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

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

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

MEMBER GORDON: Second.

MEMBER CORWIN: All in favor?

MEMBER BENJAMIN: Aye.

MEMBER GORDON: Aye.

ACTING CHAIRPERSON CORWIN: Aye. The motion is adopted.

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

And I would like to change the agenda a
And just a couple of basic bookkeeping things out of the way, and that would be, first, Item #5, a motion to accept an appeal for an area variance, public notice, and schedule a public hearing for Robert Tapp and Nickolas Ellis, 152 Central Avenue, Greenport, New York; Suffolk County Tax Map 1001-5-1-14. The property is located in the R-2 District. The applicant proposes a rear addition for an existing single-family house, and reconfigure the existing deck.

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

MEMBER BENJAMIN: Yes.

ACTING CHAIRPERSON CORWIN: And then --

MEMBER GORDON: Are we talking about the February meeting?
ACTING CHAIRPERSON CORWIN: The February meeting, yes.

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

ACTING CHAIRPERSON CORWIN: Yes.

MEMBER GORDON: But I just --

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

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

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

MEMBER BENJAMIN: Second.

ACTING CHAIRPERSON CORWIN: All in favor?

MEMBER BENJAMIN: Aye.

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

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

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

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

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

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

And I also note that I think we should wait until we have more people, preferably a complete Board, a full Board, before we discuss
this application. So we're going to postpone
Item #2, the Smoked Fish.

MS. WINGATE: Item #3.

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

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

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

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

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

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

MR. WERTHNER: I think the -- I have a stamped survey here, too. So the -- on the south side, there was about 25.1 from the bow of the
window, which you probably saw. And the corner
of the house, the major concern was about
27-foot-eight, then the other corner was 26,
MR. PROKOP: Well, there's one in the file. I don't know who else got.

MS. WINGATE: Everybody should have gotten that.

ACTING CHAIRPERSON CORWIN: I don't think that I got it. I don't know.

MR. WERTHNER: Do you want to take a look at mine?

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ACTING CHAIRPERSON CORWIN: I would like to take a look at whatever the Building Inspector has on file.

MR. WERTHNER: Okay.

MS. WINGATE: Yeah, that's the current one, because the deck is removed. And I also have --

MR. PROKOP: Does the Chairperson have a copy of this?

ACTING CHAIRPERSON CORWIN: No.

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

MR. WERTHNER: Excuse me, if you want, I have a stamped copy here, too.
MS. WINGATE: You should have a photograph with the tape measure, and it was all attached to that.

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

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

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

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

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

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

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

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

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

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

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

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

MR. WERTHNER: I did, yes.

MS. WINGATE: He did.

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

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

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

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

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

MR. PROKOP: That's not the last one.
MS. WINGATE: This is the 18th. The 30th is the last one that I have.

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

MR. WERTHNER: I'm sorry. Yeah?

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

MR. WERTHNER: Okay.

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

MR. WERTHNER: Sure, yeah. No problem, yeah. Basically, what I did in the rear on the south side was remove the deck. And I had them remeasure from the edge of the bay window, which was at 25.1. And then I told them I wanted -- of course, I wanted to really know where the house was going to be properly. I mean, why not, it's supposed to be. So they got 27.8 there from the southeast corner. And then the 26.6, I need better glasses, maybe, but pretty close to that on the southwest corner from the house to the back property line. And, of course, we go --
then, we go — we have 20 and 20 on each side
east and west, and then we go up at 21.1 to the
front property line, and then, of course, 20, 20
foot to the front property line. And the basic
house itself, without the porch and all, is about
— add another five feet, so it's like 25 feet
for the basic house, if you do that. So
that's -- the setbacks are minimal that I'm
asking for.

ACTING CHAIRPERSON CORWIN: I think I
better read. I neglected to read what the
applicant is asking for.

The applicant requests a front yard setback
and a rear yard setback variance for the proposed
new house.

MR. WERTHNER: Correct.

ACTING CHAIRPERSON CORWIN: The proposed
house is situated so the front of the house is
set back 20 feet from the north property line.
In fact, that should be 20.5 feet, as it's an
average of the two distances; am I correct in
that?

MR. WERTHNER: I think you might be, yes,
yeah. I don't know why they didn't put that.

ACTING CHAIRPERSON CORWIN: Section

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150-12-A of the Greenport Village code requires a 30-foot front yard setback in the R-1 District, requiring a 10-foot front yard setback variance. So that's going to be at 10.5 foot, right?

MR. WERTHER: Okay.

ACTING CHAIRPERSON CORWIN: As we will take averages.

MEMBER GORDON: No. It would be 9.5.

ACTING CHAIRPERSON CORWIN: 9.5? I'm sorry.

MR. WERTHNER: Yes.

MR. PROKOP: I'm sorry. What are you taking?

MS. WINGATE: We usually don't take averages.

MR. PROKOP: You can't take an average, it's the shortest distance.

MS. WINGATE: It's the closest point.

ACTING CHAIRPERSON CORWIN: The shortest
distance, okay.

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

ACTING CHAIRPERSON CORWIN: I stand corrected.

MEMBER GORDON: So then it would be 10.

ACTING CHAIRPERSON CORWIN: Requiring a 10-foot front yard setback variance. The house is situated so that the rear of the house is set back 25.1 feet from the south property line.

MR. WERTHNER: Correct.

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

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

MR. WERTHNER: Right, that's correct.

ACTING CHAIRPERSON CORWIN: Okay.

MS. WINGATE: David, Marc Lacolla had asked
that you read his letter into the record.

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

MEMBER GORDON: It's here.

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

ACTING CHAIRPERSON CORWIN: All right.

This is a letter, dated January 17th, 2015, from Marc Lacolla, 213 Bridge Street, Greenport, New York.

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

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

MRS. WERTHNER: That was nice.

MR. WERTHNER: Huh?
MRS. WERTHNER: That was very nice.

MR. WERTHNER: That was very nice, yes.

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

MEMBER BENJAMIN: No, I'm good.

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

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

When you -- it is the build-up of variances property by property as they are developed, or modified, or changes. In the case of this, of this particular project, the lot is already substandard in terms of its overall area. I believe there was a variance issued some time ago with respect to that.

So here we have a request for two other
variances, and we've got another trifecta. I refer as comparable to that the variances that were issued to Hugh Prestwood and Judy Ahrens when they subdivided their property about three years, perhaps four years ago, time does fly, when there was an opportunity to create a fully conforming lot with -- as to dimensions and area from the subdivision. And they, instead, were granted a variance to create two substandard lots, I believe both in area and width.

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

So we get these -- keep building these trifecta variance lots and construction in the
Village to the extent that it amounts to a change in the zoning code, because to put it only somewhat facetiously, I don't think I've seen, in the observations that I've been making in the meetings that I've attended over recent years, I don't see — I don't think I've seen this Board turn down a side yard variance or a front yard variance that — I don't think they've seen one they didn't like, frankly.

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

ACTING CHAIRPERSON CORWIN: Thank you.

MR. WERTHNER: May I respond to that? I'd just like to say I understand his point, but the variance that was put there, you know, with the 16 foot back in 2004, that they came in and shortened that property, it was still a building lot. I'm building a house, I'd like to move there, okay? And I understand his point, but there's — theoretically, there's no real change. I'm putting a house on what should have been a
building lot to begin with. And I guess mistakes
are made sometimes, but that's what I'm
requesting.

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

MR. WERTHNER: Oh, okay.

MR. TASKER: This isn't about your project.

This about the generality of these things as they
occur. And yes, you're right, you picked up a --
you picked up a lot that already had one --

MR. WERTHNER: Right, exactly.

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

MS. WINGATE: I do.

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

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

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

MR. BENJAMIN: I second.

ACTING CHAIRPERSON CORWIN: All in favor?

MEMBER BENJAMIN: Aye.

MEMBER GORDON: Aye.

ACTING CHAIRPERSON CORWIN: Aye.

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

And the thing about it is the front yard there is —— the variance is mostly required for a garage rather than for the house, the front of the house itself. So probably a different structure could be accommodated on the house, a different layout. I assume this was out of a book someplace, rather than designed by an architect, that was trying to fit it into the existing lot. So that's where it stands.

Anybody else on the Board have any input?

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

MS. WINGATE: The two houses to the east were both built post code, so they were set back 30 feet.
MEMBER GORDON: Right, right.

MS. WINGATE: The two --

MEMBER GORDON: The one to the west?

MS. WINGATE: The one to the west is a very old house and virtually has zero, three feet or four feet as a front yard, but it's a 100-year-old house.

ACTING CHAIRPERSON CORWIN: That's not the immediate west, is it?

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

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

MEMBER GORDON: You mean the house behind?

MEMBER BENJAMIN: Yeah.

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

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

ACTING CHAIRPERSON CORWIN: The moving of
the plot line, the rear yard property line on
that house made the problem in the first place.
If that had not been granted, we wouldn't be here
discussing this now.

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

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

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

MR. PROKOP: Excuse me for one second.
What is the rear yard, the required rear yard setback?

MS. WINGATE: Thirty-five.

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

ACTING CHAIRPERSON CORWIN: No.

MS. WINGATE: They don't have.

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

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

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

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

backyard whatsoever, given the strange shape of this lot, if you moved the house back. I mean, hardship is one of the elements we consider, right?
ACTING CHAIRPERSON CORWIN: You're correct.

Well, what's the Board's feeling? Do you want to move ahead and vote on this variance?

MEMBER BENJAMIN: Yeah, move ahead.

ACTING CHAIRPERSON CORWIN: Move ahead.

All right. In that case, the first thing I guess we have to do is the State Environmental Quality Review Act.

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

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

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

MEMBER GORDON: Second.

ACTING CHAIRPERSON CORWIN: All in favor?

MEMBER BENJAMIN: Aye.

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MEMBER GORDON: Aye.

ACTING CHAIRPERSON CORWIN: Aye.

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

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

So question number one, whether an undesirable change will be produced in the character of the neighborhood, or a detriment to nearby properties will be created by the granting of the area variance?
So I will ask Mr. Benjamin.

MEMBER BENJAMIN: No.

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

And Ms. Gordon?

MEMBER GORDON: No.

ACTING CHAIRPERSON CORWIN: No. So that's three nos on that one. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance?

Mr. Benjamin?

MEMBER BENJAMIN: No.

ACTING CHAIRPERSON CORWIN: I say no.

Ms. Gordon?

MEMBER GORDON: No.

ACTING CHAIRPERSON CORWIN: No. Whether the requested area variance is substantial?

Mr. Benjamin?
MEMBER BENJAMIN: That question again.

MR. PROKOP: So the front yard variance -- I just want to point out to the Board, the front yard variance is a one-third -- right, one-third setback, 33%?

MEMBER BENJAMIN: Yeah.

MR. PROKOP: And the rear yard is --

MEMBER BENJAMIN: A little less.

MR. PROKOP: So like 16%.

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

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

MEMBER BENJAMIN: Well, I would say no.

ACTING CHAIRPERSON CORWIN: I say yes.

MEMBER GORDON: I say yes.

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

MEMBER BENJAMIN: No.
ACTING CHAIRPERSON CORWIN: I say no.
MEMBER GORDON: No.

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

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MEMBER BENJAMIN: No.

ACTING CHAIRPERSON CORWIN: Mr. Benjamin says no. I say no.
MEMBER GORDON: No.

ACTING CHAIRPERSON CORWIN: Ms. Gordon says no.

So, that out of the way, I make a motion that we approve the variance of Mr. Werthner for the proposed front yard setback of 20 feet from the north property line, and the proposed rear yard setback of 4.9 feet variance.
MEMBER GORDON: Second.

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

ACTING CHAIRPERSON CORWIN: Aye.

MEMBER BENJAMIN: Did you say the first one right? You said --

ACTING CHAIRPERSON CORWIN: Probably not.

MEMBER BENJAMIN: You had a 10-foot setback. He wants a 10-foot setback on the front yard, and a 2. -- 4.9 setback on the rear yard?

MEMBER GORDON: Variance.

ACTING CHAIRPERSON CORWIN: I stand corrected. It's a 10-foot setback variance of the front yard, and a 4.9 rear yard setback variance.

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MR. PROKOP: This is a one-story house, right?

MS. WINGATE: Yes.

MR. PROKOP: Okay. I'd just like to point out --

MS. WINGATE: No, it's a two-story house.

MR. PROKOP: Is it two stories?

MS. WINGATE: It's a Cape. You know, it's
got a big roof and there's a small --

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

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

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

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

problems down the road.

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

So we did the public hearing, we did #1.
We have granted the variance for #2 for Mr. Werthner.

MEMBER GORDON: Congratulations.

MR. WERTHNER: Thank you.

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

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

MRS. WERTHNER: Oh, yeah.

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

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

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

MS. WINGATE: Yes.

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

ACTING CHAIRPERSON CORWIN: The Edwards,

I'm sorry, #4. All right. Now I didn't get a
copy of that either, so I don't know if the rest of the Board did.

MR. BENJAMIN: I read it online.

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

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

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

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

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

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

MEMBER GORDON: Yes.

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

MS. WINGATE: That's fine.

MEMBER BENJAMIN: We'll read it again.

ACTING CHAIRPERSON CORWIN: All right. We
1 did #6.
2 Number 7 is a motion to accept the ZBA minutes for December 17th, 2014. I so move.
3 MEMBER GORDON: Second.
4 ACTING CHAIRPERSON CORWIN: All in favor?
5 MEMBER BENJAMIN: Aye.
6 MEMBER GORDON: Aye.
7 ACTING CHAIRPERSON CORWIN: Aye.
8 The motion carries.
9 Number 8, a motion to approve the ZBA minutes of November 19th, 2014. I so move.
10 MEMBER BENJAMIN: Second.
11 ACTING CHAIRPERSON CORWIN: All in favor?
12 MEMBER BENJAMIN: Aye.
13 MEMBER GORDON: Aye.
14 ACTING CHAIRPERSON CORWIN: Aye.
15 The motion carries.
16 Number 9, a motion to schedule the next regular ZBA meeting for February 18th, 2015. I so move.
17 MEMBER GORDON: Second.
18 MEMBER BENJAMIN: Second.
ACTING CHAIRPERSON CORWIN: Aye.

MR. PROKOP: Could I just say something before we adjourn?

ACTING CHAIRPERSON CORWIN: Yes. I have two things I want to go over, too, before we adjourn.

MR. PROKOP: Oh, so go ahead.

ACTING CHAIRPERSON CORWIN: One, the Code Committee had a meeting Monday, and one of the things they're going to do, I guess the Village Board is going to vote on next week, is to ask the Zoning Board, the Planning Board, and the Historic Preservation Commission to submit any considerations they have of how the sign ordinance might be changed. So I just mention that so that you are all aware that that's coming, and if you want to spend time thinking about signs, I guess now is the time to do it.
And I guess they'll give us a month or two to think about it and make any concerns we have about signs known to the Village Board, so they may or may not change the code.

And then what I want to bring up is there was a fence built on a piece of property west of the library, a six-foot-high fence. It's not right on the property line, it is on the line of the house, the north edge of the house. It carries the north edge of the house. And that would be the southeast corner of the intersection of North and Second Street. So it's a six-foot-high fence on a corner lot, which, by the code, would be -- certainly in my interpretation, a four-foot-high fence would only be allowed without a variance.

I spoke to the Building Inspector about this and she indicated that, well, it was past practice, and that was done before. And I looked around Fourth, Fifth, and Sixth Street, and Third Street, and I didn't -- I saw a couple of
six-foot fences on side yards on corner lots, but I question whether any of them got permits to put the fence there in the first place.

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

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

ACTING CHAIRPERSON CORWIN: You permitted the fence, prior to her --

MS. WINGATE: Prior to her putting it up.

ACTING CHAIRPERSON CORWIN: Okay.

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

MR. PROKOP: Well, the front line -- the front yard of the house ends at that line that's
parallel to the front of the house that's
extended to the side yards. So, if you take the
two front corners of the house and you extend a
line that's parallel to the front of the house
and perpendicular to the sides of the house, from
those corners to the side yards, that --
everything behind that line is in a side yard,
everything in front of that line is in a front
yard. So is it -- whatever we're talking about,
if the fence is supposed to be not in the front
yard, then it would have to be behind the front
corners of the house.

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

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

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

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

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

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    I would ask that you -- everybody on the ZBA go by there and look at that, and maybe we
can discuss it some more in February. I don't think the fence there is appropriate or within the definitions that are in our Village Code, notwithstanding what the National Planning Board or anybody else may have defined.

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

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

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

MR. PROKOP: But, you know, I'm concerned about -- I don't know what the relevance is to this particular situation, but I'm concerned about the past practice statement that you made. I'm not concerned that you made it, but I'm concerned that somebody else may have raised
that, only because we've gone through this in
four or five different areas. There's no such
thing as past practice, only — and I say that,
because every time somebody says something is a
past practice, there's at least two, or three, or
four different versions of what that past
practice was. It has nothing to do with our
code. The code should be applied regardless of
what anybody thinks past practice is. It's just
not even relevant.

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

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

MR. PROKOP: Any part of the code, there's
no such thing as past practice.
I see nothing in the code. I'll look again to try to find something that defines a side yard to the corner, and a house, and where a fence could be. But, as I see it, that fence would need a variance from the Zoning Board of Appeals. And I ask the Zoning Board of Appeals to go by and take a look and make their own decision on that, and we could discuss it again in February.

MEMBER GORDON: As the newest member of the Board and still learning the basics, does the Zoning Board have the authority to, for instance, require that somebody take down a fence that we determined was out of compliance?

MS. WINGATE: Sure.

MEMBER BENJAMIN: The Zoning Board?

MS. WINGATE: Well, yeah, you could challenge any of my decisions, absolutely. And if it's determined --

MR. BENJAMIN: I did not know that.

MS. WINGATE: And if it's -- wouldn't you
think, Joe?

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

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

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

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

MR. PROKOP: That's right. There's a famous case called the Parkview Associates case, Parkhurst or Parkview in New York City, where an owner was required to remove the top 10 stories of a 70-story building because the building permit had been issued in error. And what that case stood for is that no rights are given to an
owner by a building permit that was issued in
error, or other approval, actually, that was
issued in error. So any time a building permit
-- it's actually meant to protect building
inspectors, you know, because, you know, we're
all just doing the best job that we can, so --
and with a lot of work going through our offices,
and -- but, anyway, so right, a building --
no body can say, "Well, I have a building permit,
so leave me alone." It's all subject to review.

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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
sudden, right next to me, there was a flash. And someone -- I didn't notice -- realize the reporter had come over. And my family got -- you know, thought it was a funny picture, and I really haven't mentioned it to any of the other Boards, but I never wanted it to be a reflection on this Board or your meeting, because I thought it was a great meeting. We really got -- there was -- you know, that was a trying time for everybody, that meeting, but I think -- I think the intention of the picture was to make a reflection on the meeting. And I'm sorry for that if it was, because I think for all of you, it was actually a really good meeting with a lot of work that got done. And, you know, I hope you had a laugh at it, you know, if you did.

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

        MEMBER BENJAMIN: I didn't even know you
were in the picture.

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

MS. WINGATE: It was not flattering.

MR. PROKOP: It was definitely a good one.

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

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

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

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

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

I make a motion to adjourn the meeting.

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MEMBER GORDON: Second.

MEMBER BENJAMIN: Second.

ACTING CHAIRPERSON CORWIN: All in favor?
MEMBER BENJAMIN: Aye.

MEMBER GORDON: Aye.

ACTING CHAIRPERSON CORWIN: Aye.

The motion is carried.

(Whereupon, the meeting was adjourned at 5:52 p.m.)
CERTIFICATION

STATE OF NEW YORK )

) SS:

COUNTY OF SUFFOLK )

I, LUCIA BRAATEN, a Court Reporter and Notary Public for and within the State of New York, do hereby certify:

THAT, the above and foregoing contains a true and correct transcription of the proceedings taken on January 21, 2015.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of February, 2015.

________________________________________
Lucia Braaten