

1 VILLAGE OF GREENPORT
 2 COUNTY OF SUFFOLK : STATE OF NEW YORK
 3 -----X
 4 ZONING BOARD OF APPEALS
 5 REGULAR SESSION
 6 -----X
 7 Station One Firehouse
 8 Third & South Streets
 9 Greenport, New York 11944
 10 December 19, 2023
 11 6:00 p.m.

12
 13 B E F O R E:
 14 JOHN SALADINO - CHAIRMAN
 15 DINNI GORDON - MEMBER
 16 SETH KAUFMAN - MEMBER
 17 DAVID NYCE - MEMBER
 18 JACK REARDON - MEMBER
 19 *****
 20 ALSO IN ATTENDANCE:
 21 BRIAN STOLAR - COUNSEL TO THE BOARD
 22 MICHAEL NOONE - CLERK TO THE BOARD
 23 ALEX BOLANOS - CODE ENFORCEMENT OFFICER

24
 25

1 CHAIRMAN SALADINO: Good evening, folks. It's
2 approximately 6 p.m., and this is the Village of
3 Greenport Zoning Board of Appeals Regular Meeting.

4 *Item No. 1 on this agenda is the motion to*
5 *accept -- a motion to accept the minutes of the*
6 *November 21st, 2023 Zoning Board of Appeals meeting.*

7 So moved.

8 MEMBER NYCE: Second.

9 CHAIRMAN SALADINO: All in favor?

10 MEMBER KAUFMAN: Aye.

11 MEMBER NYCE: Aye.

12 MEMBER GORDON: I have a comment to make about
13 the -- on Page 17, it says, "You're no longer able to
14 buy relief, Payment in Lieu of Parking, only in the
15 Commercial District." It should be either commercial
16 districts with no caps, or a designation that is
17 Retail Commercial, Waterfront Commercial and General
18 Commercial. And I think probably the person -- I
19 think probably -- it was you, John. Probably you
20 meant in the commercial districts. But it -- I think
21 it matters, because we have more than one Commercial
22 District, and it seems to me that it is a little
23 misleading not to -- so --

24 CHAIRMAN SALADINO: All right. We're going
25 to --

1 MEMBER GORDON: Okay?

2 CHAIRMAN SALADINO: Lucia's going to put that
3 into the record.

4 MEMBER GORDON: Yes, please, put it in the
5 record.

6 CHAIRMAN SALADINO: Okay? So did we vote?

7 COURT REPORTER: I take -- I'm sorry. I take
8 verbatim, but do I have to put a notation? Do you
9 want me to put a notation?

10 CHAIRMAN SALADINO: Just what she said.

11 MEMBER GORDON: I think it just --

12 ATTORNEY STOLAR: Just to add -- can we -- can
13 we amend the minutes to provide --

14 COURT REPORTER: Sure.

15 ATTORNEY STOLAR: -- an "s", or after
16 "district"? And that would cover it. And I think
17 that was --

18 MEMBER GORDON: And put it in small caps,
19 because it's --

20 ATTORNEY STOLAR: It's all in caps?

21 MEMBER GORDON: Yes.

22 ATTORNEY STOLAR: Okay.

23 MEMBER GORDON: Well --

24 MR. NOONE: Commercial districts in lower case.

25 CHAIRMAN SALADINO: Maybe I was shouting.

1 (Laughter)

2 MEMBER GORDON: If you want to look it over in
3 person, it could be important.

4 COURT REPORTER: I can't change verbatim, but I
5 can put something in a parenthetical.

6 MR. NOONE: You could make a notation.

7 COURT REPORTER: Yeah.

8 MR. NOONE: Lucia -- you heard what Lucia said?
9 She can't change -- she can't change --

10 CHAIRMAN SALADINO: She can't change the
11 minutes.

12 MR. NOONE: Yeah. But she can make a notation.

13 CHAIRMAN SALADINO: You can make a notation.

14 COURT REPORTER: Yes.

15 CHAIRMAN SALADINO: Just do that.

16 MEMBER GORDON: Okay. Okay, it's fine.

17 ATTORNEY STOLAR: So change it with the "s" at
18 the end, that's it.

19 CHAIRMAN SALADINO: She's going to handle it.
20 Did we vote?

21 MEMBER GORDON: Thank you

22 COURT REPORTER: You're welcome.

23 ATTORNEY STOLAR: You're voting with that
24 amendment. So just add the "s" to the end of the
25 word "district" in that sentence.

1 CHAIRMAN SALADINO: Okay. So --

2 ATTORNEY STOLAR: Say it again.

3 CHAIRMAN SALADINO: We're voting for the
4 amended resolution, right?

5 ATTORNEY STOLAR: Well, it's to -- you're
6 voting, you're voting to approve the minutes from the
7 November 21st, 2023 meeting as amended to reflect the
8 "s" at the end of the word "district" on Page 17.

9 CHAIRMAN SALADINO: So moved.

10 MR. NOONE: You can't change it.

11 MEMBER NYCE: I will second.

12 MR. NOONE: You can't change --

13 CHAIRMAN SALADINO: All in favor?

14 MEMBER KAUFMAN: Aye.

15 MEMBER NYCE: Aye.

16 MR. NOONE: -- verbatim. She can't change it
17 verbatim, like she can't change what's there, but she
18 could make an amendment?

19 COURT REPORTER: I can make a notation in --

20 MR. NOONE: Notation.

21 COURT REPORTER: -- parentheses.

22 MEMBER NYCE: Yes.

23 CHAIRMAN SALADINO: Did you vote?

24 MEMBER GORDON: Aye.

25 CHAIRMAN SALADINO: Motion carries.

1 *Item No. 2 is a motion to schedule the next*
2 *Zoning Board of Appeals meeting for January 16th,*
3 *2024, at 6 p.m. at the Station One Firehouse, Third*
4 *and South Streets, Greenport, New York 11944. So*
5 *moved.*

6 MEMBER GORDON: Second.

7 MEMBER KAUFMAN: Second.

8 CHAIRMAN SALADINO: All in favor?

9 MEMBER GORDON: Aye.

10 MEMBER KAUFMAN: Aye.

11 MEMBER NYCE: Aye.

12 CHAIRMAN SALADINO: And I'll vote aye.

13 *Item No. 3 is Motion to accept the Findings and*
14 *Determinations for David Murray on behalf of Beth and*
15 *David Dahl (phonetic).*

16 MEMBER NYCE: Dahle.

17 CHAIRMAN SALADINO: Dahle. *The property is*
18 *located in the R-2, One- & Two-family Residential*
19 *District, and is also located in the Historic*
20 *District. The Suffolk County Tax Map #1001-4-3-22.5.*
21 *Everybody read the findings. So moved.*

22 MEMBER NYCE: Second.

23 CHAIRMAN SALADINO: All in favor?

24 MEMBER GORDON: Aye.

25 MEMBER KAUFMAN: Aye.

1 MEMBER NYCE: Aye.

2 CHAIRMAN SALADINO: And I'll vote aye.

3 *Item No. 4 is 440 First Street. This is a*
4 *continuation of a Public Hearing regarding the*
5 *application of Eric Urban and 1st & Center LLC. The*
6 *applicant is appealing the determination of the*
7 *Building Inspector, specifically the Notice of*
8 *Disapproval dated November 15th, 2021, and the*
9 *amended Notice of Disapproval dated February 11th,*
10 *2022, which denied the applicant's request for a*
11 *building permit to convert the existing accessory*
12 *structure to a single-family dwelling on the property*
13 *located at 440 First Street. The applicant also*
14 *seeks area variances from 150-12 (The "Schedule of*
15 *Regulations") for the accessory structure.*

16 *150-8(A)(1) and/or 150-7(A)(1), to permit two*
17 *(2) one-family detached dwellings, where only one*
18 *single-family detached dwelling is permitted,*

19 *And 150-12, to permit (a) a rear yard setback*
20 *of 2.5 feet, where a minimum of 30 feet is required,*
21 *and (b) a side yard setback of 2.1 feet, where a*
22 *minimum of 10 feet is required, and (c) no on-site*
23 *parking, on-site parking where a minimum of 2 spaces*
24 *would be required for the proposed use.*

25 *This property is located in the R-2 One- and*

1 *Two-Family Residential District and is also located*
2 *in the Historic District. The Suffolk County Tax Map*
3 *number is 1001-4.-7-1.1 and 1001-4.-7-1.2.*

4 Is there anyone from the public that would like
5 to speak to this application?

6 MR. BRESSLER: I guess I'm from the public.

7 CHAIRMAN SALADINO: Mr. Bressler, you're always
8 welcome to speak.

9 MR. BRESSLER: Thank you, Mr. -- thank you,
10 Mr. Chairman. I will don my hat as both a member of
11 the public and as the attorney for the applicants.
12 Wickham, Bressler & Geasa, by Eric J. Bressler.

13 We've received nothing from the Building
14 Inspector, and we presume that nothing has been
15 submitted additionally to the Board. In the absence
16 of anything else being submitted, we ask that the
17 Board respectfully close the hearing and render a
18 decision. If I am incorrect with respect to a
19 submission from the Building Inspector, please let me
20 know; if not, close the hearing. You have a
21 statutory period to render a decision and we'd ask
22 you to make it.

23 CHAIRMAN SALADINO: Thank you. Is there anyone
24 else that would like to speak?

25 (No Response)

1 CHAIRMAN SALADINO: Does the Village have any
2 comments that --

3 ATTORNEY STOLAR: What I -- if you don't mind.
4 I mean, I looked at the testimony over the period
5 of -- over the various hearings, I looked at the
6 submissions, and I just want to touch briefly on what
7 I see as the facts, I think you'd call them, or I
8 guess the facts, not the findings, but the facts.

9 So the property consists of two tax lots.
10 Those tax lots were created by a subdivision in 1882.
11 Upon the initial conveyance of property, both tax
12 lots were conveyed as a single parcel to one, one
13 person in the same deed. And then including that
14 initial conveyance, there have been eight consecutive
15 conveyances of the property since 1882 of the two tax
16 lots as a single parcel.

17 In October 2017, the applicant, without
18 obtaining subdivision approval, transferred one of
19 the tax lots to co-applicant, 1st and Center LLC.
20 The two tax lots have been used as a single parcel
21 for as far back as about anyone was able to recall,
22 as was stated by I believe at least one neighbor.

23 The main dwelling contains a number of
24 significant elements that overlap or cross over the
25 two tax lots, including the wrap-around porch, a

1 portion of a bathroom, and a bay window. The garage
2 structure has been used as an accessory to the main
3 dwelling and has not been used as a dwelling.

4 There is access from and to the garage -- from
5 and to the garage to the main dwelling. The garage
6 and the dwelling clearly are not independent, two tax
7 lots, and the improvements on the two lots depend on
8 one another, and materially enhance both the use and
9 the value of the other.

10 There was a previous application, as the Chair
11 has spoken about a number of times, for subdivision
12 of two tax lots, where the applicant took the
13 position that subdivision approval was required. And
14 now the applicant has applied to convert the garage
15 into a residence and is submitting that the two tax
16 lots should be treated as separate lots, and,
17 therefore, the Board should grant the applicant's
18 appeal.

19 The applicant does appeal a November 2022 and a
20 February 2023 Notice of Disapproval issued by the
21 Building Department, both of which identified
22 Sections 150-7(A) and 150-8(A), which only permit a
23 single dwelling unit on the premises, where they're
24 looking for two dwelling units here.

25 And then the February Notice of Disapproval

1 identifies a couple of area -- a couple of variances
2 for setbacks, I think side yard and --

3 CHAIRMAN SALADINO: Rear yard.

4 ATTORNEY STOLAR: And rear yard, and also a
5 parking variance. It's that decision that is being
6 appealed from.

7 If the Board agrees with the applicant and
8 renders a determination that the decision should be
9 overturned, and that they should be treated, this
10 should be treated as two separate lots for building
11 purposes, you would not need to address the use
12 variance that was identified by the Building
13 Department, because that will basically deem the use
14 variance moot, and then you would move on to the
15 two -- three area variances.

16 If the Board determines that the -- that the
17 appeal should be denied, you then would be able to
18 address the use as identified in the Notice of
19 Disapproval and in the Notice of Hearing, and address
20 that, and you can address the area variances that are
21 being requested as well in that circumstance.

22 MR. BRESSLER: May I, Mr. Chairman, briefly?
23 Mr. Chairman, I move that the remarks of the Counsel
24 to the Zoning Board be stricken from the record.
25 That constitutes legal advice only to the Board of

1 Appeals, and is not properly part of any record.
2 He's your Counsel and what he tells you, in fact, I'm
3 quite surprised that the advice that he's giving you
4 has been made public, but I don't believe that that's
5 properly part of the record. I don't believe that it
6 constitutes any evidence whatsoever. It constitutes
7 only the opinion of your Counsel, and it accounts for
8 nothing, and, therefore, I move that it be stricken.

9 CHAIRMAN SALADINO: Doesn't he -- doesn't he
10 present the Village's position?

11 ATTORNEY STOLAR: It's not the position, it's a
12 review of the information, the testimony and the
13 submissions, that's where I got that information
14 from. It is not -- the only part that was advice was
15 the latter part as to what the Board would do in the
16 various circumstances, if you approve, if you grant
17 the application or if you deny the application.
18 Previous, the information I stated previous to that
19 is all either verbatim from what came from the record
20 or a summary of the information that came from the
21 record.

22 MEMBER NYCE: I agree.

23 MR. BRESSLER: No. Mr. Chairman, when you say
24 the position of the Village --

25 CHAIRMAN SALADINO: Well, perhaps I misspoke.

1 MR. BRESSLER: Well --

2 CHAIRMAN SALADINO: He --

3 MR. BRESSLER: The Village is not unitary.
4 You're a Board, the Building Department is a separate
5 department, and you sit in review of the Building
6 Department.

7 CHAIRMAN SALADINO: But don't we look at both
8 sides? Don't we look at your side and the Village's,
9 the Building Department's?

10 MR. BRESSLER: My point is this is your Counsel
11 giving you advice, this is not evidence on the
12 record. This is advice from the Zoning Board
13 Counsel. He's not Counsel to the Building
14 Department, or if he is, he's wearing two hats and he
15 shouldn't be. He's not Counsel to the Village, he's
16 Counsel to this Board and he's rendering you legal
17 advice.

18 CHAIRMAN SALADINO: But he is the Village
19 Attorney.

20 MR. BRESSLER: He is not a witness, he's not a
21 fact witness. He's rendering you an opinion and that
22 should not be part of the record. You may consider
23 that, obviously, in your deliberations, but that is
24 not part of the record. Assuming you deny this,
25 that's not going to be part of the record on review,

1 and it does not represent, quote-unquote, a Village
2 position.

3 MEMBER GORDON: But surely most of what he said
4 was a statement of the -- of facts, and that's
5 always, I would assume, a part of the record.

6 MR. BRESSLER: (Shook Head No)

7 MEMBER GORDON: No?

8 MR. BRESSLER: That's legal advice, that's his
9 opinion as to what it is. Those are not facts, he
10 has no knowledge of the facts. That's his opinion to
11 you and his opinion --

12 MEMBER GORDON: Well --

13 MR. BRESSLER: -- cannot be part --

14 MEMBER GORDON: Excuse me. He was talking
15 about records that exist for the -- about the
16 transfers of the property over more than 100 years.
17 Those are surely facts and not his opinion.

18 CHAIRMAN SALADINO: By your submission.

19 MR. BRESSLER: It's his opinion of those facts.
20 The facts are in the record for you to decide what
21 they are. That's your job, not Counsel's job.

22 ATTORNEY STOLAR: All right. So let me just
23 address each of the items that I stated, and I won't
24 do it -- I'll do it as quickly as I can.

25 So the first thing I spoke about were the fact

1 that there are two tax lots. Those tax lots were
2 part of a subdivision in 1882. Those tax lots all --
3 were all part of deeds that were transferred as a
4 single parcel until 2017, when there was a separate
5 transfer of the two tax lots. That information is
6 part of the applicant's submission and taken directly
7 from the applicant's submission. They've been used
8 for a single parcel as far back as any resident was
9 able to recall. That was stated by one of the
10 residents, and I don't believe anything else was
11 stated regarding that.

12 The main dwelling containing a number of items
13 that extend over onto the two lot -- tax lots, that
14 was stated during the record. I believe the Chair
15 also identified some of those items at one point.

16 The garage structure has been used as an
17 accessory to the main dwelling, it has not been used
18 as a dwelling. I had asked at the last meeting, the
19 last hearing of the applicant whether he had any
20 information that showed -- stated otherwise. There
21 was no other information as to whether or not this
22 was used for dwelling purposes or accessory to the
23 actual dwelling, so there's nothing else there.

24 There is access to and from the garage to the
25 main dwelling, that's shown by the plan. Garage and

1 the dwelling clearly are not independent. That, I
2 can understand if the applicant submits that that's
3 an opinion, but the independent -- nonindependence
4 I'm talking about is that they are used -- shown as
5 being used together. I believe somebody in the first
6 hearing, there was testimony along those lines.

7 I will give him that the first part where I
8 said -- where I used the phrase independent -- not
9 independent, could be viewed as an opinion, and you
10 can look at it that way as a Board. Two tax lots,
11 and the improvements on the tax lots depend on one
12 another and are materially enhanced. Again, that's
13 part of the same independent discussion I was just
14 talking about, where it's part -- it's based on
15 factual, factual situation, but, certainly, I can see
16 where that could be deemed to be an opinion.

17 The next one was there was a previous
18 application for subdivision of two tax lots where the
19 applicant took a certain position. That was
20 discussed multiple times at the hearing, during the
21 hearing. And then the rest with regard to the
22 applicant applying to convert the garage, and the
23 Notice of Disapproval text, that's all part of the
24 record.

25 And the next part I spoke about, which were the

1 options the Board has as to steps, that's just advice
2 as to what you would be doing in this particular
3 case, which --

4 CHAIRMAN SALADINO: Isn't that why we're here?

5 ATTORNEY STOLAR: -- I know the Board struggled
6 initially with, you know, the appeal part of the
7 process. I'm just clarifying that.

8 MR. BRESSLER: I renew my objection. The
9 record speaks for itself. Whatever's in there is in
10 there. That's not factual. Counsel has no
11 independent information. What's in the record is in
12 the record. Whatever is ex the record is ex the
13 record, and that should be ex the record.

14 CHAIRMAN SALADINO: But if that is -- if
15 everything that the -- that our Counsel said is part
16 of the record, part of the minutes, why is it
17 inappropriate?

18 MR. BRESSLER: I don't believe it's so. That's
19 our -- that's the difference of opinion. It is for
20 the Board to determine what the facts in the record
21 show, not Counsel's characterization of what it may
22 or may not be.

23 CHAIRMAN SALADINO: Well, from my own
24 recollection, everything that I've -- that I've heard
25 it seems that I've heard before, and it wasn't

1 outside this room. So I'm not sure what you're
2 talking about, Mr. Bressler.

3 MR. BRESSLER: I don't believe those comments
4 should be part of the record. Those are advice --

5 CHAIRMAN SALADINO: No, it isn't.

6 MR. BRESSLER: That's advice to the Board.
7 That's my motion. You'll make a decision. All I
8 want is to close --

9 ATTORNEY STOLAR: So if I might.

10 MR. BRESSLER: -- the record, close the public
11 hearing and make a decision timely, that's all.

12 ATTORNEY STOLAR: The only --

13 CHAIRMAN SALADINO: We only do everything at
14 our convenience.

15 ATTORNEY STOLAR: Right. The only -- as I
16 pointed out, the only item that I discussed as to an
17 item that can be -- it really was an interpretation
18 of the -- of the testimony as to the independence and
19 the material enhancement. That's something that the
20 Board ultimately has to make a decision on, but I --
21 you know, just from my observations of what was said,
22 that was what -- you know, what I -- what I opine on.
23 The Board can in that -- in those regards consider
24 those facts and make its own determination, if there
25 is a different opinion. I don't believe there's much

1 of an opinion on that. It seems to be very
2 consistent with what was said, but, ultimately, it's
3 the Board's job to make that determination based on
4 the facts.

5 CHAIRMAN SALADINO: Does this Board have to --
6 does this Board have to vote up or down Mr. Bressler's
7 motion to strike that from the record?

8 ATTORNEY STOLAR: It does not. It's not a --
9 it's not a court.

10 CHAIRMAN SALADINO: Okay. Is there anyone from
11 the public, anyone else from the public that would
12 care to speak? No?

13 (No Response)

14 CHAIRMAN SALADINO: What's the pleasure of the
15 Board? You want to close this public hearing?

16 MEMBER GORDON: I move that we close the public
17 hearing.

18 MEMBER NYCE: I second.

19 CHAIRMAN SALADINO: All in favor?

20 MEMBER KAUFMAN: Aye.

21 MEMBER NYCE: Aye.

22 MEMBER GORDON: Aye.

23 CHAIRMAN SALADINO: And I'll vote aye.

24 *Item Number 5 is 218 South Street. This is a*
25 *Public Hearing regarding the application of*

1 Christopher Shorees (phonetic) -- Shores and
2 Rachel O'Connor. The applicants propose to demolish
3 the existing rear porch and non-functional chimney
4 and replace them with an enclosed porch which merges
5 into the kitchen / interior space. Applicants also
6 propose to replace the roof -- excuse me -- rebuild
7 the mud room and entrance area. These alterations
8 will add 78 square feet of building coverage to
9 the home.

10 • The plan shows an existing front-yard
11 setback of 1.8 feet. The minimum front yard
12 requirement is 30 feet. This would require an area
13 variance of 28.2 feet.

14 • The plan shows an existing side-yard setback
15 of 3 feet. The minimum side-yard requirement is
16 10 feet. This would require an area variance of
17 7 feet.

18 • The plans show an existing accessory
19 structure with a setback of 3 feet. The minimum
20 setback for an accessory structure is 5 feet. This
21 would require an area variance of 3 feet.

22 The property is located in the R-2 One- and
23 Two-Family Residential District and is not located in
24 the Historic District. The Suffolk County Tax Map
25 number is 1001-4-6-11.

1 We have the mailings, Mike?

2 MR. NOONE: Yes, we do.

3 CHAIRMAN SALADINO: Are we going give -- if
4 it's okay with the applicant, the public, we're going
5 to give them to the Stenographer. If somebody
6 objects, I'll be glad to read them.

7 MEMBER NYCE: One of these days someone will
8 object so you have to read them.

9 (Laughter)

10 CHAIRMAN SALADINO: Well, hopefully it's an
11 application with only two, two mailings.

12 (Laughter)

13 CHAIRMAN SALADINO: And it was posted, the --

14 MR. NOONE: It was duly posted.

15 CHAIRMAN SALADINO: Okay. Is the applicant
16 here?

17 MR. MAZZAFERRO: Nicholas Mazzaferro,
18 Professional Engineer, representing the owners,
19 218 South Street.

20 This request for variances is primarily based
21 on preexisting conditions. We estimate that main
22 house here to be over 100 years old. The front yard
23 was probably there at the -- when the house was
24 originally built. Nothing's changed there, so that
25 setback is definitely preexisting.

1 On the side yard there was a covered porch that
2 was actually in structural failure. When my clients
3 bought the house, they engaged me to make an enclosed
4 porch out of it and actually tie it into the kitchen.
5 When we started to do an investigation, we also found
6 out there was a nonfunctional chimney there, which we
7 had planed on removing.

8 And the outside footprint of the house is not
9 going to change. We're basically going to put some
10 walls up under the roof that -- the roof's already
11 been demolished because it was in structural failure
12 and I was afraid it was going to hurt somebody. So
13 the footprint then would be recreated in the same
14 exact footprint as it existed now.

15 Also, on -- towards the back of the property,
16 there's an old garage/shed structure that is a
17 pre-existing condition, too close to a property line.
18 That shed's probably there from the '30s or the '40s,
19 when the scalloping business was, you know, in high
20 gear out here. And you could tell that the back room
21 at one point in time was a place where they opened
22 the scallops all -- you know, all through the Fall.

23 So all three of the variances are preexisting.
24 The proposed future construction does not create any
25 bigger footprint, and all the variances definitely

1 predate, predate 1950.

2 CHAIRMAN SALADINO: I'm going to -- Nick, I'm
3 just going to ask Mike. Mike, do we have a -- do we
4 have the form that -- oh, we don't

5 MR. NOONE: I'm not 100% sure. If I could ask,
6 I don't think I've received the --

7 CHAIRMAN SALADINO: Well, I'm not sure we need
8 it, since -- since the owner and the contact person
9 are like the same. So do we need -- do we need the
10 form saying that Nick is their -- Mr. Mazzaferro
11 is --

12 MR. NOONE: Oh, the affidavit?

13 CHAIRMAN SALADINO: Yeah.

14 MR. MAZZAFERRO: Oh, no. Well, the owner is
15 the applicant, I'm just speaking on behalf, that's
16 all. I'm like the public.

17 CHAIRMAN SALADINO: So we don't -- we don't
18 need that notarized form.

19 MR. NOONE: The owner is here.

20 MR. MAZZAFERRO: Any questions?

21 CHAIRMAN SALADINO: Before you sit down, does
22 anybody have any questions?

23 (No Response)

24 MR. NOONE: But I will say, Mr. Chairman, I
25 don't think I received the mailing labels, the

1 green --

2 CHRISTOPHER SHORES: Oh, well, we -- is that
3 separate? We had mailed it two weeks ago, yeah. The
4 certified mail?

5 MR. NOONE: Right.

6 MR. SHORES: Oh, that's surprising, because we
7 sent them out.

8 CHAIRMAN SALADINO: Did you send them -- did
9 you get the return receipt? Did you get the --

10 MR. NOONE: In other words, you have to bring a
11 copy of either the original or the return receipt,
12 the green labels.

13 MR. SHORES: Okay. All right. My wife sent
14 those, I don't have them.

15 MR. MAZZAFERRO: Do you have the receipt from
16 the post office that you mailed them out?

17 MR. SHORES: I do.

18 MR. MAZZAFERRO: Okay, because sometimes you
19 don't get them back, the green cards.

20 MR. NOONE: Like either that, or generally
21 we'll get a receipt of the actual post office
22 receipt.

23 MR. MAZZAFERRO: Yeah, the mailing out. That's
24 what I just asked him, if he's got that.

25 MR. SHORES: Oh, yeah, I have that.

1 MR. MAZZAFERRO: Yeah.

2 MR. SHORES: Not on me, but I could get it.

3 CHAIRMAN SALADINO: Well, let me ask -- let me
4 ask Brian. Can we -- can we go forward with this
5 conditioned on that he --

6 MR. MAZZAFERRO: He drops off the receipt?

7 CHAIRMAN SALADINO: That he drops off the
8 mailings?

9 ATTORNEY STOLAR: You may.

10 CHAIRMAN SALADINO: Okay, we could do that.

11 (Mailings:

12 Francine Monaco, 213 South Street, Greenport, NY 11944
13 312 Third Street LLC, P.O. Box 389, Greenport, NY 11944
14 Timothy Schmidt, 80 Huron Road Floral Park, NY 11001
15 Rie Koko, 210 South Street, Greenport, NY 11944
16 Jose Miranda, P.O. Box 838, Greenport, NY 11944)

17 CHAIRMAN SALADINO: We're going to -- we're
18 going to address this and close the public hearing,
19 and I'm pretty sure we're going to vote it, and that
20 vote will be conditioned on you bringing to the
21 Village, not to us, to the Village proof that you
22 notified the adjacent neighbors.

23 MR. SHORES: Okay.

24 CHAIRMAN SALADINO: Okay?

25 MR. SHORES: Sure. I can actually do that

1 tonight.

2 CHAIRMAN SALADINO: We won't be here.

3 (Laughter)

4 MR. NOONE: But if you come tomorrow to Village
5 Hall.

6 MR. SHORES: Sure.

7 CHAIRMAN SALADINO: Okay. No one, no one has
8 anything to say about this application? No?

9 MEMBER NYCE: I will let the Board know, I
10 did -- the property is adjacent to mine. I did stop
11 by and look. I'm familiar with the property. All
12 the work that they're describing is accurate.

13 MEMBER KAUFMAN: That's all preexisting.

14 CHAIRMAN SALADINO: Did you get it, then?

15 MEMBER NYCE: No. I'm surprised I didn't get a
16 mailing. No, I'm just kidding.

17 (Laughter)

18 CHAIRMAN SALADINO: The guy lives next door to
19 you, he didn't get a mailing.

20 (Laughter)

21 MEMBER KAUFMAN: So all the variances are
22 preexisting conditions.

23 CHAIRMAN SALADINO: Preexisting.

24 MR. MAZZAFERRO: Yeah.

25 MEMBER KAUFMAN: The 78 square feet increase is

1 what, just from the enclosed porch? Is that the
2 calculation?

3 MEMBER NYCE: There's a breezeway in the back.

4 MEMBER KAUFMAN: As he said --

5 MR. MAZZAFERRO: The 78 square feet is
6 increased towards the center of the lot.

7 MEMBER KAUFMAN: Okay, it's just --

8 MR. MAZZAFERRO: It's not on the --

9 MEMBER KAUFMAN: It's on the plan as --

10 MR. MAZZAFERRO: It's on the property line side.

11 MEMBER KAUFMAN: Okay.

12 CHAIRMAN SALADINO: Okay. Dinni, anything?

13 MEMBER GORDON: No. It looks to me as though
14 it's all pretty much repairs, it's maintenance that
15 you have to do to keep an old house functioning.

16 CHAIRMAN SALADINO: Well, yeah, okay. And, you
17 know, it's also just -- again, we're going to use
18 that word legitimize --

19 MEMBER NYCE: Yeah, preexisting.

20 CHAIRMAN SALADINO: -- side yards, front yards.

21 MEMBER GORDON: Right.

22 CHAIRMAN SALADINO: And just wait for the next
23 guy, there's not a problem.

24 All right. If that's everything, I'm going to
25 make a motion we close this public hearing.

1 MEMBER KAUFMAN: Second

2 MEMBER NYCE: Second.

3 CHAIRMAN SALADINO: All in favor?

4 MEMBER GORDON: Aye.

5 MEMBER KAUFMAN: Aye.

6 MEMBER NYCE: Aye.

7 CHAIRMAN SALADINO: And I'll vote aye. Okay.

8 Item No. -- Item No. 6, to -- I'm going to ask the
9 applicant if -- if we could -- if -- Item No. 6 is
10 440 First Street. We closed this public hearing.
11 Item No. 7 is 218 South Street that you just heard.
12 We can address that in a matter of minutes. If
13 it's -- if it's okay with you, I would like to go out
14 of order on the agenda. I don't want to -- I don't
15 want to upset anybody, handle, handle Item No. 7
16 before. My request is -- my request is we expect --
17 we expect your discussion to take a few minutes. We
18 expect the next discussion to take no minutes. So we
19 would like to go out of order on the agenda.

20 MR. BRESSLER: Absolutely fine, by all means,
21 Mr. Chairman.

22 CHAIRMAN SALADINO: You know we're polite here,
23 we like to ask.

24 (Laughter)

25 CHAIRMAN SALADINO: So I'm going to take -- I'm

1 going to take the agenda out of order. Item No. --
2 which will be the new *Item No. 6, is 218 South*
3 *Street. This is a Discussion and possible motion on*
4 *the area variances applied for by Christopher Shores*
5 *and Rachel O'Connor. The property is located in the*
6 *R2 One- and Two-Family Residential District and is*
7 *not located in the Historic District. The Suffolk*
8 *County Tax Map number remains the same at 1001-4-6-11.*

9 Board, what are we thinking?

10 MEMBER KAUFMAN: I have no problem. I think it
11 makes sense.

12 MEMBER NYCE: Yeah, I don't see any problems
13 with it.

14 CHAIRMAN SALADINO: Dinni, good?

15 MEMBER GORDON: (Nodded yes)

16 CHAIRMAN SALADINO: Apparently, nobody sees a
17 problem with this.

18 MEMBER GORDON: Do we have to go through the
19 five questions even for this?

20 CHAIRMAN SALADINO: It's part of the balancing
21 test. I think, just to make sure that we do
22 everything according to Hoyle, since we're on
23 television and we don't want to look dumb on
24 television, we'll go through the five questions.

25 I'm going to make a motion that the Zoning

1 Board of Appeals declares itself Lead Agency for the
2 purposes of SEQRA. So moved.

3 MEMBER NYCE: Second.

4 CHAIRMAN SALADINO: All in favor?

5 MEMBER GORDON: Aye.

6 MEMBER KAUFMAN: Aye.

7 MEMBER NYCE: Aye.

8 CHAIRMAN SALADINO: And I'll vote aye.

9 And this is a Type II action and --

10 (Siren Sounded)

11 CHAIRMAN SALADINO: I'm going to read these
12 before we hear the fire trucks.

13 Whether an undesirable change will be produced
14 in the character of the neighborhood or a detriment
15 to nearby properties will be created by the granting
16 of the area variance. David?

17 MEMBER NYCE: No.

18 CHAIRMAN SALADINO: Dinni?

19 MEMBER GORDON: No.

20 CHAIRMAN SALADINO: Seth?

21 MEMBER KAUFMAN: No.

22 CHAIRMAN SALADINO: And I'll vote no.

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

1 MEMBER NYCE: No.

2 CHAIRMAN SALADINO: Dinni?

3 MEMBER GORDON: No.

4 CHAIRMAN SALADINO: Seth?

5 MEMBER KAUFMAN: No.

6 CHAIRMAN SALADINO: And I'll vote no.

7 Whether the requested area variance is

8 substantial. David?

9 MEMBER NYCE: No.

10 CHAIRMAN SALADINO: Dinni?

11 MEMBER GORDON: No.

12 CHAIRMAN SALADINO: Seth?

13 MEMBER KAUFMAN: No.

14 CHAIRMAN SALADINO: And I'll vote no.

15 Whether the proposed variance will have an

16 adverse effect or impact on the physical or

17 environmental conditions in the neighborhood or

18 district. David?

19 MEMBER NYCE: No.

20 MEMBER GORDON: No.

21 MEMBER KAUFMAN: No.

22 CHAIRMAN SALADINO: And I'll vote no.

23 Whether the alleged difficulty was

24 self-created, which consideration shall be relevant

25 to the decision of the Board of Appeals, but shall

1 not necessarily preclude the granting of the area
2 variance. David?

3 MEMBER NYCE: No.

4 MEMBER GORDON: No.

5 MEMBER KAUFMAN: No.

6 CHAIRMAN SALADINO: And I'll vote no.

7 I'm going to make a motion we grant the area
8 variances.

9 MEMBER NYCE: Second the motion.

10 CHAIRMAN SALADINO: David?

11 MEMBER NYCE: Aye.

12 CHAIRMAN SALADINO: Dinni?

13 MEMBER GORDON: Aye.

14 MEMBER KAUFMAN: Aye.

15 CHAIRMAN SALADINO: And I'll vote aye. Easy-peasy.

16 MEMBER NYCE: Oh, I'm sorry, on the condition

17 that the --

18 CHAIRMAN SALADINO: Oh, I'm sorry. We --

19 MEMBER NYCE: That the mailing labels be

20 submitted.

21 CHAIRMAN SALADINO: This -- the granting of
22 this variance is conditioned on your bringing proof
23 that you notified the neighbors of the public
24 hearing.

25 MR. SHORES: All right. Thank you.

1 been --

2 (Engine Sounded in Firehouse)

3 MEMBER NYCE: Can you still hear?

4 COURT REPORT: Just put the mic closer.

5 MEMBER NYCE: All right. That the parcel has
6 been used as a single piece. And, basically,
7 witnessing that the main house crosses the property
8 line in several different instances with the porch,
9 the bathroom, etcetera. The carriage house has been
10 in that location and not used as a dwelling unit.

11 I don't -- yeah, I don't see where the Building
12 Department was incorrect in their interpretation of
13 denial of this, as the use, the expected use to be
14 two dwelling units on a single property, which our
15 code does not allow. So I would -- I would side with
16 and uphold the decision as made by the Building
17 Department in this instance.

18 MEMBER KAUFMAN: I agree with Mr. Nyce. I was
19 struck on the site visit that there's no indication
20 anywhere that that was ever used in living memory as
21 two separate lots. The building crossed -- even as
22 staked, the building crosses over, the main house
23 crosses over the property line in several places, and
24 that carriage house has been used as a garage. So I
25 also can't see any fault with what the Building

1 Department has decided.

2 MEMBER GORDON: I agree. I think the relevant,
3 the most relevant information here is the information
4 that considers this as a single parcel, and the
5 existence of the two tax map districts does not
6 really change that. It's 100 years worth of being
7 seen as a single parcel with two buildings with
8 complimentary uses, a historic part of the Village, a
9 historic property of the Village that I think most
10 residents would consider the property is the
11 property of -- with the two buildings on it in one
12 parcel.

13 CHAIRMAN SALADINO: It's hard for me, from my
14 notes -- I take a lot of notes later on, so from my
15 notes it's hard for me to argue with what everyone
16 else said. And from the -- from the documents that
17 the applicant provided, again, it's been the same
18 ownership since its first conveyance in 1882. The
19 house has crossed over lines for as long as anyone,
20 including the applicant, knows for sure. The walkway
21 to the dwelling has existed and the driveway in the
22 rear for the same time, according to people that knew
23 the property.

24 So to me, the lot, they -- you know, they've
25 been owned by a single person, but also have been

1 used as a single lot. So under these circumstances,
2 to me, it seems like it should be considered a single
3 lot.

4 I brought this up a few times. It hasn't been
5 mentioned here tonight, except by the attorney. I
6 had asked the applicant's attorney at what point did
7 the applicant decide that it was two lots, and his
8 response was he always considered it two lots.

9 I was a member of one statutory board where the
10 applicant appeared in front of for a subdivision. I
11 attended two Planning Board meetings where the
12 applicant, in a presubmission conference to try and
13 subdivide the lots, admitted for the record that he
14 had a single 1,000 -- 13,500 square foot lot that he
15 wanted to subdivide into two nonconforming lots. He
16 made these statements numerous times to the -- to the
17 Planning Board, to the ZBA, and also mentioned it to
18 the HPC on a different matter.

19 Mr. Bressler says that the Village doesn't
20 allow the merger of lots, but we're not -- the
21 code came -- in Greenport, the code came into effect
22 in 1949. The merger law wasn't in the 1949 code,
23 prohibiting merger wasn't in the 1949 code, because I
24 looked, and I don't see it in the 1971 version.

25 So we know, we know that, that the applicant

1 illegally subdivided the property with the help of
2 his attorney, not this attorney, a different
3 attorney. I believe it was 2017, did it without
4 Planning Board approval. So --

5 (Member Reardon Entered the Meeting)

6 CHAIRMAN SALADINO: Jack, they were all betting
7 against you.

8 MEMBER REARDON: Was I the only one who got the
9 7 p.m. start memo?

10 (Laughter)

11 MEMBER REARDON: I apologize for being late,
12 everyone.

13 CHAIRMAN SALADINO: In light of what was said,
14 in light of my notes, which I don't keep the best
15 notes, but it does help me recall, also in light of
16 what the attorney reminded us of that has happened
17 here, I'm -- I'm of the opinion that it's one lot.
18 And unless somebody else chimes in again with a
19 radically different story to change my mind, I think
20 my opinion is going to be reflected in my vote.

21 So I'm sure there's a lot of stuff that I'm
22 leaving out, but that's all I have. Anybody else,
23 anything else to say? No?

24 (No Response)

25 CHAIRMAN SALADINO: Jack, just to catch you up,

1 we closed Mr. Urban's public hearing. We -- right
2 now we're having a discussion about what to do with
3 his application, either confirm the Building
4 Inspector's decision or -- or not. You think you
5 have something to say, anything?

6 MEMBER REARDON: I don't have anything to say
7 right now, because I'm not -- you know, I haven't
8 been here for the discussion, but there may be a
9 point at which I will say something. No?

10 CHAIRMAN SALADINO: This is it.

11 MEMBER REARDON: This is it?

12 CHAIRMAN SALADINO: This is it.

13 (Laughter)

14 CHAIRMAN SALADINO: This is it.

15 MEMBER REARDON: Then I will say that Mr. Urban
16 and Mr. Bressler have made some reasonable arguments,
17 intelligible, and I certainly see where you're coming
18 from, and I -- I appreciate all the effort that you
19 put in, the time and the money that was involved, and
20 I presume everyone else has already spoken to this at
21 some point, and I am in alignment and agreement with
22 the majority, I presume the majority of the Board.

23 CHAIRMAN SALADINO: We haven't voted yet.

24 MEMBER REARDON: Okay. So I'll leave it at
25 that right now. Thank you.

1 CHAIRMAN SALADINO: Do we want to talk about
2 this a little more, or do we want to -- we have
3 62 days to make a decision. Do we want to -- do we
4 know enough to vote this evening, or --

5 MEMBER KAUFMAN: I personally thought we've had
6 ample opportunity too weigh this. I don't see that
7 we need to wait, although I'd be open to it if anyone
8 else wants to do that.

9 CHAIRMAN SALADINO: I personally would rather
10 not wait.

11 MEMBER KAUFMAN: Yeah.

12 CHAIRMAN SALADINO: You know, it's kind of
13 clear in my mind. I didn't hear that --

14 MEMBER KAUFMAN: Yeah.

15 CHAIRMAN SALADINO: -- convincing conversation
16 from the members. Dinni, what do you think?

17 MEMBER GORDON: No, I think we should go ahead.
18 We've -- we've talked this through in a number -- a
19 number of months and from a number of perspectives,
20 and I just -- I think the Building Inspector had a
21 job to do weighing what I think is a very slim read
22 on the other side, which is the tax map designations,
23 against more than a century of the Village's
24 understanding of this property as a historic set of
25 buildings on a large parcel in the middle of town.

1 MEMBER KAUFMAN: And the physical reality of
2 the parcel as well, what's on it.

3 MEMBER GORDON: Uh-huh.

4 MEMBER KAUFMAN: So I just -- I have no doubt
5 about this.

6 CHAIRMAN SALADINO: Just to add, and I'm not
7 sure if, when the applicant's attorney made his
8 request to strike something from the record, it was
9 this particular thing that he was talking about, was
10 that I was -- that there was eight conveyances of
11 this property, and it was always conveyed as a -- as
12 a single lot, and in my mind, that should -- that
13 should count for something.

14 So if we're agreed that we're going to vote on
15 this this evening, I'm going to make a motion that
16 the Zoning Board of Appeals declares itself Lead
17 Agency for the purposes of SEQRA. So moved.

18 MEMBER KAUFMAN: Second.

19 CHAIRMAN SALADINO: All in favor?

20 MEMBER GORDON: Aye.

21 MEMBER KAUFMAN: Aye.

22 MEMBER NYCE: Aye.

23 MEMBER REARDON: Aye.

24 CHAIRMAN SALADINO: Aye.

25 And is this a Type II Action, Brian?

1 ATTORNEY STOLAR: Unlisted. An appeal is on --
2 there are multiple parts. So you have the appeal,
3 which is the information you just spoke about. It's
4 un -- it is an Unlisted Action. The variances
5 themselves, the area variances, in any event, the
6 setback and the parking are Type II. The use
7 variance part would be a -- also an Un -- an Unlisted
8 Action.

9 CHAIRMAN SALADINO: Do we have to -- do we have
10 to -- for the portion to either uphold or deny the
11 Building Inspector's determination, we don't do a
12 balancing test?

13 ATTORNEY STOLAR: No, no. You step --

14 CHAIRMAN SALADINO: Just the vote.

15 ATTORNEY STOLAR: You step into the shoes of
16 the Building Inspector and make a determination you
17 thought was to be made.

18 CHAIRMAN SALADINO: All right. I'm going to --
19 in that case, I'm -- and SEQRA, we're done. With
20 SEQRA --

21 ATTORNEY STOLAR: With SEQRA, you just
22 determined to be the Lead Agency. What you should do
23 now, because it is an Unlisted Action, is just assess
24 whether an appeal of a Building Department -- a
25 Building Inspector's determination is going to have

1 any adverse environmental impact. And without giving
2 an opinion, there's nothing, nothing with regard to
3 that that's necessarily environmental, it's more
4 administrative, an administrative decision. So if
5 you are of the opinion that making a decision on an
6 administrative determination is one that will not
7 likely have an adverse significant impact, then your
8 motion would be to declare it as an Unlisted Action,
9 and that it's not going -- not likely to have a
10 significant environmental impact.

11 CHAIRMAN SALADINO: Well, you heard him. Is
12 it -- do we think that it's going to have a
13 significant environmental impact on the --

14 MEMBER GORDON: No

15 MEMBER KAUFMAN: No

16 CHAIRMAN SALADINO: No. So we'll declare this
17 as an Unlisted Action without a significant
18 environmental impact. So moved.

19 ATTORNEY STOLAR: That's the motion.

20 MEMBER NYCE: And I'll second that.

21 CHAIRMAN SALADINO: All in favor?

22 MEMBER GORDON: Aye.

23 MEMBER KAUFMAN: Aye.

24 MEMBER NYCE: Aye.

25 MEMBER REARDON: Aye.

1 CHAIRMAN SALADINO: And I'll vote aye. We're
2 going to vote on -- on whether to uphold the decision
3 of the Code Enforcement, the Building Inspector. I'm
4 going to make a motion that we uphold the
5 determination made by the Building Inspector in
6 regard to this property.

7 MEMBER GORDON: And deny the appeal?

8 CHAIRMAN SALADINO: And deny the appeal.
9 So moved.

10 MEMBER KAUFMAN: Second.

11 ATTORNEY STOLAR: Before you ask all in favor,
12 just because Jack did not participate in the --

13 CHAIRMAN SALADINO: In the discussion?

14 ATTORNEY STOLAR: -- substantive part of the
15 hearing today, I would suggest that he not participate
16 in -- on this vote. The other votes are fine.

17 MEMBER REARDON: Abstain.

18 ATTORNEY STOLAR: But this vote I would say
19 abstain.

20 CHAIRMAN SALADINO: Are you comfortable
21 abstaining?

22 MEMBER REARDON: Yes.

23 CHAIRMAN SALADINO: Okay. So I'm going to ask
24 for his vote for him to say abstain. So, Jack?

25 MEMBER REARDON: I'm going to abstain from

1 voting on this particular issue at this time.

2 CHAIRMAN SALADINO: David?

3 MEMBER NYCE: Aye.

4 CHAIRMAN SALADINO: Dinni?

5 MEMBER GORDON: Aye.

6 CHAIRMAN SALADINO: Seth?

7 MEMBER KAUFMAN: Aye.

8 CHAIRMAN SALADINO: And I'll vote aye.

9 The second part of this application would --
10 would require a use variance. Is -- is that --

11 MEMBER NYCE: Moot at this point?

12 CHAIRMAN SALADINO: Well, the area variances
13 are kind of moot at this point. But since there is
14 an application --

15 ATTORNEY STOLAR: It wouldn't be moot if you
16 approved the use variance.

17 MEMBER NYCE: Ah.

18 ATTORNEY STOLAR: If you grant the use
19 variance, then the area variances would have to be
20 decided. If you deny the use variance, then --

21 CHAIRMAN SALADINO: Well, wouldn't we need --
22 wouldn't we need something, I mean, to progress an
23 applica -- a decision on the variance portions of
24 this, wouldn't we need an entirely different
25 narrative from the applicant?

1 ATTORNEY STOLAR: If that's -- that part's up
2 to the applicant as to what the applicant chooses to
3 submit here. The focus was on the appeal, and
4 secondarily on the alternative relief. And, I mean,
5 it's up to you as to whether you feel they -- he
6 provided any information at all, financial
7 information to support a use variance.

8 CHAIRMAN SALADINO: So without, without,
9 without -- so the next motion would be to deny the
10 use variance?

11 ATTORNEY STOLAR: So it's to -- he would -- the
12 use variance, we're calling it by its general,
13 generic term. It's a variance to permit a -- the
14 carriage house to be used as a -- as a dwelling, and
15 grant a -- to permit it to grant a variance of
16 section or Chapter 150, Section 9 -- I'm sorry,
17 7(A)(1) and --

18 CHAIRMAN SALADINO: (A)(1), 8(1) -- (A)(1).

19 ATTORNEY STOLAR: And 8(A)(1), (A)(1). All
20 right. But it's 8(A) and 7(A).

21 CHAIRMAN SALADINO: Do you have something I
22 could read, so I don't make a mistake?

23 ATTORNEY STOLAR: Well, your consideration is
24 whether the applicant demonstrated an unnecessary
25 hardship, and the factors that you consider for that

1 variance are whether the applicant is able to realize
2 a reasonable return, showing that the return is
3 substantial, demonstrated by competent financial
4 evidence. The next part of the unnecessary hardship
5 consideration is that the alleged hardship related to
6 the property in question is unique, and does not
7 apply to a substantial portion of the zoning
8 district. And that the requested variance, if
9 granted, will not alter the essential character, and
10 it has not been self-created. And in getting there,
11 you also have to consider whether for -- whether for
12 each and every use that is permitted under the code
13 they wouldn't be able to provide for that. So in an
14 instance where someone can otherwise use this as a
15 single-family residence, you know, that's a predicate
16 determination for deciding whether there's an
17 unnecessary hardship. And if they can use it for
18 that purpose without a financial hardship that we
19 spoke about, then your answer would be no. If it's
20 the other way, then your answer would be yes, it may
21 be entitled to the use variance.

22 MEMBER GORDON: I have a question. Do we have
23 enough information about what it would take to
24 convert one use to another use in this situation, to
25 convert the carriage house to a private dwelling?

1 ATTORNEY STOLAR: The standards are statute --
2 the standards are a State statute that provides what
3 you have to look at. The burden to demonstrate
4 entitlement to the variance for -- to permit the use
5 is on the applicant, so it's up to the applicant to
6 present that. If you feel that there wasn't
7 sufficient information that was provided, you can do
8 one of two things. You can move forward with the
9 determination, or you can reopen the hearing and give
10 the applicant an opportunity to present that, if the
11 applicant wants a second bite of the apple, having
12 not done it in the first instance. That's up to the
13 Board.

14 CHAIRMAN SALADINO: I'm sure someone explained
15 this to me just recently, but I'm going to ask again.
16 Wouldn't the applicant be required to submit another
17 application for a use variance?

18 ATTORNEY STOLAR: No, we had -- if -- the
19 notice and the application subsumed it all went to
20 one. So what it was, it was somewhat of a two-part
21 of application, the appeal, which is the primary
22 request for relief, and if the appeal was not
23 successful, then to move forward with the variances
24 that were being requested, which the applicant is, in
25 my -- in my recollection of what was stated during

1 the hearing, the applicant's attorney was aware
2 that -- I think that's the one thing he agreed with
3 me on with regard to some of the statements I made
4 during the hearing, that, yes, appeal in the first
5 instance, and in the alternative relief, if the
6 appeal is denied, then the variances that were
7 identified in the -- in the Notice of Decision --
8 Notice of Disapproval, excuse me.

9 CHAIRMAN SALADINO: To vote, to vote on the
10 second part of the application, we would have to do a
11 balancing test. We would use the balancing test for
12 a use variance.

13 ATTORNEY STOLAR: No, no. Use variance
14 determine -- you have use variances and area
15 variances. The area variance is the balancing test.
16 So the side yard setback, the rear yard setback, and
17 for residential purposes, the parking variance are
18 considered area variances for which you would do your
19 balancing test. The use variance test is the
20 unnecessary hardship test that I was referring to --

21 COURT REPORTER: I'm sorry, I just can't hear
22 you very well.

23 ATTORNEY STOLAR: Sure. So the use variance
24 test is the unnecessary hardship consideration that I
25 was referring to, which means that an applicant has

1 to demonstrate that for each and every use that is
2 permitted in the zoning district, they could not
3 realize a reasonable return and move forward on --
4 and the other three factors that I mentioned.

5 CHAIRMAN SALADINO: So can this Board vote -- I
6 don't want to -- I'm not trying to be obtuse guys,
7 I'm just -- I just want to get it right, because --
8 because I don't want to see it again, but -- so can
9 this Board vote on the second half of this
10 application by using the five-question balancing test
11 and deciding an answer to that, and that would handle
12 the application? Can we vote on the second portion
13 of the --

14 ATTORNEY STOLAR: So, so --

15 CHAIRMAN SALADINO: -- of the application --

16 ATTORNEY STOLAR: Just to address --

17 CHAIRMAN SALADINO: -- the area variance?

18 ATTORNEY STOLAR: Just to address the setback
19 variances and the parking variances, and not address
20 the use?

21 MEMBER NYCE: You know what he's saying, is the
22 use variance has a different balancing test.

23 CHAIRMAN SALADINO: No, I know, and it's here,
24 but he's --

25 ATTORNEY STOLAR: I under -- I think I

1 understand what you're asking and why you're asking.
2 The concern is that nothing was -- there was minimal,
3 if any, information presented to the Board with
4 regard to financial evidence to try to demonstrate
5 the use variance, that the applicant is entitled to a
6 use variance. I think that's why the Chair is asking
7 about consideration of the area variances in the
8 first instance before a determination is made on the
9 use variance. But I would point out that you
10 can't -- you can't use -- for the use variance, the
11 garage itself in its location, carriage house, garage
12 in its location, is a nonconforming use and it gets
13 to continue as a nonconforming use. Where it
14 requires a variance for it is the conversion of that
15 building to a residential structure. By converting
16 it, it now needs the area variances that are
17 identified.

18 So I would say that you need to have both, and
19 you can't address one without the other, because if
20 you do address just the area variances, it doesn't --
21 you know, you don't need to get there if the use is
22 not being proposed as a converted use, or if the use
23 variance is not granted. The use has to be approved
24 by this Board for those variances to apply, because
25 if the use is not -- is not addressed, then he gets

1 to -- still get -- the applicant keeps the building
2 there, he doesn't have to move it, so you don't have
3 to get to the area variances for the building itself,
4 except with the conversion portion.

5 MEMBER GORDON: I have a question. Does the
6 provision that only one building -- now that we've
7 effectively decided that this is one parcel -- I'm
8 not going to use the word "lot", since that's what
9 the tax map does. But if the provision that you can
10 have only one dwelling unit on a parcel, it's -- I
11 mean, is that relevant for determining the use
12 variance or not?

13 ATTORNEY STOLAR: It's relevant in that it sets
14 the stage for what's permitted. If there -- if
15 what's being asked for is a -- by denying the two
16 lots, it's one -- as you say, it's just one lot. So
17 as a single lot, the question is can it have two
18 different buildings used for dwelling purposes.

19 MEMBER GORDON: And if the answer is no, it
20 seems to me it even precludes assessing whether a use
21 variance can be --

22 ATTORNEY STOLAR: No. That's what he's asking
23 for, to be able, to be able to be authorized to use
24 the second building on the lot for residential use
25 purposes, so that's the use variance.

1 MEMBER KAUFMAN: So if we take up a use
2 variance, then we need to assess hardship, no?

3 CHAIRMAN SALADINO: Yes.

4 MEMBER KAUFMAN: Yeah, so that's --

5 CHAIRMAN SALADINO: Well, we don't --

6 MEMBER NYCE: Well, we could only assess what's
7 been provided.

8 CHAIRMAN SALADINO: Exactly. We have no
9 narrative from the applicant --

10 MEMBER KAUFMAN: Exactly.

11 CHAIRMAN SALADINO: -- about, about --

12 MEMBER KAUFMAN: But the onus is on -- is on
13 the applicant to support this.

14 ATTORNEY STOLAR: That's correct.

15 MEMBER KAUFMAN: So, and you're saying that
16 they would need to -- the law says, rather, not you,
17 that they need to provide proof of hardship, and
18 then, also, that there's no other -- you know, no
19 other use permitted in the district that will provide
20 them for return on their investment.

21 ATTORNEY STOLAR: That's --

22 MEMBER KAUFMAN: So we haven't really heard
23 anything about alternative uses or anything, unless I
24 missed something over the last several months,
25 because I wasn't hear last month, so.

1 CHAIRMAN SALADINO: No, because it was never
2 addressed.

3 MEMBER KAUFMAN: I wasn't -- I wasn't here last
4 month, so I just want to make sure I didn't miss
5 anything.

6 CHAIRMAN SALADINO: It was -- well --

7 MEMBER KAUFMAN: Okay.

8 CHAIRMAN SALADINO: No.

9 MEMBER GORDON: No.

10 CHAIRMAN SALADINO: It was never addressed.
11 The entire conversation with this application
12 revolved around deciding whether it's one lot or two.
13 And then if it was two lots --

14 MEMBER KAUFMAN: Okay. Well --

15 CHAIRMAN SALADINO: -- it would be the area
16 variances on Lot --

17 MEMBER KAUFMAN: Okay.

18 CHAIRMAN SALADINO: -- B, too, whatever,
19 whatever it is.

20 ATTORNEY STOLAR: And I believe, but I'm not
21 100% certain, it's been a couple of weeks since I
22 last looked at the testimony, that there was a -- an
23 inquiry perhaps at the first hearing as to the use,
24 potentially use variance. And if I recall correctly,
25 and if I don't, I ask you to look at the -- consider

1 your own recollection. But if I recall correctly,
2 there was a statement that the intent was to move
3 forward with the appeal, and that for that reason it
4 may very well be that the applicant did not present
5 use variance financial hardship information. And
6 maybe that they didn't, because there was -- they
7 weren't able to. I don't know the rationale, the
8 reasoning, but that's my recollection.

9 What I would say is something else, though. If
10 you want to look back at the testimony to get a full
11 sense as to what that says, you don't have to decide
12 this part of the application tonight. And I'd hate
13 to put this over, but if you're uncomfortable moving
14 forward, which is what I'm -- what I'm gathering
15 based on the questions, that you might want to look
16 back at the testimony on this and make a determination
17 at the next meeting, or you could just decide tonight
18 based on the fact that there was nothing provided.

19 CHAIRMAN SALADINO: I'm not uncomfortable
20 deciding this evening. The only thing I'm
21 uncomfortable with is coming up with the correct
22 wording for the motion. That's my problem, I'm
23 having a problem coming up with the correct wording
24 for the motion.

25 MEMBER GORDON: If we -- if we -- is it -- you

1 referred to getting a second bite at the apple. Is
2 it possible that if we -- if we -- if we denied this
3 altogether, that the applicant can come back and
4 renew by simply asking for a use variance, starting
5 over asking for a use variance?

6 ATTORNEY STOLAR: Accepting, accept -- at least
7 for administrative purposes on an appeal, accepting
8 that the appeal is not in their favor --

9 MEMBER GORDON: Right.

10 ATTORNEY STOLAR: -- and then moving forward
11 with a separate application? That's the underlying
12 relief sought here, is to permit it. Now the
13 procedure by which they're seeking to permit it is by
14 way of an appeal in the initial instance, and then
15 alternatively --

16 MEMBER GORDON: But, I mean, if we're saying
17 there isn't enough information --

18 ATTORNEY STOLAR: So --

19 MEMBER GORDON: -- there isn't enough
20 information, can they then come back and say, "Okay,
21 we're filing a new application with lots of
22 information"?

23 ATTORNEY STOLAR: Yes, that can -- an applicant
24 can pursue that path. If the Board makes a decision,
25 then I'm not sure if we have any provisions in our

1 code that would prohibit an application within a --
2 the same application within a certain period of time.
3 But assuming that that doesn't exist, then the
4 application can -- a new application can be brought.
5 Whether the Board reopens it or not --

6 MEMBER GORDON: Right.

7 ATTORNEY STOLAR: -- the applicant can bring
8 it --

9 MEMBER GORDON: That's what I want.

10 CHAIRMAN SALADINO: What do you mean? Like
11 what's the term, collateral estoppel, res judicata?
12 Do we have that in our -- am I getting that right?

13 MEMBER GORDON: Not really.

14 ATTORNEY STOLAR: It's the same concept, you
15 don't get, you know, second bite at the apple. Once
16 decided, that's the decision.

17 CHAIRMAN SALADINO: But wouldn't -- if tonight,
18 if tonight -- if this Board this evening decides
19 tonight to address both portions of the Notice of
20 Disapproval of the application, and the applicant
21 chooses to go forward next time, next month, two
22 months from now, would a new application for a use
23 variance -- he wouldn't -- he wouldn't be stopped
24 from doing that, right? Because are they -- are
25 they -- are they similar? The applications wouldn't

1 be similar, would they? They wouldn't be, basically?

2 ATTORNEY STOLAR: Again, if we don't have a
3 provision in our code that prohibits an applicant
4 from coming back after receiving a decision, an
5 unfavorable decision, then an applicant has every
6 right to take a second appeal; has to go through the
7 process, has to get that, the Notice of Disapproval
8 applied within 60 days of that notice of disapproval
9 and move forward on that basis. So there are
10 predicate steps that would have to be taken, but
11 there would be nothing to preclude them from coming
12 back again at some point in the future, whether it be
13 immediate or some later date.

14 CHAIRMAN SALADINO: I --

15 MEMBER GORDON: But that's not your problem,
16 that's his problem.

17 CHAIRMAN SALADINO: No, no, no, no. My problem
18 is creating a motion that can --

19 MEMBER KAUFMAN: So why don't we table it until
20 next meeting? Give time to review all the testimony
21 and decide what to do.

22 CHAIRMAN SALADINO: The second half of the
23 application?

24 MEMBER KAUFMAN: Yeah.

25 CHAIRMAN SALADINO: Are you comfortable with

1 that?

2 MEMBER GORDON: No.

3 MEMBER KAUFMAN: Okay. I'm not voting for it,
4 I'm just posing a suggestion.

5 MEMBER GORDON: I know, that's fine

6 MEMBER KAUFMAN: I just want to make sure.

7 (Laughter)

8 CHAIRMAN SALADINO: I just -- I'm just -- I'm
9 just at a loss.

10 MEMBER GORDON: I just feel as though it's
11 cleaner to make a decision on the second part of
12 this, and then the applicant can decide whether he
13 wants to try again.

14 CHAIRMAN SALADINO: Dinni, I agree with you
15 100%, and I --

16 MEMBER GORDON: And it would be just returning
17 to the Building Department to ask for a building
18 permit for a single-family dwelling.

19 CHAIRMAN SALADINO: We're getting ahead of
20 ourselves. I agree with you 100%. We don't want to
21 write this guy's application for him. I agree with
22 you 100%. My problem here tonight --

23 MEMBER NYCE: Is what the motion says.

24 CHAIRMAN SALADINO: -- right now is what the
25 motion says. What motion can I make this evening

1 that would satisfy the Board, anybody that looks at
2 that decision later on, perhaps 30 days down the
3 road. That's my dilemma. I admit that I'm just not
4 sure what motion to make, how to word it. Do you
5 want to try?

6 MEMBER GORDON: I'm thinking about it.

7 MEMBER NYCE: What -- to the Village Attorney,
8 what does the motion need to include?

9 ATTORNEY STOLAR: Well, if the motion is with
10 respect to the use and the variances of 150-8(A)(1)
11 and 150-7(A)(1), it would be a determination similar
12 to what you normally do at the end of your
13 discussions, which is to grant or deny. And to grant
14 it or deny it, you have to consider the factors as to
15 whether the applicant demonstrated an unnecessary
16 hardship, which are the ones I outlined that they
17 have to demonstrate for each use that's permitted in
18 the R-2 zoning district. So what the motion, if --
19 you know, if as -- I'm not sure where the Board wants
20 to go on this motion. I think I understand based on
21 the discussion that there hasn't been any information
22 provided. So I will take a stab at it, if that's
23 something the Board would like me to do.

24 CHAIRMAN SALADINO: Yes.

25 ATTORNEY STOLAR: Okay, there we go.

1 CHAIRMAN SALADINO: At least, at least this
2 member of the Board would.

3 MEMBER NYCE: Yeah, no, I agree.

4 ATTORNEY STOLAR: Okay. So let me just get the
5 use variance terms for it. All right. So the motion
6 would be -- well, first we have to do SEQRA on this,
7 since you limited the SEQRA to the initial part of
8 it. So with respect to the use, the use, again, is
9 an Unlisted Action. So you need a motion to
10 determine that you're the Lead Agency, that this
11 action would not likely have a significant adverse
12 environmental impact, and, therefore, require no
13 further environmental review.

14 CHAIRMAN SALADINO: All right. We're going to
15 make a motion that the Zoning Board of Appeals -- can
16 we -- can I just mimic that? Can I just --

17 ATTORNEY STOLAR: Yes, absolutely.

18 CHAIRMAN SALADINO: So moved.

19 MEMBER NYCE: Second.

20 CHAIRMAN SALADINO: All in favor?

21 MEMBER GORDON: Aye.

22 MEMBER KAUFMAN: Aye.

23 MEMBER NYCE: Aye.

24 MEMBER REARDON: Aye.

25 CHAIRMAN SALADINO: And I'll vote aye.

1 ATTORNEY STOLAR: Okay.

2 CHAIRMAN SALADINO: I have the --

3 ATTORNEY STOLAR: So then the second motion
4 would be with respect to the application for a
5 variance to -- a variance of the provisions of
6 Section 150-8(A)(1) and 150-7(A)(1). It would be to
7 deny the application on the -- deny the application
8 on the basis that the applicant has not demonstrated
9 unnecessary hardship, as the fact -- as the factors
10 the Board has considered with respect to unnecessary
11 hardship under Village Law Section 7-712(B)(2)(b),
12 including that the applicant cannot realize a
13 reasonable return, that the hardship is unique, that
14 the requested variance will not alter the essential
15 character of the neighborhood, and that the alleged
16 hardship has not been self-created. The applicant
17 has not demonstrated under those factors with regard
18 to each and every -- each and every use that is
19 permitted in that district that there is unnecessary
20 hardship, and therefore, the Board denies the
21 application for the variance, variance -- variance of
22 the use sections that I keep forgetting the exact
23 number, 8(A)(1) and 7(A)(1).

24 MEMBER GORDON: Do we say anything like without
25 prejudice? I mean, do we say --

1 ATTORNEY STOLAR: You wouldn't, you don't need to,
2 yeah.

3 MEMBER GORDON: Would we say anything that
4 indicated -- we don't need to.

5 ATTORNEY STOLAR: Yeah.

6 MEMBER GORDON: Okay.

7 ATTORNEY STOLAR: The prejudice -- whether the
8 applicant can take another step to come back to you,
9 again, will be dictated by what our code permits and
10 provides. If it's -- if it's precluded for a certain
11 period of time, then he'd have to wait. If it's not,
12 then he can bring the application in -- you know,
13 whenever the applicant chooses to do that.

14 CHAIRMAN SALADINO: And I can move that
15 resolution as you read it?

16 ATTORNEY STOLAR: Correct.

17 CHAIRMAN SALADINO: So moved.

18 MEMBER NYCE: Second.

19 CHAIRMAN SALADINO: And the response is going
20 to be yes if --

21 MEMBER NYCE: To the motion to deny.

22 CHAIRMAN SALADINO: Yes to the motion to deny,
23 or no --

24 ATTORNEY STOLAR: It's a motion -- the motion
25 on the table is to deny. So it's either you're --

1 CHAIRMAN SALADINO: So yes to --

2 ATTORNEY STOLAR: -- either in favor of the
3 motion or you're against the motion. And Mr. Reardon
4 will recuse himself again on this one, just because
5 there was some additional testimony tonight that he
6 wasn't present to hear.

7 CHAIRMAN SALADINO: Are you comfortable doing
8 that, Jack?

9 MEMBER REARDON: (Nodded Yes)

10 CHAIRMAN SALADINO: David?

11 MEMBER NYCE: You want his vote?

12 CHAIRMAN SALADINO: Oh, Jack, yeah, you're
13 going to abstain.

14 MEMBER REARDON: I'm going to abstain, yes.

15 CHAIRMAN SALADINO: Okay. David?

16 MEMBER NYCE: Aye.

17 CHAIRMAN SALADINO: Dinni?

18 MEMBER GORDON: Aye.

19 CHAIRMAN SALADINO: Seth?

20 MEMBER KAUFMAN: Aye.

21 CHAIRMAN SALADINO: And I'm going to vote aye.
22 So, as of this moment, we're done with this
23 application.

24 ATTORNEY STOLAR: I would say by virtue of your
25 two determinations, the use not being permitted, the

1 area variance aspect of it is rendered moot, you
2 know, again, because they're permitted to -- that
3 building as it exists is permitted to remain in its
4 location and used as a -- I think Mr. Kaufman said as
5 a complement to the existing residence.

6 MEMBER GORDON: But if the applicant came back
7 with a new application for a use variance and that
8 was granted, we would then have to still deal with
9 the area variance --

10 ATTORNEY STOLAR: Correct.

11 MEMBER GORDON: -- issues, which are substantial.

12 CHAIRMAN SALADINO: Well, again, we
13 shouldn't -- we shouldn't be asking like what-if
14 questions right now, we're done.

15 MEMBER GORDON: Well --

16 CHAIRMAN SALADINO: The applicant will -- is
17 going to do what he thinks is best for himself.

18 MEMBER GORDON: Right.

19 CHAIRMAN SALADINO: Right? We can tell the
20 applicant there'll be a decision at Village Hall
21 in --

22 ATTORNEY STOLAR: In due time.

23 CHAIRMAN SALADINO: In due time.

24 ATTORNEY STOLAR: Certainly before the next
25 meeting, and a lot -- more likely a lot before then.

1 CHAIRMAN SALADINO: Okay, that's done.

2 The last stop is Item No. 8, any other Zoning
3 Board of Appeals business that might properly come
4 before this Board. Anyone?

5 (No Response)

6 CHAIRMAN SALADINO: No. Item No. 9 is a motion
7 to adjourn. So moved.

8 MEMBER NYCE: Second.

9 CHAIRMAN SALADINO: All in favor?

10 MEMBER GORDON: Aye.

11 MEMBER KAUFMAN: Aye.

12 MEMBER NYCE: Aye.

13 MEMBER REARDON: Aye.

14 CHAIRMAN SALADINO: And I'll vote aye. Thank
15 you, folks. Happy holidays. Thanks for coming.

16 (The Meeting was Adjourned at 7:17 p.m.)

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