

Town of Southeast  
Zoning Board of Appeals  
Minutes of March 17, 2008

*Dec'd  
H-8-08*

Edward Colello, Chairman	Present
Thomas Costello, Vice Chairman	Present
Timothy Froessel	Absent
Joseph Castellano	Present
Kevin Sheil	Absent
Paul Vink	Present
Roderick Cassidy	Absent
Mary Rhuda, Admin	Present

Regular Meeting:

Chairman Colello began the meeting advising all applicants that since there are only four board members present at this meeting, if there was to be a vote taken, they would need all four members to vote positive to be granted a variance. They would have the option to have a vote taken, or come back next month.

Curtis Johnson, 624 Route 312

Mr. Johnson was sworn in and his mailings were checked and are order. Mr. Curtis needs a variance to construct a deck to an existing non-conforming structure. He showed pictures, presented a survey and included drawings and measurements for the proposed deck. The footings for the deck have already been poured. This is an older home that he has been renovating for the 8 years he has owned it. The board feels they need to go the property to look at the area of the proposed structure. This application will be carried over to next month.

Vails Grove Golf Course, Inc., 230 Peach Lake Road

Mr. Peter Tavino and Mr. George Trembly are again in front of the board requesting a variance for a "storage locker" on the golf course property. The variance requested is for storage locker that is no longer allowed on properties, per town code. They plan is to add siding to this unit and call it a structure. The board does not believe that this is an option. At last month's meeting, it was asked that the applicant do some more research and try to find another area on the 43 acres of property to relocate this storage unit. Mr. Tavino felt he has

come up with a solution to the problem. He researched what the town codes used to be and citing requirements, feels that since this unit is pre-existing, non-conforming a variance should be granted because these types of containers used to be permitted. But, they never had a CO for the unit. At the time the unit was built, it was placed 76 ft. from the property line, and only 50ft was required. Currently, the requirement is 100 ft. setback. Mr. Tavino read a letter into the minutes that is addressed to Mr. Michael Levin, Town of Southeast, Building Inspector. (Letter attached).

Once again the board stated that this unit is not a structure, it is a "Box" which is not allowed in the Town of Southeast. The applicant was asked again if there was ever a CO given for this unit. There is none on record. Again, you can't build a structure around a box and then call it a structure. The fact that the applicant was denied a CO and was sent to the ZBA shows they are out of compliance.

The applicant does not want the board to vote this evening, they will appear before this board again next month.

Kenneth Sullivan, 39 Vails Lakeshore Drive -

Mr. Richard Vail was representing the applicant, he was sworn in. The mailings were checked, and are in order. This application is for the proposed construction of a deck to measure 12ft x 28.2 ft. Three variances are requested. This property has the Vails Grove Cooperative approval. The applicant recently purchased the property and is renovating the home. There was previously a deck, but it was taken down before the closing because it was in disrepair. The board will go out to view this proposed deck. This will be carried over on next month's agenda.

Christine Phillips, 59 South Drive -

Mrs. Phillips was sworn and the mailings were checked and are in order. The variance requested is for an existing shed that was on the property when purchased. When they applied for a building permit, they were denied. The shed sits on cinder blocks. The shed is 120 sq ft. and placed in the back of the property that is in the Tonetta Lake area. No comments from any neighbors. The public hearing was closed.

Motion introduced by T. Costello to grant an 8 ft west side variance for existing shed.

Seconded by P. Vink

Criteria:

1. Where an undesirable change will be produced in the character of the neighborhood.  
Absolutely not.
2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.  
Yes. Could move shed.
3. Where the requested variance is substantial.  
Yes.
4. Whether the proposed variance will have an adverse effect of impact on the environmental conditions in the neighborhood or district.  
None.
5. Whether the alleged difficulty was self-created.  
No. Shed on property when purchased.

Roll Call Vote:

J. Castellano	In favor
P. Vink	In favor
T. Costello	In favor
E. Colello	In favor

Variance granted by a vote of 4-0.

Motion introduced by P. Vink to accept the minutes of February 25, 2008 as submitted.

Seconded by T. Costello.

All in favor.

Meeting adjourned.

**Peter J. Tavino Jr., P.E. PC**

Civil Engineering and Site Planning

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March 14, 2008

Mr. Michael Levine  
Southeast Building Inspector, and  
Mr. Charles Tessmer,  
Zoning Officer  
67 Main Street  
Brewster, NY 10509

re Vails Grove Golf Course Shed

We have applied for a permit to add vinyl or steel siding to an existing container structure shed that has existed in its location since the early 1980's. Because it is 76' from the property line, we were advised to request a zoning variance from the R-160 zoning rear setback line of 100'.

We have begun this process, notifying almost 140 neighbors within 500' of our 45 acre property. We have met with the ZBA twice, but have a sense they are not going to approve a hardship involving substantial foundation construction costs to move the shed back down the hill, 25 feet further, to comply with today's zone. This shed that is now pine tree screened from Route 121 and the golf course entrance drive, would become visible if moved back, and impact errant golf balls hooked left on the ninth hole.

We have examined our options, and recognize that we are not requesting construction of a brand new building that does not now exist in the proposed location. Instead we are asking to continue the use of a structure that became non-conforming when the zone became R-160.

We researched the old regulations in the Southeast Town Clerk's office. We can now prove that before 2003, our shed structure was conforming because the old R-80 zone required a setback of only 50', not 100'. Please see attached maps and tables.

The original builders of the shed must have known this, and placed their structure accordingly. A few years ago, when former Zoning Officer Ron Harper toured the site, he did not see a problem with the container shed zoning status. He also approved the adjacent 22' x 18' wood framed structure that houses the greens keeper's office that is only 4.26' from the property line, but is accepted legal because of its established zoning history from the 1960's or earlier. If we choose to re-side that structure, we would receive a permit easily.

When we constructed the two new large green steel buildings, we placed them both more than 100' back because they were not pre-existing non-conforming.

We therefore request that you issue a zoning & building permit allowing the new siding on the 20' x 28' shed because we meet all the Southeast Zoning regulations, Chapter 138-11.

Section C (1) states *"The non conforming use of a building or structure may be continued, provided that: (a) Such building or structure shall not be enlarged or extended unless the use therein is changed to a conforming use.*

*(b) Such nonconforming building or structure shall not be structurally altered or reconstructed, except for such alteration, maintenance and repair work as is required to keep building or structure in a safe condition.*

*(c) Such nonconforming use shall be changed only to a conforming use."*

Use has not ceased and structure has not been damaged per sections (2) or (3).

Section D. is also relevant: *"Improvement of nonconforming uses. Notwithstanding the provisions set forth above, in order to reduce the adverse external (e)ffects of such nonconforming uses, the owner of the land, building or structure so used may be permitted to make limited changes to such building, structure or use in conjunction with a site plan review whereby, through landscaped screening and buffered areas, control of noise, smoke, odors, lighting, architectural changes, location and layout of parking areas and access drives or by any other appropriate means, these purposes may be achieved."*

The proposed siding and fascia improvements serve to eliminate all external evidence that two containers are used as the structural frame of the 20' x 28' shed. They remedy the new zoning ordinance by changing the containers to an inside not "On Site" use.

We are sorry we did not research our rights through previous zones that existed on our site, and apologize to the ZBA and neighbors for beginning the variance process. But we now request to withdraw that variance application, and we ask that a building permit be issued to allow the proper construction of a new architecturally pleasing siding veneer.

One issue that remains to be addressed is the question of whether a building permit was ever issued for the shed in the early 1980's when it is reported to have existed. We cannot find a copy of that permit. But we read the regulations carefully because they say *"The nonconforming use of a structure may be continued"*. The regulations do not say *"The nonconforming use of a structure with valid building permits may be continued"*.

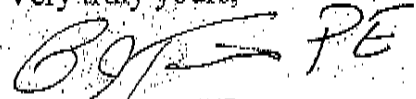
Just as a person who constructs a back wood deck without a permit is allowed the chance to apply for a permit afterwards, and upon satisfying the building official concerns that it meets or met setback requirements, and that it was originally constructed properly according to NY State Building Code criteria,

that deck can be permitted, and a house sale, etc. can proceed. There is no permit for the greens keeper's structure either.

In the spirit of making the structure more permanent than it already is with its 600 square foot roof, we have updated the construction drawings to show permanent concrete sonotube foundation. Please see attached.

The rezoning of Southeast properties to more stringent setback and other requirements did not remove the rights of the property owners who were using their property within the old zone allowances. The Vail's Grove Golf Course is entitled to these same rights of continued use despite the zone change after them, and we ask that the paperwork now be filed so that all future investigators of the golf course understand that the shed is zoning compliant, and may continue to be used and architecturally improved.

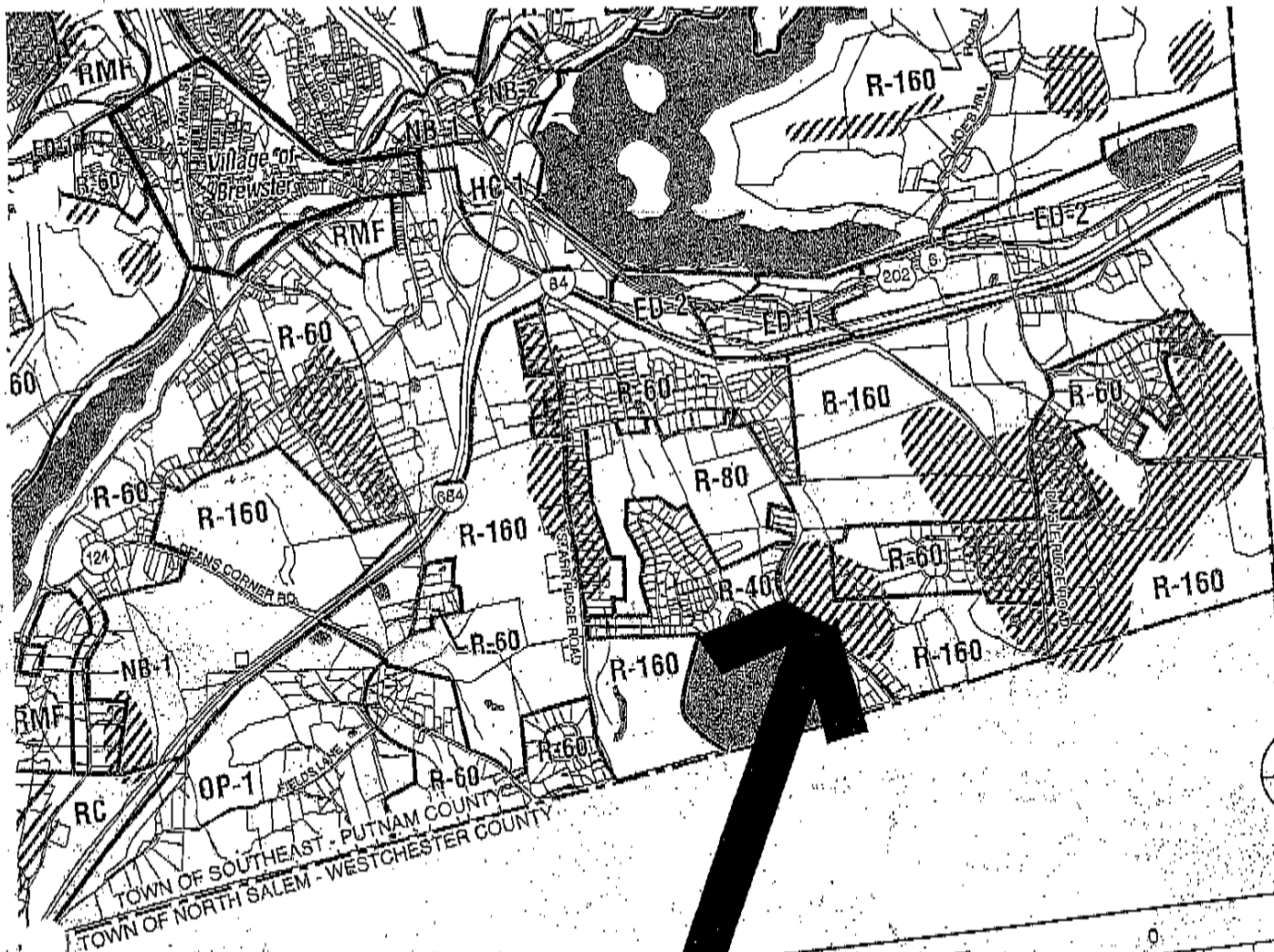
Very truly yours,



Peter Tavino PE

encl.

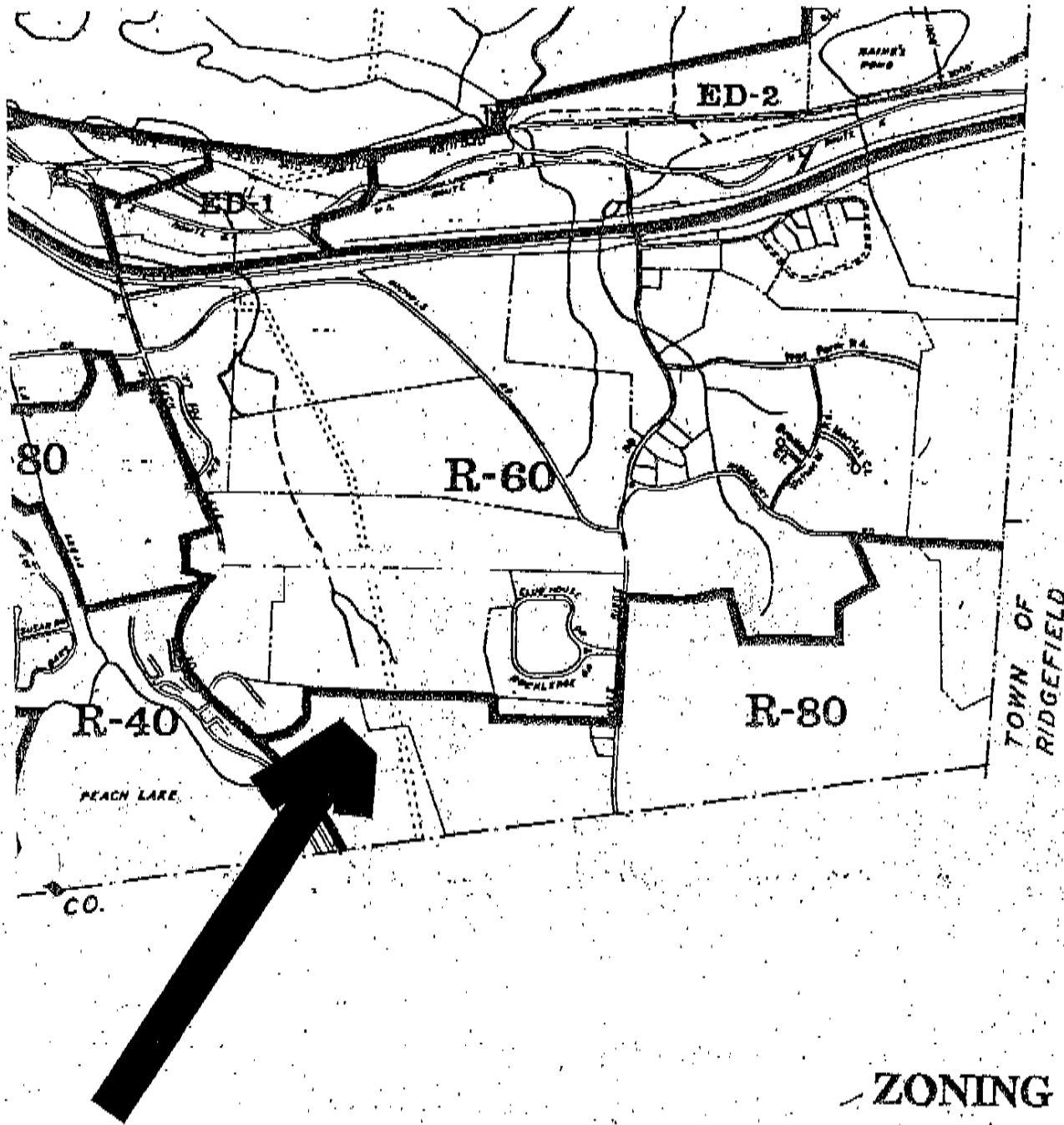
cc. Zoning Board of Appeals members,  
and Tremblay, Dean & Coates



boundary		HC-1	Highway Commercial HC-1 District
district Boundary		HC-2	Highway Commercial HC-2 District
R-160 District	100' Rear Setback	ED-1	Economic Development ED-1 District
R-80 District		ED-2	Economic Development ED-2 District
R-60 District		OP-1	Office Park OP-1 District
R-40 District		OP-2	Office Park Op-2 District
R-20 District		OP-3	Office Park OP-3 District
RMF District		RC	Rural Commercial District
Neighborhood Business NB-1 District			Ridgeline - Top 50' Above 500' AMSL
Neighborhood Business NB-2 District			

*Argo Mazzei*  
 TOWN CLERK AS THE OFFICIAL  
 OF THE TOWN OF SOUTHEAST  
 by Local Law, September 18, 2003

Current §10  
**ZONING I**  
 Town of Sou



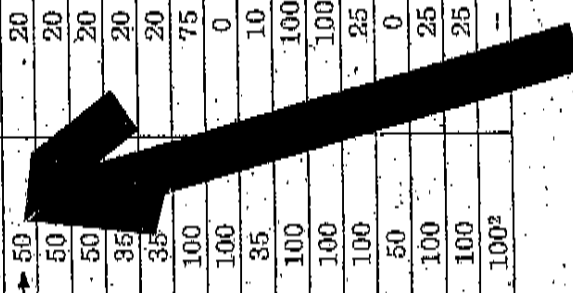
# ZONING MAP

Adopted: April 18, 1991

R-80	Residence R-80 District
R-60	Residence R-60 District
R-40	Residence R-40 District
R-20	Residence R-20 District
RMF	Residence RMF District
NB-1	Neighborhood Business NB-1 I
NB-2	Neighborhood Business NB-2 I
HC-1	Highway Commercial HC-1 Distr
HC-2	Highway Commercial HC-2 Distr
ED-1	Economic Development ED-1 Dist
ED-2	Economic Development ED-2 Dist
OP-1	Office Park OP-1 District
OP-2	Office Park OP-2 District
OP-3	Office Park OP-3 District

**Town of Southeast**  
**Table of Bulk Requirements, Residential Zoning Districts<sup>1</sup>**  
 [Amended 8-20-1998 by L.L. No. 5-1998; 2-18-1999 by L.L. No. 2-1999]

1	2	3	4	5	6	7	8	9
Use Group	Minimum Lot Area (square feet unless otherwise noted)	Minimum Lot Width (feet)	Required Front Yard Depth/Front Setback (feet)	Required Side Setback/Total Setback (feet)	Required Rear Setback (feet)	Required Side and Rear Yard Depth (feet)	Required Street Frontage (feet)	Maximum Building Height (feet)
a	80,000	200	50/50	30/100	50	20	175	35
b	60,000	175	50/50	30/75	50	20	175	35
c	40,000	135	50/50	25/70	50	20	135	35
d	20,000	90	35/35	20/50	35	20	90	35
e	20,000	90	35/35	20/50	35	20	90	35
f	5 acres	400	50/100	100/200	100	75	300	45
g	10 acres	400	100/100	100/200	100	0	15	35
h	20,000	125	35/35	20/50	35	10	90	35
i	10 acres	400	100/100	100/200	100	100	300	45
j	10 acres	400	100/100	100/200	100	100	300	45
k	2 acres	200	100/100	100/200	100	25	50	35
l	None	None	0/35	30/60	50	0	15	15
m	2 acres	200	100/100	100/200	100	25	50	35
n	50 acres	200	100/100	100/200	100	25	100	45
o	5 acres	300	100 <sup>2</sup>	75/100	100 <sup>2</sup>	--	--	--



**NOTES:**

"N/A" means "not applicable."

<sup>1</sup> Editor's Note: See § 138-20 for instructions regarding the use of this table.

<sup>2</sup> Yard setbacks shall be required in addition to the setback related to lower height, see Article X, § 138-54.1E(2) and (4).

OF SOUTHEAST  
E OF BULK REQUIREMENTS, RESIDENTIAL ZONING DISTRICTS

	1	2	3	4	5	6	7	8	9	10	11
Group	Minimum Lot Area (Sq. Ft. unless otherwise noted.)	Minimum Lot Width (feet)	Required front Yard Depth/ Front Setback (feet)	Required front Setback (feet)	Required Side Setback/Total Setback (feet)	Required Rear Setback (feet)	Required Side and Rear Yard Depth (feet)	Required Street Frontage (feet)	Maximum Building Height (feet)	Development Coverage (%)	Floor Area Ratio
a R80	80,000	200	50/50	30/100	50	20	175	35	20	0.20	
b	60,000	175	50/50	30/75	50	20	175	35	20	0.20	
c	40,000	135	50/50	25/70	50	20	135	35	40	0.20	
d	20,000	90	35/35	20/50	35	20	90	35	55	0.25	
e	20,000	90	35/35	20/50	35	20	90	35	55	0.25	
f	5 acres	400	50/100	100/200	100	75	300	45	25	0.20	
g	10 acres	400	100/100	100/200	100	0	15	35	3	N/A	
h	20,000	125	35/35	20/50	35	10	90	35	25	0.20	
i	10 acres	400	100/100	100/200	100	100	300	45	30	0.20	
j	10 acres	400	100/100	100/200	100	100	300	45	30	0.20	
k			100/100	100/200	100	25	50	35	10	0.20	

t, 1990