft. So, you know, I think from the street, it's not going to be a very imposing structure. It's just that the site's sloped so that its... from the lakeside, it does, you know...

Chairman Froessel: That's actually a walkout basement?

Mr. Vail: Walkout basement. Yeah. (Inaudible) site slopes down toward the lake. Looking at the house directly to the south... neighboring houses there, it's probably a few feet taller than (inaudible). So, it's kind of within scale with what's around it.

Boardmember Corozine: Rich, how different is the new structure as compared to the footprint that's there today?

Mr. Vail: Today, it's a... it's a one-story house, and it's practically in the same location. You know, it's... the house itself is probably a little further set back. The existing house has (inaudible) the garage is a little bit forward, I believe, but it... I don't know the exact square footage of the existing, but this is a bigger house, you know, but, you know, two stories.

Boardmember McNeill: Is the bedroom count the same?

Mr. Vail: No. I think... I don't know the exact bedroom count. You know, we're tearing the house down. So, (inaudible), but it, I think we are adding bedrooms (inaudible) now.

Boardmember McNeill: Board of Health?

Mr. Vail: It's a sewer.

Boardmember McNeill: Oh, you're on sewer. Yeah. I'm sorry.

Mr. Vail: Yeah. Correct. So, we're going to be going forward with that. The next step is (inaudible) application (inaudible) there, too.

Chairman Froessel: OK. Anyone else have any questions? Anyone in the audience have any questions about this application? No? OK. There are no hands. I'm trying to think if I have any. I don't think I do. One of the key issues for me was the lot coverage, and I saw you were under, so... Because this looked like, at first it looked like a pretty ambitious project for Vails Grove, but the fact that it is a larger lot than you typically see there...

Mr. Vail: Right. Yeah. That's the... that's the difference from other lots.

Chairman Froessel: OK. We're all OK voting on this?

Multiple Board members: Yes.

Chairman Froessel: OK. All right. Before I close the Public Hearing, are there any final comments you'd like to make in support of the application?

Mr. Vail: No. What's next for you? (Laughter).

Chairman Froessel: That's a good question. (Laughter). Do you feel you've been given a fair and adequate opportunity to present your application?

Mr. Vail: I do.

Chairman Froessel: OK. Great. Thank you. All right. I'll entertain any motion. Actually, you know what, tell you what, I'm going to go out making the motion.

The motion to grant the applicant an 11 ft. variance from the 50 ft. requirement on the east front setback, an 8 ½ ft. variance on the south side setback from the 25 ft. requirement, a 10 ft. variance from the 25 ft. requirement on the north side setback, and a 38.5 ft. variance from the 70 ft. requirement for the total side setback requirement was introduced by Chairman Froessel, seconded by Boardmember Cassidy. Chairman Froessel addressed the criteria:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties would be created by the granting of the Area Variance.
I think the fact of the approval by the Vail's Grove Cooperative is pretty substantial evidence that there is not an undesirable change to the character of the neighborhood and there's no one here complaining about it.
2. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than the Area Variance.

No. Even though this is a little bit larger lot than typically seen at Vail's Grove, the setbacks still encroach and create a pretty small building envelope on what is otherwise a pretty narrow lot. So, I don't think that the applicant can achieve this... what he wants to do without a variance.

3. Whether the requested Area Variance is substantial.
Arguably, some of these dimensional variances are substantial. However, I will say that in relation to other variances that we have granted in Vail's Grove, it is not, and I think that the comparative assessment is important here.
4. Whether the proposed variance will have an adverse effect or impact on the physical environmental conditions in the neighborhood.
There's no evidence of that, and it's been duly noted that that area is on sewer anyway.
5. Whether or not the alleged difficulty was self-created.
It was self-created to the extent that the applicants want to build a new house, but I don't think that that is sufficient to vote against the variance.

Roll Call Vote:

J. McNeill	In Favor
G. Wunner	In Favor
R. Cassidy	In Favor
S. Corozine	In Favor
T. Froessel	In Favor
A. Zito	In Favor
S. Seaman	In Favor

The motion to approve the variances as stated passed by a vote of 7 to 0.

The motion to approve the Meeting Minutes of November 18, 2024 was introduced by Chairman Froessel, seconded by Boardmember Cassidy and passed by a vote of 7 to 0.

The motion to adjourn the meeting was introduced by Chairman Froessel, seconded by Boardmember Cassidy and passed by a vote of 7 to 0.

Respectfully submitted,
Victoria Desidero
JoAnne Ciralli

ATTACHMENT A

TOWN OF SOUTHEAST ZONING BOARD
ZONING BOARD DISCUSSION AND PUBLIC HEARING

Tax Map ID 68.17-1-14

Application of Robert and Marguerite Leder

Public Hearing to review an application for an Accessory Apartment renewal in the R-60 Zoning District.

Town of Southeast Zoning Board of Appeals

1360 Route 22

Brewster, New York

December 16, 2024 8:00 p.m.

ZONING BOARD PUBLIC HEARING

APPEARANCES:

LAW OFFICE OF SHILLING & SMITH, P.C.

Attorneys for Applicants Robert and Marguerite Leder

1961 US 6, Suite 3

Carmel, New York 10512

BY: WILLIAM SHILLING, ESQ.

CYNTHIA WHITE, R.P.R.,

Official Court Reporter

BOARD APPEARANCES:

TIMOTHY FROESSEL, CHAIRMAN

RODERICK CASSIDY, VICE CHAIRMAN

STEVE COROZINE, Board Member

JOHN MCNEILL, Board Member

SCOTT SEAMAN, Board Member

GREGORY WUNNER, Board Member

ANTHONY ZITO, Board Member

ALSO PRESENT:

VICTORIA DESIDERO, SECRETARY

JOANNE CIRALLI, ASSISTANT SECRETARY

ALSO PRESENT FOR THE BOARD:

WILLIS H. STEPHENS, JR., ESQ., Town Attorney

PRESENT FOR THE APPLICANT:

ROBERT LEDER, Applicant

(Pledge of allegiance held.)

THE CHAIRMAN: All right. Good evening. Welcome to the December, 2024 Public Hearing for the Town of Southeast Zoning Board of Appeals. My name is Tim Froessel. I'm the Chairman. To my left is our Vice Chairman, Rod Cassidy. All of our other board members are present this evening. To my left, John McNeill and Greg Wunner. And to my right, Steve Corozine and Scott Seaman and Anthony Zito. All are present. We have three items on the agenda this evening. Number one is Robert and Marguerite Leder. It's a holdover from last month. Number two is Christie and Eric Johnson and number three is David Palaia. So, with that, why don't we get started with number one. Come on up. If you gentlemen can state your names and addresses for the record, and then I'm going to have the Vice Chairman swear you in.

MR. SHILLING: Good evening.

THE CHAIRMAN: Good evening. If you could just state your names and addresses for the record, please, and I'm going to have the Vice Chairman swear you in.

MR. SHILLING: Yes. For the record, my name is William Shilling; 1961 Route 6, Carmel, New York, for the Applicant.

MR. LEDER: Robert Leder; 76 Van Buskirk Avenue, Stamford, Connecticut.

MR. CASSIDY: Gentlemen, would you please raise your right hands. Do you swear that the testimony you are about to give is the truth to the best of your knowledge?

MR. SHILLING: Yes.

MR. LEDER: Yes.

MR. CASSIDY: Thank you.

THE CHAIRMAN: Okay. We kind of started backwards last time because of the adjournment. But we had folks here who wanted to say something so we let them go ahead. But we're going to start with your presentation first tonight.

MR. SHILLING: Yes, well, I'd like to apologize for my last-minute adjournment. I had a medical issue that made it impossible for me to get here.

THE CHAIRMAN: No need to apologize.

MR. SHILLING: It was very late. My name is William Shilling. I represent Robert Leder, who is here this evening with me today. The property is 186 Starr Ridge Road. It's in Brewster. It was built in 1979 as an accessory apartment. It's in an R zone, residential zone. It consists of 1.05 acres. The structure is now and always has been a three-bedroom. That's not going to change. The physical appearance of the building won't change. There will be no cosmetic change, no construction changes. It will be exactly the same as it has been since 1979, when the accessory apartment was built. The property is serviced by well and septic. Our requested relief is two-fold. The first part of our action is to seek an interpretation pursuant to 138-56 (1) of the code, which I put in front of you. And in the end the interpretation is simply to state that under this law this two-family is permitted to continue to exist. Under this modification and grandfather clause this two-family is permitted to exist. Again, pursuant just to this section, and not to the accessory apartment, the legislation which precedes it. This property, as I said, was built in 1979. And the section that I speak to speaks about a structure. It doesn't speak about a use. It speaks about grandfathering a structure. And to that extent, it says that a structure which existed prior to 1988 which don't necessarily comply or meet the requirements of the section may be allowed to continue as a separated dwelling. And

separated dwelling is not defined. It's nowhere in the definitions defined, but we submit as part of your interpretive ability is to say a separated dwelling can be a two-family. It's important that I stress again that the grandfather part of this has nothing to do with the accessory apartment. It has to do with the structure itself. And the structure itself as a two-family is consistent with that which the code provides as a separated dwelling. So we believe that, and I'll elaborate a little bit further, that we can continue as a two-family based on the fact that we're compliant with all four of the requirements set forth in this legislation, and that our use is consistent or similar in fact to a separated dwelling purpose and that it can continue as a matter of law. I will stress this more than once but I don't expect or necessarily hope that you would agree with my construction or my interpretation. But I do believe I'll bring to your attention there's a very big ambiguity or an uncertainty as to what a separated structure is. And if you can agree with me that a separated structure could or is a two-family, then we're doing something which we're absolutely permitted to do. And I would say clearly that the people who framed this legislation had something in mind for an accessory apartment that stopped. It says it can be used for a separated dwelling. And I think the code framers, the people who made this legislation, had in their mind that it wasn't going to be turned into an accessory apartment. It wasn't going to be a one-family. It was going to be a separated dwelling which again is not defined in the code. In the alternative, we'll seek a use variance. As I told you, the building was constructed in 1979 as an accessory apartment. But for ten years it's been used as a two-family. And I'll talk a little bit about the facts in just a minute, but it's been a two-family since 2014 and people who are here in opposition bought seeing that it was a separated dwelling or a two-family or an accessory apartment and really can't be hurt to say that this is inappropriate or we're being prejudiced because in fact they're not and it's been there since 1979. We are seeking use variance standards, but this is really analogous to an enlargement of a predated use. It's not a true use variance in the definition of the word where you are putting a commercial in a residential or an industrial in a commercial. This is an existing use that's not obnoxious to the neighborhood and it's not obnoxious to the code. It's a residential use. And if you look at the photograph that I posted, it fits in perfectly with the neighborhood and has done so since 1979. And when you talk about an enlargement of a preexisting use or a change in that preexisting use, any type of deviation from a preexisting use, those applications even though use variance standards, pass with much greater frequency than a use variance. You put a gas station in a residential neighborhood. This is a use that's mired. It's set. It's been there since '79. It's not changing. And we're talking about a continuation and perhaps an enlargement. In those instances use variances pass with far more frequency than the former, where you are putting something that doesn't belong there. In support of what we're saying today we submitted my clients' affidavit as part of your record. I submitted a memorandum of law. We brought some neighbors' letters in that supported the application. And I submitted to you an affidavit -- it might have been a letter -- a letter from a real estate broker saying that if it goes down to a one-family, it declines in value by \$50,000. And then I brought a contractor in. His affidavit says to convert it to a one-family would be a hundred thousand dollars -- that would be \$50,000, for a total of a hundred thousand dollars loss to change this thing to something that it's been for a long, long time. And I submit to you, even though that's not the typical reasonable attorney arguments you hear for a use variance, clearly my client will be hurt if this application is denied. The pertinent facts of this are the accessory apartment as I said was built in '79, and it was legally recognized as such. And my client lived with his mother there until 2014. 2013, forgive me, when his mother passed away.

MR. LEDER: Well, I moved out earlier than that. My mother had tenants. Accessory apartment.

MR. SHILLING: And she was an owner. In any event, mom died in 2013. And for a short period of time it was just occupied by a woman. But then it was a full-blown two-family and it has been since 2014. I want to tell you that I'm aware of how difficult and the rigid standards you need to create an accessory apartment. That's not before you tonight. Nothing about creating or meeting the criteria for an accessory apartment, it's not here. That ship has sailed. We're looking to proceed simply on the article which I stated to you previously. And it's a grandfather clause and once again it says an accessory apartment which legally existed on a single-family lot, which it does, prior to 1988 -- we're in 1979 -- which does not necessarily meet all the standards, i.e., owner-occupancy, can continue to exist as a separate dwelling. We need. We're on all fours here, all four of these things First of all, while separated dwelling isn't defined, again I say to you that if it's not a two-family, I don't know what it could be. If it were defined we would know but it's not. And it's the accessory building that we're looking for grandfathering, not the use itself. So we're not here to try to establish an accessory dwelling. That's not what we're here at all for. We're here solely to say that it was an accessory apartment. It stopped being an accessory apartment as the code provision envisions. And now because it was built before 1988, you don't have to comply with all the requirements of accessory. That's in the statute, i.e., owner occupancy. You can continue to use it as a separated dwelling. So I really hope that you'll read the statute and listen to the fact pattern that I'm giving you to then be convinced that we're on all fours here. This is an absolute as-of-right use that we're proposing. Again, the four prongs; structure, former accessory structure built before 1988, not meeting all the requirements of accessory apartment can continue to be used as a separated dwelling. And that's what we're doing here. And, again, it seems to me that we're on all fours here as to what the code envisioned. If I had to guess, the framers when they made this, they came to realize accessory dwellings would sometimes become vacant and it may be impossible to sell it as a single-family and so that they enhanced the ability to separate a dwelling to make it more marketable. The preamble of your code talks about the need to keep these buildings and how important they are to the Town itself. So I'm asking you to find this to be a reasonable construction, the code, a reasonable interpretation we're seeking. And, again, my burden is not to ask you to follow into what I'm saying. My burden is for you to say, yeah, this is ambiguous or yeah, this is confusing. It's not clear what they can do with this property. I'm not sure what a separated dwelling is. But I think it's a reasonable construction to say a separated dwelling is a two-family. We're not changing anything about the structure, not the bedroom count, nothing construction, nothing cosmetic. The building is going to stay exactly the same. So, again, if you agree with me, and I hope you do, that there's confusion or there's ambiguity, ambiguity as the lawyers on the Board know it, Board members know it, ambiguity has got to be settled in the favor of the land owner. If there is any confusion, if there is any unclearness, if there's any ambiguity, by law it has to be construed in the land owner's favor. I did also give a memorandum of law with regard to a use variance. And, again, I'll tell you, this is not your typical use variance. This is not an obnoxious use in a residential zone. This is a use that's absolutely compliant. And maybe we're changing it or maybe we're enlarging it, and if you consider that as an enlargement or as a change, please review the law that I gave you that says changes or enlargement of preexisting uses pass with far more frequency than a gas station in a residential zone. Our use is not obnoxious, which is why use variances are so hard because getting a use variance almost always means you are proposing a use that's obnoxious to the code. So I've asked you for your interpretation, and if you don't find the interpretation or the wording to be ambiguous, I would ask

you to consider the factors of a use variance which I gave to you in my memo. The first one is, and most importantly by case law, is neighborhood. This has been here since 1979 and it's not changing. There's no change in the neighborhood. Neighbors who came in here saw what it was. They saw it as -- maybe as an accessory apartment. They saw it as a two-family. They're not being prejudiced by this. There's three bedrooms. They'll always be three bedrooms. So the neighborhood is not going to be changed. It's unique. And why is it unique? Because we meet the four prongs of the grandfather language. Most importantly, this code says if it's built after 1988, don't come. You are not eligible. We built in 1979. So we meet it there. Don't necessarily meet all the requirements. Again, one of the requirements set forth in your code is owner-occupied. We don't meet that but that doesn't mean you can't grant us relief. Can use it as a separated dwelling. That's what we think we're doing right now. So I would ask you with regard to uniqueness to find that it is a unique application. With regard to hardship, again, I submitted some paperwork that showed the broker says it's going to -- the diminution of value is going to be \$50,000 if it's not a two-family or -- and to convert it to a one-family is \$50,000. So by that standard my client stands to lose a hundred thousand dollars. For what? Why would you make him convert to a single-family when it's been that way for so long. It could pass for a single-family. Nobody in the neighborhood is being hurt by this. And it's not self-created. It happened because Robert's mom died and it stood for a while as owner-occupied and then it became a two-family. And it's been a two-family for ten years now. So I'll just conclude and ask you to say if you please, please, please take a look at the interpretation I'm seeking. This statute we're right on target with. We're compliant right now. And in my opinion, our right as a two-family under these circumstances, these limited circumstances, is of right. All right. We talked about the fact that there is noncompliance of some -- we complied with all the accessory apartment issues, with the dimensional ones except for the owner-occupied. There's clear ambiguity. Nobody knows what the actual term or what a separated dwelling is. And you have to guess. You have to conjecture. It's ambiguous. That should be in my opinion your lead to say wait a minute, you've met your burden, it's ambiguous. We have to find in favor of the Applicant. And then maybe write a letter to the framers, to the Town Board. Your Board is responsible to interpret. Their Board is interpreted to make the law. And I don't think they made it right if they're not furthering the case that I think they're furthering by considering this two-family as the same thing as a separated dwelling. And then if you don't find ambiguity, I hope you'll see that under all the circumstances this is not a use variance within an obnoxious use. This is a use that's compliant with the neighborhood. We've shown elements of neighborhood, of hardship. We've shown that it's unique. You're not going to get precedential impact from this. This is really unique. The dwelling had to be built after 1988. There had to be all these things that we apply to or we comply with that others won't. So I don't think they'll be an impact. And, again, it's not self-created. So I'll field any questions that you might have and I thank you for your time.

MR. COROZINE: I have two questions of clarification. Since 1979, when the house was built, have there been any layout or structural changes made?

MR. LEDER: None.

MR. COROZINE: Nothing, okay. And then the second question I had is back when it was built, what physical characteristics would you say made this a two-family house?

MR. LEDER: Two kitchens, two living rooms. You know, it was actually four bedrooms. There's three in the larger unit and then it's, you know, a living room, and a loft and a small -- You know, if you just look at the floor plan on it, it would make a vast sprawling single-family house that doesn't really comport with most people's needs. Two kitchens for a one-family is strange, you know, so --

THE CHAIRMAN: I have a question. Did you review either the Building Department or the Assessor's records regarding when the accessory apartment was granted a certificate of occupancy?

MR. SHILLING: I am here under oath telling you I'm pretty certain it was a 1979 accessory apartment CO.

THE CHAIRMAN: I am looking at the Assessor's New York State Division of Equalization and Assessment card. This is the old one. This is available on the Town's website. And it's handwritten 5/19/2000 CO accessory apartment.

MR. LEDER: So, you know, originally those first 11 years or however long that was, it's longer than that, 20 years, my grandmother lived in the smaller unit. That's why it was built that way. It was a mother-daughter situation. My grandmother was getting older. We moved up from Yonkers. And she occupied that, you know, that unit. Myself and my mother were in the other side. And my grandmother was not well enough to be on her own. She went into assisted living around 2000, so that was probably when, you know, my mother started looking into renting it out to a third party and at that point she probably would have gone through whatever the legal requirements were.

THE CHAIRMAN: Okay. Because what the Code says is that the grandfathering applies to accessory apartments or accessory dwelling units which legally existed prior to 1998. And it looks like this did not -- if I'm reading this correctly -- this did not legally exist prior to 1998. The CO was granted in 2000.

MR. SHILLING: My understanding was that it was built as an accessory apartment in 1979, legalized at that time. I don't have the CO in my possession but that's what I understood the case

MR. LEDER: I mean, there was no rent changing hands between my grandmother and my mother. So, you know, there may have been no need for some sort of a legal variance at that point. You know, I don't know. It was - definitely it was two dwellings.

THE CHAIRMAN: Okay. But as you sit here today you don't know if there was a CO for that apartment prior to 1998?

MR. SHILLING: You're looking at the Assessor's records?

THE CHAIRMAN: Correct.

MR. SHILLING: Are you looking at the Building Department records?

THE CHAIRMAN: I'm looking at the Assessor's records.

MR. SHILLING: Okay. My understanding, and I'm under oath, was that it was approved in 1979.

THE CHAIRMAN: What's the basis of your understanding?

MR. SHILLING: My memory. And --

THE CHAIRMAN: You were there in 1979?

MR. SHILLING: Oh, no. No, my -- no, I wasn't there in 1979.

THE CHAIRMAN: Okay.

MR. SHILLING: My knowledge. My knowledge of the file when I reviewed it and my belief that the Building Department issued it in 1979.

THE CHAIRMAN: All right. I've got a document that says otherwise.

MR. SHILLING: I understand.

MR. LEDER: I mean, if it's an extended family occupying –

MR. SHILLING: It doesn't matter.

MR. LEDER: Okay.

THE CHAIRMAN: Anyone else?

MR. SEAMAN: When the rental registration law came into effect in Southeast, was it registered as a rental unit at that time?

MR. SHILLING: I don't know the answer to that. Do you?

MR. LEDER: I don't know. When did that come into effect?

MR. SEAMAN: Within the last five years.

MR. LEDER: No, then it wouldn't have been. I've been unwittingly -- since my mother passed, I've been unwittingly sort of renting it out as a two-family, not knowing about the owner occupation -- occupied requirement. So –

MR. SHILLING: Mr. Chairman, if you are limited to the use variance or criteria, having found what you found, I would really appreciate your consideration of that.

THE CHAIRMAN: Of -- consideration of what, the use variance?

MR. SHILLING: Yeah.

THE CHAIRMAN: Oh, we will consider both for sure.

MR. SHILLING: But the '79, '88 thing, which is statutory, I'm here on the premise that we got it in '79 and –

MR. LEDER: It was de facto two dwellings, whether or not the paperwork was –

MR. SHILLING: Well, it has to be, so –

MR. LEDER: Okay.

THE CHAIRMAN: The Town ordinance has the word "legally" as I said.

MR. LEDER: Okay.

MR. SHILLING: Yes.

THE CHAIRMAN: If it was just existing, that would be a different story. But legally existing, that implies a CO.

MR. LEDER: Okay.

MR. STEPHENS: Could I ask a question? You've reviewed the Building Department records?

MR. SHILLING: Yeah.

MR. STEPHENS: Do you recall whether there's a CO showing accessory apartment?

MR. SHILLING: Mr. Stephens, I wouldn't be here and argue that we're on all fours without it so I have to say that I did. But I –

MR. STEPHENS: If it exists, we should –

THE CHAIRMAN: We should maybe get it.

MR. STEPHENS: Yeah.

THE CHAIRMAN: I agree.

MR. LEDER: If that unit was not permitted to be occupied, I mean

MR. SHILLING: The question is was it legally built as an accessory apartment in '79.

THE CHAIRMAN: I'm going to make you an offer right now.

MR. SHILLING: Yeah.

THE CHAIRMAN: If you want to put this off for a month and go check the Building Department records to see what you can find.

MR. SHILLING: May I ask a question in return?

THE CHAIRMAN: Sure.

MR. SHILLING: Would you gentlemen be willing to, because it's separate and different, would you be willing to make a decision based on use variance standards?

THE CHAIRMAN: Not -- well, I think there's a logical order to this. And I think the sequence is --

MR. SHILLING: Okay.

THE CHAIRMAN: -- we have to look at the grandfathering issue first.

MR. SHILLING: I -- I --

THE CHAIRMAN: Because if it's grandfathered, we never have to get to the use variance.

MR. SHILLING: Okay.

THE CHAIRMAN: So I think my preference would be to do it --

MR. SHILLING: Fine.

THE CHAIRMAN: -- in that order.

MR. SHILLING: I'm fine with that, sir, yeah.

THE CHAIRMAN: Okay. And look, I think we should know it. There probably are records at the Department that you can come here and show us. If it was legally existing prior to 1998, then, you know, if you can show me a CO, then you're in great shape.

MR. SHILLING: Okay. I understand.

THE CHAIRMAN: Okay. We have some folks here in the audience who spoke last month on this. Is there anyone who would like to come up and make any further statement?

MR. SHILLING: Should we sit?

THE CHAIRMAN: You can stay there if you like. Come on up. Yeah, come on up. And if you can just state your name and address and I'll have --

MR. FUCITO: Paul Fucito; Cobb Road, Brewster, New York. me, sir. yes, sir.

MR. CASSIDY: Can you raise your right hand for me, sir.

MR. FUCITO: No trouble. Raise my right hand, yes sir.

MR. CASSIDY: Do you swear that the testimony you are about to give is the truth to the best of your knowledge?

MR. FUCITO: I do.

MR. CASSIDY: Thank you.

MR. FUCITO: I've lived on that road for 50 years. Going on 50 years. I knew his mom there. I just want to speak for fairness. When I say fairness, is that -- was that the intent of the original owner to have a two-family house? Because that's what we're trying to do here, is to turn that one-family house into a two-family. Is that fair to everybody? Can I do that? Can everybody else do that? Once it starts, does it just keep going?

MR. MCNEILL: Well, I think, Mr. Fucito, that going back to the Building Department will determine that. And if we have some documentation that this house was constructed --

MR. FUCITO: Okay.

MR. MCNEILL: -- in 1979 --

MR. FUCITO: With a CO.

MR. MCNEILL: With a CO.

MR. FUCITO: For that apartment?

MR. MCNEILL: For that apartment.

MR. FUCITO: But does that mean if it's an apartment it can now be a non-owner-occupied apartment, two of them? See what I'm getting at? Because the owner is not living there.

THE CHAIRMAN: You raise a fair question. Because there's the issue of legal apartment prior to 1998 and, however, the owner we're being told was –

MR. FUCITO: If the owner was there –

THE CHAIRMAN: -- residing there prior to that time.

MR. FUCITO: After it was a CO, but that CO was for like a mother-daughter, I get that.

THE CHAIRMAN: There is a sub issue here that you've identified.

MR. FUCITO: Exactly. I'm concerned. I apologize, but it's my neighborhood. I've lived there for 50 years. It's a lovely neighborhood. When do we stop? If you start, when do we stop? That's what scares me. So I guess I'm asking for fairness. And I'm asking also, this last thing, think of you all, wherever you live and how would you feel right now if it was your neighborhood? Just a little thing it's talking, but that's all. I just ask for fairness.

MR. SHILLING: If I could respond? Accessory apartments are governed by special uses. And you can do it whether or not the neighborhood likes it or not as long as you comply with the dimensional requirements. And, I mean, if the statute provides you can do and you have the house, the size, and all the requirements accessory apartment requires, then you can do it whether you like it or not. It's a special use in a residential zone.

THE CHAIRMAN: That's correct. And also there is nothing preventing anyone from coming here and trying to get a variance to do it even if they don't meet all those requirements. So, you know, but I mean that's where this Board comes in. So anyone else? Anyone else have any comments? Sir, if you could just state your name and address.

MR. GOLANKIEWICZ: Roman Golankiewicz; 17 Cobb Road, Brewster, New York.

THE CHAIRMAN: Sir –

MR. GOLANKIEWICZ: I've been a member also for over 40 years on that street.

MR. CASSIDY: Do you swear that the testimony you are about to give is the truth to the best of your knowledge?

MR. GOLANKIEWICZ: Absolutely.

MR. CASSIDY: Thank you.

MR. GOLANKIEWICZ: I knew Peggy the same way. We socialized many, many times. It was always our understanding that it was a mother-daughter, you know, apartment. And that's the way it was built and that was the purpose of it. It was never any intent to rent it from Peggy to an outsider. Things changed, yes. We lived in this neighborhood because it's a beautiful neighborhood. And we assume it's all that way and we accepted it was a mother-daughter home. That's a special situation with a owner-occupied. That's not anymore. That's going away from the law that was designed 40, 50 years ago. I don't understand it and I believe it hurts our neighborhood.

MR. SHILLING: It was never –

MR. LEDER: My mother was renting it out long before –

MR. GOLANKIEWICZ: May have been renting it out but that wasn't the intent.

MR. LEDER: Well –

MR. GOLANKIEWICZ: The intent was a mother-daughter.

MR. LEDER: She had the accessory apartment from –

MR. SHILLING: It was never a mother-daughter.

MR. LEDER: No, I mean initially –

MR. GOLANKIEWICZ: From Peggy, that's what she told us as the neighbors, it was a mother-daughter situation. And that's acceptable for anyone. Anyone -- if I had a mother-in-law or a mother that needed an apartment, that's great. It's changed from that. And he doesn't live there anymore. If he lived there now that might be a little acceptable. Not living there and not watching the property, and having two tenants I disagree with a hundred percent. So that's all I have to say.

MR. SHILLING: It's been that way for 15 years.

MR. LEDER: The property is well tended. And I haven't had a single complaint about my tenants. I mean, in 11 years of renting it out, you know, and at least unwittingly not knowing the statutes, I haven't had a single complaint. Nobody's approached me about, you know, rowdy tenants or there's no police reports, no reports of, you know -- I don't know what you -- what not watching it means. It is cared for. It's-- the bushes are trimmed, the yard is tended. Yeah, I mean here's a photo of the house.

MR. SHILLING: Okay.

THE CHAIRMAN: Would you ladies like to make a statement? Just state your names and address, and then I'll have the Vice Chairman swear you in.

MS. PIETRONUTO: Patricia Pietronuto.

THE COURT REPORTER: I'm sorry. Can you –

MS. PIETRONUTO: Patricia Pietronuto. I live in Robert's house, 180 –

MR. CASSIDY: Can you raise your right hand for me, ma'am.

MS. PIETRONUTO: 186 Ridge Road.

MR. CASSIDY: Do you swear that the testimony you are about to give is the truth to the best of your knowledge?

MS. PIETRONUTO: Yes.

MR. CASSIDY: Thank you.

MS. PIETRONUTO: I live in the -- in Robert's house for -- I thought it's three years but it's going to be four years. The neighbors across the street have the horses. The lady across the street -- we have like a three houses, right, left and front. They're very happy with us. We don't have no -- we don't have any trouble with the neighbors. I'm a little surprised for the guys in the back. You know, I understand what they say about if it built maybe 50 or 60 years ago, but people die. And that is what happened to the grandma. And that's what happened to the mother. They died and now he is the owner, the son, that has to suffer. Even us. We have to suffer if something happen. I'm very nervous and I'm very scared to move out because it is a nice neighbor. We don't have no problem across the street. The other ladies -- even I work for the lady across the street. I taking care of the kids. And for the people next to us, the same. These people, they live like maybe in the back two or three houses away. And I don't understand why they making such a issue and big about -- I'm very nervous. I'm very concerned. Open your heart because the way how he say, you don't want something happen like that in your neighbor. But it's nothing wrong with us to live in that house. It can be some people that can be jealous. I mean, I feel bad for them, they don't have a little room or a

kitchen. They don't make money. I feel bad for them. Maybe the grandpa or your grandma or your great grandma or your great grandpa did probably something like that for them. But people, it's different. Maybe they -- in that time grandpa, they think about the great grandmas or whatever. And then it's different. I just ask for you guys open the heart and just let it be. Because we don't -- we don't do nothing. She's a single mom. I'm a single mom. And we come, two cars park. We don't do nothing to the neighbor. The neighbor loves us. And the house is taken care of very well. You welcome to come any time. And just open the heart. And I mean I'm sorry for them.

MR. FUCITO: Can I ask a question? Why didn't you take your petition that you went around the neighborhood with? Nobody came to my house. Nobody came to these two gentlemen's houses.

MS. PIETRONUTO: I did. I did.

THE CHAIRMAN: Hold on, folks. Hang on.

MS. PIETRONUTO: Excuse me.

THE CHAIRMAN: We've got a stenographer here making a record.

MS. PIETRONUTO: I did.

THE CHAIRMAN: We can only have one person talk at a time. And right now I'm the one talking.

MS. PIETRONUTO: Okay.

THE CHAIRMAN: Okay. So one at a time. Second of all, I'm going to make a point here. Whether people are nice or not nice, the Town Code does not take that into account. I'm sure you are both very nice people and good tenants. I'm certain of that. However, our job here is to interpret the black and white of the Town Code and/or grant a use variance based upon statutory criteria. So a lot of what we've been talking about here in terms of everybody is very nice and we don't have complaints and what have you isn't really relevant to the inquiry that this Board has to make, whether we're making interpretation or granting a use variance. So I just want to put that out there, okay. Thanks.

MS. PIETRONUTO: Thank you.

THE CHAIRMAN: Do you have anything further to say?

MS. PIETRONUTO: I did. I went to those gentlemen. They are not nice. They throw me out and they told me they don't want to talk about it.

MR. FUCITO: What did you say? I have a hearing aid. What was that? We threw you out?

MS. PIETRONUTO: You guys, I went back to knock the door to tell you --

MR. FUCITO: Me?

MS. PIETRONUTO: -- we going to see with Robert and you told me get out.

MR. FUCITO: No.

MS. PIETRONUTO: You came to my house.

THE CHAIRMAN: All right. We're not having a dialogue here, okay. You can talk to the Board. I'll give them a chance to address us as well, but let's not have cat calling or what have you in the background. One person at a time, please. All right. Ma'am, do you have anything to add?

MS. FIORILLO: My name is Kathryn Fiorillo. I'm at 186. I rent the smaller part.

MR. CASSIDY: Do you swear that the testimony you are about to give is the truth to the best of your knowledge?

MS. FIORILLO: Yes, I do.

MR. CASSIDY: Thank you.

MS. FIORILLO: I want to say that you can -- I know that they're afraid that there's like it's not being taken care of, but if you drive by the place at any time you see that it's immaculate. We take pride. We care about where we live. It's very important to us. And we'd really like for you to go and give the use variance.

THE CHAIRMAN: Thank you. Anything further?

MS. FIORILLO: No.

THE CHAIRMAN: Very good. Anyone over there anything to say?

MR. FUCITO: For the record, nobody showed up at my house. That's all.

THE CHAIRMAN: Sir, come on up.

MR. WAGNER: Mark Wagner; 11 Cobb Road.

MR. CASSIDY: Do you swear that the testimony you are about to give is the truth to the best of your knowledge?

MR. WAGNER: Yes.

MR. CASSIDY: Thank you.

MR. WAGNER: So I don't believe that she ever came to our house. But I did go to her house several months back because my house butts up to their house on the back side. And there's trees that are dead and just it looks like a haunted house from my view. Not only that, but when we all own a house we take care of it and we have pride in it. And owner-occupied would mean just that, the owner's there. They care about it. They take care of the property. They cut their lawn. They maintain everything. Peggy had a beautiful house. She had a swimming pool in the backyard with a deck wrapped around the pool. Ever since Peggy passed away, nothing's been done to that deck. The pool collapsed. The deck is overgrown with weeds and disheveled. The whole backyard is like that. It may look like nice in the front but I'm telling you right now that it's not taken care of, number one, because it's not owner-occupied and it hasn't been for ten years. So up front it's great, it's a rental. If somebody has a problem with money and they inherited \$700,000, and the house was passed to them, that's not a hardship. If you have to make a change in order to take your \$700,000 and say what I really want is to own a two-family house, well, take your \$700,000 and go someplace where they actually have two-family homes, not try and force it here where we all bought for single-family homes in this residential neighborhood. That's all I want to say.

THE CHAIRMAN: We're good. Thank you, sir.

MR. LEDER: Can I just address a couple of things?

THE CHAIRMAN: Yes, you can.

MR. LEDER: So, you know, the pool in the back, I just -- I did not -- it's a liability with tenants and I just can't maintain that. It's just too much of a risk.

THE CHAIRMAN: Is it still there or is it removed?

MR. LEDER: The pool is removed but there is still like an old deck structure. I don't know how visible that is from his house. I mean, as he mentioned, there's a 40-year-old grove of trees there. I mean, it's a -- I don't know about dead trees but, you know, those trees have been there since the '80s so -- um, I mean, you know, the backyard is mowed. The backyard is maintained in the same condition it was when my mother owned it so - Notwithstanding the pool not being there just because it's too much of a risk.

THE CHAIRMAN: Is there anyone else in the audience that has any comments on this application?

(No audible response.)

THE CHAIRMAN: No, okay. All right. I'm going to suggest go check the Building Department records.

MR. SHILLING: I will.

THE CHAIRMAN: And see what you can find.

MR. SHILLING: Will do.

THE CHAIRMAN: Because I think it's going to shed some light on what I think is the critical issue here.

MR. SHILLING: Okay, yes.

THE CHAIRMAN: Very good.

MR. SHILLING: Thank you very much.

THE CHAIRMAN: Okay.

MR. SHILLING: Have a nice holiday, everybody.

THE CHAIRMAN: Very good. Thank you. You, too.

(Whereupon, at 8:41 p.m. the public hearing was concluded.)