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

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

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

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

Zoning Board of Appeals 6/18/14

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

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

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

MR. TASKER: Is that on here?

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

MR. TASKER: Is that on now?
CHAIRMAN MOORE: Yup, now you're talking.

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

First of all, I'm curious as to the nature of this proceeding, because it seems to be -- to me, it's a little bit procedurally inept. It would seem to me that the way that this should be proceeding is that a request for a building permit should have been made that had certain side yard plans, and for the Building Official, if she felt it appropriate, to have required a variance for the side yard. That would have permitted this Board to look at that project, that Bilco door, that chimney, and make a determination with respect to that project. But since we're here, let's carry on.

CHAIRMAN MOORE: Absolutely.
MR. TASKER: What's really happening here is that the question that the Building Inspector has presented, the Building Official has presented to you is what is a building envelope, what does it include? Bilco doors, chimneys, decks, porches, and so forth. The real question is what is a setback? And deciding whether or not Bilco doors are appropriate or not is only going to postpone the inevitable until somebody says, "Well, I'm going to put an astragal window in that's going to bow out three feet from my second story, and what about that? And then it's going to be, well, if chimneys aren't included in the setback requirement, suppose somebody builds a baronial house with a baronial chimney, big enough for yule logs, and build the back of the chimney out to the lot line. That's crazy. Common sense approach is required.

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

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

So I think you should be looking at what is a setback, not what kind of things are
permitted to protrude beyond the setback, because, by definition, nothing can protrude beyond the setback. Thank you.

CHAIRMAN MOORE: Okay, good. Thank you. Is anyone else interested in speaking? Sir?

(Whereupon, Kenneth MacAlpin made a statement that was stricken from the record.)

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

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

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

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

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

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

CHAIRMAN MOORE: Okay.

MR. ABATELLI: This is my last meeting.

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

MS. NEFF: I actually would like to make a motion --
CHAIRMAN MOORE: Yes.

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

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

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

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

MR. PROKOP: So, if the motion could be amended to preserve the speaker's -- the last speaker's comments as a separate record.

Let's strike them from the public hearing that's being conducted.

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

MS. NEFF: I would like to characterize it as an inappropriate, vicious rant, and it
should be kept as a separate record, fine.

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

MR. BENJAMIN: (Raised hand.)

CHAIRMAN MOORE: All in favor?

MR. BENJAMIN: Aye.

MS. NEFF: Aye.

CHAIRMAN MOORE: Aye.

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

MS. MUNDUS: I would.

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

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

CHAIRMAN MOORE: Yes.

MS. MUNDUS: Thank you.

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

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

MR. BENJAMIN: Second.

CHAIRMAN MOORE: And any discussion?

(No response.)

CHAIRMAN MOORE: If not, all in favor?

MS. NEFF: Aye.

MR. BENJAMIN: Aye.

CHAIRMAN MOORE: Aye.

And the public hearing is closed.

I'd just like to mention, in somewhat a response to Mr. Tasker's comment, the code does provide for an interpretation from an
official of the Greenport Village for an
interpretation of the code.

MR. TASKER: Yes.

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

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

setback area.

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

So, what I'd like to do is just to give
a little background on how this came up. It
did relate and to a degree to an issue we've
had. I think perhaps there are a number of
cases in which we've had very close
approximations to property lines for parts of
the building. And the most recent case was a
stairwell, and a ways back was a bay window.
And I've provided a handout to the members of
the Board, and I have a couple of extras, if
you'd like to look at it.

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

(Police Officers entered the Firehouse.)

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

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

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

note that Mr. Corwin has joined us.

Now, the issue that came up is that the
Southold Zoning Code very specifically
identifies areas that are included within and
other areas that are excluded from setback
requirements. And the Southold Code does
exempt cornices, and chimneys, fireplaces, steps, open porches, and exterior cellar doors, stairwells. The Village of Greenport Code is more abbreviated and says nothing about what constitutes things that are included or exempted. So, if taken literally as printed, essentially every part of the building is included in a setback requirement.

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

And one of the scenarios that I can imagine is you may have a building which is fully within the building envelope setback requirements, and for the sake of a single Bilco door installation, might require an
application for a variance and the fees associated, rather than a simple building permit.

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

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

MR. BENJAMIN: The only thought I had was you're looking at a building that's like so many feet wide and so many feet deep, and that's the area of the lot it covers, but -- so you want that setback from the property lines so much in the rear, so much in the
front, so much in the side. But, if you put a little two-foot chimney there, that's quite a bit different from a 40-foot building.

CHAIRMAN MOORE: Yes.

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

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

So one of the outcomes of our discussion could be that we would make a recommendation to the Board to be more specific and add perhaps an additional section to the code to
either include or exclude these items. You know, as I indicated, the Southold

Zoning Board of Appeals 6/18/14

14

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

Mr. Corwin, do you have thoughts?

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

CHAIRMAN MOORE: Should be counted.

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

CHAIRMAN MOORE: So the opportunity would be, then, for an applicant, if they
wished to add those items to a house, if we
were keeping it the way it's written, would be
that they would then require a variance that
would require additional considerations for
that addition?

MR. CORWIN: Yes, or that's part of the
measurement. The measurement should be to
chimneys or stairwells.

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

MS. NEFF: Would --

CHAIRMAN MOORE: Yes.

MS. NEFF: If I could just, and that
would -- what would happen is what happens
presently, which is the building permit would
be denied, and the people would have the
opportunity to bring it to the ZBA, where certainly we have dealt with matters of that nature. But the whole context, the whole building lot, the whole structure gets further scrutiny, which I think that's sufficient.

I think the part you brought up about fires, I live across the street from where two buildings burned down, but it was a case in which the first building to catch on fire was already built on the property line. It had nothing to do with our code. It existed 80 to 100 years before. So it is -- we are often dealing with 50-foot-wide or less lots, and I think it's appropriate that such things get referred to a community ZBA.

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

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

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

MS. NEFF: Second.

CHAIRMAN MOORE: And all in favor?

MR. CORWIN: Aye.

MS. NEFF: Aye.

MR. BENJAMIN: Aye.

CHAIRMAN MOORE: Aye.

The motion carries unanimously.
And then I suppose I would propose in our -- to write a brief interpretation letter back to the Building Inspector that the Greenport Village Code does not specifically exclude these items, such as are currently excluded in the Southold Town Code, and, as such, would require the inclusion of these parts of the building within the consideration for setback requirements.

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

MR. CORWIN: Second.

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

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

MR. TASKER: That's right.

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

And the other thing is that if it has a
cellar already, now you're saying that if it's a four-foot cellar door, and now that the width of the building is -- a 20-foot building is now 24 feet wide.

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

MR. BENJAMIN: Right

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

I'm not sure there's anything in the code that says you can automatically, or by some interpretation, exclude certain
components of the building --

MR. BENJAMIN: Right.

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

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

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

MR. BENJAMIN: You know, I don't know.

If it was a -- if it was a bay window that
extended 40 feet long, you know, and jutted
out two feet, well, I could say, "Hey that's a
lot of lot coverage," you know.

CHAIRMAN MOORE: You know, we --

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

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

MR. CORWIN: Aye.

MS. NEFF: Aye.

MR. BENJAMIN: Aye.
And any opposed?
(No response.)

CHAIRMAN MOORE: So that motion carries.

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

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

MS. NEFF: I have confidence also.

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

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

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

Okay. So we have gone into the regular
meeting agenda, which is our discussion and action on the request for an interpretation.

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

Zoning Board of Appeals 6/18/14

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

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

It does have the requirements within the conditions of the variance that all rainwater
from the new addition be retained on the
property.

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

MS. NEFF: Second.

CHAIRMAN MOORE: And any discussion on
the matter?

(No response.)
the Planning Board for interpretation of
Section 150-9 A & B, permitted and conditional
uses in the Retail Commercial District. The
Planning Board is considering an application
for establishment of a car service, taxi
service, proposed to be located in a parcel
designated as Retail Commercial.

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

MS. NEFF: Second.

CHAIRMAN MOORE: And any discussion?
(No response.)
CHAIRMAN MOORE: All in favor?
MR. CORWIN: Aye.
MS. NEFF: Aye.
CHAIRMAN MOORE: Aye.
MR. BENJAMIN: Yes.
CHAIRMAN MOORE: Any opposed?
(No response.)

CHAIRMAN MOORE: The motion carries.

So that document is approved. I'll sign them and return them to the Building Inspector.

And next is a motion to accept the ZBA minutes for May 21, 2014. So moved. May I have a second?

MS. NEFF: Second.

CHAIRMAN MOORE: And all in favor?

MR. BENJAMIN: Aye.

MS. NEFF: Aye.

MR. CORWIN: Aye.

CHAIRMAN MOORE: Aye.

The motion carries.

Motion to approve the ZBA minutes for April 16, 2014. So moved. Second, please.

Zoning Board of Appeals 6/18/14

MR. BENJAMIN: Second

CHAIRMAN MOORE: All in favor?

MR. CORWIN: Aye.

MS. NEFF: Aye.
MR. BENJAMIN: Aye.

CHAIRMAN MOORE: Aye.

The motion carries.

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

MR. CORWIN: Second.

MS. NEFF: Second.

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

MS. NEFF: Just --

CHAIRMAN MOORE: Yeah, Ms. Neff.

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

CHAIRMAN MOORE: July 16, Wednesday.

MS. NEFF: July 16.

CHAIRMAN MOORE: Third Wednesday.
MS. NEFF: Got it. Okay.

CHAIRMAN MOORE: Okay? And —

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

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

MR. CORWIN: Second.

CHAIRMAN MOORE: Second. And all in favor?

MR. CORWIN: Aye.

MS. NEFF: Aye.

MR. BENJAMIN: Aye.

CHAIRMAN MOORE: Aye.

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

I'd like to make a motion to adjourn.

I'll ask for a second.

MS. NEFF: Second.

CHAIRMAN MOORE: And all in favor?
MR. CORWIN: Aye.

MS. NEFF: Aye.

MR. BENJAMIN: Aye.

CHAIRMAN MOORE: Aye.

The motion carries. It was an interesting meeting.

(Whereupon, the meeting was adjourned at 5:44 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 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
set my hand this 2nd day of July, 2014.

Lucia Braaten