VILLAGE OF GREENPORT

ZONING BOARD OF APPEALS

REGULAR MEETING

August 20, 2014

5:00 p.m.

Meeting held at the Greenport Firehouse

236 Third Street, Greenport, New York 11944

APPEARANCES:

Douglas Moore - Chairman
Charles Benjamin
David Corwin
Diana Gordon
Ellen Neff

Joseph Prokop - Village Attorney
Eileen Wingate - Village Building Inspector
(Whereupon, the meeting was called to order at 5:07 p.m.)

CHAIRMAN MOORE: This is a regular session of the Greenport Zoning Board of Appeals, August 20th, and it's about seven after five.

We have a fairly busy agenda tonight, but I'd just like to make one announcement in the form of an introduction. Diana Gordon is our newly appointed member of the Zoning Board of Appeals. She's a longtime local resident, having had a house on Shelter Island for 35 years, and has been a full-time resident and homeowner of the Village of Greenport since 2008. She has a legal background as a J.D. from Harvard Law School, and a Bachelor's Degree from Radcliffe, and has been a Professor in New York for many years, and is, I guess you'd say, semi-retired in
Greenport. And we're very pleased to have her on the Board. I'm sure she'll be a valuable participant.

And I have mentioned to her that as a new member, we only have some administrative matters carrying over from before, so I wouldn't expect her to vote on those. But any of the matters newly before the Board tonight, she is welcome, should she feel comfortable with her knowledge of the code so far, to participate in the voting, or she may abstain as she chooses until she is fully engaged with --

MR. UELLENDHAHL: Welcome, Dinni.

CHAIRMAN MOORE: -- with the Board. So we do welcome you and --

MS. GORDON: Thank you very much.

CHAIRMAN MOORE: -- hope you'll enjoy your time here.

We have three public hearings tonight, and then the discussion on them, should we close the public hearings. And so we should move right
The first is a public hearing for Tom Farmakis. And I should point out that a lot of these -- two of these are complicated in that they need multiple variances, typical of the small lots that are present in so many cases in Greenport. So it's somewhat lengthy, so bear with me.

It's a public hearing for an appeal for area variances for Thomas Farmakis, 437 First Street, Suffolk County Tax Map 1001-4-6-39, located in the R-2 District and within the Zoning Board of Appeals 8/20/14

Historic District. The Applicant proposes to expand a mud room and porch addition with an expansion of 58 square feet and 78 square feet, respectively.

Section 150-12A of the Village of Greenport Code requires a 10-foot side yard setback in the R-2 District.

The proposed side yard setback for the new construction is 3.5 feet, requiring a 6.5-foot
side yard area variance for the new mudroom extension.

Section 150-12A of the Village of Greenport Code requires a 25-foot combined side yard setback in the R-2 District.

The proposed combined side yard setback is 23.8 feet, requiring a 1.2-foot combined side yard setback variance for the new extension.

This appeal was properly noticed in the Suffolk Times, and the adjacent property owners were notified. And the record of those notifications are to Stephen Bull and Terese Svoboda, 56 Ludlow Street. I don't know their -- they are immediately north of them, I believe.

MR. UELLENAHL: Right, correct.

CHAIRMAN MOORE: North, yes. Geraldine

Zoning Board of Appeals 8/20/14

Henze is 115 Center Street, to the back. Lisa Budischak, 432 First Street, Greenport, New York; Eric Urban, Post Office Box 830, Greenport, New York, across the street; Georgia Rudder, Post Office Box 403, again to the south, and Ercole
Schiavoni, 330 Second Street, Greenport, New York, and that's the property to the rear. The placard was appropriately placed on the property, I believe, for the proper length of time.

And so we could take any comments first from the property owner or representative, and then from the public.

MR. UELLENDahl: Okay. My name is Frank Uellendahl. I am here on behalf of the owners, Miriam and Thomas Farmakis. We are dealing with an historic structure, a beautiful home on First Street, which used to be the Hartley House. And Miriam Hartley, I believe, past away two or three years ago and it's now in new hands. And the new owners' name is Miriam, again, and Thomas, and they are doing a very nice job renovating the exterior and the interior.

What they now would like to ask is an approval for a variance to extend their mudroom in the back of their kitchen. This is all facing the rear yard. It's not visible from the street.
The existing mudroom is in disrepair. We actually have to remove it and rebuild it, put in a new crawl space, foundation, heat it, and extend it slightly further into the rear yard, and this is the reason why we're here. This is about 33 square feet of space within the 10-foot side yard setback that we need a variance for.

They would like to use the mudroom also as -- we're calling it a mudroom, but it's really more, you know, a utility, laundry room, and also a little sitting area, which opens up to the -- to the garden. Those homes back then did not even open up to the rear yard. There were staircases, there were maid's entrances and -- but, you know, this is now 2014. People are buying these in order to use the garden, so they would like to extend the porch.

By the way, the porch is not going to be part of the variance, because that's within the building envelope, it's just a portion of the mudroom extension that we would like you to approve.

As you can see on the elevations, the plans, I mean, it makes a big difference as far
as the fenestration of windows are concerned. We're going to match what's there already. And if there are any other questions, I would be able to answer them.

CHAIRMAN MOORE: Does the Board have any questions specifically about the plan? We can have discussion with the applicant during the discussion period as far as some of the details that might relate to a possible variance. Any questions on that?

MR. BENJAMIN: Yeah. Frank, there's a -- on this piece here, it says 3.5 feet.

MR. UELLENDahl: Yes.

MR. BENJAMIN: From the new mudroom to the fence?

MR. UELLENDahl: To the property line.

MR. BENJAMIN: Now there's another red line.

MR. UELLENDahl: Yes. I didn't mention this. I was there at the walk-through earlier this afternoon. There is a bump-out that is actually larger than what we're proposing. The
red line means -- basically delineates the current situation. We're retreating from this, because there's only 1.8 feet to the property line. People cannot -- hardly squeeze through, so we would like to make this easier for them to walk around their house. So we are actually improving that situation.

MR. BENJAMIN: Okay. Thank you.

MR. UELLENDAHL: You're welcome.

CHAIRMAN MOORE: Any other questions from the Board?

(No response.)

CHAIRMAN MOORE: Okay. Thanks. We could take comments from the general public at this point. Is anybody interested in making a comment about the proposed addition and the variance requested?

(No response.)

CHAIRMAN MOORE: If not, then would the Board entertain closing the public hearing at this point?
MR. CORWIN: So moved.

CHAIRMAN MOORE: And a second, please?

MS. NEFF: Second.

CHAIRMAN MOORE: And all in favor?

MR. BENJAMIN: Aye.

MR. CORWIN: Aye.

MS. GORDON: Aye.

So it passes unanimously. That public hearing is closed. And then we'll be discussing this during the regular meeting.

Okay. The second public hearing is a public hearing for an appeal for area variances for Jack and Jeffrey Rosa, 506 Main Street, Suffolk County Tax Map 1001-4-3-33, located in the R-2 District and within the Historic District. The applicants propose to construct a new covered porch, a new side stair and a new rear deck.

Section 150-13D(3) of the Village of
Greenport Code requires a calculated average of existing front yard setbacks for neighboring properties to determine the minimum front yard setback requirement.

The proposed front yard setback for the new covered porch is 4.08 feet, requiring a 7.42-foot front yard setback variance, based on an average minimum front yard setback requirement of 11.5 feet.

Section 150-12A of the Village of Greenport Code requires a 10-foot side yard setback in the R-2 District.

The proposed front porch construction also requires a side yard variance. The proposed porch side yard setback is .2 feet, requiring a 9.8 side yard setback variance.

Section 150-12A of the Village of Greenport Code requires a 25-foot combined side yard setback in the R-2 District.

The proposed landing, with side step on the south side of the building, is 5.8 feet wide,
with a six-foot combined side yard setback, requiring a 19-foot combined side yard setback variance.

Section 150-12A of the Village of Greenport Code requires a 10-foot side yard setback in the R-2 District.

The proposed rear deck is .7 feet from the north property line, requiring a side yard setback of 9.3 feet on the north side.

And the applicant or representative can speak.

MR. RUSSO: Hi. My name is Paul Russo. I'm the Architect here representing the owners, Jack and Jeffrey Rosa; they're the applicants as well.

So what we're doing here is we're renovating this Village Colonial inside and out. It's something that has been -- has been in a bad state for quite some time now. It's an existing two-family structure. We are proposing to bring it back to a one-family building.
We do have current plans in for the interior renovation and replacement of siding and windows on this building as we speak.

We're here before you to request four area variances. One is -- actually, two variances are for the front porch, which we want to add to the dwelling. Currently, there's just a metal awning off -- above the front door facing Main Street. This one-story portico that we're proposing, I'll show you an elevation of it if you don't have it, it -- we're basically adding that to give some character to the home, to also give some shelter when someone arrives at the front of the building.

We're required variances because of the nonconforming use of the property and the setbacks, as you said. The property is a narrow lot, it's only 29.2 feet wide. The building is currently .2 inches -- .2 feet off of the property line on the north side. So that is our second variance, is a side yard setback to the
side of the porch. The front of the porch is also -- we're proposing to be 4.08 feet off the street, and the average there is 11.5 feet.

I was just there a little while ago and some of the buildings on either side of the house, I guess it's number 510 to the north of this property, their front porch is about 13 feet from the road. The house directly to the south of us, number 500, is about four feet from the road, basically what we're proposing. And the one south of that, which is number 416, is right on the street, so it's about zero. That's our first set of variances we're requesting for the front one-story portico.

The third variance, we're requesting a side yard setback to just a simple platform. It's about eight inches tall and it will allow us to step up from the sidewalk -- from the side yard of the property off our walkway and into the back of the home.

The fourth variance is for the rear deck, which is nonexistent now. We're proposing to put a rear deck up, and it varies in height from
about eight inches to about 12 inches in height off the ground. There's no hand rails required here, there's none being proposed, as well as the prior landing that I mentioned for the area variance, number three, there's no -- there's no railings there as well.

What we're proposing, I think, will really enhance the structure. I think it will be a benefit for the owners, as well as the community. I really don't see any detriment to the adjacent owners or to the Village. And I hope that the Board sees this vision and grants us these area variances.

And I'd like to show you the elevation of this so you can see what we're talking about.

CHAIRMAN MOORE: That would be helpful, because when we were at the site, there were some questions about what things were going look like. And we were able to see the plans that were before the Historic Preservation Board, but we didn't have it in our own package, so we're going to be needing that to be submitted.

MR. RUSSO: So on the northwest side of the
property is the front portico in question that I highlighted in blue. I believe it's in your handout as well. This page is Page A-3.

MR. CORWIN: Maybe you could move the whole --

MR. RUSSO: Oh, of course.

MR. CORWIN: -- easel to look forward. Unfortunately, the people in the back can't see it. But if anybody wants to look at it, get up and take a look.

MR. RUSSO: So what we've done here is currently this portico does not exist on the building. There's a simple awning on the building. We're proposing to put this one-story portico with a flat roof above this. We couldn't do any pitched roof or anything because of the windows. This is something that we presented to the Historical Preservation Committee, and it was approved with some modifications, which are shown on the drawings that will be submitted for building permit. Those modifications were just
simply some slender columns and different divided
lite patterns with respect to the width of the
muntins. But this is for massing purposes, what
it would look like.

It's a simple two -- there's two columns at
the front part of the portico closest to the
street, which is about 4.08 feet from the
property line, and it's a simple flat roof, and
some crown detailing that actually picks up some
of the detailing on the building.

This is the west elevation facing Main
Street, and if you want to see it from the side,
the south elevation, you could see how it pulls
out. And there's no hand rails, it's just two
columns and a flat roof.

The other variances were applied for.

MS. NEFF:  Excuse me.

MR. RUSSO:  Sure.

MS. NEFF:  Just -- and I see it there, the
portico, but the distance, you're talking about
from the sidewalk?  You say the street, but
you're talking about from the sidewalk?

MR. RUSSO: From the sidewalk, yeah.

MS. NEFF: Yeah, that's what I thought.

MR. RUSSO: That's approximately the
property line as well.

MS. NEFF: Yes, right.

MR. RUSSO: I paced it out as well and it
was about 4.8 feet -- 4.08 feet.

MR. CORWIN: Paced it, or you measured it?

MR. RUSSO: I'm sorry?

MR. CORWIN: Paced it, or you measured it?

MR. RUSSO: I measured it. I'm not a
surveyor, but it was -- I trust the survey.

On the -- let's see. On the north
elevation, you can also see the side of the
portico as well. I mentioned the other area
variances for the side stoop, and on Elevation B,
the south elevation, these sets of doors that I'm
pointing to now are -- is the entrance to the
back of the kitchen there, and this is the simple
stoop here, it's about eight inches tall. And
then the other variance we're requesting is the rear deck, which is about -- it's shown on the east elevation, it's about 12 inches tall. As I said, there's no railings there, it's just a simple deck and platform on this one, and this was the proposed portico.

MS. NEFF: But it's a wood platform, the deck?

MR. RUSSO: The decks are, yes. And this would be also detailed in either wood or some sort of composite material, like an Azek, and that's what we presented to the Board.

As I said, it's not existing now, there's just an awful metal awning there. I think we would remove that and it would a thousand times better. But I think we do need something there, because it's such a flat building. I think by adding this, it really does make a difference there.

CHAIRMAN MOORE: And the south side landing that you proposed, is it replacing an existing --
MR. RUSSO: Yes.

CHAIRMAN MOORE: -- stoop of some sort?

MR. RUSSO: Yes. It's not the same size.

CHAIRMAN MOORE: It's a bit bigger. It's essentially replacing in kind.

MR. RUSSO: Yes. It's basically replacing what we have, but there was always an entrance there.

CHAIRMAN MOORE: Yes.

MR. RUSSO: And the rear, the rear deck wasn't existing.

CHAIRMAN MOORE: Yes, we observed that.

MR. CORWIN: Do you have any information on the decibels of the AC units when they are running?

MR. RUSSO: I don't have that, but we can provide that to the Village. We will get the most economical and quietest units, I should say.

Zoning Board of Appeals 8/20/14

MR. CORWIN: The quietest --

MR. RUSSO: Quietest.

MR. CORWIN: -- aren't going to be the most
MR. RUSSO: That's what I meant by that, economical. They are going to be screened. We thought about putting them in the rear yard, but it really defeated the purpose of trying to have a nice lawn area, and really cleaning up this property by having them there. We thought that it would work best on this side. They will be screened. We will have the quietest units that are available. We can make that a condition. I know I'm not here for air conditioning units, but that's something that we can make a condition to this.

MR. CORWIN: Good. Thank you.

CHAIRMAN MOORE: Okay. Questions at this point?

(No response.)

CHAIRMAN MOORE: We'll have time for discussing other details --

MR. RUSSO: Okay.

CHAIRMAN MOORE: -- once the public has been heard. Thank you.
MR. RUSSO: Thank you.

CHAIRMAN MOORE: And just to get back in the proper order, I want to mention that it was properly noticed in the Suffolk Times. The neighbors notified are the immediately adjacent and neighbors across the street. Jonathan Sperling, 203 South Street, Greenport, New York. Of course, Jeffrey Rosa, 297 Burkran Road, Locust Valley, New York; 502 Carpenter LLC, Post Office Box 389, Cutchogue, New York. That is the building across Carpenter Street to the rear. Jonathan L. Sperling Trust, Care Of Gary Lillis, 203 South Street, Greenport, New York; Rachel Comey and Clay Weiner, 235 Elizabeth Street, Apartment 1A, New York, New York, and that would be to the rear, I believe. Mac Cato and Holly Cato, 500 Main Street, Greenport, New York; Jon Kerbs, 510 Main Street, Greenport, New York. And I believe those were the proper notifications, and there was a placard placed on the property, as required.

Members of the public that would like to speak, if they can come forward at this time.

MR. UELLENDahl: My name is Frank
Uellendahl. I'm the Chairman of the Historic Zoning Board of Appeals 8/20/14

Preservation Commission, and I'm here to support the application by Paul Russo and the owner. We approved the portico, and that's basically all we were interested in. We asked to make some modifications to the elevation, as far as the size, the width or the slenderness of the portico columns are concerned. This is something that the Building Inspector will have to approve. And that's basically all I have to say tonight.

CHAIRMAN MOORE: Thank you. Would anyone else wish to speak regarding this application for a variance?

(No response.)

CHAIRMAN MOORE: If not, I'd entertain a motion from the Board to close the public hearing.

MS. NEFF: So moved.

CHAIRMAN MOORE: And a second, please.

MR. CORWIN: Second.

CHAIRMAN MOORE: And all in favor?
That carries, so the public hearing is closed for this.

The next public hearing is a hearing for an appeal for an area variance for Virginia Ludacer, 131 Sixth Street, Suffolk County Tax Map 1001-7-1-15.1. The property is located in the R-2 District. The applicants seek a building permit for an "as built" construction of a 15-by-30-foot in-ground swimming pool.

Section 150-7C(3)(A) of the Village of Greenport Code requires not less than a 20-foot setback from all property lines.

The side yard setback for the swimming pool is 7.3 feet, requiring a side yard area variance of 12.7 feet.

And just to get things straight, is this
address 131 or 133?

MR. KAPELL: 133.

CHAIRMAN MOORE: It's in various documents through the time on the property, seems 131 or 133.

MR. KAPELL: 133 is the correct address.

CHAIRMAN MOORE: 133, okay. Thank you.

And I have the folder here for this. And this was noticed in the Suffolk Times. The neighboring property owners, which were notified, are Valerie Anderson, 143 Sixth Street, Greenport; Lisette Coly, 315 East 72nd Street, New York, and that is across the street; Sandra Abbatiello and Carol Polgar, 10 Southview Court, Carle Place, and that again is to the north. I'm sorry, it is to the rear of the property. Gretchen Mackenzie, 229 East 79th Street, New York, and that is across the street, it looks like. And Catharine Byrne, 134 Sixth Street, Greenport, and Kenneth Ludacer, 133 Sixth Street, Greenport. The placard was appropriately placed
on the property.

And we could take any comments from the applicant or representative at this point.

MR. KAPELL: Mr. Chairman, members of the Board, my name is David Kapell, 400 Front Street, for the applicant.

First of all, let me explain that the -- I'm here joined today by Doug and Mary Roberts, who are successors in title to Virginia Ludacer, the original applicant, so they are now the new applicant. We filed a letter notifying you of this last week.

We're here essentially to correct a defect in an earlier action that was undertaken by the Zoning Board of Appeals in 2003 to permit the pool, which now exists on the property.

With the Board's permission, I'd like to distribute some information. What I'm handing you is an analysis of what had appeared to have gone wrong with the first application, which was an erroneous statement of the proposed side yard
setback, which was stated in the original application of 2003 as 13 feet. That was based on a plan that -- a sketch that was made of the proposed pool on a survey that had been done in 2001 by John Ehlers. And the notation on that survey associated with the sketch was that the side yard setback would be 13 feet. When we had the property surveyed recently for the transaction that just transpired, the survey showed that the actual setback of the pool is 7.3 feet.

I've done a little analysis on an enlargement that I made of the 2001 survey which shows how the error was made, if you'll follow me for a moment. The rear property line is 93 -- this is the property line to the west, is 93.28 feet total. The distance between the northerly property line and the point where the pool begins is 56 feet, and the pool itself is 30 feet, totaling 86 feet. If you subtract 86 feet from 93.28 feet, you come up with 7.28 feet, let's
call it 7.3 feet, which is the actual setback.

The point I want to make most strongly is that the pool that is, in fact — that was constructed 10 years ago and exists there today is exactly what shows on the original sketch. The problem was with the math — was with the arithmetic that was done to show the side yard setback at 13 feet, when in actuality it was 7.3 feet.

So we're here today to ask for the Board's relief to grant a new variance permitting the 7.3 setback so that we can obtain a Certificate of Occupancy.

We did get a building permit, by the way. This pool was built subject to a building permit, and had no idea that this mistake existed until we produced the new survey and it was brought to our attention by the Building Inspector. That's what brings us here this evening, and I'm available to ask any questions — answer any questions, excuse me.
CHAIRMAN MOORE: Just one is you indicated a building permit. We'll be going over kind of the time line of the whole process during our discussion. But you say there was a building permit issued prior to construction of the swimming pool?


CHAIRMAN MOORE: In 2003.

MR. KAPELL: I have it.

CHAIRMAN MOORE: Oh, good. It would be helpful, because we weren't able to find any evidence of a building permit being issued. There was a variance record, you know, record of variance being issued, but a subsequent building permit, and this is prior to our Building Inspector.

MS. WINGATE: I have a receipt for monies paid. I have an application, but I don't actually have the permit.

MR. KAPELL: I'd be happy to -- a permit, I see. Okay. Excuse me for one moment.

CHAIRMAN MOORE: And we'll be able to discuss that in more detail as we go over the time line for the whole process.

MR. KAPELL: I stand corrected and accept
the Building Inspector's report. I have an application for a building permit; we paid the fee.

CHAIRMAN MOORE: Yes.

MR. KAPELL: And we applied for and obtained the variance that contained the defect.

MR. CORWIN: So there never was a building permit, is what you're saying.

MR. KAPELL: I can't say whether there was or there wasn't. We paid for it.

CHAIRMAN MOORE: Okay. Well, all right. Any other questions from the Board about the details of the request for the variance, not necessarily the other things we'll talk about?

No?

MS. NEFF: So we don't know from the facts presented when the pool was finished, because there isn't a CO for it; is that right?

CHAIRMAN MOORE: That's correct. We assume that it started in 2008, that when the variance was granted.
22 MS. NEFF: Three you're talking about.
23 CHAIRMAN MOORE: I'm sorry.
25 CHAIRMAN MOORE: I was saying 2008 at the

Zoning Board of Appeals 8/20/14

1 site. Yes, it was 2003, my mistake.
2 MR. CORWIN: Run that by me once more. The
3 building permit was applied for in 2003, so it
4 was built in 2003, 2004?
5 MR. KAPELL: To the best of my knowledge,
6 yes. I wasn't a direct party to it.
7 CHAIRMAN MOORE: June of 2003 was receipt
8 of pool and fence permit with the fee.
9 MS. NEFF: We don't know when it's built?
10 CHAIRMAN MOORE: Presumably, in a
11 subsequent --
12 MR. KAPELL: At that time.
13 CHAIRMAN MOORE: -- year, and perhaps early
14 the next. It's not clear.
15 MR. CORWIN: But there was a temporary
16 Certificate of Occupancy issued at one point in
17 time?
MR. KAPELL: Yes, in 2010.

MR. CORWIN: And what was the purpose of the 2010?

MR. KAPELL: I believe that was in connection with the refinancing on the property that required a Certificate of Occupancy.

MR. CORWIN: And then that just expired, temporary building permit expired; is that correct?

CHAIRMAN MOORE: A CO.

MS. WINGATE: Temporary CO.

MR. CORWIN: A CO.

MR. KAPELL: Yes, to the best of my knowledge.

CHAIRMAN MOORE: It says here also "pending new survey," which at that time was not done. Okay.

MR. KAPELL: Any other questions?

CHAIRMAN MOORE: No, I don't think so.

MR. KAPELL: Thank you.

CHAIRMAN MOORE: At this point, we could
take comments from the public. The pending
owners wish to comment, or any members of the
public? Just identify your name and address, if
you would.

MR. ROBERTS: Doug Roberts, 133 Sixth
Street, the applicant, new owner of 133 Sixth.

You know, I don't know if you've ever been
in this situation, but we're inheriting someone
else's, I don't know, error, or, you know, just
didn't think about it, I have no idea. We
just want to buy the house. We've lived in
Greenport for eight years. We've lived on Sixth
Avenue, so we're moving four blocks to the south.
We love it here. We hope that this won't be an
issue. If there's something that's -- if there's
something within our power to do to make it
better for everybody -- we've actually gone -- we
know several of the folks who live around there.
We just met you today, that was great. But, you
know, we met -- we went and met with the existing
neighbors, we know them from living here.
Everyone seems to be fine with it, so we're — you know, we plan to be good, respectful neighbors, and hope that this won't be an issue. Thank you.

CHAIRMAN MOORE: Okay. Any other members of the public wish to speak?

(No response.)

CHAIRMAN MOORE: If not, I would entertain a motion to close the public hearing.

MR. CORWIN: So moved.

CHAIRMAN MOORE: And a second, please.

MR. BENJAMIN: Second.

CHAIRMAN MOORE: Charles seconded. And all in favor?

MR. BENJAMIN: Aye.

MR. CORWIN: Aye.

MS. GORDON: Aye.

MS. NEFF: Aye.

CHAIRMAN MOORE: Aye.

And the hearing is closed. So we can proceed with the regular agenda
at this point. We'll regroup here. So we'll now have some discussion back again to the Farmakis application on First Street, and this is the mudroom extension. We had an informative site visit, and this house is typical of many in Greenport. It does have a fairly good-sized lot. The width of the lot, again, is -- it's 50 feet?

MR. UELLENDAHL: One second. Yes. Let me just check.

CHAIRMAN MOORE: Okay. So it's about 50 feet wide and it's a typical house displaced northward.

MR. UELLENDAHL: 50.15, yes.

CHAIRMAN MOORE: And by Greenport standards, has a rather ample 1.8 feet of clearance to the north line, which is proposed to increase to two-and-a-half feet to allow passage on that side. And the sticking point here is that the addition, which expands the nonconformity, is to be 3.5 feet from the property line, which requires a variance. The
combined side yard clearance is not diminishing, it is increasing the size of the footprint, but the combined side yard setback, I believe, is not really changing, it just continues to be noncompliant, just on a bigger footprint. So that was also part of the variance required. But the principal focus is this additional 53 square feet of house.

One comment I'd like to make is that the position of the porch and the house doesn't change, it's the same sight line, so that we're not imposing by approving this, if we should approve it, any additional visibility to the north neighbor. And there's really not much of a view issue from the south neighboring property. So this is a minor increase in nonconformity for this property. And so far, it's been a beautiful restoration of the house.

Does the Board have any additional questions?

MR. CORWIN: I'd just like to make one note, that rainwater runoff on the structure to the back, the leaders are just going to the backyard, which I don't think is a problem. I
think the backyard grass area will absorb that runoff. However, in the front, there's two leaders, one off the porch and one off the main roof. One of them is directed now with a temporary pipe right out to the edge of the porch. And I would like to have the Zoning Board stipulate that any approval would put some kind of dry well in to collect the rainwater from the front of the structure, so that it does not run off into the street, to help the Village meet its MS4 municipal storm sewer requirements that the State is imposing upon us.

CHAIRMAN MOORE: I made a note of that at this point. Other discussion from the Board?

MS. GORDON: I have a question.

CHAIRMAN MOORE: Yes.

MS. GORDON: Maybe for the other members of the Board. I'm wondering whether in a case where it's a very old house within the Historic District with setbacks that don't reflect the code, because there was no code, does the combined side yard variance matter more? Because
it seems to me that the combined side yard variance is very, very slight here, 1.2 feet. And, I mean, I would assume that if these old houses are just chockablock next to each other, that probably the combined variance matters more than the individual side variances, but I'm asking if that's true. If it's true, then it seems to be the 1.2 feet is tiny.

CHAIRMAN MOORE: I guess it depends on the neighboring property situation. The one we most critically deal with is the minimum 10 foot on one side, which is most frequently not being that.

MS. GORDON: Right, the old houses.

CHAIRMAN MOORE: And in this case, the variance requested for the combined side yard setback is quite small, it's only one -- like you said, 1.2 feet.

MS. GORDON: Yes.

CHAIRMAN MOORE: And, you know, one could argue that it's not really changing, because the
combined side yard setback is essentially the same, but it is being represented by a section of the house that has gotten bigger. So whether that's an increase in side yard intrusion or not, you know, is sort of up for interpretation. I would say the main point here is whether the overall mass of the house and with its

substandard setback is of any real significance. And it really balances out to the benefit obtained by the applicant versus any detriment to neighboring properties. And this is what comes up when we do go through the questions that are part of the test.

MS. GORDON: Right.

CHAIRMAN MOORE: So that that's something that we would do, should we proceed with the decision at this point.

MS. NEFF: I would just like to say that this proposed change is slight, relatively speaking, to the whole mass of the house and the property size, and that it is not a significant
change, and that there's an added improvement, both for the use of the occupants and certainly aesthetics.

CHAIRMAN MOORE: And I believe in your application, you have the percent coverage is still less than 30%. And, obviously, it's not a very big increase of what the percentage was previous to that, but you have 28-and-a-half-foot lot coverage.

MR. UELLENDAL: The increase is 1.73%.

CHAIRMAN MOORE: Is there any other discussion of the Board, or would you like to move forward?

MR. PROKOP: I just wondered, what's going to happen with the two bump-outs on the north side, are they staying?

CHAIRMAN MOORE: There is one bump-out on the north side that is a topic of discussion, because it's becoming smaller. Mr. Uellendahl indicates that the current 1.8-foot clearance on the bump-out is going to increase to
two-and-a-half feet. So it's actually withdrawing from the property line during that reconstruction of that section of the house.

MR. UELLENDahl: We are rebuilding this bump-out in a smaller scale, because there is no proper foundation present.

CHAIRMAN MOORE: And I think I agree with Mr. Corwin's comment. Our focus is on the back of the house, but that we always have been -- in recent times, been specifying when there are roof lines and potential new gutters, that rainwater be contained on the property. It may well be that at the front of the property, the only remedy for that is to have a dry well. In the rear, I think the grade of the property will allow the property to absorb the runoff directly. So it will be a condition that it just can't leave the property, and then a proper remedy will have to be worked out with the Building Inspector during an approval process.

MR. UELLENDahl: I discussed this with the
owners. Even though it's not related to the actual variance here, but I -- they were open and said, yes, whatever the Board decides, we're going to implement. So they're prepared to put in a dry well, because it is a hazard during the winter when the water is freezing on top of the sidewalk.

CHAIRMAN MOORE: Any other discussion from the Board at this point?

MR. BENJAMIN: Well, not to be nitpicky, but you don't want to overlook that clean-out that's standing in the yard. And again, it's not -- it's not my problem, but it's been observed and noted that the cover, the clean-out cap is not glued into the pipe, which leads me to believe it was used for something else, because when you -- when you use a clean-out, you unscrew the cap, you don't take the whole fitting off, and I'd like that attended to.

CHAIRMAN MOORE: So your concern is that rainwater being --
MR. BENJAMIN: Rainwater going into the sewer system, for one thing.

CHAIRMAN MOORE: -- divided into the sanitary sewer system?

MR. BENJAMIN: And odors coming out, because it's in between the sewer and the house trap. So it's a very questionable piece of --

CHAIRMAN MOORE: Well, we can just refer that to the Building Inspector for proper code requirements.

MR. BENJAMIN: I think we should do that. Other than that, I don't have any problems with it.

CHAIRMAN MOORE: Okay. Will the Board want to proceed with a decision at this point?

MR. CORWIN: Yes.

CHAIRMAN MOORE: And did you want to participate?

MS. GORDON: Yes.

CHAIRMAN MOORE: Yes, okay.

So the first task we have is that we are declaring the Zoning Board of Appeals the Lead Agency, according to SEQRA, and that the decision here would be considered a Type II Action. And I
would like to make that motion, and ask each to respond if they agree.

(Roll Call Vote by Chairman Moore.)

MR. BENJAMIN: Yes.
MR. CORWIN: Yes.
MS. GORDON: Yes
MS. NEFF: Yes
CHAIRMAN MOORE: And I indicate yes.

And then the first question that has to be satisfied is 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?

(Roll Call Vote by Chairman Moore.)

MR. BENJAMIN: No.
MR. CORWIN: No
MS. GORDON: No.
MS. NEFF: No.
CHAIRMAN MOORE: And I say no.

Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance?

(Roll Call Vote by Chairman Moore.)
MR. BENJAMIN: No.

MR. CORWIN: No.

Zoning Board of Appeals 8/20/14

MS. GORDON: No.

MS. NEFF: No.

CHAIRMAN MOORE: And I say no.

Whether the requested area variance is substantial?

(Roll Call Vote by Chairman Moore.)

MR. BENJAMIN: No.

MR. CORWIN: No.

MS. GORDON: No.

MS. NEFF: No.

CHAIRMAN MOORE: I answer no.

Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? And this, of course, is taking into consideration the suggestions we have for runoff requirements.

(Roll Call Vote by Chairman Moore.)

MR. BENJAMIN: No.
MR. CORWIN: No.

MS. GORDON: No.

MS. NEFF: No.

CHAIRMAN MOORE: My answer is no.

Was the alleged — 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?

(Roll Call Vote by Chairman Moore.)

MR. BENJAMIN: No.

MR. CORWIN: No.

MS. GORDON: No.

MS. NEFF: Yes.

CHAIRMAN MOORE: And I would say no.

And then, finally, I would make a motion that we approve the requested variance based on stipulation that the runoff from the new construction be directed onto the property and not exit —

MR. CORWIN: Correction.
CHAIRMAN MOORE: -- the property.

MR. CORWIN: The runoff from the old -- the new --

CHAIRMAN MOORE: And -- yes.

MR. CORWIN: I'm sorry. I'm sorry, go ahead.

CHAIRMAN MOORE: Okay. That the new construction provide means that the runoff is not exiting the property, and that the current runoff at the front be remediated so that it does not exit the property by an inappropriate method. So I'll make that motion, and with that --

MS. NEFF: Second.

CHAIRMAN MOORE: -- I'd ask for a second.

MS. NEFF: Second.

CHAIRMAN MOORE: And in favor of the variance?

(Roll Call Vote by Chairman Moore.)

MR. BENJAMIN: Yes.

MR. CORWIN: Yes.

MS. GORDON: Yes.
MS. NEFF: Yes.

CHAIRMAN MOORE: And I answer yes.

So the motion carries and the variance is approved.

MR. UELLENDHAHL: Thank you very much.

CHAIRMAN MOORE: So our next topic for discussion is the Rosa property. And if the Board has any additional questions, we can entertain those.

I would like to just say that this is, I would say, a very typical, but extreme, case of property setbacks in that this property is only 29-point-something feet wide, and that the house is sitting less than a foot off the north property line, and that two of the construction items are following the line of the house, so, therefore, they are very close to the property line.

I'd like to point out that if the house on the property, if the property were larger, were otherwise conforming, the front porch would
likely be allowable based on the accepted items of porticos, you know, with their extension into a restricted area. But since the house itself is nonconforming, that does not apply.

One thing on our site visit, and not provided in the plans, are elevations of the house additions, and that would be helpful to us. It was very helpful when you showed them to us, but we'd like those included into the file.

The front porch addition, there is essentially a stoop and awning, which could be represented as a porch, except it's being improved and somewhat enlarged. On the south side, the step-up to the side entrance is essentially replacing something that's already there, almost of the same size. And that the most significant addition is to the rear, which is the deck.

Looking across the property line, there's a high fence and there's not much activity on the rear of the property to the north. I assume that
the fence will either be retained or replaced
with a similar fence with the new construction.
I think that would be imperative in a decision we
make, that with the deck to the rear, it would
be -- if there were no fence, it would be
directly adjoining the rear of the property to
the north.

There were some questions about the air
conditioning units. We did observe that the
neighboring house to the south has its air
conditioning units on the north side facing your
property, so perhaps it would be sort of a battle
of the air conditioning compressors. So the best
thing to do is to have them as quiet as possible.

And other than that, my impression is that
all of these additions, you know, improve the
appearance of the house, and are not greatly
significant as far as any effect on the
neighboring properties, that the other Board
Members might wish to comment about, the
additions to the house.

MR. BENJAMIN: Who owns the fence on the
north side?

CHAIRMAN MOORE: Do you know the ownership of the fence?

MRS. ROSA: I think part of it might be ours on the north side, and the rest belongs to the gentleman in the blue house, I think, I'm not 100%.

CHAIRMAN MOORE: This perhaps is because of the meandering fence?

MRS. ROSA: Yeah.

CHAIRMAN MOORE: And have you -- we have no letters responding to this application.

MS. WINGATE: (Shook head no.)

CHAIRMAN MOORE: And have you had comments from neighbors as far as your plans?

MRS. ROSA: They're very happy.

MR. CORWIN: Wait a minute, I thought we were talking about Rosa. I'm confused.

CHAIRMAN MOORE: Rosa, yes. I have Rosa out, I think.

MR. CORWIN: Well, why is Mrs. Ludacer answering questions?

CHAIRMAN MOORE: This is not Mrs. Ludacer.

MRS. ROSA: Mrs. Rosa.
CHAIRMAN MOORE: No, just confusing. They probably look a lot alike.

MS. GORDON: I have a question.

CHAIRMAN MOORE: Yes.

MS. GORDON: Another question.

CHAIRMAN MOORE: Sure.

MS. GORDON: I get -- since I'm a newbie, I can ask questions. We are dealing with a nonconforming building with conforming uses, that section, as I understand it, of the code, and I want to understand what conforming uses really means. The addition of the deck does change the use of the house somewhat, but it's obviously a use that, you know, everyone in Greenport wants to have a little outdoor space. Could you just describe to me what conforming uses means in the context of the Greenport Code?

CHAIRMAN MOORE: Right. Well, the best way, perhaps, to refer to it is if you look at a use variance, and that is defined, if it's
written here, to grant use variances. And there -- perhaps it's in the introductory section, that I don't have a copy of it right before me. But a use variance basically is use of a property in a district that does not permit

that use, so it would be commercial use in a residential area, a two-family use in an R-1 District, that sort of thing.

MS. GORDON: Okay.

CHAIRMAN MOORE: Residential use in a Commercial District, in reverse, so that the normal household uses are not a use variance.

MS. GORDON: So with that kind of standard, this would not be a nonconforming use.

CHAIRMAN MOORE: And this qualifies in an area variance because of setback requirements.

MS. GORDON: Right. Okay. Thank you.

CHAIRMAN MOORE: Sure.

MR. BENJAMIN: But then again, it's not conforming to the code of the setbacks.

CHAIRMAN MOORE: That's correct.
MS. GORDON: Right. Okay.

MR. BENJAMIN: The house isn't. So then when you put something on, an addition for a porch or something, you want that to conform as close.

MS. GORDON: Right.

MR. BENJAMIN: -- for it to be --

MS. GORDON: It doesn't increase the degree of, or create any new noncompliance with regard to the regulations, is that -- that's the question.

MR. BENJAMIN: Yeah. Basically, it is increasing the area of nonconforming use.

CHAIRMAN MOORE: It does, yes.

MS. NEFF: When we're talking about a preexisting condition, are we really talking about whether the house conforms or not? Isn't that a not -- it's sort of like a -- not the right question to be asking. You have a house that is where it is. It existed part of -- some of it, and maybe all of it, prior to the code,
and we're talking about an addition, which we have to interpret the code and try to figure out how it can be added to a house that — we're not talking about the house, the house is what it is.

CHAIRMAN MOORE: Yeah. The house is nonconforming, but can continue to do so.

MS. NEFF: Well, I think it's better to call it a preexisting house.

CHAIRMAN MOORE: Yeah, it's a preexisting nonconforming house.

MS. NEFF: Right.

CHAIRMAN MOORE: If you go to the code, there are issues on damage to nonconforming houses —

MS. NEFF: Right.

CHAIRMAN MOORE: — which do not allow them to be returned. So that in this case, the house is fine. You have the thrill of living in a nonconforming structure, but it's permissible.

Is there terminology that should be used, Mr. Prokop, on describing such properties?
MR. PROKOP: Well, I think that when Ms. Gordon asked the question first, I mean, she used the right terminology. My question was, is this house presently one-family? Is it staying one-family, or is there one-family going to two-family, do we know?

CHAIRMAN MOORE: It was a two-family house, and the proposal with the conversion is to make it a one-family house.

MR. PROKOP: Make it a one-family, okay. So I think it's a nonconforming structure with a conforming use.

CHAIRMAN MOORE: Conforming use, yes.

MR. PROKOP: That's basically it.

MS. GORDON: Thank you.

CHAIRMAN MOORE: Any other discussion with -- among the Board members at this point?

Zoning Board of Appeals 8/20/14

MR. CORWIN: I have to note that I don't have a signed application. So, as far as I can see, it's an incomplete application. And I question whether we should --
CHAIRMAN MOORE: All right.

MR. CORWIN: -- accept incomplete applications. And this is not the first time this has happened.

CHAIRMAN MOORE: Can you check and see, Eileen? You're probably more familiar with the file than I am. We've been kicking around that question about the notarizing of an application. If an applicant themself signs the application, is it a notarizing requirement, or is it --

MR. PROKOP: Yes.

CHAIRMAN MOORE: It's regardless of whether it's a representative or an applicant?

MR. PROKOP: Yeah. The another thing that I noticed on some of these is that whoever signs it has to print their name under the signature. We're getting these that --

MR. CORWIN: You can't read the signature, yes, you're correct.

MR. PROKOP: The notary really shouldn't, you know, be notarizing unless the name is
printed somewhere, so we should --

MS. WINGATE: I'll make a note.

CHAIRMAN MOORE: And a notary is currently available within Village Hall.

MR. PROKOP: Yes.

CHAIRMAN MOORE: Which is suitable.

Okay. Does that satisfy your question?

MR. CORWIN: Yes.

CHAIRMAN MOORE: Okay. Would the Board have any other discussion?

MR. BENJAMIN: One more question. You see, when the porch and the patio are so close to the property line, now to work on it and maintain it, you run into a problem when you stand at the side that the fence is on. So I'm wondering about allowing something so close to the property line when it could be moved in, maybe even a foot, to allow for maintenance, or whatever, inspection, digging, planting bushes.

CHAIRMAN MOORE: Now the building itself is not the discussion point, I guess, because we're not --

MR. BENJAMIN: It's the two additions.

CHAIRMAN MOORE: Yes. The deck, I assume, could be maintained without --
MR. BENJAMIN: Right, the property.

CHAIRMAN MOORE: -- needing adjoining properties. The porch is open space, I believe, at the front of the property.

MR. RUSSO: Yeah, it's open.

CHAIRMAN MOORE: And I imagine would just have the courtesy of asking the neighbors access, should you need to do maintenance.

MR. BENJAMIN: Well, what came to mind was the Kaplan store.

CHAIRMAN MOORE: Well, not everybody can have neighbors so cooperative.

MR. BENJAMIN: It was just a thought.

CHAIRMAN MOORE: Yes, I understand.

Fortunately, you're probably getting along with your neighbors currently, yes?

MRS. ROSA: Very well.

CHAIRMAN MOORE: Good.

MR. CORWIN: You know, one more thing is I did not think to look at the gutters and leaders on the house. It's so close to Main Street, and
it's so easy to have the water just run off into Main Street. But, again, I think if we approve this, the runoff needs -- if it goes in the backyard, I don't see a problem, the grass will absorb it, but the runoff shouldn't go to the front onto the ground, because it will just run onto Main Street. So I would like any approval to have that stipulation, that there's no runoff onto Main Street.

CHAIRMAN MOORE: The change in roof and drainage would be the porch, I assume, as really the only significant thing. Other --

MR. CORWIN: Well, I'm not so concerned with the porch, because that's a small area.

CHAIRMAN MOORE: But, again, any modifications to the building itself are within the purview of the Building Inspector, and we would suggest or recommend that that be addressed.

MS. WINGATE: (Nodded yes.)

CHAIRMAN MOORE: Relative to the variance,
I think we have to ask that the porch drainage be properly collected and not discharged off the property. The deck I don't believe is a drainage issue. The stoop, again, would not be a drainage issue. But I'd take your point about any modifications to the main house to the Building Inspector.

Would the Board want to move forward, then, with a decision on this variance?

MS. NEFF: Yes.

MR. CORWIN: Yes.

CHAIRMAN MOORE: Yes. So the first matter of business is, again, to declare ourselves Lead Agency, according to SEQRA, and we declare this a Type II Action. And ask all in — I make that motion and ask for a second.

MS. NEFF: Second.

CHAIRMAN MOORE: And all in favor?

MR. BENJAMIN: Aye.

MR. CORWIN: Aye.

MS. GORDON: Aye.
And it was all yes. And then the questions.

Whether an undesirable change will be produced in the character of the neighborhood, or a detriment to nearby properties will be created by granting of the area variance?

(Roll Call Vote by Chairman Moore.)

MR. BENJAMIN: No.

MR. CORWIN: No.

MS. GORDON: No.
10     MS. NEFF: No.
11     CHAIRMAN MOORE: And I answer no.
12     Whether the requested area variance is
13     substantial?
14     (Roll Call Vote by Chairman Moore.)
15     MR. BENJAMIN: No.
16     MR. CORWIN: No.
17     MS. GORDON: No.
18     MS. NEFF: No.
19     CHAIRMAN MOORE: I answer no.
20     Whether the proposed variance will have an
21     adverse effect or impact on the physical or
22     environmental conditions in the neighborhood or
district?
23     (Roll Call Vote by Chairman Moore.)
24     MR. BENJAMIN: No.

Zoning Board of Appeals 8/20/14

1     MR. CORWIN: No.
2     MS. GORDON: No.
3     MS. NEFF: No.
4     CHAIRMAN MOORE: And I answer no.
5     And 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 an area variance?

(Roll Call Vote by Chairman Moore.)

MR. BENJAMIN: Yes.

MR. CORWIN: No.

MS. GORDON: No.

MS. NEFF: Yes.

CHAIRMAN MOORE: And I would say no.

And then, finally, I would make a motion to approve the requested variance for the construction of a porch, replacement of the stoop, and construction of the deck to the rear, with the stipulation that relative to our purview, the porch roof runoff be retained on the property. And we also make the recommendation to the Building Inspector, relative to any other construction on the building, that all runoff from the roofs be retained on the property. And

I'd make that motion and ask for a second.
MR. BENJAMIN: Second.

CHAIRMAN MOORE: Second. Any further discussion?

(No response.)

CHAIRMAN MOORE: And those in favor?

(Roll Call Vote by Chairman Moore.)

MR. BENJAMIN: Yes.

MR. CORWIN: Yes.

MS. GORDON: Yes.

MS. NEFF: Yes.

CHAIRMAN MOORE: And I would answer yes. So that variance is approved. Good luck on your construction.

MR. CORWIN: Good luck.

CHAIRMAN MOORE: All right. The next is the request of Virginia Ludacer and the discussion at this point. Now the applicant is Ms. Ludacer. The interested parties are here, obviously, the people purchasing the property, and Mr. Kapell is here to represent them all. I would just like to review the time line. The property was subdivided, I believe, in '98 or '99, it was before 2000, by owners prior to the Ludacers?
MR. KAPELL: Yes.

CHAIRMAN MOORE: And that was a subdivision which resulted in a fully compliant new lot, which was 60 feet wide by 150-something.

MR. KAPELL: 165.

CHAIRMAN MOORE: 165 deep?

MR. KAPELL: Yes.

CHAIRMAN MOORE: And, you know, compliant in the R-2 District, and left behind a larger property, which is the Ludacer house that remains.

The time line, which we've discussed in some detail, is that the application for the swimming pool, just historically, during the time of the subdivision, because there was a deck on the house that either crossed the property line or came very close to the property line, and there was a request at the time of the subdivision for a variance to allow the deck to be too close to the property line. That variance was not approved by the Zoning Board of Appeals at the time. The remedy was to remove the deck,
 which was done.

Then we move to 2003, there's application for a swimming pool. There was a Notice of

Zoning Board of Appeals 8/20/14

Disapproval, and there was a variance granted, and the variance granted was either 13 or 15 feet, depending on which piece of documentation you're looking at, but we're looking essentially at 13 feet was allowed. And, as Mr. Kapell has pointed out, if you do the math from the north side of the property, you end up with the existing conditions, which is 7.3 feet, essentially, from the property line. But what was granted was the requested 13 feet of distance from the property line, which was depicted on the property survey, previous property survey of probably 2001.

MR. KAPELL: Yes.

CHAIRMAN MOORE: And was not correct. When you look at the drawing, the 13 feet depicted, as penciled in, doesn't appear to be correct, but at the time, it was assumed the pool would be 15
feet -- 13 feet from the property line, and, of course, we know it was constructed seven-plus feet from the property line.

So we have the situation now that, as Mr. Kapell indicated, there was a temporary CO issued at the time the refinancing operation was going on in 2010. It was indicated pending a new survey, but apparently no survey was done at that time. So the true position of the pool, as laid out by a survey, again, was not done. And only now, when the survey was done in June of this year, we find the pool is not meeting the -- what the variance allowed back then.

MR. KAPELL: Can I just --

CHAIRMAN MOORE: Yes.

MR. KAPELL: Can I interject one thing, sir? And that is that you said that the pool was not positioned. The pool is positioned exactly the way it was proposed. What was inaccurate was the notation of the setback in relationship to the southerly property line.
CHAIRMAN MOORE: Yes, and that was discussed and approved according to what was asked for, so --

MS. WINGATE: When you think about it, the numbers that were sketched in were the numbers of the variance that they should have asked for. Instead of the numbers that existed, the sketch numbers were the numbers of the variance.

CHAIRMAN MOORE: Yes, right. I don't what --

MS. WINGATE: Which is somebody thinking out loud.

CHAIRMAN MOORE: You know, I don't think there were verbatim minutes, but I don't believe, from what I read in the file, that there was any discussion that the pool was actually going to be seven feet from the property line, it was always 13 feet.

MR. KAPEL: Thirteen feet, yeah.

CHAIRMAN MOORE: So there was a mistake. And it was not noticed during any of the
construction, or any inspections, or what may have been done subsequent to that. So that we sort of now have the dilemma that you have a pool, which isn't likely to move again, and we have a request to make this correct by issuing a second variance. And it's unfortunate, because, usually, when you issue a variance for an exception, that's what's done, you get the exception and everybody's happy, but now we're back again.

You know, we should — I could point out that the pool has survived without complaint, but, of course, the property owner of both properties are the Ludacers who built the pool, so they obviously aren't unhappy to have a pool.

I'm looking ahead now to the future.

The vacant lot, we understand, is to be built on by the Ludacers for their residence, and so, again, I doubt they will complain about the position of the pool, its proximity to the property line. But we have to look forward to
future property owners of that property, and they
may not be happy. So that one of the thoughts I
had was that in condition, if we should approve a
second variance, that a proper and a
high-as-permissible fence be included in the
process, should a variance be granted, along that
property line.

MR. KAPELL: It's the Roberts' intention to
install a six-and-a-half-foot privacy fence along
that line. So, if you want to make that a
condition of the variance, that's fine.

CHAIRMAN MOORE: The proximity of the pool
equipment, you know, it was running when we were
there, and I thought it was extremely quiet, and
it's not necessary to change the position of
that. That's not the issue, it's really the
physical position of the pool.

I think, if way back in 2003, if this
difference had been noted, the pool could easily

have been moved a little bit further north to
give a larger separation from the property line.
There are neighboring pools. I guess Mr. Uellendahl has left. I was going to tap his knowledge.

On Fifth and Sixth Street, the backyards of those properties, there are roughly three pools, I believe, in that same block in close proximity, and I can't recall their separations. We did approve a variance for a new pool, which is now installed off of Fifth Street, and it did not meet the 20 foot, but I don't recall the setback that we permitted. It was more in the neighborhood of teens of feet, but I don't recall.

MS. WINGATE: Was it five foot?

CHAIRMAN MOORE: It was from the north and rear property line in that case. So, whether this is greatly different from other pools that had been approved, I can't say.

Any further thoughts from the Board members?

MR. CORWIN: Question on who is making the application.

MR. KAPELL: Doug and Mary Roberts.
MR. CORWIN: I don't see any paperwork to that effect.

MR. KAPELL: I filed a letter with the Building Inspector two weeks ago.

MR. CORWIN: It's not in front of me. I don't know if anybody else has a copy.

CHAIRMAN MOORE: The application is listed as Ludacer, so I don't know the technical details.

MS. WINGATE: It's in the file.

MR. KAPELL: I have the letter here.

MS. WINGATE: I didn't think everybody needed a copy; I would have included it.

CHAIRMAN MOORE: And you signed the application as agent, so it doesn't make it -- it doesn't make it clear. This I'm not familiar with, successors to the title.

MR. PROKOP: I just have a quick -- can I ask a quick question?

CHAIRMAN MOORE: Absolutely.

MR. PROKOP: It's really procedural, it doesn't have that much to do with the application, but what -- when it shows in the
time -- who did the time line, you did?

MS. WINGATE: I did.

MR. PROKOP: When it shows in the time line on June 19th that the building permit was renewed, I thought you -- didn't you say -- did you say that there was no building permit?

MS. WINGATE: I finally issued it.

MR. PROKOP: So it wasn't a renewal, it was a new building permit, because it says renew the expired building permit.

MS. WINGATE: Well, I couldn't find the expired one, so I reissued it. I would consider it a reissue, a renew.

MR. PROKOP: Okay. So I'm just trying to figure out how they -- technically, how they're here.

CHAIRMAN MOORE: It's a CO issue, I believe.

MS. WINGATE: It's a CO issue. I can't -- I can't close the building permit.

CHAIRMAN MOORE: So, technically--
MS. WINGATE: I issued it.

MR. PROKOP: It doesn't conform with the -- the as-built doesn't conform with the building permit. Okay. They have a building permit based on the new survey. Based on the new survey, they got a building permit.

CHAIRMAN MOORE: Well, technically, no.

MS. WINGATE: No. What I did was I renewed the old building permit, and then I can't close the building permit without a survey. So when they finally gave me the survey, there was a difference, and I couldn't close it because it didn't conform with what they had given them.

MR. PROKOP: Okay. But where's the old permit? That's what I'm trying to figure out. Is there a permit number that's an old number?

MS. WINGATE: No, I don't know offhand. I took a bad situation and tried to walk it through and make it right at every step, until I got the survey, when that put me back behind the eight ball again.
MR. PROKOP: Okay.

CHAIRMAN MOORE: Mr. Corwin indicated to me, and you have a copy of the Assessor's form, that the pool does not appear on the current Assessor's card from the Town Office, because, apparently, without a building permit, it didn't trigger --

MS. WINGATE: Probably.

CHAIRMAN MOORE: -- an assessment.

MS. WINGATE: Probably.

CHAIRMAN MOORE: So they'll apparently be coming to assess the pool at some point. So that it seems that the gap in the building permit is just one of the things along the way. But the real problem was the fact that the -- there was a discrepancy in the approved variance and the actual planned position of the pool, which it ended up where it was indicated it would be, but in the absence of proper depiction of the setback.

MS. WINGATE: Yes.
CHAIRMAN MOORE: So we don't know what the Zoning Board at the time would have done. You were there, so maybe you could --

MR. BENJAMIN: I was there. We made a decision based on the information that was given to us.

CHAIRMAN MOORE: Yes. But, I mean, if it had been 7.5 feet, you know, maybe something different would have been decided. But we can't relive history, so we have to deal with the present.

And any suggestions from the Board of any other remedies?

MR. BENJAMIN: I have a question. When a mistake was made, which I'm not sure who made the mistake, but assuming that it's not the Zoning Board of Appeals' mistake --

MR. CORWIN: Wait, wait, wait, stop. Two people are talking at once.

MR. BENJAMIN: Those two people are talking.
MS. WINGATE: I'm sorry. I'm sorry.

CHAIRMAN MOORE: That's okay, you were just having a side discussion.

MR. BENJAMIN: If a mistake is made and it was made by the property owner, and the information that they presented to the Zoning Board was not correct, and so we based our decision on the information that was given us, now we find that after the fact that information was not right, and that's what we have to deal with.

CHAIRMAN MOORE: Exactly.

MR. BENJAMIN: So we have to correct it.

CHAIRMAN MOORE: Right. If you go back in history and everything was being monitored, there would have been an immediate discrepancy discovered, and there might have been a contractor/property owner issue about that. But right now, it's not. It's where the pool is and whether that can be considered an acceptable setback with the remedy of the fence for the
future use of those two properties. That's, I
guess, the question we have. And I would --

MR. PROKOP: It's sort of compounded. This
is why I was asking the question.

CHAIRMAN MOORE: Yes.

MR. PROKOP: Because along the way, it says
here we issued a C of O. In 2010, we issued a
C of O. So they -- you know, the first problem
was that the survey -- I guess the survey was
done incorrectly, whatever happened in 2003, but
then we sort of signed off on that in 2010.

CHAIRMAN MOORE: With a temporary.

MR. PROKOP: Yes. So, I mean, these people
had every reason to believe that everything was
okay, not only because the survey was wrong, but
because we --

MS. WINGATE: The temporary Certificate of
Occupancy gave them six months to give me a
survey, I think. I could look it up. Usually
not more than six months. But the temporary
Certificate of Occupancy expired and they still
didn't provide a survey.
MR. PROKOP: Okay.

CHAIRMAN MOORE: So now it's back to not having a CO.

MS. WINGATE: So now it's back to without a CO.

MR. PROKOP: Oh.

CHAIRMAN MOORE: So do you think --

MR. CORWIN: Do you have any knowledge of why they didn't give you a survey?

MS. WINGATE: I could only write letters. No, I have no idea why I did not get a CO. It wasn't something that you just forget about. I sent one or two follow-up letters, and after that, I put a file away with a note that says, "No CO."

CHAIRMAN MOORE: Which usually is resolved when a house changes ownership.

MS. WINGATE: When a house changes hands, right.

CHAIRMAN MOORE: And here we are. So would the Board want to move forward and see how the decision comes out? Does that seem to be the best thing to do at this point? Yes, no? I don't know whether we could be asking for any new
Zoning Board of Appeals 8/20/14

1. MS. GORDON: Excuse me.
2. CHAIRMAN MOORE: Yes.
3. MS. GORDON: How was the question of who is the applicant resolved? I understand -- who is the applicant legally?
4. MS. WINGATE: You want me to find it, or you have it?
5. CHAIRMAN MOORE: It just indicates that the --
6. MS. GORDON: The successor owners.
7. CHAIRMAN MOORE: "The new owners are successors in title to Virginia Ludacer for property located at 133 Sixth Street, Greenport, having closed title on August 1st. The property is the subject of a pending variance application for swimming pool filed by David Kapell on behalf of the prior owner." So does that satisfy the need for who is applying for the variance at this point?
8. MR. PROKOP: Well, we should -- you know,
just as a formality, we should probably have --
I'm sure that there's an unrecorded deed floating
around somewhere from the closing, probably some
-- if we could just get something from the
closing, just anything from the closing.

MR. KAPELL: Sure.
MR. PROKOP: Any copy of the deed.
MR. KAPELL: Sure.
MR. PROKOP: It doesn't have to be
recorded, just to drop in the file.
CHAIRMAN MOORE: To me, it doesn't change
the impact of what decision we might make, it
just --
MR. PROKOP: Right.
CHAIRMAN MOORE: -- makes things tidy.
Would the Board want to proceed, then, with
the process?
MS. NEFF: I have one question.
CHAIRMAN MOORE: Yes.
MS. NEFF: The survey that I have here,
this is the survey of 2000 and what?
CHAIRMAN MOORE: From the application?

MS. NEFF: Yes.

CHAIRMAN MOORE: The original application?

MR. PROKOP: 2014, isn't it --

MS. NEFF: Yeah. No, it is. It says, I think, June 2014.

MR. PROKOP: Correct.

CHAIRMAN MOORE: Oh, you have the little one.

MS. WINGATE: You have the new one.

MS. NEFF: Okay. So there is -- I just want to make sure that this is what it says, what the survey says. There's a gate, the gate shown enclosing the pool. The fence on the south side does not exist at this point. There is no fence on the south side, but that's what's going to be built?

MR. KAPELL: Yes.

MS. NEFF: Okay. And is there any entrance from the house into the outside pool?
MR. KAPELL: No.

MS. WINGATE: No.

MS. NEFF: Okay.

MR. BENJAMIN: Yes. Yes, there is.

MS. NEFF: Well, you have to go through gates to get to it, though. That's my concern.

Do you have to go through a gate to get from the house to the pool area?

MR. KAPELL: Yes.

MS. NEFF: Okay.

CHAIRMAN MOORE: So you can't exit the rear of the house into the patio area.

MS. NEFF: You can't exit, that's the question.

CHAIRMAN MOORE: Oh, there's no door at that point.

MR. KAPELL: No, there's no exit from the rear of the house.

CHAIRMAN MOORE: Okay. I thought that was an issue at this point.

MS. NEFF: All right.
MR. PROKOP: The shed and the cabana, do they both conform?

MS. WINGATE: The cabana is a shed. It is not a cabana, it doesn't even have electricity.

Yes, they --

MR. PROKOP: Thank you. But does it conform with the accessory setbacks?

MS. WINGATE: Well, actually, it looks like it's 3.7 feet. It should be five, but it's been there -- well, it's been there.

CHAIRMAN MOORE: It's not new construction?

MR. KAPELL: No.

CHAIRMAN MOORE: It's not new construction with the pool?

MS. WINGATE: Oh, no, no.

CHAIRMAN MOORE: No.

MR. CORWIN: Look. Is it shown on the

Zoning Board of Appeals 8/20/14

Assessor's?

CHAIRMAN MOORE: Do they show the shed?

MR. CORWIN: I don't see them showing the shed.
CHAIRMAN MOORE: Well, I don't know the history of that question. I guess you could inquire as a separate issue as to the construction of the shed, its date and such things.

MS. WINGATE: I can investigate the shed, yes.

CHAIRMAN MOORE: That could be a new issue, perhaps.

MR. KAPELL: The shed shows up on the surveys, 2001 and 2014.

CHAIRMAN MOORE: It just depends on how far back it goes and whether it was ever -- you know, if it's preexisting or not, that's the question. But it's not the matter before us, I don't think, so we can just refer it to the Building Inspector in her spare time to figure that one out.

Would the Board want to proceed, then, to make a decision?

MS. NEFF: Yes.

MR. BENJAMIN: I would like to take care of
this matter, but I would like to have the proper paperwork also, because it's not going to do much good if we don't have the proper paperwork, because this is how this -- this is how we got into this position, by not having the proper paperwork.

CHAIRMAN MOORE: So are we missing something at this point?

MR. BENJAMIN: Well, an application by somebody, a proper survey, which we more or less have here.


MR. BENJAMIN: Do I have an application by somebody?

MS. WINGATE: Sure.

MR. BENJAMIN: Where?

CHAIRMAN MOORE: Originally filed in behalf of Virginia Ludacer by Dave Kapell, with a letter indicating that there has been a succession of ownership of the property.

MR. BENJAMIN: So that will work?

CHAIRMAN MOORE: So the question is whether a new application is necessary for requesting a variance by the new owner, or whether the succession document transfers the application as
well. I don't know the answer. Mr. Prokop, would you --

MR. PROKOP: I'm okay with it. As long as there's -- as long as there's a document in the file evidencing the ownership of the property, I'm okay with the applicant naming change.

CHAIRMAN MOORE: Are you okay with that?

MR. BENJAMIN: Yes.


So then I would move ahead with the first matter of business, which is to declare the Zoning Board of Appeals Lead Agency, according to SEQRA, and declare it a Type II Action. And I would make that motion, and ask for a second, please.

MR. BENJAMIN: Second.

CHAIRMAN MOORE: And all in favor?

MR. BENJAMIN: Aye.

MR. CORWIN: Aye.

MS. GORDON: Aye.
22             MS. NEFF: Aye.
23             CHAIRMAN MOORE: Aye.
24             Any opposed?
25             (No response.)

Zoning Board of Appeals 8/20/14

1             CHAIRMAN MOORE: No. Questions follow:
2             Whether an undesirable change will be
3       produced in the character of the neighborhood, or
4       a detriment to nearby properties will be created
5       by the granting of an area variance?
6             (Roll Call Vote by Chairman Moore.)
7             MR. BENJAMIN: I don't think so, no.
8             MR. CORWIN: Yes.
9             MS. GORDON: No.
10             MS. NEFF: No.
11             CHAIRMAN MOORE: I would say no.
12             Whether the benefit sought by the applicant
13             can be achieved by some method feasible for the
14             applicant to pursue other than an area variance?
15             (Roll Call Vote by Chairman Moore.)
16             MR. BENJAMIN: No.
17             MR. CORWIN: Yes.
MS. GORDON: No.

MS. NEFF: No.

CHAIRMAN MOORE: And I would answer no.

Whether the requested area variance is substantial?

(Roll Call Vote by Chairman Moore.)

MR. BENJAMIN: I would say yes.

MR. CORWIN: Yes.

MS. GORDON: Yes.

MS. NEFF: Yes.

CHAIRMAN MOORE: And I would actually say no, I don't think it is at this point.

Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

(Roll Call Vote by Chairman Moore.)

MR. BENJAMIN: No.

MR. CORWIN: No.

MS. GORDON: No.

MS. NEFF: No.
CHAIRMAN MOORE: I would say no.

Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but not necessarily preclude the granting of the area variance? And, in this case, I think we have to look at the present situation and the current owners.

(Roll Call Vote by Chairman Moore.)

MR. BENJAMIN: If you put it that way, no.

MR. CORWIN: Yes.

MS. GORDON: No.

MS. NEFF: Yes.

CHAIRMAN MOORE: And I would say no as well.

And then, finally, I would make a motion that we approve the requested variance to allow the pool to continue to be 7.3 feet from the property line, with the stipulation that a screening fence be constructed along the property line to properly screen the fence from the
south -- property to the south. So moved. Any discussion?

MR. BENJAMIN: One more point, in that I'm concerned about the porch on the north side. I know that you go down the stairs and go through the gate to get into the pool area, but the railings on the side of that porch are such that anybody can climb off that porch and into the pool area. So it doesn't protect young people from going into the pool area. So I just want to consider -- I want that porch considered on that west side.

MR. KAPEL: We'd be happy to stipulate that, we'll tighten that up.

CHAIRMAN MOORE: And I think, you know, that is probably the most --
MR. BENJAMIN: Well, it's just on the record.

CHAIRMAN MOORE: Yes. And with that addition, to make note of that, I would make a motion to approve the requested variance with those stipulations. And may I have a second?

MR. BENJAMIN: Second.

CHAIRMAN MOORE: And any further discussion?

(No response.)

CHAIRMAN MOORE: If not, I'll record the votes.

(Roll Call Vote by Chairman Moore.)

MR. BENJAMIN: Yes.

MR. CORWIN: Yes.

MS. GORDON: Yes.

MS. NEFF: Yes.

CHAIRMAN MOORE: And I would answer yes. So the second variance is approved for 7.3.

MR. KAPELL: I promise never to come back on this one.
CHAIRMAN MOORE: As long as the pool doesn't move again.

MR. KAPELL: Thank you very much.

MR. ROBERTS: Thank you all.

MRS. ROBERTS: Thank you.

CHAIRMAN MOORE: Sure. Enjoy your new house.

MRS. ROBERTS: Thank you very much.

CHAIRMAN MOORE: All right. One more business item. Bear with me, I'll be right there. Okay. We're on our regular agenda part here.

Item #4. Could I have the attention of the members, please, so we can get through?

MS. NEFF: Here—here.

CHAIRMAN MOORE: Eileen, could we finish the agenda?

MS. WINGATE: Yeah, sure.

CHAIRMAN MOORE: Thank you. Item #4 is a motion to accept an appeal for an area/use variance, publicly notice and schedule a public hearing for Lekina Harris, Post Office Box 1548, Shelter Island, New York, for property located at 612 Third Street, formerly Perry Day Care Center,
Greenport, New York, Suffolk County Tax Map

1001-2-5-7.1. The applicant proposes to use the property as a Child Care Center/Nursery School.

Section 150-7B(2) states Schools are permitted conditional use is provided:

(b) Any such school shall be a nonprofit organization within the meaning of the Internal Revenue Act and shall be registered effectively as such thereunder.

The proposed Child Care Center/Nursery School facility will be run by a for-profit organization.

(c) Any such school shall occupy a lot with an area not less than one acre plus one acre for each 100 pupils for which the building is designed.

The existing facility is located on a parcel which is .51 of an acre, 23,256 square feet.

Additionally, Section 150-7B(2)(a) states the conditions of section 150-7B(1)(a) and (b) must be met regarding the minimum setback of 50
feet from any street or property line and a limitation of 20% of lot coverage of principal and accessory buildings.

I should point out that the application is properly signed and notarized, I believe. This is a combination of a use variance, because the use is being proposed under a non-permitted manner, which is a for-profit organization. And there are area variances because of the size of the parcel, and the setbacks and limitation. I don't know if the 20% lot coverage is an issue or not. We don't have that calculation.

MS. WINGATE: I have it calculated, but I don't think so. Oh, it's -- Joe, when I go to calculate it, because it's a church, it's commercial, do I use -- do I use the Residential Code to calculate --

MR. PROKOP: No.

MS. WINGATE: -- lot coverage? I use the commercial?
MR. PROKOP: Yeah, it's not commercial, it's either residential or nonresidential. So you don't need the -- even though it's technically commercial, you can't use the Residential Code.

MS. WINGATE: So use the nonresidential code --

MR. PROKOP: Nonresidential.

MS. WINGATE: -- to calculate lot coverage?

MR. PROKOP: Right.

MS. WINGATE: Okay. Thank you.

CHAIRMAN MOORE: So, you know, I just wanted to point out in this application that this is a former daycare center, but was being operated, you know, through an ecumenical organization as a nonprofit organization. So, as such, it did not have an issue in the past with a variance.

So we'll just be looking at the revitalization of this nursery school and look at the use variance. I think it would be important
for the applicant --

MS. WINGATE: She left.

CHAIRMAN MOORE: She left?

MS. WINGATE: She had to go back to work.

CHAIRMAN MOORE: Had to go. You know, look at the requirements of a use variance and have proper documentation regarding the financial aspects.

MS. WINGATE: It's very hard to do financial aspects, because it was a not-for-profit and they have no foundation to even do -- we talked about it.

CHAIRMAN MOORE: And one of the issues is to, you know, demonstrate the inability to use it for any code-appropriate use in the Residential District. And, in this case, the building is not a residence, to my knowledge, it's a --

MS. NEFF: No.

CHAIRMAN MOORE: It's a school.

MS. WINGATE: It's a school.

CHAIRMAN MOORE: So that I think we'll have
a -- be able to discuss this through. But just
be sure that the applicant looks at the code and
has as much documentation as possible. So --

MR. PROKOP: Well, the problem with the use
variance is that, you know, there is that
requirement. But there's also another
requirement, that you have to establish hardship.
And if you purchase the property, no -- if you
purchase the property and there was no change in
the code, if the use that you're seeking -- if
the use that you're seeking was prohibited when
you purchased the property, then you cannot later
claim a hardship by -- so that's an issue.

CHAIRMAN MOORE: Well, we'll have to look
at that in detail.

Zoning Board of Appeals 8/20/14

MS. WINGATE: The church still owns the
property. So the church hasn't sold the
property, the church just --

MS. NEFF: It's a lease.

MS. WINGATE: It just -- no, the church
still owns the property.
CHAIRMAN MOORE: Is it being leased?

MS. NEFF: Okay.

MS. WINGATE: The church just cannot fund the daycare center any longer. So the building has been sitting vacant since almost a year now.

CHAIRMAN MOORE: So is the building being purchased?

MS. WINGATE: No. They're just going to rent it from the church.

MS. NEFF: It's a lease.

CHAIRMAN MOORE: So it will be a lease arrangement.

MS. WINGATE: Oh, it's a lease, yes.

MS. NEFF: Yes.

MR. PROKOP: Well, if you're going to involve me in one of the discussions you have with Eileen before the meeting --

CHAIRMAN MOORE: Yeah.

MR. PROKOP: -- if you give me --

CHAIRMAN MOORE: I think we need to work through the --
MS. WINGATE: Tell me what to ask for.

CHAIRMAN MOORE: -- separation of whether this is church activity, or private church activity on church property, because, you know, when it comes to a church activity, we have a lot more restraints as to what we say, you know, yes or no. And then we, of course, have to look at the overall benefit to the community, as well as to the applicant. That's -- use variance has some stringent tests.

MR. BENJAMIN: I thought it was built by the Village.

MS. WINGATE: It was built by the Village. It was built with Community Development funds, which is why it never went through Zoning in the first place. The Village has decided this was good for the community, and that, therefore, it is.

MR. BENJAMIN: Yes. So it's not really changing the use.

MS. NEFF: Question. Is it on the same property with the church?

MS. WINGATE: I believe the --

MS. NEFF: Because I find this --

Zoning Board of Appeals 8/20/14
MS. WINGATE: It was a separate parcel and they merged.

MS. NEFF: See, this survey tells me nothing --

MS. WINGATE: Right.

MS. NEFF: -- because I can't read any numbers on it, I don't see the church.

MS. WINGATE: I believe that there were two parcels and the parcels were merged in the development of the daycare center.

MS. NEFF: Okay. And, really, this is about the church, as owner of the property, wishing to get a lease to another individual approved, isn't it?

MS. WINGATE: Well, I thought it was appropriate for the tenant to fill out the application, because that's how we would do it if it were a commercial property downtown, but the church could very well be the applicant as well.

CHAIRMAN MOORE: Maybe what we can do is we accept this for consideration with the understanding that you're going to have some discussions to find out exactly who the
applicants are and what is going on.

MS. WINGATE: Well, as far as I know, this

is -- this Lekina is the applicant. She has
arranged for a lease. I've talked to Valerie
Marvin, who is the Attorney for the church, so
there's a lease in place.

MS. NEFF: So there is a lease in place?
MS. WINGATE: Well, not quite yet, until
she's through with this.

MR. PROKOP: Well, it should say that
somewhere.

MS. WINGATE: Okay.

MR. PROKOP: Unless I'm missing it.

MS. WINGATE: No, it does not anywhere.

But she did offer a business plan, you know, how
she'd like to move forward.

CHAIRMAN MOORE: And as a conditional use,
should get a variance, or need a variance.

MS. WINGATE: Right.

CHAIRMAN MOORE: It will certainly go to
the Planning Board for their consideration,
because the numbers of students and such things
that do require additional property.

MS. WINGATE: It did go through the
Planning, so -- it didn't go through Zoning.

From what I read, and the files are thick --

CHAIRMAN MOORE: Well, I'm talking about

upcoming for the new plan.

MS. WINGATE: Upcoming?

CHAIRMAN MOORE: Yes.

MS. WINGATE: Okay.

CHAIRMAN MOORE: Would it be a Planning
Board issue?

MS. WINGATE: I don't know.

MR. PROKOP: Yeah.

MS. WINGATE: It went through Planning last
time.

CHAIRMAN MOORE: So, anyway, I would just
propose that if the application is currently in
order, we accept it for consideration.

MR. CORWIN: Question.

CHAIRMAN MOORE: Yes.
MR. CORWIN: You just read off of the agenda Post Office -- Lekina Harris, Post Office Box 1548 Shelter Island. The application is Lekina Harris, Post Office Box 853, Greenport.

MS. WINGATE: There would -- she just recently got a Greenport Post Office Box, and there were two applications, because first she filled out the wrong application. She was given the wrong application. So you might -- this is the use variance. Oh, Doug had the first application, which was an area variance that we could work with the agenda. When she came back in on Monday, she filled this one out.

MR. CORWIN: So what address are we using?

MS. WINGATE: We're going to use the Greenport address.

CHAIRMAN MOORE: Okay. Let's make note that the applicant's mailing address is Post Office Box 853, Greenport, and not the Shelter Island address, so we can get that straight. And that application is properly signed and
MS. WINGATE: It is.

CHAIRMAN MOORE: So it's been an update.

MS. WINGATE: So going forward, what does the Board -- is there anymore information that I need from her, other than telling her to read the code and be prepared?

CHAIRMAN MOORE: Well, we --

MR. CORWIN: Well, this seems very strange to me, that a young woman has a plan to do a daycare center on her own. If it is, God bless her, that's a wonderful thing, but someplace somebody's got to be behind you with insurance policies, and money, and salaries, and inspections of the Suffolk County Department of Health Services. So is she prepared for all this, or does she have a partner, or what?

MS. WINGATE: I haven't heard of any partners, but she's been in my office any number of times, and she's talking of banks, and she's got 25 kids all lined up, and apparently she's
dove in that pool. You know, I can't pry too much.

CHAIRMAN MOORE: Well, I think what we'll do is we can accept the application based on the variances that we, at this time, think are necessary from your analysis of the application, and in the interim, ask to see if there are any wrinkles in the ownership, lease and operator issue, and then we can judge the request for a use variance accordingly.

MS. WINGATE: Okay.

CHAIRMAN MOORE: You know, the facility exists, so the issues of setback and other parts of the code that are the area variance parts I think are the less challenging issue.

MS. WINGATE: Are they going to be part of the legal notice and the placard?

CHAIRMAN MOORE: I would say yes.
there's a — why there's an application in the first place, because that's what it was built for, and that's what it was intended for. And the reason why it's not now is because financially it fell apart, they couldn't afford to pay people to work there.

MS. NEFF: Well, they lost the Federal funding.

CHAIRMAN MOORE: Under —

MS. WINGATE: Sequestration.

MS. NEFF: Yeah.

CHAIRMAN MOORE: Under the conditions of use, the conditional use, the section requires, 150-7B(2) requires that it be a nonprofit organization. So a for-profit business constitutes a different use and requires a variance. So it's that one key section of the code.

MR. BENJAMIN: Aha.

CHAIRMAN MOORE: Now we have some area issues also, because we're talking about a substandard lot, and with the change of business
plan, that may enter into it as well.

MR. BENJAMIN: So if she was a not-for-profit organization, she wouldn't have any problems?

CHAIRMAN MOORE: It would follow the conditional use. And it would still be a Planning Board issue, because conditional uses must go to the Planning Board, but it wouldn't be a variance issue.

MR. BENJAMIN: I see.

CHAIRMAN MOORE: As far as I can tell. So it's a complicated issue, and, hopefully, we can get a little light on it before the meeting next month.

MS. NEFF: And there's certainly the atmosphere of a need to provide daycare for -- she says 25, or whatever number.

MS. WINGATE: That's what it is.

MS. NEFF: And the timeliness of such a venture. So try to get the ducks lined up so the left hand knows what the right one is doing. And to me, it would -- someone sign a lease without knowing all this is in place, I think not. So I think then it is really about the church being
able to lease this building for this use, whether

not-or-profit, which it was, or for-profit.
That's how I see it. I don't know.

CHAIRMAN MOORE: So we have to analyze
whether that change of use will, you know, be an
allowable variance. You know, that's why we're
being asked the question.

So, with that, you know, I made the motion
to something pertinent. I'll be glad to -- a
brief comment.

MR. TASKER: No. I'd like to make a
comment relative to what you're discussing now,
if I might. It might be helpful.

CHAIRMAN MOORE: We're just accepting an
application at this point, we're not adjudicating
the process.

MR. TASKER: Well, it's a point -- no, I
understand that. It's a point of information
that could help the applicant in this situation,
and it could be passed on.

CHAIRMAN MOORE: Maybe you should direct
that to the applicant. Do you have a point to make? We're just trying to get through the accepting procedure, and with that, we'll have full opportunity next month to discuss that.

MR. CORWIN: Well, let's --

MS. NEFF: Yes.

MR. CORWIN: If you don't mind.

CHAIRMAN MOORE: Yeah.

MR. CORWIN: Mr. Tasker may have some --

CHAIRMAN MOORE: Okay.

MR. CORWIN: Because who knows what's going to happen next month. Why hold him up for another month if we don't have to.

CHAIRMAN MOORE: All right. Well, we can't take testimony regarding the application, because we haven't gone through the process of noticing, so --

MR. TASKER: This isn't testimony.

CHAIRMAN MOORE: Okay. Let's see what it is, then. Go ahead and speak.

MR. TASKER: Perhaps the applicant is
unaware of the fact that -- my name is Robert Tasker, I live at 17 Beach Street. Perhaps the applicant is unaware of the fact that in July of 2014, the New York State Not-For-Profit Business Law was extensively changed and permits easy formation of a not-for-profit corporation in New York State. If that information is available to the applicant, it might assist in this whole process. Thank you.

Zoning Board of Appeals 8/20/14

CHAIRMAN MOORE: Well, it would likely nullify the process. So we'll take that comment. And just the same, we have an application before us currently, and we will either accept it or not accept it. So I move that we accept the application, and I'm asking for a second.

MS. NEFF: Second.

CHAIRMAN MOORE: And any discussion further?

(No response.)

CHAIRMAN MOORE: If not, all in favor?

MR. BENJAMIN: Aye.
MR. CORWIN: Aye.

MS. GORDON: Aye.

MS. NEFF: Aye.

CHAIRMAN MOORE: Aye.

And any opposed?

(No response.)

CHAIRMAN MOORE: So that application is accepted, and we will continue next month again.

Next item of business is to accept the ZBA minutes for July 16, 2014. So moved. A second, please.

MS. NEFF: Second.

CHAIRMAN MOORE: All in favor?

Zoning Board of Appeals 8/20/14
CHAIRMAN MOORE: Mr. Corwin seconded. And all in favor?

MR. BENJAMIN: Aye.

MR. CORWIN: Aye.

MS. GORDON: Aye.

MS. NEFF: Aye.

CHAIRMAN MOORE: Aye.

And then the motion is to schedule the next regular ZBA meeting for September 17th, 2014.

MR. CORWIN: Second.

CHAIRMAN MOORE: I make that motion and ask for a second. And all in favor?

MR. BENJAMIN: Aye.

MR. CORWIN: Aye.

MS. GORDON: Aye.

MS. NEFF: Aye.

CHAIRMAN MOORE: If everybody's available.

Aye. So that's scheduled. And --

MS. NEFF: Motion to adjourn.

CHAIRMAN MOORE: And before I do that --

MS. NEFF: Oh, excuse me.
CHAIRMAN MOORE: Before I do that, I just want to be sure that we accepted this application for the day school. And we will need to make the proper notifications, should that go forward, but I would ask for some feedback along the way. If anything changes, that we may need to, you know, make a change in the agenda for next month.

MS. WINGATE: Okay.

MR. PROKOP: What's the process, because usually -- I'm not sure what you're saying, because normally when you get the paperwork -- what feedback are you looking for from us?

CHAIRMAN MOORE: Well, if there's some change in the application, such as if somebody else is applying for it --

MR. PROKOP: Okay.

CHAIRMAN MOORE: -- or should be withdrawn for reconsideration, whatever. Otherwise, we'll move forward with it with what we have and what the applicant can provide. So that's all I'm saying.
So I would now make a motion to adjourn and ask for a second.

MR. PROKOP: Can I just make one --

CHAIRMAN MOORE: Yes.

MR. PROKOP: Tonight we approved an application where there was other nonconformities on the property. I'd recommend to the Board that you don't do that -- you don't do that. But if you're going to do that for some reason, you specify that the variance is particular to the structure that it applies to.

CHAIRMAN MOORE: Are you referring to that we are suspicious that another structure is nonconforming?

MR. PROKOP: No, we're not suspicious. If it's indicated on the survey --

MS. WINGATE: The sheds, I was going to ask you how to handle that.

MR. PROKOP: If other -- excuse me, I'm sorry. If other nonconformities are shown on the property that a variance has not been applied for, the application should really stop and we don't move ahead.

CHAIRMAN MOORE: Okay. We would have to investigate the history of whether that's
pre-existing or not, though --

MR. PROKOP: Yeah.

CHAIRMAN MOORE: -- at this point. But we
don't know that at this point.

MR. PROKOP: It shouldn't be done. I mean,
that application --

MR. CORWIN: It's not on the Assessor's
card, so how can it be there?

CHAIRMAN MOORE: Apparently, it doesn't
exist on this Assessor's card, so it --

MR. PROKOP: Okay.

CHAIRMAN MOORE: I understand what you're
saying, but I think --

MR. PROKOP: I'm not talking about a
specific application.

CHAIRMAN MOORE: Yeah.

MR. PROKOP: I mentioned it when you were
considering it and we went ahead. In the future,
you shouldn't. But if for some reason you
decided --

CHAIRMAN MOORE: If there's a
nonconformance that is not preexisting. So, in
other words, some other aspect of the property
that appears to require a variance.

MR. PROKOP: Yeah. Most places, that will
just stop the application. You have to get
everything straightened out at the same time,
that's all I'm saying.

CHAIRMAN MOORE: Oh, I understand. Okay.
That's a good point.
So I made the motion to adjourn and ask for
a second. I don't know if anyone did. Second,
please.

MS. NEFF: Second.
MR. BENJAMIN: Second.
CHAIRMAN MOORE: And all in favor?
MR. BENJAMIN: Aye.
MR. CORWIN: Aye.
MS. GORDON: Aye.
MS. NEFF: Aye.
CHAIRMAN MOORE: Aye. Thank you.
(Whereupon, the meeting was adjourned at
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 August 20, 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 29th day of August, 2014.

__________________
Lucia Braaten