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

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

I had listed three public hearings. Hearing #1 is an error on my part. We actually last month closed the public hearing. It's actually a continuation of a discussion of the application for the variance, so that we aren't really expecting to take any public comments tonight, unless someone seeing the notice did want to comment on the Riva application. So is
there anybody from the public that wants to make
any comment?
(No response.)
CHAIRMAN MOORE: We could reopen the
hearing if that's the case. But if not, then the
hearing will remain closed, and we'll move to #2.
And this is a public hearing for an appeal
for an area variance for Ralph and Sarah Edwards,

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163 Fifth Street, Greenport, New York; Suffolk
County Tax Map 1001-7-4-14. The applicants seek
a building permit to construct an in-ground
swimming pool.
Section 150-7(3a) of the Village of
Greenport Code requires that the edge of a pool
shall be kept a distance not less than 20 feet
from all property lines.
The proposed swimming pool setback is 10
feet on the north property line, requiring a
setback variance of 10 feet. The same section
applies for the west property line.
I believe there is an error in the
dimension. It was indicated to be 12 feet setback from the back property line. I believe it's actually 17 feet, if that's correct. So I'm just noting that correction now. And that would require a rear yard setback variance of three feet. And then, again, the same Section, 150-7(3a), requires a 20-foot setback. The proposed swimming pool setback is 14 feet on the south property, requiring a variance of six feet. And just for the record, the adjacent property owners were notified by mail, certified mail, and we have the receipts here. And, excuse me, they are -- excuse me. Just for the record, Catharine Byrne, 134 Sixth Street; Lisette Coly is listed as a New York address, but that is one of the adjacent property owners. Gretchen MacKenzie, again, a New York address, but that property is to the rear of this property. Kevin and Andrea Boucher, it's listed as a Key West address, which is actually the north property line, adjacent property. And Marian Friedmann,
Greenport, New York, Post Office Box 642. And William and Mariana Rountry, it's listed as a Pleasantville, New York address, and that is actually the south property, adjacent property. And then Oyster Point Condos at 160 Fifth Street. So those are the property owners that were notified.

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

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

MS. BYRNE: Yes.

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

MS. BYRNE: 134 Sixth Street.

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

MS. BYRNE: I was not -- it was not
delivered to me.

CHAIRMAN MOORE: Not received?

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

CHAIRMAN MOORE: Would these have an indication of receipt?

MR. UELLENDahl: May I? I received the package back a few days ago, and it said on the envelope "Refused". So the whole package came back.

CHAIRMAN MOORE: It was refused.

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

MR. UELLENDahl: The post office made that notation.

MS. BYRNE: Well, they made an error.

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

MS. BYRNE: Well, I am, too. But it's just, as I say, a fluke. It was not --
but the requirements were met. It was mailed by certified mail, and I believe it was property noticed in the paper, and it was also placard-noticed at the front of the property, as also required.

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

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

Now, if you look at the site plan and the survey, there is an irregularity on that block insofar as there was a piece of property squeezed into the middle of the block, which has access from Sixth Street. And Andrea and Kevin Boucher,
they bought this house and they live there, and it affects the lot of my -- of the applicants. It squeezes the back portion of the lot down from 60 feet to 40 feet. That's the only location where a pool could possibly go, and the --

MR. PROKOP: I want to adjust this.

MR. UELLENDAHL: Do I have to --

MR. PROKOP: No, that's fine.

MR. UELLENDAHL: Thanks, Joe.

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

MR. UELLENDAHL: Oh, is it? It's too close?

So the code obviously says that we have to have 20 feet, a 20-foot setback from each property line; we don't have that. As of right, we couldn't build a pool. On the other hand, there are adjacent properties that do have a pool and they received variances. There's particularly the site to the south, there is an equally large pool in the backyard, and there is another pool which belongs to the Colys. It's
west of the -- thanks, Dave. Is this better?

CHAIRMAN MOORE: Yes.

MR. UELLENDahl: Yes.

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

MR. UELLENDahl: So maybe I'll just have to move back a little bit more.

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

(Firehouse siren sounded.)

CHAIRMAN MOORE: Just wait for a minute.

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

So we are very well aware of the fact that there is their neighbors in the vicinity who don't like the noise, or object to the noise of
the pool equipment. And I spoke to the Building Inspector and we discussed this, and we decided up front that we're not going to keep the pool equipment open. We are going to enclose it in a shed that will be the backdrop of the pool, in the back of the pool, and it will be enclosed, and it should not cause any noise problems to the adjacent neighbors.

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

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

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

MR. CORWIN: Well, two questions. Is the
pool going to be heated?

MR. UELLENDAHL: Yes, it will be heated.

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

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

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

MR. UELLENDAHL: Thank you.

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

MS. MACKENZIE: Here?

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

I am very concerned about noise. People using pools make noise, fine, they're having fun. But the motors, unless they're very, very carefully housed, make a lot of noise. I can speak from experience, having lived there for almost 20 years. The Colys at 138 Sixth Street have a pool right adjacent to my garden, and my house, and my kitchen, and my bedroom, and it's very unpleasant, because people swim late at night and make terrific noise. When they are quiet, the motor is running; it is not housed. It is beyond understanding. Be that as it may, it's there. And here I have a situation where I
can at least express my concern about this proposal.

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

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

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

CHAIRMAN MOORE: Yes.

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

CHAIRMAN MOORE: Coly's?

MS MACKENZIE: It functions perfectly well, it's just noisy as hell.
CHAIRMAN MOORE: Because I understood there was an operational problem somewhere in the neighborhood with equipment that wasn't operating properly, and apparently was fixed.

MS. MACKENZIE: I hope so.

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

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

CHAIRMAN MOORE: Right.

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

CHAIRMAN MOORE: Okay.

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

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

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

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

If the law was correct when it was written and the proportions of the houses are as they
are, if you have a small lot, you shouldn't have
a big pool. I find fault with granting so many
variances. I find fault particularly with
variances for pools when it takes less than 20
seconds to walk from my house to the Fifth Street
Park and to the water.

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

MR. CORWIN: Excuse me.

MS. BYRNE: Yes.

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

MS. BYRNE: 134 Sixth Street.

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

MS. BYRNE: Well --

MR. CORWIN: South, or north, or east, or
west?
MS. BYRNE: I am closer to the water, to Peconic Bay, whichever the direction is.

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

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

CHAIRMAN MOORE: South of the Colbys, you said?


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

MR. CORWIN: Okay. Thank you.

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

MS. BYRNE: Yes.

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

MS. BYRNE: I hope you realize, when you grant these variances, that the pool is there forever. People move and go away. People may be very quiet, and then all of a sudden the house is
sold, and then somebody moves in with 24
children, or nieces, and nephews, and
grandchildren. I moved here because I wanted the
peacefulness and the quiet, and I like to sit in
my yard where it's quiet and peaceful. I think
we have too much noise in our society, and that's
one of the reasons that Greenport is so alluring
to so many people. It is a quiet, peaceful town.

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

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

CHAIRMAN MOORE: Thank you.

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

MR. TASKER: Good evening. My name is
Arthur Tasker. I live at 17 Beach Street in
Greenport. It's, of course, appropriate to be
sympathic with Mrs. MacKenzie's concerns about
noise, but -- and I'm sure there is no sound
engineer in this -- no facetious requirement.
I'm sure there's a sound engineer in the audience here who can speak to it, but I don't think that from an audible standpoint, the difference in the edge of a pool being 10 feet, or 15 feet, or 20 feet from a particular property is going to make a substantial difference in terms of the noise that will be heard in the adjacent property.

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

Having said that, the setbacks were made for a purpose, and the purpose was to maintain the nature of properties, and neighborhoods, and adjacent properties, and adjacent neighborhoods in a particular manner, and that's why it was done. But wholesale, or regular, or routine granting of variances is not the way to maintain
the Village as it was expected to be.

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

Thank you.

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

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

MS. FRIEDMANN: Marian Friedmann.

CHAIRMAN MOORE: Friedmann. Thank you.

MS. FRIEDMANN: Last week I had an opportunity to go down to the Village and look at the site plan, and Eileen Wingate was very
helpful pointing out pieces on the plan that I
didn't know exactly what they were, because I'm
not an architect or a pool designer. And I was
really very pleased about the placement of the
pool and the adjacent things. And I have to tell
you, as I think the largest abutter, I am not
opposed to the pool. I actually support their
application.

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

AUDIENCE MEMBER: Nick.

MS. FRIEDMANN: Nick. It went out of my
mind. And what the Edwards have done is maintain
the integrity of that property, and it will be
more beautiful than ever. And I think that the
Ficurillis, if they could see the way the house
is going to be would be smiling from wherever it
is that they are, I truly believe that. So I
think that the Edwards are very respectful of
Greenport.
And my only concern, and I don't know whether it is something I can be concerned about, is that from time to time, people need to empty the pool. And I don't know what the Village has in terms of rules where you can get rid of the excess, if you're emptying the pool and so forth, for winter use, or, heaven forbid, a repair, what happens in that situation. But save for that, I think that the renovation on this house is extraordinary, and Fifth Street will be more beautiful for it. So thank you.

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

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

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

CHAIRMAN MOORE: I think there is a requirement that the pool be -- the water be dechlorinated. In other words, you can't dump
chlorinated water. But I'm not sure you can dump it on the street. I would think it might have to go into the sanitary sewer system.

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

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

(No response.)

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

MR. CORWIN: Second.

CHAIRMAN MOORE: Any other discussion on the matter?

(No response.)

CHAIRMAN MOORE: If not, all in favor?

MR. BENJAMIN: Aye.

MR. CORWIN: Aye.

MS. GORDON: Aye.

MS. NEFF: Aye.

CHAIRMAN MOORE: Aye.
Any opposed or abstaining?
(No response.)
CHAIRMAN MOORE: Okay. That motion carries, the hearing is closed.
So we will move -- we'll be discussing this during our regular session. And we will move on to the next item, which is, again, another public hearing. And this is a request by the Planning Board of the Village of Greenport to the Zoning Board of Appeals for an interpretation of Village Code Section 150-9A(18), accessory apartment dwelling units over retail stores, businesses, professional and governmental offices existing as of July 1st, 2002, and in accessory buildings thereof also existing as of July 1st, 2002, subject to the following standards and requirements, as established for the uses in the Retail Commercial District.
The Planning Board is considering an application for the proposed renovation of 211 Carpenter Street, located in the Commercial
Retail District. The existing structure is vacant; Suffolk County Tax Map 1001-6-2-17.

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

We can take comments from the public, but if the owner or representative would like to make any comments, we can take that. And while Mr. Olinkiewicz comes up, I would just like to remind the audience that the discussion tonight is specifically the technical question about interpretation of the code. It is not a hearing for the site development plan, that is a Planning Board issue. So that I would ask that any public comments be restricted to that section of the code, and not the project in general.

Mr. Olinkiewicz.

MR. OLINKIEWICZ: Yeah. The name is James 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
municipal parking lots, and they park in different areas.

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

So in the zoning code, it talks that I'm exempt from off-street parking, and that I have the ability to put an apartment above the
building, because the building was built before 2002.

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

But if the Zoning Board feels that the Section 18 meant that the building prior to 2002, which this building is, then I would not have to go to site plan review for the Planning Board, I could then just be, I don't know, granted the usage, or we'd have a public hearing with that. I don't know the protocol for that through the Village.
So what we're actually just trying to get is an interpretation on whether it had to have a store in there as 2002, or whether the building had to exist before 2002, for which direction I go for the apartment upstairs. So that's -- that's why we're here.

There is many other businesses all throughout the Village that have apartments above them. I'm not asking for anything that's different than in the rest of the Village. There's a definite need for housing. As everybody knows, I have a number of houses in the Village that I rent. There is 46 or 40 -- 44 people right now on my waiting list. Last count, I've counted that there's been eight or nine houses that have given up their accessory apartment use for Airbnbs. There is also Airbnbs being used in the Commercial District on the second floor apartments, as well as the first floor apartments; that I don't know if that's a correct usage for the first floor in the Commercial District, because the first floor in a Commercial District is supposed to be for businesses, not for Airbnbs. On top of that, there has been a number of houses that have been
sold throughout the Village that were
two-families and were reconverted back to
one-families. So the Village is losing houses at
an alarming pace between the Airbnb, and between
the houses being converted from two-families to
one-families.

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

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

MR. OLINKIEWICZ: Yes.

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

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

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

MR. OLINKIEWICZ: Fantastic.

CHAIRMAN MOORE: Okay. Thank you.

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

CHAIRMAN MOORE: Mr. Corwin.

MR. CORWIN: I have a question.

CHAIRMAN MOORE: Yes.

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

MR. OLINKIEWICZ: I'm not allowed to judge that, because that's prejudicial, and you're not allowed to do that by law. I have 44 families that have asked me for housing in the Greenport area. I'm not allowed to choose if they live in Greenport now, or if they want to move here from Southold, or move here from Mattituck. That's totally against the law.

MR. TASKER: That's not.

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

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

MR. OLINKIEWICZ: How many different people from Greenport have asked me? Probably on that
list is 30.

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

MR. OLINKIEWICZ: I understand.

MR. CORWIN: And I have nothing against low-income housing, and some of the things you fixed up are good, and I'll compliment you on that, but I don't want to hear there's a list of 44 people looking for houses, and maybe they're from Riverhead, maybe they're from someplace else, the Town of Shelter Island, which I don't think has a lot of low-income housing. And I get very confused why the Town of Southold doesn't do something more, and the Town of Shelter Island doesn't do something more. But everybody comes to Greenport and says, "Hey, you got sewers, you got density, you got to do all the low-income housing for the North Fork and Shelter Island."

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

My proposal, and, in fact, talked to the Town Board Member, Dave Murray, about that for the Village of Greenport in a future plan, would be --
CHAIRMAN MOORE: No, you said Town.

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

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

If somebody want to have an Airbnb, and
Airbnb has to get a permit, because that's a
year-round rental that has come off the rolls,
and allow somebody else to convert and put a
year-round rental, and this way you can control
it. It's easily done, because you've taken the
rental law, as well as you have an Airbnb law,
and put it all together, and you can actually
control the situation. You can work on the
problem and become part of the solution, so —
but right now, that's not the case. Right now,
you have apartments disappearing for Airbnb, or
apartments disappearing because people are coming
in and buying the houses, and throwing their
tenants out and converting it to one-family. And
you're going to have more problems with density
and amount of people living with each other.
You're going to have more families going in
together and putting eight, nine, ten members of
a family in a house, because now they have jobs
here, they've been rooted in the community for a
number of years, and they're not going to want to
move from Greenport to Riverhead, or someplace
and find housing.

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

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

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

CHAIRMAN MOORE: And the things you mentioned are excellent, and I would suggest you attend next month's Code Committee, and, hopefully, write a letter supporting what you say, because that's being discussed every month now for the next couple of months.

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

CHAIRMAN MOORE: Great.

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

CHAIRMAN MOORE: Great.

MR. OLINKIEWICZ: Thank you.

CHAIRMAN MOORE: Thank you.

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

CHAIRMAN MOORE: Good. I think you have someone heading in the direction that -- any members of the public now may come forward to speak. And I just want to remind you to keep
your comments brief and on point.

MR. SWISKEY: Yeah, I understand that.

William Swiskey, 184 Fifth Street.

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

MR. BENJAMIN: Joe is.

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

CHAIRMAN MOORE: Well, actually, I don't want to flip the book open and find that section
of the code, but the Zoning Board of Appeals is charged with interpretation of sections of the code when requested, and they may be requested by any agency of the Village, or by an applicant who has been given a denial and is appealing the denial based on the code and can seek an interpretation.

MR. SWISKEY: From what I see, with that section of the code, is I don't even know if it's constitutional, because if you wind up in court and get your butt kicked and the Village gets sued, you're not lawyers, how are you going to justify defending it? That's all I got to say.

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

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

As anticipated, Mr. Swiskey's comments, it's quite interesting, but you need to point out that the way administrative law works is that the Board, as the Chairman says, is responsible by
law for interpretation. But that's not the end of it. The process is if you don't like what the Zoning Board did, you can commence an appeal in the form of an Article 78 proceeding to ask that the courts review the judgment, in their best judgment, of what the Zoning Board did. And if you don't like that, you go to the Appellate Division and on up to the Court of Appeals. But it's only the start of a process, it's not the end of the process. They are charged by the statute with doing that.

That's not what I anticipate -- what I planned to stand up here to speak to, and that is this: Mr. Olinkiewicz, let's go back to Bill Clinton and the meaning of -- what the meaning of "is" is. That's what this is, there aren't any commas in this statute, and that's why you've got a problem. If there was a comma after the word -- and I'm now looking at Section 18. "Accessory apartment dwelling units," if there was a comma after that, it would be perfectly
clear that the apartment had to exist before 2002. If there were a comma after government offices, it would probably be that the business had to exist before 2002. But there ain't any commas, so you've got three choices. That's what the Board is being asked to interpret, they're being asked to place the comma.

And, again, the intent is what you have to try and look at of the people who wrote it. This was written in 2002 so I don't have any -- I don't have any vested interest in this part of it, but you have to try and ascertain what the intent was. The intent was to regulate accessory apartments, not the businesses in the CR District. So the -- probably, the proper interpretation is that accessory apartments defined as existing over a retail unit or business, the accessory -- such accessory apartment which existed prior to 2002 is permitted. But the entry point is the existence of the accessory apartment, not the existence of
the business or the building. You can't have
either the apartment or the business without the
building, so that's not the answer. Thank you.

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

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

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

MS. MC ENTEE: I'm --

CHAIRMAN MOORE: Excuse me, over retail
commercial properties. This is what we're being
asked to do. Perhaps you could say that to the
Planning Board, but this is what we're asked to comment on, and you're commenting on something else, and I'm trying to move in the direction of interpretation of this section of the code.

MS. MC ENTEE: Well --

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

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

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

MS. MC ENTEE: Mr. Olinkiewicz?

MR. OLINKIEWICZ: Just one going upstairs.

MS. MC ENTEE: One upstairs.

MR. OLINKIEWICZ: Right.

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

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

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

And as far as Mr. Olinkiewicz talking about his 46 people -- 44 people, they are not all from this area. And isn't there a law against, you know, harboring illegals in this Village? I'm just curious to know. Isn't it a law in the United States? Because I think that really needs to start being looked into around here.

CHAIRMAN MOORE: May I suggest that you hand in a written statement that you would like to enter into the record?

MS. MC ENTEE: Sure.

CHAIRMAN MOORE: I'd be glad to accept that.

MS. MC ENTEE: The other side of it --

CHAIRMAN MOORE: I'm not trying to stifle what you're saying, I'm just trying to keep you on point, so the question that we're being asked --

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

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

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

My concern is, is that this month it's --
this month it's an attorney's office, and next
month it becomes another apartment. If he was willing to assure us that that wouldn't happen, I have no complaints about this application.

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

The only thing that I'm kind of confused about is, and we see each other all the time here and stuff, is what exactly is your business? You say you have 47 people on a list that's looking for apartments. Are you a builder, or are you a real estate agent?

MR. OLINKIEWICZ: Both.

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

MR. OLINKIEWICZ: Both, yeah.

MR. SALADINO: Oh, okay. I didn't know that. I thought you were a builder, and I
thought you built houses, and you rented income-producing property to people that needed it, I didn't know you had a list.

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

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

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

(No response.)

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

MS. NEFF: So moved.

CHAIRMAN MOORE: Okay. That's the motion.

MR. CORWIN: Second.

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

(No response.)

CHAIRMAN MOORE: All in favor?

MR. BENJAMIN: Aye.

MR. CORWIN: Aye.

MS. GORDON: Aye.

MS. NEFF: Aye.

CHAIRMAN MOORE: Aye.

And opposed?

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

CHAIRMAN MOORE: Yes. Are you -- yes, you
MR. PROKOP: We should -- maybe what we could do is vote to hold the record open for 10 days, or something, or until, you know, 20 days.

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

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

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

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

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

MR. CORWIN: I second the motion as amended.

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

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MR. CORWIN: Aye.

MS. GORDON: Aye.

MS. NEFF: Aye.

CHAIRMAN MOORE: Aye.

Any opposed?

(No response.)

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

CHAIRMAN MOORE: Okay. So we're going to now move to the regular meeting agenda. And at this point, we have a carryover from last month, which is the application for a variance from Debra Riva, 433 Sixth Street, Greenport, New York; Tax Map #1001-6-3-4. Property is located in the R-2 District. The applicant proposes to construct a new mudroom addition and a deck. The proposed addition is 36 square feet, and the proposed deck is 192 square feet. I should mention that this has been amended in her plan. And so we are continuing the discussion of
this application. And I should note that we have a revised drawing, and Ms. Riva has modified her plan, which I expect you'll explain to us now at this point as we continue our discussion.

MS. RIVA: Okay. Originally, I had the
mudroom outside my kitchen door, and then wrapping around to the front. And I've changed my mind, and the mudroom remained just on the side, and then just a deck in front of the house underneath my living room window, so to speak.

CHAIRMAN MOORE: Yes.

MS. RIVA: That's the modification.

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

It does not change any setbacks, so we're
still talking about the same front and rear
setbacks, and I think it's a good solution to the
problem.

The reason for this delay, and which we do
apologize for, is that there was discussion about
a stairway on the original plans, which wasn't
depicted in the drawings, and it was uncertain if
this would increase the variance that would need
to be given. And if so, the applicant would have
to apply for a new variance in that case. So now
we're back to a plan that covers that question.

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

(No response.)

CHAIRMAN MOORE: So I think we've got the
information we need. As Mr. Corwin explained
last month, he didn't see that this was a very
large allowance for a variance. And I think, if
the Board's so inclined, we can move forward with
decision on the request for a variance.
MR. CORWIN: Yes, yes.
CHAIRMAN MOORE: Okay?
MR. CORWIN: Let's do the questions.
CHAIRMAN MOORE: And we'll do the questions. And we first have to do the issue that we would declare the Zoning Board of a Appeals Lead Agency for this matter, and declare it a Type II Action, requiring no further environmental assessment. And I would make that motion and ask for a second.
MR. CORWIN: Second.
CHAIRMAN MOORE: And all in favor?
MR. BENJAMIN: Aye.

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MR. CORWIN: Aye.
MS. GORDON: Aye.
MS. NEFF: Aye.
CHAIRMAN MOORE: Aye.
And any opposed?
(No response.)
CHAIRMAN MOORE: That motion carries unanimously.
And then we will ask the questions. If you want to sit down, if you're comfortable.

MS. RIVA: Okay.

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

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

(Roll Call Vote by Chairman Moore)

MR. CORWIN: No.

MS. GORDON: No.

MS. NEFF: No.

MR. BENJAMIN: No.

CHAIRMAN MOORE: And I would answer no.

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

(Roll Call Vote by Chairman Moore)

MR. CORWIN: No.

MS. GORDON: No.

MS. NEFF: No.

MR. BENJAMIN: No.

CHAIRMAN MOORE: I would answer no.

Whether requested area variance is substantial?

(Roll Call Vote by Chairman Moore)

MR. CORWIN: No.

MS. GORDON: No.

MS. NEFF: No.

MR. BENJAMIN: No.

CHAIRMAN MOORE: I answer no.

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

(Roll Call Vote by Chairman Moore)

MR. CORWIN: No.
MS. GORDON: No.

MS. NEFF: No.

MR. BENJAMIN: No.

CHAIRMAN MOORE: And I would say no.

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

(Roll Call Vote by Chairman Moore)

MR. CORWIN: No.

MS. GORDON: No.

MS. NEFF: No.

MR. BENJAMIN: No.

CHAIRMAN MOORE: And I would answer no.

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

(No response.)

CHAIRMAN MOORE: If not, I make that motion and ask for a second.
MS. GORDON: Second.

CHAIRMAN MOORE: And all in favor?

(Roll Call Vote by Chairman Moore)

MR. CORWIN: Yes.

MS. GORDON: Yes.

MS. NEFF: Yes.

MR. BENJAMIN: Yes.

CHAIRMAN MOORE: And I would answer yes.

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

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

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

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

CHAIRMAN MOORE: Yes. So I would say that
would be okay, since it is also a very small scale project --

MS. RIVA: Thank you.

CHAIRMAN MOORE: -- with a very minor variance.

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

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

And so for general discussion on this
variance, there was some comment from the public about the setbacks and the size of the lot. You know, we should note, and I think Mr. Uellendahl noted, that the lot to the rear of the property is actually narrower, because of the property at the north actually pushing into the property line. So the rear yard area available for construction is more limited than if it were at the front of the property, which, of course, wouldn't be allowed.

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

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

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

MR. UELLENDAHL: Yes, that's correct.

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

MR. UELLENDAHL: Yes.

CHAIRMAN MOORE: It would be fully enclosed.

MR. UELLENDAHL: That would not change.

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

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

MR. UELLENDAHL: Well, I can certainly try
to do a good job as far as that is concerned.

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

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

MR. CORWIN: Is there any --

MR. UELLENDAHL: Compared to, you know, keeping it open without any enclosure.

MR. CORWIN: When this pool equipment --

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

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

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

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

MR. UELLENDAHL: Right.
MacKenzie property to the northwest, whether any specific measures could be taken to further screen that area that might eliminate some of the visibility and the noise that would travel?

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

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

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

MR. UELLENDAHL: Yes.

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

MR. UELLENDAHL: Yes, I have, because I was actually working for the Bouchers. Their names are Andrea and Kevin Boucher. They spent the summer here in Greenport. They just bought the
house recently, and I helped them turn the garage into a workshop. And they're very nice people.
I discussed our project.

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

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

MR. UELLENDahl: Yes, it will have to be.

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

MR. UELLENDahl: Yes.

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

MR. UELLENDahl: Right. This will part of
the pool permit. I'm not going to file the
permit application, this is going to be the pool
company who's doing this, but we will make sure

that this will be as per code.

CHAIRMAN MOORE: I see.

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

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

CHAIRMAN MOORE: And as far as the
position, you had said that there was some
flexibility, that the pool, one way or another,
either by shortening the pool, or just moving it
east, could accommodate a full 20-foot setback.

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

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

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

(No response.)

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

MR. BENJAMIN: Well, I do have a concern about the noise, and it seems that Greenport is quite noisy in certain places. But when you're
looking for peace and quiet, and it's been quiet
and then the quiet's disturbed, it has an affect
on somebody's quality of life. So I would just
be concerned about that noise.

One thing, the second thing would be what
we're doing when we're covering the land with
stuff. You know, I mean, we need a certain
amount of open land for the water table. But
already, the bays and creeks are dying, and the
more we build, the more we're going to destroy
it. And this water around this used to be
crystal clear, but now it's not, see. And people
want to -- don't want to swim in muck.

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

MR. BENJAMIN: Yes.

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

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

CHAIRMAN MOORE: Yeah, that was my feeling as well, and we're not bound to make a decision tonight. And I would suggest that we table this item until the meeting next month for a potential vote. And we do have 62 days to make a decision. So if more mulling over was needed, we could even wait until January. I'm under the impression that the construction isn't going to immediately commence in the wintertime, so there's time for us to think. So what I'll do at this point is make a motion.

MS. NEFF: Can I just speak once?

CHAIRMAN MOORE: Yes, please.

MS. NEFF: That if it's available, the
process about the level of noise from both the pump and the proposed heater, the specs on them might just be, without the complete detail, probably 23 pages, but just a summary of what the prospective items to be selected might produce in the way of noise.

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

MS. WINGATE: There is.

MS. NEFF: There is a solid fence?

MS. WINGATE: (Nodded yes.)

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

Okay.

MR. PROKOP: If the plan's going to change
based on the offer by the applicant, I think that
you might request them to submit the amended
plan, if it's --

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

    MR. UELLENDahl: Okay.

    CHAIRMAN MOORE: Which you can accomplish.

    MR. UELLENDahl: I will -- yes, I will
submit a revised site plan.

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

    MR. UELLENDahl: Right.

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

The other thing is the fencing for
screening, and especially to the north and west,
and the sound attenuation, some information on
that.

MR. UELLENDahl: Okay.

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

MR. UELLENDahl: December meeting. Okay, very well.

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

MS. GORDON: May I ask a question?

CHAIRMAN MOORE: Yes.

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

MR. UELLENDahl: No.

MS. NEFF: No.

MS. GORDON: So the equipment is the equipment?

MR. UELLENDahl: Yes, it's the same.

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

Okay. So I'll make a motion, then, that we
table this for further discussion until next month, and I would seek a second.

MS. NEFF: Second.

CHAIRMAN MOORE: And all in favor?

MR. BENJAMIN: Aye.

MR. CORWIN: Aye.

MS. GORDON: Aye.

MS. NEFF: Aye.

CHAIRMAN MOORE: Aye.

Any opposed?

(No response.)

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

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

Point two, even if you know how many decibels that pump motor makes at 10 feet, not one of us in here understands what that number
CHAIRMAN MOORE: Thank you. And I think one point I would ask for from the Village Attorney is if the variance requested is reduced in significance, is further noticing required if there are changes?

MR. PROKOP: Not as far as I know of. I'll look into it.

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

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

So we move on to our next item, which is probably the more interesting, although it is a technical interpretation. And this, again, is a discussion and possible decision for request by
the Planning Board of the Village of Greenport to
the Zoning Board of Appeals for interpretation of
Section 150-9A(18), and this regards accessory
apartment dwelling units over retail store
businesses -- stores and businesses.

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

I'd like to give a little background on

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

I do have some information about the voting
that occurred. I also had the opportunity to
talk with former Mayor Kapell, who actually
sponsored this legislation. He very definitely
indicated to me that the intent of the
legislation was for structures, business properties in existence at the time, I believe the date was 2002, that were preexisting. He said it did not relate to the existence of businesses, and it did not relate to the existence of apartment units having already to be there.

One comment I can make that supports that is that in the original voting, I have a copy of the voting record for that section of the code, and this is in relation to permitting accessory apartment dwelling units in Commercial Retail District as permitted. And in the discussion following the vote, which was unanimously approved by Trustees Horton, Gail Horton, George Hubbard, Sr., Bradley Burns, and Mayor Kapell, Mayor Kapell gave a review of the importance of this legislation. And in his discussion, he said not so much in terms of the quantum of the apartments or housing units that will be created as a result of this action.
So, clearly, during their discussion, even during the passing of this legislation, they were talking about apartments which might be created over business spaces.

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

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

MR. TASKER: Tasker.

MS. GORDON: Sorry -- there should be a comma there. It seems to me there are two prepositional phrases. There's, "accessory apartment dwelling units," and then there's a phrase, "Over retail stores and businesses." And then the second possibility is, "In accessory
buildings thereof." And that the only way you can really read that is to say that this -- that this date applies to the dwelling units over retail stores and businesses.

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

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

CHAIRMAN MOORE: And then I think another point to be made, if I can get my mind straight on this, is one of the difficulties, I think, with this particular property as being an example, is that it appears to be a house, and it
was a house. I don't know. It was -- may have been constructed early 1900s, and was likely used as a residence. And the most recent history of this property is it was actually used as a rooming house. And that ceased in 2005, and that was a nonconforming use of the property. As a Commercial Retail District property, it's to be used for business.

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

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

The question about the accessory apartments over a retail store business is fairly clear in code here, and it indicates that it's a matter for the Building Inspector, that the apartment is not part of the Planning Board site review. So even though this property is under review by the
Planning Board for a site plan development, it is not an issue for the second floor. The apartment essentially is granted. It is a building code issue, which the Building Inspector would handle, and I'm sure is in communication with the developer.

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

So that's my input, and my feeling is that the code points to the existence of a dwelling, of a building in Retail Commercial at the time that this code was established. So that any new buildings being constructed, there is not an availability of having an apartment on the second floor of the new structure. And that's where, apparently, the artist loft is currently being
used to establish apartments over new buildings. And, unfortunately, the artist loft implementation is a very difficult process, and most property owners actually end up asking for a hardship exemption, and use it as a standard apartment. But that issue's being discussed by

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

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

Any other members wish to comment?

MR. BENJAMIN: Yes. I would say that I agree with, you know, what the code says, that you can have an apartment over a business and -- but there's also a problem with that, and that is the congestion in parking. If people are going to live there, they have to assume that they're either going to drive there or ride a bike there.
And there is a driveway there. People could park in the driveway, or should be able to park in the driveway, but if they don't park there, they have to park somewhere else.

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

CHAIRMAN MOORE: And I think one of the issues, too, that compounds that, I believe that driveway has a deeded right-of-way, so parking really isn't available in that driveway. That has to be left open for the businesses that use it for access.

MR. OLINKIEWICZ: Yes.

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

Mr. Corwin, you had a comment.

MR. CORWIN: Well, that was a boarding house, was the last use. It lost its use as a
boarding house because it was, I guess, empty for
more than a year. Prior to that, I'm not sure
what it was, but when I was a young man, it was
said to be a house of prostitution.

AUDIENCE MEMBER: It's a business.
CHAIRMAN MOORE: I guess it's a business.
AUDIENCE MEMBER: It's a business.
MR. CORWIN: But I want that on the record,
that it was a house of prostitution.
CHAIRMAN MOORE: Alleged, alleged house of
prostitution.

MS. NEFF: Alleged.
MR. CORWIN: A woman named Darla, they used
to call her Darla Dot, and we used to call her --

what did they call her? Moped Annie, was it?
MR. SALADINO: What did they charge, David?
CHAIRMAN MOORE: But you were a young boy
at the time, right?
MR. CORWIN: I was too young for it.
CHAIRMAN MOORE: Yes.
MR. CORWIN: Do you know anything about it?
MR. CORWIN: He's exempted from any participation. Otherwise, it would be a conflict of interest if he were to participate in the discussion. Anyway, sorry.

Mr. Corwin: But I want that on the record, it was a house of prostitution, alleged house of prostitution.

Chairman Moore: Alleged house of prostitution.

Mr. Corwin: If you look at the code, it says Section 150-9, CR District, so Commercial Residential District. And then it's saying in a CR --

Mr. Prokop: It's Commercial Retail.

Ms. Wingate: Retail.

Mr. Prokop: It's Commercial Retail.

Ms. Wingate: Commercial Retail.

Mr. Prokop: It's not Commercial Residential.

Mr. Corwin: I'm sorry, Commercial Retail. In a CR Retail Commercial District, "No building
or premises shall be used and no building or part of a building shall be erected or altered which is arranged, intended or designed to be used, in whole or in part, for any use except as listed below." Then it goes on to list all these things, including #18, and it says, "All such uses shall be subject to site plan approval in accordance with Article 11."

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

Then, if we go on to #18, "Accessory apartment dwelling units over retail stores and businesses, professional and government offices existing as of July 1st, 2002." I can only take that one way. The retail stores and businesses and offices of what they were talking about, they were not talking about prior to or after July 1st, 2002. They weren't talking about before
July 1st, 2002, when it was, I guess, a rental unit, or housing unit of some sort.

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

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

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

CHAIRMAN MOORE: Okay.

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

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

MR. CORWIN: I don't see a rooming house as a business. I see a rooming house as possibly a hotel. I don't think we have any rooming houses
CHAIRMAN MOORE: Not that it doesn't. I believe that rooming house was issued as some exception. I'm not sure it was a zoning variance. But it was the North Fork Housing Alliance that was either the owner or the operator of that property.

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

CHAIRMAN MOORE: Yeah.

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

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

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

CHAIRMAN MOORE: The Housing Alliance.

MS. WINGATE: Housing Authority.

MR. PROKOP: What happened was there was an application for an interpretation to the Zoning Board as to whether or not a rooming house was a
legal use, and I believe that that -- it was
determined to be a legal use and a C of O was
issued for that use. There was an Article 78
commenced, and it was -- the Court upheld the
Zoning Board of Appeals. And I believe that that

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

CHAIRMAN MOORE: At that point, I see.

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

MR. CORWIN: Well, I guess your --

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

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

CHAIRMAN MOORE: Right. Now --

MR. PROKOP: One of the other things that I
wanted --

CHAIRMAN MOORE: Yes.

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

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

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

CHAIRMAN MOORE: Yes. And I think the code
describes the apartment an accessory to the
principal use as a studio or gallery.

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

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

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

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

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

    If we move ahead with a decision, and it
would pass by vote to be the decision we're
issuing, or interpretation, can we as well
request that the Board of Trustees take this
under consideration to clarify this section of the code for the future? I mean, we will make an interpretation that will say one way or another what we think it means, or what we decide it --

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

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

CHAIRMAN MOORE: Yes.

MR. CORWIN: -- choose to change it.

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

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

MR. PROKOP: One of the things --
CHAIRMAN MOORE: He was quite clear. Yes, go ahead.

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

CHAIRMAN MOORE: No problem.

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

MS. WINGATE: Yes.

MR. PROKOP: Downtown?

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

CHAIRMAN MOORE: And my understanding is the practice for as many years as you have been the Building Inspector, and perhaps before, is that conversions of second floor space have been done through building permits to establish apartment units above commercial space. So it's
not contrary to what has been the practice, and there has been no discussion

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

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

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

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

But I would suggest we move ahead with a motion to decide, you know, what the motion should contain. I know Mr. Corwin is talking about the existence of the defined business or commercial operations as his opinion of the interpretation, my statement of how I read it and what I've been told by those who developed the
code, what it means. And the other members, perhaps we could wait?

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

    CHAIRMAN MOORE: You're correct in that. MR. CORWIN: So I don't think that you can take any of that into consideration, other than for your own personal vote.

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

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

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

    MR. TASKER: And they do not have -- they were not part of the record on which they voted.
CHAIRMAN MOORE: Anyway, that affects my vote, and perhaps none of the others. So, to proceed, I suppose what I'm going to suggest, and this will be a pass/fail type operation, I guess before that, we do have to do the SEQRA Lead Agency question.

MR. PROKOP: Yes, I would.

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

MR. PROKOP: Type II.

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

MS. NEFF: Second.

CHAIRMAN MOORE: And all in favor?

MR. BENJAMIN: Aye.

MR. CORWIN: Aye.

MS. GORDON: Aye.

MS. NEFF: Aye.

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

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Commercial spaces in Section -- I'm just trying to find the section description.

CHAIRMAN MOORE: 150-9(A)18 --
MS. WINGATE: A(18), right.
MS. NEFF: 18, yes.
CHAIRMAN MOORE: -- refers to the existence of the property, the dwelling, as of July 1st, 2002.
MR. CORWIN: But don't call it a dwelling.
CHAIRMAN MOORE: Not dwelling.
MR. CORWIN: Call it a building.
CHAIRMAN MOORE: I'm sorry, I corrected
myself. A building, a structure existing as of July 1st, 2002, and it refers to that existence and not the existence of the apartment itself or the business activities on that property. So I make that motion, and would ask for a second.

MS. GORDON: Second.

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

(Roll Call Vote by Chairman Moore)

MR. CORWIN: No.

MS. GORDON: Yes.

MS. NEFF: Yes.

MR. BENJAMIN: No.

CHAIRMAN MOORE: And I would answer, obviously, yes. So we have three votes to two, so that motion carries. So, currently, that is the interpretation issued by the Zoning Board of Appeals back to the Planning Board. And that would allow the construction of an apartment over the second floor of a Commercial Retail
structure. So that action is completed. And we would move forward with the --

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

CHAIRMAN MOORE: No

MS. GORDON: It seems very clear to me.

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

MS. GORDON: Okay.

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

MS. NEFF: Can I just ask a question?

CHAIRMAN MOORE: Yes.

MS. NEFF: It still puts it back with the Planning Board in reference to a site plan, correct?

CHAIRMAN MOORE: Yes, that's correct.

MS. NEFF: Okay.

CHAIRMAN MOORE: Whether or not the
Mr. Corwin: No, it doesn't. No, it doesn't.

Mr. Prokop: Well, it's going to be a big fight over that, because the applicant doesn't want to have site plan -- I mean --

Chairman Moore: Well, I think the applicant is stating he doesn't want site plan review regarding the second floor apartment.

Ms. Wingate: The application to the Planning Board is for a use evaluation, not a full-blown site plan.

Chairman Moore: Okay, excuse me. Yeah, a use evaluation. That will be a matter for the Planning Board to discuss. Whether they can separate themselves from the apartment aspect as a part of the whole property, that's their business.

But, anyway, I thank the Board for their votes on that, and we'll move forward with the last few items on the agenda. That was #4. No,
I'm sorry.

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

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

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

The proposed house is sited so that the rear of the house is set back 27.96 feet from the south property line, and the rear deck is 17.96 feet from the south property line, requiring a 12.04-foot rear yard variance.
Section 150-12A of the Village of Greenport Code requires a 30-foot rear yard setback in the R-1 District.

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

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

MR. BENJAMIN: Second.
CHAIRMAN MOORE: And all in favor?

MR. BENJAMIN: Aye.

MR. CORWIN: Aye.

Any opposed?

(No response.)

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

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

The Applicant is represented by Mary Bess
Phillips, Secretary Treasurer for K & M Properties, the landlord to the tenant, North Fork Smoke Fish Company.

The applicant requests an interpretation of Article IV, Section 150–9 CR Retail Commercial District A, Permitted Uses, and I go to #9, manufacturing, as it applies to the current use of the property, processing/wholesale smoke fish business.

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

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

I should point out that this matter is before the Planning Board, and they have asked that the property owner and tenant seek an interpretation, and likely a use variance for
this property, as they cannot proceed with the
planning process if this is not a permitted use
and does not have a variance. So that with that
in mind, and the description, I would make that
motion that we accept this application.

MR. CORWIN: Before you make a motion --
CHAIRMAN MOORE: Yes.

MR. CORWIN: -- I'd like to make a couple
of comments.
CHAIRMAN MOORE: Yeah, we could do that
after we accept it, but go ahead.

MR. CORWIN: Well, that's the problem.
CHAIRMAN MOORE: Or after we second it, but
ahead, before we vote.

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

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

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

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

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

CHAIRMAN MOORE: Yeah, four.

MR. PROKOP: -- are meant to be the minimum
considerations that the Board has to apply. So you need to basically address those four considerations, and then anything else that you think is relevant, you can address also.

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

CHAIRMAN MOORE: Well, you know, as a matter of protocol, what I suggest we do is the matter of the completeness of the descriptions or the appropriateness of the descriptions that answer the questions on the application, or given as the answers to the questions on the application, will come up under our discussion. If we find that we do not have sufficient information to make a decision, we can ask for a revised application. And perhaps with these
comments in mind, the applicant might consider looking at the application for potential revisions to it that might preempt some of the things that might come up.

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

MR. CORWIN: Well, let me good on.

CHAIRMAN MOORE: Yes.

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

CHAIRMAN MOORE: Okay.

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

CHAIRMAN MOORE: Okay.

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

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

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

CHAIRMAN MOORE: I'm not trying to cut you

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

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

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

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

MS. WINGATE: Do you have a copy?

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

But the Attorney said, when I raised this question, I've raised it a couple of times, that these things have to be signed and notarized.
The Attorney said, yes, they have to be signed, and when they're signed, you've got to print the name, and then they've got to be notarized.

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

MS. GORDON: It is notarized.

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

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

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

CHAIRMAN MOORE: One question I had, which I think has been correct in the application, is originally the applicant was the tenant to the property. And a question I rose is whether a tenant has standing to request a variance of a
property, and I think the answer was that it had  
to be the property owner. And this has been  
corrected, that the representative is also  
co-owner of the corporation. So that it is  
appropriate that Mary Bess Phillips may represent  
the appeal for the variance; is that correct?

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

CHAIRMAN MOORE: She has standing to ask.

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

MR. PROKOP: Yes.

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

CHAIRMAN MOORE: Yes.

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

CHAIRMAN MOORE: The interpretation is as
to whether the applicant is proposing an operation that meets the conditions of Section 9.

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

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

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

CHAIRMAN MOORE: Okay. So that --

MR. CORWIN: So we're doing both?

CHAIRMAN MOORE: Yes.

MR. CORWIN: This -- both are checked off,
a variance and an interpretation.

MR. PROKOP: Yes.

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

And unlike an area variance, which balances the benefit to the applicant with -- to the potential detriment of the community, this is specifically a test of whether the variance for use is justified.

So, with that in mind, I think I have before the Board a motion to accept this application as presented, and I would make that motion and ask for a second.
MS. NEFF: Second.

CHAIRMAN MOORE: And all in favor?

MS. NEFF: Aye

CHAIRMAN MOORE: Aye. Opposed?

MR. CORWIN: Aye, nay.

CHAIRMAN MOORE: And yours is?

MS. GORDON: I'm opposed.

CHAIRMAN MOORE: Opposed? So we have two opposed and three yes, so the application is accepted. And we will take it up for consideration at the December meeting.

If there's any continued dialogue between the Building Department that generates any new paperwork, we'd appreciate it, that we have a complete package.

MS. NEFF: And would we have some diagrams and --

CHAIRMAN MOORE: Yes, it's in the application. And there was a document, which is a financial sheet, that was also supplied just recently, and that will be available to the Board
as well.

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

CHAIRMAN MOORE: Yes.

MS. GORDON: -- if it's useful to say to

the applicant that these -- that there are

Members of the Board who do not think that these

questions are addressed by the answers.

CHAIRMAN MOORE: I think that was made --

MR. PROKOP: I think that was made clear.

CHAIRMAN MOORE: -- obviously apparent,

yes.

MR. PROKOP: Can I please ask to be

excused?

CHAIRMAN MOORE: Yes. We're just finishing

up some of the more important parts of the

agenda.

I'D like to go to Item #6, motion to accept

the ZBA minutes for October 15th, 2014. So

moved. May I have a second?

MR. BENJAMIN: Second.

CHAIRMAN MOORE: All in favor?

MR. BENJAMIN: Aye.
MR. CORWIN: Aye.
MS. GORDON: Aye.
MS. NEFF: Aye.
CHAIRMAN MOORE: Aye.

Motion carries.

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

MR. BENJAMIN: Second.
CHAIRMAN MOORE: All in favor?
MR. BENJAMIN: Aye.
MR. CORWIN: Aye.
MS. GORDON: Aye.
MS. NEFF: Aye.
CHAIRMAN MOORE: Aye.

Motion carries.

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

MR. CORWIN: Do we have inspections?
CHAIRMAN MOORE: I believe we do not have any site visits planned. I don't know if it's necessary to go to the property regarding the
Smoke Fish Company. It's an issue of interpretation. And if a use variance comes up, we may choose to do so, so -- but we will have a public hearing on that matter at that meeting, and that would occur at the beginning of the meeting.

MR. CORWIN: So we will be --

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

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

MR. CORWIN: I would like to, yes.

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

MS. PHILLIPS: I'm sorry.

CHAIRMAN MOORE: I'm sorry to interrupt, but we're trying to close up for the Fire Department. Would the property be available for
inspection next month before the meeting by the
Board?

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

CHAIRMAN MOORE: Yes.

MS. PHILLIPS: I can arrange it.

CHAIRMAN MOORE: Regarding the use
variance.

MS. PHILLIPS: Yes, I could arrange that.

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

MS. PHILLIPS: I can arrange that.

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

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

MR. CORWIN: Second.

MS. WINGATE: 4:45?

CHAIRMAN MOORE: Yes, site visit.

And all in favor?
MR. BENJAMIN: Aye.

MR. CORWIN: Aye.

MS. GORDON: Aye.

MS. NEFF: Aye.

CHAIRMAN MOORE: Aye.

And motion to adjourn. I make that motion.

Second?

MR. CORWIN: Second.

CHAIRMAN MOORE: All in favor?

(Whereupon, the meeting was adjourned at 7:00 p.m.)
CERTIFICATION

STATE OF NEW YORK )

) SS:

COUNTY OF SUFFOLK )

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

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

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

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

________________________________________

Lucia Braaten