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VILLAGE OF GREENPORT  
ZONING BOARD OF APPEALS

REGULAR MEETING  
November 19, 2014  
5:00 p.m.

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

APPEARANCES:

- Douglas Moore – Chairman
- David Corwin
- Charles Benjamin
- Dinni Gordon
- Ellen Neff
  
- Joseph Prokop – Village Attorney
- Eileen Wingate – Village Building Inspector

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1 (Whereupon, the meeting was called to order  
2 at 5:05 p.m.)

3 CHAIRMAN MOORE: This is the regular  
4 meeting of the Greenport Zoning Board of Appeals,  
5 and it's about five-after-five. It's very nice  
6 to see everybody here tonight. The cold weather  
7 just brings people in off the streets, so that's  
8 great. We have a busy agenda tonight, so I think  
9 we'll get started.

10 I had listed three public hearings.  
11 Hearing #1 is an error on my part. We actually  
12 last month closed the public hearing. It's  
13 actually a continuation of a discussion of the  
14 application for the variance, so that we aren't  
15 really expecting to take any public comments  
16 tonight, unless someone seeing the notice did  
17 want to comment on the Riva application. So is

18 there anybody from the public that wants to make  
19 any comment?

20 (No response.)

21 CHAIRMAN MOORE: We could reopen the  
22 hearing if that's the case. But if not, then the  
23 hearing will remain closed, and we'll move to #2.

24 And this is a public hearing for an appeal  
25 for an area variance for Ralph and Sarah Edwards,

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1 163 Fifth Street, Greenport, New York; Suffolk  
2 County Tax Map 1001-7-4-14. The applicants seek  
3 a building permit to construct an in-ground  
4 swimming pool.

5 Section 150-7(3a) of the Village of  
6 Greenport Code requires that the edge of a pool  
7 shall be kept a distance not less than 20 feet  
8 from all property lines.

9 The proposed swimming pool setback is 10  
10 feet on the north property line, requiring a  
11 setback variance of 10 feet. The same section  
12 applies for the west property line.

13 I believe there is an error in the

14 dimension. It was indicated to be 12 feet  
15 setback from the back property line. I believe  
16 it's actually 17 feet, if that's correct. So I'm  
17 just noting that correction now. And that would  
18 require a rear yard setback variance of three  
19 feet. And then, again, the same Section,  
20 150-7(3a), requires a 20-foot setback. The  
21 proposed swimming pool setback is 14 feet on the  
22 south property, requiring a variance of six feet.

23 And just for the record, the adjacent  
24 property owners were notified by mail, certified  
25 mail, and we have the receipts here. And, excuse

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1 me, they are -- excuse me. Just for the record,  
2 Catharine Byrne, 134 Sixth Street; Lisette Coly  
3 is listed as a New York address, but that is one  
4 of the adjacent property owners. Gretchen  
5 MacKenzie, again, a New York address, but that  
6 property is to the rear of this property. Kevin  
7 and Andrea Boucher, it's listed as a Key West  
8 address, which is actually the north property  
9 line, adjacent property. And Marian Friedmann,

10 Greenport, New York, Post Office Box 642. And  
11 William and Mariana Rountry, it's listed as a  
12 Pleasantville, New York address, and that is  
13 actually the south property, adjacent property.  
14 And then Oyster Point Condos at 160 Fifth Street.  
15 So those are the property owners that were  
16 notified.

17 MS. BYRNE: I object. I am Catharine Byrne  
18 and I was not notified. It's just a fluke that  
19 I'm here.

20 CHAIRMAN MOORE: Well, let me look at the  
21 mailings. I don't know if you can remember here.  
22 Catharine Byrne.

23 MS. BYRNE: Yes.

24 CHAIRMAN MOORE: Let me look up and see  
25 where it was mailed to.

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1 MS. BYRNE: 134 Sixth Street.

2 CHAIRMAN MOORE: Catharine Byrne, 134 Sixth  
3 Street, Greenport, New York. It's certified  
4 mail.

5 MS. BYRNE: I was not -- it was not

6 delivered to me.

7 CHAIRMAN MOORE: Not received?

8 MS. BYRNE: I live here full time. I have  
9 not received it, never did receive it.

10 CHAIRMAN MOORE: Would these have an  
11 indication of receipt?

12 MR. UELLEND AHL: May I? I received the  
13 package back a few days ago, and it said on the  
14 envelope "Refused". So the whole package came  
15 back.

16 CHAIRMAN MOORE: It was refused.

17 MS. BYRNE: I would not have refused that,  
18 and I live here full time.

19 MR. UELLEND AHL: The post office made that  
20 notation.

21 MS. BYRNE: Well, they made an error.

22 CHAIRMAN MOORE: Well, we're glad you're  
23 here, so --

24 MS. BYRNE: Well, I am, too. But it's  
25 just, as I say, a fluke. It was not --

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1 CHAIRMAN MOORE: Well, it's unfortunate,

2 but the requirements were met. It was mailed by  
3 certified mail, and I believe it was property  
4 noticed in the paper, and it was also  
5 placard-noticed at the front of the property, as  
6 also required.

7 So, at this point, we would accept comment  
8 from the representative and possibly the owner,  
9 if they wish. And you could go ahead and then  
10 we'll take some public comments that I'm sure  
11 we'll have on this.

12 MR. UELLEND AHL: Good evening. My name is  
13 Frank Uellendahl. I'm here on behalf of my  
14 friends and owners, Sarah and Ralph Edwards.  
15 They're moving to Greenport early next year. We  
16 are remodeling and renovating the existing  
17 structure. It used to be a two-family house.  
18 It's now going to be a one-family house, and in  
19 particular, Sarah would love to have a pool in  
20 the backyard.

21 Now, if you look at the site plan and the  
22 survey, there is an irregularity on that block  
23 insofar as there was a piece of property squeezed  
24 into the middle of the block, which has access  
25 from Sixth Street. And Andrea and Kevin Boucher,

1           they bought this house and they live there, and  
2           it affects the lot of my -- of the applicants.  
3           It squeezes the back portion of the lot down from  
4           60 feet to 40 feet. That's the only location  
5           where a pool could possibly go, and the --

6           MR. PROKOP: I want to adjust this.

7           MR. UELLEND AHL: Do I have to --

8           MR. PROKOP: No, that's fine.

9           MR. UELLEND AHL: Thanks, Joe.

10          CHAIRMAN MOORE: Has it been turned down a  
11          little bit?

12          MR. UELLEND AHL: Oh, is it? It's too  
13          close?

14                 So the code obviously says that we have to  
15          have 20 feet, a 20-foot setback from each  
16          property line; we don't have that. As of right,  
17          we couldn't build a pool. On the other hand,  
18          there are adjacent properties that do have a pool  
19          and they received variances. There's  
20          particularly the site to the south, there is an  
21          equally large pool in the backyard, and there is  
22          another pool which belongs to the Colys. It's

23 west of the -- thanks, Dave. Is this better?

24 CHAIRMAN MOORE: Yes.

25 MR. UELLEND AHL: Yes.

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1 CHAIRMAN MOORE: Turn it more front, if you  
2 would.

3 MR. UELLEND AHL: So maybe I'll just have to  
4 move back a little bit more.

5 So that is the situation. This is what  
6 hurts this particular property. If it were a  
7 60-by -- a rectangular lot --

8 (Firehouse siren sounded.)

9 CHAIRMAN MOORE: Just wait for a minute.

10 MR. UELLEND AHL: If it were a rectangular  
11 typical lot on this block, 60-by-166 feet, we  
12 would have no problems putting in a pool. We  
13 could get a 20-foot distance and setback from the  
14 northern and the southern property line, but,  
15 unfortunately, we don't have that luxury here.

16 So we are very well aware of the fact that  
17 there is their neighbors in the vicinity who  
18 don't like the noise, or object to the noise of

19 the pool equipment. And I spoke to the Building  
20 Inspector and we discussed this, and we decided  
21 up front that we're not going to keep the pool  
22 equipment open. We are going to enclose it in a  
23 shed that will be the backdrop of the pool, in  
24 the back of the pool, and it will be enclosed,  
25 and it should not cause any noise problems to the

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1 adjacent neighbors.

2 In addition, as Chairman Moore mentioned,  
3 the disapproval stated a 12-foot setback from the  
4 pool. It is actually 17, so we're only asking  
5 for a three-foot variance as far as the back lot  
6 line is concerned.

7 So this is basically where we are right  
8 now, and we hope that we can build the pool in  
9 the spring.

10 CHAIRMAN MOORE: We can have the  
11 opportunity to ask questions later, unless there  
12 are any pressing questions from any member of the  
13 Board.

14 MR. CORWIN: Well, two questions. Is the

15 pool going to be heated?

16 MR. UELLEND AHL: Yes, it will be heated.

17 MR. CORWIN: On this sheet, name of owner,  
18 Edwards. Paragraph 2, it's talking, I guess,  
19 about the house to the north, accessible from  
20 Fourth Street only by a 10-foot-wide  
21 right-of-way.

22 MR. UELLEND AHL: Oh, I'm sorry. This is a  
23 misprint. It shouldn't say Fourth Street, it  
24 should say Sixth Street, as I stated earlier in  
25 my presentation. So I thank you for picking that

up.

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1 CHAIRMAN MOORE: So if there are no other  
2 questions, we could proceed with any comments  
3 from the public.

4 MR. UELLEND AHL: Thank you.

5 CHAIRMAN MOORE: If a member of the public  
6 who would like to speak, please come to the  
7 microphone and state your name, and address, and  
8 affiliation, if necessary.

9 MS. MACKENZIE: Here?

10 CHAIRMAN MOORE: Yes.

11 MS. MACKENZIE: I'm Gretchen MacKenzie. I  
12 live at 140 Sixth Street. The southwest corner  
13 of my property abuts the west property line of  
14 the Edwards house. It also abuts the north  
15 property line of the Edwards house. And it  
16 happens to be a quarter section of my property  
17 that I use all the time, from May through  
18 September. I write; that's been an oasis.

19 I am very concerned about noise. People  
20 using pools make noise, fine, they're having fun.  
21 But the motors, unless they're very, very  
22 carefully housed, make a lot of noise. I can  
23 speak from experience, having lived there for  
24 almost 20 years. The Colys at 138 Sixth Street  
25 have a pool right adjacent to my garden, and my

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1 house, and my kitchen, and my bedroom, and it's  
2 very unpleasant, because people swim late at  
3 night and make terrific noise. When they are  
4 quiet, the motor is running; it is not housed.  
5 It is beyond understanding. Be that as it may,  
6 it's there. And here I have a situation where I

7 can at least express my concern about this  
8 proposal.

9 We are in an area that has, as has been  
10 noted, two pools already in a very tight range.  
11 And I urge you to consider very carefully the  
12 dimensions of the pool, the request for variance  
13 from property lines. It's going to be really a  
14 big blow for my serenity, if that matters to  
15 anybody.

16 CHAIRMAN MOORE: I'd just like to ask one  
17 question. You mentioned the property to the  
18 south and the motor noise. Is that the property  
19 where there was a malfunctioning pool motor  
20 recently?

21 MS. MACKENZIE: The property to the south  
22 of my property?

23 CHAIRMAN MOORE: Yes.

24 MS. MACKENZIE: That's the Coly's pool.

25 CHAIRMAN MOORE: Coly's?

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1 MS MACKENZIE: It functions perfectly well,  
2 it's just noisy as hell.

3                   CHAIRMAN MOORE: Because I understood there  
4 was an operational problem somewhere in the  
5 neighborhood with equipment that wasn't operating  
6 properly, and apparently was fixed.

7                   MS. MACKENZIE: I hope so.

8                   CHAIRMAN MOORE: But we understand the  
9 difference between outside and inside.

10                  MS. MACKENZIE: I would say that at the end  
11 of the summer, that pool -- that pool motor made  
12 less noise than it did in July. It definitely  
13 doesn't go away.

14                  CHAIRMAN MOORE: Right.

15                  MS. MACKENZIE: Now, what else did I want?  
16 So distances, I really resist the issue of the  
17 eight-foot variance on the west property line,  
18 because that's smack dab up against my -- and  
19 that's where my kitchen is and my bedroom. And  
20 as for the 10 foot, I have a hunch that the  
21 Bouchers would not be happy about that either.  
22 We talked about it this summer when we knew the  
23 pool was proposed. Andrea has questioned and  
24 said, "Well, if I can go through the fence and go  
25 swimming once in a while, I won't mind." We

1 both -- we both understood that. But she was  
2 expecting a 20-foot setback, I'm sure.

3 CHAIRMAN MOORE: Okay.

4 MS. MACKENZIE: And we're pretty close to a  
5 beach, so one has to wonder about the size of the  
6 pool. That's a value judgment, I'm sorry. So my  
7 issues are distance from property line and noise.  
8 Thank you.

9 CHAIRMAN MOORE: Would there be someone  
10 else that would like to speak?

11 MS. BYRNE: Yes. I'm Catharine Byrne, the  
12 one who was not notified. And whatever the  
13 mailman told you wasn't true, because I live  
14 there 24 hours a day, rarely leave my house, so I  
15 resent not having been notified. But I'm here  
16 for another cause.

17 There are at least six pools in the  
18 neighborhood in West, yes, Dublin where I live.  
19 The one that was most recently built was one that  
20 I had objected to. It was also where a variance  
21 was granted.

22 If the law was correct when it was written  
23 and the proportions of the houses are as they

24 are, if you have a small lot, you shouldn't have  
25 a big pool. I find fault with granting so many

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1 variances. I find fault particularly with  
2 variances for pools when it takes less than 20  
3 seconds to walk from my house to the Fifth Street  
4 Park and to the water.

5 So I just want you to know that I think the  
6 law should be obeyed. If not, it should be  
7 changed. Variances are just not necessary, as  
8 far as I'm concerned, particularly with pools,  
9 particularly when we're surrounded by water.

10 MR. CORWIN: Excuse me.

11 MS. BYRNE: Yes.

12 MR. CORWIN: Could you just give me an idea  
13 of where you're located?

14 MS. BYRNE: 134 Sixth Street.

15 MR. CORWIN: In relation to the Edwards.  
16 The numbers don't really make any sense to me.

17 MS. BYRNE: Well --

18 MR. CORWIN: South, or north, or east, or  
19 west?

20 MS. BYRNE: I am closer to the water, to  
21 Peconic Bay, whichever the direction is.

22 MR. CORWIN: So is that one house south  
23 or --

24 MS. BYRNE: The Colys are beside me to the  
25 left, and beside them is --

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1 CHAIRMAN MOORE: South of the Colbys, you  
2 said?

3 MS. BYRNE: Colys, K-O-L-Y (sic).

4 CHAIRMAN MOORE: Coly, Coly. So it's that  
5 one right there.

6 MR. CORWIN: Okay. Thank you.

7 CHAIRMAN MOORE: You're immediately behind  
8 the Rountry pool.

9 MS. BYRNE: Yes.

10 CHAIRMAN MOORE: Yes. So now we know where  
11 you are.

12 MS. BYRNE: I hope you realize, when you  
13 grant these variances, that the pool is there  
14 forever. People move and go away. People may be  
15 very quiet, and then all of a sudden the house is

16 sold, and then somebody moves in with 24  
17 children, or nieces, and nephews, and  
18 grandchildren. I moved here because I wanted the  
19 peacefulness and the quiet, and I like to sit in  
20 my yard where it's quiet and peaceful. I think  
21 we have too much noise in our society, and that's  
22 one of the reasons that Greenport is so alluring  
23 to so many people. It is a quiet, peaceful town.

24 So, please, if you grant this variance,  
25 then you're going to continue granting variances

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1 for the next -- for the rest of my lifetime, very  
2 likely. Thank you.

3 CHAIRMAN MOORE: Thank you.

4 MS. BYRNE: And I hope you will find out  
5 why I didn't get a notice.

6 MR. TASKER: Good evening. My name is  
7 Arthur Tasker. I live at 17 Beach Street in  
8 Greenport. It's, of course, appropriate to be  
9 sympathetic with Mrs. MacKenzie's concerns about  
10 noise, but -- and I'm sure there is no sound  
11 engineer in this -- no facetious requirement.

12 I'm sure there's a sound engineer in the audience  
13 here who can speak to it, but I don't think that  
14 from an audible standpoint, the difference in the  
15 edge of a pool being 10 feet, or 15 feet, or 20  
16 feet from a particular property is going to make  
17 a substantial difference in terms of the noise  
18 that will be heard in the adjacent property.

19 Having said that, I'm also quite  
20 sympathetic to what Mrs. Byrnes said, and that is  
21 with respect to the general propriety of the  
22 zoning laws, and the laws were established some  
23 time ago. Nobody here will remember the fact  
24 that my father wrote the first zoning code in  
25 1949 for the Village of Greenport.

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1 Having said that, the setbacks were made  
2 for a purpose, and the purpose was to maintain  
3 the nature of properties, and neighborhoods, and  
4 adjacent properties, and adjacent neighborhoods  
5 in a particular manner, and that's why it was  
6 done. But wholesale, or regular, or routine  
7 granting of variances is not the way to maintain

8 the Village as it was expected to be.

9 You go back to the -- one of the stated  
10 purposes, I can't recall it from memory, of the  
11 zoning code is to eliminate nonconforming uses.  
12 But every time you permit a variance, you create  
13 a new nonconforming use. And if you do that  
14 routinely enough, you get what you deserve.  
15 Thank you.

16 MS. FRIEDMANN: Good evening. I'm Marian  
17 Friedmann and I own 171 Fifth Street in  
18 Greenport, which is directly north of the Edwards  
19 property. They are probably my longest neighbor,  
20 except for my neighbor to the north, so I think I  
21 am the longest abutter to the property. And --

22 CHAIRMAN MOORE: I'm sorry. Could you say  
23 your last name again?

24 MS. FRIEDMANN: Marian Friedmann.

25 CHAIRMAN MOORE: Friedmann. Thank you.

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1 MS. FRIEDMANN: Last week I had an  
2 opportunity to go down to the Village and look at  
3 the site plan, and Eileen Wingate was very

4 helpful pointing out pieces on the plan that I  
5 didn't know exactly what they were, because I'm  
6 not an architect or a pool designer. And I was  
7 really very pleased about the placement of the  
8 pool and the adjacent things. And I have to tell  
9 you, as I think the largest abutter, I am not  
10 opposed to the pool. I actually support their  
11 application.

12 They have done remarkable things to a  
13 beautiful, beautiful house. I had the privilege  
14 of having the Ficurillis as my neighbors for  
15 almost 22 years, both Janet and --

16 AUDIENCE MEMBER: Nick.

17 MS. FRIEDMANN: Nick. It went out of my  
18 mind. And what the Edwards have done is maintain  
19 the integrity of that property, and it will be  
20 more beautiful than ever. And I think that the  
21 Ficurillis, if they could see the way the house  
22 is going to be would be smiling from wherever it  
23 is that they are, I truly believe that. So I  
24 think that the Edwards are very respectful of  
25 Greenport.

1           And my only concern, and I don't know  
2           whether it is something I can be concerned about,  
3           is that from time to time, people need to empty  
4           the pool. And I don't know what the Village has  
5           in terms of rules where you can get rid of the  
6           excess, if you're emptying the pool and so forth,  
7           for winter use, or, heaven forbid, a repair, what  
8           happens in that situation. But save for that, I  
9           think that the renovation on this house is  
10          extraordinary, and Fifth Street will be more  
11          beautiful for it. So thank you.

12           CHAIRMAN MOORE: Any other members of the  
13          public wish to speak?

14           MS. BYRNE: I can speak for where the water  
15          goes. Every time the Colys empty their pool, it  
16          goes right down the street, right in their  
17          driveway, and right down to the Peconic Bay. I  
18          don't know if that's legal or not, but that's  
19          where the water goes.

20           MR. SWISKEY: No, it's not actually legal,  
21          they shouldn't be doing that, but they're --

22           CHAIRMAN MOORE: I think there is a  
23          requirement that the pool be -- the water be  
24          dechlorinated. In other words, you can't dump

25 chlorinated water. But I'm not sure you can dump

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1 it on the street. I would think it might have to  
2 go into the sanitary sewer system.

3 MS. WINGATE: It's not part of our code,  
4 but we're looking at that as how to handle it in  
5 the future.

6 CHAIRMAN MOORE: Okay. Any other mechanics  
7 of the public on this issue?

8 (No response.)

9 CHAIRMAN MOORE: If not, then I'd make a  
10 motion we close the public hearing.

11 MR. CORWIN: Second.

12 CHAIRMAN MOORE: Any other discussion on  
13 the matter?

14 (No response.)

15 CHAIRMAN MOORE: If not, all in favor?

16 MR. BENJAMIN: Aye.

17 MR. CORWIN: Aye.

18 MS. GORDON: Aye.

19 MS. NEFF: Aye.

20 CHAIRMAN MOORE: Aye.

21 Any opposed or abstaining?

22 (No response.)

23 CHAIRMAN MOORE: Okay. That motion

24 carries, the hearing is closed.

25 So we will move -- we'll be discussing this

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1 during our regular session. And we will move on  
2 to the next item, which is, again, another public  
3 hearing. And this is a request by the Planning  
4 Board of the Village of Greenport to the Zoning  
5 Board of Appeals for an interpretation of Village  
6 Code Section 150-9A(18), accessory apartment  
7 dwelling units over retail stores, businesses,  
8 professional and governmental offices existing as  
9 of July 1st, 2002, and in accessory buildings  
10 thereof also existing as of July 1st, 2002,  
11 subject to the following standards and  
12 requirements, as established for the uses in the  
13 Retail Commercial District.

14 The Planning Board is considering an  
15 application for the proposed renovation of 211  
16 Carpenter Street, located in the Commercial

17 Retail District. The existing structure is  
18 vacant; Suffolk County Tax Map 1001-6-2-17.

19 I should mention that this was not publicly  
20 noticed, because it is a request for an  
21 interpretation. So a notice of adjacent property  
22 owners apparently is not required, so that was  
23 not done in this case.

24 We can take comments from the public, but  
25 if the owner or representative would like to make

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1 any comments, we can take that. And while Mr.  
2 Olinkiewicz comes up, I would just like to remind  
3 the audience that the discussion tonight is  
4 specifically the technical question about  
5 interpretation of the code. It is not a hearing  
6 for the site development plan, that is a Planning  
7 Board issue. So that I would ask that any public  
8 comments be restricted to that section of the  
9 code, and not the project in general.  
10 Mr. Olinkiewicz.

11 MR. OLINKIEWICZ: Yeah. The name is James  
12 Olinkiewicz. I'm the owner of 211 Carpenter

13 Street, Greenport.

14 The building used to be owned by the North  
15 Fork Housing Alliance. For a number of years, it  
16 was a boarding house that was in use up to, I  
17 guess, about seven or eight years ago, when they  
18 stopped using it.

19 When I purchased it three months ago, I was  
20 informed that the building is in the CR District,  
21 so any usage that the Housing Alliance had had  
22 for a boarding house was null and void, so that I  
23 had to follow the CR Code. The CR Code states  
24 that the use, adaptation or change of use of any  
25 building within the CR District in existence as

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1 of January 1st, 1991 shall be entirely exempt  
2 from any off-street parking requirements. So  
3 that's the Village Code.

4 There's been a number of people that have  
5 brought up the whole issue about parking, and  
6 parking for the building, but like many other  
7 businesses throughout the Village in CR District,  
8 they don't have parking and they park in the

9 municipal parking lots, and they park in  
10 different areas.

11 So my belief is that -- and we were sent  
12 here by the Planning Board because I had  
13 requested to do a commercial usage downstairs for  
14 a legal service, as I try to rent the downstairs.  
15 But then I also applied under the Village Code,  
16 Section 18 of Zoning Code 150-9. I had read that  
17 an accessory apartment dwelling units over retail  
18 stores and businesses, professional and  
19 government offices existing as of 2002, and  
20 accessory buildings therefore also existing on  
21 July 1st, 2002 are subject to the following  
22 standards and requirements. And Item B is  
23 apartments are not to be located on the first  
24 floor of the principal buildings or  
25 residential unit -- any residential units in

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1 accessory buildings can be anywhere.

2 So in the zoning code, it talks that I'm  
3 exempt from off-street parking, and that I have  
4 the ability to put an apartment above the

5 building, because the building was built before  
6 2002.

7 I believe we were put here in front of you  
8 for an interpretation on whether the zoning code  
9 meant to read that the building before 2002, or  
10 whether it meant that because if there was a  
11 business in there before 2002. So there's a  
12 slight misunderstanding or misinterpretation, or  
13 we're trying to get down to it, because if it was  
14 that there wasn't a business there before 2002, I  
15 may be subject to have to go to site plan review  
16 for the apartment upstairs for the Zoning Board  
17 -- for the Planning Board.

18 But if the Zoning Board feels that the  
19 Section 18 meant that the building prior to 2002,  
20 which this building is, then I would not have to  
21 go to site plan review for the Planning Board, I  
22 could then just be, I don't know, granted the  
23 usage, or we'd have a public hearing with that.  
24 I don't know the protocol for that through the  
25 Village.

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1           So what we're actually just trying to get  
2           is an interpretation on whether it had to have a  
3           store in there as 2002, or whether the building  
4           had to exist before 2002, for which direction I  
5           go for the apartment upstairs. So that's --  
6           that's why we're here.

7           There is many other businesses all  
8           throughout the Village that have apartments above  
9           them. I'm not asking for anything that's  
10          different than in the rest of the Village.  
11          There's a definite need for housing. As  
12          everybody knows, I have a number of houses in the  
13          Village that I rent. There is 46 or 40 -- 44  
14          people right now on my waiting list. Last count,  
15          I've counted that there's been eight or nine  
16          houses that have given up their accessory  
17          apartment use for Airbnbs. There is also Airbnbs  
18          being used in the Commercial District on the  
19          second floor apartments, as well as the first  
20          floor apartments; that I don't know if that's a  
21          correct usage for the first floor in the  
22          Commercial District, because the first floor in a  
23          Commercial District is supposed to be for  
24          businesses, not for Airbnbs. On top of that,  
25          there has been a number of houses that have been

1 sold throughout the Village that were  
2 two-families and were reconverted back to  
3 one-families. So the Village is losing houses at  
4 an alarming pace between the Airbnb, and between  
5 the houses being converted from two-families to  
6 one-families.

7 As said, I have a number of homes  
8 throughout the Village. In -- amongst all of my  
9 houses, I have -- other than restoring existing  
10 houses that had the usage, I have only added five  
11 extra apartments to the Village apartment supply.  
12 So you've lost probably 15 or 20, and I've added  
13 back five. Yes, if I get -- when I go through  
14 the Planning Board for the usage of this upstairs  
15 apartment, that would make a sixth apartment that  
16 was not there before. But, as I said, it's an  
17 accepted usage in the zoning, and it's being done  
18 by tremendous amounts of other businesses  
19 throughout the -- throughout the Village, so --  
20 and because I'm exempt from off-street parking,  
21 that becomes a null and void issue with the whole

22 situation. Thank you.

23 CHAIRMAN MOORE: Just let me ask you, you  
24 gave us a letter last month in October.

25 MR. OLINKIEWICZ: Yes.

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1 CHAIRMAN MOORE: Do you feel that your  
2 statement tonight covers what's in the letter,  
3 and we could simply include it in the record and  
4 not read it tonight?

5 MR. OLINKIEWICZ: Yes, yes. I mean,  
6 probably 85 or 90% of that letter I've covered.

7 CHAIRMAN MOORE: So what we'll do is submit  
8 that for the record, and understand that you've  
9 spoken for much of what it says already.

10 MR. OLINKIEWICZ: Fantastic.

11 CHAIRMAN MOORE: Okay. Thank you.

12 MR. OLINKIEWICZ: Thank you. Any  
13 questions? No?

14 CHAIRMAN MOORE: Mr. Corwin.

15 MR. CORWIN: I have a question.

16 CHAIRMAN MOORE: Yes.

17 MR. OLINKIEWICZ: Okay.

18 MR. CORWIN: You've mentioned this list of  
19 44 people. You've called it families before. I  
20 don't know whether it's families or people. But  
21 I'm curious, is it people that I would call  
22 Greenporters, or is it people in Southold Town  
23 and the Town of Shelter Island?

24 MR. OLINKIEWICZ: I'm not allowed to judge  
25 that, because that's prejudicial, and you're not

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1 allowed to do that by law. I have 44 families  
2 that have asked me for housing in the Greenport  
3 area. I'm not allowed to choose if they live in  
4 Greenport now, or if they want to move here from  
5 Southold, or move here from Mattituck. That's  
6 totally against the law.

7 MR. TASKER: That's not.

8 MR. OLINKIEWICZ: As a landlord, it's  
9 against the law. You can't --

10 MR. CORWIN: As the landlord. But you're  
11 saying you won't give us -- my only concern is --

12 MR. OLINKIEWICZ: How many different people  
13 from Greenport have asked me? Probably on that

14 list is 30.

15 MR. CORWIN: My concern is I don't want to  
16 see Greenport be the low-income housing solution  
17 for the Town of Southold and for the Town of  
18 Shelter Island.

19 MR. OLINKIEWICZ: I understand.

20 MR. CORWIN: And I have nothing against  
21 low-income housing, and some of the things you  
22 fixed up are good, and I'll compliment you on  
23 that, but I don't want to hear there's a list of  
24 44 people looking for houses, and maybe they're  
25 from Riverhead, maybe they're from someplace

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1 else, the Town of Shelter Island, which I don't  
2 think has a lot of low-income housing. And I get  
3 very confused why the Town of Southold doesn't do  
4 something more, and the Town of Shelter Island  
5 doesn't do something more. But everybody comes  
6 to Greenport and says, "Hey, you got sewers, you  
7 got density, you got to do all the low-income  
8 housing for the North Fork and Shelter Island."

9 MR. OLINKIEWICZ: That's a question you've

10 got to bring up with Southold, Mattituck, Shelter  
11 Island. I mean, I get -- when I get asked by a  
12 tenant for -- if I have a rental, the first thing  
13 I don't ask them is where you're moving from.  
14 Maybe I could, that's fine. I get asked -- I  
15 know that the Village has had a tremendous amount  
16 of problems with the population in houses, and  
17 with density that way. So if you eliminate more  
18 and more apartments for the people that are here,  
19 you're going to have people become overcrowded  
20 and become another -- it's a vicious cycle that  
21 you're trying to create.

22 My proposal, and, in fact, talked to the  
23 Town Board Member, Dave Murray, about that for  
24 the Village of Greenport in a future plan, would  
25 be --

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1 MR. CORWIN: Mr. Murray is a Village Board  
2 Member.

3 MR. OLINKIEWICZ: That's what I said,  
4 Village Board Member.

5 MR. CORWIN: No, you said Town.

6 CHAIRMAN MOORE: No, you said Town.

7 MR. OLINKIEWICZ: Oh, I'm sorry, Village  
8 Board Member. So what I had said, that in my  
9 interpretation, that should come to the Village  
10 Board.

11 They're asking about issues that deal with  
12 R-2, right? If you can -- because we're filing  
13 -- filling out the paperwork now for the rental  
14 law, which I have been a proponent for, and I'm  
15 more than happy to fill out my paperwork, and all  
16 the inspections that need to be done for any of  
17 my houses, I have absolutely no problem with it.  
18 I think that once you get that inventory of  
19 rentals, that when a rental goes off the market,  
20 when you have a two-family that then become --  
21 gets bought and becomes a one-family house, you  
22 should have a waiting list for people who want to  
23 convert their houses to two-families, and as one  
24 goes off, one is able to be added. So that you  
25 don't have somebody come in and convert 25 or 30

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1 houses to two-families and cause your problem

2 that you're talking about, bringing the low  
3 income all through Greenport. You can regulate  
4 that with that.

5 If somebody want to have an Airbnb, and  
6 Airbnb has to get a permit, because that's a  
7 year-round rental that has come off the rolls,  
8 and allow somebody else to convert and put a  
9 year-round rental, and this way you can control  
10 it. It's easily done, because you've taken the  
11 rental law, as well as you have an Airbnb law,  
12 and put it all together, and you can actually  
13 control the situation. You can work on the  
14 problem and become part of the solution, so --  
15 but right now, that's not the case. Right now,  
16 you have apartments disappearing for Airbnb, or  
17 apartments disappearing because people are coming  
18 in and buying the houses, and throwing their  
19 tenants out and converting it to one-family. And  
20 you're going to have more problems with density  
21 and amount of people living with each other.  
22 You're going to have more families going in  
23 together and putting eight, nine, ten members of  
24 a family in a house, because now they have jobs  
25 here, they've been rooted in the community for a

1 number of years, and they're not going to want to  
2 move from Greenport to Riverhead, or someplace  
3 and find housing.

4 So you can't have it both ways. You have a  
5 workforce here that needs housing, you have low  
6 income that needs housing, but you also want to  
7 protect the Village. I understand it, I get it.  
8 So the only way to do that is to create a formula  
9 that you stop overexpansion of new properties,  
10 and you only convert what's taken off the rent  
11 rolls as year-round housing and let others be  
12 created to replace that.

13 CHAIRMAN MOORE: Okay. I think we're  
14 drifting a little bit off the subject, but you  
15 were stimulated by Mr. Corwin's question, but I  
16 appreciate that.

17 MR. OLINKIEWICZ: His question about -- you  
18 know, it's very difficult, because, as a  
19 landlord, you're asking me to do stuff that's  
20 illegal to ask. You can't ask somebody where  
21 they lived, moved from. There's all kinds of  
22 things you can't tell them. I mean, I can go to

23 jail for some of that stuff, because it's  
24 considered prejudicial.

25 CHAIRMAN MOORE: And the things you

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1 mentioned are excellent, and I would suggest you  
2 attend next month's Code Committee, and,  
3 hopefully, write a letter supporting what you  
4 say, because that's being discussed every month  
5 now for the next couple of months.

6 MR. OLINKIEWICZ: Good. I'd like to be a  
7 part of that --

8 CHAIRMAN MOORE: Great.

9 MR. OLINKIEWICZ: -- because that needs to  
10 be done.

11 CHAIRMAN MOORE: Great.

12 MR. OLINKIEWICZ: Thank you.

13 CHAIRMAN MOORE: Thank you.

14 MR. SWISKEY: Oh, I'd like to speak.

15 CHAIRMAN MOORE: Good. I think you have  
16 someone heading in the direction that -- any  
17 members of the public now may come forward to  
18 speak. And I just want to remind you to keep

19 your comments brief and on point.

20 MR. SWISKEY: Yeah, I understand that.

21 William Swiskey, 184 Fifth Street.

22 What I don't really understand is I'm  
23 neither here nor there with Mr. Olinkiewicz, or  
24 Trustee Phillips who's on there. Are any of you  
25 lawyers?

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1 MR. BENJAMIN: Joe is.

2 MR. SWISKEY: You're asking for an  
3 interpretation of a law. That shouldn't even be  
4 here. That should be either in the Building  
5 Department or the Village Attorney. This is  
6 like -- I don't know who started this, but your  
7 interpretation of your code starts with the  
8 people that, one, that either enforce it, or  
9 interpret it for you, not with this Board. I  
10 don't understand how these things are winding up  
11 before this Planning Board -- I mean, the Zoning  
12 Board, where they don't belong.

13 CHAIRMAN MOORE: Well, actually, I don't  
14 want to flip the book open and find that section

15 of the code, but the Zoning Board of Appeals is  
16 charged with interpretation of sections of the  
17 code when requested, and they may be requested by  
18 any agency of the Village, or by an applicant who  
19 has been given a denial and is appealing the  
20 denial based on the code and can seek an  
21 interpretation.

22 MR. SWISKEY: From what I see, with that  
23 section of the code, is I don't even know if it's  
24 constitutional, because if you wind up in court  
25 and get your butt kicked and the Village gets

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1 sued, you're not lawyers, how are you going to  
2 justify defending it? That's all I got to say.

3 CHAIRMAN MOORE: Thank you. Yes,  
4 Mr. Tasker.

5 MR. TASKER: Good evening again. Arthur  
6 Tasker, 17 Beach Street.

7 As anticipated, Mr. Swiskey's comments,  
8 it's quite interesting, but you need to point out  
9 that the way administrative law works is that the  
10 Board, as the Chairman says, is responsible by

11 law for interpretation. But that's not the end  
12 of it. The process is if you don't like what the  
13 Zoning Board did, you can commence an appeal in  
14 the form of an Article 78 proceeding to ask that  
15 the courts review the judgment, in their best  
16 judgment, of what the Zoning Board did. And if  
17 you don't like that, you go to the Appellate  
18 Division and on up to the Court of Appeals. But  
19 it's only the start of a process, it's not the  
20 end of the process. They are charged by the  
21 statute with doing that.

22 That's not what I anticipate -- what I  
23 planned to stand up here to speak to, and that is  
24 this: Mr. Olinkiewicz, let's go back to Bill  
25 Clinton and the meaning of -- what the meaning of

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1 "is" is. That's what this is, there aren't any  
2 commas in this statute, and that's why you've got  
3 a problem. If there was a comma after the  
4 word -- and I'm now looking at Section 18.  
5 "Accessory apartment dwelling units," if there  
6 was a comma after that, it would be perfectly

7 clear that the apartment had to exist before  
8 2002. If there were a comma after government  
9 offices, it would probably be that the business  
10 had to exist before 2002. But there ain't any  
11 commas, so you've got three choices. That's what  
12 the Board is being asked to interpret, they're  
13 being asked to place the comma.

14 And, again, the intent is what you have to  
15 try and look at of the people who wrote it. This  
16 was written in 2002 so I don't have any -- I  
17 don't have any vested interest in this part of  
18 it, but you have to try and ascertain what the  
19 intent was. The intent was to regulate accessory  
20 apartments, not the businesses in the CR  
21 District. So the -- probably, the proper  
22 interpretation is that accessory apartments  
23 defined as existing over a retail unit or  
24 business, the accessory -- such accessory  
25 apartment which existed prior to 2002 is

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1 permitted. But the entry point is the existence  
2 of the accessory apartment, not the existence of

3 the business or the building. You can't have  
4 either the apartment or the business without the  
5 building, so that's not the answer. Thank you.

6 MS. MC ENTEE: Joanne McEntee, 242 Fifth  
7 Avenue. I do understand what your position is  
8 that you have to do here. I have seen throughout  
9 the years of what has gone on with an accessory  
10 apartment, an apartment that Mr. Olinkiewicz has  
11 built. There has been numerous amounts of  
12 vehicles on these lots.

13 I have a house right next door to us that  
14 he renovated, and there are many cars there  
15 during the course of the day, in, out, in, out,  
16 in, out. They come and go, they play their music  
17 very loudly. They do not care what is going on  
18 in our residential area.

19 CHAIRMAN MOORE: Could you put what you're  
20 commenting on in the context of the section of  
21 the code regarding accessory apartments over --

22 MS. MC ENTEE: I'm --

23 CHAIRMAN MOORE: Excuse me, over retail  
24 commercial properties. This is what we're being  
25 asked to do. Perhaps you could say that to the

1 Planning Board, but this is what we're asked to  
2 comment on, and you're commenting on something  
3 else, and I'm trying to move in the direction of  
4 interpretation of this section of the code.

5 MS. MC ENTEE: Well --

6 CHAIRMAN MOORE: I appreciate what you're  
7 saying, but it doesn't relate to what we're being  
8 charged with to ask.

9 MS. MC ENTEE: You're going to have people  
10 move into this if you decide -- first of all, you  
11 don't have to decide if he as an accessory  
12 apartment there. And is there two apartments  
13 going in there upstairs or one?

14 CHAIRMAN MOORE: I have no idea what's in  
15 the plan.

16 MS. MC ENTEE: Mr. Olinkiewicz?

17 MR. OLINKIEWICZ: Just one going upstairs.

18 MS. MC ENTEE: One upstairs.

19 MR. OLINKIEWICZ: Right.

20 MS. MC ENTEE: And downstairs is all going  
21 to be commercial?

22 MR. OLINKIEWICZ: Commercial, commercial  
23 uses, yup.

24 MS. MC ENTEE: Okay. I think, before a  
25 decision has to be made on any of this, that

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1 Mr. Olinkiewicz really needs to know what type of  
2 retail business or commercial business is going  
3 on downstairs. Right now, it's very divided into  
4 what we would call bedrooms. There are -- there  
5 is a basement downstairs. Obviously, the  
6 upstairs we were unable to go in, because we  
7 weren't allowed to do the site visit and go in,  
8 which I disapprove of, unfortunately.

9 On the other side of the coin is when  
10 someone has an office, then that's fine. Where  
11 are these people going to park for this  
12 commercial place? You have a doctor's office  
13 that moves in there, you have people coming every  
14 10 minutes. You have an artist studio move in,  
15 then there is something -- there probably are  
16 less people. The parking there, I understand  
17 there are four legal parking areas on the street.  
18 There is no parking at the homes or at the  
19 commercial resident -- commercial property



16 of the coin is when Mr. Olinkiewicz builds all  
17 these homes, and it's well over 20 at this time,  
18 whether if they're built, renovated, or add  
19 accessory apartments, or whatever, he has never  
20 stayed true to his word. You know, when  
21 something has -- he'll go in to do something for  
22 a particular job, then he'll change it as it goes  
23 on later on. So I don't believe in the truth of  
24 what Mr. Olinkiewicz has to set forth. Thank  
25 you.

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1 CHAIRMAN MOORE: Is there someone else who  
2 would like to speak? Mr. Saladino.

3 MR. SALADINO: John Saladino, Sixth Street.  
4 I heard Mr. Olinkiewicz say that he wanted to put  
5 a law-like office on the first floor, and an  
6 accessory apartment above. I really don't see a  
7 problem with that. I just -- I just don't know  
8 how he could say like it's going to be a law  
9 office in perpetuity.

10 My concern is, is that this month it's --  
11 this month it's an attorney's office, and next

12 month it becomes another apartment. If he was  
13 willing to assure us that that wouldn't happen, I  
14 have no complaints about this application.

15 As far as -- as far as parking, I really --  
16 you know, I grew up in Manhattan, I really don't  
17 care about parking. I mean, you park where you  
18 park. If it's legal, you park there. If you  
19 don't -- you know, I live on Sixth Street. You  
20 know, if somebody parks in front of my house, go  
21 ahead, as long as it's legal.

22 The only thing that I'm kind of confused  
23 about is, and we see each other all the time here  
24 and stuff, is what exactly is your business? You  
25 say you have 47 people on a list that's looking

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1 for apartments. Are you a builder, or are you a  
2 real estate agent?

3 MR. OLINKIEWICZ: Both.

4 MR. SALADINO: I mean, how -- oh, you are?

5 MR. OLINKIEWICZ: Both, yeah.

6 MR. SALADINO: Oh, okay. I didn't know  
7 that. I thought you were a builder, and I

8 thought you built houses, and you rented  
9 income-producing property to people that needed  
10 it, I didn't know you had a list.

11 So, as far as -- as far as the accessory  
12 apartment, I have no problem with that. They're  
13 all over town, they're all over Front Street,  
14 they're all over Main Street. As far as the  
15 business downstairs, if we could get an  
16 assurance, if the public could get an assurance,  
17 if I could get an assurance that it would remain  
18 commercial, I would have no problem with that. I  
19 would never dictate what kind of business you  
20 rented to, you know, law office, I don't know,  
21 doctor's office. I don't know who's going to  
22 open up there. But if it remains commercial, I'm  
23 happy with it.

24 And again, as far as the parking, if you  
25 park legally, bona fortuna, good for you. Thank

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1 you for listening.

2 CHAIRMAN MOORE: Thank you. Is there  
3 anybody else from the public who would wish to

4 speak?

5 (No response.)

6 CHAIRMAN MOORE: If not, then I would make  
7 a motion that we close the public hearing, ask  
8 for a --

9 MS. NEFF: So moved.

10 CHAIRMAN MOORE: Okay. That's the motion.

11 MR. CORWIN: Second.

12 CHAIRMAN MOORE: And seconded by  
13 Mr. Corwin. Any further discussion?

14 (No response.)

15 CHAIRMAN MOORE: All in favor?

16 MR. BENJAMIN: Aye.

17 MR. CORWIN: Aye.

18 MS. GORDON: Aye.

19 MS. NEFF: Aye.

20 CHAIRMAN MOORE: Aye.

21 And opposed?

22 MR. CORWIN: Just one note. You had  
23 suggested that Ms. McEntee could send a letter,  
24 so I think we need to stipulate that somehow.

25 CHAIRMAN MOORE: Yes. Are you -- yes, you

1 are here.

2 MR. PROKOP: We should -- maybe what we  
3 could do is vote to hold the record open for 10  
4 days, or something, or until, you know, 20 days.

5 CHAIRMAN MOORE: We could do that. If you  
6 have something tonight to hand in, you could  
7 hand --

8 MS. MC ENTEE: I don't have anything  
9 tonight.

10 CHAIRMAN MOORE: Well, why don't we --  
11 we'll do that. And as we're discussing the  
12 interpretation, I guess we could do it at that  
13 time, or would you think right now?

14 MR. PROKOP: Yes. Well, we could --

15 CHAIRMAN MOORE: Well, we're closing the  
16 hearing, so we could just say that in the course  
17 of closing the public hearing, we will accept any  
18 written public comments for 10 days from today's  
19 date, and include that in the record as well. So  
20 that would be included in the motion. And we  
21 have a motion made and a second again.

22 MR. CORWIN: I second the motion as  
23 amended.

24 CHAIRMAN MOORE: And all in favor?

25 MR. BENJAMIN: Aye.

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1 MR. CORWIN: Aye.

2 MS. GORDON: Aye.

3 MS. NEFF: Aye.

4 CHAIRMAN MOORE: Aye.

5 Any opposed?

6 (No response.)

7 CHAIRMAN MOORE: So that motion carries, so  
8 the public hearing is closed.

9 CHAIRMAN MOORE: Okay. So we're going to  
10 now move to the regular meeting agenda. And at  
11 this point, we have a carryover from last month,  
12 which is the application for a variance from  
13 Debra Riva, 433 Sixth Street, Greenport, New  
14 York; Tax Map #1001-6-3-4. Property is located  
15 in the R-2 District. The applicant proposes to  
16 construct a new mudroom addition and a deck. The  
17 proposed addition is 36 square feet, and the  
18 proposed deck is 192 square feet. I should  
19 mention that this has been amended in her plan.

20 And so we are continuing the discussion of

21 this application. And I should note that we have  
22 a revised drawing, and Ms. Riva has modified her  
23 plan, which I expect you'll explain to us now at  
24 this point as we continue our discussion.

25 MS. RIVA: Okay. Originally, I had the

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1 mudroom outside my kitchen door, and then  
2 wrapping around to the front. And I've changed  
3 my mind, and the mudroom remained just on the  
4 side, and then just a deck in front of the house  
5 underneath my living room window, so to speak.

6 CHAIRMAN MOORE: Yes.

7 MS. RIVA: That's the modification.

8 CHAIRMAN MOORE: And what I'll do is  
9 explain that in the last month, the plan was that  
10 there would be a wrap-around deck continuing from  
11 your front door around to the new mudroom  
12 addition, and you've amended that to eliminate  
13 the part that wrapped around the corner. So that  
14 reduces the amount of square footage that you're  
15 requesting.

16 It does not change any setbacks, so we're

17 still talking about the same front and rear  
18 setbacks, and I think it's a good solution to the  
19 problem.

20 The reason for this delay, and which we do  
21 apologize for, is that there was discussion about  
22 a stairway on the original plans, which wasn't  
23 depicted in the drawings, and it was uncertain if  
24 this would increase the variance that would need  
25 to be given. And if so, the applicant would have

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1 to apply for a new variance in that case. So now  
2 we're back to a plan that covers that question.

3 And any questions from the Board Members to  
4 Ms. Riva about her plans? We're all familiar  
5 with it, I guess. Would there be any?

6 (No response.)

7 CHAIRMAN MOORE: So I think we've got the  
8 information we need. As Mr. Corwin explained  
9 last month, he didn't see that this was a very  
10 large allowance for a variance. And I think, if  
11 the Board's so inclined, we can move forward with  
12 decision on the request for a variance.

13 MR. CORWIN: Yes, yes.  
14 CHAIRMAN MOORE: Okay?  
15 MR. CORWIN: Let's do the questions.  
16 CHAIRMAN MOORE: And we'll do the  
17 questions. And we first have to do the issue  
18 that we would declare the Zoning Board of a  
19 Appeals Lead Agency for this matter, and declare  
20 it a Type II Action, requiring no further  
21 environmental assessment. And I would make that  
22 motion and ask for a second.  
23 MR. CORWIN: Second.  
24 CHAIRMAN MOORE: And all in favor?  
25 MR. BENJAMIN: Aye.

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1 MR. CORWIN: Aye.  
2 MS. GORDON: Aye.  
3 MS. NEFF: Aye.  
4 CHAIRMAN MOORE: Aye.  
5 And any opposed?  
6 (No response.)  
7 CHAIRMAN MOORE: That motion carries  
8 unanimously.

9                   And then we will ask the questions. If you  
10 want to sit down, if you're comfortable.

11                   MS. RIVA: Okay.

12                   CHAIRMAN MOORE: We don't have further  
13 questions at this point. I don't want you to be  
14 staying up longer than you want to.

15                   So now we go through the questions for an  
16 area variance. And the first is whether an  
17 undesirable change will be produced in the  
18 character of the neighborhood, or detriment to  
19 nearby properties will be created by the granting  
20 of the area variance. And I'll ask Mr. Corwin.

21                   (Roll Call Vote by Chairman Moore)

22                   MR. CORWIN: No.

23                   MS. GORDON: No.

24                   MS. NEFF: No.

25                   MR. BENJAMIN: No.

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1                   CHAIRMAN MOORE: And I would answer no.

2                   Second, whether the benefit sought by the  
3 applicant can be achieved by some method feasible  
4 for the applicant to pursue, other than the area

5 variance?

6 (Roll Call Vote by Chairman Moore)

7 MR. CORWIN: No.

8 MS. GORDON: No.

9 MS. NEFF: No.

10 MR. BENJAMIN: No.

11 CHAIRMAN MOORE: I would answer no.

12 Whether requested area variance is

13 substantial?

14 (Roll Call Vote by Chairman Moore)

15 MR. CORWIN: No.

16 MS. GORDON: No.

17 MS. NEFF: No.

18 MR. BENJAMIN: 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

23 district?

24 (Roll Call Vote by Chairman Moore)

25 MR. CORWIN: No.

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1 MS. GORDON: No.

2 MS. NEFF: No.

3 MR. BENJAMIN: No.

4 CHAIRMAN MOORE: And I would say no.

5 Whether the proposed variance -- oh, sorry.  
6 Whether the alleged difficulty was self-created,  
7 which consideration shall be relevant to the  
8 decision of the Board of Appeals, but shall not  
9 necessarily preclude the granting of the area  
10 variance?

11 (Roll Call Vote by Chairman Moore)

12 MR. CORWIN: No.

13 MS. GORDON: No.

14 MS. NEFF: No.

15 MR. BENJAMIN: No.

16 CHAIRMAN MOORE: And I would answer no.

17 And lastly, I would make a motion that the  
18 Zoning Board of Appeals approve the variance  
19 according to the revised deck and entry plan, and  
20 would also ask if there are any other  
21 contingencies the Board would like to add to this  
22 variance?

23 (No response.)

24 CHAIRMAN MOORE: If not, I make that motion  
25 and ask for a second.

1 MS. GORDON: Second.

2 CHAIRMAN MOORE: And all in favor?

3 (Roll Call Vote by Chairman Moore)

4 MR. CORWIN: Yes.

5 MS. GORDON: Yes.

6 MS. NEFF: Yes.

7 MR. BENJAMIN: Yes.

8 CHAIRMAN MOORE: And I would answer yes.

9 And the variance is granted, and good luck  
10 with your construction.

11 MS. RIVA: May I ask you, is it possible  
12 for me to get -- and I don't know if you have the  
13 answer, to get a building permit tomorrow?

14 CHAIRMAN MOORE: I should think the  
15 Building Inspector could proceed, pending the  
16 writeup of the Decision Document. What would you  
17 think at this point?

18 MR. PROKOP: If there's no conditions, then  
19 I think it's probably okay based on the vote,  
20 since we're taking a transcript here.

21 CHAIRMAN MOORE: Yes. So I would say that

22 would be okay, since it is also a very small  
23 scale project --

24 MS. RIVA: Thank you.

25 CHAIRMAN MOORE: -- with a very minor

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1 variance.

2 All right. So the next item, and this is  
3 discussion, possible decision for an area  
4 variance for Ralph and Sarah Edwards, 163 Fifth  
5 Street, Greenport, New York, and it regards the  
6 previously described plans to build an in-ground  
7 pool, requiring three variances.

8 And we should note that the one variance  
9 was incorrectly stated, that is to the west  
10 property line. The dimension is actually 17  
11 feet, and that is the five-foot setback, the  
12 shed, which was whatever, seven, and the deck  
13 walkway around the pool, which is another five  
14 feet. So I believe it comes to 17 feet. And so  
15 the rear property variance is three feet that's  
16 being requested.

17 And so for general discussion on this

18 variance, there was some comment from the public  
19 about the setbacks and the size of the lot. You  
20 know, we should note, and I think Mr. Uellendahl  
21 noted, that the lot to the rear of the property  
22 is actually narrower, because of the property at  
23 the north actually pushing into the property  
24 line. So the rear yard area available for  
25 construction is more limited than if it were at

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1 the front of the property, which, of course,  
2 wouldn't be allowed.

3 Mr. Uellendahl, do you have some comments  
4 on any flexibilities in these dimensions on the  
5 setbacks that are being requested?

6 MR. UELLEND AHL: Well, we're open to any  
7 recommendations that the Board might have. I can  
8 see the possibility to eliminate one of the  
9 variances as far as the west lot line is  
10 concerned. We're very close, it's 17 feet. We  
11 could move the pool another three feet, so we  
12 actually comply with the setback. That would be  
13 probably the easiest way to come to a positive

14 solution.

15 CHAIRMAN MOORE: One thing I noticed, too,  
16 is that you had mentioned that the equipment for  
17 the pool, which I guess consisted of the  
18 filtration equipment and the pool heater --

19 MR. UELLEND AHL: Yes, that's correct.

20 CHAIRMAN MOORE: -- will all be contained  
21 in this shed structure.

22 MR. UELLEND AHL: Yes.

23 CHAIRMAN MOORE: It would be fully  
24 enclosed.

25 MR. UELLEND AHL: That would not change.

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1 But if we're moving the pool over, then the shed  
2 actually could become a little bit bigger, and we  
3 could actually -- I mean, it doesn't really  
4 matter as far as the noise reduction is  
5 concerned, but it would certainly help.

6 CHAIRMAN MOORE: Yeah. I would guess that  
7 you're not a sound engineer, but is your  
8 assessment that the shed --

9 MR. UELLEND AHL: Well, I can certainly try

10 to do a good job as far as that is concerned.

11 CHAIRMAN MOORE: The question would be  
12 whether you would feel that the equipment within  
13 the shed, as well as the pool heater, would  
14 essentially produce no sound audible beyond the  
15 property line.

16 MR. UELLEND AHL: Well, I can't promise that  
17 there's no sound beyond the property line,  
18 because everybody's ear capability is different,  
19 and some people are more attuned to this. But I  
20 certainly think that this will be within reason,  
21 that the noise will be drastically reduced.

22 MR. CORWIN: Is there any --

23 MR. UELLEND AHL: Compared to, you know,  
24 keeping it open without any enclosure.

25 MR. CORWIN: When this pool equipment --

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1 what we're talking about is the pump that  
2 circulates the water for filtering. I don't  
3 imagine you specified the equipment, the pool  
4 builder probably does that.

5 MR. UELLEND AHL: Correct.

6 MR. CORWIN: But is there any way to get  
7 information on the decibel level of a pump like  
8 that, that the pump the applicant would put in,  
9 or the pool people would put in?

10 MR. UELLEND AHL: Yeah. Well, yes, I can  
11 find out. I mean, every appliance that we can  
12 buy has those specifications, so absolutely.  
13 But, I mean, more -- I mean, we know what a pool  
14 pump produces as far as noise is concerned. It's  
15 really not that noisy, unless it's really not --  
16 it's a defect. But by enclosing it, for example,  
17 we can keep it open to -- more open to the sky.  
18 But to enclose the actual equipment, it will do  
19 the job that we're looking for.

20 CHAIRMAN MOORE: Yes. And the one question  
21 I have, when you look at the surrounding  
22 properties, obviously, to the west, immediately  
23 to the west and to the south are neighbors who  
24 already have pools.

25 MR. UELLEND AHL: Right.

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1 CHAIRMAN MOORE: I would wonder, with the

2 MacKenzie property to the northwest, whether any  
3 specific measures could be taken to further  
4 screen that area that might eliminate some of the  
5 visibility and the noise that would travel?

6 MR. UELLEND AHL: Yeah, that's what I am  
7 trying to say, that we can really -- you know, we  
8 can actually do something inside the shed to  
9 buffer the sound more, and I will be looking into  
10 this.

11 This is going to be a Building Department  
12 permit application, so I will discuss this with  
13 the Building Inspector as well.

14 CHAIRMAN MOORE: Okay. And then the other  
15 question I would have is to the immediate north,  
16 that property is the little property accessed  
17 from Sixth Street by a right-of-way.

18 MR. UELLEND AHL: Yes.

19 CHAIRMAN MOORE: And have you -- I can't  
20 recall from the discussion -- had communications  
21 from that property owner?

22 MR. UELLEND AHL: Yes, I have, because I was  
23 actually working for the Bouchers. Their names  
24 are Andrea and Kevin Boucher. They spent the  
25 summer here in Greenport. They just bought the

1 house recently, and I helped them turn the garage  
2 into a workshop. And they're very nice people.  
3 I discussed our project.

4 I have to disagree a little bit with what  
5 Gretchen was saying. I did not hear any --  
6 anything negative about what we're planning to  
7 do. She was just trying to coordinate the fence  
8 situation. She didn't want to spend more money  
9 on the fence before she knew what was going to  
10 happen next door. And I said we would be working  
11 with her, and she was absolutely fine with this.

12 CHAIRMAN MOORE: Would the fencing on the  
13 north and west sides of the property be the  
14 security for the pool as far as access control?

15 MR. UELLEND AHL: Yes, it will have to be.

16 CHAIRMAN MOORE: So that would be the  
17 responsibility of the property owner --

18 MR. UELLEND AHL: Yes.

19 CHAIRMAN MOORE: -- to put that in. So you  
20 may be able to discuss with the north and west  
21 neighbor the type of fence.

22 MR. UELLEND AHL: Right. This will part of

23 the pool permit. I'm not going to file the  
24 permit application, this is going to be the pool  
25 company who's doing this, but we will make sure

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1 that this will be as per code.

2 CHAIRMAN MOORE: I see.

3 MS. NEFF: But it says on these plans that  
4 the fence, the six-foot fence will be a solid  
5 fence.

6 MR. UELLEND AHL: Yes. Well that's in  
7 addition. It could be basically a more  
8 transparent fence, as long as it complies with  
9 code, not more than two inches of openings. A  
10 chain link fence, for example, could do the job.  
11 But we know the sensitivities around our  
12 properties, and I think the closed fence will be  
13 a -- more buffer the sounds that emanates from  
14 the property, and it's also a privacy issue.

15 CHAIRMAN MOORE: And as far as the  
16 position, you had said that there was some  
17 flexibility, that the pool, one way or another,  
18 either by shortening the pool, or just moving it

19 east, could accommodate a full 20-foot setback.

20 MR. UELLENDahl: Yeah, we discussed this  
21 when we were doing the walk-through, and also  
22 having listened to some of the neighbors'  
23 comments. We -- my clients would be more than  
24 willing to comply and move the pool three feet,  
25 so we do not need that third variance, as far as

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1 the western lot line is concerned. So we would  
2 make the distance to the lot line 20 feet, as  
3 opposed to right now, as proposed, 17.

4 CHAIRMAN MOORE: Are there any other  
5 comments from the Board Members at this point?

6 (No response.)

7 CHAIRMAN MOORE: There is the narrative  
8 that's been supplied in the variance application.  
9 Would Board Members feel that they would need  
10 anymore time to review and consider the request  
11 for the variance at this point?

12 MR. BENJAMIN: Well, I do have a concern  
13 about the noise, and it seems that Greenport is  
14 quite noisy in certain places. But when you're

15 looking for peace and quiet, and it's been quiet  
16 and then the quiet's disturbed, it has an affect  
17 on somebody's quality of life. So I would just  
18 be concerned about that noise.

19 One thing, the second thing would be what  
20 we're doing when we're covering the land with  
21 stuff. You know, I mean, we need a certain  
22 amount of open land for the water table. But  
23 already, the bays and creeks are dying, and the  
24 more we build, the more we're going to destroy  
25 it. And this water around this used to be

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1 crystal clear, but now it's not, see. And people  
2 want to -- don't want to swim in muck.

3 CHAIRMAN MOORE: Well, I think, certainly,  
4 your concerns can be reflected in your voting.

5 MR. BENJAMIN: Yes.

6 CHAIRMAN MOORE: What I would ask the Board  
7 is, is any members in general wanting some more  
8 time to think about this, or would you want to  
9 proceed with the questions and voting process to  
10 see if this would pass or not? Any comments from

11 the Board?

12 MR. CORWIN: Well, my thinking has always  
13 been that if there's negative comments on  
14 something like this, that it's probably better  
15 not to vote on the same night as the public  
16 hearing, but, rather, to mull it over a little  
17 more.

18 CHAIRMAN MOORE: Yeah, that was my feeling  
19 as well, and we're not bound to make a decision  
20 tonight. And I would suggest that we table this  
21 item until the meeting next month for a potential  
22 vote. And we do have 62 days to make a decision.  
23 So if more mulling over was needed, we could even  
24 wait until January. I'm under the impression  
25 that the construction isn't going to immediately

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1 commence in the wintertime, so there's time for  
2 us to think. So what I'll do at this point is  
3 make a motion.

4 MS. NEFF: Can I just speak once?

5 CHAIRMAN MOORE: Yes, please.

6 MS. NEFF: That if it's available, the

7 process about the level of noise from both the  
8 pump and the proposed heater, the specs on them  
9 might just be, without the complete detail,  
10 probably 23 pages, but just a summary of what the  
11 prospective items to be selected might produce in  
12 the way of noise.

13 I have one other question. Is there a  
14 solid fence between -- this is not relevant, I  
15 mean, it's in the neighborhood -- between the  
16 MacKenzie property and the Coly property? In  
17 other words, there's an existing pool directly  
18 west of this proposed pool? I'm just wondering  
19 if there's a solid fence between them.

20 MS. WINGATE: There is.

21 MS. NEFF: There is a solid fence?

22 MS. WINGATE: (Nodded yes.)

23 MS. NEFF: Okay, which is -- contribution  
24 to reducing noise is not huge, because there's  
25 still -- it's an impact felt by the neighbors.

Okay.

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1 MR. PROKOP: If the plan's going to change

2 based on the offer by the applicant, I think that  
3 you might request them to submit the amended  
4 plan, if it's --

5 CHAIRMAN MOORE: Yes, I think so, because  
6 what we're looking at right now is that a  
7 positive vote, if it were to occur on the  
8 project, would likely require a full 20-foot  
9 setback to the rear.

10 MR. UELLEND AHL: Okay.

11 CHAIRMAN MOORE: Which you can accomplish.

12 MR. UELLEND AHL: I will -- yes, I will  
13 submit a revised site plan.

14 CHAIRMAN MOORE: There's not much  
15 opportunity for reducing the north setback. It's  
16 requesting a 10-foot variance, which is  
17 significant. The south variance is not as  
18 significant. It's apparently a -- well, it's  
19 seven feet. There's only 14 feet --

20 MR. UELLEND AHL: Right.

21 CHAIRMAN MOORE: -- currently available --  
22 six feet. Sorry, my math is bad tonight.

23 The other thing is the fencing for  
24 screening, and especially to the north and west,  
25 and the sound attenuation, some information on

1 that.

2 MR. UELLEND AHL: Okay.

3 CHAIRMAN MOORE: If possible. And that  
4 would then place this for potential further  
5 discussion and decision at the December meeting.

6 MR. UELLEND AHL: December meeting. Okay,  
7 very well.

8 CHAIRMAN MOORE: And so I would now make a  
9 motion that we table this and --

10 MS. GORDON: May I ask a question?

11 CHAIRMAN MOORE: Yes.

12 MS. GORDON: If you made the pool a little  
13 smaller, would it be less noisy?

14 MR. UELLEND AHL: No.

15 MS. NEFF: No.

16 MS. GORDON: So the equipment is the  
17 equipment?

18 MR. UELLEND AHL: Yes, it's the same.

19 CHAIRMAN MOORE: What we're really looking  
20 at is a technicality, so how many variances are  
21 being granted and the palatability of that.

22 Okay. So I'll make a motion, then, that we

23 table this for further discussion until next  
24 month, and I would seek a second.

25 MS. NEFF: Second.

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1 CHAIRMAN MOORE: And all in favor?

2 MR. BENJAMIN: Aye.

3 MR. CORWIN: Aye.

4 MS. GORDON: Aye.

5 MS. NEFF: Aye.

6 CHAIRMAN MOORE: Aye.

7 Any opposed?

8 (No response.)

9 CHAIRMAN MOORE: So that motion carries,  
10 and we'll continue discussion next month.

11 MR. TASKER: If I may, before you adjourn,  
12 if they amend their plans, you've got to have  
13 another public meeting. If you're going to  
14 require that, make it a condition of your  
15 variance, point one.

16 Point two, even if you know how many  
17 decibels that pump motor makes at 10 feet, not  
18 one of us in here understands what that number

19 means.

20 CHAIRMAN MOORE: Thank you. And I think  
21 one point I would ask for from the Village  
22 Attorney is if the variance requested is reduced  
23 in significance, is further noticing required if  
24 there are changes?

25 MR. PROKOP: Not as far as I know of. I'll

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1 look into it.

2 CHAIRMAN MOORE: So, as long as an increase  
3 in variance is requested, then a new hearing  
4 wouldn't need to be had. So that we can continue  
5 with the hearing being closed with discussion, as  
6 long as the variance request does not increase.  
7 So we'll be free to discuss that again next month  
8 without further public input.

9 So we've made that motion, and I believe we  
10 voted, so that is continued until next month.

11 So we move on to our next item, which is  
12 probably the more interesting, although it is a  
13 technical interpretation. And this, again, is a  
14 discussion and possible decision for request by

15 the Planning Board of the Village of Greenport to  
16 the Zoning Board of Appeals for interpretation of  
17 Section 150-9A(18), and this regards accessory  
18 apartment dwelling units over retail store  
19 businesses -- stores and businesses.

20 I think Mr. Olinkiewicz appropriately  
21 discussed the crux of the matter of our  
22 interpretation, and that is, and Mr. Tasker as  
23 well, the actual wording of that section of the  
24 code and what it refers to.

25 I'd like to give a little background on

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1 this. I've done a little bit of research. One  
2 is the information about the intent of the code.  
3 My understanding is that any detailed minutes of  
4 the discussion of this legislation are not  
5 available at this point, no one has found them.

6 I do have some information about the voting  
7 that occurred. I also had the opportunity to  
8 talk with former Mayor Kapell, who actually  
9 sponsored this legislation. He very definitely  
10 indicated to me that the intent of the

11 legislation was for structures, business  
12 properties in existence at the time, I believe  
13 the date was 2002, that were preexisting. He  
14 said it did not relate to the existence of  
15 businesses, and it did not relate to the  
16 existence of apartment units having already to be  
17 there.

18 One comment I can make that supports that  
19 is that in the original voting, I have a copy of  
20 the voting record for that section of the code,  
21 and this is in relation to permitting accessory  
22 apartment dwelling units in Commercial Retail  
23 District as permitted. And in the discussion  
24 following the vote, which was unanimously  
25 approved by Trustees Horton, Gail Horton, George

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1 Hubbard, Sr., Bradley Burns, and Mayor Kapell,  
2 Mayor Kapell gave a review of the importance of  
3 this legislation. And in his discussion, he said  
4 not so much in terms of the quantum of the  
5 apartments or housing units that will be created  
6 as a result of this action.

7           So, clearly, during their discussion, even  
8           during the passing of this legislation, they were  
9           talking about apartments which might be created  
10          over business spaces.

11           I agree, that the wording of this section  
12          of the code runs on as a continuous sentence.  
13          And I believe, Ms. Gordon, you had indicated to  
14          me that as grammatically interpreted, that the  
15          last section that says accessory -- or it says  
16          offices, buildings, would indicate the code  
17          applies to those.

18           MS. GORDON: It seems to me that -- I  
19          respectfully disagree with Mr. Trasker. I don't  
20          think there's -- should be --

21           MR. TASKER: Tasker.

22           MS. GORDON: Sorry -- there should be a  
23          comma there. It seems to me there are two  
24          prepositional phrases. There's, "accessory  
25          apartment dwelling units," and then there's a

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1          phrase, "Over retail stores and businesses." And  
2          then the second possibility is, "In accessory

3 buildings thereof." And that the only way you  
4 can really read that is to say that this -- that  
5 this date applies to the dwelling units over  
6 retail stores and businesses.

7 And then the question is what was there on  
8 July 1, 2002. And if there was a retail store,  
9 business, professional or government office at  
10 that time, that that defines what -- the  
11 permission for the accessory apartment dwelling  
12 unit.

13 So, if you're just reading the language, it  
14 seems to me pretty clear that this refers to the  
15 building and not to the apartment. But then  
16 there is the question of intent, and maybe  
17 there's a question of what the whole overall  
18 purpose was of this part of the code. And I  
19 wasn't here then, so I'm not really very well  
20 informed about that.

21 CHAIRMAN MOORE: And then I think another  
22 point to be made, if I can get my mind straight  
23 on this, is one of the difficulties, I think,  
24 with this particular property as being an  
25 example, is that it appears to be a house, and it

1 was a house. I don't know. It was -- may have  
2 been constructed early 1900s, and was likely used  
3 as a residence. And the most recent history of  
4 this property is it was actually used as a  
5 rooming house. And that ceased in 2005, and that  
6 was a nonconforming use of the property. As a  
7 Commercial Retail District property, it's to be  
8 used for business.

9 We have many other houses in the Village  
10 that were originally residences, but are now  
11 Commercial Retail properties, and they have  
12 businesses in them.

13 So I don't think the issue of what it was  
14 before the applicant purchased the house, the  
15 building, is that it is in the Retail Commercial  
16 District, and the intended purpose for this  
17 building's use is for a business.

18 The question about the accessory apartments  
19 over a retail store business is fairly clear in  
20 code here, and it indicates that it's a matter  
21 for the Building Inspector, that the apartment is  
22 not part of the Planning Board site review. So  
23 even though this property is under review by the

24 Planning Board for a site plan development, it is  
25 not an issue for the second floor. The apartment

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1 essentially is granted. It is a building code  
2 issue, which the Building Inspector would handle,  
3 and I'm sure is in communication with the  
4 developer.

5 I think there were some comments about what  
6 kind of business would be on the first floor.  
7 That's -- again, the Planning Board would be  
8 interested in that as it relates to signage, and  
9 traffic, and other issues of operating a  
10 business, but it's not the question that we're  
11 being asked.

12 So that's my input, and my feeling is that  
13 the code points to the existence of a dwelling,  
14 of a building in Retail Commercial at the time  
15 that this code was established. So that any new  
16 buildings being constructed, there is not an  
17 availability of having an apartment on the second  
18 floor of the new structure. And that's where,  
19 apparently, the artist loft is currently being

20 used to establish apartments over new buildings.  
21 And, unfortunately, the artist loft  
22 implementation is a very difficult process, and  
23 most property owners actually end up asking for a  
24 hardship exemption, and use it as a standard  
25 apartment. But that issue's being discussed by

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1 the Code Committee to try and unify occupancy  
2 over retail businesses in a more general way.

3 But right now, tonight, my feeling is that  
4 it's the existence of the structure and the  
5 allowance of an apartment applies if that  
6 structure existed as of July 1st, 2002. So  
7 that's my input.

8 Any other members wish to comment?

9 MR. BENJAMIN: Yes. I would say that I  
10 agree with, you know, what the code says, that  
11 you can have an apartment over a business and --  
12 but there's also a problem with that, and that is  
13 the congestion in parking. If people are going  
14 to live there, they have to assume that they're  
15 either going to drive there or ride a bike there.

16 And there is a driveway there. People could park  
17 in the driveway, or should be able to park in the  
18 driveway, but if they don't park there, they have  
19 to park somewhere else.

20 So, I mean, the code's there, and the  
21 code's plain, but the problem is the parking.  
22 There's always going to be a parking problem.  
23 Somewhere along the line, the parking has to be  
24 dealt with. And that's my only comment.

25 CHAIRMAN MOORE: And I think one of the

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1 issues, too, that compounds that, I believe that  
2 driveway has a deeded right-of-way, so parking  
3 really isn't available in that driveway. That  
4 has to be left open for the businesses that use  
5 it for access.

6 MR. OLINKIEWICZ: Yes.

7 CHAIRMAN MOORE: The ones that are Front  
8 Street -- or on Main Street.

9 Mr. Corwin, you had a comment.

10 MR. CORWIN: Well, that was a boarding  
11 house, was the last use. It lost its use as a

12 boarding house because it was, I guess, empty for  
13 more than a year. Prior to that, I'm not sure  
14 what it was, but when I was a young man, it was  
15 said to be a house of prostitution.

16 AUDIENCE MEMBER: It's a business.

17 CHAIRMAN MOORE: I guess it's a business.

18 AUDIENCE MEMBER: It's a business.

19 MR. CORWIN: But I want that on the record,  
20 that it was a house of prostitution.

21 CHAIRMAN MOORE: Alleged, alleged house of  
22 prostitution.

23 MS. NEFF: Alleged.

24 MR. CORWIN: A woman named Darla, they used  
25 to call her Darla Dot, and we used to call her --

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1 what did they call her? Moped Annie, was it?

2 MR. SALADINO: What did they charge, David?

3 CHAIRMAN MOORE: But you were a young boy  
4 at the time, right?

5 MR. CORWIN: I was too young for it.

6 CHAIRMAN MOORE: Yes.

7 MR. CORWIN: Do you know anything about it?

8 MR. CORWIN: He's exempted from any  
9 participation. Otherwise, it would be a conflict  
10 of interest if he were to participate in the  
11 discussion. Anyway, sorry.

12 MR. CORWIN: But I want that on the record,  
13 it was a house of prostitution, alleged house of  
14 prostitution.

15 CHAIRMAN MOORE: Alleged house of  
16 prostitution.

17 MR. CORWIN: If you look at the code, it  
18 says Section 150-9, CR District, so Commercial  
19 Residential District. And then it's saying in a  
20 CR --

21 MR. PROKOP: It's Commercial Retail.

22 MS. WINGATE: Retail.

23 MR. PROKOP: It's Commercial Retail.

24 MS. WINGATE: Commercial Retail.

25 MR. PROKOP: It's not Commercial

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1 Residential.

2 MR. CORWIN: I'm sorry, Commercial Retail.  
3 In a CR Retail Commercial District, "No building

4 or premises shall be used and no building or part  
5 of a building shall be erected or altered which  
6 is arranged, intended or designed to be used, in  
7 whole or in part, for any use except as listed  
8 below." Then it goes on to list all these  
9 things, including #18, and it says, "All such  
10 uses shall be subject to site plan approval in  
11 accordance with Article 11."

12 So if we go down then to #18, #18 says, oh,  
13 it's not subject to site plan approval. But my  
14 thinking, you have to take the most restricted  
15 interpretation, which to me it needs site plan  
16 approval. Whatever we decide on question #18, it  
17 needs site plan approval.

18 Then, if we go on to #18, "Accessory  
19 apartment dwelling units over retail stores and  
20 businesses, professional and government offices  
21 existing as of July 1st, 2002." I can only take  
22 that one way. The retail stores and businesses  
23 and offices of what they were talking about, they  
24 were not talking about prior to or after July  
25 1st, 2002. They weren't talking about before

1 July 1st, 2002, when it was, I guess, a rental  
2 unit, or housing unit of some sort.

3 So I cannot see the interpretation of it as  
4 the building. It clearly says to me retail  
5 stores, businesses and offices, which that  
6 wasn't, it was some sort of housing unit on July  
7 1st, 2002.

8 CHAIRMAN MOORE: Okay. So you're -- of the  
9 three things, the building, the use of the  
10 building as a business, or the existence of the  
11 apartment, you would take it to mean the  
12 existence of business at the property? That's  
13 your --

14 MR. CORWIN: But not just business. A  
15 retail store --

16 CHAIRMAN MOORE: Okay.

17 MR. CORWIN: -- or a business, or an  
18 office, which it was not. It was some sort of  
19 housing unit.

20 MS. GORDON: You don't think a rooming  
21 house is a business?

22 MR. CORWIN: I don't see a rooming house as  
23 a business. I see a rooming house as possibly a  
24 hotel. I don't think we have any rooming houses

25 in the code.

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1 CHAIRMAN MOORE: Not that it doesn't. I  
2 believe that rooming house was issued as some  
3 exception. I'm not sure it was a zoning  
4 variance. But it was the North Fork Housing  
5 Alliance that was either the owner or the  
6 operator of that property.

7 MR. CORWIN: They got a variance and there  
8 was a lot of to-do about it.

9 CHAIRMAN MOORE: Yeah.

10 MR. CORWIN: Because I know one of the  
11 neighbors was very unhappy with the idea of a  
12 rooming house there.

13 CHAIRMAN MOORE: Was the property  
14 Village-owned at that point, or was it --

15 MR. PROKOP: No. I think, if I recall --

16 CHAIRMAN MOORE: The Housing Alliance.

17 MS. WINGATE: Housing Authority.

18 MR. PROKOP: What happened was there was an  
19 application for an interpretation to the Zoning  
20 Board as to whether or not a rooming house was a

21 legal use, and I believe that that -- it was  
22 determined to be a legal use and a C of O was  
23 issued for that use. There was an Article 78  
24 commenced, and it was -- the Court upheld the  
25 Zoning Board of Appeals. And I believe that that

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1 proceeding validated the C of O for a rooming  
2 house, if I'm not mistaken.

3 CHAIRMAN MOORE: At that point, I see.

4 MS. GORDON: Would you regard that, then,  
5 as tantamount to saying that the rooming house  
6 was a business? I mean, because we're talking  
7 partly about the definition of a business.

8 MR. CORWIN: Well, I guess your --

9 MR. PROKOP: No, I don't think so.

10 MR. CORWIN: And I would point out that the  
11 people that put it in there, the North Fork  
12 Housing Alliance, they -- I don't think they'd  
13 call themselves a business, I think they would  
14 call themselves a community service of some sort.

15 CHAIRMAN MOORE: Right. Now --

16 MR. PROKOP: One of the other things that I

17 wanted --

18 CHAIRMAN MOORE: Yes.

19 MR. PROKOP: -- to ask you to clear up,  
20 because it's only -- I don't know if it's used  
21 anywhere else in the code, so I just want to --  
22 is this talk about an accessory apartment. I  
23 don't know what -- if that is just -- if that was  
24 just surplus language that was added on there for  
25 some reason.

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1 MR. CORWIN: I found that very confusing,  
2 what's an accessory building to a business, and I  
3 could make no sense of that.

4 MR. PROKOP: I meant an accessory  
5 apartment, because, you know, the artist -- the  
6 concept of an artist loft, for instance, is that  
7 the artist loft is supposed to be associated with  
8 a studio. If I'm not mistaken, an artist loft is  
9 supposed to be associated with a studio that's  
10 located in the same building, if I'm not  
11 mistaken.

12 CHAIRMAN MOORE: Yes. And I think the code

13 describes the apartment an accessory to the  
14 principal use as a studio or gallery.

15 MR. PROKOP: Right. And I'm just wondering  
16 if the use of the word here "accessory" -- I  
17 mean, the thing is so --

18 CHAIRMAN MOORE: It's very difficult. I'm  
19 guessing that the accessory refers to accessory  
20 to the business use on the first floor. That's  
21 all I can imagine.

22 MR. PROKOP: Right. To me, that's -- in  
23 other words, and I have this in other  
24 municipalities, where it's -- an apartment is  
25 allowed over a commercial use on a premises that

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1 will be used by the owner of the commercial use  
2 or their family.

3 CHAIRMAN MOORE: Yeah. In here, it's not  
4 stated in that manner.

5 If we move ahead with a decision, and it  
6 would pass by vote to be the decision we're  
7 issuing, or interpretation, can we as well  
8 request that the Board of Trustees take this

9 under consideration to clarify this section of  
10 the code for the future? I mean, we will make an  
11 interpretation that will say one way or another  
12 what we think it means, or what we decide it --

13 MR. PROKOP: Yes, you could refer it to the  
14 Trustees.

15 MR. CORWIN: Yeah, but we have to clarify  
16 the section of the code. They have to change it  
17 if they --

18 CHAIRMAN MOORE: Yes.

19 MR. CORWIN: -- choose to change it.

20 CHAIRMAN MOORE: And I understand that  
21 we're having discussions on the Code Committee  
22 regarding Retail Commercial and other commercial  
23 property rentals, and especially regarding the  
24 artist loft code, so that it's likely to be  
25 discussed anyway. But I'm thinking this is a

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1 sticky point in the code. From what I understand  
2 from former Mayor Kapell is that it was intended  
3 to reference the building existing before 2002.

4 MR. PROKOP: One of the things --

5                   CHAIRMAN MOORE: He was quite clear. Yes,  
6 go ahead.

7

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

9                   CHAIRMAN MOORE: No problem.

10                  MR. PROKOP: One of the things -- the other  
11 thing, I think that there's many other buildings  
12 that this will apply to, if I'm not mistaken; am  
13 I correct?

14                  MS. WINGATE: Yes.

15                  MR. PROKOP: Downtown?

16                  MS. WINGATE: We have -- well, we have any  
17 number of apartments over our retail stores, and  
18 then there's any number of apartments that could  
19 be developed over our retail stores.

20                  CHAIRMAN MOORE: And my understanding is  
21 the practice for as many years as you have been  
22 the Building Inspector, and perhaps before, is  
23 that conversions of second floor space have been  
24 done through building permits to establish  
25 apartment units above commercial space. So it's

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1 not contrary to what has been the practice, and  
2 there has been no discussion

3 MS. WINGATE: It goes -- it goes way back,  
4 back to where the State was giving money to  
5 develop, redevelop downtowns.

6 CHAIRMAN MOORE: So what I guess we would  
7 do to --

8 MR. PROKOP: I'm not sure that that -- if  
9 it was the practice of --

10 CHAIRMAN MOORE: I think it's just to  
11 indicate it's -- you know, if we were to decide  
12 that it was the structure that was the defining  
13 point as existing, that it wouldn't be contrary  
14 to what has happened before. I mean, if -- to  
15 this date, no conversions of retail spaces to  
16 apartments on the second floor have ever been  
17 approved. It would be difficult to say that that  
18 now would be the interpretation.

19 But I would suggest we move ahead with a  
20 motion to decide, you know, what the motion  
21 should contain. I know Mr. Corwin is talking  
22 about the existence of the defined business or  
23 commercial operations as his opinion of the  
24 interpretation, my statement of how I read it and  
25 what I've been told by those who developed the

1 code, what it means. And the other members,  
2 perhaps we could wait?

3 MR. CORWIN: I just -- that is hearsay.  
4 Mr. Kapell did not come here this evening, or  
5 anybody else that voted for this, to testify.

6 CHAIRMAN MOORE: You're correct in that.

7 MR. CORWIN: So I don't think that you can  
8 take any of that into consideration, other than  
9 for your own personal vote.

10 CHAIRMAN MOORE: Okay, I understand that.  
11 And the only thing I could indicate that is here  
12 before us is the record of the original voting,  
13 and the Mayor's comment at the time of the  
14 apartments and housing units that will be  
15 created. It is in his voting, so while --

16 MR. TASKER: Those comments were made after  
17 the vote.

18 CHAIRMAN MOORE: Yes, they were made on the  
19 record after the vote.

20 MR. TASKER: And they do not have -- they  
21 were not part of the record on which they voted.

22 CHAIRMAN MOORE: Anyway, that affects my  
23 vote, and perhaps none of the others.

24 So, to proceed, I suppose what I'm going to  
25 suggest, and this will be a pass/fail type

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1 operation, I guess before that, we do have to do  
2 the SEQRA Lead Agency question.

3 MR. PROKOP: Yes, I would.

4 CHAIRMAN MOORE: And so I will again say  
5 that the ZBA is declaring itself Lead Agency for  
6 this matter, and that it is a Type II Action, or  
7 an --

8 MR. PROKOP: Type II.

9 CHAIRMAN MOORE: Type II Action. So I  
10 would make that motion and ask for a second.

11 MS. NEFF: Second.

12 CHAIRMAN MOORE: And all in favor?

13 MR. BENJAMIN: Aye.

14 MR. CORWIN: Aye.

15 MS. GORDON: Aye.

16 MS. NEFF: Aye.

17 CHAIRMAN MOORE: Aye.

18 Any opposed?  
19 (No response.)  
20 CHAIRMAN MOORE: So that motion carries.  
21 And now the sticky point is to basically  
22 forward an interpretation, make a motion that the  
23 interpretation, as the Chairperson sees it, and  
24 looking for votes to support that, that the issue  
25 for the accessory apartments over Retail

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1 Commercial spaces in Section -- I'm just trying  
2 to find the section description.  
3 MS. NEFF: 150-9.  
4 CHAIRMAN MOORE: 150-9(A)18 --  
5 MS. WINGATE: A(18), right.  
6 MS. NEFF: 18, yes.  
7 CHAIRMAN MOORE: -- refers to the existence  
8 of the property, the dwelling, as of July 1st,  
9 2002.  
10 MR. CORWIN: But don't call it a dwelling.  
11 CHAIRMAN MOORE: Not dwelling.  
12 MR. CORWIN: Call it a building.  
13 CHAIRMAN MOORE: I'm sorry, I corrected

14 myself. A building, a structure existing as of  
15 July 1st, 2002, and it refers to that existence  
16 and not the existence of the apartment itself or  
17 the business activities on that property. So I  
18 make that motion, and would ask for a second.

19 MS. GORDON: Second.

20 CHAIRMAN MOORE: And then I will ask each  
21 member whether they would agree with that  
22 interpretation. First of all, Mr. Corwin.

23 (Roll Call Vote by Chairman Moore)

24 MR. CORWIN: No.

25 MS. GORDON: Yes.

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1 MS. NEFF: Yes.

2 MR. BENJAMIN: No.

3 CHAIRMAN MOORE: And I would answer,  
4 obviously, yes. So we have three votes to two,  
5 so that motion carries. So, currently, that is  
6 the interpretation issued by the Zoning Board of  
7 Appeals back to the Planning Board. And that  
8 would allow the construction of an apartment over  
9 the second floor of a Commercial Retail

10 structure. So that action is completed. And we  
11 would move forward with the --

12 MS. GORDON: I have a question. Are we  
13 supposed to rule -- are we supposed to interpret  
14 this parking thing?

15 CHAIRMAN MOORE: No

16 MS. GORDON: It seems very clear to me.

17 CHAIRMAN MOORE: It's not a parking  
18 question before us.

19 MS. GORDON: Okay.

20 CHAIRMAN MOORE: It was specifically  
21 Section 18 of the code, and that's what we have  
22 done. So we have --

23 MS. NEFF: Can I just ask a question?

24 CHAIRMAN MOORE: Yes.

25 MS. NEFF: It still puts it back with the

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1 Planning Board in reference to a site plan,  
2 correct?

3 CHAIRMAN MOORE: Yes, that's correct.

4 MS. NEFF: Okay.

5 CHAIRMAN MOORE: Whether or not the

6 Planning Board --

7 MR. CORWIN: No, it doesn't. No, it  
8 doesn't.

9 MR. PROKOP: Well, it's going to be a big  
10 fight over that, because the applicant doesn't  
11 want to have site plan -- I mean --

12 CHAIRMAN MOORE: Well, I think the  
13 applicant is stating he doesn't want site plan  
14 review regarding the second floor apartment.

15 MS. WINGATE: The application to the  
16 Planning Board is for a use evaluation, not a  
17 full-blown site plan.

18 CHAIRMAN MOORE: Okay, excuse me. Yeah, a  
19 use evaluation. That will be a matter for the  
20 Planning Board to discuss. Whether they can  
21 separate themselves from the apartment aspect as  
22 a part of the whole property, that's their  
23 business.

24 But, anyway, I thank the Board for their  
25 votes on that, and we'll move forward with the

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1 last few items on the agenda. That was #4. No,

2 I'm sorry.

3 Number 4 is a motion to accept an appeal  
4 for an area variance, publicly notice, and  
5 schedule a public hearing for Edward Werthner,  
6 Post Office Box 982, Southold, New York. The  
7 applicant seeks a building permit to construct a  
8 house on a vacant lot located on the south side  
9 of Bridge Street, Greenport, New York; Suffolk  
10 County Tax Map 1001-2-2-8.4. The proposed house  
11 is 1,533.5 square feet, and the proposed rear  
12 deck is a 150 square feet. The property is  
13 located in the R-1 District.

14 The proposed house is sited so that the  
15 front of the house is set back 20 feet from the  
16 north property line, requiring a 10-foot front  
17 yard variance.

18 Section 150-12A of the Village of Greenport  
19 Code requires a 30-foot front yard setback in the  
20 R-1 District.

21 The proposed house is sited so that the  
22 rear of the house is set back 27.96 feet from the  
23 south property line, and the rear deck is 17.96  
24 feet from the south property line, requiring a  
25 12.04-foot rear yard variance.

1           Section 150-12A of the Village of Greenport  
2           Code requires a 30-foot rear yard setback in the  
3           R-1 District.

4           I should comment that this was before the  
5           Board actually a few months ago, but the -- it  
6           turned out at the time that the application was  
7           made, the applicant was not in ownership of the  
8           property, so did not have standing to request a  
9           variance. The applicant now is in contract to  
10          purchase the property. And we have a letter of  
11          authorization from the property owner that the  
12          prospective buyer may proceed with this variance  
13          application. In fact, one of the catch 22s in  
14          the application was that the contract to purchase  
15          the property required approval of construction of  
16          a house on the property. So that we now can move  
17          forward with this.

18          And I would make that motion, that we  
19          accept this application, that it appears to be in  
20          order at this point, and I would ask for a  
21          second.

22          MR. BENJAMIN: Second.

23 CHAIRMAN MOORE: And all in favor?

24 MR. BENJAMIN: Aye.

25 MR. CORWIN: Aye.

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1 MS. GORDON: Aye.

2 MS. NEFF: Aye.

3 CHAIRMAN MOORE: Aye.

4 Any opposed?

5 (No response.)

6 CHAIRMAN MOORE: No one opposed, so that  
7 motion carries.

8 The next item is number -- excuse me, #5.

9 A motion to accept an appeal for a use variance  
10 and a request for an interpretation of the  
11 Village of Greenport Code, publicly notice, and  
12 schedule a public hearing for Philip Karlin,  
13 North Fork Smoke Fish Company, 200 Wilson Road,  
14 Cutchogue, New York. The property is located at  
15 414 First Street, Greenport; Suffolk County Tax  
16 Map 1001-4-7-5, and is located in the Commercial  
17 Retail District.

18 The Applicant is represented by Mary Bess

19 Phillips, Secretary Treasurer for K & M  
20 Properties, the landlord to the tenant, North  
21 Fork Smoke Fish Company.

22 The applicant requests an interpretation of  
23 Article IV, Section 150-9 CR Retail Commercial  
24 District A, Permitted Uses, and I go to #9,  
25 manufacturing, as it applies to the current use

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1 of the property, processing/wholesale smoke fish  
2 business.

3 And then second, the applicant requests a  
4 use variance for the operation of a production  
5 wholesale facility, not open to the public, for  
6 processing and distribution of smoked fish and  
7 smoked fish products.

8 Section 150-9A, Permitted Uses, 1 through  
9 18, do not permit such operation in the  
10 Commercial Retail District.

11 I should point out that this matter is  
12 before the Planning Board, and they have asked  
13 that the property owner and tenant seek an  
14 interpretation, and likely a use variance for

15 this property, as they cannot proceed with the  
16 planning process if this is not a permitted use  
17 and does not have a variance. So that with that  
18 in mind, and the description, I would make that  
19 motion that we accept this application.

20 MR. CORWIN: Before you make a motion --

21 CHAIRMAN MOORE: Yes.

22 MR. CORWIN: -- I'd like to make a couple  
23 of comments.

24 CHAIRMAN MOORE: Yeah, we could do that  
25 after we accept it, but go ahead.

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1 MR. CORWIN: Well, that's the problem.

2 CHAIRMAN MOORE: Or after we second it, but  
3 ahead, before we vote.

4 MR. CORWIN: In reading this over, and  
5 maybe I'm premature, but I don't think the -- if  
6 you go to the second page, and it says use  
7 variances, then it asks four questions. And I  
8 think that they -- and needless to say, this  
9 application is going to get a lot of --

10 MR. SWISKEY: Attention.

11 MR. CORWIN: Attention. Thank you, Bill.  
12 And whatever happens, if we vote yes, these guys  
13 are going to be mad at us, maybe. Maybe they're  
14 not, I don't know. We vote no, the applicant is  
15 going to mad at us. But those four questions I  
16 think are answered very awkwardly, and I think  
17 they need to be done better in some form. I  
18 don't know how to approach this, but I don't  
19 think they really address all of the issues. I  
20 think they were just kind of thrown in there as  
21 best it could.

22 MR. PROKOP: Well, those questions are not  
23 meant to be all inclusive. Those questions are  
24 really the minimum. If I'm interrupting you, I'm  
25 sorry.

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1 MR. CORWIN: No, you're not interrupting.

2 MR. PROKOP: I wanted to say that for both  
3 area -- the five questions for area variances and  
4 four questions for use variances --

5 CHAIRMAN MOORE: Yeah, four.

6 MR. PROKOP: -- are meant to be the minimum

7 considerations that the Board has to apply. So  
8 you need to basically address those four  
9 considerations, and then anything else that you  
10 think is relevant, you can address also.

11 MR. CORWIN: But what I am saying is how  
12 these are set up. And I can give you an example,  
13 if you would all like. I don't think they're  
14 answered in a straightforward way. It looks like  
15 one of my compositions for Dude Manwaring in  
16 World History. When I just didn't know the  
17 answer to the question, I made something up.

18 CHAIRMAN MOORE: Well, you know, as a  
19 matter of protocol, what I suggest we do is the  
20 matter of the completeness of the descriptions or  
21 the appropriateness of the descriptions that  
22 answer the questions on the application, or given  
23 as the answers to the questions on the  
24 application, will come up under our discussion.  
25 If we find that we do not have sufficient

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1 information to make a decision, we can ask for a  
2 revised application. And perhaps with these

3           comments in mind, the applicant might consider  
4           looking at the application for potential  
5           revisions to it that might preempt some of the  
6           things that might come up.

7           As a matter of process, I believe, unless  
8           there's something missing from the application or  
9           inappropriate to the application --

10          MR. CORWIN: Well, let me good on.

11          CHAIRMAN MOORE: Yes.

12          MR. CORWIN: But that's my first complaint.

13          CHAIRMAN MOORE: Okay.

14          MR. CORWIN: If the applicant wants me to  
15          vote for this, I want some answers directly to  
16          the question. If you look at the first question,  
17          the applicant cannot realize a reasonable return,  
18          and I don't think it's really addressed there.

19          CHAIRMAN MOORE: Okay.

20          MR. CORWIN: Then, if we go on --

21          CHAIRMAN MOORE: Is there a matter of  
22          protocol in the application as far as something  
23          that's inappropriate or missing?

24          MR. CORWIN: Well, let me try get you --

25          CHAIRMAN MOORE: I'm not trying to cut you

1 off, but I'm trying to focus us on accepting the  
2 application.

3 MR. CORWIN: Yeah, I understand. If we go  
4 on to this SEQRA, Short Environmental Assessment  
5 Form, Appendix B, and then we go to Page 3 of 4,  
6 the applicant filled out the questions, and then  
7 they're supposed to sign it, and it's not signed.

8 CHAIRMAN MOORE: That's a point. Do we  
9 have any information as to whether it was signed?

10 MR. CORWIN: And then if you go on to the  
11 last page --

12 MS. WINGATE: Do you have a copy?

13 MR. CORWIN: If we go on to the last page  
14 of the handout that I got, and sometimes these  
15 aren't in everybody's same order, so it's only a  
16 couple of lines, and that looks to me like it was  
17 the last page of the Village's application, so  
18 it's out of order. And then it's signed, and  
19 because I know the applicant, and I can read most  
20 of it, it's Mary Bess Phillips.

21 But the Attorney said, when I raised this  
22 question, I've raised it a couple of times, that  
23 these things have to be signed and notarized.

24 The Attorney said, yes, they have to be signed,  
25 and when they're signed, you've got to print the

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1 name, and then they've got to be notarized.

2 So I'm belaboring this because I know that  
3 it's getting a lot of attention, and it's not an  
4 everyday application like we did with the setback  
5 for the porch on Sixth Street.

6 MS. GORDON: It is notarized.

7 MR. CORWIN: It is notarized, but the  
8 name isn't printed.

9 CHAIRMAN MOORE: Right, you don't have the  
10 name being printed.

11 MR. CORWIN: And it's out of order with the  
12 sheets. So unless you are familiar with all the  
13 applications, you just wouldn't know where it  
14 belongs.

15 CHAIRMAN MOORE: One question I had, which  
16 I think has been correct in the application, is  
17 originally the applicant was the tenant to the  
18 property. And a question I rose is whether a  
19 tenant has standing to request a variance of a

20 property, and I think the answer was that it had  
21 to be the property owner. And this has been  
22 corrected, that the representative is also  
23 co-owner of the corporation. So that it is  
24 appropriate that Mary Bess Phillips may represent  
25 the appeal for the variance; is that correct?

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1 MR. PROKOP: Yes. That's been resolved.

2 CHAIRMAN MOORE: She has standing to ask.

3 The other standing is that the Planning Board has  
4 requested this to come to the ZBA, and that is  
5 sufficient to bring this matter before us at this  
6 point was also indicated.

7 MR. PROKOP: Yes.

8 MR. CORWIN: But what did the Planning  
9 Board ask for? Because you said the Planning  
10 Board wanted an interpretation, and then you said  
11 it may require a variance.

12 CHAIRMAN MOORE: Yes.

13 MR. CORWIN: So what in particular are  
14 we --

15 CHAIRMAN MOORE: The interpretation is as

16 to whether the applicant is proposing an  
17 operation that meets the conditions of Section 9.

18 MR. PROKOP: That's an application -- the  
19 applicant is applying for an interpretation. The  
20 Planning Board, as I recall, and we'll see this  
21 from the minutes, because there's now a  
22 discussion about this for some reason that I  
23 don't understand.

24 CHAIRMAN MOORE: The minutes are just out  
25 at this point.

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1 MR. PROKOP: But there's -- the Planning  
2 Board, as I recall, the Chairman, with a vote,  
3 said that the use was not a proper use of the  
4 property, and that the applicant needed a use  
5 variance. And then that basically ended the  
6 application with the Planning Board, subject to  
7 the processing by the Zoning Board.

8 CHAIRMAN MOORE: Okay. So that --

9 MR. CORWIN: So we're doing both?

10 CHAIRMAN MOORE: Yes.

11 MR. CORWIN: This -- both are checked off,

12 a variance and an interpretation.

13 MR. PROKOP: Yes.

14 CHAIRMAN MOORE: And I think, you know, the  
15 interpretation, obviously, will come first. If  
16 the decision was that the proposed use met the  
17 conditions of the code, obviously, there wouldn't  
18 be a need for a variance. If we agree with the  
19 Planning Board as to their reading of the code,  
20 then #2 would proceed, which is a request for a  
21 variance, a use variance, which we have pointed  
22 out is a much more stringent test. Those four  
23 questions are very binding to the approval.

24 And unlike an area variance, which balances  
25 the benefit to the applicant with -- to the

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1 potential detriment of the community, this is  
2 specifically a test of whether the variance for  
3 use is justified.

4 So, with that in mind, I think I have  
5 before the Board a motion to accept this  
6 application as presented, and I would make that  
7 motion and ask for a second.

8 MS. NEFF: Second.  
9 CHAIRMAN MOORE: And all in favor?  
10 MS. NEFF: Aye  
11 CHAIRMAN MOORE: Aye. Opposed?  
12 MR. CORWIN: Aye, nay.  
13 CHAIRMAN MOORE: And yours is?  
14 MS. GORDON: I'm opposed.  
15 CHAIRMAN MOORE: Opposed? So we have two  
16 opposed and three yes, so the application is  
17 accepted. And we will take it up for  
18 consideration at the December meeting.  
19 If there's any continued dialogue between  
20 the Building Department that generates any new  
21 paperwork, we'd appreciate it, that we have a  
22 complete package.  
23 MS. NEFF: And would we have some diagrams  
24 and --  
25 CHAIRMAN MOORE: Yes, it's in the

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1 application. And there was a document, which is  
2 a financial sheet, that was also supplied just  
3 recently, and that will be available to the Board

4 as well.

5 MS. GORDON: Can I just -- I wondered --

6 CHAIRMAN MOORE: Yes.

7 MS. GORDON: -- if it's useful to say to  
8 the applicant that these -- that there are  
9 Members of the Board who do not think that these  
10 questions are addressed by the answers.

11 CHAIRMAN MOORE: I think that was made --

12 MR. PROKOP: I think that was made clear.

13 CHAIRMAN MOORE: -- obviously apparent,  
14 yes.

15 MR. PROKOP: Can I please ask to be  
16 excused?

17 CHAIRMAN MOORE: Yes. We're just finishing  
18 up some of the more important parts of the  
19 agenda.

20 I'D like to go to Item #6, motion to accept  
21 the ZBA minutes for October 15th, 2014. So  
22 moved. May I have a second?

23 MR. BENJAMIN: Second.

24 CHAIRMAN MOORE: All in favor?

25 MR. BENJAMIN: Aye.

1 MR. CORWIN: Aye.

2 MS. GORDON: Aye.

3 MS. NEFF: Aye.

4 CHAIRMAN MOORE: Aye.

5 Motion carries.

6 Motion to approve the ZBA minutes for  
7 September 17, 2014. So moved. May I have a  
8 second?

9 MR. BENJAMIN: Second.

10 CHAIRMAN MOORE: All in favor?

11 MR. BENJAMIN: Aye.

12 MR. CORWIN: Aye.

13 MS. GORDON: Aye.

14 MS. NEFF: Aye.

15 CHAIRMAN MOORE: Aye.

16 Motion carries.

17 We're scheduling the next ZBA meeting for  
18 December 17th, 2014, if that's agreeable to  
19 everybody. We will meet at 5 p.m. I'm  
20 thinking --

21 MR. CORWIN: Do we have inspections?

22 CHAIRMAN MOORE: I believe we do not have  
23 any site visits planned. I don't know if it's  
24 necessary to go to the property regarding the

25 Smoke Fish Company. It's an issue of

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1 interpretation. And if a use variance comes up,  
2 we may choose to do so, so -- but we will have a  
3 public hearing on that matter at that meeting,  
4 and that would occur at the beginning of the  
5 meeting.

6 MR. CORWIN: So we will be --

7 MS. NEFF: I can't be at the next meeting,  
8 I could tell you right now, I have a conflict.

9 CHAIRMAN MOORE: All right. What's the  
10 feeling of the Board regarding a site visit?  
11 Would the Board want to visit the property before  
12 the meeting?

13 MR. CORWIN: I would like to, yes.

14 CHAIRMAN MOORE: Yes? Okay. Well, would  
15 the property be available before the meeting next  
16 month?

17 MS. PHILLIPS: I'm sorry.

18 CHAIRMAN MOORE: I'm sorry to interrupt,  
19 but we're trying to close up for the Fire  
20 Department. Would the property be available for

21 inspection next month before the meeting by the  
22 Board?

23 MS. PHILLIPS: You're talking about the  
24 building itself?

25 CHAIRMAN MOORE: Yes.

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1 MS. PHILLIPS: I can arrange it.

2 CHAIRMAN MOORE: Regarding the use  
3 variance.

4 MS. PHILLIPS: Yes, I could arrange that.

5 CHAIRMAN MOORE: So at quarter-of-five, if  
6 we could have access, the Board. And that will  
7 be in the public notice as well.

8 MS. PHILLIPS: I can arrange that.

9 CHAIRMAN MOORE: That's suitable then, so  
10 we will have that on our agenda.

11 And we're scheduling the next meeting. So  
12 I make that motion and look for a second.

13 MR. CORWIN: Second.

14 MS. WINGATE: 4:45?

15 CHAIRMAN MOORE: Yes, site visit.

16 And all in favor?

17 MR. BENJAMIN: Aye.  
18 MR. CORWIN: Aye.  
19 MS. GORDON: Aye.  
20 MS. NEFF: Aye.  
21 CHAIRMAN MOORE: Aye.  
22 And motion to adjourn. I make that motion.  
23 Second?  
24 MR. CORWIN: Second.  
25 CHAIRMAN MOORE: All in favor?

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1 MR. BENJAMIN: Aye.  
2 MR. CORWIN: Aye.  
3 MS. GORDON: Aye.  
4 MS. NEFF: Aye.  
5 CHAIRMAN MOORE: Aye.  
6 And the meeting is adjourned.  
7 (Whereupon, the meeting was adjourned at 7:00 p.m.)  
8  
9  
10  
11  
12



9 York, do hereby certify:

10 THAT, the above and foregoing contains a  
11 true and correct transcription of the proceedings  
12 taken on November 19, 2014.

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

17 IN WITNESS WHEREOF, I have hereunto  
18 set my hand this 4th day of December, 2014.

19

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\_\_\_\_\_  
Lucia Braaten

23

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