VILLAGE OF GREENPORT

ZONING BOARD OF APPEALS

REGULAR MEETING

December 17, 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 5:07 p.m.)

CHAIRMAN MOORE: So it's about five after seven-after-five this evening, and this is the regular meeting of the Greenport Zoning Board of Appeals.

We have tonight two public hearings. The first hearing is a public hearing for an appeal for an area variance 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 adjacent to 213 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 150 square feet. The property is located in the R-1
The proposed house is sited so the front of the house is set back 20 feet from the north property line.

Section 150-12A of the Greenport Village Code requires a 30-foot front yard set back in the R-1 District, requiring a 10-yard -- a 10-foot front yard setback variance.

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The proposed house is sited so that the rear of the house is set back 27.96 feet from the south property line.

Again, Section 150–12A of the Greenport Village Code requires a 30-foot rear yard setback in the R-1 District, requiring a 2.04-foot rear yard setback variance.

The proposed rear deck is sited so that the proposed rear deck is set back 17.96 feet from the south property line.

Section 150–12A of the Village of Greenport Code requires a 30-foot rear yard setback in the R-1 District, requiring a 12.04-foot rear yard
variance for the proposed rear deck.

This was properly noticed in the Suffolk Times. The following people were noticed, which are the adjacent properties, and one across the street from the proposed construction site:

Anthony Farley. I do not have the local address. It's 905 West End Avenue, New York City. Shuman and -- I can't read the last -- M-O-N, fortan, Monfortan -- Shuman, Monfortan, 337 Stuyvesant Avenue, Brooklyn. Rogue Wave Associates, LLC, 300 West 23rd Street, New York City. And then two local addresses: Mark LaColla, 213 Bridge Street, and Dorothy Owen, 225 Bridge Street, Greenport, New York.

I believe the placard on the property was properly sited, as required.

And with that, I'd take any comments from the applicant or representative, if you wish to describe the overall project and what you're seeking to do.

MR. WERTHNER: Sure.
CHAIRMAN MOORE: And then we'll take public comments.

MR. WERTHNER: Good evening. Basically, what I'm trying to do is just build a three-bedroom two-story house on this lot and make it my retirement home, and live a nice life in Greenport and walk the Town. And that's a real simple house and doesn't take up much room. I kind of shortened it. I do like the deck in the back, like everybody else likes a deck in the back of the house for, you know, the barbecue, and what have you. And it's, basically, that simple. If anybody's got any questions or anything, I'm here to answer.

CHAIRMAN MOORE: And just one question is --

MR. WERTHNER: Sure.

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CHAIRMAN MOORE: -- the 20-foot front setback is due to the garage extending from the body of the house; is that correct?

CHAIRMAN MOORE: And so there's approximately an additional five or eight feet?

MR. WERTHNER: Eight for the house where it's --

CHAIRMAN MOORE: To the house, house.

MR. WERTHNER: That's correct, about eight foot, eight foot back.

CHAIRMAN MOORE: So you would -- the bulk of the house would be 28 feet --

MR. WERTHNER: That's correct.

CHAIRMAN MOORE: -- but the garage is 20 feet from the front line?

MR. WERTHNER: That's right.

CHAIRMAN MOORE: And a relatively small deck. And it brings it, though, 14 feet, if I'm remember what I was reading, from the rear line?

MR. WERTHNER: About that, yes.

CHAIRMAN MOORE: Or 17. I'm sorry, 17.

MR. WERTHNER: Seventeen-nine.

MS. NEFF: Seventeen.
MS. NEFF: That's practically 18 feet.

It's 17.9 feet.

CHAIRMAN MOORE: Yes.

MR. WERTHNER: Yeah, 17.9.

CHAIRMAN MOORE: I was trying to see this drawing and it's not coming through very clearly. It looked like 14 to me, but it's 18 feet.

Any questions from the Board Members at this point?

(No response.)

CHAIRMAN MOORE: Okay. Well, thank you, Ed.

MR. WERTHNER: Okay. Thank you.

CHAIRMAN MOORE: And are there any members of the public that would like to speak regarding this variance application?

(No response.)

CHAIRMAN MOORE: If not, no one's interested in speaking, I would then make a motion that we close the public hearing, and I would ask for a second.

MS. NEFF: Second.

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

I'll get organized here. The second public hearing tonight is a request for an interpretation of the Village of Greenport Code for Philip Karlin, North Fork Smoked Fish Company, 200 Wilson Road, Cutchogue, New York, 11935. The property is located at 414 First Street, Greenport; Suffolk County Tax Map 1001-4-7-5. It is located in the Retail Commercial District. The applicant is represented by Mary Bess Phillips, Secretary Treasurer, K & M Properties, Incorporated, the landlord to the tenant, North Fork Fish Company.

The applicant requests an interpretation of the Village Code Section 150-9A(9) as follows:

Interpretation: The applicant is
requesting interpretation by the Zoning Board of Appeals as to whether the proposed use of the premises is consistent with 150-9A of the Village of Greenport Code;

Permitted uses: (9) Manufacturing,
assembling, converting, altering, finishing,
cleaning, or any other processing of products where goods so produced or processed are to be sold at retail exclusively on the premises, provided that:

(a) The space so used is fully concealed from any street and equal in area to no more than 20% of the square footage devoted to retail sales.

(b) Not more than two employees are engaged in such production or processing.

I should mention at this point that there was originally a request for a use variance, but that was withdrawn by the applicant on the 10th of December. So tonight we will be taking any public comments regarding the interpretation of
that section of the code.

I should point out that this comes from the Planning Board, and the applicant is seeking the interpretation at the request of the Planning Board because of discussions that have been going on with their use evaluation proposal that's currently pending with the Planning Board.

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This was properly noticed in the Suffolk Times, and I will read the notifications.

And, Ms. Phillips, if I miss one of them, or I'm not getting the one that had some trouble being delivered, just let me know.

MS. PHILLIPS: It's Thompson.

CHAIRMAN MOORE: Thompson, was it?

MS. PHILLIPS: It's Laura Thompson is the one. It has the sheet of paper attached to it that shows the post office.

CHAIRMAN MOORE: Oh, I see. So that was unable to be delivered.

MS. PHILLIPS: Well, it's there waiting for her to pick it up.
CHAIRMAN MOORE: I see.

MS. PHILLIPS: She never picked it up.

CHAIRMAN MOORE: So I'll read that one first. It's Laura Thompson, Box 593, from 422 First Street, Greenport, New York.

The others all were successfully delivered, and they are Carman Hoge Thistle, 312 Buckingham Road, West Palm Beach. I do not know the local address. Charles Kulsziski, 433 Main Street, Greenport. K & M Properties, care of Phillips, 210 Atlantic Avenue, Greenport. K & M Properties again, care of Phillips, Atlantic Avenue, Greenport. Joseph Henry, 421 First Street, Greenport. Joseph and Elaine Henry, 34 South Street, Greenport, New York. William and Helen Shearer, I believe it is, 425 Main Street, Greenport, New York. And Alice Eichorn, Post Office Box 243, Peconic, New York. I don't know the local address. And those are --

MS. PHILLIPS: She lives across the street.

CHAIRMAN MOORE: Across the street?
MS. PHILLIPS: She lives across the street.

CHAIRMAN MOORE: Okay, thank you. So those are the people that were contacted.

So I'd just like to make a note that this regards -- our public testimony tonight regards the interpretation that's being requested of the Zoning Board of Appeals. At this point, there is no use variance being requested.

Would the operator or the property owner wish to make any statements?

MS. PHILLIPS: Yes, please. Chairman Moore, did you have a copy for --

CHAIRMAN MOORE: Yes I, passed them around.

MS. PHILLIPS: Okay.

MR. PROKOP: Are there anymore copies of this?

CHAIRMAN MOORE: There's one here. Take this one. And we might want to provide a spare once to the transcriptionist later.

MS. PHILLIPS: Good evening, Chairman Moore and ZBA Members. I'd like to thank you for
listening to my comments this afternoon. And I'd like to please enter into the public hearing record, dated December 17th, 2014, from North Fork Smoked Fish Company the following information for the Village of Greenport Zoning Board of Appeals:

North Fork Smoke Fish Company approached K & M, Inc. with a business plan looking for a site to process, prepare, smoke and ship the products via his website to retail and local wholesale customers. Smoking Fish is a specialty product in the seafood market industry. For the past three years their website has developed a strong retail customer base. This has resulted in a business income split of 70% retail, 30% wholesale.

To quote the IRS, "Retailing has long been held to be more of an art than a science." The intuitive ability to correctly anticipate consumer's interest will be key."

North Fork Smoked Fish Company is part of
the new method of selling seafood products. The seafood industry has gone beyond the traditional retail market to grow into direct sales from harvesters, green markets, farmer's markets, etcetera. The E-commerce of lobsters from Maine, shrimp from the Gulf of Mexico, or salmon from Alaska give the customer -- I'm sorry, give the consumer access to retail products nationwide.

During his visit for the use evaluation, the Building Inspector asked if he would open the door to retail customers. His answer was no, as 30% of his income from wholesalers would stop purchasing from him. Any other form of retail sales was not requested by the Building Inspector. It seemed to hinge on whether retail customers entered the building.

In reviewing the definitions in the Village of the Greenport -- I mean, the Village of Greenport Code, there is not one for retail. In considering the interpretation of Section 150–9(A), Subsection 9 of the Village Code, please review the retail descriptions from the IRS and New York State. The company's New York
State Principal Business NAICS Code is 445220, Fish & Seafood Markets, with the following definition:

"A marketplace used for marketing fish products. It can be dedicated to wholesale trade between fishermen and fish merchants, or to the sale of seafood to individual consumers or both."

In reviewing IRS Chapter 43, Retail Industry, the following sections describe retail activity.

Composition: Some retailers are both manufacturers and retailers, because they produce the products they sell.

Retail Industry Classification has a description that reads as follows:

"Retail consists of two principal types of establishment, store retailers and non-store retailers."

"Non-store retailers are similar to a store retailer, which is organized to serve the general public, but their retailing methods differ."

IRS has included a description of E-Commerce, that online retailers bring to the
consumer the same products in the same way as
traditional store retailers.

In reviewing the code, North Fork Smoked
Fish Company business activities are as follows:
Under the permitted uses for 150-9(A)(9) is
manufacturing, assembling, converting, altering,
finishing, cleaning, or any other processing of
products where goods so produced or processed are
to be sold at retail exclusively on the premises.
Following the retail descriptions from IRS
and New York State, the company is processing,
packaging and shipping and/or delivering to
website -- website retail sales customers the
produce or product processed from that building.

Under Subsection A, the Building
(Department) is in possession of an updated site
plan, which, after much going back and reviewing
the original application, I found there were some
errors in communication between everyone.
The back room of the building is used for
processing, similar to all seafood markets, and
the front section of the building is used for packaging and shipping the requested sales for retail and wholesale customers. There is an office in the building where paperwork is processed for the pickup of UPS, FedEx, and etcetera.

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Subsection B, the production or processing is done by the owner and one employee. I have included in this package a copy of North Fork Smoked Fish Company's website, along with two other examples of retail online seafood retailers.

Thank you for taking this information for the record and reviewing the requested interpretation process for this site.

Does anyone have any questions?

CHAIRMAN MOORE: We'll be able to ask additional questions during our deliberations, if it comes up.

MS. PHILLIPS: Okay, fine. Okay. Thank you.
16 CHAIRMAN MOORE: Any questions of the Board right now that you would like to ask?
17 (No response.)
18 CHAIRMAN MOORE: If not, then thank you.
19 MR. CORWIN: Maybe one question.
20 CHAIRMAN MOORE: Yes, Mr. Corwin.
21 MR. CORWIN: Could you just go over again this online retail versus wholesale, the numbers? In other words, how much --
22 MS. PHILLIPS: Okay. North Fork Smoked

Fish originally for three years started out as a retail online business. He's only recently got into where he has been taking a certain percentage and selling it wholesale to Southold Fish Market, IGA, some of the other places. It's -- one of the issues is that his production, he was trying to diversify. Whether he stays in wholesale, that's going to depend on the markets continuing to buy the product here. As I said, his customer base is really based on retail. That's where most of his income
comes from. These numbers I'm getting from him, I'm not pulling them out of the air.

MR. CORWIN: Do you have a percentage, one versus the other?

MS. PHILLIPS: As far as?

MR. CORWIN: Online retailing is how much percentage than whole --

MS. PHILLIPS: That's 70. Seventy -- all of his stuff is online retail, that's the 70%, okay?

MR. CORWIN: That's 70%.

MS. PHILLIPS: All right. That's the 70. And that's for the numbers I asked him for, was his online retail customers. As I said, for the last three years, he's been online. Most of his customers order online. He will either deliver it to them as he goes up west, or he ships it out of there, which, as I explained originally, we were trying to keep a low -- a low impact business in that particular area due to that it just needed to be to compliment the other tenants
that are all sharing that property, okay?

Any other questions? I can wait until you
want to discuss --

MS. GORDON: I have a question. I
understand that the packaging and shipping is
done from the front room of the building. Is the
response to the retail customers' orders done
also in that building --

MS. PHILLIPS: Yes.

MS. GORDON: -- or is it done somewhere
else?

MS. PHILLIPS: No it's done in the office.
That's why I showed you when you went to the site
visit that there is the front where there's the
packaging. As you walk back, there's a bathroom,
and then there's also an office, which is where
he does all his records and all his shipping, is
out of there.

The website address has not been changed,
because when I discovered that there had be some
errors in the beginning with his starting his
business, okay, and we stopped everything to get through the use evaluation, his web master has not changed anything yet until after we get through this process. Then the web master will show 414 First Street as the correct address. All his sales, if you look at his website, you will -- you can go up and see that he actually has an order online account, the whole nine yards that any other retailer has with their own company, okay?

MS. GORDON: Thank you.

MR. CORWIN: Question. When I was looking at the front of the building, I saw a little letter board there telling people where they could go to purchase the smoked fish. There was Alice's, Southold Fish Market, and one or two others. I don't recall seeing a website address. Did I miss something, or is there none?

MS. PHILLIPS: The website address is on the sign.

MR. CORWIN: It is on the sign?

MS. PHILLIPS: It's on the sign, exactly.
CHAIRMAN MOORE: I believe it's on the window, the colored sign.

MS. PHILLIPS: That's what I'm talking about, it's on the window.

CHAIRMAN MOORE: It's actually this way. This is not very clear, but there is a website there, right above "wholesale only".

MS. PHILLIPS: As I said, when I discovered that there had been a lapse in process, everything just came to a stop until we get through this process. But his whole commitment is to stay there. The landlord is -- the whole commitment is for him to succeed, plus we're trying to compliment and to work with the other tenants, who really wanted something that was not going to be so traffic-bound as what the previous tenant was.

MR. CORWIN: On here, it says, "Wholesale only," which that's to keep people from going in the front door, and blah, blah, blah.

MS. PHILLIPS: I --

MR. CORWIN: But --

MS. PHILLIPS: I'm sorry, go ahead.

MR. CORWIN: Would the sign be more clear
if it said, "For retail purchases," and --

MS. PHILLIPS: That is what it's supposed to say, okay? As I said, there -- everything came to a halt. He was supposed to have the website address put into the window. I -- as I said, there's been a lot of miscommunication on this one. The wholesale customers in the beginning were put there to appease some of the other customers. Eventually, that sign in the front will be coming down off the door, and the sign will be moved over to the door and it will have the website and retail sale only, but we haven't gotten that far yet, okay?

MR. CORWIN: Thank you.

CHAIRMAN MOORE: Okay. Thank you.

MS. PHILLIPS: Okay.

CHAIRMAN MOORE: And I have a question. Mr. Prokop, this statement of 70% retail and 30% wholesale, would there need to be some substantiation of that, if at some point that becomes a critical issue either in enforcement or
the planning process?

MR. PROKOP: Yes. Well, I'm not sure really what -- yes.

CHAIRMAN MOORE: I'm just curious.

MR. PROKOP: And I'm not sure exactly what means, if it's transactional or a dollar amount.

MS. PHILLIPS: Dollar amount.

CHAIRMAN MOORE: But that might be something that would be required down the road. I don't think it affects our decision tonight, but, certainly, the outcome of a decision might be an issue.

MS. PHILLIPS: As I said, and -- well, I'll until you start, if you want to ask questions later.

CHAIRMAN MOORE: Sure. Now any members of the public wish to speak? Could I have a show of hands who might be interested in speaking, just so we know about time constraints? Yes. Why don't you go ahead. You seem to be the only one. So if you could speak five minutes or less, it
would be appreciated.

MR. HENRY: My name is Joseph Henry. I live at 421 First Street, across the street. Is this -- this is going on right now, his business is going on right now, right?

MS. PHILLIPS: Yes.

MR. HENRY: Okay. I just have basically two concerns. I'm not against the business being there, but I just -- in the future, you know,
So that was my two concerns, is basically refrigeration trucks in the street at night, and the hours of operation.

CHAIRMAN MOORE: Okay. Thank you.

MS. PHILLIPS: Would you like me to answer that now, Mr. Moore, or no?

CHAIRMAN MOORE: If you wish, yes, go ahead.

MS. PHILLIPS: Okay. As I stated before, this is a specialty product that's done in the fishing industry. It's usually a one-man operation or two-man operation. The way he is at the moment, and I really don't envision it changing, because he has — smoking fish is really a one-person operation. He comes in in the morning and he leaves at night. There is no all-night operations, there's no refrigerated trucks coming in. He has a van and a pickup truck, and that's it.

If he were to do any growing, he's going to have to grow out of that building. If he were to
do exactly what Mr. Henry was suggesting, he
would have to really move out of that building,
because it's not meant for anything more than
that small type of an operation, okay? Any other
questions?
   (No response.)
   MS. PHILLIPS: Okay.
   MR. HENRY: Thank you.
   CHAIRMAN MOORE: Excuse me. Anybody else
wish to speak regarding this interpretation?
   (No response.)
   CHAIRMAN MOORE: Well, if not -- excuse me.
   If not, then I would make a motion. Any further
discussion from the Board Members?
   (No response.)
   CHAIRMAN MOORE: If not, then I'd make a
motion that we close the public hearing for the

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Hearing #2, and I will accept the second.

MR. BENJAMIN: Second.

CHAIRMAN MOORE: And all in favor?

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

MS. GORDON: Aye.

MS. NEFF: Aye.

CHAIRMAN MOORE: Aye.

Any opposed or abstaining?

(No response.)

CHAIRMAN MOORE: The motion carries.

Excuse me. I might have to ask for a tag team.

MS. GORDON: Would you like a lozenge?

CHAIRMAN MOORE: I have one currently.

All right. So then I'm going to move on to the regular agenda.

Item #1 is the continuation of discussion we've been having regarding the application for an area variance for Ralph and Sarah Edwards at 163 Fifth Street regarding the construction of a swimming pool.

And as of last meeting, there were three variances pending before the Board. And I would just ask the -- we're not having a public hearing
tonight, that was closed last time, but based on any new information that might come out regarding the requested variances, Mr. Uellendahl might want to update us on what has happened.

MR. UELLENDHAHL: Correct. Thank you for having us back. Good evening.

First of all, I would like to note that on the agenda, under #2, the proposed swimming pool setback is 12 feet, etcetera, etcetera. This whole paragraph should be eliminated, because we submitted a revised site plan where we eliminated the third variance on the westerly setback line, which was not 12 feet, it should have said 17 feet originally. But we moved the pool, the proposed pool, back three more feet, so it will be 20 feet off the westerly lot line. So that would eliminate the third variance as submitted. I think you have the revised site plan in front of you.

In addition, we -- my clients are very concerned about the concerns that were voiced at last month's meeting, in particular, about the noise that would be created by the mechanical equipment, the pool equipment. And we did a lot of research. We contacted a local pool
consultant. And, as a matter of fact, the owner, Ralph Edwards, is here tonight, and he would like to, you know, as a mock-up, to actually tell you what it means, what a decibel is.

We talk about decibels and nobody really knows what it actually means. And I think we should have a comparison compared to a refrigerator, or to something else that we all know. And I think, going forward, because you will be dealing with pool applications and that kind of noise complaints, particularly in the close Village of Greenport, it would be very interesting to see what it actually means to have a 49 decibel noise, versus a 60 decibel noise.

I would like to turn it over to Ralph Edwards. He has a little bit to show for you. So I hope this will help clarify, also for future projects, that we can actually maintain a very quiet noise, if it's done correctly. And, as a matter of fact, we are going to house this even in. Even if it's open to the sky, it's not
really that bad. But in this case, because we
had the complaints, or the voices from a couple
of neighbors, we are willing to put the
mechanical equipment into a shed and soundproof

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this, even though it really should not be a
problem. So I would like to turn it over to
Ralph Edwards, if I may.

CHAIRMAN MOORE: Yes. I just want to ask
you one question. There's a revised drawing that
I picked up a few days ago. The setbacks for the
north and south are still 10 and 14, so the --

MR. UELLENDahl: Yes.

CHAIRMAN MOORE: The only change is 20 from
the back?

MR. UELLENDahl: Correct.

CHAIRMAN MOORE: I had heard there was some
comment about further movement of the pool that
might have changed it.

MR. UELLENDahl: Well, we discussed this,
but we'd like to keep it at the 10-foot setback
and the 14-foot setback, because we looked
further at saving the big tree that is on the
property, and the root system will not be
affected by the current location of the pool,
as --

CHAIRMAN MOORE: Yes.

MR. UELLENDahl: -- proposed in our site
plan.

CHAIRMAN MOORE: Okay. Thank you.

MR. UELLENDahl: Okay.

CHAIRMAN MOORE: Mr. Edwards.

MR. EDWARDS: I am the applicant, Ralph
Edwards. Thank you for this opportunity to talk.

We -- I've been coming -- my wife and I
have been coming to Greenport for six or seven
years. And two years ago, we rented a house at
the corner of Sixth and Linnet and we loved it.
We had a great summer, and we decided this is
where we're going to retire.

With Frank's help, we are rebuilding and
doing an extensive renovation to 163 Fifth
Street, as you know, when you look at the site
plan. We're thrilled to be here, and we plan to be full-time residents as soon as the house is done.

We were here last month, both my wife and I. My wife couldn't be here tonight, but we were both here last night -- last month, and we didn't talk, because we thought it was our turn to listen and hear the concerns of the community and our neighbors. We were very gratified that Marian Friedmann spoke on our behalf about the quality of the renovation, but we also heard two concerns about the noise. And, you know, Frank

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has put the pool equipment in the shed to further mitigate the noise issue that Ms. MacKenzie spoke extensively of. She shares a seven-foot boundary on the rear of our property on the west side.

So, at that point, what I did is I undertook to understand how noisy this equipment is going to be outside of a shed. And I want to keep emphasizing that our plan all along has been to mitigate the noise issue, to enclose this
fully. And I went and I talked to Bill Berkmier, who is at North Fork Pool Care, and he spec'd out the kind of pump that we would be using, which is a multi-speed pump, which is considerably quieter. It's a 45 decibel pump, and he -- in a brochure of IntelliFlo pumps, they do have a variety of different decibel levels. If I can give you copies of this, would that be helpful?

CHAIRMAN MOORE: Sure. I will certainly pass it on to the Building Inspector, if it has any useful reference information.

MR. EDWARDS: Thank you. At 45 decibels -- I mean, decibels are tricky things. I knew nothing about decibels a month ago. They're tricky things. It's a logarithmic scale, so it's not -- adds additional -- a 45 decibel pump is equivalent to a very quiet dishwasher.

Dishwashers, if you go to Lowe's, the one in Riverhead sells dishwashers that are between 48 and 63 decibels; 48 is considered to be very quiet. Because decibels are a log. scale, every
three decibels is a big difference, so a 60
decibel dishwasher is considerably more noisy.

In talking to Bill, he also asked if I
wanted to borrow his display. His display has
what an old pump sounds like. It's a 67 decibel
pump, and what the pump that we are proposing, a
multi-speed sounds like, not in a shed. Keep in
mind that this will be further abated, the noise
will be abated by putting it in a shed.

I know that Ms. MacKenzie is concerned
about the Coly pump that is in the middle of --
between her and another neighbor, Cate, who spoke
-- who is not contiguous to our property, but is
also very concerned about the noise. And the
Colys have an older pool with an older pump, with
-- it's out in the open.

So, if I could just play this for you, I
think it helps. It is illustrative to me. The
first noise is not the noise, it's 67 decibels,
and the second noise is 45 decibels. So, if

that's okay with you, I'll push that button and
you can hear.

CHAIRMAN MOORE: That's fine. And I should note that this is indoors. And this will only take a moment, right?

MR. EDWARDS: Oh, this will only take -- no. The first is very noisy, then it stops, and then it --

CHAIRMAN MOORE: I'm just glad we're not talking about foghorns or chainsaws.

MR. EDWARDS: No, no, no.

CHAIRMAN MOORE: So let's -- go right ahead.

MR. EDWARDS: Absolutely not. Oh, and by the way, a refrigerator is typically 50 decibels.

CHAIRMAN MOORE: It's 50, okay.

MR. EDWARDS: So here's the first one, it's going to be 67, and then the multi-speed pump will be the second one and that will be 45.

CHAIRMAN MOORE: It's very quiet.

(Laughter)

(Whereupon, pool pump decibel level was demonstrated by Mr. Edwards.)

MR. EDWARDS: That's 67.

CHAIRMAN MOORE: That's the actual pump?
MR. EDWARDS: That's the pump. That's a tape of the pump noise.

CHAIRMAN MOORE: Oh, I'm sorry. I thought you had the actual pump operating.

MR. EDWARDS: That is what the pump looks like.

CHAIRMAN MOORE: Okay.

MR. EDWARDS: That's the tape of the pump.

CHAIRMAN MOORE: All right. Okay.

MR. EDWARDS: That's 67.

(Whereupon, pool pump decibel level was demonstrated by Mr. Edwards.)

MR. EDWARDS: That's 47.

CHAIRMAN MOORE: Okay.

MR. EDWARDS: And that's --

CHAIRMAN MOORE: Yeah, thank you.

MR. EDWARDS: And we'll put that in the shed, so that will be enclosed. Thank you.

CHAIRMAN MOORE: Thank you very much.

MR. EDWARDS: Thank you for your time.

CHAIRMAN MOORE: And we are currently then in the discussion stage among the Board Members.
I certainly appreciate the recorded sounds, but I think relative to other pieces of equipment that we're familiar with, you get an understanding of the pump.

I believe one of the issues also is it will be enclosed in a structure, which can be further insulated to prevent the noise.

I think one of the concerns that was expressed by a few of the neighbors was the incidental noise that the presence of a pool causes, either children or adults enjoying the pool at various hours of the day, and I understand those concerns. This is an area where there are quite a few pools. But I think, on the same lines, that if you had yard equipment, recreational equipment for children, that the same noise issues would be there. And I think the way to deal with the noise issues is code enforcement, and I think that's something that perhaps would take care of these problems.

I personally think that they've done as
much as they can, considering the lot, to attenuate the noise and the visibility issues with the landscaping that's being done. And I don't see this as greatly different than other pools that have been previously approved by the ZBA.

Comments from others on the Board, please?

Anybody wish to comment?

MR. CORWIN: Well, as someone that doesn't like noise, I'm not too thrilled with the whole thing. And the setbacks were set in the code for some reason, so I really don't know which way to go on this.

CHAIRMAN MOORE: Would the Board -- yes?

MS. NEFF: I just want to --

CHAIRMAN MOORE: Yes.

MS. NEFF: The fact that this lot was -- is not a straightforward lot, but the change made in it happened long before the applicants before us, and that there is an attempt within the width of the yard at the point where the pool is going to
be is 40 feet, not 50 or 60 feet, which might be
a more typical yard, I can see an attempt to work
with the dimensions in a way that has less
impact, particularly moving it away from the
rear, the west lot line.

CHAIRMAN MOORE: Any other comments?

MR. CORWIN: Question. On the two people
that objected about noise, one was, I guess,
MacKenzie?

MS. NEFF: Uh-huh.

CHAIRMAN MOORE: Yes.

MR. CORWIN: If anybody recalls --

CHAIRMAN MOORE: Yes.

MR. CORWIN: -- because I don't. And that
complaint is almost brought into compliance with
the code by moving the pool.

CHAIRMAN MOORE: Correct.

MR. CORWIN: The other one was Byrne, I
believe.

CHAIRMAN MOORE: Yes, Cate Byrne. And that
individual was concerned about not being noticed,
and also that there are six pools, by her claim, in the neighborhood. And her comment was, I think, regarding the accessibility of the bay to these properties, as opposed to using a swimming pool.

MR. CORWIN: So I would just note that the corner of her property, Byrne, is going to be -- these 15-feet scales are hard to use. It's going to be a good 30 feet away from the pool, though about 15 -- well, not even 15 feet away from the lot line.

CHAIRMAN MOORE: Was the Byrne property -- in which position relative to this property, do you recall?

MR. CORWIN: Well, I have to here. I'm not sure if I'm correct.

CHAIRMAN MOORE: Oh, it was down, yes, to the south and west. I think that was the only one I didn't note was there. Yes?

MS. GORDON: I think that this is information sort of external to the immediate
concern. I live one door to the north of MacKenzie, and we hear the Coly pool all summer long, very loud. It's not the shed noise or the pump noise that we hear, it's the noise of revelers, both children and young adults at two in the morning.

So I think I'd like to endorse my Chair's comment about code enforcement here, and consider that that's something -- I mean, I realize this is not the issue we're talking about right now, but it is something that could be taken to the -- to the Code -- to the Code Committee as an issue that's going to be recurring as there are more and more pools, and that that should be a priority for the Code Enforcement Officer.

MR. CORWIN: But how do you regulate that? Do you tell somebody you can't sit in your backyard, and drink beer, and yuck it up with your friends?

MS. GORDON: Is there -- but is there a decibel level for human reveling? Probably. I
mean, I used to live on Shelter Island and there were certainly efforts to regulate noise at public places, anyway, when the decibel level reached a certain point.

MR. CORWIN: I think it's a wonderful idea if you could do it, but I don't see how you can possibly regulate it.

CHAIRMAN MOORE: Well, let me ask the Building Inspector. Are there any objective standards that are used currently for noise in general at properties?

MS. WINGATE: There is a section of the code that deals with decibel level of noise, when and how, except we don't have a decibel meter. So it's hard to go out and check decibel levels at this point in time.

CHAIRMAN MOORE: Okay.

MR. CORWIN: But that's for recorded music.

MS. WINGATE: No, that's actually --

MR. CORWIN: That's for a band or something, isn't it?

MS. WINGATE: There's a whole list of -- it's not only recorded music, it's yard noise and
all kinds of other --

MR. CORWIN: So it would be a machine or something. Again, if you're sitting in your backyard with your buddies drinking beer, and the Code Inspector comes along and says, "You're making too much noise," you're going to get a whole lot of attitude and say, "Hey, do something about it."

CHAIRMAN MOORE: I think --

MR. BENJAMIN: I have one more comment.

CHAIRMAN MOORE: Yes.

MR. BENJAMIN: Plantings, planting trees and bushes to absorb the noise and block the noise works, and in a lot of places they're required. We can cut down the noise considerably by planting a tree or a group of trees, right?

MR. CORWIN: I agree with you, that would be a big help. This plan is showing trees planted on the Boucher property, so I don't know. I don't remember if they're there now, or what shape they're in, or what. And it's kind of showing some --

CHAIRMAN MOORE: To the west.
MR. CORWIN: -- planting on the Edwards property to the west. But I don't see any specifications or any idea what they would be, and I wouldn't know what, other than something that grows tall, what would be appropriate.

MR. BENJAMIN: Yeah. Evergreens sometimes work.

CHAIRMAN MOORE: Well, I think one thing — comment about the noise issues is I think the more frequent result of a noisy situation is that the police arrive, and usually the police encourage the activity to diminish. And I'm not aware whether citations have been issued as a result of failure of people to comply, but I think more often the police are summoned than someone with a decibel meter.

MR. CORWIN: Yeah. In my experiences, they say, "Quiet down." The Greek Church is an excellent example. Although they're not as bad as they used to be, the cop says, "Quiet down," they turn the music down, the cop gets two blocks
away, and they turn the music back up.

CHAIRMAN MOORE: Right. Well --

MR. CORWIN: So we could debate this all night.

CHAIRMAN MOORE: I think we could talk about this all night.

Would the Board wish to proceed with making a decision on this?

MS. NEFF: Yes.

MS. GORDON: Uh-huh.

CHAIRMAN MOORE: So, first --

MR. BENJAMIN: Perhaps.

CHAIRMAN MOORE: Yes, perhaps.

MR. BENJAMIN: Perhaps a condition.

CHAIRMAN MOORE: Well, we can consider when we get to that point to apply some conditions that would be based on potential approval.

First issue is that the ZBA would declare itself Lead Agency according to SEQRA, and declare this a Type II Action. And I would ask in order if you approve.
(Roll Call Vote by Chairman Moore.)

MR. BENJAMIN: Yes.

MR. CORWIN: Yes.

MS. GORDON: Yes.

MS. NEFF: Yes.

CHAIRMAN MOORE: And I say yes.

The next item is the conditions. And I think that the different questions, the conditions that are -- seem to be emerging is that, one, it's granted that the equipment will be minimally noisy and contained in a shed, and, secondly, that there would be an effort to maximize the plantings to minimize noise transmission past the property line.

I imagine there would be a third issue, that any effluent from the pool would have to be discharged not beyond the property line, more likely into the sanitary sewer.

The first question 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 an area variance? And I would ask Mr. Benjamin.

(Roll Call Vote by Chairman Moore)

MR. BENJAMIN: No.

MR. CORWIN: Yes.

MS. GORDON: No.

MS. NEFF: No.

CHAIRMAN MOORE: And I would answer no.

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

(Roll Call Vote by Chairman Moore)

MR. BENJAMIN: No.
MR. BENJAMIN: Yes.

MR. CORWIN: Yes.

MS. GORDON: Yes.

MS. NEFF: Yes.

CHAIRMAN MOORE: And I would 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. BENJAMIN: That's condition --

CHAIRMAN MOORE: Adverse effect on conditions.

MR. BENJAMIN: I would say -- I would say yes.

MR. CORWIN: Yes.

MS. GORDON: No.

MS. NEFF: No.

CHAIRMAN MOORE: I answer no.

And whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals,
but shall not necessarily preclude the granting of an area variance?

(Roll Call Vote by Chairman Moore)

MR. BENJAMIN: No.

MR. CORWIN: No.

MS. GORDON: No.

MS. NEFF: Yes.

CHAIRMAN MOORE: And I would answer yes.

And then the last is to approve the requested variances, which are now two, which is a setback variance of 10 feet to the north, and a variance of six feet to the south. And I would make a motion that we approve the requested variance with conditions that we previously stated regarding the sound attenuation by using a quiet pump and enclosing it in the shed, the vegetation, and the discharge of any effluent from the pool, and with --

MR. CORWIN: Who's going to judge the vegetation?

CHAIRMAN MOORE: Good question. What would the Board suggest? Would the Building Inspector
be able, through the inspections, to determine if
an appropriate amount of vegetation is in place?

    MS. WINGATE: I can do that

    CHAIRMAN MOORE: Would that be suitable, I
mean, between the Building Inspector and the
designer; would that be acceptable?

    MR. CORWIN: Could we ask the applicant if
they're agreeable to some kind of enhanced
plantings?

    CHAIRMAN MOORE: I guess that's just a --
basically a yes or no.

    MR. UELLENDHAHL: Yes. But I would like to
mention that the six-foot solid fence that we're
proposing is much more effective, what we're
talking about here, as far as sound attenuation.
The plantings do not much -- it's just visual.

    CHAIRMAN MOORE: Okay. And is that on the
north and the west?

    MR. UELLENDHAHL: But we are -- the owners
are ready to do whatever the Board requires them
to do as far as planting is concerned. They
would like this to look nice. But I'm saying the
planting, a bush does not do much for wearing off
sound.
CHAIRMAN MOORE: And that fence is on all exposed sides of the property?

MR. UELLENDAHL: Yes, yes.

CHAIRMAN MOORE: Okay.

MR. BENJAMIN: Is that -- is that an official statement? Are you an expert in plantings; is that why you're making that statement?

MR. UELLENDAHL: Well, I live in the Village of Greenport, and I know when I have a hedge close by a driveway, which I do, then I hear every car that drives by. If I have a solid fence, that sound is much less. Yes, it's just very simple.

MR. BENJAMIN: But that's a difference in vegetation.

MR. UELLENDAHL: The vegetation really doesn't do much. It's really more than vegetation, it's area. And in the wintertime, I mean, in the wintertime they don't go swimming, but, you know, it's usually empty, unless you
plant deciduous trees and bushes. But that's all
I wanted you to understand.

CHAIRMAN MOORE: Understood.

MR. UELLENDAHL: The planting, to me, is
not as important as the fencing.

CHAIRMAN MOORE: Well, we just ask you
to --

MR. UELLENDAHL: The six-foot fencing is
much -- is much more effective.

MR. BENJAMIN: A privet hedge is not.

CHAIRMAN MOORE: Okay. Well, thank you
very much.

MR. BENJAMIN: Not plantings.

CHAIRMAN MOORE: So we'll move ahead. So,
with those conditions mentioned, I would make a
motion to approve the requested variance and ask
for --

MS. NEFF: Second.

CHAIRMAN MOORE: Well, I guess it's just to
go ahead. And I would make a motion that we
approve the requested variance, and then ask for
the members to vote.

(Roll Call Vote by Chairman Moore)

MR. BENJAMIN: Yes.

MR. CORWIN: Yes.

MS. GORDON: Yes.

MS. NEFF: Yes.

CHAIRMAN MOORE: And I vote yes.

And so the motion carries, and it is approved. So very good.

Just let me ask, is there a proposed construction schedule for this, when the construction would commence?

MR. UELLENDALH: Well, the -- since it's approved, we can pour concrete in January. The pool can be in place by March or April.

CHAIRMAN MOORE: Okay. So I think by next month, it --

MR. UELLENDALH: Of course, we need a building permit.

CHAIRMAN MOORE: I'm thinking that we'd probably have a Decision Document for this by
next month that would be available to sign. So I think that won't hinder anything, since it's not until January that you would begin. I just want to look at the coordination of efforts.

MR. UELLENDARL: Okay.

CHAIRMAN MOORE: Okay. So the next item on the agenda --

MR. UELLENDARL: Thank you.

CHAIRMAN MOORE: Yes. Is a discussion and possible decision for an appeal for an area variance for Ed Werthner, Post Office Box 982, Southold. The applicant seeks a building permit to construction a house on a vacant lot located on the south side of Bridge Street, adjacent to 213 Bridge Street, Greenport, New York; Suffolk County Tax Map 1001-2-2-8.4.

I describe the conditions of the house, that basically the applicant's looking if a 20-foot north street setback, which would require a 10-foot front yard setback variance.

MS. NEFF: From the street?
CHAIRMAN MOORE: I'm sorry?

MS. NEFF: I'm sorry.

CHAIRMAN MOORE: I said the front yard setback to the street.

MS. NEFF: Okay.

CHAIRMAN MOORE: Would require a 10-foot front yard setback variance. The proposed house to the rear would require a 2.04-foot rear yard setback variance, and including the deck, it would require a 17.96-foot -- sorry, a 12.04-foot rear yard variance. So those are the dimensions of the variances being requested.

We did get a chance to talk to the applicant, and I believe the history on this property is that it at one time was a single property between Monsell Place and Bridge Street. The property was subdivided equally in a previous

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ZBA Board, and then subsequent to that, the former owner of the property with the house on Monsell Place further moved, with the ZBA approval, further to the north, making this lot
substandard as far as lot area was concerned.

So Mr. Werthner now is proposing a house, which is fairly modest on the property, which does require basically two variances, which is 20 feet from the front, and about -- what did I say before from the rear, 12 feet? Twelve feet from the rear as far as the variance.

Discussions from the Board members on the proposed variance?

MR. PROKOP: Did you say --

MR. CORWIN: I made an -- go ahead, Mr. Prokop

MR. PROKOP: I'm sorry.

MR. CORWIN: I made an inspection by myself earlier in the afternoon when Mr. Werthner was marking out the outlines of the building, and I thought this is no big deal. But after I went back and looked on Google and started playing around with the setbacks of the adjacent houses, I thought maybe this isn't that great, because the front yard extended 30 feet, and the houses
along there averaged, I guess, more than 30 feet, if you measure off of Google, which is not an accurate thing to measure from. And I thought is this the right way to go, to stick -- even the house to the west is 24 feet off the edge of the road. Where the property line is, I'm not sure. I don't think we could really see that based on an approximation.

MS. NEFF: Can I just say, these monuments that show on the edges of the property, I doubt very much that they're at the road. I certainly agree with you, that 24 feet for the house to the west from the street, but I would -- I think it's fair to say that the way this house is sited is actually further back than the house to the west, and that the -- on the other side of Bridge Street actually is not the Village of Greenport, to the best of my knowledge.

MR. CORWIN: That's correct.

MS. NEFF: Those houses. There's a lot of variance of the siting of houses, but I don't think it's true that the house to the west is closer to the road than this house. The monument, if that's a monument that marks my property, is there's a sidewalk in front of it
and then the road.

MR. CORWIN: But we didn't see any
monuments out there.

MS. NEFF: Well, then all I'm saying is,
you're right, but this thing that's drawn on this
survey, if it is a monument, I don't know. I
mean, I don't know whether they're called
monuments, but they are -- in fact, mark the
corner of lots. The depth of the lot is not from
the street, it's from where that point is, in the
Village of Greenport, to the best of my
knowledge.

CHAIRMAN MOORE: For the requested setback,
though --

MS. NEFF: Yes.

CHAIRMAN MOORE: -- it is being -- it is 20
feet from the property line, which is the
appropriate measurement. I think my observation,
I agree with Mr. Corwin, the house to the east,
which is a small ranch house, is set back
considerably more.
MS. NEFF: Yes, yes.

CHAIRMAN MOORE: The house to the west, I believe, would be similar in its position to the front of the garage. Perhaps it was set back one or two feet, you would guess, from the proposed 20-foot mark, but it's very similar to the proposed house.

And one of the advantages I see on this, the rear setback request is actually the smallest amount, and that's for the deck, which isn't very large. The house on the property off of Monsell Street is actually very far forward on the property, so this house will be quite separate, well separated from the house to the rear. So I don't see a big problem with the rear setback variance. It's nearly what's required for the bulk of the house, and the deck brings it closer to the rear property line, which is essentially unoccupied in the property to the other side.

The proximity to the street is somewhat of a concern, that the -- there would be sufficient
room for a car to park in front of the garage, if necessary, and I believe 20 feet is an allowable amount for a car parking place.

MR. CORWIN: But I wanted to say a couple of more things.

CHAIRMAN MOORE: Yes.

MR. CORWIN: And my measurements are not accurate, I have to say that, but the garage is about seven — it's over 700 square feet. The house itself, the first floor is 665 square feet, and the garage is — it's a two-car garage, and it's wider or longer; it faces the road. It's deeper than it needs to be. So I would be happier if the garage was shallower than it is, and gave the — was more in line with the average of the houses in the Village of Greenport on Bridge Street.

CHAIRMAN MOORE: Okay. One of the things with the garage is when you look at the — the floor plan is one thing. The actual artistic, artist rendition of the appearance of the house
it is has a monolithic roof line, which
essentially extends downward. So you don't
notice the garage's position so much, other than
the actual square -- the setback from the front.
I don't know if that's an option, that other than
the setback allowance that might be permitted.
We're not so much into aesthetics as physical
dimension of a property and whether it's really
compatible with the neighborhood.

Any other comments from the Board?

MR. PROKOP: Can I ask a couple of
questions?

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CHAIRMAN MOORE: Yes.

MR. PROKOP: So did we approve this as a
substandard lot?

MS. WINGATE: Yes.

MR. PROKOP: Is 7500 substandard? It
wasn't exactly 7500, because it's in -- we
thought it was in R-2.

MS. WINGATE: No, it's in R-1

MR. PROKOP: It's in R-1.
CHAIRMAN MOORE: But the square foot for an R-1 lot requirement is still 7500, or is it higher?

MR. PROKOP: No, R-1 is 10,000.

CHAIRMAN MOORE: Ten thousand, so it is a substandard lot.

MR. PROKOP: Okay. Then the other question was I'm also looking at the one survey. The survey that I just saw has the deck as indicated as 14 feet, and then the house is indicated as another 10 feet, for 24 feet.

CHAIRMAN MOORE: Which dimension are you referring to, Mr. Prokop?

MR. PROKOP: These rear dimensions.

CHAIRMAN MOORE: Oh, yeah. This is -- I don't believe this is 14, according to the requested variance. It's a longer distance. It's something like 17 feet off the rear line.

MR. PROKOP: I know. But was is the -- was there a survey or a plan submitted that shows that?
MS. WINGATE: Yes. He's got everything.

MS. GORDON: 17.96.

CHAIRMAN MOORE: Yeah, it's 17 feet, 17.96 to the deck. It looks like 14, but I'm not -- I don't believe that's the dimensions.

MR. WERTHNER: I think that was an older -- I think that was an older take-off --

CHAIRMAN MOORE: Okay.

MR. WERTHNER: -- okay, with a scale that was not exact. That's why I went and had it done by the surveyor properly.

MR. PROKOP: So do we have that in the file at all?

MR. WERTHNER: Yeah.

CHAIRMAN MOORE: I just have the three drawings, which is the original site without the house, and then a proposed house, which is hard to read, and then the hand-drawn part, which puts the house on the lot. And it's 27, and the deck is 10, so that makes it 17.
CHAIRMAN MOORE: Plus off -- 17.96 off the receiver lot line.

MR. PROKOP: Was this stamped by anybody, the one --

CHAIRMAN MOORE: Not this one. This one is not, but this one -- this one is.

MS. WINGATE: It's current.

MR. PROKOP: It's current, but is it stamped?

CHAIRMAN MOORE: The trouble is the dimension from the house to the rear lot line is not shown on the stamped drawing, and it's just 10 and what looks like 14, which is apparently not correct, it's actually 10 plus 17. So we may need to clarify that, I don't know.

MS. WINGATE: Can I see?

CHAIRMAN MOORE: Yes. It's just that the reproduction of the dimensions makes it look like 14 feet here. It looks like a 14.

MS. WINGATE: It does.

CHAIRMAN MOORE: And this one makes sense, that if this is 27, this clearly is 17-plus, so it's not clear.

MR. WERTHNER: Maybe it's because I do my
7s like foreigners do, with the cross in them.

CHAIRMAN MOORE: It looks like 14.3, or something, but it's very small. Do you have a larger version of this?

MR. WERTHNER: I don't know. I don't think so, no.

CHAIRMAN MOORE: So are we concerned that we might be approving a 14-foot setback instead of the 17 foot?

MS. WINGATE: I've done the math. I would go with the math.

CHAIRMAN MOORE: So the math works out to 17 feet. So it's safe to say if you take the depth of the house, 54 and 10 is 64, off of 81.

MS. NEFF: It's 81.96.

CHAIRMAN MOORE: Or 82, so 64 --

MS. GORDON: It's 17.9.

CHAIRMAN MOORE: You're getting about 18 feet, so it comes out correct.

MR. PROKOP: I don't think that the Zoning Board should be doing these calculations.

CHAIRMAN MOORE: No, no, it takes up a lot
MR. PROKOP: We've had other applications in the Village that we've turned down in that process, because they -- we have a requirement that everybody's submissions have to be stamped.

MS. WINGATE: It is.

MR. PROKOP: Or certified.

MR. WERTHNER: They just did it two weeks ago, the Peconic Surveyors, off the 2004 version.

MR. PROKOP: Do you have a stamped and certified plan that shows the variances that you're requesting?

MR. WERTHNER: I guess I did get one. I thought I gave it to you.

CHAIRMAN MOORE: Well, it's just that the drawing here seems to depict the wrong dimension off the rear line. The math, if you do the setbacks and the depth of the house and the depth of the deck, it comes out to about 18 feet, but it appears to be marked as 14 feet. So that question is where is the -- what is the actual
dimension that's being approved? You know, the
difficulty is if 18 feet is approved as a rear
setback and the house ends up being 14 feet, it's
not right. And how do we rectify that?

MS. WINGATE: If you notice, the plains of
the rear of the house are not on the same plain.

CHAIRMAN MOORE: I'm not hearing you, I'm

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sorry, if you could point that out to me. Just
if we can get the correct dimensions, we can move
forward. Otherwise, we need a better drawing.

MS. WINGATE: Where are you? If you go to
the plain of the rear of the house --

CHAIRMAN MOORE: Yeah.

MS. WINGATE: Oh, here, are not the same,
because here he's taking the measurement from the
-- from the bay window, and here he's taking it
from the house. So what he's doing here is from
the bay window and not from the house.

MS. NEFF: Yeah.

MS. WINGATE: So that's the -- that three
feet is the difference between 14 and 17.
CHAIRMAN MOORE: So what is it, is it 14 or is it 17 feet where the rear deck is positioned?

MS. WINGATE: It's -- this is right. The survey is right, but I was taking it from the house, because that's the bulk of the variance.

CHAIRMAN MOORE: So what is the variance being requested? So that the -- we're spending a lot of time on this, but the rear deck --

MS. WINGATE: The bay window is at three feet.

CHAIRMAN MOORE: It says that the rear deck

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is sited so that the proposed rear deck is set back 17.96 feet from the rear property line, requiring a 12.04-foot rear yard variance. So are you saying that this house will be 18 feet off the back property line?

MS. WINGATE: Yes.

CHAIRMAN MOORE: The deck?

MS. WINGATE: From -- well, from the plans that I have, the assumption was the bay window was not part of the foundation. The bay window
wasn't --

CHAIRMAN MOORE: Okay.

MS. NEFF: Okay.

CHAIRMAN MOORE: So then if we approve a 12-foot variance, that means that nothing can be past that point --

MS. WINGATE: Correct.

CHAIRMAN MOORE: -- on the construction.

Is that suitable to people, that we approve --

MR. PROKOP: No, that's not right.

CHAIRMAN MOORE: -- what it needs to be.

MR. PROKOP: I'm sorry.

CHAIRMAN MOORE: Yes.

MS. WINGATE: What?

CHAIRMAN MOORE: It seems the drawing is depicting something else, so --

MR. PROKOP: I know, but we still don't -- we're looking at a -- the deck is indicated as 14 feet, and the -- it doesn't explain the discrepancy in the deck.

MS. WINGATE: There's no discrepancy in the
CHAIRMAN MOORE: All I want to know is how far is the deck going to be from the rear property line? This drawing doesn't depict it as the variance application states, that's the problem I have.

MR. PROKOP: The drawing shows 14 feet and some inches, and the variance requested is 17 feet. Excuse me, the variance requested is basically on a setback of 17.9 feet.

CHAIRMAN MOORE: It's essentially, yeah, 18 feet. So how do we rectify that problem? What's the solution? Correct, have a proper survey, or do we change the variance to a smaller variance that might not succeed? What would the Board's pleasure be?

MR. PROKOP: Wait. The problem is we don't have a survey that shows what is being requested.

CHAIRMAN MOORE: Okay. So why don't we just -- the Board would ask that we -- I'll make a motion to table the application pending the
 submission of a drawing that properly depicts the
requested setbacks. So I make that motion, and
ask for a second.

MS. GORDON: Second
MR. BENJAMIN: Second
CHAIRMAN MOORE: 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: So that's the way it is.
We're going to have to have a better drawing.
Sorry.

MR. WERTHNER: Okay.
CHAIRMAN MOORE: But we don't want to have
a mistake of granting a variance that can't be
met.
MR. WERTHNER: Okay.
MR. PROKOP: And just to follow up, because
I know we have --
CHAIRMAN MOORE: Yes.

MR. PROKOP: We have a sketch, or whatever that is here.

CHAIRMAN MOORE: Yes.

MR. PROKOP: I don't have the benefit of it, but I don't think that we can act based on a -- I don't want to have the applicant come in with a sketch the next time.

CHAIRMAN MOORE: Right. Well, let's ask for a stamped drawing with the proper dimensions.

MS. WINGATE: He can go back to the surveyor that did that.

CHAIRMAN MOORE: Exactly.

MS. WINGATE: I also have the opportunity now to find out if the bay window is part of the foundation or --

CHAIRMAN MOORE: We just want the dimensions that clearly show the setbacks required. Whether there's a bay window back there or not doesn't matter, really.

MR. WERTHNER: Can we do -- can we do the 14-foot setback and just leave it that way, and I'll just build it right to that? That's fine
with me.

CHAIRMAN MOORE: That's shaving it --

MS. NEFF: Just to clarify, that would --

It would involve a greater variance than it seems that the plans actually suggest, but it's not definite. That's why we're asking you to --

CHAIRMAN MOORE: Right. And the problem with that is to grant a larger variance administratively puts it back to a public hearing, so it's going to take as much or more time than just getting the proper drawing and clearing it up next month with the final vote.

MS. NEFF: That it matches 17.9 --

CHAIRMAN MOORE: It matches what's being asked for, correct.

MS. NEFF: The drawing matches that.

MR. PROKOP: And if you're going to make any changes on what -- what the notice says is what was requested, and this is what was published.

MR. WERTHNER: Right.
MR. PROKOP: So if whatever you submit that's stamped and sealed by a surveyor is different from this, you need to get us -- and you want to be on for the next time. If you don't care about being on in January, it's up to you. But if you'd like to be on in January, you have to get it to us in time so that we can get the public notice out, which means it's --

CHAIRMAN MOORE: Well, if you're going to change the variance.

MR. PROKOP: That's what I said.

CHAIRMAN MOORE: Yes.

MR. PROKOP: That's the first thing.

MR. WERTHNER: Yeah. Something's wrong, because like I said, we -- Eileen said -- told me -- the Building Department told me that I have to put the house on the plan, and now the -- that take-off, but I thought you had that in your possession.

CHAIRMAN MOORE: Well, in a way, but it's depicted with the wrong dimensions. And I
think --

MS. WINGATE: Can you move forward on the house and work on the deck?

CHAIRMAN MOORE: Let's just get a proper drawing and take care of it next month. I think, you know, it's not a major question, but we've had to deal with swimming pools that ended up in the wrong place and required variances --

MR. WERTHNER: I don't want that to happen.

CHAIRMAN MOORE: -- 8, 10 years after they were granted. So --

MR. WERTHNER: I agree.

CHAIRMAN MOORE: So, rather than have successive variances, let's just get it right one time.

MR. WERTHNER: Okay.

CHAIRMAN MOORE: Okay? So we did vote on that to -- correct?

MR. PROKOP: Yes.

CHAIRMAN MOORE: We did push it off until next month, and I apologize for that, but it will
eventually get done.

the next issue is the discussion for the
request for an interpretation of section 150-9A
of the Village of Greenport Code, and if you
wish, I'll read that again.

I did bring a little bit of documentation
with me concerning the Commercial Retail
District, because I think the interpretation
we're being asked to do is to interpret what the
actual statement of that section means relative
to the Commercial Retail District. And then we
can talk about some of the particulars of the
current situation at the property as to -- and,
you know, whether we're going to get into that or

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not, I'll ask Mr. Prokop whether it's incumbent
on the Zoning Board of Appeals to then determine
whether the information so far presented meets
that definition of the Code of the Village of
Greenport.

Are we just issuing a straightforward
interpretation of what it means, and then letting
other entities and agencies deal with the
compliance, or are we actually making a reference
to the situation of this particular use of the
property relative to the code? I don't know if
that's a clear enough question.

MR. PROKOP: Are you asking me right now?
CHAIRMAN MOORE: Yeah.
MR. PROKOP: Oh, I'm sorry.
CHAIRMAN MOORE: Yes, if you could.
MR. PROKOP: I thought you were saying
later on you were going to ask me.
CHAIRMAN MOORE: No, no, I'm asking it
right now.
MR. PROKOP: I think it's specific to this
application.
CHAIRMAN MOORE: Okay.
MR. PROKOP: And this use.
CHAIRMAN MOORE: All right, very good. And

we're not discussing a variance, but we're just
discussing whether this use fits with the
requirement of the code.
Now one of the things that confuses this is the nature of the activities at the property, but I think we ought to first talk about the code itself. And if you'll just bear with me for a minute, I'm going to find the chapters here.

There was a lot of discussion about this property in the past, and I just want to confirm that there was no question, that this property is Retail Commercial; is that correct, that this district and this property is included in the Commercial Retail District? So we're talking about that Chapter of the Code.

In the permitted uses, there's a whole series of things, there are 18, in fact. And, typically, they are retail stores and banks, there's personal service and nonpersonal service agencies, eating and drinking places, business and professional offices, theaters, hotels, motels, cleaning establishments, newspaper printing, clubs, mortuaries, various things.

The issue that we're talking about is the Issue #9, which is manufacturing, assembling,
converting, altering, finishing, cleaning, or any other processing of products or goods so produced or processed are to be sold at retail exclusively on the premises, provided that the space so used is fully concealed from any street, and equal in area not more than 20% of the square footage devoted to retail sales; not more than two employees are engaged in such production or processing.

I think the point here is that this comes off of the basis of retail stores and banks, and Section 9 essentially allows for a certain amount of manufacturing on a premises that is a retail business.

There is a restriction, which is fairly strict, that 80% of the floor space has to be devoted to the retail sales, and the production can only occupy 20%.

So I think that this issue reflects the intent of the code, that the principal business is retail sales at the facility.

If you go to the General Commercial District, there are permitted uses such as light manufacturing, and assembling, and warehousing,
so that that is a district where a strict

production facility would be located.

The Waterfront Commercial District also
allows for this kind of activity under the
category Fish and Shellfish Processing Plants,
also retail and wholesale of seafood products.

One of the things that I think confuses the
issue a bit is that throughout the application
process, this facility has been referred to as a
wholesale facility. It's been before the
Planning Board, and in the Planning Board's
actual application is a description which is
processing wholesale smoked fish business. The
business is the sole owner/operator, with one
employee, who smokes seafood product for
wholesale and other retail businesses for
consumer -- oh, to other retail businesses for
consumer consumption, basically what a production
wholesale business is.

There is -- the Building Inspector's
inspection of the property refers to the previous
use being classified by New York State Code as M-Mercantile. The new occupancy is classified as F-Factory. And in the application for use evaluation, signed by Mary Bess Phillips, is the proposed action for this building is a production wholesale facility not open to the public. The facility will not participate in retail sales. So, consistently, the applicant has been presenting this as a production facility.

MS. PHILLIPS: Could I make a clarification?

CHAIRMAN MOORE: And just let me finish. When we go the minutes of the Planning Board back in October, there was a lot of discussion about the type of activity at the facility. And Ms. Phillips says -- she is referring to odors -- "No one even knows that they're there. This is a wholesale operation." It goes on to say, "You know, he has a wholesale business that he does." There was actually discussion that there were restrictions in the lease that retail sales from
the premises were not permitted.

So my impression of this whole dialogue is that this is a production facility, producing materials for principally wholesale use. And there has been some discussion that actually this grew out of a retail business. I just find it difficult to look at the facility, that it's shuttered up, that it's not open to the public, it's not a retail business in the common sense,

yet the assertion that materials are being sold through the internet as a retail business without substantiation as to the percentage, establishes this as a retail business suitable in the Retail Commercial District. That's just my personal feelings. I think it's a stretch.

And I think if this were to be used as an example for retail business in Greenport as I whole, I can't imagine businesses on Front and Main Street shuttering their businesses, going into production and selling their wares on the internet. I don't think that's why this section
of the code was written, to allow for a 20% floor space production in the Retail Commercial District. So, you know, my impression is that this does not meet the requirement of Section 9.

Any other discussion from Board Members as to opinions?

MS. GORDON: I think we're sort of stuck with a -- we're stuck with code wording that does not take into consideration the modern internet sales sector, and that adds to the problem. I mean, I, too, would like to see -- you said that the way the 70/30 is measured is by the value of sales, right? So I would assume that it is possible to provide that information. I'm quite prepared to consider this as predominantly retail, given that the primary business is done over the --

MS. PHILLIPS: Internet.

MS. GORDON: -- the internet to purchasers from anywhere, if I saw, on the basis of the receipts of the business, that it really was
70/30, but we haven't been given that material.

CHAIRMAN MOORE: And I think one of the other difficulties is even if granted that the business could be considered a retail operation, the percentage requirements at the facility are clearly not being met. It's not an 80/20 situation. There's not an 80% front end retail business. And one of the difficulties I have is it's not open to the public, it's a closed facility, and the lease arrangements prohibit it from being so.

MS. GORDON: The reason I asked the question about where the business is -- where the internet business is done is that if the internet business is mostly done in the office, then, clearly, it does meet the 80/20 thing, because that's where the retail transactions occur. So, I mean, I really do think that a problem we have here is with the code and the assumptions about retail as in the 21st Century, where so much retail is done by -- through the internet.
CHAIRMAN MOORE: Well, I think if this were not a manufacturing facility, if it was simply a Retail Commercial zoned district that used online services to establish its customer base, that could easily be classified as a business or professional office, that fits, I mean, if a storefront wishes to have a business of operating as an internet business selling things and shipping things. The trouble is that the section of the code here restricts such activities which involve manufacturing.

And, you know, my impression that the facility is — you know, front to back, the facility looks like a manufacturing plant, it doesn't look like a retail outlet. And, you know, there may be some retail sales that aren't substantiated that are occurring, but it's documented as a — as a wholesale business. And there are restrictions on operating as a retail business at the facility. So that I think it's kind of a stretch of the definition to say that
this is a retail facility that's involved in a minor way in manufacturing. I think it's a manufacturing facility.

Comments from other Board Members?

MR. CORWIN: Well, I tend to agree with what you're saying. I don't have a big problem with the operation there, if there was another route go, but the applicant dropped the variance request, and it's pretty hard to say that it's retail or the space is correct.

CHAIRMAN MOORE: Yeah. I think, even if by consensus on the Board this would be defined as a retail business, and I can't speak for the Board, I can only speak for myself, and we haven't taken a vote, the operation would still not meet the requirements of the code and would require a variance. In that case, it might be an area variance instead of a use variance.

So, if you're dealing with the dimensional aspects of a retail business and this requirement, would that be an area, as opposed to a -- Mr. Prokop?

MR. PROKOP: I think that you need -- excuse me. No, I don't think it is. I think you need -- my recommendation would be that you read,
the Board reads Subsection 9, because you're coming -- you're applying ratios that I don't believe exist, and the -- so it's "manufacturing, assembling, converting, altering, finishing, cleaning, or any other processing of products where goods so produced or processed are to be sold as retail exclusively on the premises, provided that the space so used is fully concealed from the street and equal in area to no more than 20% of the square footage devoted to retail sales, and not more than two employees are engaged." So I think the 20% that is being, you know, bantered around really applies to the square footage of the floor, not the ratio to the sales.

CHAIRMAN MOORE: Right.

MR. PROKOP: And then there actually is no ratio of sales.

CHAIRMAN MOORE: And I'm saying --

MR. PROKOP: You asked me -- that's what I'm saying in response to your question, that I
would just carefully read the code that you're
being asked to interpret. I don't want to get
involved in the interpretation.

CHAIRMAN MOORE: Right. No, I understand.

MR. PROKOP: I just caution you to, please,
read it.

CHAIRMAN MOORE: I believe I was stating
that even if being regarded as a retail
operation, the dimensional aspects of the retail
sales versus production do not meet the square
foot requirements. So that I would say the
operation didn't meet the requirements of the
code, even if defined -- if it would be defined
as a retail operation.

MR. PROKOP: Then that would be an area
variance, if that's your question.

CHAIRMAN MOORE: Yes, that would be my
question, yeah. Other comments? Who haven't we
hear from?

MS. GORDON: So your assumption would be
that that -- the 20% refers to the front part of
the building --

CHAIRMAN MOORE: No, the --

MS. GORDON: -- that area, space?

CHAIRMAN MOORE: The space allowed for the
production aspects of a mixed business, which is
retail and manufacturing, would be that the
manufacturing could not occupy more than 20% of
the overall space of the retail operation. You

know, there is some shipping from the front and,
you know, completing orders in the front, but
there's also completion of the manufacturing
process in the front. So I don't see this as
meeting the requirement.

I'm thinking of an example, that the Surf
Shop in Greenport is a 100% retail operation. If
Mr. Dowling decided to start producing paddle
boards himself, he could do so in the rear of his
store for 20% of the floor space, providing that
he is selling these through retail operations in
80% of the retail space.

So, even if the newer types of ordering,
that this facility is not open to the public, it is not an over-the-counter retail business, but an online retail and wholesale business, I would say that it does not meet the requirements of the code, because it's essentially -- I would say, probably 80% of the operation occupies -- it occupies 80% of the floor space to complete the production of the materials, and a very small portion is devoted to completing the orders by shipping them and packaging them.

MR. BENJAMIN: It brings up the question of the size of the product, if you had 80% of the area to sell a one-pint container, you see. And the difference in the marketing, you know, there's not a clerk that has to put something in a bag and run a cash register, there's a guy that just has to push a button. So this is like a totally different concept in retailing.

Another thing, I think there's a couple of businesses in town that make things and sell things out of their store, but, yet, they're a
retail-only.

CHAIRMAN MOORE: Correct.

MR. BENJAMIN: I think of Aldo's with his coffee. You know, he manufactures -- well, he processes coffee. I don't know if Preston's anymore is doing it, but they used to make frames for their pictures and sell them. So they -- but they also had a store.

CHAIRMAN MOORE: That's correct.

MR. BENJAMIN: But they're all retail, but they're different. So this is a different thing, but it's dictated by the size of the product. That's, you know, a point that --

CHAIRMAN MOORE: I think the examples you used would meet the requirement of the code for Retail Commercial, because they do -- you know, they do occupy a small percentage of the floor space of the facility for the production aspects, and they are in the environment of a retail business that's open to the public.

We're now talking about some new concepts
that I certainly don't want to dismiss, but I think they may be coloring the argument a bit to basically have a production facility operating as a production facility front to back, which just happens to be selling a certain amount retail through mail order. I certainly imagine that a certain amount of these materials for wholesale production are delivered directly by the producer. And I'm just having difficulty getting my hands around this particular operation meeting the requirements of Section 9.

MR. BENJAMIN: That's probably what it would have to do. You have to prove that it's at least more than 50% in order to be something.

CHAIRMAN MOORE: I think as far as the interpretation, if the Board is going to just vote on an interpretation --

MR. BENJAMIN: Okay.

CHAIRMAN MOORE: -- as the interpretation of Section 9 is as written, that it is an allowance for 20% floor space of a facility to be
devoted to production in the environment of an 80% retail operation. And it does indicate here also that to be sold at retail exclusively on the premises. That could include shipping, which then I think satisfies the argument that the applicants are making.

But I think the simplest way of looking at the interpretation is it says what it means, 80%/20%, and that any business that cannot meet that requirement is not operating within the requirements of the code. And the basis of this is that you're basically starting with a retail store and you have some manufacturing within. Is that agreeable with the Board as far as an overall interpretation? How would you suggest the discussion be wrapped around?

MR. CORWIN: It's a very awkward paragraph. What it's saying, that is what, 60 years old, 60 years ago or so, 70 years ago, and, certainly, things are changing. But, unfortunately, I don't think it's our place to -- it's the Village Boards's place to change it and make it more compatible to some other type of use. So it's very difficult to say yes or no, other than what
I said before. I can understand the variance.

CHAIRMAN MOORE: Go ahead.

MS. NEFF: Well, on the occasions where they've asked to provide an interpretation, we can also say we prefer not to, which I like.

On the other hand, there's also -- if you think about a code that was written whatever number of years from number 70 to 50, whenever it was written. The intention behind it, it seems to me, is you don't want manufacturing to be, or all of those things that went with manufacturing, to be a disturbance to the rest of the uses in the neighborhood. And that one way to look at an applicant -- again, this is -- this is the Planning Board's job -- is to say the scale. And, actually, the owner of the building also suggested that if it was much bigger, it couldn't be there. Does it fit into the site plan of the whole area, this particular use? Is it -- I think that's one way to look at it.

And I like the idea that we don't have to offer an interpretation, that all those words --
people will walk up to that. And you do have to
work on signage that's very clear about --
because they're used to walking up to it and --

but what is actually going on in a safe manner,
where all the rest of that, which is not our
business to discuss, has a lot of ring of
appropriate to me.

CHAIRMAN MOORE: I think I would have far
less trouble with trying to interpret that not
only -- the meaning of the code here, I think, is
clear. It says 80%/20% within a retail business.

MS. NEFF: I think that's a very outmoded
way --

CHAIRMAN MOORE: I know, but that's --

. MS. NEFF: -- in a lot of ways, that's my
point.

CHAIRMAN MOORE: Yeah, and that's what it
states, but it's in the environment of a retail
store. I would have far less trouble dealing
with the percentage of this if it, in fact, were
a retail outlet that had customers walking in and
out and could purchase the product at the site.

I see that as making it far more palatable as a retail operation, because it is open to the public, and it's not just a factory, it's not just a front door closed, "Don't come in."

MR. BENJAMIN: Exclusive.

CHAIRMAN MOORE: You know, exclusive to production. That's what this facility is, in a sense. And it ships — you know, any production facility is going to ship its materials, and it's going to do it by telephone orders, it's going to do it by internet orders. But the point is that you're making something and shipping it, and that's exactly what a factory would do.

In the absence of a visible retail operation, I don't see how it fits in the Retail Commercial District, it just doesn't do it for me.

MR. CORWIN: Let me just make one aside. When I was a young man, not that that place was a retail fish market, but the rest of that operation was an ice plant.
MS. NEFF: Absolutely.

CHAIRMAN MOORE: Yes, that's --

MR. CORWIN: So that was manufacturing. It was a soda plant, that was manufacturing, and you didn't buy it retail in there. And it was the supplies for fishermen, that was not really a retail operation.

CHAIRMAN MOORE: Right, right.

MR. CORWIN: So it kind of -- what was there originally was kind of pushed out at the --

CHAIRMAN MOORE: That's right.

MR. CORWIN: With the zoning that was picked for it, I guess.

CHAIRMAN MOORE: And in that case, you know, the -- as the manufacturing or general commercial activities leave that site, they become outdated and eliminated. And the purpose and intent of the zoning, right from the beginning of the chapter, is the gradual elimination of nonconforming use. So that there's really no justification for continued
nonconforming use because it used to be, and those nonconforming uses have lapsed. This current building has been used as a retail facility for more than 20 years, probably, but it's not been a manufacturing facility, so --

MS. NEFF: And it's -- but it's integral to a site that is completely very much like it used to be --

CHAIRMAN MOORE: Yes.

MS. NEFF: -- with tenants, not exactly the same as ice plant, fishermen supplies, but there's looking at the whole site.

CHAIRMAN MOORE: Yeah, it's used as retail activity. There is warehousing, which --

MS. NEFF: There's all kinds of -- it's a mix.

CHAIRMAN MOORE: -- is a long-term, but the furniture store is a retail operation. The current building was used as a retail facility for at least 20 years. And the warehousing operation has been there for many years. It's
perhaps a continuation of a nonconforming use, but that's not our question tonight. How would the Board wish to proceed on this, because time will run out shortly. 

MR. PROKOP: I just have one other quick question.

CHAIRMAN MOORE: Yes

MR. PROKOP: So this came to -- you know, I feel like I want to start a two-hour discussion about this point, but -- so I'm sorry --

CHAIRMAN MOORE: You can have a 10-minute discussion on this.

MR. PROKOP: Okay. This -- the application for an interpretation originally came as sort of a tag-on to an application for a use variance, okay? So the application --

MS. WINGATE: Evaluation.

MR. PROKOP: I'm sorry, use evaluation. So there was an application for a use evaluation, which was denied, and then there was an application for a use variance.
CHAIRMAN MOORE: I don't believe it was denied.

MS. WINGATE: It wasn't denied, it was sent here.

CHAIRMAN MOORE: It was tabled pending an interpretation of the Zoning Board. And in conjunction with that, the applicant filed a use variance. Actually, the applicant filed it all. The Planning Board has not filed a request. So that the basis -- the applicant has standing to ask for an interpretation, which normally a regular applicant wouldn't --

MR. PROKOP: Okay.

CHAIRMAN MOORE: -- because of an adverse, you know, decision pending before the Planning Board. So that we have no objection to having Mary Bess Phillips ask for an interpretation.

MS. PHILLIPS: Can I ask a question?

CHAIRMAN MOORE: Yes.

MS. PHILLIPS: Because my understanding is that the Planning Board is the one that referred this, and my understanding from Eileen is I had to fill out a change of use application.
CHAIRMAN MOORE: That, the application you filled out is a request for an interpretation, and originally --

MS. PHILLIPS: That was my request.

CHAIRMAN MOORE: -- a request for a use variance.

MS. PHILLIPS: But the Planning Board asked for --

MS. WINGATE: The Planning Board asked that you go for a use variance.

MS. PHILLIPS: Correct.

MS. WINGATE: That they didn't believe that the business suited the code, and that's why they wanted you to come to Zoning for a use variance, and you asked for an interpretation.

MS. PHILLIPS: I asked for the interpretation because the use -- to change the use -- the use variance could not -- I would not have met all the criteria for that, for the income.

CHAIRMAN MOORE: I'm sorry, could you say that again? I don't follow that.

MS. PHILLIPS: Okay. Under the conditions
of changing the use, the use variance, I would not have met all of the conditions, even down to the income section, because it just -- no matter how, it just wasn't -- the percentages wouldn't work.

CHAIRMAN MOORE: Yeah.

MS. PHILLIPS: I was advised by my attorney to withdraw the use variance.

CHAIRMAN MOORE: Yes, okay.

MS. PHILLIPS: As I have explained, and I will now explain, and I have explained to the Village Attorney, is that I am going to be amending the Planning Board's use evaluation, because there was much communication issues in dealing with this application from the beginning, okay? There have been mistakes made on the applicant's part. I became involved in it when I found out the mistake, came to the Village and said, "Okay, we have issues here, I need to straighten it out," okay?

I -- technically, I am a little confused on
your interpretation of what you're saying, 
because it has been a fish market in the past, 
and a fish market does process food, okay? It 
does wholesale. As I -- you know, as I explained 
in the document, the seafood industry has 
changed. I am having a hard time, and this is 

something that you'll have to decide. I'm 
calling it a factory, or a manufacturing, when 
it's really a seafood -- seafood establishment, 
okay? That's -- in my eyes, that's what it is. 
But trying to fit it into the code, I understand 
where you're coming from. 

CHAIRMAN MOORE: Yup.

MS. PHILLIPS: But I also know that it is 
-- it is an old code, and that building has had 
uses in it before that were acceptable, i.e. fish 
market, i.e., before Salamanders became what it 
was, it started as a bakery, which sold out of 
there.

So, at this point, I -- as I said, I have 
presented -- he's in a different -- he's in a
different type of retailing. Village Code does not -- there are no definitions for retail, okay? In our code, there is no definition of what retail means. Retail means not open to the public, but serves the public, okay? That's why I put the definition in from New York State and IRS, because there is nothing in the Village to go by which designates retail.

CHAIRMAN MOORE: Right.

MS. PHILLIPS: So, as I said, that's -- you know, that's where I'm coming from. It's -- to me, it's a seafood market, so.

CHAIRMAN MOORE: I think the way that we'd have to proceed here is to simply either support or not support the Section 9 as written, and then infer back to the Planning Board that we have concerns that the current setup of the business, which is already operating, we have concerns that it may not meet the requirements of the code as written. And we'd have to leave it to the Planning Board to address that, and the Building
Department as well, I suppose. Is that agreeable?

MR. CORWIN: Well, that's doing the Planning Board's work for them. And the more I'm thinking about this and hearing what the Building Inspector said, I like Ellen's idea, that we don't have to make a recommendation.

CHAIRMAN MOORE: We don't have to make a recommendation, but we would simply make a motion that we agreed with the wording of the --

MS. NEFF: When you say --

CHAIRMAN MOORE: -- Section 9?

MS. NEFF: Could I just say one thing before you speak?

CHAIRMAN MOORE: Yes.

MS. NEFF: When you say, "May not fit the code as written," then I can support that, because that doesn't sound like we're saying exactly what it means --

CHAIRMAN MOORE: Yes.

MS. NEFF: -- and what it doesn't mean,
what is this. But I am not comfortable with
supporting that we got totally clear what the
interpretation is of that section, and that this
application doesn't fit it. That -- I can't
support that --

CHAIRMAN MOORE: Okay.

MS. NEFF: -- based on what I know at this
time.

CHAIRMAN MOORE: No. I would say that the
only thing we can do is agree that the Section 9
supports the Retail Commercial District by
limiting the amount of manufacturing to a
percentage as stated. I think we'd have to agree
that that's what our interpretation of that
section is. It's -- you know, the basic
interpretation is read it, and that's, you know,
what it says.

MR. BENJAMIN: Yeah, but you said

manufacturing, and packaging, and selling is
wholesale.

CHAIRMAN MOORE: That depends on the
customer.

MR. BENJAMIN: Yes.

CHAIRMAN MOORE: That's why this new
wrinkle is coming in as to the customer base and
the type of sales that are occurring.

MR. BENJAMIN: So, again, what changes is
you can agree with 9, but making it plain is
where we have the problem here, making it plain,
because a traditional retail is 80/20, but it's
not necessary in this case. You see, it's not
necessary, it's just a matter of --

CHAIRMAN MOORE: This pretty well
specifically -- I mean, if it was all retail, it
would just be #1, retail stores and banks.

MR. BENJAMIN: Right.

CHAIRMAN MOORE: When you bring in the
manufacturing aspect, Section 9 limits it to 20%
of the square footage devoted to retail sales.
So you basically have an 80/20 split. So that,
regardless of the type of retail sales that are
occurring, acknowledging that they are selling to
retail customers.
You know, while the requirement is agreeable to maintain the nature of the Retail Commercial District and not have it be general commercial use, we would have to infer, I think, to the Planning Board that the applicant's operation doesn't meet that standard, and they would have to look at the site plan accordingly. It's -- we're not judging the use variance here, we're just simply stating the code, and its in reference to an operation that's before the Planning Board.

And we're going to have to decide what to did with this, kick it down the road and wait, or make a decision. What would the Board want to do?

MS. GORDON: I don't even find the regulation as written very clear. The word "exclusively," does this apply as we, I think, have been saying it, to the phrase "on the premises"? Because if it's being done exclusively on the premises, that's quite different from a situation where the -- some of the processing -- some of the business aspect of the market would be done off the premises. Or is it to be sold at retail exclusively? Is
"exclusively" modifying "retail," in which case there's a problem with the wholesale aspect of the business.

So, I mean, I would like to have an asterisk in whatever we say --

CHAIRMAN MOORE: Right.

MS. GORDON: -- that says that the -- the regulation is not really very clear.

CHAIRMAN MOORE: Yeah. That may be poorly written, but I think it refers to the fact that the manufacturing relates to the retail sales activity that occur at that particular location.

MS. GORDON: Right.

CHAIRMAN MOORE: And the difficulty I have conceptually is there is not a retail sale operation occurring directly from that building, but through indirect forms, which would be typical of any manufacturing company that makes and ships things.

MR. CORWIN: Well, let me make the suggestion.
CHAIRMAN MOORE: Yes.

MR. CORWIN: We're not getting anywhere.

CHAIRMAN MOORE: No.

MR. CORWIN: And we got to be out of here at 7 o'clock.

CHAIRMAN MOORE: Yeah, we're going to have dinner if we don't leave.

MR. CORWIN: So let's move this to the next month.

CHAIRMAN MOORE: Yes.

MR. CORWIN: If anybody wants to have any input, it's welcomed. We can all go home and look on the website and see what we think of that.

CHAIRMAN MOORE: I agree.

MR. CORWIN: And it's not going to hurt to push it back for another month, that's for sure.

CHAIRMAN MOORE: In that case, I would make a motion that we table this for an additional month --

MS. NEFF: Second.
CHAIRMAN MOORE: -- to consider, and reconvene next month to continue the discussions. May I have a second?

MS. NEFF: Second.

CHAIRMAN MOORE: And all in favor?

MR. BENJAMIN: Aye.

MR. CORWIN: Aye.

MS. GORDON: Aye.

MS. NEFF: Aye.

THANK YOU. SO WE CAN MOVE QUICKLY NOW, THE NEXT ITEM IS TO APPROVE A FINDINGS, DETERMINATION AND DECISION DOCUMENT FOR AN AREA VARIANCE APPROVED FOR DEBRA RIVA, 433 SIXTH STREET, GREENPORT, NEW YORK; SUFFOLK COUNTY TAX MAP 1001-6-3-4. IT'S IN THE R-2 DISTRICT. AND THE APPLICANT WAS REQUESTING SETBACK VARIANCES ON THE FRONT AND SIDE OF THE PROPERTY, WHICH WE GRANTED, AND THAT DOCUMENT BASICALLY SAYS THAT. THERE WERE NO CONDITIONS IMPOSED BY THE BOARD ON THAT. SO I WOULD MAKE A MOTION THAT WE APPROVE
that document as presented. May I have a second?

MS. GORDON: Second.

MR. BENJAMIN: Second.

CHAIRMAN MOORE: All in favor?

MR. BENJAMIN: Aye.

MR. CORWIN: Aye.

MS. GORDON: Aye.

MS. NEFF: Aye.

CHAIRMAN MOORE: Aye.

Any opposed

(No response.)

CHAIRMAN MOORE: The motion carries.

And a motion to approve the Findings,

ZBA 12/17/14

Determination and Interpretation Document representing a decision the ZBA made November 19th, 2014. The Planning Board of the Village of Greenport requested the Zoning Board of Appeals to interpret Village Code Section 150–9A(18) regarding accessory apartment dwelling units over retail businesses.

And just to abbreviate it slightly, the
Board found that the existence of the building itself was the key to preexist before July 2002, and the Decision Document so reflects that, with the voting of three-to-two to approve that document.

So I make that motion to approve the document. May I have a second?

MR. BENJAMIN: Second.

CHAIRMAN MOORE: All in favor?

MR. BENJAMIN: Aye.

MS. GORDON: Aye.

MS. NEFF: Aye.

CHAIRMAN MOORE: Aye. Opposed?

MR. CORWIN: Aye.

CHAIRMAN MOORE: So we have one opposed, and four in favor, so that document is approved.

A motion to accept the ZBA minutes for

ZBA 12/17/14


MS. GORDON: Second.

MR. BENJAMIN: Second.

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

MR. CORWIN: Aye.

MS. GORDON: Aye.

MS. NEFF: Aye.

CHAIRMAN MOORE: Aye.

MS. NEFF: What was the date?

CHAIRMAN MOORE: November 19th, the last month's meeting. We're just accepting the minutes for --

MS. NEFF: Yes, yes. I'm sorry.

CHAIRMAN MOORE: So that's accepted.

Motion to approve the ZBA minutes for October 15th, 2014. So moved. Second, please.

MS. NEFF: Second.

CHAIRMAN MOORE: All in favor?

MR. BENJAMIN: Aye.

MR. CORWIN: Aye.

MS. GORDON: Aye.

MS. NEFF: Aye.

CHAIRMAN MOORE: Aye. Motion carries.

And then motion to schedule the next
regular ZBA meeting for January 15th, 2015. Any objections to that date? It's a typical Wednesday. It should be the third. Is that correct?

MS. NEFF: No, no, it's not.
CHAIRMAN MOORE: That's not correct.
MS. NEFF: It's not.
CHAIRMAN MOORE: It's the 21st.
MS. NEFF: The 21st is correct.
CHAIRMAN MOORE: It's the 21st. My mistake.
MS. NEFF: Right, right.
CHAIRMAN MOORE: Of January, which is the third Wednesday. So everybody's available for that meeting.
I'd just like to make one announcement. I am not going to be here for the next several meetings. And so the customary practice will be that the Board will select an acting Chair at the meeting, and that person will convene and run the meeting.
Secondly, I have asked Mr. Corwin to sit in for me on the Code Committee for the next couple of meetings. There are some very important discussions on rental and short-term rentals in
the Village, and he's very well versed and 
opinionated in that area, and I appreciate his 
participation there. So those are the things.

Someone will have to get together with 
Eileen as far as the agenda. I'd be glad to help 
from a distance, but I won't be available to do 
that.

With that mentioned, motion to adjourn.

MR. BENJAMIN:  Second.

CHAIRMAN MOORE:  May I have a second?

All in favor?

MR. BENJAMIN:  Aye.

MR. CORWIN:  Aye.

MS. GORDON:  Aye.

MS. NEFF:  Aye.

CHAIRMAN MOORE:  Aye.

The meeting is adjourned.

(Whereupon, the meeting was adjourned at 7:03 
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 December 17, 2014.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.
IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of January, 2015.

____________________
Lucia Braaten