VILLAGE OF GREENPORT
COUNTY OF SUFFOLK STATE OF NEW YORK
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ZONING BOARD OF APPEALS
REGULAR MEETING
----------------------------------------x

Third Street Firehouse
Greenport, New York

August 19, 2015
5:00 P.M.

BEFORE:

DOUG MOORE - CHAIRMAN
DAVID CORWIN - MEMBER
JAMES SALADINO - MEMBER
DINNI GORDON - MEMBER
ELLEN NEFF - MEMBER
EILEEN WINGATE - VILLAGE BUILDING INSPECTOR
JOSEPH PROKOP - VILLAGE ATTORNEY
Call the meeting of the Zoning Board of Appeals to order.

Public hearing for an appeal for a use variance for Lydia Wells Warden of Holy Trinity Church, 758 Main Street, SCTM 1001-2-3-5. The applicant proposes to construct a second residential unit in an existing one family house in the R1 District. Section 150-7A(1) does not permit any building to be used, in whole or in part for any use except one-family detached dwellings, not to exceed one dwelling on each lot. We did have a site visit this afternoon. As far as notifications, this was published in the Suffolk Times. The property has been placarded. People have received notices. Uni Gardner, 314 Manor Place, Elena Mosco, PO 371, East Marion. I note that was returned. Ronald Lettern, 301 Manor Place, Greenport. Deborah Shapiro and Kieran Polo (phonetic). And it’s a New York address. They're the property – I don't see it on the map here but I believe it was right across the street. And Carlos and Patricia
DeJesus, 754 James Street. Those were the surrounding addresses and the official notification by mail. Customarily, we will have the applicant or representative come up first and make public comments. I would just like to note that this is a revision of a use variance already granted in 2013. And I think the applicant’s can explain what has changed and I would appreciate if you could give a history, especially of the use of the house prior to the variance that was provided and what you would like to accomplish with your application.

MS. WELLS: Okay. The rectory has been existence —

CHAIRMAN MOORE: Just identify yourself —

MS. WELLS: Lydia Wells. I am one of the wardens at the Holy Trinity Church. The rectory has been part of the church property for over 150 years, I assume. We had had a priest live in the rectory with their families, but for about the last 25 years, we have not had a full-time priest at Holy Trinity Church. We have had
supplied priests. About two years ago, we
– the Bishop of Long Island had a priest
that he thought that would work out for us.
That we needed to provide housing for. And
we also had a sexton at that point. Who
was living in the house as part of his
package. So he was a church employee. So
we did hire Father Pat McNamara for a short
period of time. He was a part-time priest.
And at that point, we had come to the
Zoning Board to ask for a use variance. So
we could have two apartments. One for the
sexton and one for the priest. During the
time that Father Pat was here, we did pay
for his housing at another apartment in
town while the construction was going on.
At the time, we had a mole problem. Mold
problem in there. So we worked out
remediating that. We worked out
remediating – there was asbestos of some
type in the basement. We knew we had to
get that replaced. So we bought a lot of
materials that we were working on in making
the two apartments. Father McNamara left
us and we're back to the supplied priest.
The sexton is no longer with us. We have a sexton that lives locally. He has his own house and he does work part-time in the church. So he would not need the housing.

Also, at this point, seeing that we're using supplied priests, we are looking — we are not sure yet at what capacity, we will be having another priest come in. There is one that will be retiring September 1st and owns property in the Village. Hopefully he will be with us for a number of years. So that is where we're at, at this point. The church is still very active. Financially, it would benefit the church and also — we are still going to have to put quite a bit of work into it, as you saw from the — from the site visit. And we would use one of the apartments to pay back that construction loan, which the diocese will be giving us hopefully. And the other one, would help replenish what we have already spent out of our endowment funds.

CHAIRMAN MOORE: I was just thinking, I think there was mention that the Mattituck Church, a possibility of a
shared —

MS. WELLS: There is that possibility. Mattituck is without a priest right now. So if they were to, that is where. There is nothing in the works yet.

CHAIRMAN MOORE: Is that income possibility —

MS. WELLS: If a priest was — if he were to have those priests that we were paying and even if shared with Mattituck, we would have to provide some type of housing for them.

CHAIRMAN MOORE: That might be something that requires some kind of numerical analysis.

MR. PROKOP: Well, I think it's required especially since it's in the R1 district.

CHAIRMAN MOORE: Because the -- the permitted use would be to a one-family house and you wouldn't be here asking for a revision of the variance. I realize the plans have changed back from 2013 when we approved the original variances, based on the housing supplying space for a staff of
the church. It’s a change. The types of rentals that you’re thinking of, I assume, are long term?

        MS. WELLS: Yes. Definitely.

        Long term. With permits.

        CHAIRMAN MOORE: Do you have any other people from the church that wish to -- we can engage in a dialogue with you.

        MS. WELLS: I have George. Fred. Fred is our Treasurer. He helps out with the finances.

        CHAIRMAN MOORE: I am not sure if we can move forward with questions without the actual documents.

        MS. WELLS: I mean, I can show you current report, which I was working on yesterday. That the finances are not the best.

        CHAIRMAN MOORE: Just so the Board members know, when we finish, we can then engage in a direct dialogue with additional questions. If you said your peace, we would ask if any other members of the church or any other members of the public would want to get up and say something?
MEMBER CORWIN: I have a question.

Does the church pay any real estate taxes?

MS. WELLS: Yes, we do.

MEMBER CORWIN: On the church?


CHAIRMAN MOORE: Now I do recall, this parcel addition includes a rectory and a church structure.

MS. WELLS: Yes, that’s correct.

CHAIRMAN MOORE: Thank you.

Anyone else from the public or member from the church?

MR. CLARKE: Good evening. My name is Peter Clarke and I live at 806 Main Street. We're not adjacent to the property in question, but live one property away from a property that is adjacent. Before I speak, I just want to thank the Board for their time and efforts and service that they provide to the Village. We know that the boy scouts and cub scouts meet there. We know that the other activities go on, community based activities which we support and encourage 100%. So we're friends of
the church and support its activities. However, to grant the variance for a permanent two family in this location, I would encourage you to disapprove just because of the pressure of the amount of traffic that is already existing in that lot. The amount of already grandfathered variances within that very small section of Manor Place. Main Street does not have that kind of pressure. The two blocks that Manor Place takes have a great deal of pressure on them. So my feeling along with many of my neighbors is that certainly we're going to support the church and support the Board in its initial findings in 2013, to allow a variance for church members and for a sexton and/or a part-time or full-time rector, and a church employee or administrator or whatever. We support that but we don't support additional variances to be granted just to try and prevent any additional density pressure and traffic pressure in what is already a fairly delicate and very, very busy part of Greenport Village.
CHAIRMAN MOORE: Could I just ask you to clarify when you say, pressures, you're referring to -- basically traffic and --

MR. CLARKE: It’s a very highly traffic for this area.

CHAIRMAN MOORE: Residential pressure?

MR. CLARKE: Well, we do have a great deal of variance already on Main Street. We do have other two family units that have variances from the start of zoning. So it’s not a particularly clean block in already adhering to R-1. So I would not encourage any further development in that direction in order to respect the initial character of that district of the Village.

CHAIRMAN MOORE: When you say variances, are you referring to granted variances?

MR. CLARKE: Granted variances, yes.

CHAIRMAN MOORE: As opposed to grandfathered --
MR. CLARKE: No. Grandfathered.
Not granted. Excuse me. Yes.
CHAIRMAN MOORE: Thank you.
MR. CLARKE: Any other questions?
MEMBER SALADINO: I do. Peter in your personal observation on the days and times that the church is active, Sunday’s obviously. Thursday’s when there is meetings there. Are those parking spaces, are those spaces all taken up on Manor Place?
MR. CLARKE: No, not all of it.
To be, you know, fair and honest, during the day the lower half of Manor Place and the medical building and the hospital is completely parked out. And at night when at night, the meetings, the other half is completely parked out. If you're willing walk a block, you will find a parking spot. Thank you.
CHAIRMAN MOORE: Thank you.
Anyone else? If there is anyone else from the neighborhood? Yes.
MS. SHAPIRO: Hi. I am Debbie Shapiro. I live at 802 Main Street. Right
across from the property. I didn't get any letters, so this is a last minute thing. I have been there for ten years. We have had some problems with people that have lived there in the past.

MEMBER NEFF: You said you had some problems with what?

MS. SHAPIRO: People who have lived in that house in the past. I guess the church hired and probably not aware of their doings. When we first moved in, there was a lot of traffic. There were drugs that were being sold out of there. Then another couple came in. And now, I know that you want to clean it up and make it better, but that being said, we have a B&B across the street, which I don't think Peter mentioned. So we have a lot of density and people and traffic. Not so much in parking that you asked for meetings, but more -- we have a hospital right down the street. And it’s busy. And to me, that house should be a one family house. I am asking the Board to not to give a variance for a two-family home. I
think if they need to raise money if
they're going to rent it out, they will
make money on a one family home. My hopes
would be to see it given to either a sexton
or a priest to live there. It is still
part of the church, and not what I would
think it to be commercial property. I
don't see it being commercial property. It
has been part of the church, since she
mentioned over 125-150 years. I do
understand that they're financially
strapped. But you know, there is something
to be said about keeping your property up
and the insides and all of that. I don't
see it being a two family house.

CHAIRMAN MOORE: You said you did
not receive the notice?

MS. SHAPIRO: No, I didn't.

CHAIRMAN MOORE: It was signed for
by a V. Gordon at your address. It’s at a
New York, 201 East 31st Street?

MS. SHAPIRO: Is there an
apartment number on there?

CHAIRMAN MOORE: No. Doesn't look
like it.
MS. SHAPIRO: Maybe that was the problem. I will go down to the -- I will fix it. I will put the apartment on there. I am here pretty much full-time.

CHAIRMAN MOORE: I believe the addresses come from the tax --

MS. SHAPIRO: I get my taxes for sure. I also didn't get the variance for 2013. I never got that one either. So I knew nothing of that. That it was granted. Nothing like that. And as I said, I do live exactly across the street. I can see into their backyard. I can see into the house. It would be nice to have somebody there but I don't see it as being a two-family home.

CHAIRMAN MOORE: How many parking slots do you have --

MS. WELLS: In that driveway?

CHAIRMAN MOORE: In that driveway?

MS. WELLS: You could park double and it’s wide. So I would probably say at least four. Really, in the past it was only used by the sexton. He pulls up to the back and dropping off stop. And the
CHAIRMAN MOORE: Do people attending events there, meetings, use that driveway?

MS. WELLS: No.

CHAIRMAN MOORE: Okay. Is there anyone else from the public who would like to speak tonight? If not, before we make a motion to close the hearing, I would just read a letter. It’s from Arthur Tasker who is a resident of Sandy Beach. He made comment to the Zoning Board. This is from Arthur M. Tasker addressed to the Zoning Board of Appeals. I write to express my objection to the subject application to create a second dwelling unit in the Holy Trinity Parsonage located in the R1 District that is restricted to use for a single one family dwelling. While I am sympathetic to the financial plight of the Holy Trinity parish, full disclosure, I am Episcopalian, their approach to alleviating their financial problem by renting out two dwellings unit in their vacant rectory, I suppose because they have no rector to
occupy it, is ill-conceived and will burden all of the single family properties in the district with a potential flood of similar applications. The controversy concerning the AIR BNB type shorter term rentals should be very much top of mind as well in considering this application. First, permitting such a variance, a two family in a one family zoning district is a classic example of spot zoning because it will benefit a individual owner only. Illegal spot zoning occurs whenever the change us other than part of well-considered and comprehensive plan calculated to serve the general welfare of the community. The question of whether a rezoning constitutes spot zoning, should be answered by determining whether rezoning was done to benefit an individual owner rather than pursuant to a comprehensive plan for the general welfare of the community. Second, while the presumed object of the applicant is to be able to rent more dwelling units and thereby provide greater income to the parish, that reasoning does not stand the
test for self imposed hardship. The present dwelling can be rented as a single family unit and deliver income to the parish. And while a second dwelling unit, after considering the cost of constructing the second unit, might provide more income. That's not a test of hardship. In other words, here the applicant must demonstrate that the renting the permitted existing single family house as such will not give reasonable return to its owner. It does not mean that a variance should be granted because an even greater return might be had with a use that is not otherwise permitted.

And we will put that into the record. I think that was the only letter that were received. If the Board doesn't have any other immediate questions, we can accept a motion to close the hearing?

MEMBER CORWIN: I have a question.
CHAIRMAN MOORE: Yes, sir.
MEMBER CORWIN: One is, I think we should leave the public hearing open.
CHAIRMAN MOORE: That’s a good point.
MEMBER CORWIN: If they're going to supply additional information.

CHAIRMAN MOORE: That's a good point.

MEMBER CORWIN: And then, it doesn't appear that they have made any filing fee. There is a filing fee that is supposed to be submitted with each application. I don't see it with the application.

MS. WINGATE: There is a filing fee.

MS. WELLS: It was $600.00. I have the receipt. I have that for now.

CHAIRMAN MOORE: We can get that information. I am sure. I agree with Mr. Corwin about closing the public hearing. I think we would be unable to complete the questions and one of them specifically about financial information, which would not allow the variance to succeed. At that point, I think we should leave the public hearing open until next month's meeting. I would ask that the applicant provide financial information as best as you can.
I am not sure if we need anything else, but that we would be open for any additional information at this point through next month. At which time then, we might close the public hearing. If we are all in agreement with that --

MEMBER NEFF: I have a question.

CHAIRMAN MOORE: Yes.

MEMBER NEFF: The applicant mentioned in describing the project that there was seeking a loan from the diocese or whatever it’s called. Is there any detail about that?

MS. WELLS: What we need first is to -- we will need to get cost estimates, bids on it and that has to be submitted with paperwork. We have met with the bishop and it’s kind of -- church property as I understand it, we can't sell the house without their permission. There is certain things we can't do without their permission. The diocese permission. In this case, they're kind of like co-owners in some way. So we will have to apply for the loan. They have funds available to
help us and then they would, you know, we
would have to give the estimates.

MEMBER NEFF: Just for a point of
clarification. An application for a loan
from the diocese or whatever entity it is
called, if you could describe what is
needed to complete it as a one-family
house. There is nothing in that process
that makes it a two-family.

MS. WELLS: Right.

MEMBER NEFF: Okay.

MS. WELLS: The reason why we
continued with the two family is because
some of the work had already been done for
the two family. From two years ago as far
as the two bathrooms. The starting of the
kitchen. Supplies had been purchased. You
know, two washer and dryers. That type of
thing. That is why we continued with that.

MEMBER GORDON: I have a question
for the Building Inspector. The comment
referred to other variances and I am
wondering, you know, one thing you can say
is that there shouldn't be yet another
variance, but on the other hand, there are
many variances in this area and it already
compromises the R1 District and what
difference does it make if there is another
one? I would like to know, are there quite
a few variances in the area? How could you
characterize that?

MS. WINGATE: There are several
two family houses.

MEMBER NEFF: Can I just -- many
of the variances are historically and have
nothing to do with a variance application
that existed --

MS. WINGATE: It existed before
the code. And some of them were gifted
variances and I really don't know -- I do
know of one or two that I can think of.
But I have to do a quick study.

CHAIRMAN MOORE: We would ask you
to do, since it appears that we are going
to be pushed back for another month, is do
that research and any preexisting
nonconforming as they were being described.
And I am not sure of what you mean by
gifted variances, as opposed to granted
variances.
MS. WINGATE: Granted.

CHAIRMAN MOORE: All right. If you could do that, that would be part of our analysis next month.

MS. WINGATE: How far? What is the area that you want me to --

CHAIRMAN MOORE: I would say Manor Place to two blocks.

MS. WINGATE: Okay.

CHAIRMAN MOORE: A block north and south of Main, would that do?

MS. WINGATE: On both sides of the street.

CHAIRMAN MOORE: On both sides of the street. So then if there are no other questions from the Board, I would make a motion that we table the public hearing and leaving it open for any additional comments or correspondence, and with some homework assignments for a number of people. And we will reconvene at our September meeting. So moved.

MEMBER CORWIN: I would just suggest that we say adjourned instead --

CHAIRMAN MOORE: Adjourned.
MR. PROKOP: The meeting should be adjourned and open -- the meeting should be tabled or adjourned.

CHAIRMAN MOORE: So I will use the term adjourned.

MEMBER CORWIN: I'll second.

CHAIRMAN MOORE: Thank you.

And all in favor?

MEMBER CORWIN: Aye.

MEMBER SALADINO: Aye.

MEMBER NEFF: Aye.

MEMBER GORDON: Aye.

CHAIRMAN MOORE: Aye.

Motion carries.

We will resume next month.

We will resume to our regular agenda. The first item obviously

The next item is just some clean-up homework on an interpretation that we all agreed to. Probably about three months ago and we have run out of time.

Does everyone have a copy? Basically what we agreed to is that the code is very specific as far as placement of fences of what is considered front yards.
Specifically that we require front yard setbacks. There has been confusion over some years between the definition of required yards. And if everybody is satisfied with that document as the proper direction, I would ask someone to make a motion that we approve that document.

MR. PROKOP: I don't remember all the lists.

CHAIRMAN MOORE: Two pages with the diagram. Basically it's acknowledging especially on corner lots, that front yard is a 30 foot setback would be the current placement for fences.

MR. PROKOP: Is this document before the Board?

CHAIRMAN MOORE: We all agreed to the principle document. It had been prepared. We have had it up on the agenda for approval and have not done so because of time constraints. It's really --

MR. PROKOP: I just don't remember seeing this.

CHAIRMAN MOORE: We do understand that people on corner lots are usually
seeking a high fence down their side line
to get some privacy. In those cases, they
would have to seek a variance. In some
cases, it might be appropriate and in other
cases where it might not. So we would have
to do that. Fences are in the required
yards, setbacks then it’s a Building
Department issue. So if the Board is
satisfied with the document, I would ask
for a motion to approve?

MEMBER CORWIN: I had mentioned
this to you, the drawing on the last page,
if you look at that, you would come to the
conclusion that a high fence on a corner
lot can be put up to the house but in case
-- some of this here is for a conforming
lot --

CHAIRMAN MOORE: Yes.

MEMBER CORWIN: If it’s not a
conforming lot --

CHAIRMAN MOORE: Correct,

MEMBER CORWIN: And your response
at the time was, well, in a test, it
explains it and I can't go through that now
and find it, but I just wanted to note that
this diagram is for conforming lots.

CHAIRMAN MOORE: Yes. In fact
that could be modified to have required
front yard on the diagram and make that
quite clear. If that is the key issue
here, it has to be a required front yard
that would align with the building. Now
the blue squares is just an indication.
It’s not necessarily a house. With that in
mind, conforming lot. Would anyone like to
make a motion to approve?

MR. PROKOP: Can I ask you a
question?

CHAIRMAN MOORE: Yes.

MR. PROKOP: This --
CHAIRMAN MOORE: That is the table
of setbacks, I believe.

MR. PROKOP: There is no --
required yards, where is that in the
defined terms? I apologize --

MS. WINGATE: In the definitions.

CHAIRMAN MOORE: On the first
page, I think I have it cited.

MR. PROKOP: You have a term which
is required yards that is in quotes.
CHAIRMAN MOORE: Yes.

MR. PROKOP: So this is your definition --

CHAIRMAN MOORE: No, no. I am referring to the definition of what a required front yard is. There is more generic terms. Front yard is the space in front of the house. Required yard is the section of the property that is required to satisfy the setback. And I thought it was in the definitions, 150-12. It talks about minimum requirement and I think generically, yard setbacks are those described that are referred to that are required front and side yard.

MR. PROKOP: Yes.

CHAIRMAN MOORE: It says, minimal require both side yards, front yards.

MR. PROKOP: When I look at this, this is not colored -- is it your intention that a colored diagram is going to become part of the code? Because if a colored diagram is going to become part of this, which is going to become relevant to something, why is this not --
CHAIRMAN MOORE: Well, it’s used -- it’s been colored to highlight the pictures. It doesn't have to be colored.

MR. PROKOP: Okay.

CHAIRMAN MOORE: I believe. So the definition would have to be in those regulations as it --

MR. PROKOP: Okay. I'm sorry.

Thank you.

MEMBER CORWIN: Perhaps we have put this off so many times, maybe we should take the time to make sure that we all understand it.

CHAIRMAN MOORE: Tell you what, I will add required as indicated that this is -- represents a conforming lot. All right.

One more time

MR. PROKOP: Can I just make one more suggestion, you have required yards in parenthesis and some not, was that just to shorten --

CHAIRMAN MOORE: Correct.

Perhaps. Yes.

MR. PROKOP: If you look at this, if someone came in and looking at this,
they wouldn't see required.

CHAIRMAN MOORE: Just more
general.

MEMBER GORDON: It seems to me
that this is complicated because if this is
going to be required front yards, then
there is a whole universe of front yards
that are not, as I understand it, required
because they're not conforming. So it's
not going to settle the question.

CHAIRMAN MOORE: This drawing not
being so specific, it’s to serve the
purpose of both a front yard and a side
yard. If this is a house, front yard would
be here.

MEMBER GORDON: We need to make
two decision there.

CHAIRMAN MOORE: Let’s think about
it for a moment. We are going through a
lot of time here on something that we have
talked about a lot. So do we need a motion
to put this over?

MR. PROKOP: Yes.

CHAIRMAN MOORE: Then I would
entertain a motion from someone to put this
MEMBER CORWIN: I move that we table this until the September meeting and that that be the first item on the agenda and no more proceedings until it’s settled.

CHAIRMAN MOORE: Yes. With corrections to be made.

MEMBER GORDON: Second.

CHAIRMAN MOORE: All in favor?

MEMBER CORWIN: Aye.

MEMBER SALADINO: Aye.

MEMBER GORDON: Aye.

MEMBER NEFF: Aye.

CHAIRMAN MOORE: Aye.

Okay.

We have the determination documents. We can go quickly through them. The first is for findings and determinations for Carol Wilder, 218 Sixth Avenue; SCTM #1001.4.4-26. The property is located in the R2 District. The applicant proposed to construct an in ground swimming pool. An area variance was conditionally approved for a side yard setback. There were some conditions that we placed. A
covenant on the property that it not be
subdivided. The pool system would be
arranged in to have a back flow system and
overflow would go to the sewer system. And
as we indicated in the minutes, an
insulated pool cover would be installed if
the pool is heated. I will accept a motion
to accept this document as presented.

MEMBER NEFF: So moved.
MEMBER GORDON: Second.
CHAIRMAN MOORE: All in favor?
MEMBER CORWIN: Aye.
MEMBER NEFF: Aye.
MEMBER GORDON: Aye.
CHAIRMAN MOORE: Aye.
MEMBER SALADINO: Abstain.
Motion carries. Mr. Saladino
abstains. He was not present for that
decision.

The next one on the agenda is for
Motion to approve the findings and
determinations document approving area
variances for Chuck Kitz, 228 Sixth Street;
SCTM# 1001-7.2-1. The applicant proposed
to construct a new front porch addition at
the premises located at 228 Sixth Street.
The property is located in the R-2 District. Area variances were conditionally approved for a front yard setback to the West calculated from a reduced front yard setback and for a front yard setback. (Second front yard, corner lot) to the north. This determinations document had conditions that were to be applied, and they were that the applicant would install gutters and leaders on the porch and the entire house. Collected rain water and runoff would be contained on the property in dry wells. The new porch addition will not have a roof deck and the new porch will not be structurally enclosed. If everyone has seen the document, I will entertain a motion to approve it.

MEMBER CORWIN: So moved.
MEMBER GORDON: Second.
CHAIRMAN MOORE: All in favor?
MEMBER CORWIN: Aye.
MEMBER NEFF: Aye.
MEMBER GORDON: Aye.
CHAIRMAN MOORE: Aye.

MEMBER SALADINO: Abstain.

Mr. Saladino abstains.

No. 5 is a motion to the findings and determination document approving area variances for Walter Foote, 22 Brach Street; SCTM # 1001-2-5-40. The property is located in the R2 District and is situated as a corner lot. The applicant proposed to construct a new addition and deck expansion to an existing non-conforming house. Area variances were conditionally approved for a rear yard setback and a front yard setback (second front yard, corner lot.) If everyone has seen the document, I should point out that there were a number of conditions with the approval of the variance. And they are the water from the shower shall be contained on the property and disposed in a manner that is directed by the Village of Greenport. And the work shall comply with regulations in Suffolk County Department of Health Services Office Waste Water Management. So this is the document and I would ask for a
motion to approve it.

MEMBER NEFF: So moved.

MEMBER SALADINO: Second.

CHAIRMAN MOORE: All in favor?

MEMBER CORWIN: Aye.

MEMBER NEFF: Aye.

MEMBER GORDON: Aye.

CHAIRMAN MOORE: Aye.

MEMBER SALADINO: Abstain.

Mr. Saladino abstains.

The next one is motion to approve

Findings and Determination document

disapproving area variances for Tracy

Combs, 516 Second Street; SCTM

#1001-2-6-24. The property is located in

the R2 District. The applicant proposed to

construct a house addition and an in-ground

swimming pool. An area variance of a

combined yard setback for an addition to

the house and three area variances (two

side yard and one rear yard setback) for

collection of an in-ground swimming pool

were disapproved. I believe everybody has

been able to see this document. It does

represent the motion which occurred for
that, which was to disapprove for the
variances.

Motion to accept it?

MEMBER CORWIN: So moved.

MEMBER SALADINO: Second.

CHAIRMAN MOORE: All in favor?

MEMBER CORWIN: Aye.

MEMBER SALADINO: Aye.

MEMBER NEFF: Aye.

MEMBER GORDON: Aye.

CHAIRMAN MOORE: Aye.

That motion carries.

We just have a brief item here.

It’s a discussion and motion to return to
the Building Inspector of an appear for
area variance for Jack and Jeffery Rosa,
5-6 Main Street; SCTM 1001-4-3-33. The
building Inspector issued a Notice of
Disapproval dated June 8, 2015 and the
applicant filed an appeal for a variance on
July 10, 2015. A proposed construction of a
roof deck does is over preexisting
nonconforming part of the structure and the
proposed construction does not create new
nonconformance or increase nonconformance
according to an interpretation of the ZBA 
regarding the issue dated February 20, 
2013. We did issue variances for 
renovation of the house, which I believe at 
that time involved a deck at grade level 
and front porch and a side porch. 
Subsequently the applicant came to the 
Building Inspector interested in building a 
rood deck, over an existing part of the 
house. As neighbors may recall, it did not 
bring to the level of appeal for an area 
variance. Reconstruction or expansion or 
modification as long as it does not 
increase the setback limitations that are 
in the zoning regulations. That is what 
this return process involves. I think 
there is individual here that would like to 
say something. I guess to find out what it 
is, we have to ask you to state your name. 

MS. ST. LOUIS: My name is Nadine 
St. Louis on behalf of Paul Russo Architect 
Service on behalf of Mr. And Mrs. Rosa. 

CHAIRMAN MOORE: Do you have 
something to say about this? If you 
understand what we are doing, we are not
accepting an applicant for variance because it’s a matter for Building Inspector. If she wishes for any further review, I am sure she will direct the Planning Board if it’s deemed necessary. It’s not to the Zoning Board for consideration of variance.

CHAIRMAN MOORE: Mr. Prokop?

MR. PROKOP: I think it’s clear under New York State, if you have a structure that is nonconforming, either preexisting or nonconforming, or it’s legally in a side yard, that does not give you the right under New York State law -- (Whereupon, the tone alarm went off.)

MR. PROKOP: That doesn't give the right to extend other structures in prior nonconforming setbacks. So in simple terms, if the required setback is 20 feet and you granted 10 feet. That does not give you the right to enlarge that structure within the 10 feet -- between the 10 feet and the 20 feet or put another structure within that setback. That is clear within New York State law. The other
thing is, this application was presented to us as a variance for one deck, which was either a ground level deck in the rear of the structure. That -- it was specifically -- when you consider the impact on the neighborhood, if was for your consideration that this structure was going to be a flat roof. It’s in the minutes that it was specifically stated to the Board. And it was in the original plans. I think this is a modification of the original application and it requires de novo review by the Board. The third thing is that, I have been -- I have been through the historic committee minutes of this and what happened with this building. There was an application of windows. There was never -- as far as I can tell, maybe it would take some more time, it appears there was never a vote approving that application. So that application was not for the original rear deck or the first floor roof deck or second floor deck. And my recommendation to this Board and all future boards regarding the property that is in the historic distort,
no determinations be made until it has passed through the historic district.

CHAIRMAN MOORE: I was going to respond to your mass comment by saying that this be for Historic Board, then so be it. Then to just hold off on a final decision to accept it or not. I think your first comment is directed over the first section of the house was new construction and it was not. It was constructed as it was present and being renovated. When we did this original interpretation, any building which does contain of which does not conform with the lot regulations, such building shall be amended there to. I would indicate that if this is a matter that impacts the community, with this additional change in the plans, that it go to the Planning Board or Historic Board. It is not in the hand of this board.

MR. PROKOP: Okay. My job is to give you the law. I just want to make sure that you heard me when I said that either preexisting or nonconforming other than a variance, would take it to account this
building, and that doesn't establish a
setback that you can add on to -- as long
as you do not increase the area of the
nonconformance.

MEMBER SALADINO: So I have a
question for you. So you're saying that if
it fits into the existing footprint, you
are still within the height requirement of
the Village?

MR. PROKOP: If you add mass or
volume, that is considered --

MEMBER SALADINO: That is contrary
to what the code says.

CHAIRMAN MOORE: That is contrary
to the way the code is written. That is
why the previous interpretation was made.
It allows for structural alteration,
enlargement of nonconformance. Enlargement
is adding a deck.

MEMBER SALADINO: The other
question that I have, are roof decks
specifically prohibited?

MR. PROKOP: We don't have a
prohibition against roof decks. It has to
be considered in a variance.
CHAIRMAN MOORE: I would propose that we table or adjourn a decision whether to accept this or not accept this application --

MS. WINGATE: They are scheduled to go to Historic. Historic was not until the 7th.

CHAIRMAN MOORE: Is the Board agreeable to that?

MEMBER CORWIN: I would like the opportunity to say something.

CHAIRMAN MOORE: Sure.

MEMBER CORWIN: First of all, we visited this before.

CHAIRMAN MOORE: We did make a site visit.

MEMBER CORWIN: Not this particular property. Sandy Beach. For the railroad.

CHAIRMAN MOORE: Yes.

MEMBER CORWIN: And then you rendered a determination that since then we have to change venues.

CHAIRMAN MOORE: Yes.

MEMBER CORWIN: The other
consideration, you have to show everything
on that plan and everything is not shown
when we granted the variance. So my
position is that the applicant has to go
through the process.

CHAIRMAN MOORE: What I am going
to propose is let the other Board’s do what
they need to do and until that time, we
table this deliction.

MS. ST. LOUIS: Just for
clarification, this is going to the
Historic Board for approval not for Zoning
board?

CHAIRMAN MOORE: We have
tentatively suggested that it’s not Zoning
issue.

MS. ST. LOUIS: Okay.

MEMBER CORWIN: Wait a minute.

You have suggested it.

CHAIRMAN MOORE: I have suggested
it. At this point, we have some additional
issues that Historic has and Mr. Prokop has
made some suggestions.

MS. ST. LOUIS: Okay, I just
wanted clarification.
MEMBER NEFF: Can I just ask, when is the Historic Preservation meeting?

MS. WINGATE: Well, it’s the 14th of September.

MR. PROKOP: Excuse me, are you from the architects office?

MS. ST. LOUIS: Yes.

MR. PROKOP: Can I ask you question?

MS. ST. LOUIS: Sure.

MR. PROKOP: Are you familiar with the property, with the as-built?

MS. ST. LOUIS: I do have some prior knowledge of what is going on.

MR. PROKOP: That deck that was built on the second floor, was that originally extended to be a wrap around?

MS. ST. LOUIS: No, there was no deck. This is the second phase.

MR. PROKOP: Thank you.

CHAIRMAN MOORE: I will entertain a motion from the Board to table until further review by the Historic Board and get any information that we may get.

MEMBER CORWIN: So moved.
Second.

CHAIRMAN MOORE: All in favor?

MEMBER CORWIN: Aye.

MEMBER SALADINO: Aye.

MEMBER NEFF: Aye.

MEMBER GORDON: Aye.

CHAIRMAN MOORE: Aye.

That motion carries.

Last business matter, just something that I recommend that the ZBA do to bring us in compliance with the filings. There is requirement that the reporting of ZBA decisions to the Village Clerk. This is generally at least at the first meeting or second meeting going past the five day limit. What I am suggesting that we do, I record the votes on a spreadsheet. Any of the conditions that are applied are recorded. This form could be supplied to the Village Clerk within the five day requirement. I would ask Mr. Prokop if this is a suitable way of what the votes are and what the decisions are?

MR. PROKOP: I think it’s good.

As long as it’s understood that it’s not
official. Yes, I think it’s suitable.

CHAIRMAN MOORE: If the Board is agreeable to that, this is what I will start doing.

MR. PROKOP: We will start filing them.

MS. WINGATE: They are permanent property files.

CHAIRMAN MOORE: I would make a motion that our filings be with the Village Clerk, so that all of our filings would be with her.

MS. WINGATE: That the original signature go to the applicant and we maintain copies. Is that correct?

MR. PROKOP: I think the original stays in the file. I will go and check.

CHAIRMAN MOORE: I make that motion.

MEMBER GORDON: Second.

CHAIRMAN MOORE: All in favor?

MEMBER CORWIN: Aye.

MEMBER SALADINO: Aye.

MEMBER NEFF: Aye.

MEMBER GORDON: Aye.
CHAIRMAN MOORE: Aye.

That motion carries.

Next is Motion to accept the ZBA minutes of July 15, 2015.

MEMBER SALADINO: Second.

CHAIRMAN MOORE: All in favor?

MEMBER CORWIN: Aye.

MEMBER SALADINO: Aye.

MEMBER NEFF: Aye.

MEMBER GORDON: Aye.

CHAIRMAN MOORE: Aye.

And Motion to approve the ZBA Minutes for June 17, 2015. So moved.

MEMBER NEFF: Second.

CHAIRMAN MOORE: All in favor?

MEMBER NEFF: Aye.

MEMBER GORDON: Aye.

CHAIRMAN MOORE: Aye.

MEMBER SALADINO: I'll abstain.

MEMBER CORWIN: I abstain.

CHAIRMAN MOORE: Motion to schedule the next ZBA meeting for September 16, 2015.

MEMBER SALADINO: Second.

CHAIRMAN MOORE: All in favor?
MEMBER CORWIN:  Aye.
MEMBER SALADINO:  Aye.
MEMBER NEFF:  Aye.
MEMBER GORDON:  Aye.
CHAIRMAN MOORE:  Aye.

And motion to adjourn.
MEMBER GORDON:  Second.
CHAIRMAN MOORE:  All in favor?
MEMBER CORWIN:  Aye.
MEMBER SALADINO:  Aye.
MEMBER NEFF:  Aye.
MEMBER GORDON:  Aye.
CHAIRMAN MOORE:  Aye.

Motion carries.

(Whereupon, the meeting concluded.)
CERTIFICATION

I, Jessica DiLallo, a Notary

Public for and within the State of New York, do hereby certify:

THAT, the witness(es) whose testimony is herein before set forth,

Was duly sworn by me, and,

THAT, the within transcript is a True record of the testimony given by

Said witness(es).

I further certify that I am not Related either by blood or marriage to

Any of the parties to this action; and That I am in no way interested in the

Outcome of this matter.

IN WITNESS WHEREOF, I have hereunto

Set my hand this day, September 2, 2015.

____________________

(Jessica DiLallo)

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