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VILLAGE OF GREENPORT
ZONING BOARD OF APPEALS

REGULAR MEETING

June 18, 2014

5:00 p.m.

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

APPEARANCES:

Douglas Moore - Chairman

David Corwin

Charles Benjamin

Ellen Neff

Joseph Prokop - Village Attorney

David Abatelli - Community Development

Director

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1 (Whereupon, the meeting was called to
2 order at 5:07 p.m.)

3 CHAIRMAN MOORE: So this is the regular
4 monthly meeting of the Zoning Board of
5 Appeals. It's about seven after five. We do
6 have three members present, and I would
7 anticipate that Mr. Corwin would be joining
8 us, but we'll go ahead and start without him.

9 We have a fairly brief agenda tonight.
10 We have a public hearing to start, which is a
11 public hearing for a request from the Building
12 Inspector for an interpretation of Sections
13 150-12A and 150-13D of the Village of
14 Greenport Code. An interpretation is
15 requested regarding the exclusion or inclusion
16 of Bilco doors, basement stairwells, chimneys,
17 and similar components for consideration in

18 the yard setback requirements stated in
19 Section 150-12A.

20 I should mention that this was properly
21 noticed in the Suffolk Times. There aren't
22 any adjacent neighbors to notify, nor placard
23 to be placed, because this was just a request
24 for an interpretation from the Building
25 Inspector.

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1 If there's any members of the public
2 that would like to speak in regard to this
3 issue, you could come up to the podium. You
4 may have to adjust it.

5 MR. TASKER: I'll put it in place and
6 we'll get underway.

7 CHAIRMAN MOORE: Thank you very much.
8 So we appreciate any public input before we
9 have a discussion about this.

10 MR. TASKER: Is that on here?

11 CHAIRMAN MOORE: I'm not sure it's
12 turned on, but --

13 MR. TASKER: Is that on now?

14 CHAIRMAN MOORE: Yup, now you're
15 talking.

16 MR. TASKER: Good evening. I'm Arthur
17 Tasker. I live at 17 Beach Street in
18 Greenport. It's nice to be before you again.
19 It's been almost a year, I think.

20 First of all, I'm curious as to the
21 nature of this proceeding, because it seems to
22 be -- to me, it's a little bit procedurally
23 inept. It would seem to me that the way that
24 this should be proceeding is that a request
25 for a building permit should have been made

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1 that had certain side yard plans, and for the
2 Building Official, if she felt it appropriate,
3 to have required a variance for the side yard.
4 That would have permitted this Board to look
5 at that project, that Bilco door, that
6 chimney, and make a determination with respect
7 to that project. But since we're here, let's
8 carry on.

9 CHAIRMAN MOORE: Absolutely.

10 MR. TASKER: What's really happening
11 here is that the question that the Building
12 Inspector has presented, the Building Official
13 has presented to you is what is a building
14 envelope, what does it include? Bilco doors,
15 chimneys, decks, porches, and so forth. The
16 real question is what is a setback? And
17 deciding whether or not Bilco doors are
18 appropriate or not is only going to postpone
19 the inevitable until somebody says, "Well, I'm
20 going to put an astragal window in that's
21 going to bow out three feet from my second
22 story, and what about that? And then it's
23 going to be, well, if chimneys aren't included
24 in the setback requirement, suppose somebody
25 builds a baronial house with a baronial

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1 chimney, big enough for yule logs, and build
2 the back of the chimney out to the lot line.
3 That's crazy. Common sense approach is
4 required.

5 If you go to Black's Law Dictionary, it

6 says that a setback is the distance from the
7 road or curb where nothing can be built upon.
8 And that's not New York State Law, but those
9 kinds of definitions have been adopted in many
10 states, and I would expect in New York State.
11 And since I don't have access to Westlaw, I
12 couldn't do it, but a five-minute search on
13 Westlaw on New York cases and statutes could
14 easily ascertain what the definition of
15 setback is.

16 So the question that you've been asked
17 to examine isn't going to solve the problem or
18 answer the situation, because what will happen
19 is if someone disagrees with your
20 interpretation and the Building Inspector
21 issues a building permit based on it, then
22 someone is going to challenge that building
23 permit and you're going to be right back here
24 again.

25 So I think you should be looking at what

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1 is a setback, not what kind of things are

2 permitted to protrude beyond the setback,
3 because, by definition, nothing can protrude
4 beyond the setback. Thank you.

5 CHAIRMAN MOORE: Okay, good. Thank you.
6 Is anyone else interested in speaking? Sir?
7 (Whereupon, Kenneth MacAlpin made a statement
8 that was stricken from the record.)

9 CHAIRMAN MOORE: Now, did you say that
10 they were coming here?

11 MR. ABATELLI: Yeah. Well, they were
12 called.

13 CHAIRMAN MOORE: Yeah. But he's gone,
14 unless he decides to come back.

15 I apologize to those assembled for his
16 outburst. We can move on now.

17 Is there anyone else that would like to
18 make a comment about the issue at hand, the
19 public hearing?

20 MR. TASKER: It's not wide open anymore?

21 CHAIRMAN MOORE: Okay.

22 MR. ABATELLI: This is my last meeting.

23 CHAIRMAN MOORE: Yeah, and I would like to --

24 MS. NEFF: I actually would like to make
25 a motion --

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1 CHAIRMAN MOORE: Yes.

2 MS. NEFF: -- that the last speaker's
3 comments be stricken from the record, unless
4 we need the record for some legal purposes,
5 but I do not think it will benefit anyone.

6 CHAIRMAN MOORE: Is that -- Mr. Prokop,
7 is that suitable?

8 MR. PROKOP: What my recommendation is,
9 is that it be made part of a separate record,
10 because, obviously, I'd like to have them
11 preserved for legal purposes.

12 CHAIRMAN MOORE: Yeah, I think so, in
13 case any issues come after this.

14 MR. PROKOP: So, if the motion could be
15 amended to preserve the speaker's -- the last
16 speaker's comments as a separate record.
17 Let's strike them from the public hearing
18 that's being conducted.

19 CHAIRMAN MOORE: And as probably not
20 applicable to the topic at hand.

21 MS. NEFF: I would like to characterize
22 it as an inappropriate, vicious rant, and it

23 should be kept as a separate record, fine.

24 CHAIRMAN MOORE: And that is moved. May
25 I have a second, please?

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1 MR. BENJAMIN: (Raised hand.)

2 CHAIRMAN MOORE: All in favor?

3 MR. BENJAMIN: Aye.

4 MS. NEFF: Aye.

5 CHAIRMAN MOORE: Aye.

6 So that will be the way it is. And, oh,
7 we haven't closed the hearing.

8 MS. MUNDUS: I would.

9 CHAIRMAN MOORE: Yes. Why don't you
10 come up and speak, please. Can you address
11 the zoning issue that's at hand?

12 MS. MUNDUS: My name is Pat Mundus. And
13 I would just like to thank the members of the
14 community who are serving on the Zoning Board
15 of Appeals as volunteers, community service.
16 Thank you very much. It's above and beyond
17 what you normally have to take. Thank you for
18 being so patient and not making it more

19 confrontational.

20 CHAIRMAN MOORE: Yes.

21 MS. MUNDUS: Thank you.

22 CHAIRMAN MOORE: Thank you. And I
23 should mention for the record that Pat Mundus
24 is also a volunteer on the Planning Board and
25 a resident of Greenport.

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1 If there are no more public comments, I
2 would like to make a motion to close the
3 public hearing. May I have a second?

4 MR. BENJAMIN: Second.

5 CHAIRMAN MOORE: And any discussion?

6 (No response.)

7 CHAIRMAN MOORE: If not, all in favor?

8 MS. NEFF: Aye.

9 MR. BENJAMIN: Aye.

10 CHAIRMAN MOORE: Aye.

11 And the public hearing is closed.

12 I'd just like to mention, in somewhat a
13 response to Mr. Tasker's comment, the code
14 does provide for an interpretation from an

15 official of the Greenport Village for an
16 interpretation of the code.

17 MR. TASKER: Yes.

18 CHAIRMAN MOORE: So even though a case
19 is not pending regarding a particular setback,
20 the code does permit that task be taken up by
21 the Zoning Board of Appeals.

22 MR. TASKER: Well, I think -- my point
23 is that the Building Official has not
24 presented a question that can be adjudicated
25 by determining whether or not it is in the

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1 setback area.

2 CHAIRMAN MOORE: Yes, I understand what
3 you're saying.

4 So, what I'd like to do is just to give
5 a little background on how this came up. It
6 did relate and to a degree to an issue we've
7 had. I think perhaps there are a number of
8 cases in which we've had very close
9 approximations to property lines for parts of
10 the building. And the most recent case was a

11 stairwell, and a ways back was a bay window.
12 And I've provided a handout to the members of
13 the Board, and I have a couple of extras, if
14 you'd like to look at it.

15 The Village of Greenport Code does not
16 define or exclude particular components of the
17 building from a setback requirement.

18 (Police Officers entered the Firehouse.)

19 CHAIRMAN MOORE: Ah, yes. Well, thank
20 you for coming. I'll just take a break from
21 the proceedings.

22 (Whereupon, the meeting was recessed at
23 5:24 p.m. and resumed at 5:28 p.m.)

24 CHAIRMAN MOORE: All right. I think
25 we're ready to begin again. I'll just make

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1 note that Mr. Corwin has joined us.

2 Now, the issue that came up is that the
3 Southold Zoning Code very specifically
4 identifies areas that are included within and
5 other areas that are excluded from setback
6 requirements. And the Southold Code does

7 exempt cornices, and chimneys, fireplaces,
8 steps, open porches, and exterior cellar
9 doors, stairwells. The Village of Greenport
10 Code is more abbreviated and says nothing
11 about what constitutes things that are
12 included or exempted. So, if taken literally
13 as printed, essentially every part of the
14 building is included in a setback requirement.

15 Discussions we've had with the Building
16 Inspector indicate that there has been a
17 custom over the years to exclude chimneys, and
18 stairwells, and things like that, from
19 consideration when looking at setback
20 requirements, or setback -- building envelopes
21 and whether they're entering into a restricted
22 zone or not.

23 And one of the scenarios that I can
24 imagine is you may have a building which is
25 fully within the building envelope setback

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1 requirements, and for the sake of a single
2 Bilco door installation, might require an

3 application for a variance and the fees
4 associated, rather than a simple building
5 permit.

6 So, with those discussions at hand, the
7 question was presented to us whether -- you
8 know, what is the story on this. And, you
9 know, I use the term it's been a custom. It's
10 not a policy, because if it were a policy, it
11 would have some sort of written documentation
12 documenting the policy.

13 So I'm opening the discussion to the
14 Board Members to see whether this is something
15 they'd like to comment on as to the definition
16 within the Village Code as to what constitutes
17 the building footprint or building area.
18 Would anyone care to comment on their
19 feelings?

20 MR. BENJAMIN: The only thought I had
21 was you're looking at a building that's like
22 so many feet wide and so many feet deep, and
23 that's the area of the lot it covers, but --
24 so you want that setback from the property
25 lines so much in the rear, so much in the

1 front, so much in the side. But, if you put a
2 little two-foot chimney there, that's quite a
3 bit different from a 40-foot building.

4 CHAIRMAN MOORE: Yes.

5 MR. BENJAMIN: So it's really not
6 significant, in my eyes, unless it goes too
7 close to the property line. You know, you
8 can't say -- you can't build a building like
9 two feet from the property line, then put your
10 chimney on top of the property line. So there
11 has to be reasonable distance for all these
12 little juts out.

13 CHAIRMAN MOORE: Right. The thing we
14 have to be careful of is that while we can do
15 interpretations of the code, the Zoning Board
16 of Appeals does not have Legislative authority
17 to create codes. So we can't amend the code
18 to exclude or include certain items with
19 specific language.

20 So one of the outcomes of our discussion
21 could be that we would make a recommendation
22 to the Board to be more specific and add
23 perhaps an additional section to the code to

24 either include or exclude these items.

25 You know, as I indicated, the Southold

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1 Code is rather specific in things that it does
2 exempt from the setback requirements.

3 Mr. Corwin, do you have thoughts?

4 MR. CORWIN: Well, the only thing I can
5 say is I saw a fire on First Street early
6 Spring, and these buildings in Greenport are
7 so close together, and that fire on First
8 Street, if the wind had been blowing, it would
9 have probably set the Methodist Parsonage on
10 fire. So I think these chimneys should be
11 counted.

12 CHAIRMAN MOORE: Should be counted.

13 MR. CORWIN: At least the chimneys. And
14 I'm not comfortable with the exit doors of the
15 basements either, because sometimes they're
16 left open and then present an opportunity to
17 fall down a stairwell.

18 CHAIRMAN MOORE: So the opportunity
19 would be, then, for an applicant, if they

20 wished to add those items to a house, if we
21 were keeping it the way it's written, would be
22 that they would then require a variance that
23 would require additional considerations for
24 that addition?

25 MR. CORWIN: Yes, or that's part of the

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1 measurement. The measurement should be to
2 chimneys or stairwells.

3 CHAIRMAN MOORE: That, you know, could
4 be the result of our discussion, is to simply
5 leave the code alone, and be very specific
6 that any part of the building outline be
7 considered in the setback, and that would
8 include stairwells, Bilco doors, and chimneys
9 and fireplaces. If you --

10 MS. NEFF: Would --

11 CHAIRMAN MOORE: Yes.

12 MS. NEFF: If I could just, and that
13 would -- what would happen is what happens
14 presently, which is the building permit would
15 be denied, and the people would have the

16 opportunity to bring it to the ZBA, where
17 certainly we have dealt with matters of that
18 nature. But the whole context, the whole
19 building lot, the whole structure gets further
20 scrutiny, which I think that's sufficient.

21 I think the part you brought up about
22 fires, I live across the street from where two
23 buildings burned down, but it was a case in
24 which the first building to catch on fire was
25 already built on the property line. It had

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1 nothing to do with our code. It existed 80 to
2 100 years before. So it is -- we are often
3 dealing with 50-foot-wide or less lots, and I
4 think it's appropriate that such things get
5 referred to a community ZBA.

6 CHAIRMAN MOORE: Does that seem as like
7 it's kind of best to leave it alone and let it
8 be run through the process, that any incursion
9 into the side yards, front yards or backyards
10 would require a variance application?

11 MR. CORWIN: That would be my thinking.

12 CHAIRMAN MOORE: Okay. If that's the
13 thinking, I could in a moment propose a motion
14 that we would return an interpretation that
15 basically leaves the code as is, and that it
16 would be more specific, especially considering
17 the small lot sizes in Greenport, to recognize
18 all of the parts of the building, whether they
19 be chimneys, or stairwells, or actually parts
20 of the foundation line.

21 So, with that, I would first make a
22 motion that we declare the Zoning Board of
23 Appeals the Lead Agency according to SEQRA,
24 and declare this a Type II Action. So moved.
25 And may I have a second, please?

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1 MS. NEFF: Second.

2 CHAIRMAN MOORE: And all in favor?

3 MR. CORWIN: Aye.

4 MS. NEFF: Aye.

5 MR. BENJAMIN: Aye.

6 CHAIRMAN MOORE: Aye.

7 The motion carries unanimously.

8 And then I suppose I would propose in
9 our -- to write a brief interpretation letter
10 back to the Building Inspector that the
11 Greenport Village Code does not specifically
12 exclude these items, such as are currently
13 excluded in the Southold Town Code, and, as
14 such, would require the inclusion of these
15 parts of the building within the consideration
16 for setback requirements.

17 So I'd make that motion. May I have a
18 second?

19 MR. CORWIN: Second.

20 CHAIRMAN MOORE: And all in favor? Or
21 any discussion on the matter?

22 MR. BENJAMIN: You know, that's saying
23 that a 20-foot-wide building is now 22 feet
24 wide because it has a chimney.

25 MR. TASKER: That's right.

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1 MR. BENJAMIN: Well, that's -- you know,
2 that math is all wrong.

3 And the other thing is that if it has a

4 cellar already, now you're saying that if it's
5 a four-foot cellar door, and now that the
6 width of the building is -- a 20-foot building
7 is now 24 feet wide.

8 CHAIRMAN MOORE: I think one thing, as
9 we just discussed, is that even though the
10 part of the chimney is a very small amount of
11 square footage --

12 MR. BENJAMIN: Right

13 CHAIRMAN MOORE: -- that when
14 considering a request for a variance, its
15 scale relative to the overall setback
16 requirement would be taken into consideration,
17 because usually these issues come to be
18 because a building is being expanded, and part
19 of the building might be a chimney addition as
20 well. So I think in that case, you know, we'd
21 be able to look at the relative impact of this
22 additional square footage.

23 I'm not sure there's anything in the
24 code that says you can automatically, or by
25 some interpretation, exclude certain

1 components of the building --

2 MR. BENJAMIN: Right.

3 CHAIRMAN MOORE: -- as currently
4 written. And we could add to the letter a
5 recommendation that the Village Board consider
6 this matter, but, as Mr. Corwin indicated --

7 MR. BENJAMIN: When there's no clear
8 definition, there should be a clear
9 definition.

10 CHAIRMAN MOORE: Perhaps. Perhaps that
11 would be something they'd want to consider.

12 MR. BENJAMIN: You know, I don't know.
13 If it was a -- if it was a bay window that
14 extended 40 feet long, you know, and jutted
15 out two feet, well, I could say, "Hey that's a
16 lot of lot coverage," you know.

17 CHAIRMAN MOORE: You know, we --

18 MR. BENJAMIN: But it's just my opinion.

19 CHAIRMAN MOORE: Yeah. Okay. Well, why
20 don't we take it to the vote? And we had a
21 second on that, so I'll ask, all in favor?

22 MR. CORWIN: Aye.

23 MS. NEFF: Aye.

24 MR. BENJAMIN: Aye.

25 CHAIRMAN MOORE: Aye.

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1 And any opposed?

2 (No response.)

3 CHAIRMAN MOORE: So that motion carries.

4 So I'll prepare a brief letter that will
5 go back to the Building Inspector. And if
6 you'd like, I will bring it to next month's
7 meeting for approval, or shall I just send it?
8 What would the Board wish to do on that?
9 Would you want to go through a formal approval
10 process?

11 MR. CORWIN: I have confidence in you,
12 you would just send it.

13 MS. NEFF: I have confidence also.

14 CHAIRMAN MOORE: Okay. So then I'll
15 just prepare a letter and send it. That's
16 acceptable, Mr. Prokop?

17 MR. PROKOP: Yeah, I think that's fine.

18 CHAIRMAN MOORE: Good, because it's a
19 pretty straightforward matter.

20 Okay. So we have gone into the regular

21 meeting agenda, which is our discussion and
22 action on the request for an interpretation.

23 So Item #2 is a motion to approve the
24 Findings, Determination and Decision Document
25 approving an area variance for Orin and Jamie

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1 Kimball, 818 Main Street, Greenport, New York,
2 Suffolk County Tax Map 1001-2-2-24.1. The
3 property is located in the R-1 District and
4 within the Historic District. The owners
5 propose to build an addition to an existing
6 structure, requiring a three-foot side yard
7 setback area variance for the new foundation
8 walls. The proposed addition has a basement
9 access door stairwell, which requires a
10 variance of six-feet-eight-inches on the south
11 property line.

12 Has everyone had a chance to review the
13 document that was prepared? It was pretty
14 straightforward.

15 It does have the requirements within the
16 conditions of the variance that all rainwater

17 from the new addition be retained on the
18 property.

19 With that in mind, I will make a motion
20 that we approve the Determination Document as
21 written. May I have a second, please?

22 MS. NEFF: Second.

23 CHAIRMAN MOORE: And any discussion on
24 the matter?

25 (No response.)

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1 CHAIRMAN MOORE: All in favor?

2 MR. CORWIN: Aye.

3 MS. NEFF: Aye.

4 CHAIRMAN MOORE: Aye.

5 I'm sorry. Mr. Benjamin, did you say

6 aye or --

7 MR. BENJAMIN: Aye.

8 CHAIRMAN MOORE: Yes. And opposed?

9 (No response.)

10 CHAIRMAN MOORE: The motion carries.

11 The next item is the motion to approve a
12 ZBA Interpretation Document for a request from

13 the Planning Board for interpretation of
14 Section 150-9 A & B, permitted and conditional
15 uses in the Retail Commercial District. The
16 Planning Board is considering an application
17 for establishment of a car service, taxi
18 service, proposed to be located in a parcel
19 designated as Retail Commercial.

20 Again, I did circulate that document to
21 the Board, if anyone has any comments on it.
22 If not, I would make a motion that we approve
23 that document as written. And may I have a
24 second?

25 MS. NEFF: Second.

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1 CHAIRMAN MOORE: And any discussion?

2 (No response.)

3 CHAIRMAN MOORE: All in favor?

4 MR. CORWIN: Aye.

5 MS. NEFF: Aye.

6 CHAIRMAN MOORE: Aye.

7 MR. BENJAMIN: Yes.

8 CHAIRMAN MOORE: Any opposed?

9 (No response.)
10 CHAIRMAN MOORE: The motion carries.
11 So that document is approved. I'll sign
12 them and return them to the Building
13 Inspector.
14 And next is a motion to accept the ZBA
15 minutes for May 21, 2014. So moved. May I
16 have a second?
17 MS. NEFF: Second.
18 CHAIRMAN MOORE: And all in favor?
19 MR. BENJAMIN: Aye.
20 MS. NEFF: Aye.
21 MR. CORWIN: Aye.
22 CHAIRMAN MOORE: Aye.
23 The motion carries.
24 Motion to approve the ZBA minutes for
25 April 16, 2014. So moved. Second, please.

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1 MR. BENJAMIN: Second
2 CHAIRMAN MOORE: All in favor?
3 MR. CORWIN: Aye.
4 MS. NEFF: Aye.

5 MR. BENJAMIN: Aye.

6 CHAIRMAN MOORE: Aye.

7 The motion carries.

8 And then a motion to schedule the next
9 regular ZBA meeting for July 16, 2014. I
10 believe we will have a few new applications,
11 but they will only be accepted, so we won't be
12 able to have any site visits. So it will be
13 at 5 p.m., July 16. I'll make that motion.
14 May I have a second, please?

15 MR. CORWIN: Second.

16 MS. NEFF: Second.

17 CHAIRMAN MOORE: Everybody's available
18 for that meeting, I suppose.

19 MS. NEFF: Just --

20 CHAIRMAN MOORE: Yeah, Ms. Neff.

21 MS. NEFF: Could you just say the date
22 again?

23 CHAIRMAN MOORE: July 16, Wednesday.

24 MS. NEFF: July 16.

25 CHAIRMAN MOORE: Third Wednesday.

1 MS. NEFF: Got it. Okay.

2 CHAIRMAN MOORE: Okay? And --

3 MS. NEFF: So our regular meeting time,
4 5:00?

5 CHAIRMAN MOORE: Regular meeting time,
6 5:00. And did I get a second on that? If
7 not, may I have a second?

8 MR. CORWIN: Second.

9 CHAIRMAN MOORE: Second. And all in
10 favor?

11 MR. CORWIN: Aye.

12 MS. NEFF: Aye.

13 MR. BENJAMIN: Aye.

14 CHAIRMAN MOORE: Aye.

15 And then, before I make a motion to
16 adjourn, Mr. Abatelli has left, but I just
17 would like to thank him. This will be his
18 last ZBA meeting before he retires at the end
19 of the month, so we'd like to thank him. And
20 I'm sure he will enjoy his future. And we'll
21 see how things go in his absence.

22 I'd like to make a motion to adjourn.
23 I'll ask for a second.

24 MS. NEFF: Second.

25 CHAIRMAN MOORE: And all in favor?

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1 MR. CORWIN: Aye.

2 MS. NEFF: Aye.

3 MR. BENJAMIN: Aye.

4 CHAIRMAN MOORE: Aye.

5 The motion carries. It was an
6 interesting meeting.

7 (Whereupon, the meeting was adjourned at
8 5:44 p.m.)

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C E R T I F I C A T I O N

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 June 18, 2014.

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

18 set my hand this 2nd day of July, 2014.

19

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22

Lucia Braaten

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