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VILLAGE OF GREENPORT
ZONING BOARD OF APPEALS

REGULAR MEETING
January 21, 2015
5:00 p.m.

Meeting held at the Greenport Firehouse
236 Third Street, Greenport, New York 11944

APPEARANCES:

- David Corwin – Acting Chairman
- Charles Benjamin
- Dinni Gordon

- Joseph Prokop – Village Attorney
- Eileen Wingate – Village Building Inspector

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ZBA 1/21/15

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1 (Whereupon, the meeting was called to order
2 5:00 p.m.)

3 MEMBER CORWIN: I think the first thing we
4 should do is elect a Chairman pro tem. Are there
5 any nominations?

6 MEMBER BENJAMIN: Yes. I make a motion
7 that we make David Corwin Acting Chairperson.

8 MEMBER GORDON: Second.

9 MEMBER CORWIN: All in favor?

10 MEMBER BENJAMIN: Aye.

11 MEMBER GORDON: Aye.

12 ACTING CHAIRPERSON CORWIN: Aye. The
13 motion is adopted.

14 So we will note that Member Neff is not
15 going to be here today, so we are a body of
16 three.

17 And I would like to change the agenda a

18 little bit. And just a couple of basic
19 bookkeeping things out of the way, and that would
20 be, first, Item #5, a motion to accept an appeal
21 for an area variance, public notice, and schedule
22 a public hearing for Robert Tapp and Nickolas
23 Ellis, 152 Central Avenue, Greenport, New York;
24 Suffolk County Tax Map 1001-5-1-14. The property
25 is located in the R-2 District. The applicant

ZBA 1/21/15

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1 proposes a rear addition for an existing
2 single-family house, and reconfigure the existing
3 deck.

4 I'm not going to read this all, it's on the
5 agenda, and we have a package of plans. And we
6 need to schedule a site visit and a public
7 hearing for this. So I would suggest we start at
8 Central Avenue at 4:20, if that's all right with
9 everyone.

10 MEMBER BENJAMIN: Yes.

11 ACTING CHAIRPERSON CORWIN: And then --

12 MEMBER GORDON: Are we talking about the
13 February meeting?

14 ACTING CHAIRPERSON CORWIN: The February
15 meeting, yes.

16 MEMBER GORDON: I am not going to be at the
17 February meeting. If this is -- if Ellen is
18 here, there are still three people.

19 ACTING CHAIRPERSON CORWIN: Yes.

20 MEMBER GORDON: But I just --

21 ACTING CHAIRPERSON CORWIN: All right.
22 We'll see what happens in February.

23 MS. WINGATE: February should be fine,
24 because I've talked to Ellen about it. So you're
25 looking at February 18.

ZBA 1/21/15

4

1 ACTING CHAIRPERSON CORWIN: February 18
2 we'll have a site visit at 4:20, and then the
3 public hearing at 5:00. So I move we accept this
4 application and set a public hearing at 5:00 on
5 February 18.

6 MEMBER BENJAMIN: Second.

7 ACTING CHAIRPERSON CORWIN: All in favor?

8 MEMBER BENJAMIN: Aye.

9 MEMBER GORDON: Aye.

10 ACTING CHAIRPERSON CORWIN: Aye.

11 And then I'd like to go to Item #6, a
12 motion to accept an appeal for an area variance,
13 public notice, and schedule a public hearing for
14 Michael Combs, 516 Second Street; Suffolk County
15 Tax Map 1001-2-6-24. The applicant seeks a
16 building permit to construct an in-ground
17 swimming pool and art studio/pool house.

18 And I would like to propose that we set an
19 inspection at 4:40, and a public hearing at 5:00.
20 And we will take the public hearings in order
21 after 5:00 on February 18.

22 So I make a motion that we schedule a
23 public hearing -- accept the application and
24 schedule a public hearing for 5:00 on February 18.

25 MEMBER BENJAMIN: Second.

ZBA 1/21/15

5

1 ACTING CHAIRPERSON CORWIN: All in favor?

2 MEMBER GORDON: Aye.

3 MEMBER BENJAMIN: Aye.

4 ACTING CHAIRPERSON CORWIN: Aye.

5 The motion is approved.

6 And then, I guess, just for bookkeeping
7 purposes, we'll get one more thing off the agenda
8 before we start, and that is Item #3,
9 continuation of discussion and possible decision
10 for an interpretation of Village of Greenport
11 Code from the Planning Board via Mary Bess
12 Phillips and Phil Karlin, North Fork Fish
13 Company, 200 Wilson Road, Cutchogue, New York.

14 And then there's an email that Mary Bess
15 Phillips sent to the ZBA, and she says:

16 "Good morning. Please accept this email
17 requesting to postpone the ZBA activity for the
18 North Fork Smoked Fish interpretation. There is
19 an amended Planning Board application that will
20 be placing a retail component for North Fork
21 Smoked Fish, as well as Alice's Fish Market, in
22 the building. Any questions, please call Mary
23 Bess Phillips."

24 And I also no note that I think we should
25 wait until we have more people, preferably a

ZBA 1/21/15

6

1 complete Board, a full Board, before we discuss

2 this application. So we're going to postpone
3 Item #2, the Smoked Fish.

4 MS. WINGATE: Item #3.

5 ACTING CHAIRPERSON CORWIN: Item #3, I'm
6 sorry. Thank you.

7 Now let's go to the public hearing. I
8 guess what happened last month was the question
9 came up about the rear yard setback on this one,
10 because I guess what happened originally, and
11 correct me if I'm wrong, the Building Inspector
12 measured the foundation the way she thought the
13 foundation would be in a bow window, and that
14 changed the application a little. The question
15 came up, did the foundation extend to the edge of
16 the bow window, and should it be measured to the
17 foundation of the bow window? And I guess this
18 was -- was this advertised again?

19 MS. WINGATE: We readvertised it, and we
20 reissued the placard, so every -- all the numbers
21 jive now, everything is where it should be.

22 ACTING CHAIRPERSON CORWIN: Okay. That
23 said, the public hearing is open. Anybody that
24 cares to speak to issue, please.

25 MR. WERTHNER: Sure. Hi, good evening.

1 I'm Ed Werthner. And, basically, what we did
2 also, besides that, was I removed the deck to not
3 make it that encumbered on the rear part of the
4 south property. And I had the surveyor, of
5 course, do the surveying properly, so that we
6 knew exactly where there was everything, the
7 property lines would be. And I went after -- I
8 staked out and found the monuments in the front
9 of the yard on the north side. I found that
10 there was a consistency of about 14 foot of grass
11 from my monument to the asphalt on the road, the
12 beginning of the asphalt and the grass, which
13 would allow for maybe a future sidewalk or
14 something of that nature to be put in there. So
15 there's plenty of room, and things were
16 definitely more logical for you to make some kind
17 of a decision on that.

18 MR. PROKOP: Do we have a new survey? Did
19 you email it?

20 MR. WERTHNER: I think the -- I have a
21 stamped survey here, too. So the -- on the south
22 side, there was about 25.1 from the bow of the

23 window, which you probably saw. And the corner
24 of the house, the major concern was about
25 27-foot-eight, then the other corner was 26,

ZBA 1/21/15

8

1 about 27 foot on the other side. So there's only
2 a small request in a sense for the size of the
3 house for a few extra feet for a variance, two or
4 three feet for a variance.

5 And the front is consistent at 20, 20 foot
6 from the north side to the monuments to my
7 property line, and then, of course, another 14
8 feet to the asphalt. And the house -- the house
9 basically itself is about 25 feet from the -- the
10 garage is on the left side facing north, and then
11 the house on the right side, is about 25 foot
12 from the front monuments of the property line.
13 And, of course, I've got the 20 foot on each side
14 of the house, as requested, for a clearance from
15 the property line. And --

16 ACTING CHAIRPERSON CORWIN: The question
17 just came up by the Attorney, do we have a new
18 survey on this or any changes?

19 MR. PROKOP: Well, there's one in the file.

20 I don't know who else got.

21 MS. WINGATE: Everybody should have gotten

22 that.

23 ACTING CHAIRPERSON CORWIN: I don't think

24 that I got it. I don't know.

25 MR. WERTHNER: Do you want to take a look

ZBA 1/21/15

9

1 at mine?

2 ACTING CHAIRPERSON CORWIN: I would like to

3 take a look at whatever the Building Inspector

4 has on file.

5 MR. WERTHNER: Okay.

6 MS. WINGATE: Yeah, that's the current one,

7 because the deck is removed. And I also have --

8 MR. PROKOP: Does the Chairperson have a

9 copy of this?

10 ACTING CHAIRPERSON CORWIN: No.

11 MR. PROKOP: So I guess we only have one

12 survey.

13 MR. WERTHNER: Excuse me, if you want, I

14 have a stamped copy here, too.

15 MS. WINGATE: You should have a photograph
16 with the tape measure, and it was all attached to
17 that.

18 ACTING CHAIRPERSON CORWIN: I have the
19 photograph, but --

20 MS. WINGATE: And you don't have the
21 survey.

22 ACTING CHAIRPERSON CORWIN: -- unless I
23 misplaced it. I never got it.

24 MR. PROKOP: What's this, the tape measure?

25 MS. WINGATE: It's the distance from --

ZBA 1/21/15

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1 ACTING CHAIRPERSON CORWIN: He was just
2 explaining where the monument was.

3 MS. WINGATE: -- the street to the property
4 line.

5 ACTING CHAIRPERSON CORWIN: We had tried to
6 look for the monument on the inspection visit and
7 we didn't have much luck.

8 MR. PROKOP: We could just have the
9 applicants give us copies. I mean, I'm not
10 questioning Mr. Werthner. In the future, you

11 should just --

12 MS. WINGATE: Here, here's another one. I
13 have a bunch of them. I just --

14 MR. PROKOP: So you don't have to worry
15 about making copies, you just get the applicants
16 to give you several copies.

17 MS. WINGATE: Well, he did, and that's
18 what --

19 MR. WERTHNER: I did, yes.

20 MS. WINGATE: He did.

21 MR. WERTHNER: And they were all stamped
22 for you.

23 MS. WINGATE: They were all stamped, and
24 you should all have them, because they were in
25 the boxes.

ZBA 1/21/15

11

1 ACTING CHAIRPERSON CORWIN: And where the
2 problem came in, as I recall last month, was
3 somehow the 10 and the 14 didn't add up to the
4 27.8, which was never dimensioned on the original
5 survey.

6 MR. WERTHNER: That's correct. I made them

7 go back and make corrections and give accurate
8 projections on this. And then I made them stamp
9 it to make sure that it was proper. The
10 monuments were missing. Somebody had actually
11 pulled them on the northeast side. And I
12 couldn't find the one on the northwest side of
13 the property line. So I had the surveyors go
14 back and give me correct figures, so we know what
15 proper distance would be so there would be no
16 more questions about this stupid thing. And the
17 front yard, like I said, with the picture shows
18 the 14-foot grass to front property line, so that
19 it would be clarified, so you didn't have to do
20 another inspection.

21 ACTING CHAIRPERSON CORWIN: All right.
22 Just to sum up, we're working off of a survey,
23 dated December 30th, 2014, which shows some
24 changes from the one we were originally issued
25 September 15th.

ZBA 1/21/15

12

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MR. PROKOP: That's not the last one.

3 MS. WINGATE: This is the 18th. The 30th
4 is the last one that I have.

5 ACTING CHAIRPERSON CORWIN: And if you
6 would just -- Mr. Werthner?

7 MR. WERTHNER: I'm sorry. Yeah?

8 ACTING CHAIRPERSON CORWIN: If you would
9 just summarize. You gave us those dimensions
10 before and I wasn't following you.

11 MR. WERTHNER: Okay.

12 ACTING CHAIRPERSON CORWIN: If you would
13 just summarize them again, please.

14 MR. WERTHNER: Sure, yeah. No problem,
15 yeah. Basically, what I did in the rear on the
16 south side was remove the deck. And I had them
17 remeasure from the edge of the bay window, which
18 was at 25.1. And then I told them I wanted -- of
19 course, I wanted to really know where the house
20 was going to be properly. I mean, why not, it's
21 supposed to be. So they got 27.8 there from the
22 southeast corner. And then the 26.6, I need
23 better glasses, maybe, but pretty close to that
24 on the southwest corner from the house to the
25 back property line. And, of course, we go --

20 distance, okay.

21 MR. PROKOP: Yeah. Excuse me, I'm sorry.

22 ACTING CHAIRPERSON CORWIN: I stand
23 corrected.

24 MEMBER GORDON: So then it would be 10.

25 ACTING CHAIRPERSON CORWIN: Requiring a

ZBA 1/21/15

15

1 10-foot front yard setback variance. The house
2 is situated so that the rear of the house is set
3 back 25.1 feet from the south property line.

4 MR. WERTHNER: Correct.

5 ACTING CHAIRPERSON CORWIN: Section 150-12A
6 of the Greenport Village code requires a 30-foot
7 rear yard setback in the R-1 District, requiring
8 a 4.9-foot rear yard setback variance.

9 So, to go over this again, we're having a
10 10-foot variance on the front, and a 4.9-foot
11 variance on the back, and it meets the side yard
12 setbacks.

13 MR. WERTHNER: Right, that's correct.

14 ACTING CHAIRPERSON CORWIN: Okay.

15 MS. WINGATE: David, Marc Lacolla had asked

16 that you read his letter into the record.

17 ACTING CHAIRPERSON CORWIN: I don't
18 believe -- I don't think I have his letter.

19 MEMBER GORDON: It's here.

20 (Whereupon, Member Gordon handed Acting
21 Chairperson Corwin the letter.)

22 ACTING CHAIRPERSON CORWIN: All right.
23 This is a letter, dated January 17th, 2015, from
24 Marc Lacolla, 213 Bridge Street, Greenport, New
25 York.

ZBA 1/21/15

16

1 "Dear Eileen, thank you for providing the
2 necessary information concerning the Werthner
3 building permit application Planning Board
4 variance process. The Lacolla Family welcomes
5 the Werthners to the neighborhood, and all the
6 success building their new residence. Earnestly,
7 Marc Lacolla." So I guess that means he's in
8 favor of the request.

9 MR. WERTHNER: That's a good thing, yes.

10 MRS. WERTHNER: That was nice.

11 MR. WERTHNER: Huh?

12 MRS. WERTHNER: That was very nice.

13 MR. WERTHNER: That was very nice, yes.

14 ACTING CHAIRPERSON CORWIN: Does anybody on
15 the Board want to ask Mr. Werthner anything?

16 MEMBER BENJAMIN: No, I'm good.

17 ACTING CHAIRPERSON CORWIN: Does anybody
18 else in the audience want to speak?

19 MR. TASKER: Arthur Tasker, 17 Beach Street
20 in Greenport. I want to speak more generally, I
21 think, but the nature of this particular
22 application affords the opportunity to afford
23 some comments that are of concern to me in
24 general.

25 When you -- it is the build-up of variances

ZBA 1/21/15

17

1 property by property as they are developed, or
2 modified, or changes. In the case of this, of
3 this particular project, the lot is already
4 substandard in terms of its overall area. I
5 believe there was a variance issued some time ago
6 with respect to that.

7 So here we have a request for two other

8 variances, and we've got another trifecta. I
9 refer as comparable to that the variances that
10 were issued to Hugh Prestwood and Judy Ahrens
11 when they subdivided their property about three
12 years, perhaps four years ago, time does fly,
13 when there was an opportunity to create a fully
14 conforming lot with -- as to dimensions and area
15 from the subdivision. And they, instead, were
16 granted a variance to create two substandard
17 lots, I believe both in area and width.

18 And at the time, I commented at the time
19 that that was being done, that what's going to
20 result on this is going to be a year now -- a
21 year or two from now, somebody's going to be in
22 here with side yard variance applications. And
23 sure enough, just about a year ago, the first one
24 of such went through. The second of the two lots
25 is now offered for sale. And you can bet that

ZBA 1/21/15

18

1 you're going to do the same thing here.

2 So we get these -- keep building these
3 trifecta variance lots and construction in the

4 Village to the extent that it amounts to a change
5 in the zoning code, because to put it only
6 somewhat facetiously, I don't think I've seen, in
7 the observations that I've been making in the
8 meetings that I've attended over recent years, I
9 don't see -- I don't think I've seen this Board
10 turn down a side yard variance or a front yard
11 variance that -- I don't think they've seen one
12 they didn't like, frankly.

13 So I would like to have this cautionary
14 note before the Board, because either the zoning
15 code means something or it doesn't. Thank you.

16 ACTING CHAIRPERSON CORWIN: Thank you.

17 MR. WERTHNER: May I respond to that? I'd
18 just like to say I understand his point, but the
19 variance that was put there, you know, with the
20 16 foot back in 2004, that they came in and
21 shortened that property, it was still a building
22 lot. I'm building a house, I'd like to move
23 there, okay? And I understand his point, but
24 there's -- theoretically, there's no real change.
25 I'm putting a house on what should have been a

1 building lot to begin with. And I guess mistakes
2 are made sometimes, but that's what I'm
3 requesting.

4 MR. TASKER: Well, this isn't about -- this
5 isn't about our project.

6 MR. WERTHNER: Oh, okay.

7 MR. TASKER: This isn't about your project.
8 This about the generality of these things as they
9 occur. And yes, you're right, you picked up a --
10 you picked up a lot that already had one --

11 MR. WERTHNER: Right, exactly.

12 MR. PROKOP: Do we know what the setbacks
13 of the adjoining properties are?

14 MS. WINGATE: I do.

15 MR. PROKOP: The front yard setbacks of the
16 adjoining properties, do you know what they are,
17 the front yard setbacks of the adjoining
18 properties?

19 MS. WINGATE: The immediate house to the
20 east has a 30-foot setback. The one to the east
21 has a 30-foot setback, and we gave her a front
22 yard variance for an entrance deck, so she's down
23 to 24 feet. The house exactly due west is a very
24 old house that has a setback of about, because we

25 don't have a survey, but it's about three feet.

ZBA 1/21/15

20

1 MEMBER BENJAMIN: So now what?

2 ACTING CHAIRPERSON CORWIN: All right. If
3 there's no other input for a public hearing,
4 we'll close the public hearing.

5 MR. BENJAMIN: I second.

6 ACTING CHAIRPERSON CORWIN: All in favor?

7 MEMBER BENJAMIN: Aye.

8 MEMBER GORDON: Aye.

9 ACTING CHAIRPERSON CORWIN: Aye.

10 Now we can discuss it as a Board. I will
11 note that I was not thrilled the last time we
12 discussed this. I was not thrilled with the
13 front yard setback, because this house does
14 appear to be -- require more of a variance;
15 appears to be set closer to the road than the
16 neighboring houses. And I did bring that up at
17 the last meeting and it really didn't go
18 anyplace. So my attitude was, well, I'm not
19 going to argue with anybody over this variance
20 for the front yard, but I think it is

21 questionable.

22 And the thing about it is the front yard
23 there is -- the variance is mostly required for a
24 garage rather than for the house, the front of
25 the house itself. So probably a different

ZBA 1/21/15

21

1 structure could be accommodated on the house, a
2 different layout. I assume this was out of a
3 book someplace, rather than designed by an
4 architect, that was trying to fit it into the
5 existing lot. So that's where it stands.

6 Anybody else on the Board have any input?

7 MEMBER GORDON: I have a -- would you
8 repeat the setback variance? You said there was
9 a small variance for the house to the west?
10 Because when I was looking at it, it seemed to me
11 that these houses were quite similar, at least
12 aesthetically, in looking at what the setback
13 would be.

14 MS. WINGATE: The two houses to the east
15 were both built post code, so they were set back
16 30 feet.

17 MEMBER GORDON: Right, right.

18 MS. WINGATE: The two --

19 MEMBER GORDON: The one to the west?

20 MS. WINGATE: The one to the west is a very

21 old house and virtually has zero, three feet or

22 four feet as a front yard, but it's a

23 100-year-old house.

24 ACTING CHAIRPERSON CORWIN: That's not the

25 immediate west, is it?

ZBA 1/21/15

22

1 MS. WINGATE: The immediate west, yes, that
2 old red house with the barn in the back.

3 MEMBER BENJAMIN: Yeah. Also, the one
4 south of it has a 10-foot set back, because
5 that's on this piece of paper, the house that was
6 part of that lot.

7 MEMBER GORDON: You mean the house behind?

8 MEMBER BENJAMIN: Yeah.

9 ACTING CHAIRPERSON CORWIN: That's the
10 house behind, which that really --

11 MEMBER BENJAMIN: That's an old house, too.

12 ACTING CHAIRPERSON CORWIN: The moving of

13 the plot line, the rear yard property line on
14 that house made the problem in the first place.
15 If that had not been granted, we wouldn't be here
16 discussing this now.

17 MEMBER BENJAMIN: Also, we didn't expect
18 her to die so soon, you know. So, on the other
19 hand, we're dealing with an old town, an old --
20 you know, lot sizes. And we're not here to
21 change the law, we're just here to give relief
22 from the law, you know. What do you do, say,
23 "Well, you can't go that close to the road, so
24 you have to go back and have a bigger" -- so we
25 give as little as we can give, you know.

ZBA 1/21/15

23

1 ACTING CHAIRPERSON CORWIN: My feeling
2 would be it would be a better application if it
3 was moved back. And the problem was in the
4 backyard setback, because that was kind of a --
5 what caused the problem in the first place.

6 But, anyway, we've got to move forward one
7 way or another.

8 MR. PROKOP: Excuse me for one second.

9 What is the rear yard, the required rear yard
10 setback?

11 MS. WINGATE: Thirty-five.

12 MR. PROKOP: And they have 30 feet in the
13 back?

14 ACTING CHAIRPERSON CORWIN: No.

15 MS. WINGATE: They don't have.

16 ACTING CHAIRPERSON CORWIN: No, they don't
17 have.

18 MS. WINGATE: They don't have the front and
19 they don't have --

20 MR. PROKOP: Oh, so we're doing the rear
21 yard? I thought somebody said we're doing the
22 side. I'm sorry, you're right, it's the front.
23 Okay. Excuse me, I'm sorry.

24 MEMBER GORDON: But it's hard to figure out
25 how you would get a house that would give you any

ZBA 1/21/15

24

1 backyard whatsoever, given the strange shape of
2 this lot, if you moved the house back. I mean,
3 hardship is one of the elements we consider,
4 right?

5 ACTING CHAIRPERSON CORWIN: You're correct.
6 Well, what's the Board's feeling? Do you want to
7 move ahead and vote on this variance?

8 MEMBER BENJAMIN: Yeah, move ahead.

9 ACTING CHAIRPERSON CORWIN: Move ahead.
10 All right. In that case, the first thing I guess
11 we have to do is the State Environmental Quality
12 Review Act.

13 MS. WINGATE: There's a cheat sheet in the
14 back for you.

15 MR. PROKOP: The motion is to adopt Lead
16 Agency status and determine that this application
17 for area -- two area variances is a Type II
18 Action for purposes of SEQRA, and, therefore, no
19 further SEQRA review is required.

20 ACTING CHAIRPERSON CORWIN: I make the
21 motion as the Attorney just said. Is there a
22 second?

23 MEMBER GORDON: Second.

24 ACTING CHAIRPERSON CORWIN: All in favor?

25 MEMBER BENJAMIN: Aye.

1 MEMBER GORDON: Aye.

2 ACTING CHAIRPERSON CORWIN: Aye.

3 So the next thing we would have to do is go
4 through the questions. It's someplace. I
5 printed them out, because I figured things were
6 going to go this way. And the five questions we
7 always ask, and I'll just read the whole thing as
8 it is in the code. Area variances:

9 The Zoning Board of Appeals shall have the
10 power upon an appeal from a decision --
11 determination and administration official charged
12 with the enforcement of such Local Law to grant
13 area variances, as defined therein. In making
14 its determination, the Zoning Board of Appeals
15 shall take into consideration the benefit of the
16 applicant, if the variance is granted, as weighed
17 against the detriment to the health, safety and
18 welfare of the neighborhood or community by such
19 grant. In making such a determination, the Board
20 shall also consider:

21 So question number one, whether an
22 undesirable change will be produced in the
23 character of the neighborhood, or a detriment to
24 nearby properties will be created by the granting
25 of the area variance?

1 So I will ask Mr. Benjamin.

2 MEMBER BENJAMIN: No.

3 ACTING CHAIRPERSON CORWIN: No. Myself, I
4 will say no. And I note the neighbor,
5 Mr. Lacolla, didn't have any objection to the
6 project.

7 And Ms. Gordon?

8 MEMBER GORDON: No.

9 ACTING CHAIRPERSON CORWIN: No. So that's
10 three nos on that one.

11 Whether the benefit sought by the applicant
12 can be achieved by some method feasible for the
13 applicant to pursue other than an area variance?
14 Mr. Benjamin?

15 MEMBER BENJAMIN: No.

16 ACTING CHAIRPERSON CORWIN: I say no.
17 Ms. Gordon?

18 MEMBER GORDON: No.

19 ACTING CHAIRPERSON CORWIN: No. Whether
20 the requested area variance is substantial?
21 Mr. Benjamin?

22 MEMBER BENJAMIN: That question again.

23 MR. PROKOP: So the front yard variance --
24 I just want to point out to the Board, the front
25 yard variance is a one-third -- right, one-third

ZBA 1/21/15

27

1 setback, 33%?

2 MEMBER BENJAMIN: Yeah.

3 MR. PROKOP: And the rear yard is --

4 MEMBER BENJAMIN: A little less.

5 MR. PROKOP: So like 16%.

6 MEMBER BENJAMIN: Yeah. So it's kind of --

7 ACTING CHAIRPERSON CORWIN: You don't have
8 to answer yes or no, you can say, "I don't know."

9 MEMBER BENJAMIN: Well, I would say no.

10 ACTING CHAIRPERSON CORWIN: I say yes.

11 MEMBER GORDON: I say yes.

12 ACTING CHAIRPERSON CORWIN: Number four,
13 whether the proposed variance will have an
14 adverse effect or impact on the physical or
15 environmental conditions in the neighborhood or
16 district? Mr. Benjamin?

17 MEMBER BENJAMIN: No.

18 ACTING CHAIRPERSON CORWIN: I say no.

19 MEMBER GORDON: No.

20 ACTING CHAIRPERSON CORWIN: And five,
21 whether the alleged difficulty was self-created,
22 which consideration shall be relevant to the
23 decision of the Board of Appeals, but shall not
24 necessarily preclude the granting of the area
25 variance?

ZBA 1/21/15

28

1 MEMBER BENJAMIN: No.

2 ACTING CHAIRPERSON CORWIN: Mr. Benjamin
3 says no. I say no.

4 MEMBER GORDON: No.

5 ACTING CHAIRPERSON CORWIN: Ms. Gordon says
no.

6 So, that out of the way, I make a motion
7 that we approve the variance of Mr. Werthner for
8 the proposed front yard setback of 20 feet from
9 the north property line, and the proposed rear
10 yard setback of 4.9 feet variance.

11 MEMBER GORDON: Second.

12 ACTING CHAIRPERSON CORWIN: All in favor?

13 MEMBER BENJAMIN: Aye.

14 MEMBER GORDON: Aye.
15 ACTING CHAIRPERSON CORWIN: Aye.
16 MEMBER BENJAMIN: Did you say the first one
17 right? You said --
18 ACTING CHAIRPERSON CORWIN: Probably not.
19 MEMBER BENJAMIN: You had a 10-foot
20 setback. He wants a 10-foot setback on the front
21 yard, and a 2. -- 4.9 setback on the rear yard?
22 MEMBER GORDON: Variance.
23 ACTING CHAIRPERSON CORWIN: I stand
24 corrected. It's a 10-foot setback variance of
25 the front yard, and a 4.9 rear yard setback

ZBA 1/21/15

29

1 variance.
2 MR. PROKOP: This is a one-story house,
3 right?
4 MS. WINGATE: Yes.
5 MR. PROKOP: Okay. I'd just like to point
6 out --
7 MS. WINGATE: No, it's a two-story house.
8 MR. PROKOP: Is it two stories?
9 MS. WINGATE: It's a Cape. You know, it's

10 got a big roof and there's a small --

11 MR. PROKOP: Okay. I'd just like to point
12 out to the applicant on the record that the
13 approval of these setbacks is based on the plans
14 that you submitted, which I understand is a
15 one-and-a-half story Cape-style house. And any
16 further building within the setbacks of the front
17 or the back requires you to come back to this
18 Board for further relief, just so there's no
19 confusion in the future.

20 MR. WERTHNER: No. Thank you very much.
21 That's why I made sure that we got the right --

22 MR. PROKOP: And thank you for submitting
23 the new survey, that was a big help.

24 MR. WERTHNER: Yeah. That was ridiculous,
25 the first, I have to admit. I don't need any

ZBA 1/21/15

30

1 problems down the road.

2 ACTING CHAIRPERSON CORWIN: All right.
3 That goes -- the official survey that we worked
4 off of for this particular variance.

5 So we did the public hearing, we did #1.

6 We have granted the variance for #2 for
7 Mr. Werthner.

8 MEMBER GORDON: Congratulations.

9 MR. WERTHNER: Thank you.

10 MRS. WERTHNER: Oh, thank you. I can walk
11 to work.

12 MEMBER BENJAMIN: Go get some nails. Go
13 get some nails.

14 MRS. WERTHNER: Oh, yeah.

15 ACTING CHAIRPERSON CORWIN: We are not
16 going to deliberate on Item #3 until, hopefully,
17 we have a full Board, or it disappears.

18 We've set up a public hearing for Item #4
19 and #5, which brings us to --

20 MR. PROKOP: Number four is just to approve
21 your decision.

22 MS. WINGATE: Yes.

23 MEMBER GORDON: Right, that's the Edwards
24 swimming pool.

25 ACTING CHAIRPERSON CORWIN: The Edwards,

ZBA 1/21/15

31

1 I'm sorry, #4. All right. Now I didn't get a

2 copy of that either, so I don't know if the rest
3 of the Board did.

4 MR. BENJAMIN: I read it online.

5 MS. WINGATE: Yeah, it's been online.

6 ACTING CHAIRPERSON CORWIN: Okay. I did
7 not read it online. I'm not going to try to read
8 it now.

9 MS. WINGATE: You could take it with you,
10 and sign it and bring it back to the office.

11 ACTING CHAIRPERSON CORWIN: Is this holding
12 anything up if we don't vote for it today?

13 MS. WINGATE: No, because you gave me
14 permission to issue a building permit.

15 ACTING CHAIRPERSON CORWIN: All right. So
16 let's do that in February, then. Have you read
17 it, Mrs. Gordon?

18 MEMBER GORDON: Yes.

19 ACTING CHAIRPERSON CORWIN: You did.
20 Unless either one of you would like to vote on it
21 tonight, I would just assume hold off until
22 February.

23 MS. WINGATE: That's fine.

24 MEMBER BENJAMIN: We'll read it again.

25 ACTING CHAIRPERSON CORWIN: All right. We

1 did #6.

2 Number 7 is a motion to accept the ZBA
3 minutes for December 17th, 2014. I so move.

4 MEMBER GORDON: Second.

5 ACTING CHAIRPERSON CORWIN: All in favor?

6 MEMBER BENJAMIN: Aye.

7 MEMBER GORDON: Aye.

8 ACTING CHAIRPERSON CORWIN: Aye.

9 The motion carries.

10 Number 8, a motion to approve the ZBA
11 minutes of November 19th, 2014. I so move.

12 MEMBER BENJAMIN: Second.

13 ACTING CHAIRPERSON CORWIN: All in favor?

14 MEMBER BENJAMIN: Aye.

15 MEMBER GORDON: Aye.

16 ACTING CHAIRPERSON CORWIN: Aye.

17 The motion carries.

18 Number 9, a motion to schedule the next
19 regular ZBA meeting for February 18th, 2015. I
20 so move.

21 MEMBER GORDON: Second.

22 MEMBER BENJAMIN: Second.

23 ACTING CHAIRPERSON CORWIN: All in favor?
24 MEMBER BENJAMIN: Aye.
25 MEMBER GORDON: Aye.

ZBA 1/21/15

33

1 ACTING CHAIRPERSON CORWIN: Aye.
2 MR. PROKOP: Could I just say something
3 before we adjourn?
4 ACTING CHAIRPERSON CORWIN: Yes. I have
5 two things I want to go over, too, before we
6 adjourn.
7 MR. PROKOP: Oh, so go ahead.
8 ACTING CHAIRPERSON CORWIN: One, the Code
9 Committee had a meeting Monday, and one of the
10 things they're going to do, I guess the Village
11 Board is going to vote on next week, is to ask
12 the Zoning Board, the Planning Board, and the
13 Historic Preservation Commission to submit any
14 considerations they have of how the sign
15 ordinance might be changed. So I just mention
16 that so that you are all aware that that's
17 coming, and if you want to spend time thinking
18 about signs, I guess now is the time to do it.

19 And I guess they'll give us a month or two to
20 think about it and make any concerns we have
21 about signs known to the Village Board, so they
22 may or may not change the code.

23 And then what I want to bring up is there
24 was a fence built on a piece of property west of
25 the library, a six-foot-high fence. It's not

ZBA 1/21/15

34

1 right on the property line, it is on the line of
2 the house, the north edge of the house. It
3 carries the north edge of the house. And that
4 would be the southeast corner of the intersection
5 of North and Second Street. So it's a
6 six-foot-high fence on a corner lot, which, by
7 the code, would be -- certainly in my
8 interpretation, a four-foot-high fence would only
9 be allowed without a variance.

10 I spoke to the Building Inspector about
11 this and she indicated that, well, it was past
12 practice, and that was done before. And I looked
13 around Fourth, Fifth, and Sixth Street, and Third
14 Street, and I didn't -- I saw a couple of

15 six-foot fences on side yards on corner lots, but
16 I question whether any of them got permits to put
17 the fence there in the first place.

18 So what happened is the Building Inspector,
19 after the fact -- the fence was put in, and
20 correct me if I'm wrong. The fence was put in,
21 then the Building Inspector, I assume, went to
22 the property owner and said, "You need a permit."

23 MS. WINGATE: She took a permit out and I
24 permitted that fence.

25 ACTING CHAIRPERSON CORWIN: You permitted

ZBA 1/21/15

35

1 the fence, prior to her --

2 MS. WINGATE: Prior to her putting it up.

3 ACTING CHAIRPERSON CORWIN: Okay.

4 MS. WINGATE: It's behind the house. The
5 definition of a front yard is from the property
6 line to the line of the house. That's Federation
7 Plan -- National Planning Federation, that's what
8 it is.

9 MR. PROKOP: Well, the front line -- the
10 front yard of the house ends at that line that's

11 parallel to the front of the house that's
12 extended to the side yards. So, if you take the
13 two front corners of the house and you extend a
14 line that's parallel to the front of the house
15 and perpendicular to the sides of the house, from
16 those corners to the side yards, that --
17 everything behind that line is in a side yard,
18 everything in front of that line is in a front
19 yard. So is it -- whatever we're talking about,
20 if the fence is supposed to be not in the front
21 yard, then it would have to be behind the front
22 corners of the house.

23 MS. WINGATE: It's this much
24 (demonstrating). It's a corner board off of the
25 edge of the house.

ZBA 1/21/15

36

1 MR. PROKOP: And I don't know anything
2 about this particular situation. I'm just saying
3 that that's traditionally what is considered the
4 front yard of the house, and especially with the
5 application to fences, is that extension of the
6 front lines of the house perpendicular to the

7 sides.

8 ACTING CHAIRPERSON CORWIN: All right. At
9 any rate, I wrote a letter to the Village
10 Administrator asking that -- indicating that I
11 felt it was -- the building permit was issued in
12 error, and that the applicant, if the applicant
13 wanted a six-foot-high fence, they should come
14 into the Zoning Board of Appeals.

15 And the Village Administrator -- we had a
16 very brief conversation, because we didn't have
17 time, and he indicated pretty much what the
18 Building Inspector said, somehow it was behind
19 the north side of the house, so it was okay. And
20 I took it from him, he was saying that was in
21 Village Code, which it's not that I can see.

22 So my position remains that that fence,
23 that six-foot-high fence was issued in error, and
24 they should come to the ZBA, and I bring that to
25 your attention.

ZBA 1/21/15

37

1 I would ask that you -- everybody on the
2 ZBA go by there and look at that, and maybe we

3 can discuss it some more in February. I don't
4 think the fence there is appropriate or within
5 the definitions that are in our Village Code,
6 notwithstanding what the National Planning Board
7 or anybody else may have defined.

8 MS. WINGATE: Our Village Code language is
9 very peculiar, it talks about the sky. So maybe
10 it's one of those things you want to put into the
11 Code Committee to define the yards better. But
12 it is within -- it is within our code.

13 MR. PROKOP: Well, does it say the rear
14 yard? Does it say -- where's the six-foot-fence
15 allowed?

16 MS. WINGATE: Anyplace other than a
17 required front yard, and 30 feet off of the
18 corner, which is also part of the Planning
19 Federation.

20 MR. PROKOP: But, you know, I'm concerned
21 about -- I don't know what the relevance is to
22 this particular situation, but I'm concerned
23 about the past practice statement that you made.
24 I'm not concerned that you made it, but I'm
25 concerned that somebody else may have raised

1 that, only because we've gone through this in
2 four or five different areas. There's no such
3 thing as past practice, only -- and I say that,
4 because every time somebody says something is a
5 past practice, there's at least two, or three, or
6 four different versions of what that past
7 practice was. It has nothing to do with our
8 code. The code should be applied regardless of
9 what anybody thinks past practice is. It's just
10 not even relevant.

11 And, you know, to the extent that you
12 pointed that out, I appreciate that and I'll take
13 a look at the code. But if you ever hear that
14 word mentioned, I mean, we've gone through this,
15 Eileen and I, many times together, trying to
16 straighten this out, and there really should not
17 be any discussion about past practice anymore.

18 ACTING CHAIRPERSON CORWIN: Well, I don't
19 go for past practice for a second. That's what I
20 was told when I first brought this up with the
21 Building Inspector, that it was past practice.

22 MR. PROKOP: Any part of the code, there's
23 no such thing as past practice.

20 think, Joe?

21 MR. PROKOP: Well, it has to come before us
22 somehow. Any decision that she makes is
23 reviewable by --

24 MEMBER BENJAMIN: I have to see it on paper
25 to discuss it in public. I guess we can't

ZBA 1/21/15

40

1 discuss it behind --

2 MS. WINGATE: No, it would have to be a
3 public hearing, absolutely.

4 ACTING CHAIRPERSON CORWIN: A permit that's
5 issued in error, and the question now becomes,
6 was it issued in error? And as I read the code,
7 it was a permit issued in error. Doesn't stand
8 if somebody questions it, as I understand.

9 MR. PROKOP: That's right. There's a
10 famous case called the Parkview Associates case,
11 Parkhurst or Parkview in New York City, where an
12 owner was required to remove the top 10 stories
13 of a 70-story building because the building
14 permit had been issued in error. And what that
15 case stood for is that no rights are given to an

16 owner by a building permit that was issued in
17 error, or other approval, actually, that was
18 issued in error. So any time a building permit
19 -- it's actually meant to protect building
20 inspectors, you know, because, you know, we're
21 all just doing the best job that we can, so --
22 and with a lot of work going through our offices,
23 and -- but, anyway, so right, a building --
24 nobody can say, "Well, I have a building permit,
25 so leave me alone." It's all subject to review.

ZBA 1/21/15

41

1 MEMBER GORDON: Thank you.

2 MR. PROKOP: I'm sorry it was such a long
3 story, but that's it.

4 MEMBER BENJAMIN: Okay.

5 ACTING CHAIRPERSON CORWIN: Okay. That's
6 my new business. Mr. Prokop?

7 MR. PROKOP: I just wanted to say, you
8 know, I think it was at the last meeting, there
9 was a picture of the Board in the paper, and at
10 the time, I was trying to concentrate on my
11 agenda, because I had just sat down. All of a

12 sudden, right next to me, there was a flash. And
13 someone -- I didn't notice -- realize the
14 reporter had come over. And my family got -- you
15 know, thought it was a funny picture, and I
16 really haven't mentioned it to any of the other
17 Boards, but I never wanted it to be a reflection
18 on this Board or your meeting, because I thought
19 it was a great meeting. We really got -- there
20 was -- you know, that was a trying time for
21 everybody, that meeting, but I think -- I think
22 the intention of the picture was to make a
23 reflection on the meeting. And I'm sorry for
24 that if it was, because I think for all of you,
25 it was actually a really good meeting with a lot

ZBA 1/21/15

42

1 of work that got done. And, you know, I hope you
2 had a laugh at it, you know, if you did.

3 ACTING CHAIRPERSON CORWIN: I saw the
4 picture and I didn't take it that way at all. At
5 least you weren't asleep, Joe. You weren't
6 asleep.

7 MEMBER BENJAMIN: I didn't even know you

8 were in the picture.

9 MR. PROKOP: No. I was trying to read my
10 agenda and concentrate for a minute.

11 MS. WINGATE: It was not flattering.

12 MR. PROKOP: It was definitely a good one.

13 ACTING CHAIRPERSON CORWIN: And there's
14 more to come after the Code Committee yesterday.

15 MS. WINGATE: I almost sent it to you as a
16 Christmas card.

17 ACTING CHAIRPERSON CORWIN: All right. Is
18 there any other business anyone wants to bring
19 before the ZBA?

20 MR. BENJAMIN: I think we should have our
21 next meeting with Douglas. Maybe we should come
22 see --

23 ACTING CHAIRPERSON CORWIN: I don't think
24 we can do that.

25 I make a motion to adjourn the meeting.

ZBA 1/21/15

43

1 MEMBER GORDON: Second.

2 MEMBER BENJAMIN: Second.

3 ACTING CHAIRPERSON CORWIN: All in favor?

4 MEMBER BENJAMIN: Aye.

5 MEMBER GORDON: Aye.

6 ACTING CHAIRPERSON CORWIN: Aye.

7 The motion is carried.

8 (Whereupon, the meeting was adjourned at

9 5:52 p.m.)

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