VILLAGE OF GREENPORT
ZONING BOARD OF APPEALS

REGULAR MEETING AGENDA
November 20, 2013
5:00 p.m.

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

APPEARANCES:
Douglas Moore - Chairman
David Corwin
Ellen Neff
Charles Benjamin
Denise Rathbun (Not Present)

Joseph Prokop - Village Attorney
David Abatelli - Village Administrator
Eileen Wingate - Village Building Inspector
(Whereupon, the meeting was called to order at 5:05 p.m.)

CHAIRMAN MOORE: I think we can begin.

This is the Regular Session of the Greenport Zoning Board of Appeals. It's about five-after-five.

Just to let you know, I apologize in advance, if I get a tickle, I will have to pass on to someone else to carry out, but I'll try and keep my voice going for the duration.

So what we have tonight is two public hearings. One is a continuation, and then we have our Regular Meeting agenda.

On Item #1 is a continuation of the Public Hearing for the signage at Eastern Long Island Hospital. Just to remind the audience, this is a request for two lighted signs at the front of the property. One is replacing a current illuminated sign, and the other is an additional new sign. They are restricted, because, one, they're directly illuminated, and secondly, the area of the signs exceeds the allowable 24 square feet.

So I think most people are familiar with this process. We've had two months of public testimony, but we have the hearing still open and
we'd like to give any additional people the
opportunity to make comments tonight, if there
are any. If someone has already spoken, we have
your comments on record, and unless there's
something new and different you would like to
say, we'd look for any new comments from members
of the community.

Are there any comments regarding Eastern
Long Island Hospital sign proposal, an
application for variance?

(No Response)

CHAIRMAN MOORE: If not, then, I would make
a motion to close the Public Hearing.

MR. CORWIN: Well, let's wait a few minutes
in case they show up.

CHAIRMAN MOORE: You would like to wait for
a few?

MR. CORWIN: And maybe we could just
suspend that one and start the other one.

CHAIRMAN MOORE: Okay. We could --

MR. CORWIN: If that's fine, if there's no
objections.

CHAIRMAN MOORE: Would that be agreeable to
the Board to do that?

(Affirmative Response)
CHAIRMAN MOORE: All right. The suggestion was that, should there be some late arrivals, people interested in the Hospital, that we would hear them. So we'll just reverse the order of the public testimony and start on the second item.

This is a Public Hearing for a request for an interpretation. And just bear with me for a minute, I'll switch files. And just to indicate, first of all, that this Public Hearing is for an interpretation-appeal requested by Margaret Richards, 415 Kaplan Avenue, Greenport, New York, regarding issuance of a building permit for the improvement of a nonconforming structure adjacent to her property. The subject property, commonly known as Kaplan's Market, is located at 407 Kaplan Avenue, Suffolk County Tax Map 1001-4-1-10.2, and is in the R-2 District.

Sections of the Greenport Village Code referenced by the Applicant are Section 150-1, Purpose, Intent, F, the Gradual Elimination of Nonconforming Uses; Section 150-12A, Bulk and Parking Regulation for Uses Permitted in R-1 and R-2; Section 150-21A, Nonconforming Buildings with Conforming Uses, Definition and
Modifications to Structures; Section 150-21B
(1)(2) and (3), Reconstruction of a Damaged
Building. And last cited by the Applicant is
Section 1 -- is Section 65-6A, Certificate of
Occupancy. And I have noted, this section, fire
prevention and building construction is not under
the purview or authority of the Zoning Board of
Appeals.

This hearing was properly noticed in the
Suffolk Times. I believe the placard, as
required, has been placed on the property at the
proper interval. And I don't have the map that
shows the location, but the people that were
notified, David Corwin and Thomas Crowler
(phonetic), 639 Main Street, Greenport, Josephine
Johnston and Thomas Watkins, 421 Kaplan Avenue;
Frank A. Field Realty, Inc., Post Office Box
30 -- 631, Greenport; Vicky Semler, 516 Madison
Avenue; Edgar and Arlene Marvin, Post Office Box
28, New Suffolk. I believe this is the corner
property of Madison and Kaplan; is that correct?

MS. RICHARDS: No, second over.
CHAIRMAN MOORE: It's one in. I'm sorry,
it's the second one in. Thank you. I just try
to identify sometimes where the properties are
when we have box numbers. And then, finally,
James Olinkiewicz, Post Office Box 591.

I'd like to first spend just a little time
with a few explanations on how we're going to
conduct this hearing and give a little bit of
information about what is actually the process
going on tonight.

Normally, most people are familiar with the
Zoning Board of Appeals issuing or considering
variances for applicants who have applied for
building permits, but been refused by the
Building Department. Another function of the
Zoning Board is to provide interpretations, and
this can be from several sources. One is that a
Village official or any of the Boards of the
Village can request an interpretation of the
meaning of the code. Secondly, an appellant for
a negative building permit or a citation can ask
for interpretation if they feel that the zoning
chapter was misapplied in refusing a building
permit. And, finally, a neighbor can actually
appeal the issuance of a building permit based on
an assertion that the code was incorrectly
followed on issuing the building permit.

So it's kind of an upside down appeal.
It's actually protesting the positive issuance of a building permit, and that's the case we have tonight.

We should at some point review the history of the property. But what I'd like to do is go to get public comments. And what I'd suggest we do tonight is that, first, the Applicant, or the person filing the appeal is Margaret Richards, and I'd like to ask her to present her information.

This issue is actually between herself and the Building Department, and in cases like this, the Building Department or the Village, in general, is offered the opportunity to give their input into the situation. Obviously, Mr. Olinkiewicz, property owner, who has been issued the building permit, has an interest and he could talk as well, and then we'd entertain any comments from the public in general.

What I'd like to ask, though, is that those who are speaking from the public, who can be anybody, you don't have to be a neighbor, you can be anybody who has an interest, that you identify the section of the Zoning Code, Chapter 150, on which you're making your comments. That's very
important, because we do not have jurisdiction on
other matters. I know there's a lot of emotion
going on in this particular instance, and this
property has had a lot of contentious activity in
the past, but the issue tonight is strictly about
Chapter 150, and so I would ask you to restrict
your comments to that area.

So what I'll ask, then, is for Ms. Richards
to make comments. She did submit a fairly
extensive report about her assertions, and that
is available to be placed in the file, and I'm
sure you'll be referencing that. Can you say how
much time you're going to need for your
presentation?

MS. RICHARDS: Well, do you want me to
review the written part, or just a copy of it
submitted?

CHAIRMAN MOORE: Well, I have a copy of the
written part, it's been submitted, and we'll
provide that for the minutes. I would suggest
that, in your original appeal application, you
stated the different section of the code that
were being referenced, that you would use that as
your guide, and you certainly have prepared a
document for your own reference and you can say
whatever you would like.

MS. RICHARDS: I think I could do it rather quickly.

CHAIRMAN MOORE: And just to remind everybody, when you come to the podium, your name, address, and any affiliations is appropriate. Thank you.

MS. RICHARDS: Okay. Margaret Richards, 415 Kaplan Avenue.

A variance is a device that was written into the law to allow for property owners with no other option, the need for a handicapped ramp for an elderly parent, an unexpected birth, sometimes for estate planning purposes, to bring a building up to code, never for purely monetary reasons, yet this Village Board has been handing them out like penny candies.

The Applicant's attorney, in August, had the gall to bring up 314 Center street as a precedent for variances granted in regards to the Fifth Street matter. Mr. Olinkiewicz was the applicant there as well, and, by the standards of State Law, should never have been granted that variance, nor the density allowed on those parcels.
New York law provides statutory standards for the issuance of variances. The statutes impose a heavy burden upon an applicant of demonstrating that a variance should be granted, as that applicant is requesting the Zoning Board of Appeals to alter the local Legislature's determination that a specific circumstance is not appropriate in the zoning district.

The fact that the property needed variances, it shouldn't have gotten a building permit.

CHAIRMAN MOORE: Excuse me.

MS. RICHARDS: Yes.

CHAIRMAN MOORE: Can you identify what property you're referencing?

MS. RICHARDS: 407 or 411 Kaplan, depending on what paperwork you're looking at, Kaplan's Market.

CHAIRMAN MOORE: Okay. You're talking about the Kaplan?

MS. RICHARDS: Yes, Kaplan's Market.

CHAIRMAN MOORE: And what variance are you referencing that was issued?

MS. RICHARDS: No, a variance was not issued, a building permit was issued.
CHAIRMAN MOORE: Okay.

MS. RICHARDS: The point I'm making is that a variance should have been required, and that is a way of giving notice to people around the building of what its deficiencies were, what its insufficiencies are, and how the Village is going to deal with that.

With this particular -- now, nowhere in the file did I see anything addressing how he was going to make up in extra parking, required parking space. If he was going to have a two-family dwelling in that building, it absolutely requires three parking spaces; the plans show two.

I understand he owns the property next door to it, but nothing is in the file referencing that. But, if he is considering using that other property as access or a parking space, he's proposing taking two nonconforming properties and intensifying the nonconformity of both of them. But, in any event, he cannot have a two-family dwelling there.

One part is that the ZBA in the past has -- the word is escaping me. They said that it would only be a single-family residence. That was an
issue from a prior ZBA.

Secondly, the criteria in the code can only
be waived if an existing residence is on the
property, in which event only the parking
requirement needs to be met. The last legal use
of the property, the last CO was commercial.

Also triggering Criteria #3, if he should
go looking for a variance, that the requested
variance would be substantial, because the
property needs multiple variances, as well as
State variances. These codes were put into place
for a reason and should not be made light of for
monetary gain.

And unless you want me to go into
specifics, that's -- those are my comments.

CHAIRMAN MOORE: Okay. Perhaps you should
review the portions of the zoning code --

MS. RICHARDS: Okay.

CHAIRMAN MOORE: That would not permit
issuance of a building permit.

MS. RICHARDS: The section -- Section
150-21-B(1) is having to do with not being able
to reconstruct a building that's been damaged
more than 50%. And it's my assertion that having
an open warehouse converted into three separate
uses with five bedrooms, and an extra loft, and
combinational space, all of that done without any
building permits, I consider that damage. If you
go to the --

MR. CORWIN: Could you -- before you go on,
you went to 150-21B(1).

MS. RICHARDS: Yeah.

MR. CORWIN: In your handout, you have
highlighted 150-21A. So I assume you're
referring, and I do believe you referred to that,
too, in your application. So could you just
mention that one, too, if you consider that
relevant?


MR. CORWIN: Nonconforming Buildings with
Conforming Uses, 150-21.

MS. RICHARDS: Okay. Now, when you get
into 150-21B, it talks about building --

MR. CORWIN: But you just mentioned 120 --
you just went over 150-21B, correct?

MS. RICHARDS: Yes.

MR. CORWIN: And I'm saying how does
150-21A apply?

MS. RICHARDS: I don't see anything in here
about 150-21A.
MR. CORWIN: You have it in your application and you've highlighted it in your handwriting.

MS. RICHARDS: Well, that's just the definitions, is it not? I don't have the code with me, I only have what I wrote out.

CHAIRMAN MOORE: You have it in front of you, we can read it.

MR. CORWIN: All right.

MS. RICHARDS: I know I could get something.

MR. CORWIN: We'll just go by the written testimony or the written handout on that.

MS. REA: We actually have a copy.

MR. OLINKIEWICZ: We have a printed copy of the code, if you want.

CHAIRMAN MOORE: I apologize for, you know, being persistent in questions, but this is -- gets to be a very technical discussion, and I'm sure we're going to be discussing it in detail.

(Cell Phone Rang)

CHAIRMAN MOORE: Excuse me, I'm sorry. I apologize for having that on, I usually turn it off.

MS. RICHARDS: All right.
CHAIRMAN MOORE: Anyway, it's very important that you reference any particular section of the code that you are taking exception with that has been improperly applied.

MS. RICHARDS: I'm looking at 150-20 -- 150-21?

MR. OLINKIEWICZ: Bottom of Page 2.

MR. CORWIN: This is what you gave us. You've highlighted this and quoted that and you cite it in your application.

MS. RICHARDS: It's the definition of a nonconforming building --

MR. CORWIN: Okay. Thank you.

MS. RICHARDS: -- with a nonconforming use. Okay. The next part I have on here is with reference to the bulk and parking, which is what, 150-12?

CHAIRMAN MOORE: Yes, I believe so, Section -- probably Section A.

MS. RICHARDS: On two-and-a-half sides, this building has virtually no property at all. The front has 3.2 feet to the municipal sidewalk. He will not be able to install the Hardie plank siding on my side, on the north side, as it takes a tiny six-inch setback and makes it an even
tinier four-inch setback. It also would preclude any access to my backyard, because the property up to the wall of that building is paved and has been utilized as a driveway to my property for over 50 years.

The siding should not have been allowed on the south, as it increased the setback deficiency of 7.8 inches to 5.8 inches, and in the rear from six inches to four inches.

There are new openings in the roof, three industrial fans and some skylights, and I was -- the roof was substandard when the prior owner owned it, and if any changes were made to it, it needed to be brought up to code. That's not -- actually, that's not a zoning issue. I'm sorry, that's a State Building Code requirement.

I already went over what the parking issues are. And should you decide that he -- that he would be allowed to use the adjacent property that he owns, he would have to put a recorded easement on that property with the County. Otherwise, he could change that at any point in time and sell it to somebody without parking.

It is definitely a self-created hardship, because all of these issues existed before he
purchased the property. The fact that it's been
in dispute has been open and notorious. The
owner is also a contractor and, as such, is
familiar with all local and State building codes.
Therefore, he knowingly proceeded with
construction that could not meet either.

It is substantial in the number of
variances required in the decree of
nonconformity.

And I touched on this earlier about one of
the reasons that it should have been referred to
the ZBA in the first place, and possibly to the
Planning Board as well, that there is a
fundamental element beyond administrative review
for applying for and displaying a building permit
and public hearings before the ZBA and Planning
Board for more than basic changes to your
property; this element is notice. Other
homeowners and residents of your neighborhood and
community have a right to know that what you are
doing behind closed doors will not impact upon
their quality of life or property values. This
aspect has been conspicuously absent in how the
owners and the Village of Greenport have been
proceeding in regard to the Kaplan Market project
for about 13 years now.

If this property is ever allowed human occupancy, my property and other surrounding properties have been and will be illegally burdened with the need for fire access, egress and parking in the street.

And that's enough, because I'm shaking like a leaf. Thank you.

MR. PROKOP: Can I ask you a question?

MS. RICHARDS: Oh, I'll answer the question, sure.

MR. PROKOP: Somewhere along the way you said that you thought that there was a prior variance that restricted the use of this property to a single-family. Do you know when that was?

MS. RICHARDS: Would have been September of 2009, more than likely. Mary Bess was the Chairman. She has mentioned to me that that's her understanding, because I said, "Wasn't that kind of washed out when the variance was washed out?" And she said, as far as she was concerned, it was set in stone.

MR. PROKOP: When did she say that to you, in 2009 or recently?

MS. RICHARDS: No. She said that to me at
a recent meeting. So that would be something
that you got to kind of interpret for yourself,
because I'm not really positive on that, but that
was Mary Bess' understanding.

CHAIRMAN MOORE: Yeah, and we can go over
that. We'll be doing some kind of review of the
property history, and we can kind of clarify
that, perhaps, or look at what it actually might
say.

MS. RICHARDS: Uh-huh.

CHAIRMAN MOORE: Okay?

MR. PROKOP: You said -- I'm sorry. Could
I ask something?

CHAIRMAN MOORE: Yes.

MS. RICHARDS: Yeah.

MR. PROKOP: You just said at the end that
if the building reverted to residential use, that
that would be a burden on you for fire hazard
reasons or something?

MS. RICHARDS: Yes

MR. PROKOP: But wasn't -- before the --
before the commercial variance was issued, wasn't
it residential use before that?

MS. RICHARDS: Not legally.

MS. WINGATE: Not legally.
MR. PROKOP: Not legally

MS. RICHARDS: Never legally.

MR. PROKOP: Okay, good. All right.

Thanks. That's what I wanted to question.

Thank you.

CHAIRMAN MOORE: Okay. So, next, if the Village would have any comments in response to the appeal.

MS. WINGATE: Do you have that piece of paper I gave you?

CHAIRMAN MOORE: Which one? Oh, yes.

MS. WINGATE: With the -- I just want to refer to it.

CHAIRMAN MOORE: This one.

MS. WINGATE: That one. Perfect.

MR. CORWIN: Let me just note, before you make your remarks, apparently, the -- a former Zoning Board of Appeals, September the 27th, 2006, says there -- Section 2 on Page 7, "There will be only one unit tenant for use of the premises."

MS. WINGATE: That was part of the use variance.

MS. NEFF: Are you reading from the minutes?
MR. CORWIN: I'm reading from --
CHAIRMAN MOORE: From the Findings and Determination.
MR. CORWIN: -- the boiler plate Findings Determinations and Decisions. So that I don't know if that's what the --
MS. WINGLE: That was for permission to be in commercial property.
MR. CORWIN: Okay.
CHAIRMAN MOORE: It references the commercial tenant, yes.
MS. WINGLE: The commercial -- right. It references the commercial variance.
MR. CORWIN: All right. Thank you.
MS. WINGLE: No problem. I will not be speaking on the condition of the building permit, that's not why we're here.
CHAIRMAN MOORE: If you would, just for the record.
MS. WINGLE: Eileen Wingate. I'm the Building Inspector for the Village of Greenport.
I will, however, share with the Board the measures that the Building Department has taken to minimize any accusations of the proper procedure.
Dave Abatelli and I knew that the redevelopement of the Market was going to be challenging. We made every effort to insulate the Department. Dave Abatelli went to the Village Board and the Board decided that by using consulting engineers, we might eliminate any questions of code compliance.

The consulting engineers reviewed the plans for compliance with New York State Building and Fire Prevention codes. In addition to that level of review, we also contacted the Department of State Regional Architect, Richard Smith. He was asked to review the application, as well as all plans. Upon approval of -- from all these professionals, Building Permit Number 2419 was issued.

The consulting engineer was also on site for all the inspections that were performed. So far, we're almost through -- we've done a pre-final inspection and now we're just waiting to get through this last hump to issue a Certificate of Occupancy.

The plans for reconstruction for the building really do fit the code well. Section 150-1(F) mandates the elimination of all
nonconforming uses. This building is located in an R-2 District, one and two-family homes. It might not look like a conventional home, but it certainly has been reconstructed to be just that.

Furthermore, Section 150-21, Nonconforming Buildings with Conforming Uses, nothing in this -- and I'm just going to read it. We were just talking about that particular section of the code.

"Nothing in this article shall be deemed to prevent normal maintenance, repair, structural alteration, moving, reconstruction or enlargement of a nonconforming building, provided that such action does not increase the degree or create any new noncompliances with regards to regulations pertaining to such buildings."

This is a nonconforming building in an R-2 Zone. Putting in two families does not at all require a variance.

And, as far as the easement goes, we have -- we have preliminary paperwork filed with the County for easements for parking for two cars.

MR. CORWIN: Wait a minute. Wait a minute. You just said, "We have." You're saying the Village is doing this?
MS. WINGATE: The Village. It's in the file.

MR. CORWIN: But the Village is filing this with the County?

MS. WINGATE: No, no, no, the owner is filing this. The owner --

MR. CORWIN: So "he" would be the proper pronoun.

MS. WINGATE: "He," meaning my files, David.

MS. RICHARDS: It wasn't in the file when you gave it to me.

MS. WINGATE: Okay.

MS. REA: We just did it today.

MR. PROKOP: It's dated today.

MR. CORWIN: One person at a time.

MR. PROKOP: Just so everybody knows, there's A -- in the packet before the ZBA is an easement, what purports to be a Declaration of Non-Exclusive Easement, dated today, November 20th, so nobody would have known. I don't know when this came about. This came about at five o'clock or three o'clock? When was this submitted?

MS. REA: Earlier, earlier this afternoon.
This has been in the works, however. It's always been contemplated there would be an easement to provide access for parking in the back at 510 Madison.

CHAIRMAN MOORE: Perhaps what we can --

MS. REA: That's always been part of this project.

CHAIRMAN MOORE: Just to avoid back and forth testimony, perhaps you can give some more information about that. I just received my copy today by email, so it is a late-arriving item.

MS. WINGATE: There was a preliminary one that's been in the file maybe a week or so saying that they are preparing, and today I guess it was prepared. But, again, it's a nonconforming building in an R-2 Zone and it does not require any variances at all.

And just for a little bit of history, back in 2004, the previous owner put in a building permit application, and it was disapproved because he asked for office use. In 2005, he put in a building permit for light commercial and it was disapproved for that. So history says that this past owner has tried any number of ways to use that building and they were all turned down,
until, eventually, in 2006, he applied for light commercial and he was approved for a use variance.

In 2007, a building permit was issued for the correction of all the deficits the building has. The rear roof was reconstructed, since the whole -- the whole building was essentially brought up to code in 2007. The reason it wasn't given a Certificate of Occupancy at that time was because the previous owner refused to file CNRs for the property. At that point in time, the Zoning Board --

MS. NEFF: Excuse me. CNRs are?

CHAIRMAN MOORE: Explain what that is.

MS. WINGATE: Covenants and Restrictions.

MS. NEFF: I got it. Thanks.

MS. WINGATE: At that point in time, the Zoning Board of Appeals chose to revoke his use variance and left the building vacant. The building has been vacant now since -- I think it went on the market in 2006, 2007, and it's been vacant ever since. So, therefore, it absolutely has lost its nonconforming use.

And the other -- the last little piece of this is there have been any number of people who
have come into my office to look at the file for
Kaplan Market, some people serious buyers, and
some people just looking for a cheap investment
here in Greenport. There have been a handful of
really serious buyers who are looking for a place
to live, or make art, or have an office, and kind
of a home office situation, and, frankly, they've
all been scared away by Margaret's property to
the north, and by the neighbor who lives with
Margaret to the north. Chasing people down in
the street was -- well, probably would scare
anybody who's getting ready to make an
investment, and you know it's true.

MR. SWISKEY: Yeah, you're out of line,
though. You can't talk like that.

MR. CORWIN: I have to agree with
Mr. Swiskey.

MS. WINGATE: Okay. Then I --

MR. CORWIN: I think that you're giving us
an opinion.

MS. WINGATE: Excuse me.

CHAIRMAN MOORE: Yeah, don't --

MR. CORWIN: And I don't think you're
correct.

MS. WINGATE: We won't go there now.
CHAIRMAN MOORE: And if you're hearing comments from the audience, then perhaps the audience could withhold those comments as well.

MS. WINGATE: I felt that this property fell into the hands of a developer because I'm not so sure that the buyers who are coming into the office had the means to continue to fix it and the wherewithal to work with all the given situations. That was it.

CHAIRMAN MOORE: Okay. Either the owner or representative of the owner wish to speak? And we have your letter, we received your letter, it was a late arrival.

MS. REA: Yes.

CHAIRMAN MOORE: Do you intent to read the letter or just make comments?

MS. REA: No. I think it would be best to simply cover the high points of it, because I think it might dispel some factual aspersions here.

CHAIRMAN MOORE: We will file the letter, then, with the minutes, if that would be appropriate.

MS. REA: Yes, please. I would like the letter that we submitted today --
CHAIRMAN MOORE: And please identify and --

MS. REA: Dated November 20th, from me,
Kimberlea Rea, from Westervelt and Rea --

CHAIRMAN MOORE: That's good, thank you.

MS. REA: -- Attorneys for the Applicant.

It is a four-page letter. It contains two
attachments. The first is the 2011 resolution
enacted by the ZBA revoking the commercial use
variance that was granted to the prior owner in
2006.

The second attachment is a copy of
guidelines issued by the New York State
Department of State, issued under the auspices of
the James A. Coon Local Government Technical
Series. And it basically outlines the procedures
that I think you, Chairman Moore, have outlined
tonight. I simply attached that because I wanted
to be certain that we didn't spend a lot of time
tonight with public testimony regarding matters
that are commonly considered for requests for
variance. That's just not what we have here
tonight at all.

The Building Inspector, I believe, has made
clear that this is a nonconforming building with
a conforming use. We're not seeking variances
here, we don't need to. The code, Section 150-21, provides that, quote, "A nonconforming building with conforming use is any building which does contain a use permitted in the district in which it is located, but does not conform to the district regulations for lot area, width or depth, front, side or rear yards, maximum height, lot coverage, or maximum livable floor area per dwelling unit."

The code goes on to say, "Such building shall have been legally existing prior to the effective date of this chapter or any amendment thereto."

There is no dispute that this building was built prior to the enactment of the zoning code, I believe in approximately 1929. I don't believe that there's any dispute that for years it operated as a market. It was a commercial use, but that, as the Building Inspector has said, that commercial use variance was rescinded by this Board; that was in August of 2011.

I'm not aware of a 2009 ruling by anybody, whether it be dicta, resolution, or anything, restricting the use of this building to one-family, and I've been through these minutes,
I've pored through this. I believe that what we are dealing with here is very simple. We have a building that is nonconforming, because, indeed, there are -- it doesn't meet setback requirements and certain other of the bulk district limitations. However, its use is that of -- it's within the two-family, and the building permit was properly issued to allow construction of a two-family dwelling inside.

There was earlier -- when Ms. Richards was talking something about the code, 150-21B, that talks about buildings that have been damaged by fire in which the fair market value has been diminished. That does not apply here. There's not been a fire. This is a straightforward issue.

MS. RICHARDS: This is -- I'm sorry.

MS. REA: This is a straightforward issue of this building, and, certainly can see, everyone can see it does not conform to the bulk district requirements. However, its use is, indeed, that of a two-family.

If Mr. Olinkiewicz wanted to go in and put a market in today, he wouldn't be able to do that without coming and getting a use variance, which
the code frowns upon.

Regarding the parking --

MR. SWISKEY: Yeah, I'll call you back.

CHAIRMAN MOORE: Mr. Swiskey, we can't see

you, but we can hear you. Maybe you could go

outside.

AUDIENCE MEMBER: We can see you.

CHAIRMAN MOORE: Now we can see you. I'm

sorry. Can you either -- Mr. Swiskey, can you

either hang up or go outside, please?

MR. SWISKEY: All right.

CHAIRMAN MOORE: All right. Thank you.

All right. Go ahead.

MS. REA: Regarding the parking and the

easement that was brought up earlier, I'd like to

explain that. It has always been contemplated as

part of this project that an easement would be

granted from the property behind the Kaplan

Market property, that is 510 Madison, which is

owned by Mr. Olinkiewicz, to grant ingress and

egress to the back of the Kaplan Market property

on 407 Kaplan Ave, but that's always been

anticipated.

The actual drawing of the easement was done

this afternoon by my law partner. It has been in
the works for a very long time, and, in fact, the
surveyor has been working on it. So that will be
sent to Suffolk County for filing. This isn't
something that's new or a surprise, this is just
something that's been in the works. So what that
will permit is ingress and egress along the
driveway of 510 Madison, which, as I said,
Mr. Olinkiewicz owns and has the legal right to
grant to the 407 Kaplan Avenue property since
he's the owner of that one.

That easement runs with the land, it will
always exist. It provides access, and egress and
ingress for parking spaces. I believe that there
are two on the plans. However, there's ample
room for four. The way the surveyor has plotted
it on the easement, there are room for four cars.
So there should be no problem here at all with
off-street parking. There's more than enough
off-street parking.

There was earlier some mention by
Ms. Richards, I believe, of a substandard roof.
My client doesn't know what she means by that,
but, in any case, the roof is fine. There are
five skylights. They're very attractive and they
provide very nice light within the dwellings.
She mentioned earlier that this was a, quote, unquote, self-created hardship for Mr. Olinkiewicz. That does not apply here, because he's not seeking a variance. There is no -- a variance is not at issue here, because one is not needed, since this is a conforming use.

I don't know when I've ever seen quite so much technical review by a municipal board in advance of the issuance of a building permit. It was an extraordinary amount of very rigorous technical review before the building permit was even issued. And since then, there have been numerous inspections by not only the Building Inspector, but the Consulting Engineer, Joseph Fischetti, who was hired by the Village to assist the Building Department, which, by the way, my client is paying for, and gladly, as a part of this application.

Richard Smith, who is the New York State Department of State Regional Architect, was consulted. So these plans have been vetted by at least four sets of professionals, five sets if you include my client's Architect and Engineer, who provided stamped plans by a Professional Engineer and his Architect, Anne Sherry. So
we're looking at technical review by five sets of professionals.

   It sounds as though we're not going to get into construction issues that I believe were part of Ms. Richards' submission earlier, so I take it I don't need to go into that. But I can assure the Board that, at least to date, my client has been assured by these professionals that the property has been constructed, and the two-family dwelling is in full compliance with New York State and local codes. I believe it's ready for occupancy, and I think this Board simply has to decide.

   I'd ask that the Board close the Public Hearing tonight, finish taking whatever testimony it needs, and then make its decision to interpret this section of the code.

   My client has leases for the occupants of these two -- the occupancy of these two dwellings. The front building, or the front dwelling, is a three-bedroom dwelling. It's 1200 square feet, and the tenant is a single mother with four children. Three of these children attend the Greenport Schools. Their lease was set to commence on November 1st. That was
because we didn't know until last month, when we were here at this hearing, or at the ZBA hearing on another one of Mr. Olinkiewicz's properties, that there had been an appeal filed. So he had that -- he started working on those leases. That particular lease was set to commence November 1st. So this mother and her four children are very anxiously awaiting permission to be able to move in. It's ready for her and she's -- a horrible hardship has been worked on her. She's really, really in a bind.

Similarly, the rear dwelling, which is a 600-square-foot dwelling with two bedrooms, has been leased to a single adult mother. She actually plans to live there by herself. She has a young son who visits once every two weeks on the weekends. That is set to commence on December 1st; also a terrible hardship on her if she's not able to move in.

So I would ask that this Board hear the public comment that's applicable to this interpretation, close the hearing, and, please, promptly make a determination. Thank you.

MR. PROKOP: Could I ask you a question?

MS. REA: Yes.
MR. PROKOP: 510 Madison Avenue, is that a vacant property?

MS. REA: Yes. When Mr. Olinkiewicz bought the property, it was vacant. He then constructed a two-family dwelling on that property. It did not need a variance, it was code compliant. It was compliant in every respect with respect to the plans, so that there was a building permit issued and --

MR. PROKOP: Okay. So when that house was built, was there an application to the Planning Board?

MS. WINGATE: Yes.

MR. PROKOP: And didn't the layout of that property -- how many spaces were indicated on the layout of the property to the Planning Board?

MR. OLINKIEWICZ: The parking?

MR. PROKOP: Yes.

MS. REA: 510 Madison? You're talking about 510 Madison?

MR. PROKOP: Yeah.

MR. OLINKIEWICZ: James Olinkiewicz, to answer the question. On 510 Madison Avenue, when we applied, it was set up with three, at least three, if not four, parking spots which have not
been touched with the allowance of this ingress and egress. So there's still the available three parking or four parking spots that are at Madison now, and the new ingress and egress does not touch them, does not affect them at all, and you can just drive down the driveway and turn in behind Kaplan Market.

MR. PROKOP: The parking layout for Madison Avenue that we're talking about that was approved by the Planning Board, that was for parking for Madison Avenue, it wasn't -- there wasn't an easement discussed where there would be parking for the Kaplan Avenue property also, I don't recall.

MS. WINGATE: The parking is on --

MR. ABATELLI: Let them answer.

MR. OLINKIEWICZ: I'm losing you.

MR. PROKOP: The layout at 510 Madison that was approved by the Planning Board --

MR. OLINKIEWICZ: That layout has not changed.

MR. PROKOP: No, but it was approved for 510 Madison, it wasn't approved -- and, I'm sorry, I don't recall. I'm asking you, I'm just trying to open a discussion about this. But the
layout for 510 Madison that was approved with parking --

MR. OLINKIEWICZ: Correct.

MR. PROKOP: -- was the parking for 510 Madison, it wasn't the parking for Kaplan Avenue, right?

MR. OLINKIEWICZ: Correct, but the Kaplan does not even go through the parking areas for Madison. They will share a driveway, but it does not affect the parking areas that were approved by the Planning Board for Madison Avenue.

MR. PROKOP: But the thing is, when we -- when the Planning Board reviews parking, it's in terms of the use for that -- of that property, you know, whatever the use is going to be, a one-family house, two-family house, whatever it is, you know, to make sure, for instance, that there isn't a burden with on-street parking, you know, things like that, to make sure there's enough parking on the property for that house.

MR. OLINKIEWICZ: But there's no stipulation in the Greenport Code to have to go back to the Planning Board when you file ingress or egress across property you already own.

MS. REA: Right, and that's a restatement
of law. But I think, just to get at what I think
you're asking about, I'm not sure, but I think
what you're asking, is there enough parking, and
the parking for 510 Madison is directly behind
510 Madison. There's a lot of space back there;
it's reached by the driveway. The parking for
Kaplan Avenue is a separate -- it's over to the
right, it's completely separate. It's on the
Kaplan property site. So there's a lot of
parking back there.

MR. PROKOP: No, it's not --

MS. REA: There's Kaplan parking and then
there's Madison Ave. parking.

MR. PROKOP: Yeah. I mean, obviously, it's
not for me to say whether there is or isn't, but
the thing is -- the only point I'm making is that
this was all reviewed. Whatever exists on 510
Madison, honestly, the last time I saw the lot,
it was vacant, and I don't remember the Planning
Board application, but whatever is there was
determined by the Planning Board to be okay for
that property, there was no other use for any
other property discussed.

MS. REA: Right. He didn't own 407 Kaplan
at that time.
MR. PROKOP: Okay.

MS. REA: And the other thing is I think that -- I think that the law of easements permits this. And I don't know about a Village ordinance or State Law that would contravene this easement and this use of the driveway.

MR. PROKOP: But where do the -- the people that are living at 510 Madison, where are they supposed to park?

MS. REA: They park behind the building at 510 Madison and that won't be affected. They have adequate off-site parking, which is separate from the Kaplan Ave. parking, it's just reached by the same driveway.

MR. PROKOP: Right.

MS. REA: There's more than enough parking for both dwellings, is the point.

CHAIRMAN MOORE: Okay.

MS. REA: Any other questions?

CHAIRMAN MOORE: Any questions from the Board? No?

(No Response)

CHAIRMAN MOORE: Thank you, then.

MS. REA: Thank you. Thanks very much.

CHAIRMAN MOORE: So we can move. If there
are any members of the public who would like to
speak regarding this interpretation? Yes. And,
again, I would like to ask people to keep your
comments as brief as possible. We are under some
time constraints tonight. And, again, I would
like you to reference that portion of the zoning
code in Chapter 150 that you are concerned about.
Thank you.

MR. WATT: My name is Stephen Watt,
Avenue in Greenport.

And I started out by saying I don't know --
I've never met Mr. Olinkiewicz and I do not know
him. I certainly do know -- I'm aware of his
activities around the Village, and I do share
some concerns of my neighbors to the south on
Fifth Avenue of land use density, and also issues
of using buildings that were once utility
buildings and converting them into residences.
But my concern is with this building on Kaplan
Avenue known as Kaplan's Market and its sister
project at 510 Madison.

And I guess I want to go to just briefly to
the point that the Building Inspector made about
how it just takes a certain -- I'm reluctant to
say it, but sometimes it takes the private sector
to do what the public sector can't. That
building at 510 Madison was such a danger to the
public and languished for so many years without
any action by this Village. And subsequent to
its demolition for a foundation -- for the
foundation left open and also abandoned, and
then, again, no action by the Village.

We are -- we have, I guess, God's good
graces to thank for having not just sustained any
lawsuit from a parent of some child who could
have gotten grievously injured or killed in that
-- on that property.

And Mr. Olinkiewicz's project there was
just a real turn-around, and, likewise, on
the project on Kaplan Avenue. I guess I speak
for a number of my neighbors when I say that what
this represents, what the development of this
property represents to many of my neighbors is
the nearest glimmer, the light at the end of a
very dark tunnel, which is the history of this
building and its neighbor to the north, where we
have just -- I mean, the Spanish word "basta"
comes to mind, we've just had enough. And this
development, this change in the status of this
building to a code-compliant and zoning-compliant
two-family residence is -- represents relief,
final relief.

And I am not going to be able to address
Section 150 and the four subsections that the
Appellant has brought to this Board one by one.
I'm just going to tell you that this project
going forward, this permit being allowed to stand
and be executed, and two new neighbors moving
into a building that has been derelict for so
long is just -- I just implore you to accept this
permit and this exhaustively and
thoroughly-researched permit and let it stand,
and let the owner move forward with this project.
It is an untenable situation to date, and this
represents some hope for many of the residents on
that block. And I thank you for your time.

CHAIRMAN MOORE: Thank you. Yes, ma'am.

MS. MC ENTEE: Good evening. My name is
Joanne McEntee, 242 Fifth Avenue.

There's been a big issue with R-2 zoning
here, and I understand, talking to Eileen
Wingate, that 75 to 80% of the homes that are
located now in the Village of Greenport has been
rezoned and it's very overwhelming. So most of
the people which are -- could be landlord, and
they are landlord-owned, they're not -- it's
great for us to have if there was an owner that
was living in the home to be able to keep that
home and rent one part of their home out for a
two-family. That's my interpretation. That's
not what Mr. Olinkiewicz's interpretation is.
He's there for the almighty buck.

I'm looking to keep our Village alive, I'm
looking to keep it where we have middle class
people coming in and people that bring up our
town, not bring it down.

I'm also wondering, the issuance of the
easement for the parking, is that finalized?

MR. PROKOP: What do you mean? I think
it's --

MS. MC ENTEE: Is it finalized? It was
just submitted, correct, today?

MR. PROKOP: It hasn't been anything.

MS. MC ENTEE: Okay.

MR. PROKOP: It's just been applied.

MS. MC ENTEE: Okay. So Eileen Wingate is
ready for the CO, she's ready for the CO. And on
December 1st, we want to have the renters move
right in because we have these needy families
immediately. Now how can we do that when we
don't have the easement? How about if the
easement doesn't go through?

MS. REA: The easement's going to be filed
this week.

MS. MC ENTEE: It may be filed, but this
also needs to be --

CHAIRMAN MOORE: Excuse me. You have to
make your questions rhetoric. I don't think you
can expect an answer, but we will deal with it.

MS. MC ENTEE: That's fine. That's fine,
but I'm just -- understand that if you don't have
an easement coming through, where is that parking
going to be? So you can't possibly give a CO to
a building or a property without having that,
with no parking. They're going to be parking on
the street?

I also did a site visit today, and I looked
over there and there's wetlands behind there.
Has anybody taken into consideration DEC? We're
not far from wetlands. That's freshwater
wetlands and that's a big issue.

I see that -- I went over there, there's
gravel everywhere. Every piece of land has been
disturbed. I know that because I own a piece of
property that I had to go through this, and I did it the right way. And I believe that somebody needs to investigate, whether it's Eileen and either the Board and Mr. Abatelli, somebody needs to investigate the DEC with the wetland setback.

One thing I don't understand is that this -- to me, R-2 zoning, if I made my house -- if I had a house here in Greenport and I made my house that I was living in to an R-2, the -- and I had somebody rent the place, I would be fine with that, that would be my home. What Mr. Olinkiewicz is doing is running a business. To me, this is commercial zoned -- commercial. R-2 has not truly been defined, has it?

That's all I have to say, and I appreciate you listening to me. Thank you.

CHAIRMAN MOORE: Okay.

MS. SOLOMON: Hi. My name is Connie Solomon. I live on Kaplan Avenue, 422. My mother brought the property on Kaplan Avenue in 1975, we've been there ever since.

I didn't understand some of the comments about middle class families and a landlord living in the house and renting a house. I don't think -- I don't know you. I'm glad that, finally,
someone's going to do something to that eyesore. And I hate to say it, Margaret, but the property to the right, to the north is an eyesore as well. I'm sorry. I know we're friends, but it is. Kaplan Avenue, traditionally, it's a nice family block, it's quiet, but it just looks run-down. You know, I've complained a lot about that Kaplan Avenue property. I think that you're providing a much-needed product, service. You're providing homes for families. Now, whether you want to say that's middle class, or what, lower class? Or, you know, rents are so out of whack anyway, they need Section 8 to help them out. But I don't think we need to prejudge these people.

I'm just happy that maybe, you know, our property prices, or whatever, will not continue to just slide, because Kaplan Avenue looks, you know -- and it's got -- it looks bad with the market and also that other property. It's really an eyesore. And I would love just for this project to go forward and have families that need housing. You're obviously providing a need, a much needed need in this community. Thank you very much.
CHAIRMAN MOORE: Thank you. Someone else?

MS. GLASGOW: Hi. I'm Elizabeth Glasgow.

I own the property at 502 Madison Avenue. I am on the south side of Kaplan's Market. I actually also got notice of this in the mail, even though my name wasn't mentioned.

And I just wanted to say that I'm very pleased with the way Kaplan's Market looks. When we -- when I go out of my backyard, that's the first thing that I look at, and I've been looking at an abandoned building for six years.

Mr. Olinkiewicz came to talk to my husband and me before he started any construction, told us what his plans were, told us, you know, what kind of siding is going to be put on the building, and I think it looks great. And he was on our property. All the workers were wonderful, everything was cleaned up. I have no problem with the Market. I'm glad it's been renovated, and I'm happy that he bought the building.

CHAIRMAN MOORE: Thank you.

MS. RICHARDS: Can I rebut?

CHAIRMAN MOORE: Anybody else, members of the community would like to speak?

(No Response)
CHAIRMAN MOORE: Okay. And to be -- give everybody the opportunity to hear all the arguments and try and get this straightened out, if possible, tonight, I'd offer the Applicant to make a final brief comment, if you would, but with the opportunity that the Village could respond. And so, if you would like to make any further comments, Ms. Richards.

MS. RICHARDS: When Eileen spoke and she told us of all the engineers, and DOS, and everybody coming around, that was all about State Building Code. Nothing was mentioned about Greenport Zoning Code; that 150-12A, Note 1 is explicit, that you cannot have a second family unless you meet all the requirements, except -- wait. I got that backwards. The only way you can have a second family that doesn't meet all the requirements, except parking, which has to be given, is if you had an existing residence there and you were adding a second residence. That is not true on this property. So, therefore, he has to meet all of the -- he has to show a backyard, he has to show a front yard, a side yard, size of the property, density. All of those bulk requirements that are in that code have to be met
to give him a second family, there's no getting around it. And for Eileen to stand there and say it doesn't need any variances is totally wrong.

As far as 510 Madison, what Joe was bringing up before was very -- Mr. Prokop. When the Planning Board looked at that, they take everything into consideration, not just parking. They take into consideration whether you're going to have a backyard for your tenants, whether there's going to be a place for children to play. We're going to put all this parking for two two-family houses and burden those little, tiny -- there'll be no backyard for those four children to play in, there will be nothing. They're going to be in our streets. They're not going to have a backyard, and there's no backyard for people at 510 Madison either with all these cars, and easements, and driveways, and that's a requirement, too. And 600-square-feet apartment?

I thought that the minimum had to be 1,000.

MS. WINGATE: No. Read your code.

MS. RICHARDS: I did read the code.

MS. WINGATE: No. The code says --

CHAIRMAN MOORE: Perhaps you could wait until your turn comes up. I'm sorry. I'll just
allow you to finish.

MS. RICHARDS: Okay. And I believe that if an easement is put on 510 Madison, it will overburden that property, which already has a two-family home on it, and it was a small property to begin with.

Okay. Backyards. I think that that's all the notes I took. Thank you.

CHAIRMAN MOORE: Thank you. Perhaps you'd want to go up and make any final comments.

MS. RICHARDS: I just have one more thing.

I'm sorry.

CHAIRMAN MOORE: Oh, sorry. Go ahead.

MS. RICHARDS: Yes, it looks pretty. When Mr. Gordon painted it, it looked pretty, too, but it has to meet code and it has to be safe.

CHAIRMAN MOORE: Would you care to say anything further?

MS. WINGATE: (Shook head no.)

CHAIRMAN MOORE: No? All right.

MS. WINGATE: I think I've said everything.

MR. ABATELLI: I think, if anything --

David Abatelli, Village Administrator.

It's just that a lot of effort went into researching this. We were really very careful...
and dealt with many people, agencies in -- I
mean, I don't really want to get into a long
story other than saying we really put a lot of
effort into this, and we feel as confident as we
realistically can that this is being done
properly. And it's just -- you know, I don't
want to -- I'm not prepared to debate every item
that she had said, but --

CHAIRMAN MOORE: Okay. Thank you.
MS. RICHARDS: You ignore one pertinent
part of the code. That's beautiful.
MR. ABATELLI: But, again --
CHAIRMAN MOORE: All right. Any other
comments?
MS. REA: Can we make a comment?
CHAIRMAN MOORE: Yes, if you'd like to make
a final comment.
MR. OLINKIEWICZ: James Olinkiewicz. Yes,
I do own 510 Madison Avenue. Yes, I do own 407
Kaplan Avenue.

It's been brought up that the whole
backyard of Madison Avenue was covered with
stone. That is not a fact. We -- when we did
the final grading in the end of October, you
can't plant grass seed at the end of October,
beginning of November when it's 35 degrees outside. It will not grow, so we were unable to plant the lawn. But there is definitely yard for both houses, areas with barbecues, areas for bicycles, to sit, areas for swing sets, if they would like them. There's more than enough space there.

Is there an acre of yard? No. Is there 40-by-50 or 60? Yes, on Madison in the backyard, plus that. And is there 50-by-30 or 40 after you take out the parking for Kaplan? Yes, there is that there also. But I don't know of any mandate that tells me I can't even put gravel on my whole yard if wanted to.

So, other than that, I came, I went through an exhaustive questions and brought -- was thrown curve balls on every turn with other people that had to review the project, that had to go through it. I have never actually had, with 30 years of building experience through Shelter Island, Southampton, the North Fork, never had to go through three different levels of approvals, and including, I mean, pre -- after even my architect drew something. So it's been looked at, and looked at, and looked at, and
looked at to meet code and all the requirements. So it's an R-2 house in an R-2 zone. Thank you.

CHAIRMAN MOORE: Thank you. So I think all members of the public and the Applicant having had the opportunity, I think I would offer to entertain a motion to close the Public Hearing.

MS. NEFF: I move to close the Public Hearing on Kaplan Market

CHAIRMAN MOORE: Can I have a second?

Second, please. Anyone second it?

MR. BENJAMIN: Second.

CHAIRMAN MOORE: And then all in favor?

MS. NEFF: Aye.

CHAIRMAN MOORE: Before I ask for a vote, any discussion on the matter?

(No Response)

CHAIRMAN MOORE: Okay. All in favor?

MR. CORWIN: Give me a second.

CHAIRMAN MOORE: Oh, I'm sorry.

MR. CORWIN: I'm a little slow.

CHAIRMAN MOORE: I'm sorry, I misread you.

MR. CORWIN: We have received additional information. I'm going to make a couple of comments that possibly somebody would want to address after the public hearing is closed, so --
CHAIRMAN MOORE: Yes, we'll have opportunity to discuss it.

MR. CORWIN: I'm not sure if it's proper to close the Public Hearing.

CHAIRMAN MOORE: I'm not sure I understand. Are you saying that other members of the public, or that the Board --

MR. CORWIN: Yes, that's what I'm saying.

CHAIRMAN MOORE: -- the Board itself?

MR. CORWIN: By the time -- the recently submitted information and any remarks I have might change somebody's mind.

CHAIRMAN MOORE: Okay. I think what we really need to do is continue with the motion to close the Public Hearing and take a vote. And if all agree, then it will be closed. If not, we'll have to keep it open. So may I have a vote that we close the Public Hearing?

MS. NEFF: Aye.

CHAIRMAN MOORE: Aye.

MR. BENJAMIN: Aye.

CHAIRMAN MOORE: Charlie. And any opposed?

MR. CORWIN: No.

CHAIRMAN MOORE: It's three in favor, one opposed. Public Hearing is closed.
We will have the opportunity to discuss this during the regular part of the meeting, because -- and we will do that, I hope, tonight. We're under some time constraints. It's 6:15 and we probably have to complete by 7:15. I believe you mentioned 7:30 for the Fire Department.

MR. ABATELLI: We need -- we should probably try to be out by seven, because they'll rearrange the furniture.

CHAIRMAN MOORE: Yes, okay.

MR. ABATELLI: So somewhere, either 7, 7:15.

CHAIRMAN MOORE: What I'm going to recommend is -- anyone from the Hospital officially here tonight? Are there personnel from the Hospital?

(No Response)

CHAIRMAN MOORE: Okay. So what I think we will do is, in the absence --

MR. CORWIN: Could I make a suggestion?

CHAIRMAN MOORE: Yes.

MR. CORWIN: Since they handed in another application for the emergency sign, which I assume is the end of Madison or Manor Place?

CHAIRMAN MOORE: I think it's on the south
side of the building, but that only arrived today
and it's not under our consideration at this
point.

MR. CORWIN: I just -- I think it's better
if these things are one big ball. That's what
I'm trying to get at.

CHAIRMAN MOORE: Yes.

MR. CORWIN: And maybe, if they had -- I
don't know if it's possible, if they amended
their application and then we kept the Public
Hearing open to try to take two things together.
I don't know if that's feasible or not, but just
a suggestion.

CHAIRMAN MOORE: Yeah. I might have an
alternate suggestion. In the absence of the
Hospital here, and, apparently, in the absence of
any members of the public -- is anyone here from
the public wishing to speak about the Hospital?

Okay.

AUDIENCE MEMBER: I'll speak, but --

CHAIRMAN MOORE: Yes.

AUDIENCE MEMBER: I only wanted one comment
for the person, so I've made my letter.

CHAIRMAN MOORE: Okay. Do you feel there's
anything additional to add to your --
AUDIENCE MEMBER: No.

CHAIRMAN MOORE: Okay. So it's on file.

AUDIENCE MEMBER: I want to follow through and see what's the developing story.

CHAIRMAN MOORE: When we discuss --

AUDIENCE MEMBER: I would certainly like to know if there's been a new application, what the signs look like, or what's going on with that.

CHAIRMAN MOORE: Okay. Right now we're considering an application for the two signs originally applied. Mr. Corwin has a very good point, and there's several ways we might be able to address that.

The Hospital has not submitted a comprehensive sign plan, so we are looking at this piecemeal. And the fact that a building permit, I think only today or yesterday, was submitted for now another sign change, that it might be appropriate to go back to the Hospital and ask them to solidify it.

Another alternative would be to act on two signs and require, as a contingency, that they present a sign plan to the Planning Board for complete review. We can go either way, but in the absence of the Hospital being here, I think
it's only fair to keep the hearing open, so I would suggest that.

And do we need a motion to keep the hearing open?

MR. PROKOP: Normally, we table.

CHAIRMAN MOORE: We could just table?

MR. PROKOP: I think the motion is tabling it, because there's no appearance by the Applicant.

CHAIRMAN MOORE: There's not much point in getting into a discussion after we even close the hearing. So I would suggest we table the hearing until next month, and I'll make that motion. Could I have a second, please?

MR. BENJAMIN: Second.

CHAIRMAN MOORE: And any further discussion?

(No Response)

CHAIRMAN MOORE: If not, all in favor?

MR. CORWIN: Aye.

MR. BENJAMIN: Aye.

MS. NEFF: Aye.

CHAIRMAN MOORE: Aye.

So that's tabled until next month. And we can now move on to the Regular Meeting agenda.
Obviously, Number One will wait until next month regarding the sign application.

We now move on to our discussion of the request for interpretation by Margaret Richards.

Just to review, I think the history of this property has been reviewed in some detail, perhaps dating back to 1926. There was a subdivision on this property, which was approved by the ZBA in 1997, and was officially registered with the County in 2000. That's an additional piece of information. And this separated the house, which faces Madison Avenue from the Market property on Kaplan.

We've covered the fact that there were several applications for different commercial uses which disapproved. There was a variance issued in 2006 by a previous Zoning Board of Appeals. As the Building Inspector indicated, no action was taken on this. In July of 2011, this current Zoning Board of Appeals rescinded that use variance, reverting the property to its original designation of residential use.

So the only zoning code allowed use of this property is currently residential use, and that is what the Applicant has been issued a building
I would like to entertain any discussion from the Board concerning some of the assertions that there are issues with the zoning code that this property development does not meet. Is there any discussion that Board Members would like to make in this regard?

MR. CORWIN: Well, the first thing I want to say is that I looked through Executive Law, codes, rules and regulations, International Building Code, and the Village Code, and I didn't find any place that the Building Inspector is authorized to issue building permits or COs.

If you go to Southold Town, their code, they specifically say the Building Inspector can issue a building permit and CO. If you go to some other villages in the State of New York, they say that specifically. There's, I think, three things the Building Inspector -- enumerated that the Building Inspector can do in the Village of Greenport and it does not include issuing a building permit or a CO. So that's one thing I have to note.

I went to look at this file. I filed a FOIL request. And it's difficult to go through
the files, because they put you in a little desk
in the business office there. And I asked for a
copy of the big plan by the architect, and I
wanted -- I was willing to go and copy the plan
myself and pay the fee myself. Mr. Abatelli was
there, he said to the Deputy Clerk, "Well, you
probably could let him do it," blah, blah, blah,
but the Deputy Clerk didn't want to do that,
because she had checked with the Clerk, who had
gone for a walk.

Then I got an email that that particular
plan, the large format architect's plan, was no
longer valid. I guess there was a new one. I
didn't see it, I didn't see any marks on the
page. So what they did, they e-mailed me a small
format plan by the architect that's illegible.
So I didn't get the opportunity to go through the
plan, which I wanted to do, and I would still
like to do.

And then there's been building permits
issued in the past by the Building Department
that should not have been issued, notably Dutch
Macomber's garage that was turned into a detached
housing unit as an apartment. And, as I pointed
out at the time, that floods, that area floods.
That used to be known as Cook's Pond.

And your position, Mr. Chairman, is we're just interested in zoning issues, and I think you're partly correct, but I think you're missing the last question in the five questions we answer, which says, "Affect on the environment."

And I think if building is done in error and not corrected, that that has to be our concern.

And I will tell you two things that were done in error, in my opinion, on the Center and Third Street projects by Mr. Olinkiewicz. They were both built on fill. The one on the west side of Third Street was built right where Cook's Pond was, and the building code says that if it's built on fill, you have to have an engineer's report on the nature of the material and how much it can support, and I looked through the files, I didn't see that.

And I also note that on the house on the east side of Third Street, I'm assuming the old chimney is still in service. I'm assuming the old chimney is still in service and the building code says 10 feet over, three feet up. I don't think that chimney meets that requirement.

So there have been errors on the part of
the Building Department in the past, and I think these things have to be scrutinized a little bit.

CHAIRMAN MOORE: Okay. Thank you. Do you have any specific comments about the current protest of the building permit regarding the --

MR. CORWIN: Not without studying it further.

CHAIRMAN MOORE: Okay. Any comments from Charlie or Ellen?

MR. BENJAMIN: I just have --

CHAIRMAN MOORE: Go ahead, Charlie.

MR. BENJAMIN: -- one question, one question about -- and I don't even know if it's relevant or not. That's my question, is that it appears that there's wetlands about 150 feet or so to the north and west, I guess. It looks like a swamp area, it might have been at one time. I don't know if that has anything to do with what was done there, you know, but the building existed, it's a preexisting building. I mean, maybe it existed before the DEC got in there. But there was a question brought up and I don't know what that has to do with anything, but I think I would have to know, that's all. And that's the only comment I have. It's just a
question.

CHAIRMAN MOORE: Perhaps what I could do is
ask the Building Inspector, and possibly
Mr. Prokop, if a wetlands issue regarding this
property for renovation is a factor that has been
overlooked, or is the factor at all in issuance
of a building permit.

MR. PROKOP: Normally, if the Village feels
that wetlands are involved, the wetlands, we
require that the wetlands be what's called
flagged. The nearest wetland boundary has to be
flagged, and then there's a determination as
to -- depending on where that -- where the
wetlands boundary is, I believe that an
application to the DEC may be required, and,
also, that may bring in the wetland jurisdiction
of the Village. That has to -- but that has to
be determined by flagging of the wetlands.

MR. ABATELLI: I mean, it's an existing
building.

MS. WINGATE: Generally, only if there's
excavation or --

CHAIRMAN MOORE: Can you hear okay?

MS. BRAATEN: Not very much.

CHAIRMAN MOORE: If you could speak up a
little louder, yes.

MR. ABATELLI: I mean, it's an existing building. I mean, I don't think that that would be a normal procedure that we would go through a DEC review, or even make a request when there's an existing building being renovated. I'm not aware of any situation where that's been done. I hope that's the case. I mean, that would be a surprise to me if this would have required a DEC review, but, you know.

MR. PROKOP: That's correct, there's no exterior change. Yeah, I would be correct on that, there's no exterior change in the building, that's right. So I think there's no exterior change. The only question that I have, then, would be about the parking, a parking area being created that either in or adjacent to wetlands, that might be an issue.

MS. RICHARDS: No exterior change?

MS. MC ENTEE: That will be disturbed?

MR. ABATELLI: I mean, if we're talking about -- I really don't want to get into a debate, you know, but with siding, that they put siding on. I mean, that's --

CHAIRMAN MOORE: Just to continue
discussion, and, Ellen, comments?

MS. NEFF: I was just going to say, at the
time that the building was created on two -- I
mean, excuse me, 510 Madison Avenue, which is --
runs to the rear of the property at -- on Kaplan
Avenue, would be much -- at the time that
building was built, it's much closer, if it is,
in fact, close to any swampy areas or wetlands,
and that those issues would have come up at that
time, and they don't seem to be relevant of the
visit that I made to this site, that question.

CHAIRMAN MOORE: Okay.

MS. NEFF: And I think that we have an
example, and this happens in other places in the
Village, but maybe nowhere to the extent of this,
where a building, preexisting, as we all
acknowledge, occupies a substantial part of the
property, and at different times in its history
been a derelict building, and that we're looking
at issues regarding what has happened recently.
And that, in many ways, what has happened
recently, as many people in this room have
spoken, have positive impact, and whether the
rest of the story needs to give us pause now is
our question.
CHAIRMAN MOORE: Yes. And the comments that I'd like to make is that this property has had a lot of contentious issues on it in its past, which is certainly way before the issues that we're dealing with now.

There have been many references to this property being commercial, and it was actually never commercial property by zoning, but its use was principally commercial through most of its history. It did have the sanctification of a use variance, which was issued only in 2006, and that variance, due to the failure of the owner to register the proper covenants, was rescinded. And so the property, which has all along been residential R-2 District, which is one or two-family occupancy, is now back to full residential use, and the owner is developing the structure, which is preexisting nonconforming for residential occupancy.

The interesting thing about this property is that when it was originally configured with the Madison and Kaplan Avenue properties intact, it had mixed use as residential and commercial, and the subdivision that was approved in 2000, finally registered in 2000, separated those uses.
And the property, which is probably the poster child of a preexisting nonconforming use, had additionally added -- the lot became a substandard lot in size, and its occupancy of footprint of building, again, exceeded the permissible lot coverage. I believe the building now occupies, the Kaplan Market Building, 67% of lot coverage. So this is a very unusual property, but it is preexisting.

My feeling is that the opportunities to restore this to residential use have been taken by the owner, and I have difficulty in seeing any interference of the zoning code, which has been done. Again, and this has been read before, "Nothing in this article shall be deemed to prevent normal maintenance and repair, structural alteration, moving, reconstruction or enlargement of a nonconforming building, provided that such action does not increase the degree or create any new noncompliance with regards to the regulations pertaining to such buildings," and those are the bulk regulations for residential properties.

I think one of the assertions of enlargement of the building by the application of siding I think is insignificant. We're talking
about inches. And I would hardly think that any homeowner elsewhere in the Village who had a noncompliant house and wished to remodel it would expect to have a variance to add siding to the building. I just don't see that.

I think that we have been very consistent on the Zoning Board in considering needs for variances and approving variance applications, that when the footprint of the building changes and increases the noncompliance, we require a variance. This hasn't been the case in the past, but in recent years, this has been the case and it's been very strictly applied. So there have been a number of requests for things such as porches and other additions to houses that we have examined and approved on a case-by-case basis.

I don't see that a variance would be required for the improvements that have been made on this house, and because of that, I would feel personally that the building permit was properly issued. There may be issues of building codes, which is out of our realm, and they can be investigated by proper inquiries to the Building Department. My understanding is there are
processes where this would occur. I'm not familiar with them, but it's not a Zoning Board activity.

Any other discussion from the Board before we move forward?

MR. CORWIN: One other thing is --

CHAIRMAN MOORE: Yes.

MR. CORWIN: -- possibly the Fire Department should have some input on this, because what is the access to that building in a fire? They certainly can't run a hose to the back of the building very easily.

CHAIRMAN MOORE: And that would be an issue relative to issuance of a CO, I take it.

MR. CORWIN: I don't know.

CHAIRMAN MOORE: Before occupancy, I would guess. I think that's a valid suggestion. I don't know that it's a question before the Zoning Board. That would be something to do with building standards. Charlie?

MR. BENJAMIN: A comment on that is that you can get to the one apartment from the south and the other apartment from the east. So you have access to both apartments from the street. I don't know where the fire hydrants are, but
anybody might have that same problem. You know, you might have to go to one street or the other, but you could still get there. And if you have an easement, you can't park in the easement, so they could drive their fire truck right up and get to both, you know, of the easements.

CHAIRMAN MOORE: I'd like to ask a question of the property owner.

MR. CORWIN: You can't park in an easement?

MS. REA: No, you cannot.

MS. WINGATE: No.

MR. BENJAMIN: Well, you're not supposed to.

MR. CORWIN: You're not supposed to --

MR. BENJAMIN: Yeah.

MR. CORWIN: -- but you can.

MS. REA: Actually the easement specifically prohibits that.

MR. BENJAMIN: Good.

MR. CORWIN: Yeah. Well, who's going to be there to -- I don't want to get into it. You can park --

CHAIRMAN MOORE: I just have a question of the property owner representative. What is the width of the easement that's being filed?
MR. OLINKIEWICZ: Ten feet.

CHAIRMAN MOORE: And is that sufficient for fire apparatus to pass?

MR. OLINKIEWICZ: Yeah. You minimally have to have eight feet, and then you can go up to 10 feet. We put the wider easement down the property to allow for possibility for fire apparatus or ambulance.

CHAIRMAN MOORE: And what is the actual width of the driveway? The easement is one thing.

MR. OLINKIEWICZ: The width of the driveway is 10 feet.

CHAIRMAN MOORE: As far as free access?

MR. OLINKIEWICZ: Correct. And that's on the side of the house that has -- was a 15-foot setback when they originally built that house. So there's actually two more feet on one side and three feet on the other side, so --

CHAIRMAN MOORE: Okay. That's what I'm driving at, to find out whether there was available access.

So any other questions from the Board?

MR. PROKOP: I just --

MS. RICHARDS: Can I just say one thing?
CHAIRMAN MOORE: Yes. We finished public testimony.

MS. RICHARDS: I know, but you're completely going -- you're the Zoning Board and you're completely ignoring Section 150-12A, Note 1. You haven't even discussed it, and that is the most pertinent.

MR. PROKOP: So my comment is --

CHAIRMAN MOORE: Yes.

MR. PROKOP: My comment, I just have a comment. And I was trying to speak to -- I was speaking to David Abatelli about this to try to get an answer, but what the regulations call for is, if you increase the -- if you change the property from R-1 to R-2, you get a waiver of the bulk area requirements for the -- what it says, the new unit. And I'm not -- you know, I don't think it's a holdup to try to figure out what the new -- what means as far as the new unit. It probably is -- means you get a waiver from the bulk area requirements, period, except that you don't get a waiver from parking.

CHAIRMAN MOORE: That's correct.

MR. PROKOP: And the parking requirement, I believe, unless I'm mistaken, is three cars.
CHAIRMAN MOORE: For the two units.
MR. PROKOP: For the two units, right.
CHAIRMAN MOORE: Yes.
MS. RICHARDS: But you only get the waiver if you have an existing residence.
CHAIRMAN MOORE: I'm sorry.
MR. PROKOP: So the first thing is tonight, we got -- I mean, I don't know if it was discussed previously, but inside the Village Office, it wasn't discussed with me that I remember, but tonight I have an easement agreement that is between Parcel A and Parcel B, and they're supposed to be -- there's no description about Parcel A or Parcel B, and there's supposed to be a Schedule C attached.
MS. REA: There actually is a description.
MR. PROKOP: And there's no Schedule C attached.
MS. REA: The surveyor has -- the surveyor, in your copy -- maybe it didn't come through your copy. Let me give you a Schedule C.
MR. PROKOP: I have a two-page copy.
MS. REA: It must have -- here's Schedule C. Does anyone else need a copy?
MS. NEFF: Please.
CHAIRMAN MOORE: I have a copy, I have it on file.

MS. NEFF: Thank you.

CHAIRMAN MOORE: Thank you.

MR. PROKOP: So. My only comment is that, normally, when there's an easement involved, or covenants and restrictions involved, there's a decision that's made that incorporates them and subject to the Attorney's approval, subject to the Attorney's review and approval, and that the decision does not go into effect until recorded. That's my first comment. So this has to be put together into a real easement and has to be reviewed.

And then the second thing is that I believe that the change in the use of part of the premises of 510 Madison is subject to the -- some kind of review of the Planning Board, only because the Planning Board reviewed that property, the layout of that property. And, you know, I'm not saying it's a good idea, a bad idea, I'm not saying yes or no, I'm just saying that I think that that -- if you move ahead with this, it has to be subject to the review of that Board.
So those are two comments that I have about the application. I wanted to, if I could have some leeway for a second, and address the people from Madison Avenue, the people -- is it Madison Street? I'm sorry.

MS. WINGATE: Madison Avenue.

MR. PROKOP: Madison Avenue. I'm sorry.

And, also, there was somebody from Kaplan Avenue that mentioned the 510 Madison property. I just wanted to say, since there was a problem, apparently misinformation, the Village worked -- we understood that that was a bad situation at that property, and the Village worked for a long time trying to correct it. We were actually in Southold Town Court for at least probably two years with a lot of effort from myself and also Eileen Wingate and Dave Abatelli trying to clean up what existed.

The property was, for all intents and purposes, abandoned by a corporate owner. Omni Ventures was the owner, and they basically abandoned the property, and we went through the normal course, which is to go -- to start issuing violations and try to get some kind of relief that way for the neighborhood and also for the
Village.

I happened to be -- have a meeting one night in Holtsville at an address called Peachtree Court in an office building there, and I -- just by chance, the office that I was in was across the hall from Omni Ventures, and the next day I was there with a summons and we served them. They continued for a few months to not appear in court. And then, consulting with the Mayor, and the Board, and also Eileen and Dave, what we did is we started a new track, and what ended up happening was the Village went in there with the expenditure of Village money. The Village spent a lot of money, close to $10,000 of Village -- of public money cleaning that property up, filling -- removing the old foundation, backfilling it and grading it, and I think also putting in a fence. And I know that -- I know it then became -- continued to become kind of a problem and we tried to stay on top of it, but that a lot of hard work went into trying to clean it up for the Village. I wish it had happened in a couple of days instead of a couple of years, but we went by -- you know, there's a procedure that we have to go by and that's what we did.
Thank you.

CHAIRMAN MOORE: Okay. Would the Board be prepared to entertain a decision on this request for appeal of the building permit, because I might be able to put together some level of coherent statement needed.

MR. PROKOP: I think that even though it's an interpretation, you do have to do SEQRA and it's --

CHAIRMAN MOORE: Yes.

MR. PROKOP: I believe it's a Type II.

CHAIRMAN MOORE: I was about to do that.

So the first matter of business, prior to making a proposal for a decision, is that we would declare the Zoning Board of Appeals Lead Agency for this matter and declare a SEQRA Type II Action. So I make that motion, and may I have a second?

MS. NEFF: Second.

CHAIRMAN MOORE: All in favor?

MR. CORWIN: Aye.

MS. NEFF: Aye.

MR. BENJAMIN: Aye.

CHAIRMAN MOORE: Aye. Motion carries.

And then, next, see if I can word this
properly. First of all, I think there's been plenty of input from the public, also from the Board, and the property owner, and the Village. I think the complicated past of this property has added a level of confusion to it, and also other issues, because it's also a construction project that some people have taken some objection to. And whether or not there are any building code issues, I can't say, it's not my field. But, as far as the zoning code is concerned, this structure on residential property meets the requirement of a nonconforming building with a proposed conforming use. And with that in mind, I would make the motion that we reject the appeal of the Applicant, which will allow the building permit to proceed. There may be some technical questions about the easement, which I think can be resolved before issuance of any CO. With that, I make that motion, and may I have a second?

MS. NEFF: Second.

CHAIRMAN MOORE: Is there any further discussion?

(No Response)

CHAIRMAN MOORE: If not, all in favor?
MS. MC ENTEE: Will you be --
CHAIRMAN MOORE: I'm sorry, no questions right now.
MS. MC ENTEE: Are you getting involved with wetlands as well?
CHAIRMAN MOORE: I'm not proposing any involvement with wetlands.
All in favor?
MR. CORWIN: Do we have to do the five questions?
CHAIRMAN MOORE: No. This is not an application for an appeal, it's simply a vote on whether an appeal of the building permit will be permitted or not.
So may I have a vote, please? All in favor?
MS. NEFF: Aye.
CHAIRMAN MOORE: Aye.
MR. BENJAMIN: Aye.
CHAIRMAN MOORE: And opposed?
MR. CORWIN: Aye.
CHAIRMAN MOORE: So we have three in favor and one opposed. That means that the appeal for rescinding the building permit is rejected and the building permit stands. And thank you.
I believe we only have administrative business from this point on. If anybody in the audience is interested in departing, I suggest you could do so.

We have pushed back the further deliberation and tabled discussion for the Hospital, so that will be coming up next month.

And we'll be moving on to Item Number 3, is a motion to accept the ZBA minutes for October 17th, 2013. So moved. May I have a second, please?

MS. NEFF: Second.
CHAIRMAN MOORE: All in favor?
MR. BENJAMIN: Aye.
MS. NEFF: Aye.
CHAIRMAN MOORE: Aye.
MR. CORWIN: Aye.
CHAIRMAN MOORE: Motion to approve the ZBA minutes for September 18th, 2013. So moved.
Second, please.

MS. NEFF: Second.
CHAIRMAN MOORE: All in favor?
MR. CORWIN: Aye.
MS. NEFF: Aye.
MR. BENJAMIN: Aye.
CHAIRMAN MOORE: Aye. The motion carries.
And motion to schedule the next regular ZBA
meeting for December 18, 2013.
MS. NEFF: Doug, do we have to accept the
application of the Hospital?
CHAIRMAN MOORE: Not yet.
MS. NEFF: No?
CHAIRMAN MOORE: It's not a request of this
building permit request.
MS. NEFF: Sorry.
CHAIRMAN MOORE: That's all right. So we
would have our next meeting December 18th. Is
that amenable, being so close to Christmas, to
everybody? How's does that sound? Is the 18th
all right with you?
(Affirmative Response)
CHAIRMAN MOORE: So we will schedule the
next meeting for December 18th, which is a
Wednesday, third Wednesday in December, and that
has been scheduled.
And I would make a motion to adjourn the
meeting. Second?
MR. BENJAMIN: Second.
CHAIRMAN MOORE: Charlie seconded it. Then
all in favor?
MR. CORWIN: Aye.

MR. BENJAMIN: Aye.

MS. NEFF: Aye.

CHAIRMAN MOORE: Aye.

So the meeting is adjourned.

(Whereupon, the meeting was adjourned at 6:45 p.m.)
CERTIFICATION

STATE OF NEW YORK )
) SS:
COUNTY OF SUFFOLK )

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

THAT, the above and foregoing contains a true and correct transcription of the proceedings taken on November 20, 2013.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of November, 2013.

[Signature]
Lucia Braaten
<table>
<thead>
<tr>
<th>B</th>
</tr>
</thead>
<tbody>
<tr>
<td>B 76:12,14</td>
</tr>
<tr>
<td>backfilling 79:17</td>
</tr>
<tr>
<td>backwards 50:16</td>
</tr>
<tr>
<td>Backyards 52:7</td>
</tr>
<tr>
<td>bad 48:19 77:21 78:12</td>
</tr>
<tr>
<td>ball 58:5</td>
</tr>
<tr>
<td>balls 54:17</td>
</tr>
<tr>
<td>barbecues 54:4</td>
</tr>
<tr>
<td>based 6:22</td>
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<tr>
<td>basic 17:17</td>
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<tr>
<td>basically 29:15 78:21</td>
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<td>basis 71:17</td>
</tr>
<tr>
<td>basta 43:23</td>
</tr>
<tr>
<td>bear 4:8</td>
</tr>
<tr>
<td>beautiful 53:11</td>
</tr>
<tr>
<td>bedrooms 13:1 36:13</td>
</tr>
<tr>
<td>beginning 54:1</td>
</tr>
<tr>
<td>Benjamin 1:17</td>
</tr>
<tr>
<td>Bess 18:17 19:4</td>
</tr>
<tr>
<td>best 28:17</td>
</tr>
<tr>
<td>better 58:4</td>
</tr>
<tr>
<td>beyond 17:14</td>
</tr>
<tr>
<td>bicycles 54:5</td>
</tr>
</tbody>
</table>

density 9:24 42:17 50:24
departing 83:3
depending 10:16 66:13
depth 30:7
Deputy 63:6, 8
derelict 44:10 68:19
description 76:14 76:16
designation 61:22
desk 63:1
detached 63:23
detail 14:20 61:6
determination 10:7 21:3 36:23 66:12
Determinations 21:5
determined 40:21 66:18
developer 28:5
developing 59:4 69:17
development 43:18 43:25 62:5
device 9:10
dicta 30:23
different 3:5 8:22 54:22 61:15 68:18
difficult 62:25
difficulty 70:12
diminished 31:14
directly 2:21 40:4
approve 25:20 25:23 61:16
discuss 56:2 57:1 59:5
discussed 38:12 40:23 75:6 76:9 76:10
discussing 14:20
dispel 28:19
displaying 17:15
dispute 17:2 30:14 30:17
district 4:18 10:8 23:2 30:5, 6 31:5 31:21 69:15
disturbed 46:25 67:20
document 8:25
doing 17:21 19:6 23:25 47:12
door 11:15
doors 17:21
DOS 50:10
Doug 84:4
Douglas 1:14
drawing 32:24
drew 54:24
drive 38:6 73:5
driveway 16:4 33:7 38:6 39:9 40:6 41:6, 14 74:10, 12
driveways 51:18
driving 74:21
due 69:12
duration 2:10
Dutch 63:22
dwelling 11:12, 22 30:9 31:9 35:10 35:21, 21 36:12, 13 37:5
dwellings 33:25 35:20 41:17
case's 46:4
cases 23:22 41:3 51:18 73:6
easily 72:12
east 64:20 72:23
Eastern 2:15 3:8
Edgar 5:19
effect 77:11
effective 30:12
effort 22:3 52:24 53:4 78:16
egress 18:5 32:21 33:6, 12 38:2, 4 39:24
eight 74:5
either 17:6 28:10 32:9, 10 47:4 51:17 57:11 59:24 67:17
elderly 9:13
element 17:14, 18
eliminate 22:6
elimination 4:21 22:25
Elizabeth 49:2
Ellen 1:16 65:9 68:1
email 25:11 63:11
emergency 57:23
emotion 8:2
enacted 29:8
enactment 30:15
ended 79:12
engineer 22:17
34:14, 23, 25
engineer's 64:15
engineers 22:6, 8 50:10
enlargement 23:12 70:17, 24
entertain 7:18 55:6 62:2 80:3
enumerated 62:19
environment 64:6
error 64:7, 10
errors 64:25
escaping 11:24
essentially 26:7
estate 9:14
evening 44:19
event 11:21 12:4
eventually 26:1
everybody 9:5 24:17 50:2, 11 84:14
examined 71:16
example 68:14
excavation 66:22
exceeded 70:5
exceeds 22:2
exception 15:3
excuse 10:12 14:22 26:13 27:21 46:8 68:4
executed 44:9
Executive 62:9
exhaustive 54:16
exhaustively 44:12
exist 33:12
existed 16:25 65:20 65:21 78:18
exists 40:17
expect 46:10 71:4
expenditure 79:13
experience 54:20
explain 26:14 32:16
explanations 6:4
explicit 50:14
extensive 8:10
extent 68:15
exterior 67:12, 13 67:14, 19
extra 11:10 13:1
extraordinary 34:10
eyesore 48:1, 3, 21
F
F 4:21 86:1
faces 61:12
factor 66:5, 6
factual 28:19
failure 69:12
fair 31:13 60:1
fairly 8:9
familiar 2:23 6:8 17:4 72:2
family 48:6 50:14 50:17 51:1
fans 16:11
feasible 58:12
fee 63:5
feel 6:19 53:4 58:24 71:20
feeling 70:10
feels 66:8
feet 2:22 15:22 35:22 64:23, 23
O
O 86:1
o'clock 24:23,23
objection 81:7
objections 3:22
obviously 7:15
40:14 48:23 61:1
occupancy 5:5 18:3
22:22 26:9 35:12
35:19 69:16,19
70:4 72:16
occupants 35:18
occupies 68:17 70:7
occur 72:1
October 53:24,25
83:9
off-site 41:12
off-street 33:18,19
offer 50:4 55:5
offered 7:14
office 5:17,19 6:2
25:21 27:1,6,7
28:7 63:2 76:10
79:4,5
official 6:15
officially 57:15
61:9
Oh 18:10 20:11
52:13 55:19
okay 3:20 9:8 10:19
11:1 12:16,18
13:17 15:13,15
19:11 20:3,6 21:9
24:13 27:18 28:10
37:10 40:21 41:1
41:18 45:20,22
47:17 50:1 52:2,7
53:9 55:17 56:13
57:10,18 58:19,24
59:2,9 65:3,8
66:23 68:12 74:20
80:2
old 64:20,22 79:16
Olinkiewicz 6:2
7:16 9:21 14:15
15:7 31:23 32:20
33:8 34:3 37:3,17
37:22,22 38:17,20
39:3,7,21 42:13
47:12 49:12 53:18
53:18 64:11 74:1
74:4,12,15
Olinkiewicz's 36:3
43:14 45:7
Omni 78:20 79:6
on-street 39:18
once 36:16 42:18
one-family 30:25
39:16
open 2:25 12:25
17:2 38:25 43:7
56:17 58:11 60:1
60:4
openings 16:10
operated 30:18
opinion 27:20
64:10
opportunities 70:10
opportunity 3:2
7:14 50:2,6 55:5
56:2 57:1 63:17
opposed 56:22,25
82:20,23
option 9:12
order 2:1 4:4
 ordinance 41:4
original 8:21 61:22
originally 59:11
69:21 74:17
outcome 86:16
outlined 29:16
outlines 29:15
outside 32:6,10
54:2
overburden 52:4
overlooked 66:6
overwhelming 44:25
owned 16:13 32:20
owner 7:16 16:12
17:3 24:5,6 25:19
25:24 26:10 28:10
28:11 29:9 33:10
44:14 45:3 69:12
69:17 70:12 73:8
73:24 78:20,21
81:3
owners 9:11 17:24
owns 11:15 16:20
33:8

P
p.m. 1:7 2:2 85:7
packet 24:18
page 15:7 20:19
63:15
painted 52:15
paper 20:10
paperwork 10:17
23:21
Parcel 76:12,12,14
76:14
parcels 9:25
parent 9:13 43:11
park 41:9,10 73:4,9
73:22
parking 4:23 11:10
11:11,13,18 12:4
15:16 16:17,23
18:6 23:22 25:3
32:2,14 33:13,18
33:19 37:17,25
38:3,3,8,10,12,15
39:2,4,5,8,10,13
39:18,20 40:3,4,6
40:10,12,13 41:12
41:13,16 45:14
46:13,16,16 50:18
51:7,11 54:11
67:16,16 75:21,24
part 8:16,19 11:23
15:15 20:22 25:5,6
32:17 34:17 35:4
45:5 53:11 57:2
64:25 68:17 77:16
particular 8:3 11:8
15:2 23:8 36:6
63:11
parties 86:14
partly 64:4
partner 32:25
pass 2:8 74:3
pause 68:24
paved 16:3
pay 63:5
paying 34:17
Peachtree 79:4
penny 9:17
people 2:23 3:1 4:3
5:13 6:8 11:4
26:25 27:2,3,10
41:7 42:3 45:1,11
45:11 48:15 51:17
53:1 54:17 68:22
78:3,4 81:7
Perfect 20:15
performed 22:18
period 75:21
permissible 70:6
permission 21:7
36:8
permit 4:13 6:18,21
6:22,24 7:2,17
10:11,25 12:19,20
17:15 21:16 22:15
25:20,22 26:4
31:7 33:6 34:9,11
37:8 44:8,12,13
59:17 62:1,16,22
65:5 66:7 71:21
80:4 81:16 82:13
82:24,25 84:9
permits 6:11 13:3
41:3 62:13 63:20
permitted 4:23
30:4 82:14
persistent 14:18
person 7:8 24:16
58:23
personally 71:21
personnel 57:15
pertaining 23:16
70:21
pertinent 53:10
75:7
Phone 14:21

Flynn Stenography & Transcription Service
(631) 727-1107
waived 12:3
waiver 75:15,20,22
76:4
walk 63:10
wall 16:3
want 8:15 12:14
14:16 20:12 42:23
45:24 48:11 52:10
53:2 57:24 59:3
62:8 63:8 67:22
73:21
wanted 20:4 29:17
31:23 49:7 54:14
58:22 63:4,18
78:2,10
warehouse 12:25
washed 18:20,20
wasn't 18:19 19:21
19:22 24:11 26:8
38:11,11,23 39:5
49:6 76:10
Wattkins 5:16
Watt 42:9,9
way 11:4 18:12
33:15 34:16 47:2
49:8 50:16 59:24
69:4 78:25 86:15
ways 25:24 59:12
68:21
we'll 4:4 8:19 14:12
19:6 56:1,16 83:8
we're 6:4 14:20
21:17 22:19,20
29:25 35:1,3 38:9
46:20 48:4 51:11
57:4 59:9 64:2
67:21 68:19 69:5
70:25
we've 2:24 22:19
43:24 47:21 61:14
Wednesday 84:19
84:19
week 25:13 46:5
weekends 36:17
weeks 36:16
went 13:6,20 16:17
22:4 26:21 46:23
52:24 54:15 62:24
78:22 79:12,21,24
west 64:12 65:16
Westervelt 29:3
wetland 47:5 66:11
66:16
wetlands 46:19,21
46:22 65:15 66:4
66:9,9,10,14,18
67:17 68:8 82:5,7
whack 48:12
WHEREOF 86:17
wherewithal 28:8
wider 74:6
width 30:7 73:25
74:10,12
willing 63:4
Wingate 1:22 19:25
20:9,12,15,22
21:7,12,15,20,20
24:1,5,9,13 25:12
26:15,17 27:18,21
27:25 28:4 37:13
38:15 44:23 45:22
51:21,23 52:19,21
66:21 73:11 78:6
78:17
wish 28:11 79:22
wished 71:3
wishing 58:18
withhold 28:3
WITNESS 86:17
wonderful 49:17
wondering 45:13
word 11:24 43:23
80:25
work 28:8 79:21
worked 36:10
78:11,13
workers 49:17
working 33:2 36:5
works 25:1 33:1,5
wouldn't 31:24
written 8:16,19
9:10 14:12,13
wrong 51:3
wrote 14:6
X

Y
yard 50:23,23 54:3
54:8,14
yards 30:7
Yeah 13:7 19:5,15
27:14,22 32:3
37:21 40:14 58:14
67:12 73:15,20
74:4
years 16:5 18:1
30:17 43:4 49:11
54:19 71:12 78:16
79:23
yesterday 59:17
York 1:11 4:12
10:1 22:9 29:12
34:19 35:10 62:17
86:3,9
young 36:16

Z
ZBA 11:23 12:1
17:12,16 24:18
29:8 36:2 61:9
83:9,18 84:2
zone 23:18 25:16
55:2
zoned 47:13
zoning 1:3 2:5 5:7
6:9,13,19 7:24
10:5,8 12:17
16:15 20:18 26:12
26:18 30:15 42:6
44:21 47:7 50:13
61:17,20,23 62:4
64:3 69:8 70:13
71:7 72:2,18 75:4
80:15 81:10
zoning-compliant 44:1

0

1
12:14 5:2,4 50:13

75:6
1,000 51:20
10 64:23 74:5,13
1001-4-1-10.2 4:18
1194 1:11
120 13:19
1200 35:21
13 18:1
15-foot 74:16
150 7:24 8:6 42:7
44:5 65:15
150-1 4:20
150-1(F) 22:25
150-12 15:17
150-12A 4:22 50:13
75:5
150-20 15:5
150-21 13:14,16
15:6 23:5 30:2
150-21-B(I) 12:22
150-21A 4:24 13:9
13:23,25
150-21B 5:1 13:18
13:20 31:11
150-21B(I) 13:6
17th 83:10
18 84:3
18th 83:19 84:12
84:14,18
1926 61:7
1929 30:16
1975 47:21
1997 61:9
1st 35:25 36:7,18
45:24

2
2:52 15:7 20:19
20 1:6 86:12
2000 61:10 69:24
69:25
2004 25:19
2005 25:21
2006 20:19 26:1,21
29:10 61:17 69:11
2007 26:4,8,21
2009 18:17,24
30:22
2011 29:7 30:21
61:19
2013 1:6 83:10,19
84:3 86:12,18
20th 24:21 29:2
236 1:11
24 2:22
2419 22:15
242 44:20
27th 20:18
28 5:20
29th 86:18
3
3 5:2 12:7 83:8
3.2 15:22
30 5:18 54:19
314 9:19
35 54:1
4
40 54:10
40-50 54:9
407 4:16 10:16
32:22 33:9 40:24
53:19
411 10:16
415 4:12 9:9
421 5:16
422 47:19
426 42:10
5
5.8 16:8
5:00 1:7
5:05 2:2
50 16:5
50-50 54:10
50% 12:24
502 49:3
510 25:3 32:19 33:7
37:1,19,20,23
38:18,23 39:1,4
40:4,5,17 41:8,11
42:22 43:3 51:4
51:17 52:3 53:19
<table>
<thead>
<tr>
<th>68:4 77:17 78:9</th>
</tr>
</thead>
<tbody>
<tr>
<td>516 5:18</td>
</tr>
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<td>591 6:2</td>
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<tbody>
<tr>
<td>6:15 57:4</td>
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<td>60 54:9</td>
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<td>600-square-feet</td>
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<td>36:13</td>
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<tr>
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<td>639 5:15</td>
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<tr>
<td>65-6A 5:4</td>
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<td>67% 70:7</td>
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<tbody>
<tr>
<td>720:19 57:11</td>
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<tr>
<td>7:30 57:6</td>
</tr>
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<td>75 44:23</td>
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</tbody>
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<th>8</th>
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<tbody>
<tr>
<td>848:13</td>
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<td>80% 44:23</td>
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