

VILLAGE OF GREENPORT  
ZONING BOARD OF APPEALS

REGULAR MEETING AGENDA

July 17, 2013

5:00 p.m.

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

APPEARANCES:

Doug Moore - Chairman

Charles Benjamin

David Corwin

Ellen Neff

Denise Rathbun

Joseph Prokop - Village Attorney

David Abatelli - Village Administrator

Eileen Wingate - Village Building Inspector



ORIGINAL

1 (Whereupon, the meeting was convened at  
2 5:07 p.m.)

3 CHAIRMAN MOORE: I think we're ready to  
4 begin.

5 This is the Regular Session of the  
6 Greenport Zoning Board of Appeals on July  
7 17th, and it's about seven after five. And we  
8 have a full membership tonight. So Denise  
9 Rathbun's been out for a while and she's  
10 recuperating and back in full force. So we  
11 have a full Board tonight, which is good  
12 thing.

13 We have a very busy agenda tonight, and  
14 not only some complicated issues, but also  
15 some interesting ones. So I think it might be  
16 an interesting session, but it will be busy  
17 and I hope we can move things along.

18 We have three Public Hearings, and then  
19 we have our regular agenda. So, if the Board  
20 is ready, we'll just proceed with the agenda.

21 The first item is a continuation of the  
22 Public Hearing for Arden Scott, 301 Atlantic  
23 Avenue, Suffolk County Tax Map 1001-2-2-14.

24 The Applicant seeks a permit to  
25 construct an addition to an existing

1 nonconforming building where:

2           The proposed addition is 15 feet from  
3 the east property line, requiring a 15-foot  
4 front yard area variance, where Section  
5 150-12A of the Village of Greenport Code  
6 requires a 30-foot front yard setback. This  
7 is because an unusual situation of a corner.  
8 There are actually two front yards on this  
9 property.

10           Without reading the second section,  
11 perhaps I could ask Mr. Prokop, before we take  
12 any further testimony, to review the process.

13           We do apologize for the delays, but  
14 there was a question in our first session that  
15 we did not have an answer to and Mr. Prokop  
16 wasn't here. We had some advice after that,  
17 and perhaps I'll let him review where we are  
18 today. Joe?

19           MR. PROKOP: Yes, thank you. I had --  
20 as you said, I wasn't at the May meeting, and  
21 I spoke to the Village prior to the June  
22 meeting, and based on information at that  
23 time, I had indicated that I thought that a  
24 use variance was necessary for this project.

25           And subsequent to that, I spent time

1 with the Village and went through the -- went  
2 through additional material that was  
3 available, and based on that second review, I  
4 was able to indicate in a letter that I sent  
5 to the Board that I do not think that a use  
6 variance is necessary for the application, and  
7 the application can move ahead with -- just  
8 with area variances, as requested in the  
9 Public Hearing.

10 CHAIRMAN MOORE: Okay. Thank you. And  
11 we did not need to re-notice the meeting, and  
12 so this was -- is now a continuation of the  
13 Public Hearing. So we would perhaps ask the  
14 Applicant or a representative to just do a  
15 brief recap of what's being sought.

16 If there are any people in the audience,  
17 then, that would wish to speak, we could  
18 entertain any additional public comments  
19 before we move on.

20 MR. KAPPELL: Mr. Chairman, Members of  
21 the Board, David Kapell, 400 Front Street,  
22 Greenport, for the Applicant, Arden Scott.

23 Ms. Scott proposes to build a small  
24 addition on an existing building that has a  
25 long history as a truck garage, which was

1 permitted pursuant to a variance issued, I  
2 don't know, some 30, 40 years ago in  
3 connection with the operation of Pell's Fish  
4 Market adjacent.

5 She has used this structure for the last  
6 several years as an artist studio, and  
7 proposes now to build a small addition, which  
8 would allow her to have a heated space, which  
9 doesn't exist now, and, also, to bring north  
10 light into an area where she needs to be able to  
11 draw. North light, as you probably know, is a  
12 very important commodity for an artist.

13 The property, as you mentioned, is a  
14 corner property, so it's subject to a double  
15 front yard. That necessitates the variance  
16 that we're asking for. Ordinarily, a 15-foot  
17 setback would be sufficient on the side. In  
18 this case it's not, because it's the second  
19 piece of a corner lot.

20 Just in terms of the criteria that the  
21 Board uses to evaluate a variance application,  
22 whether an undesirable change will be produced  
23 in the character of the neighborhood or a  
24 detriment to nearby properties by the granting  
25 of the variance, I would submit that the

1 answer to that is clearly no, that this will  
2 be a net improvement to the property.  
3 Anything is better than an industrial truck  
4 garage. And this will help Arden clean up the  
5 property and use it in an orderly way that  
6 will benefit the neighborhood.

7 Whether the benefit sought by the  
8 Applicant can be achieved by some method  
9 feasible for the Applicant to pursue other  
10 than an area variance. Again, I'd say no.  
11 This is the only location on the property  
12 where she can construct this addition in a  
13 manner that brings north light into the  
14 building.

15 Whether the requested variance is  
16 substantial. I'll leave it for you to  
17 conclude that. I don't think so. It's in  
18 conformity with what would otherwise need a  
19 side yard variance -- a side yard setback  
20 requirement, and I don't think it's a  
21 substantial -- we don't think it's a  
22 substantial request.

23 Whether the proposed variance will have  
24 an adverse effect or impact on the physical  
25 environment conditions in the neighborhood.

1 Once again, I'd say no. This would be a net  
2 gain for the neighborhood. This would be a  
3 substantial improvement. She's a quiet  
4 neighbor. She's going to be improving the  
5 property. Anything is better than the truck  
6 garage.

7 And then, lastly, whether the alleged  
8 difficulty was self-created. And, once again,  
9 I would say no, because she's inherited the  
10 prior use and the prior -- the existing  
11 building on the property, which was  
12 constructed as a truck garage, and she's  
13 trying to accommodate the current conditions  
14 in a way that allows her to do what she needs  
15 to do.

16 If there's -- if the Board has any  
17 questions, I'm available. Also, the Architect  
18 who's drawn the plans, is also available if  
19 there are any technical issues.

20 CHAIRMAN MOORE: Thank you. We'll have  
21 the chance to ask specific questions during  
22 the discussion phase, so we would, you know,  
23 reserve that for that time.

24 MR. KAPPELL: Thank you.

25 CHAIRMAN MOORE: And I'm sure there may

1 be a few. And if no other comments from the  
2 Applicant, any members of the public like to  
3 speak regarding the application?

4 (No Response)

5 And, if not, would the Board entertain  
6 closing the Public Hearing?

7 MS. NEFF: A motion to close the Public  
8 Hearing.

9 CHAIRMAN MOORE: And could I have a  
10 second?

11 MS. RATHBUN: Second.

12 CHAIRMAN MOORE: Any discussion? If  
13 not, all in favor?

14 MS. RATHBUN: Aye.

15 MR. CORWIN: Aye.

16 MS. NEFF: Aye.

17 MR. BENJAMIN: Aye.

18 CHAIRMAN MOORE: Aye.

19 Any opposed?

20 (No Response)

21 And the motion carries, so the Public  
22 Hearing is closed for Item #1.

23 So we will move on to the Public Hearing  
24 #2. Now I may have to dig a little bit for  
25 this. Public Hearing is for John Costello at

1 the address 102 Broad Street, Suffolk County  
2 Tax Map 1001-02-05-0292.

3 The Applicant proposes to build a second  
4 story addition to an existing three-car garage  
5 for an artist studio.

6 The height of the proposed second floor  
7 is 20 feet, six inches, requiring a 5.6 height  
8 variance. Section 150-13A(1)(a) of the  
9 Village of Greenport Code limits the height of  
10 accessory buildings to 15 feet.

11 The proposed location of the stair to  
12 the second floor is located one foot from the  
13 west property line, requiring a four-foot side  
14 yard setback area variance. Section  
15 150-13A(1)(b) of the Village of Greenport Code  
16 requires a minimum of five feet from any lot  
17 line.

18 I will just look in the file briefly as  
19 far as the public notices. This was noticed  
20 appropriately in the Suffolk Times. A placard  
21 notice was in place, I gather, for the  
22 required period of time, and the adjacent  
23 property owners were notified. Oops, this is  
24 not the right notice. I'm sorry. I saw  
25 Richard Kearns on the notifications.

1 I'm not seeing the mailed notifications.  
2 I have the ones for the other two cases. And  
3 if you could look for me. I'm just looking  
4 here.

5 (Eileen Wingate perused the file.)

6 CHAIRMAN MOORE: Oh, thank you very  
7 much. If you'd bear with me for a minute.

8 So here are the notifications from the  
9 map. They basically are all of the directly  
10 adjoining properties and any properties across  
11 the street, and even to the far corners. And  
12 they are the LV Inn LLC, at 190 Sterling  
13 Street, the owner; Ronald Rose, and that is an  
14 adjoining neighbor by the address of 40 East  
15 80th Street, New York; David Corwin, 639 Main  
16 Street; Eric Fry, 711 Main Street; Eve  
17 Jarrett, 93 Main Street, Southampton. I'm not  
18 sure of which property it is. Patricia and  
19 Carol Neary, another Merrick address, an  
20 adjoining property, and Beatrice Claudio, 22  
21 Broad Street, Greenport.

22 I believe we did have some letters  
23 submitted, and I will find those in a minute  
24 here.

25 MS. NEFF: I have them, two of them.

1 CHAIRMAN MOORE: Yeah, I have them here.  
2 Yup. I'll just catch up to them. I have them  
3 here. Oh, this is the file. Okay. Let me  
4 put those back.

5 There were two letters submitted; I  
6 believe they just came today. One is from  
7 Carol Neary, and it is -- I'll read into the  
8 record.

9 "I am the adjoining neighbor to the west  
10 of the proposed project at 102 Broad Street in  
11 Greenport.

12 I would like to inform the Board that I  
13 have absolutely no objection to the two  
14 variances being requested to raise the height  
15 of the garage to 20 feet, six inches to allow  
16 for an artist studio for Cynthia Pease Roe,  
17 the tenant and resident at the 102 Broad  
18 Street property, nor do I object to the side  
19 yard variance on the west side of the garage  
20 of four feet. Sincerely, Carol Neary."

21 Second one is Ronald Rose. He is the  
22 adjoining neighbor on the other side of the  
23 property.

24 "I am the owner and resident of 715  
25 First Street in Greenport. I am the neighbor

1 on the north side of 102 Broad Street in  
2 Greenport.

3 I understand that 102 Broad Street has  
4 requested two variances to raise the roof of  
5 their garage to 20 feet, six inches to allow  
6 for an artist studio for Cynthia Pease Roe.

7 John Costello and Cindy Roe showed the  
8 plans to me and my wife, Cynthia. We believe  
9 that the plans for the new garage are a vast  
10 improvement over the existing structure. We  
11 believe that this will be a welcome  
12 improvement to our lovely street.

13 We have no objections to the two  
14 variances being requested. We have no  
15 objection to raise the roof of the garage" --  
16 "their garage to 20 feet, six inches. We have  
17 no objection to the side yard variance on the  
18 west side of the garage of four feet.

19 Please contact me if you have any  
20 questions." Signed, Ronald Rose.

21 So those are the two letters. Perhaps  
22 the Applicant or a representative could  
23 comment on the application for a variance.

24 MR. COSTELLO: My name is John A.  
25 Costello, and I am a 50% owner in that

1 property with Ms. Roe. And we are trying to  
2 improve the property, and we've been trying to  
3 improve the house. We've been working on  
4 painting and trying to fix it up and bring it  
5 up to today's standards.

6 The garage is not very nice looking for  
7 that neighborhood. The pitch of the roof is  
8 not conforming with any buildings on that  
9 First Street area.

10 We also discussed it with these two  
11 neighbors, showed them the plans, went over  
12 with it, and showed them what the improvements  
13 were intended to be. They are the adjacent  
14 properties, one to the north and one to the  
15 immediate west. They're the closest  
16 neighbors.

17 We also approached the estate of  
18 Beatrice Claudio across the street. She has  
19 passed away. Even though we've sent a  
20 notification, we went and made sure that they  
21 were aware what was going on in the adjacent  
22 neighborhood. And we -- they had a yard sale  
23 there last week and we discussed it with them,  
24 the executors of the estate, and they are  
25 tickled to death over the improvement, but

1 they did not write a letter. We asked them if  
2 they could, it would be appreciated, but, you  
3 know, if they were for or against, but it did  
4 not occur.

5 Cindy Pease Roe, my partner in this, is  
6 also a tenant at Hanff's Boat Yard. She rents  
7 from there. I think she's up to date on her  
8 rent. And so in the wintertime Hanff's Boat  
9 Yard, it's not insulated, it's quite  
10 uncomfortable. And she could speak for  
11 herself on this issue, but she would also --  
12 there's a lot of traffic down at Hanff's Boat  
13 Yard, working on wooden boats, restoring  
14 wooden boats. I have a machine shop down  
15 there, I have a welding shop down there, and  
16 there's quite a bit of traffic.

17 So what she intends to do here, she  
18 could tell you herself, and that was the  
19 purpose of raising the garage and  
20 accommodating a studio over it.

21 We went before the Historic Review Board  
22 and they basically were in approval of it  
23 under the condition that this Board approved  
24 it.

25 We discussed putting the stairs on the

1 back of the property, which required a  
2 variance, and so that it could not be seen  
3 from the road. I'd prefer, myself, not to see  
4 it from the road. I would not want this to be  
5 anything but the look of a cottage, and I want  
6 the higher pitched roof. That has a  
7 reasonably flat roof now.

8 This Board has attended and looked at it  
9 and it's less than appealing, but it is what  
10 it is. And it is a three-car garage, and we  
11 intend to use it as a three-car garage.

12 We have adequate off-street parking for  
13 the tenant, which is Cindy Pease Roe, and two  
14 other apartments in the driveway, and we  
15 intend to have that driveway used to keep it  
16 off the street as much as possible.

17 Any questions this Board may have of me,  
18 I'll do my best

19 CHAIRMAN MOORE: I would just have one  
20 question at this point pertinent to the Public  
21 Hearing, is on the drawings, I didn't see any  
22 indications of plumbing improvements, whether  
23 any plans are for bathrooms, other such  
24 things.

25 MR. COSTELLO: Well, I would think in

1 this day and this age, I would hope that we  
2 would put a bathroom in. I mean, she needs  
3 running water. If you have to wash paint  
4 brushes or do anything in a studio, you have  
5 to have water. And I would presume that she  
6 could also run to the house, which is probably  
7 50 feet away, but some days that may not be  
8 quite the thing you want to do.

9 CHAIRMAN MOORE: And I think the main  
10 point of the question was that we're not  
11 approaching any kind of outfitting that would  
12 represent the structure as a residence.

13 MR. COSTELLO: It is not the intention,  
14 that we have enough residential problems on  
15 that -- and I can't speak that she wouldn't  
16 sleep in it. You know, I could sleep in a  
17 chair. I sleep in my office, which is not  
18 residential, but I have fallen asleep there.  
19 But that's -- there is no accommodations for  
20 sleeping. There will be no intention of  
21 having showers, which you would certainly  
22 need. But I'm certainly -- you know, it's not  
23 intended to be living quarters, except an  
24 artist -- operating artist studio.

25 CHAIRMAN MOORE: Any questions from the

1 Board in reference to the Public Hearing part  
2 of the proceedings?

3 MS. NEFF: I have one. It's not the  
4 design to have the public visit the artist  
5 studio, it is an artist studio for work?

6 MR. COSTELLO: It is an artist studio  
7 for work. I can assure you that she will have  
8 friends, guests to come see her, but it's not  
9 going to be an operating business entity and  
10 to go up there and sell art, because she has  
11 that spot already. I hope she remains at  
12 Hanff's Boat Yard, I could use the rent.

13 CHAIRMAN MOORE: Okay. Thank you.

14 MR. COSTELLO: If you have any questions  
15 of Ms. Roe, I'm sure she would make every  
16 attempt to answer them.

17 CHAIRMAN MOORE: Any other comments from  
18 the owner's side of the request? Yes. You  
19 get to go first, and then the public can --

20 MS. ROE: Hi. I'm Cynthia Pease Roe,  
21 and I just wanted to talk a little bit about  
22 my use for the space.

23 I do have a commercial space at Hanff's  
24 Boat Yard. I have a sign out there. I meet  
25 the public there, and because of that, I need

1 private space to work. I have -- you know, I  
2 have liability insurance. I have everything  
3 that you need to be involved with the public  
4 down at Hanff's because of that. As I said,  
5 there's a lot of -- like John said, there's a  
6 lot of foot traffic in and out of the studio  
7 and it's hard for me to work privately. So I  
8 do need a private space, a home that I can  
9 work, also a place that is warm in the  
10 wintertime and cooler in the summertime, and,  
11 you know, that I can go outside my back door  
12 and I can go to work at night and stay as late  
13 as I want to work. And that's really the  
14 purpose of the space.

15 Any questions?

16 CHAIRMAN MOORE: No. We'll have the  
17 opportunity to ask direct questions later, but  
18 thank you.

19 MS. ROE: Okay. All right. Great.

20 CHAIRMAN MOORE: Any members of the  
21 public who had wished to speak? Yes, if you  
22 want to come up and identify yourself with  
23 name, and address, and affiliation, if  
24 appropriate.

25 MS. HORTON: Good afternoon. My name is

1 Gail Horton and I live at 727 First Street,  
2 three doors down from the property, and I've  
3 lived there for 45 years. I was there when it  
4 burnt down, when Jimmy Mitchell (phonetic), I  
5 guess, smoked a cigarette or something when he  
6 shouldn't have. And I was there when May and  
7 Phil Watson fixed it up and raised their  
8 family there and turned it into a three-family  
9 house. So I've been there a long time.

10 And I want to say I truly support this.  
11 I, too, am an artist. I'm fortunate that I  
12 could add on to a part of my house and have my  
13 studio right in my home and it's really great,  
14 and show elsewhere, although people show up  
15 once in a while and want to see it. But I  
16 think it's very important to do this. I think  
17 the plans, as I see them, are an asset to our  
18 community.

19 I was at an affair last night and I was  
20 sitting with a real estate broker from Park  
21 Slope in Brooklyn and she was saying about  
22 Park Slope, how it's changed, and how the  
23 sales there are going. And she said, you  
24 know, the artists came in first and they  
25 really improved the -- and when artists come,

1    how much it attracts other people, and it's a  
2    positive thing to have an artist in your  
3    community.

4           And then I want to also say something  
5    about John Costello back there.  You know, if  
6    more people were like John Costello, we would  
7    not need an Historic Preservation Board.  I'm  
8    telling you, if you see what he's done on his  
9    own in the Hanff house and properties he's  
10   touched, we're lucky to have him here.  And I  
11   believe, you know, wholeheartedly, between the  
12   two of them, who I know and they are my  
13   friends and my neighbors, I believe that -- I  
14   know they will do a good job.  So I hope you  
15   consider it in their favor, and I thank you.

16           CHAIRMAN MOORE:  Thank you.  Are there  
17   other members of the public who wish to speak  
18   about this application?

19                           (No Response)

20           If not, will the Board entertain closing  
21   the Public Hearing?  Could I have a motion?

22           MS. NEFF:  A motion to close the Public  
23   Hearing.

24           CHAIRMAN MOORE:  And a second, please.

25           MS. RATHBUN:  Second.

1 CHAIRMAN MOORE: Any discussion?

2 (No Response)

3 All in favor?

4 MS. RATHBUN: Aye.

5 MR. CORWIN: Aye.

6 MS. NEFF: Aye.

7 MR. BENJAMIN: Aye.

8 CHAIRMAN MOORE: Aye.

9 Any opposed?

10 (No Response)

11 Motion carries, so that Public Hearing  
12 is closed.

13 The next is Hearing #3, Public Hearing  
14 for Richard Ward, 718 Main Street, Suffolk  
15 County Tax Map 1001-2-3-5. The property is  
16 located in the R-1 District.

17 The Applicant proposes to construct a  
18 second residential unit in an existing  
19 one-family house in the R-1 District. Section  
20 150-7 does not permit any building to be used,  
21 in whole or in part, for any use except  
22 one-family detached, not to exceed one  
23 dwelling unit on each lot.

24 And, if I may, I will just read the  
25 notices. It was noticed in the Suffolk Times,

1 I believe. And looking just for the mailings  
2 here. I hope I didn't file them with  
3 something else. Could you assist on this?

4 MS. NEFF: Yes.

5 CHAIRMAN MOORE: I don't see the  
6 notices. I'm looking for Eileen Wingate to  
7 help. This looks to be two sets of Costello,  
8 so --

9 MS. WINGATE: Beatrice Claudio. This is  
10 Costello. This is --

11 CHAIRMAN MOORE: This is Costello.

12 MS. WINGATE: Okay. May I?

13 CHAIRMAN MOORE: Yes. Sorry about that,  
14 but I just want to make sure we have it.  
15 Thank you. Thank you.

16 So, again, it was the surrounding  
17 properties. And first, of course, is the  
18 Episcopal Church in Greenport; Eunice  
19 Gardiner, 314 Manor Place, Greenport; Halina  
20 Siemaszko, East Marion; Ronald Levin, 301  
21 Manor Place; James Betz. There's a Jersey  
22 City address, but apparently next door  
23 neighbors. And Debra Shapiro and Kieran  
24 Holohan, a New York address, and Carlos and  
25 Patricia DeJesus, 754 Main Street, Greenport,

1 New York.

2 The property was also properly  
3 placarded, I notice, with a public notice.

4 And if the representative would like to  
5 speak about the project, you could do so.  
6 Just be sure to identify yourself by name,  
7 address and affiliation.

8 MR. WARD: My name is Richard Ward. I'm  
9 the Warden and I'm the agent for this project  
10 for request for zoning variance for Holy  
11 Trinity Church, Greenport.

12 Is it necessary to read the response  
13 into the record?

14 CHAIRMAN MOORE: We will be looking into  
15 that. If you wish to give an overview of your  
16 feelings towards why your request is  
17 justifiable, that would help, then perhaps you  
18 could.

19 MR. PROKOP: It's not required. I mean  
20 it's part -- he submitted it as part of the  
21 application --

22 CHAIRMAN MOORE: Yes.

23 MR. PROKOP: -- I believe, so it's not  
24 required that he read into the record.

25 CHAIRMAN MOORE: I mean, if you would

1 like to just review your reasons for doing so  
2 and what you're going to do with the property,  
3 because it's a little in usual because of its  
4 affiliation with the Church.

5 MR. WARD: Okay. Basically, the  
6 parsonage, or what we call the rectory, which  
7 was formerly called the rectory anyway, has  
8 been -- we have not had a full-time Priest in  
9 that house for some 23 to 25 years. Over the  
10 years we've had Sextons that have lived there  
11 that have maintained the property and have  
12 worked for us. We're at a building point  
13 right now where we're taking on a full-time  
14 Pastor September 1st.

15 We have a Sexton that is doing  
16 maintenance and actually rebuilding some of  
17 our facilities through a capital campaign that  
18 we have.

19 Long-term, we really do desire the two  
20 apartments that we're requesting. Right now,  
21 we have a single male Priest that's going to  
22 come and stay at the house. As part of our  
23 financial package with him and part of our  
24 financial package with the Sexton and his wife  
25 is that we provide housing.

1           These are two separate entities and we'd  
2 like to divide the house. If 25 years from  
3 now things change, I think we could open up a  
4 couple of doors, you could make it a house  
5 again. But our long-range projection of what  
6 we're seeing, when we go out and try to call a  
7 new Priest for our small parish, financially  
8 we're not capable of bringing in somebody  
9 that's looking for a large -- you know, a  
10 large congregation. Therefore, we need the  
11 ability to have housing for that -- for the  
12 Priest, we need -- in order to maintain our  
13 facilities.

14           And, actually, over the last year, and  
15 we have about another year or two to go, to  
16 bring them up to speed, we need Tom and  
17 Laurie's help to do that. We're kind of  
18 rebuilding from inside and trying to bring our  
19 facilities up to speed.

20           We have -- as far as the neighborhood  
21 goes, we're in a mixed area as it is. We just  
22 took down the fence that was put up some 25  
23 years ago in the backyard to make just a lawn  
24 area. Across the street, directly across is  
25 the funeral home. Down the block is the

1 Eastern Long Island Hospital. If you're  
2 walking down Main Street, there's churches,  
3 there's a mix of some bed and breakfasts and  
4 two-family. Visually, the house doesn't  
5 change. Well, I'll say it doesn't change. We  
6 want to replace a couple of windows. We're  
7 not talking about any additions to the house  
8 other than interior changes to accommodate the  
9 Code and accommodate two separate entrances  
10 that are already there, to accommodate the two  
11 apartments.

12 So we think it's a wise use for our  
13 property to put one gentleman in there, one  
14 Priest in there, and try to heat and cool the  
15 place for such a big expanse of a building  
16 that's really not economically feasible to us.

17 Leonard, you want to say anything?  
18 Leonard Dank is our Senior Warden, and he may  
19 like to add a few words at this point.

20 MR. DANK: Thank you. Ladies and  
21 Gentlemen of the Board, my name is Leonard  
22 Dank. I'm the Senior Warden of Holy Trinity  
23 Church.

24 In the Episcopal Church, as in all other  
25 Christian churches, there is normally a

1 Priest, a Pastor, a minister who runs the  
2 church. The two wardens in this case are lay  
3 people, we're untrained, and we just usually  
4 advise a Priest on perhaps things that are  
5 going wrong, people's concerns. We're  
6 assistants. We also raise the money so we can  
7 pay the bills, and the Junior Warden normally  
8 takes care of making sure that the buildings  
9 are in good repair.

10 For the past 23 years we have been  
11 without a Priest. We have had what in the  
12 Episcopal Church is called a supply Priest. A  
13 supply Priest comes in Sunday morning, he says  
14 an 8 o'clock service, he hangs around for  
15 coffee, he says the 10 o'clock service, and,  
16 if he can, and there's somebody in the  
17 hospital, he might go over and visit them and  
18 he leaves. The rest of the week there's no  
19 church, there's no minister, there's no  
20 religious activity, there's no one to do it.

21 Perforce, when I became Warden, it  
22 became quite clear that we were going to be on  
23 a downward spiral. No church can exist with  
24 lay people running it. It's a religious  
25 institution. So now, with our old, very

1 old-fashioned former Diocesan Bishop, he  
2 insisted on a level of income, that we would  
3 have to pay anybody far above our dwindling  
4 supply, because as we were going down, the  
5 money was going down. And he kept saying,  
6 "You're going to need \$170,000," just, you  
7 know. Also, he was very old-fashioned, he was  
8 not computer up-to-date. He would only assign  
9 priests within his own parish that he had  
10 control over. So, therefore, there were none,  
11 they were all assigned. There was no Priest.  
12 There was too much of a money demand.

13 Alleluia, God willing, four years ago we  
14 got a new young Bishop. We went to him, Dick  
15 and I, with not much hope, last April, April  
16 15th -- 17th. We had lunch with his Adjutant  
17 General called a Canon to the Ordinary, and he  
18 said, "I don't know. You know, it's expensive  
19 to live out there if we get a young Priest  
20 with a young family." A few days later he  
21 called. "Wait a minute," he said, "there is a  
22 Priest in New Hampshire that's got the  
23 experience you need. He'll take a relatively  
24 low stipend, and he's eager. He's in a  
25 seafront neighborhood now and this would be

1 just" -- so he said, "Would you like to  
2 interview him?" Quick fast forward, we did;  
3 ideal. We came to a deal with him, but we  
4 must supply him with housing.

5 As Dick said, Tom and Laura Wilson are  
6 essential to our scheduled building program.  
7 He's willing to work, since he doesn't pay any  
8 rent, for a very reasonable fee. We priced  
9 commercial things and it's like three to one,  
10 you know. We could not keep up. As what  
11 happened with Sacred Heart, they could not  
12 keep up with their maintenance program. It's  
13 now closed and going to be, hopefully, not  
14 razed, because a 120-year-old building and  
15 150-year-old church need constant maintenance.  
16 So we cannot lose Tom.

17 We have to supply the Priest, a single  
18 man, with modest needs with an apartment. The  
19 no-brainer solution: Divide it up. With the  
20 Village's permission, we can grow and reform,  
21 and, hopefully, get into the future with a  
22 great deal of confidence.

23 Thank you very much.

24 CHAIRMAN MOORE: Thank you. Before I  
25 ask for any members of the public, I believe

1 there were no letters, correspondence received  
2 in connection with this request, so we could  
3 move right ahead to anybody from the  
4 neighborhood, neighbors.

5 MR. CORWIN: I would like to ask a  
6 question.

7 CHAIRMAN MOORE: Yes. Oh, I'm sorry.  
8 Yes. We might have a question for you just  
9 about the layout or the -- Mr. Corwin.

10 MR. CORWIN: Do you have square footage  
11 of the first floor and the second floor of the  
12 building?

13 MR. WARD: With the air conditioner, I  
14 couldn't hear.

15 MR. CORWIN: Do we have footage of the  
16 first floor and the second floor of the  
17 building; do you have that available?

18 MR. DANK: Square footage. Dick, do we  
19 have square footage?

20 MR. UELLEND AHL: The size of the  
21 apartment.

22 MR. DANK: Well, we have the size. I'm  
23 not sure the Architect put it down, to be  
24 honest with you. No. But the building is  
25 about --

1 MR. WARD: It's over -- I know that it's  
2 over 1,000.

3 MR. CORWIN: And let me ask Mr. Abatelli  
4 where the line is between one-family and  
5 two-family zoning.

6 MR. ABATELLI: Where the zone changes, I  
7 guess about a block or so south. It's kind of  
8 around where Webb Street is.

9 MR. KAPELL: It's the north property  
10 line of Townsend Manor.

11 CHAIRMAN MOORE: They're right in this  
12 little corner, and then this area is R-1, this  
13 little bit. This is where they are.

14 MS. NEFF: I know, I know where they  
15 are, here. There's many -- not many, but  
16 several two-family houses in this area along  
17 here. There are two or three, at least three.

18 MR. CORWIN: So these three, two are  
19 still one-family.

20 MR. ABATELLI: Excuse me, the  
21 transcriptionist isn't getting anything you're  
22 saying.

23 CHAIRMAN MOORE: Okay, sorry.

24 MR. CORWIN: I'm noting that three  
25 houses south of the Episcopal Church property

1 is zoned one-family, and I believe there's at  
2 least one house there. I believe the DeJesus  
3 house is a two-family house.

4 CHAIRMAN MOORE: Okay. So any other  
5 direct questions during the Public Hearing  
6 period for Mr. Ward from the Board?

7 MR. KAPPELL: I have one piece of  
8 information, Mr. Chairman.

9 CHAIRMAN MOORE: Could you have or add?

10 MR. KAPPELL: Offer one piece.

11 CHAIRMAN MOORE: Yes, we'll open it to  
12 the public, then. So if you'd like to come  
13 up, and the public may make comments.

14 MR. KAPPELL: Sure.

15 CHAIRMAN MOORE: Thank you.

16 MR. KAPPELL: Dave Kapell, 400 Front  
17 Street.

18 I have personal knowledge that in  
19 addition to the DeJesus house being a  
20 two-family house, the house at 744 Main  
21 Street, which is the first house in the R-1  
22 District and north of the Townsend Manor Inn  
23 is also a two-family house.

24 CHAIRMAN MOORE: Okay. Thank you very  
25 much.

1 Any other members of the public wish to  
2 make comment?

3 (No Response)

4 If not, I'll entertain a motion from the  
5 Board to close the Public Hearing.

6 MS. NEFF: I move that we close this  
7 Public Hearing.

8 CHAIRMAN MOORE: And a second, please.

9 MS. RATHBUN: Second.

10 CHAIRMAN MOORE: Denise Rathbun  
11 seconded. Any discussion? All in favor?

12 MS. RATHBUN: Aye.

13 MR. CORWIN: Aye.

14 MS. NEFF: Aye.

15 MR. BENJAMIN: Aye.

16 CHAIRMAN MOORE: Aye.

17 Opposed?

18 (No Response)

19 Motion carries, so the Public Hearing  
20 phase of the meeting is now over.

21 I'm going to move on to the regular  
22 agenda, and I may have a few sort of review  
23 comments to make at the beginning of each of  
24 these cases. We're in a position to discuss  
25 and then potentially approve variances that

1 have been requested, should we wish to do so.

2 The first item is the application for  
3 Arden Scott. And I did give a little bit of  
4 an introduction before the Public Hearing as  
5 to where we are. And if you'll bear with me  
6 just for a minute, I need to find that file  
7 again.

8 MS. NEFF: Which one are you looking  
9 for, Arden Scott?

10 CHAIRMAN MOORE: Here it is. I'm sorry,  
11 I turned it over. Just my own file with the  
12 information in it.

13 I'd just like to give a review of things  
14 that have occurred on this property and some  
15 of the neighborhood issues. I think it's been  
16 pointed out in past Public Hearings, and we  
17 are now at the Board discussion phase, so it's  
18 not part of the public input, that surrounding  
19 this property are some commercial properties,  
20 waterfront commercial across the street. The  
21 hospital directly across from the property has  
22 a large parking lot, which is a nonresidential  
23 use. I don't know the status of that relative  
24 to variances.

25 MR. CORWIN: Could you say that again?

1 CHAIRMAN MOORE: The hospital parking  
2 lot is across, I believe -- is that Monsell  
3 Place?

4 MR. UELLEND AHL: Yes.

5 CHAIRMAN MOORE: The street?

6 MS. NEFF: Yes.

7 MR. UELLEND AHL: Yes, it is.

8 CHAIRMAN MOORE: Yes. And there's a  
9 parking lot there. This property was granted  
10 a variance back, I believe, in 1973 for  
11 construction of a garage. It's a very unusual  
12 situation, and this was part of the reason  
13 that I would admit that the Board was somewhat  
14 confused which direction to go. There were  
15 some discussions of whether it was a principal  
16 building or an accessory building. Clearly, a  
17 studio is an accessory use, which is permitted  
18 in a residential district.

19 And I think we may have been splitting  
20 hairs a bit too much. The real issue appears  
21 to me to be an issue of an area variance,  
22 because the building is permitted to be there  
23 with an original use as a garage. It has been  
24 used as a studio for perhaps -- how many  
25 years?

1 MS. SCOTT: Fourteen.

2 CHAIRMAN MOORE: Fourteen years,  
3 apparently without any challenge at any time,  
4 and is now continuing to desire to still be a  
5 studio, artist studio.

6 We, of course, are distinguishing a  
7 studio from a gallery or an artist loft, which  
8 is a combination of studio and auxiliary  
9 residential use. This is strictly an artist  
10 studio.

11 As far as the Board, I don't know if any  
12 other comments would be desired. I think the  
13 addition is certainly an improvement on the  
14 appearance of the building. I'm just  
15 expressing my personal feelings.

16 One of the issues that has been present  
17 on that property, it has been used for storage  
18 of commercial equipment, and the owner has  
19 indicated that that equipment is exiting the  
20 property and is expected to be entirely gone.  
21 I think that also is a big improvement. And I  
22 feel that while the use of the property in its  
23 past as a garage was fairly passive, certainly  
24 the use as a studio is along the same lines,  
25 and perhaps considered even to be a less

1 intense use.

2 While it was described as a garage for  
3 personal purposes, it was Mr. Pell who owned  
4 the seafood business across the street and was  
5 clearly in support of a commercial operation,  
6 which is no longer the case. So those are my  
7 feelings.

8 Any other comments from the Board  
9 regarding this property and its use?

10 MR. CORWIN: Well, I'll make some  
11 comments. One is I'm not in favor of  
12 expansion of these nonconforming uses. And  
13 the Applicant has the opportunity to build a  
14 structure on the west side without needing any  
15 variance.

16 And the argument is, well, you have to  
17 have north light. And I was watching American  
18 History T.V. two weeks ago and they're going  
19 on about engraving, how back in the day they  
20 had to have the windows on the north side to  
21 do the engraving. I can't think of anything  
22 that's more difficult than engraving for  
23 currency. But they don't do that anymore  
24 because artificial lighting and the lighting  
25 available today is -- the color spectrum is

1 very good.

2 I'll also note that there has been some  
3 cleanup of the property, but it's certainly  
4 not finished.

5 When we were at the training session two  
6 or three months ago, I think one of the  
7 instructors said something to the effect that,  
8 well, yeah, you can give somebody something in  
9 exchange for getting something. So, if I knew  
10 that cleaning was going to go on and the fence  
11 was going to go, as it was said it was going  
12 to happen, I'd probably be a little more  
13 comfortable with the expansion of the  
14 nonconforming use.

15 And then what I'd really like to know,  
16 and maybe the Attorney can help me here, is  
17 when the property is sold, what kind of use is  
18 it going to revert to? I mean, when it's  
19 sold, is it going to be, well, it can be an  
20 artist studio, it can be a garage, or is it  
21 going to be a one-family residence? And do we  
22 have any control over what happens when a  
23 property is sold?

24 MR. PROKOP: Well, I was waiting for you  
25 to finish, but my recommendation would be that

1 if you grant a variance, you have a condition  
2 that it not be used for -- as a residence or  
3 habitation, and also that no retail activity  
4 occurs at the building. If those were  
5 conditions on the variance, they would pass --  
6 those two conditions would pass to a new  
7 owner, as would the -- as would the variance.

8 MR. KAPPELL: Also, we have no objection  
9 if you want to stipulate the continuation --  
10 the completion of the cleanup and installation  
11 of the fence. We can do that.

12 CHAIRMAN MOORE: And I believe there  
13 would be even Code Enforcement issues that  
14 could be brought into play for any nuisances  
15 on a residential property in the first place,  
16 because this is residential. I think when we  
17 were discussing that it would not be used for  
18 residential purposes, I think we're referring  
19 to the garage and not the property in general.

20 MR. KAPPELL: We have no intention of  
21 occupying it as a residence.

22 CHAIRMAN MOORE: Yes.

23 MR. KAPPELL: We have no problem with the  
24 condition that we won't, and we also have no  
25 problem stipulating that we'll complete the

1 cleanup and install the fence.

2 CHAIRMAN MOORE: Yeah. I don't recall  
3 if we had the discussion, but I kind of got  
4 the impression that the location of the  
5 addition on the north side, not only for  
6 light, left ample room to the west for  
7 construction of a conforming residential  
8 structure.

9 MS. NEFF: Absolutely.

10 CHAIRMAN MOORE: Which would then  
11 absolutely make this structure an accessory  
12 structure to a residence. And, you know, with  
13 that in mind, I wouldn't feel impelled to --  
14 compelled to require that you satisfy your  
15 needs by doing it fully conforming.

16 I see, from my personal opinion, a  
17 15-foot setback I think will be the result of  
18 the footprint of this new structure, which  
19 normally would be the setback required. But,  
20 in this case, because it's technically a front  
21 yard, it would normally be 30, so that relief  
22 is needed.

23 I certainly feel we could impose as  
24 stipulations no commercial activities, which  
25 includes the use as a gallery, as opposed to a

1 studio, and no commercial storage, and that  
2 would be something we could add in our  
3 decision document.

4 Are there questions or discussion from  
5 the Board?

6 MS. NEFF: I don't understand a  
7 stipulation to the effect that you can't store  
8 your artwork. I mean --

9 CHAIRMAN MOORE: No, I'm sorry. I meant  
10 the use of the facility for storage of  
11 commercial equipment, which would normally be  
12 a business use or an industrial use. I  
13 certainly think that an artist with a studio  
14 stores art at such place. Yes, go head.

15 MR. KAPPELL: If I could -- I'd offer  
16 this just to make it simple. We have no  
17 problem abandoning the garage use, you know.  
18 So, if you want to structure the approval such  
19 that -- you know, that it's not going to  
20 revert back to a garage or the storage  
21 associated with the garage, that's fine with  
22 us. The only thing Arden wants to do with  
23 that building is create art.

24 CHAIRMAN MOORE: I think the discussion  
25 is really revolving around commercial marine

1 fisheries equipment that's totally unrelated  
2 to residential or artist use, unless, of  
3 course, you use it as your materials  
4 (laughter).

5 MS. SCOTT: If I may.

6 CHAIRMAN MOORE: Yes.

7 MS. SCOTT: I did tell in February to  
8 the Phillips that I no longer want them to use  
9 the premises. And, you know, bit by bit  
10 (inaudible).

11 CHAIRMAN MOORE: She's having difficulty  
12 hearing you to record what you're saying.

13 MS. SCOTT: Oh.

14 CHAIRMAN MOORE: We're allowing you to  
15 speak at this point, so we do want to get it  
16 down.

17 MS. SCOTT: I said that the people,  
18 Phillips, who have been using it for storage  
19 were told in February that I no longer want  
20 them using it, and they said they would clear  
21 it out bit by bit; they have been.

22 CHAIRMAN MOORE: Very good. Thank you.

23 MR. CORWIN: I would just like to ask  
24 the Attorney again, because I'm a little slow,  
25 that the Zoning Board could put some kind of

1 restrictions on any variance that its use  
2 couldn't revert to a garage or some similar  
3 structure, that when it's sold, it would be  
4 either a one-family residence or an artist  
5 studio; can we do that?

6 MR. PROKOP: You know, in this case, I  
7 don't -- you can put conditions on -- you can  
8 put conditions on a variance which are related  
9 to the relief that you're granting, but the  
10 problem is, in this case, the building is a  
11 garage. So I don't see how -- I don't see how  
12 you could put a restriction on the owner or a  
13 future owner that they can't use a garage as a  
14 garage.

15 The reason why -- the only reason why  
16 the studio really is being accommodated here  
17 is because that it is a garage and that  
18 uses -- one use that's often associated with a  
19 garage is a noncommercial, nonretail use as a  
20 studio, as the second application that we have  
21 tonight.

22 MR. CORWIN: But what I'm asking is, can  
23 we restrict the use, if it's sold, when it's  
24 sold, as a garage as a commercial use?

25 MR. PROKOP: It could be restricted as a

1 noncommercial use, not a commercial garage,  
2 you know, not a rental garage, owner -- it  
3 could be restricted to owner-occupied only.

4 CHAIRMAN MOORE: I think one point to  
5 make is if the use of this property was  
6 abandoned totally as studio use and became  
7 residential and a structure was built, this  
8 could, indeed, become a residential garage in  
9 connection with residential use. It is an  
10 unusual garage because it's quite large, so  
11 it's hard to imagine architecturally how  
12 someone would preserve such a facility. The  
13 facility looks like a commercial building, and  
14 I think it would be fine to say that it could  
15 not be used for commercial use.

16 MR. PROKOP: Right.

17 CHAIRMAN MOORE: That would be a  
18 appropriate.

19 MR. CORWIN: My other question is,  
20 Mr. Kapell and Ms. Scott has represented the  
21 property is going to be cleaned up. But what  
22 handle -- once we pass a variance, what handle  
23 do we have to make sure that it's cleaned up,  
24 if it's not cleaned up right away? Because my  
25 experience is the Code Enforcement in the

1 Village has a lot of trouble getting people to  
2 clean up properties.

3 MR. PROKOP: Well, this Board had a --  
4 we could give a time frame, you know,  
5 reasonable time frame that the Applicant is  
6 comfortable with.

7 And this -- you know, just to remind  
8 you, in the past this Board has done that in  
9 other application, and we actually had a  
10 variance that we rescinded because there was  
11 conditions attached to it that had to be done  
12 within a time period, and when they weren't  
13 done, we voted and actually rescinded that  
14 variance.

15 So, you know, I think that -- I think  
16 the Board can come up with a reasonable time  
17 period that's acceptable to the Applicant, and  
18 then you could revisit it at the meeting  
19 that's just subsequent to that time period.

20 CHAIRMAN MOORE: And there are time  
21 limits to the completion of construction  
22 relating to a variance, which is directly in  
23 the Code. And if we simply mirror that with  
24 the cleanup, that would go together, I  
25 believe.

1 MR. KAPELL: Can I make a suggestion?

2 CHAIRMAN MOORE: Yes, if you will.

3 MR. KAPELL: If we could have six months  
4 to complete the cleanup and make it -- you  
5 know, make it a requirement of the CO, we  
6 don't get a CO until -- again, we actually  
7 can't build the addition until the stuff is  
8 out of there because it's in the way.

9 CHAIRMAN MOORE: And I believe the Code  
10 calls for a six-month or a year time limit on  
11 construction, approved construction. One  
12 year?

13 MS. WINGATE: (Nodded).

14 MR. CORWIN: One year.

15 CHAIRMAN MOORE: Yeah, one year.

16 MR. ABATELLI: From start to finish.

17 CHAIRMAN MOORE: So that would be  
18 certainly permissible, I think.

19 So is the Board prepared to move ahead  
20 with a decision on a variance?

21 MR. CORWIN: Yes.

22 MS. NEFF: Yes.

23 CHAIRMAN MOORE: Okay. So we could do  
24 that.

25 The first item is that we would declare

1 the ZBA the Lead Agency in reference to SEQRA,  
2 and it would be a Type II Action requiring no  
3 further action. And I would make that motion  
4 and ask for a second.

5 MS. RATHBUN: Second.

6 CHAIRMAN MOORE: And any discussion?

7 (No Response)

8 All in favor?

9 MS. RATHBUN: Aye.

10 MR. CORWIN: Aye.

11 MS. NEFF: Aye.

12 MR. BENJAMIN: Aye.

13 CHAIRMAN MOORE: Aye.

14 And opposed?

15 (No Response)

16 I don't have a chart, so I'm just going  
17 to have to record in hand here. Okay. And  
18 it's all in favor, yes.

19 So then we will go through the test  
20 questions. And I'll just take a break here  
21 for a minute because of the noise. I'll be  
22 right with you.

23 Okay. The first question is whether an  
24 undesirable change will be produced in the  
25 character of the neighborhood, or a detriment

1 to nearby properties will be created by the  
2 granting of an area variance. And if  
3 everybody would respond, please.

4 MS. RATHBUN: No.

5 MR. BENJAMIN: No.

6 MS. NEFF: No.

7 MR. CORWIN: No.

8 CHAIRMAN MOORE: No. And that's  
9 unanimous.

10 Secondly, whether the benefit sought by  
11 the Applicant can be achieved by some method  
12 feasible for the Applicant to pursue other  
13 than an area variance. And answers?

14 MS. RATHBUN: No.

15 MR. CORWIN: Yes.

16 CHAIRMAN MOORE: Ms. Rathbun said no, I  
17 believe.

18 MS. RATHBUN: Yes, no.

19 MS. NEFF: The question is, if I could  
20 remember, is -- is it available any other way?

21 CHAIRMAN MOORE: To pursue. Just  
22 whether the benefit sought by the Applicant  
23 can be achieved by some method feasible for  
24 the Applicant to pursue other than an area  
25 variance. In other words, to not require a

1 variance.

2 MS. NEFF: No.

3 CHAIRMAN MOORE: Mr. Benjamin?

4 MR. BENJAMIN: I would say yes.

5 CHAIRMAN MOORE: Yes? I would say no.

6 And you did say no or yes?

7 MS. RATHBUN: Yes.

8 CHAIRMAN MOORE: Yes, okay. That's a  
9 yes, okay.

10 MS. RATHBUN: No. Wait, wait.

11 MR. CORWIN: Can you just call the  
12 names, please?

13 CHAIRMAN MOORE: Yes, I'll do that this  
14 next time, so we don't have confusion.

15 Whether requested area variance is  
16 substantial. Ms. Rathbun.

17 MS. RATHBUN: No.

18 CHAIRMAN MOORE: Mr. Corwin.

19 MR. CORWIN: No.

20 CHAIRMAN MOORE: Ms. Neff.

21 MS. NEFF: No.

22 CHAIRMAN MOORE: Mr. Benjamin.

23 MR. BENJAMIN: No.

24 CHAIRMAN MOORE: I say no.

25 Whether the proposed variance will have

1 an adverse effect or impact on the physical or  
2 environmental conditions in the neighborhood  
3 or district.

4 Ms. Rathbun.

5 MS. RATHBUN: No.

6 CHAIRMAN MOORE: Mr. Corwin.

7 MR. CORWIN: No.

8 CHAIRMAN MOORE: Ms. Neff.

9 MS. NEFF: No.

10 CHAIRMAN MOORE: Mr. Benjamin.

11 MR. BENJAMIN: No.

12 CHAIRMAN MOORE: I say no.

13 And last, whether the alleged difficulty  
14 was self-created, which consideration shall be  
15 relevant to the decision of the Board of  
16 Appeals, but shall not necessarily preclude  
17 the granting of an area variance.

18 Ms. Rathbun.

19 MS. RATHBUN: Yes, but no.

20 CHAIRMAN MOORE: Yes. You can be  
21 undecided. Mr. Corwin.

22 MR. CORWIN: Yes.

23 CHAIRMAN MOORE: Ms. Neff.

24 MS. NEFF: No.

25 CHAIRMAN MOORE: Mr. Benjamin.

1 MR. BENJAMIN: No.

2 CHAIRMAN MOORE: I would say yes.

3 And then lastly, I would -- I think I  
4 will organize the motion, because it's a  
5 little bit complicated. I'll be right with  
6 you. I have a piece of paper I want to pull  
7 out here.

8 I would propose that the Zoning Board of  
9 Appeals approve the application for the area  
10 variance as stated in the application, with  
11 the following conditions:

12 First, that no commercial activities  
13 would be carried out on the property,  
14 including use of the property as a commercial  
15 gallery.

16 And that there be no commercial storage  
17 of any equipment not related to the use as a  
18 studio.

19 And that there -- the efforts to clean  
20 up the property of the existing commercial  
21 materials being stored on the property would  
22 be completed in six months time.

23 And then that the use, of course, would  
24 carry as a studio if the property were sold,  
25 but that any other change of use would require

1 further application to the Board of Appeals if  
2 it were other than residential in the R-1  
3 District.

4 And did I miss anything as far as the  
5 stipulation?

6 MR. PROKOP: Yes, there was -- I'm  
7 sorry.

8 CHAIRMAN MOORE: Did I miss anything?

9 MR. PROKOP: No -- yes. No C of O until  
10 the cleanup is completed.

11 CHAIRMAN MOORE: Yes. And the  
12 Certificate of Occupancy would be withheld  
13 pending, of course, completion of construction  
14 and the cleanup of the property.

15 MR. PROKOP: Including the fence  
16 removal. Is the fence --

17 MR. KAPPELL: Replacement.

18 MR. PROKOP: Replacement.

19 CHAIRMAN MOORE: Replacing the fence.

20 With that proposed, I so move. Second,  
21 please.

22 MS. NEFF: Second.

23 CHAIRMAN MOORE: And all -- any  
24 discussion?

25 (No Response)

1 All in favor?

2 MS. RATHBUN: Aye.

3 MR. CORWIN: Aye.

4 MS. NEFF: Aye.

5 MR. BENJAMIN: Aye.

6 CHAIRMAN MOORE: Aye. And,  
7 Mr. Benjamin, did he answer as well? Aye,  
8 okay.

9 So the variance is approved.

10 MR. KAPPELL: Thank you very much.

11 MR. UELLEND AHL: Thank you.

12 CHAIRMAN MOORE: Good luck to you.

13 Now, if you'll bear with me, I'll try  
14 and find the things that I've already  
15 displaced. There it is.

16 So the second is the application of John  
17 Costello. I will not read the whole part, but  
18 we are at the discussion phase at this point.  
19 We have in the file two letters strongly  
20 supporting from the immediate neighbors who  
21 would be most affected.

22 It's my understanding that the structure  
23 that presently is there will be torn down and  
24 a new foundation installed. So there is some  
25 flexibility for reducing the amount of

1 variance requested.

2 And I believe that the building was  
3 going to move, was it five feet off the line  
4 to the north; is that correct?

5 MR. COSTELLO: It's 18 inches in each  
6 direction.

7 CHAIRMAN MOORE: Okay. So there would  
8 be no relief needed on the north, but you  
9 would maintain the one-foot setback, which  
10 would require a four-foot variance, due to the  
11 stairs, which are proposed to be done on the  
12 back of the building, west side. My personal  
13 feeling is that --

14 MR. PROKOP: I'm sorry. Could you just  
15 back up for a second?

16 CHAIRMAN MOORE: Yes.

17 MR. PROKOP: Before you get to personal  
18 feelings.

19 CHAIRMAN MOORE: Yes.

20 MR. PROKOP: How did we get from a  
21 public notice that says that there's going to  
22 be an addition to an existing three-car garage  
23 to an application where the building is going  
24 to be torn down?

25 And then the second question for the

1 Building Inspector is if the building is going  
2 to be torn down, how do they get -- is any --

3 MS. WINGATE: Well, the words "torn  
4 down" were the first time I heard them today.  
5 I've heard that it was going to be lifted and  
6 then held in place. So I did not -- I was  
7 completely unaware this was going to be a  
8 complete new construction. I knew that it was  
9 going to get a new foundation.

10 MR. PROKOP: I'm not --

11 CHAIRMAN MOORE: Okay.

12 MR. PROKOP: -- expressing an opinion.  
13 I just want --

14 CHAIRMAN MOORE: Yes.

15 MR. PROKOP: The application and the  
16 notice should be factually correct.

17 CHAIRMAN MOORE: Okay. Let me ask a  
18 question and --

19 MR. PROKOP: And it's not unusual that  
20 we're, you know, surprised at the hearing, or  
21 we get new information at the hearing.

22 CHAIRMAN MOORE: Yes.

23 MR. PROKOP: So we just need to pin that  
24 down.

25 CHAIRMAN MOORE: Right. It appeared

1 that a second floor was being placed on an  
2 existing structure.

3 MS. WINGATE: On an existing structure,  
4 yes.

5 CHAIRMAN MOORE: Let me ask the Village  
6 Attorney, what are the implications if the  
7 structure were torn down, but a variance has  
8 been granted for that setback? Is there any  
9 issue of a new structure that would bring up  
10 any other variance issues?

11 MR. PROKOP: Only is the new structure,  
12 is it going to be replaced in kind? Is it a  
13 replacement in kind, or what is it?

14 MS. WINGATE: It's -- well, there are --

15 MR. PROKOP: But do you know? I mean,  
16 if you don't know --

17 MS. WINGATE: Well --

18 MR. PROKOP: I guess you didn't ask me  
19 that, but --

20 MS. WINGATE: -- it's supposed to be  
21 exactly the same size, but they were moving it  
22 to conform. I was aware that they were moving  
23 it to conform, yes. But the Code also says  
24 you can reconstruct an existing building. I  
25 mean, if you go --

1 MR. PROKOP: If you know about it, I  
2 mean, you have to -- the Building Inspector  
3 has to at least know it's going to happen, as  
4 compared to building --

5 MS. WINGATE: This is true.

6 MR. PROKOP: As compared to building a  
7 second story addition.

8 MS. WINGATE: I believe that the  
9 building is solid enough to handle, with  
10 modification, of course, but I believe the  
11 building is solid enough to handle a second  
12 floor. If they're going to tear it down --

13 MR. PROKOP: What does that have to  
14 do -- he already told you that he was going to  
15 tear it down, so what does that have to do  
16 with it?

17 MS. WINGATE: That happened tonight,  
18 Joe. I was told the original building was  
19 moving.

20 CHAIRMAN MOORE: On the site, there's a  
21 -- we became aware that there wasn't an actual  
22 adequate foundation under the building. I  
23 think it's actually posts in the ground on  
24 bricks.

25 MS. NEFF: Right.

1 MR. COSTELLO: There's posts in the  
2 center, and a brick foundation around the  
3 perimeter.

4 CHAIRMAN MOORE: So that is necessary to  
5 replace. And as far as I can tell, the fact  
6 that a building is being replaced, as opposed  
7 to rebuilt, doesn't change the degree of  
8 variance that's necessary. It still requires  
9 an area variance for both the setback and the  
10 height. I can't think myself if another --

11 MR. PROKOP: So the Building Inspector,  
12 she should be --

13 CHAIRMAN MOORE: Yes.

14 MR. PROKOP: Either you or I, the  
15 Building Inspector, she needs to tell us  
16 whether or not they're losing -- whether or  
17 not there's any nonconformity, that they lose  
18 the right to -- by the removal of the  
19 building.

20 MS. WINGATE: Well, it's stated right  
21 here in Section 150-21A, that nothing in this  
22 article shall be deemed to prevent home  
23 maintenance, repair, structural, alteration,  
24 moving, reconstruction or enlargement of a  
25 nonconforming building.

1           So it's in our Code, that whether they  
2           can rebuild this building or build a  
3           completely new one. As long as it's the same  
4           building, it's the same variances.

5           MR. PROKOP: So you've seen the plans  
6           for the new building and you --

7           MS. WINGATE: I have not.

8           MR. PROKOP: And you're opinion tonight  
9           is it's a reconstruction, is that what you're  
10          saying?

11          MS. WINGATE: From what I've heard this  
12          afternoon, it sounds like it's going to be  
13          reconstruction.

14          CHAIRMAN MOORE: As far as I know, the  
15          only increase in nonconformance --

16          MS. WINGATE: Is the stair.

17          CHAIRMAN MOORE: -- is the stair.

18          MS. WINGATE: And they're asking for  
19          that.

20          CHAIRMAN MOORE: Which is part of a  
21          reconstruction or a new construction. The  
22          north face of the house is actually, I  
23          believe, or the garage -- I'm sorry -- being  
24          brought into conformance because it's moving  
25          south a small amount. So, in a way, we're

1 kind of increasing one way and decreasing the  
2 other way.

3 The height of the building I thought  
4 would be an issue, as far as reaction by  
5 neighbors. And, actually, the neighbor to the  
6 north, in their correspondence which I read,  
7 actually fully supported that.

8 MS. NEFF: Right.

9 CHAIRMAN MOORE: And I assume they are  
10 aware of the scale of 20 feet, six inches, and  
11 that's at the peak. It's a building that  
12 dormers, but it has the appearance of a peaked  
13 roof building.

14 And it is an improvement, certainly, in  
15 appearance, and that was supported by the  
16 neighbors' letters.

17 Any other considerations?

18 (No Response)

19 I believe one of the issues, too, was  
20 the amount of utilities to be installed, and  
21 the indication is there could be a bathroom.  
22 There's no indication of any kitchen or other  
23 residential type items in the building. So it  
24 would remain as a garage with an artist  
25 studio.

1           And I think, again, the same dialogue  
2           can occur regarding stipulations which would  
3           restrict commercial activity at the site.

4           MR. BENJAMIN: There's just a question  
5           the way this was proposed. So it was proposed  
6           to build a second story addition. But then,  
7           when we got to the site, it was a tear-down  
8           and rebuild.

9           CHAIRMAN MOORE: Yes.

10          MR. BENJAMIN: So the proposal should  
11          say tear down and rebuild, because that's what  
12          we're looking at.

13          CHAIRMAN MOORE: And as far as I  
14          understand, the lower level of the building  
15          will remain a three-car garage.

16          MR. PROKOP: No, it's going to be --  
17          it's not going to remain anything, it's not  
18          going to be there.

19          CHAIRMAN MOORE: Well, I mean the  
20          continuing use of the structure will be a  
21          three-car garage on the main level.

22          MR. BENJAMIN: It's going to be used the  
23          same way and everything, but it's --

24          CHAIRMAN MOORE: It will be new.

25          MR. BENJAMIN: It's just the way it's

1 presented, that's all.

2 MR. PROKOP: I'm sorry, I don't mean to  
3 be a stickler, but we can't -- the Zoning  
4 Board can't be the front line of reviewing  
5 building applications. And in the past, we  
6 actually had -- we actually had an application  
7 for a height variance for a garage, which  
8 ended up, if we -- if you looked at the plans,  
9 it was actually not even a garage, it was a  
10 cottage or something.

11 So it's very important that we get these  
12 things straight --

13 CHAIRMAN MOORE: Okay.

14 MR. PROKOP: -- when they're presented  
15 to the Board.

16 CHAIRMAN MOORE: How would you propose  
17 we correct the deficiency that exists,  
18 simply --

19 MR. PROKOP: And I don't mean -- this is  
20 definitely not a reflection of Mr. Costello --

21 CHAIRMAN MOORE: No, no.

22 MR. PROKOP: -- in any way, or the  
23 application. I don't mean to --

24 CHAIRMAN MOORE: So I would suggest, to  
25 move this forward, that we could simply, in

1 the decision document, relay the fact that it  
2 is a reconstruction rather than an addition,  
3 and that should any issues arise relative to  
4 the Code that pertain to a new structure would  
5 have to be returned to the Zoning Board,  
6 which, of course, we don't anticipate there  
7 are any. Does that --

8 MR. PROKOP: That's fine.

9 CHAIRMAN MOORE: -- seem to be the  
10 simple solution? Does that sound straight?

11 MR. PROKOP: And I just had one other  
12 question for the Building Inspector on this  
13 application and the next one. Have you  
14 reviewed the plans with respect to the Uniform  
15 Code? Are all the -- does this application --  
16 if we grant the variance and it's built  
17 according to the plans, does it meet all the  
18 requirements of the Uniform Code as far as  
19 height, area --

20 MS. WINGATE: Are you talking about this  
21 particular one?

22 MR. PROKOP: -- the stairway?

23 MS. WINGATE: I don't do Code plan  
24 review until there are construction drawings.  
25 These are not construction drawings. People

1 don't want to invest in construction  
2 drawings --

3 MR. PROKOP: Okay.

4 MS. WINGATE: -- until they get their  
5 variance.

6 MR. PROKOP: Okay. Thank you.

7 MS. WINGATE: These are not construction  
8 documents, these are schematics.

9 MR. PROKOP: But the next application is  
10 not construction, it's an existing -- it's  
11 already broken out, right? So you can -- if I  
12 can -- If I'm going to ask you the same  
13 question in a few minutes --

14 MS. WINGATE: It would be a completely  
15 different answer.

16 MR. PROKOP: Okay. Thanks.

17 MS. WINGATE: Completely.

18 CHAIRMAN MOORE: Okay. Any other  
19 discussion from the members of the Board?

20 (No Response)

21 Okay. So would you be prepared to move  
22 forward with the approval, or the evaluation  
23 and potential approval? Yes?

24 MR. BENJAMIN: Is that -- we need to  
25 reword the application or --

1           CHAIRMAN MOORE: No, that we would move  
2 forward with the requested variance relative  
3 to the area variance as requested. And I  
4 think, along the course of that process, that  
5 we would stipulate, one, no commercial  
6 activity in the accessory structure, and that  
7 the reconstruction, because it is  
8 reconstruction and not an addition, that if  
9 any new issues regarding zoning and variance  
10 requirements arise, would require a review by  
11 the Zoning Board of Appeals.

12           MR. PROKOP: And what about -- excuse  
13 me -- no habitation or use as a residence?

14           CHAIRMAN MOORE: And, of course, it  
15 would be nonresidential use.

16           MR. PROKOP: And if there's a bathroom  
17 installed, that it's not a -- a bathroom does  
18 not include either a shower or tub.

19           CHAIRMAN MOORE: Okay. So based on  
20 those directions that we're heading, would the  
21 Board be prepared to move forward with a  
22 decision?

23           MS. NEFF: Yes.

24           MR. CORWIN: And I would be recusing.

25           CHAIRMAN MOORE: Oh, yes. And we

1 discussed this when we scheduled the hearing.  
2 Mr. Corwin, who has, obviously, moved out of  
3 my site, is recusing himself because of some  
4 business relationships with Mr. Costello, so  
5 he's not participating. My apologies, I  
6 forgot.

7 So, with that in mind, I would then move  
8 forward. And the first issue is that the ZBA  
9 declares itself Lead Agency relative to SEQRA,  
10 declaring it a Type II Action. And I'll make  
11 that motion, seeking a second.

12 MS. NEFF: Second.

13 CHAIRMAN MOORE: And all in favor?

14 MS. RATHBUN: Aye.

15 MS. NEFF: Aye.

16 MR. BENJAMIN: Aye.

17 CHAIRMAN MOORE: And Aye.

18 So that's unanimous without Mr. Corwin.  
19 And just bear with me for a minute so I can  
20 write some initials here.

21 And the next is that we are evaluating  
22 the basis for the area variance.

23 Number one is whether an undesirable  
24 change will be produced in the character of  
25 the neighborhood, or a detriment to nearby

1 properties will be created by the granting of  
2 an area variance. Ms. Rathbun.

3 MS. RATHBUN: No.

4 CHAIRMAN MOORE: Ms. Neff.

5 MS. NEFF: No.

6 CHAIRMAN MOORE: Mr. Benjamin.

7 MR. BENJAMIN: No

8 CHAIRMAN MOORE: I say no.

9 Number two is whether the benefit sought  
10 by the Applicant can be achieved by some  
11 method feasible for the Applicant to pursue  
12 other than an area variance.

13 Ms. Rathbun.

14 MS. RATHBUN: Yes.

15 CHAIRMAN MOORE: Ms. Neff.

16 MS. NEFF: No.

17 CHAIRMAN MOORE: Mr. Benjamin.

18 MR. BENJAMIN: No.

19 CHAIRMAN MOORE: I would say no.

20 Number three, whether the requested area  
21 variance is substantial.

22 Ms. Rathbun.

23 MS. RATHBUN: No.

24 CHAIRMAN MOORE: Ms. Neff.

25 MS. NEFF: Yes.

1 CHAIRMAN MOORE: Mr. Benjamin.

2 MR. BENJAMIN: No.

3 CHAIRMAN MOORE: I would say no.

4 Fourthly, whether the proposed variance  
5 will have an adverse effect or impact on the  
6 physical and environmental conditions in the  
7 neighborhood or its district.

8 Ms. Rathbun.

9 MS. RATHBUN: Yes.

10 CHAIRMAN MOORE: Ms. Neff.

11 MS. NEFF: No.

12 CHAIRMAN MOORE: Mr. Benjamin.

13 MR. BENJAMIN: No.

14 CHAIRMAN MOORE: I would say no.

15 And then Number 5, whether the alleged  
16 difficulty was self-created, which  
17 consideration shall be relevant to the  
18 decision of the Board of Appeals, but shall  
19 not necessarily preclude the granting of the  
20 area variance.

21 Ms. Rathbun.

22 MS. RATHBUN: No.

23 CHAIRMAN MOORE: Ms. Neff.

24 MS. NEFF: Yes.

25 CHAIRMAN MOORE: Mr. Benjamin.

1 MR. BENJAMIN: No.

2 CHAIRMAN MOORE: I would say yes.

3 And then, lastly, I would make a motion  
4 that we approve the area variance requested,  
5 as written in the application, with the  
6 stipulations that no commercial activity take  
7 place at the site; that it be used only for  
8 nonresidential accessory uses; that no shower  
9 or tub be installed in a bathroom, if so  
10 installed; and, lastly, that as a result of  
11 our deliberations, that reconstruction of the  
12 building, tear-down and reconstruction will be  
13 done; and that we would stipulate that if any  
14 issues regarding reconstruction relative to  
15 Zoning Code would require a re-review by the  
16 Zoning Board of Appeals, should such issues  
17 arise.

18 And with that motion, I would make that  
19 motion and ask for a second.

20 MS. NEFF: Second.

21 MS. RATHBUN: Second

22 CHAIRMAN MOORE: And all in favor? And  
23 polling, Ms. Rathbun.

24 MS. RATHBUN: Yes.

25 CHAIRMAN MOORE: Ms. Neff.

1 MS. NEFF: Yes.

2 CHAIRMAN MOORE: Mr. Benjamin.

3 MR. BENJAMIN: Yes.

4 CHAIRMAN MOORE: And I will vote yes.

5 So the motion carries, and so the  
6 variance is approved. And good luck on your  
7 reconstruction.

8 MR. COSTELLO: Thank you.

9 MS. ROE: Thank you.

10 CHAIRMAN MOORE: So, once again, bear  
11 with me. Good luck on that.

12 MS. ROE: Thank you.

13 MR. COSTELLO: Thank you.

14 CHAIRMAN MOORE: I'm sorry, I forgot  
15 that you had already notified me on that.

16 Okay. Moving right along, this is a  
17 very interesting case. We're moving on to  
18 Item #3, which is the application of Richard  
19 Ward, on behalf of the Episcopal Church, for a  
20 variance. This is actually a use variance, so  
21 we will have a separate set of questions.

22 I would like to engage in a little  
23 discussion. One issue the Village Attorney  
24 recommended I check on, and he can perhaps  
25 fill me in a little bit further, is a, I

1 believe, Federal act, which if -- I'm not sure  
2 of the pronunciation of the acronym, but it's  
3 RALUPIA (phonetic)?

4 MR. PROKOP: RLUIPA.

5 CHAIRMAN MOORE: RLUIPA. And it's the  
6 Religious Land Use and Institutionalized  
7 Persons Act. And I'll just read the general  
8 rule to set us in the right state of mind, and  
9 this has to do with governmental interference  
10 with religious activities.

11 The general rule is that no government  
12 shall impose or implement a land use  
13 regulation in a manner that imposes a  
14 substantial burden on the religious exercise  
15 of a person, including a religious assembly or  
16 institution, unless the government can  
17 demonstrate that imposition of the burden on  
18 that person, assembly or institution is in  
19 furtherance of a compelling government  
20 interest, and is the least restrictive means  
21 of furthering that compelling government  
22 interest.

23 My assessment of the compelling  
24 government interest would be to maintain the  
25 even application of the Zoning Code. And I

1 don't know how compelling that is, but I think  
2 there's a certain amount of relaxation that  
3 can be accommodated in looking at the  
4 religious institution.

5 This building, as proposed, because it  
6 is in the R-1 District, and it is, I believe,  
7 on a separate tax map parcel --

8 MS. WINGATE: (Shook head no).

9 CHAIRMAN MOORE: It's all one property  
10 with the church.

11 MS. WINGATE: (Nodded yes).

12 CHAIRMAN MOORE: Aha. Okay. So that's  
13 even a different issue. We have a single  
14 property which includes the church property  
15 and the residence.

16 The church seeks to better use the  
17 property for a dual occupancy, which is not  
18 permitted in an R-1 District, but it is  
19 recommending that they would like to do this  
20 without any physical changes to the outside of  
21 the building to accommodate the needs of both  
22 their residents' needs for the Warden, I  
23 believe, and also the Sexton.

24 MR. DANK: The Sexton.

25 MS. NEFF: Sexton.

1 CHAIRMAN MOORE: Sexton and --

2 MR. WARD: Priest and the Sexton.

3 MS. NEFF: Priest and the Sexton.

4 CHAIRMAN MOORE: And the Priest. So

5 this is --

6 MR. WARD: Two employees of the church.

7 CHAIRMAN MOORE: Of the church.

8 MR. WARD: Yes.

9 CHAIRMAN MOORE: So, in a way, we would  
10 be looking at the impact of this, and this to  
11 me seems a reasonable allowance, which would  
12 result in a granting of a use variance for the  
13 church property.

14 We have the ability, when considering  
15 such a variance, to issue some stipulations,  
16 and the one that would come immediately to my  
17 mind is that this allowance would only  
18 continue so long as the church maintained the  
19 residence for use by the church employees.

20 And, secondly, that if in some way this  
21 parcel were separated from the church property  
22 to be sold for private use, that it would have  
23 to revert to the requirements of the zoning  
24 district. That is somewhat simplified by the  
25 fact that it is not already a separate

1 property.

2 MR. WARD: Yes, that's reasonable.

3 CHAIRMAN MOORE: So it makes it, you  
4 know, even more difficult that that could  
5 happen. And we had one property, we have it  
6 used for church purposes, and they're now  
7 looking to expand that use.

8 I think it's certainly a unique  
9 situation that's not replicated in the  
10 neighborhood on any private properties. And  
11 based on that, I would recommend that we move  
12 forward with the process of considering  
13 granting that variance.

14 Other discussion by members of the  
15 Board?

16 MR. BENJAMIN: Yes.

17 CHAIRMAN MOORE: Yes, Mr. Benjamin.

18 MR. BENJAMIN: Granting a use variance  
19 have to do with finances?

20 CHAIRMAN MOORE: Yes, in a different set  
21 of criteria.

22 MR. BENJAMIN: So we need financial  
23 documents?

24 CHAIRMAN MOORE: Yes.

25 MR. PROKOP: The problem is -- the

1 problem here is that we havea , you know,  
2 obviously not-for-profit organization, you  
3 know, in its truest sense, and with no profit  
4 motive and -- or everyone profit allowance,  
5 because there's not even a profit allowed for  
6 the institution. So the -- and that faces  
7 the -- you know, the application of the  
8 criteria that comes to the use variance, where  
9 we are supposed to -- we're supposed to look  
10 at the return on the property versus -- now  
11 versus afterwards, and to conclude that  
12 there's no reasonable return that could be  
13 obtained where the property is. The problem  
14 is that there's really no return at all now.  
15 However, the Applicant has mentioned --

16 MS. NEFF: Can I just mention --

17 MR. PROKOP: Sure.

18 MS. NEFF: -- that in a way we are  
19 talking about financial aspects here. We're  
20 talking about very significant ones that  
21 enables the church to give to employees  
22 housing, which is a financial consideration.

23 MR. PROKOP: That's exactly what I was  
24 going to say.

25 MS. NEFF: Okay.

1 MR. PROKOP: I think that's very  
2 important, and thanks for bringing it up.

3 So there really is a financial hardship  
4 that they put on the record, which is,  
5 basically, it's the only way that they can  
6 exist. You know, their future really is  
7 dependent on the financial benefits that will  
8 accrue from this, and I think that that's  
9 sufficient.

10 CHAIRMAN MOORE: Yes.

11 MR. PROKOP: Especially given the inner  
12 play of RLUIPA.

13 CHAIRMAN MOORE: And we would still be  
14 granting a variance rather than giving --

15 MR. PROKOP: Yes.

16 CHAIRMAN MOORE: -- a pass. So we would  
17 grant a variance.

18 And there has been, as you indicated, a  
19 general reference to the financial hardship  
20 because of the structure of the church and the  
21 difficulties.

22 MR. BENJAMIN: That's why I was thinking  
23 when they were speaking, that it sounds like  
24 they're applying for a use variance, but  
25 without the documentation, you know what I'm

1 saying? There's no --

2 CHAIRMAN MOORE: I understand.

3 MR. BENJAMIN: There's no physical  
4 papers that say that.

5 CHAIRMAN MOORE: Yes. Well, I think  
6 based on the --

7 MR. DANK: There is. We have a contract  
8 that states that we must supply housing.  
9 There's a certain stipulation, so it is in the  
10 contract that we must.

11 CHAIRMAN MOORE: And I think what the  
12 Board can do in their consideration is balance  
13 the amount of information about the financial  
14 issues concerning use of the property and the  
15 viability of the church, you know, against the  
16 fact that it's an institutional use,  
17 nonprofit. So would the Board be prepared,  
18 pending any other discussion, to move ahead  
19 with the decision process?

20 MS. NEFF: I just want to point out the  
21 prominence of that area of Main Street, the  
22 fact that it is mixed kinds of things  
23 happening there. I live very nearby, and that  
24 the church, through the many activities that  
25 the -- especially their hall supports, they

1 provide an enormous value of stability in  
2 serving the community. And that if this is a  
3 change that makes it more possible for them to  
4 sustain themselves, that we should -- our site  
5 visit confirms that and your information  
6 confirms that.

7 CHAIRMAN MOORE: Is the Board prepared  
8 to move forward, then?

9 MS. RATHBUN: Yes.

10 CHAIRMAN MOORE: Yes? Okay. So the  
11 first issue is that we would once again  
12 declare the ZBA the Lead Agency referencing  
13 SEQRA, and that it would be declared as a Type  
14 II Action, requiring no further review. So  
15 moved. And may I have a second, please?

16 MR. BENJAMIN: Second.

17 CHAIRMAN MOORE: And all in favor?

18 MS. RATHBUN: Aye.

19 MR. CORWIN: Aye.

20 MS. NEFF: Aye.

21 MR. BENJAMIN: Aye.

22 CHAIRMAN MOORE: And I say yes. That's  
23 across the Board. And now the questions are a  
24 little different, so listen carefully.

25 The Applicant cannot realize a

1 reasonable return, provided that lack of  
2 return is substantial, and as demonstrated by  
3 competent financial evidence.

4 And, as we discussed, we are taking into  
5 consideration the issues of the unique  
6 properties of not only the finances, but the  
7 type of institution we're talking about. With  
8 that in mind, I'll poll the Board. And  
9 Ms. Rathbun.

10 MS. RATHBUN: Yes.

11 CHAIRMAN MOORE: And the yes is that  
12 they cannot. So yes? What was your answer?  
13 I just want to straighten out the direction.

14 MR. CORWIN: You're going to have to --

15 CHAIRMAN MOORE: Yes.

16 MR. CORWIN: -- read the question again.

17 MS. NEFF: You're going to have to read  
18 it again.

19 CHAIRMAN MOORE: The Applicant cannot  
20 realize a reasonable return, provided that  
21 lack of return is substantial, as demonstrated  
22 by competent financial evidence. And the yes  
23 answer indicates that they cannot.

24 So, Ms. Rathbun.

25 MS. RATHBUN: Yes.

1 CHAIRMAN MOORE: Yes. Mr. Corwin.

2 MR. CORWIN: Well, I don't know where  
3 the financial evidence is, but a church being  
4 a church, none of them seem to have a lot of  
5 money, so I'll say yes.

6 CHAIRMAN MOORE: Okay. Ms. Neff.

7 MS. NEFF: Yes.

8 CHAIRMAN MOORE: Mr. Benjamin.

9 MR. BENJAMIN: Yes.

10 CHAIRMAN MOORE: And I say yes.

11 And, secondly -- these are a little more  
12 in line -- the alleged hardship relating to  
13 the property in question is unique and does  
14 not apply to a substantial portion of the  
15 direct -- district or neighborhood.

16 Ms. Rathbun.

17 MS. RATHBUN: Yes.

18 CHAIRMAN MOORE: Mr. Corwin.

19 MR. CORWIN: No.

20 CHAIRMAN MOORE: Ms. Neff.

21 MS. NEFF: Yes.

22 CHAIRMAN MOORE: Mr. Benjamin.

23 MR. BENJAMIN: Yes.

24 CHAIRMAN MOORE: I would answer a yes.

25 That the requested use variance, if

1 granted, will not alter the essential  
2 character of the neighborhood.

3 Ms. Rathbun.

4 MS. RATHBUN: Yes.

5 CHAIRMAN MOORE: Mr. Corwin.

6 MR. CORWIN: Yes.

7 MS. NEFF: Yes.

8 CHAIRMAN MOORE: And Mr. Benjamin.

9 MR. BENJAMIN: Yes.

10 CHAIRMAN MOORE: And I say yes.

11 And then the alleged hardship has not  
12 been self-created.

13 Ms. Rathbun.

14 MS. RATHBUN: Yes.

15 CHAIRMAN MOORE: So you're saying it has  
16 not been self-created, yes. And Mr. Corwin.

17 MR. CORWIN: No.

18 CHAIRMAN MOORE: Ms. Neff.

19 MS. NEFF: No.

20 CHAIRMAN MOORE: Mr. Benjamin.

21 MR. BENJAMIN: Yes.

22 CHAIRMAN MOORE: And I would say yes.

23 That's a difficult direction.

24 MS. NEFF: Yeah. I'm not sure I voted  
25 right.

1 CHAIRMAN MOORE: Those are the four  
2 questions. They're very difficult because  
3 they're a bit upside down.

4 And then, lastly, I would make a motion  
5 that we approve the area variance as requested  
6 for the --

7 MR. BENJAMIN: Proposed use variance.

8 CHAIRMAN MOORE: Did I say "use"?

9 MR. BENJAMIN: No.

10 MS. NEFF: You said "area".

11 CHAIRMAN MOORE: I'm sorry. The  
12 correction, use variance, for the construction  
13 of the two residential units in the church  
14 residence. And the stipulations would be that  
15 it be occupied only by employees of the  
16 church. And I was trying to think if there  
17 was another restriction that we were applying.  
18 That the property --

19 MR. CORWIN: If the property was divided  
20 or sold --

21 CHAIRMAN MOORE: Okay.

22 MR. CORWIN: -- that the variance would  
23 disappear.

24 CHAIRMAN MOORE: Okay. So, if the  
25 property were divided and sold, as Mr. Corwin

1 said.

2 MR. CORWIN: Divided or sold.

3 CHAIRMAN MOORE: Yes, that the variance  
4 would not longer be in effect.

5 MR. CORWIN: Right.

6 CHAIRMAN MOORE: And we would then  
7 assume -- and the use would have to revert to  
8 the requirements of the R-1 District.

9 With that, I would make that motion with  
10 those conditions. And may I have a second,  
11 please?

12 MS. RATHBUN: Second.

13 MS. NEFF: Second.

14 CHAIRMAN MOORE: And all in favor? By  
15 roll call would be Ms. Rathbun.

16 MS. RATHBUN: Yes.

17 CHAIRMAN MOORE: Mr. Corwin.

18 MR. CORWIN: Yes.

19 CHAIRMAN MOORE: Ms. Neff.

20 MS. NEFF: Yes.

21 CHAIRMAN MOORE: Mr. Benjamin.

22 MR. BENJAMIN: Yes.

23 CHAIRMAN MOORE: And I would vote yes.

24 So the use variance is approved, and I  
25 hope you'll do a lovely apartment.

1 MR. DANK: Thank you very much.

2 MR. WARD: Thank you.

3 CHAIRMAN MOORE: Okay. Now the rest is  
4 a bit more administrative, but we do have some  
5 additional approvals.

6 How is your time line, Ellen? Are you  
7 okay for --

8 MS. NEFF: I'm going to leave. I need  
9 to leave.

10 CHAIRMAN MOORE: Yes, okay. That would  
11 be fine, actually.

12 MS. NEFF: I can now, can't I?

13 CHAIRMAN MOORE: Okay. And, yes, you  
14 could.

15 So we are down to Item #5, and this is a  
16 motion to provisionally accept an application  
17 for an area variance, administratively  
18 forwarded from the Planning Board, and pending  
19 official vote of the Planning Board, to  
20 schedule a site visit, and to schedule a  
21 Public Hearing.

22 The Applicant, James Olinkiewicz, is  
23 seeking Planning Board approval of a  
24 subdivision which requires ZBA variances for  
25 property located at 221 Fifth Avenue,

1 Greenport, New York, Suffolk County Tax Map  
2 1001-4-4-29. I will read what is being  
3 sought.

4 The Applicant seeks to subdivide the  
5 property into two new lots and construct a  
6 two -- a new two-family residence on one new  
7 lot, requiring area variances as follows:

8 Lot #1, which is to the north, the  
9 proposed subdivision creates Lot 1, which is  
10 6,587 square feet, where Section 150-12A  
11 requires a minimum lot size of 7,500 square  
12 feet, requiring a variance of 913 square feet.

13 The proposed lot width is 47.82 feet,  
14 where Section 150-12A requires a minimum lot  
15 width of 60 feet, requiring an area variance  
16 of 12.18 feet.

17 The combined side yard setback for the  
18 proposed new construction is 22 feet,  
19 requiring a three-foot combined side yard area  
20 variance. Section 150-12A of the Village of  
21 Greenport Code requires a 25-foot combined  
22 side yard setback.

23 Lot #2: The proposed lot width is 52.35  
24 feet, where Section 150-12A requires a minimum  
25 lot width of 60 feet, requiring a variance of

1 7.65 feet.

2 And, finally, the proposed combined side  
3 yard is 17.9 feet, where Section 150-12A  
4 requires a combined side yard setback of 25  
5 feet, requiring a variance of 7.1 feet.

6 Just as a little background, this  
7 application was before the Zoning Board pretty  
8 much intact as it was originally proposed.  
9 The difference is that Mr. Olinkiewicz  
10 proposes to proceed with building a structure  
11 on the new lot, as opposed to subdividing it  
12 with later construction considered.

13 So, with that in mind, I would suggest  
14 that we schedule a site visit for next month.  
15 The meeting would be on August 21st.

16 As we have one other item, which I  
17 skipped and I'll go back to, to consider.

18 We would schedule this visit for  
19 probably 4:40 on August 21st. And with that  
20 in mind, is everybody available on that date  
21 that we could do the site visit? And then, if  
22 everybody is available, I would make a motion  
23 to --

24 MR. CORWIN: Question.

25 CHAIRMAN MOORE: Yes, go ahead.

1 MR. CORWIN: Motion to provisionally  
2 accept. What does that mean, "provisionally  
3 accept"?

4 CHAIRMAN MOORE: Well, let me explain.  
5 The Planning Board did not have an official  
6 meeting due to a lack of a quorum. The  
7 Chairperson of the Planning Board  
8 administratively forwarded the application to  
9 us pending its official approval for  
10 forwarding at their work session, which will  
11 be towards the end of July. With that in  
12 place, we could then have proceeded with the  
13 site visit. And what we're trying to do is  
14 save a little bit of time on the submission  
15 cycles. The Village Attorney, I think,  
16 indicated that was a permissible path to  
17 follow.

18 MR. PROKOP: Right. If it comes up on  
19 our calendar and for some reason the Planning  
20 Board has not had an official meeting and  
21 denied it with a quorum, then we'll have to  
22 table it. But, in the meantime, you know,  
23 they have two meeting dates pending, and,  
24 hopefully, at one of those meetings, they'll  
25 have a quorum and be able to deny it, so we'll

1 have jurisdiction to conduct a hearing and act  
2 on it.

3 CHAIRMAN MOORE: One thing that comes  
4 up, because this is now a more complicated  
5 process, the Planning Board also has this  
6 application before them for approval of the  
7 subdivision itself. We, I think, can benefit  
8 from input from the Planning Board. And,  
9 again, in the aspect of the time and delaying  
10 proceedings, I would hope that the Planning  
11 Board, at their work session, could discuss  
12 this application to give their general  
13 references about issues that may arise  
14 relative to the subdivision aspects, and that  
15 they could provide that to us before we  
16 deliberate. Is that possible?

17 MR. PROKOP: Right. What you normally  
18 would do is to vote to -- vote to authorize  
19 Chairman Moore to send a letter to the  
20 Planning Board asking them for their  
21 recommendations on this application, and any  
22 discussion.

23 CHAIRMAN MOORE: You know, prior to  
24 our --

25 MR. PROKOP: Yes.

1 CHAIRMAN MOORE: -- consideration.

2 Okay. So I would then make that motion. I'm  
3 sorry, go ahead.

4 MR. CORWIN: I'm still trying to  
5 understand this.

6 CHAIRMAN MOORE: Yes.

7 MR. CORWIN: A motion to provisionally  
8 accept, I understand that. Administratively  
9 forward it from the Planning Board, pending  
10 official vote to schedule a site visit and to  
11 schedule a Public Hearing.

12 CHAIRMAN MOORE: Yes.

13 MR. CORWIN: So that means the Planning  
14 Board is going to have a site visit and Public  
15 Hearing.

16 CHAIRMAN MOORE: Oh, no, that meant for  
17 us, for the ZBA. Yes. I'm sorry. That maybe  
18 could be worded differently.

19 What we're asking is that we are  
20 accepting -- okay. So what we're doing is  
21 simply, we can't officially accept until the  
22 Planning Board forwards it, so we are  
23 provisionally accepting it. And as soon as  
24 they --

25 MR. CORWIN: So we're going to --

1 CHAIRMAN MOORE: -- forward it to us.

2 MR. CORWIN: -- authorize the Zoning  
3 Board of Appeals to have a site visit and a  
4 Public Hearing.

5 CHAIRMAN MOORE: That's correct.

6 MR. CORWIN: That's what we're doing  
7 here.

8 CHAIRMAN MOORE: Yes.

9 MR. CORWIN: So this is a do-over of  
10 what we did already.

11 CHAIRMAN MOORE: Yes.

12 MR. CORWIN: And I don't understand the  
13 purpose of this, because, as I read the  
14 Subdivision Law, I saw nothing in there where  
15 it said it had to go to the ZBA, and the ZBA  
16 had to approve something prior to or in  
17 conjunction with the Planning Board's  
18 decision.

19 CHAIRMAN MOORE: I believe the Planning  
20 Board can't make a decision if a variance is  
21 required for whatever they're approving.  
22 Variances have to be approved prior to the  
23 Planning Board approving a site plan.

24 CHAIRMAN MOORE: So the ZBA has to make  
25 a site visit, have a Public Hearing, then

1 approve the variances, then it goes back to  
2 the Planning Board, and they can make --  
3 they're going to have to have a Public  
4 Hearing, too, right?

5 MR. PROKOP: Yes.

6 MR. CORWIN: And a site visit, and then  
7 they can approve or not approve the  
8 subdivision.

9 MR. PROKOP: That's correct.

10 MR. CORWIN: And now they could approve  
11 or not approve regardless of what the ZBA  
12 says. In other words, if the Zoning Board  
13 says no to the variances, that doesn't stop  
14 the Planning Board from saying, "Yeah, you can  
15 subdivide it."

16 MR. PROKOP: No. If the ZBA says no,  
17 then the application is dead, it cannot go  
18 back to the Planning Board. Planning Board  
19 will not have jurisdiction to hear the  
20 application, because it proposes substandard  
21 lots. If they -- only if the ZBA says yes can  
22 it go back to the Planning Board, and the  
23 Planning Board is not bound to say yes. The  
24 Planning Board, even if the ZBA approves it,  
25 the variances, the Planning Board can still

1 deny the application.

2 CHAIRMAN MOORE: And what I'm  
3 additionally asking, because we're not  
4 actually requesting a joint meeting, which I  
5 don't really think is appropriate here, we're  
6 asking that we get some indication from the  
7 Planning Board, from their assessment at their  
8 work session, that they could give some  
9 indication to us as to any issues they may  
10 have regarding the subdivision, because they  
11 are actually the subdivision adjudicating  
12 body. So, to avoid the complication, I would  
13 like some input from the Planning Board in  
14 advance of our decision.

15 MR. CORWIN: Now what is their schedule?  
16 When is their next work session and when is  
17 their next meeting where they're going to vote  
18 on anything?

19 CHAIRMAN MOORE: I believe the twenty  
20 something, 28th?

21 MR. PROKOP: Twenty-seventh, and the --  
22 it's the last Thursday and the first Thursday.

23 MR. CORWIN: So the last Thursday is  
24 going to be their work session.

25 CHAIRMAN MOORE: And then they'll have a

1 regular session the first Thursday of August,  
2 and then our proceedings won't occur until  
3 August 21st.

4 Now, they won't officially be able to  
5 make a determination on a subdivision,  
6 obviously, but they will be able, I believe,  
7 to look at the application, and, on my  
8 request, if the Board authorizes me to write a  
9 letter, I can get some input from the Planning  
10 Board, which seems to be the right way to do  
11 things.

12 MR. PROKOP: The other thing that you  
13 could do is in Item #5, the motion could be to  
14 schedule the Public Hearing based on a denial  
15 by the Planning Board by whatever that date  
16 is, August 1st, or whatever that date is. And  
17 then in the event that they don't deny it,  
18 there's not a public -- there's no Public  
19 Hearing for another month.

20 MR. CORWIN: You lost me on that one.

21 CHAIRMAN MOORE: In other words, they're  
22 looking for a specific action of the Planning  
23 Board directing the application to us, which  
24 in a sense is denying further progress on the  
25 subdivision, pending a variance by the ZBA,

1 and that has not officially been done yet. So  
2 that if that doesn't happen at the end of the  
3 month, we can't proceed with the variance  
4 consideration.

5 MR. CORWIN: Right. Now what's the  
6 status of -- I guess there's no status at this  
7 point in time, because there's not an  
8 official, including this motion, but what's  
9 the status of notification to the neighbors  
10 and posting signs, and that kind of stuff?

11 CHAIRMAN MOORE: Okay. We would --

12 MR. CORWIN: -- and are both parties,  
13 the Planning Board and the ZBA, going to make  
14 separate notices and postage of signage, and  
15 blah, blah, blah?

16 MR. PROKOP: Yes.

17 CHAIRMAN MOORE: Each Board has a  
18 requirement for public notices, and that  
19 includes placarding for both Planning Board  
20 and ZBA. And as part of our preparation for a  
21 Public Hearing, the newspaper, notification of  
22 neighbors and placarding would be part of the  
23 process.

24 MR. CORWIN: Okay.

25 CHAIRMAN MOORE: So that has to occur

1 this next month.

2 MR. CORWIN: Now you're going to notify  
3 the neighbors, because you promised to. But  
4 is there time to do that yet, or are you going  
5 to wait until the Planning Board officially  
6 sends this to us?

7 CHAIRMAN MOORE: I think we have time  
8 for the Planning Board to officially act.  
9 They're expected to vote at their work  
10 session.

11 MS. WINGATE: Which is next Thursday.

12 CHAIRMAN MOORE: Which is next week.  
13 And, at that time, a decision could be made to  
14 issue the notices in plenty of time for our  
15 meeting, which is August 21st.

16 MR. CORWIN: But notwithstanding the  
17 notices, you made a promise to the neighbors  
18 that you would keep them informed.

19 CHAIRMAN MOORE: Correct, and that is  
20 what we'll do. I would suggest that when we  
21 make the notification of the neighbors, that  
22 we request the Building Inspector to provide  
23 an expanded radius of neighbors, perhaps to  
24 include the entire block, as we've done in the  
25 past. It puts an additional burden on the

1 property owner, because he has to send all of  
2 those, but that would certainly inform the  
3 neighbors, plus I would expect that if they  
4 saw a sign, they would pay attention

5 MR. CORWIN: Right. We're on the same  
6 wavelength there --

7 CHAIRMAN MOORE: Yes.

8 MR. CORWIN: -- because, as I remember,  
9 we specifically said to the neighbors, "We'll  
10 let you know what's going on." And I don't  
11 consider the official notice in the mail as  
12 the same thing. In other words, should the  
13 neighbors be told now this is in progress,  
14 and, "We want you to know that, because I told  
15 you that's what I would do, let you know," or  
16 is your position, well, when they get the  
17 notices and the placards go up, that's the  
18 notice?

19 CHAIRMAN MOORE: I would ask that we  
20 wait until the Planning Board officially sends  
21 us their vote that they're forwarding it to  
22 us. And with our motion tonight, we could  
23 then ask the Building Inspector to provide  
24 that information after their next Thursday's  
25 meeting, and those notifications would go out

1 before the end of July, or right at the end of  
2 July with adequate notice with an expanded  
3 mailing of the neighborhood.

4 I think the point you were making is  
5 there was a nearby neighbor at the end of the  
6 street that received no notices and found out  
7 about the meeting indirectly, and, in that  
8 case, we would cover that.

9 MR. CORWIN: Well, they made a big stink  
10 that they wanted to know what was going on.

11 CHAIRMAN MOORE: Yes.

12 MR. CORWIN: And I want to hold the ZBA  
13 to that, they know what's going on.

14 CHAIRMAN MOORE: Good.

15 MR. CORWIN: And sometimes you get  
16 notices, but you got something else planned,  
17 because the notice is two weeks down the road  
18 and you'd rather know a month down the road.  
19 That's what I meant.

20 CHAIRMAN MOORE: Okay.

21 MR. PROKOP: The Board is -- you know,  
22 the statutes -- the Code states the minimum  
23 notice that's required. The Board can expand  
24 the notice that's required any time that it  
25 wants to. So we don't have to belabor it. If

1 you think a more advanced notice or a  
2 different type of notice is necessary, you  
3 could just make that motion and then the Board  
4 can consider it.

5 MR. CORWIN: I can -- possibly, I'm not  
6 recalling what was said correctly at the last  
7 Public Hearing, but, to me, there was going to  
8 be some augmentation of the notice process, so  
9 that's kind of what I'm after.

10 CHAIRMAN MOORE: Okay. I think that  
11 will accomplish it. And that would be  
12 satisfactory to you?

13 MR. CORWIN: Yes.

14 CHAIRMAN MOORE: Great. So on Item #5,  
15 if I can recap everything, we're making a  
16 motion to provisionally accept the application  
17 for an area variance, and that we will wait  
18 for the official notification of the Planning  
19 Board, and then notify the adjoining and  
20 nearby neighbors with a radius that would  
21 encompass the entire block of Fifth Avenue.  
22 And that, of course, the placard on the  
23 property and the public notice in the  
24 newspaper would also be done at the earliest  
25 convenience, probably at the beginning of

1 August, for our upcoming hearing on August  
2 21st.

3 So I would make that motion, and ask for  
4 a second.

5 MR. CORWIN: Second.

6 CHAIRMAN MOORE: And all in favor?

7 MR. CORWIN: Aye.

8 MR. BENJAMIN: Aye.

9 CHAIRMAN MOORE: Aye.

10 So that motion carries.

11 If I may, I will go back. I,  
12 unfortunately, skipped Item #4, which is,  
13 again, another motion to accept an application  
14 for a use variance, schedule a site visit, and  
15 schedule a Public Hearing for Margaret and  
16 Anthony McDonald, 629 Main Street, Suffolk  
17 County Tax Map 1001-2-6-50, located in the R-2  
18 district.

19 The Applicants seek a building permit to  
20 construct a second residential unit in the R-2  
21 District. Article IV, Section 150-8, One and  
22 Two-Family Residential District, states:

23 "In a Two-Family Residential District,  
24 no building or premises shall be used, and no  
25 building or part of a building shall be

1 erected or altered, which is arranged,  
2 intended, or designed to be used, in whole or  
3 in part, for any purpose except a two-family  
4 dwelling.

5 I will make that motion, and ask for a  
6 second.

7 MR. CORWIN: Question.

8 CHAIRMAN MOORE: Yes.

9 MR. CORWIN: Is this another one of  
10 these things that are detached?

11 CHAIRMAN MOORE: In this case, it is a  
12 fully detached. It's an existing --

13 MR. CORWIN: But the Building Inspector  
14 said -- told -- Mr. Prokop said you can't do  
15 that anymore.

16 MR. PROKOP: That's right.

17 MR. CORWIN: That's my understanding.

18 MS. WINGATE: That's why they're here.

19 MR. CORWIN: And now we're doing it  
20 again?

21 CHAIRMAN MOORE: No, no.

22 MS. WINGATE: That's why they're here.

23 No. They have an existing building that has  
24 been there for a very long time, David. I  
25 don't know how long. They would like to --

1 CHAIRMAN MOORE: So what we are --

2 MS. WINGATE: They would like to  
3 continue its use, but the building is  
4 deteriorating. The only way that they could  
5 rebuild it is with a variance from the ZBA.  
6 That's why we're here.

7 MR. CORWIN: All right.

8 CHAIRMAN MOORE: Okay. So, in other  
9 words, so I've made that motion to accept the  
10 application, and may I have a second?

11 MR. CORWIN: Second.

12 CHAIRMAN MOORE: And all in favor?

13 MR. CORWIN: Aye.

14 MR. BENJAMIN: Aye.

15 CHAIRMAN MOORE: Aye.

16 So that application is accepted.

17 So we're going to move on now to the  
18 Findings and Determination Documents. There  
19 are three. I don't know if everybody had a  
20 chance to review them.

21 The first is the application from James  
22 and Carol Kalin, and that is a Findings and  
23 Determination Decision Document approving a  
24 variance for an addition to an existing  
25 nonconforming dwelling. I'd just like --

1 MS. WINGATE: Excuse me. The ones I  
2 distributed might, in fact, not have been the  
3 right ones.

4 CHAIRMAN MOORE: Right. I would just  
5 like to make note that in the document, as  
6 currently conformed, identifies the District  
7 as R-1; it should be R-2.

8 MS. WINGATE: Right.

9 CHAIRMAN MOORE: And this document does  
10 include the stipulation that discharge of  
11 water from the new construction would not be  
12 permitted to leave the property. And other  
13 than that, it follows exactly the voting and  
14 the determination for issuance of that  
15 variance.

16 So would the Board be prepared to  
17 consider approving the document that follows?

18 MR. CORWIN: Yes.

19 CHAIRMAN MOORE: So I would make a  
20 motion that we accept that Determination and  
21 Decision Document for James and Carol Kalin.  
22 May I have a second?

23 MR. CORWIN: Second.

24 CHAIRMAN MOORE: And all in favor?

25 MR. CORWIN: Aye.

1 MR. BENJAMIN: Aye.

2 CHAIRMAN MOORE: Aye.

3 MR. CORWIN: Before we go any further on  
4 these --

5 CHAIRMAN MOORE: Yes.

6 MR. CORWIN: -- can I ask a question?

7 CHAIRMAN MOORE: Sure.

8 MR. CORWIN: Is the building permit  
9 issued prior to these formal boiler plate  
10 motions, or does the Building Department wait  
11 until these formal motions are made?

12 MS. WINGATE: It depends. I -- if you  
13 voted to approve it, I generally issue a  
14 building permit before the formal motions are  
15 approved.

16 MR. CORWIN: All right. I don't want to  
17 visit that tonight --

18 MS. WINGATE: It usually --

19 MR. CORWIN: -- because I want to visit  
20 something else. But I think we need to visit  
21 that and have some formal way of doing that.

22 MS. WINGATE: Can I finish my sentence?  
23 I usually wait until the minutes are  
24 available. So I might not have a formal  
25 resolution, but at least I have the minutes,

1 so I know which direction I go.

2 MR. CORWIN: The problem is sometimes we  
3 get into arguments over these things, so I  
4 think we need some kind of formal procedure  
5 there.

6 MS. WINGATE: Okay.

7 CHAIRMAN MOORE: Yeah. I think the only  
8 issues that come up as to whether the Decision  
9 Document accurately represents what we  
10 discussed and what we approved. Sometimes  
11 when the approvals are very tight, there's  
12 some deliberation that occurs, and I think  
13 we're generally tuned into those. And my  
14 experience is that Ms. Wingate has held back  
15 on approving building permits for  
16 controversial approvals, but some of the easy  
17 to pass and unanimous decisions from the  
18 Board, the building permit is issued.

19 Item #6 is, again, approving the  
20 Findings, Determination and Decision Document  
21 for a variance for David Glaser, Second  
22 Street, Suffolk County Tax Map 1001-4-2-35.2.

23 MR. CORWIN: That's Item 7.

24 CHAIRMAN MOORE: I'm sorry. That's this  
25 -- I'm using the old draft.

1 MR. CORWIN: It's Item 7 on my agenda.

2 CHAIRMAN MOORE: Yes, it is. I didn't  
3 bring my numbers up to date. Sorry.

4 Item #7 for Glaser, and that is the  
5 construction of a new one-family dwelling.

6 Again, this was incorrectly noted to be  
7 in the R-1 District. It's the R-2 District.  
8 And the statement following that is that the  
9 premises is presently used as a single-family  
10 residence.

11 MS. WINGATE: Which is vacant.

12 CHAIRMAN MOORE: I would recommend that  
13 the proposed construction is to be used as a  
14 single-family residence. And in the voting,  
15 we did vote in B, the benefit sought by the  
16 Applicant could be achieved by some other  
17 method. But despite that consideration, we  
18 did pass the variance. And with --

19 MS. WINGATE: And in the last paragraph,  
20 do I have the wrong one, or does it talk about  
21 the CAC?

22 CHAIRMAN MOORE: You know --

23 MR. ABATELLI: CAC would be for the next  
24 one.

25 CHAIRMAN MOORE: I missed that. That is

1 not -- doesn't belong, so --

2 MS. WINGATE: Yeah, the whole entire  
3 last paragraph.

4 CHAIRMAN MOORE: So we have to stop at  
5 granting the variance and leave the rest,  
6 except for the installation of gutters and  
7 leads to retain the runoff on the property.  
8 And I will reword that appropriately, taking  
9 out the CAC, which came from another document,  
10 apparently.

11 MS. WINGATE: Right.

12 CHAIRMAN MOORE: I missed that one

13 MS. WINGATE: That's okay.

14 CHAIRMAN MOORE: Would the Board entrust  
15 me to make those corrections?

16 MR. CORWIN: Yes.

17 CHAIRMAN MOORE: So I would then offer  
18 that document for approval and make that  
19 motion. May I have a second?

20 MR. CORWIN: Second.

21 CHAIRMAN MOORE: All in favor?

22 MR. CORWIN: Aye.

23 MR. BENJAMIN: Aye.

24 CHAIRMAN MOORE: Aye.

25 So that document is approved, and I will

1 make those corrections.

2 And the last one is the application of  
3 Nancy Louise Pope, that is Item #8, I believe,  
4 of 8 Beach Road, Greenport, New York, Suffolk  
5 County Tax Map 1001-3-3-32, to construct an  
6 addition to the existing nonconforming  
7 building.

8 And that document is correct --

9 MS. WINGATE: Yes.

10 CHAIRMAN MOORE: -- as printed, as far  
11 as I can see. And with that in mind, I'll  
12 move that we approve that document. May I  
13 have a second?

14 MR. CORWIN: Second.

15 CHAIRMAN MOORE: All in favor?

16 MR. CORWIN: Aye.

17 MR. BENJAMIN: Aye.

18 CHAIRMAN MOORE: Aye.

19 That document is approved.

20 Next is to accept, #9, the ZBA minutes  
21 from June 19, 2013. So moved. Second,  
22 please.

23 MR. BENJAMIN: Second.

24 CHAIRMAN MOORE: And all in favor?

25 MR. CORWIN: Aye.

1 MR. BENJAMIN: Aye.

2 CHAIRMAN MOORE: Aye. You said "aye,"  
3 Charlie?

4 MR. BENJAMIN: Yes, I did.

5 CHAIRMAN MOORE: Thank you.

6 And then motion is to approve the ZBA  
7 minutes for May 14, 2013. So moved. Second,  
8 please.

9 MR. CORWIN: Second.

10 CHAIRMAN MOORE: All in favor?

11 MR. CORWIN: Aye.

12 BENJAMIN: Aye.

13 CHAIRMAN MOORE: Any.

14 And that's approved. And then a motion  
15 to schedule the next regular ZBA meeting for  
16 August 21st, 2013. With that in mind, we  
17 would be meeting for the area variance for  
18 Mr. Olinkiewicz at 4:40. And before that, we  
19 will be visiting the site for Margaret and  
20 Anthony McDonald on Main Street.

21 MR. CORWIN: But that's provisional.

22 CHAIRMAN MOORE: Provisionally at --

23 MR. ABATELLI: What was the time? We do  
24 need a time.

25 CHAIRMAN MOORE: At 4:20. We would do

1 it at 4:20. I think that would be enough  
2 time.

3 MR. ABATELLI: That's for McDonald at  
4 4:20.

5 CHAIRMAN MOORE: At 4:20. And if that  
6 does not come to be, then we would simply meet  
7 at 4:40 for Mr. Olinkiewicz on Fifth Avenue.  
8 Is that acceptable?

9 MR. BENJAMIN: Yes.

10 CHAIRMAN MOORE: And with that in mind,  
11 I'd make the motion for the next meeting. And  
12 a second, please.

13 MR. CORWIN: Second.

14 CHAIRMAN MOORE: And all in favor?

15 MR. CORWIN: Aye.

16 CHAIRMAN MOORE: Aye. Charlie, yes?

17 MR. BENJAMIN: Yes.

18 CHAIRMAN MOORE: And the final is I make  
19 a motion to adjourn. Second, please.

20 MR. CORWIN: I would like to discuss a  
21 few things --

22 CHAIRMAN MOORE: Yes. Oh, discussion,  
23 yes.

24 MR. CORWIN: -- before we do that.

25 The first thing is Mr. Costello

1 represented that that house on Broad Street  
2 was a three-family house.

3 MS. WINGATE: It is. It has a CO to be  
4 a three-family house.

5 MR. PROKOP: But when did the use start?

6 MS. WINGATE: When did it start?

7 MR. PROKOP: I mean the CO, yes.

8 MS. WINGATE: Oh, I don't --

9 MR. CORWIN: Well, let me finish what I  
10 have to say, please.

11 MS. WINGATE: Okay.

12 MR. CORWIN: That's been used for many  
13 years as a four-family house. In other words,  
14 I was a young -- when I was a child, I  
15 remember that as maybe a three-family house.  
16 I remember two families being in there. May  
17 Watson used it as a four-family house. And I  
18 want to know what it is officially, and I  
19 want -- when the next person moves in there,  
20 buys it, I want to know it's going to be a  
21 three-family house, not turned again into a  
22 four-family house, or, with the addition of a  
23 studio, a five-family house.

24 MS. WINGATE: I have been in the house,  
25 not the whole house. I've been in May's

1 apartment, which I've been in the front  
2 apartment, and I've never been upstairs. So I  
3 can ask to be through the whole house. I  
4 don't know anymore than that it has a  
5 Certificate of Occupancy as a three-family  
6 house.

7 MR. CORWIN: And I know for a fact that  
8 it was used as a four-family house.

9 CHAIRMAN MOORE: Would we know the basis  
10 for that status, preexisting nonconforming  
11 use, or what would be the --

12 MS. WINGATE: Oh, it goes way back.

13 MR. ABATELLI: Yeah. I'm not sure, but  
14 it goes way back. It's either right at the  
15 beginning, like in the early '70s, when the  
16 Code was --

17 MS. WINGATE: I can certainly ask for a  
18 tour of the house and do a report.

19 MR. CORWIN: I have no problem with  
20 Costello, because I know he's straightforward  
21 and he's going to do what he says he's going to  
22 do. But I know when they sell it in 20 years,  
23 somebody's going to say, "You know, there's a  
24 lot of room up here in the attic," blah, blah,  
25 blah.

1 MS. WINGATE: Oh, yeah. It's a big  
2 house.

3 CHAIRMAN MOORE: So what's the trigger?  
4 What would be the triggers for loss of that  
5 current status? Not simply sale, but --

6 MR. PROKOP: We get a Code Enforcement  
7 Officer that goes and looks at it and issues a  
8 violation.

9 CHAIRMAN MOORE: Okay. But if it had a  
10 preexisting nonconforming use?

11 MR. PROKOP: Well, nobody's determined  
12 that.

13 CHAIRMAN MOORE: That's what I'm  
14 wondering, if it, in fact, was the case.

15 MR. PROKOP: If that was the case, then  
16 they'd have to discontinue the use for either  
17 three or six months, I forget.

18 CHAIRMAN MOORE: Based on what? I  
19 mean --

20 MR. PROKOP: If they discontinued the  
21 use for a three --

22 CHAIRMAN MOORE: Oh, if they discontinue  
23 the use.

24 MR. PROKOP: Yes.

25 CHAIRMAN MOORE: Yes. Sorry.

1 MS. WINGATE: And I think our Code says  
2 a year.

3 CHAIRMAN MOORE: Or substantial  
4 reconstruction, and all the other things.

5 MS. WINGATE: Or substantial  
6 reconstruction would certainly put it in the  
7 nonconforming use category.

8 CHAIRMAN MOORE: Yes.

9 MR. PROKOP: But these are the kinds of  
10 things that -- we run into this all the time,  
11 that somebody's making a statement that, you  
12 know, it started way back, or whatever Dave  
13 said. I mean, that's not the determination a  
14 of preexisting nonconforming use. We need  
15 legal proof in the file, which is generally  
16 considered the affidavits from two  
17 disinterested people that are at least as old  
18 as -- that were adults in 1971 that say that  
19 they remember specifically that the use was a  
20 four-family house.

21 CHAIRMAN MOORE: And the challenge for  
22 that could be a complaint?

23 MR. ABATELLI: Or survey.

24 MR. PROKOP: Or a survey, a survey  
25 complaint.

1           CHAIRMAN MOORE:  Could that be  
2 precipitated by a complaint from an affected  
3 neighbor or --

4           MR. PROKOP:  Sure.

5           CHAIRMAN MOORE:  I wonder what triggers  
6 that evaluation

7           MR. ABATELLI:  Well, the building, and I  
8 really haven't looked at the CO, but I  
9 would -- the three family sounds familiar.  
10 The building has been transferred, so I think  
11 that's what -- the CO in the file I think has  
12 been a three-family for a pretty long time.  
13 Dave very well might be correct, that when May  
14 was there, she used it as a four-family.

15          MR. CORWIN:  But in point of fact, it  
16 was a four-family house.

17          MS. WINGATE:  May used it recently as a  
18 four-family?

19          MR. CORWIN:  May Watson certainly did,  
20 yes.

21          MS. WINGATE:  Recently, just --

22          MR. CORWIN:  Until she sold the thing.  
23 And now John's changing who's in there.

24          CHAIRMAN MOORE:  Well, if somebody had  
25 the impulse to do the right thing, what would

1 be the process? Would it be an application  
2 for a variance or --

3 MR. PROKOP: Yeah. No.

4 CHAIRMAN MOORE: -- supplying  
5 affidavits.

6 MR. PROKOP: Application for a C of O.

7 CHAIRMAN MOORE: A C of O.

8 MR. PROKOP: For whatever the use is  
9 right now, and whatever the use actually is,  
10 what it really is, an application for a  
11 Certificate of Existing Use for that use.

12 CHAIRMAN MOORE: Because the only thing  
13 I think could precipitate it is a new owner  
14 who might feel in jeopardy if that was not  
15 somehow sanctified. So, in fact, they could  
16 petition through affidavits or a variance  
17 request to certify its current status.

18 MR. PROKOP: Yes.

19 CHAIRMAN MOORE: Okay.

20 MR. ABATELLI: I don't know if I'm -- I  
21 know we're all tired, but I don't know if I'm  
22 missing something.

23 CHAIRMAN MOORE: Yes.

24 MR. ABATELLI: But if the CO says a  
25 three-family, and the owner 20 minutes ago

1 said it's a three-family, I mean, maybe it's  
2 been used as a four-family, but I think when  
3 Eileen -- if Eileen goes in the house and it's  
4 clearly the four-family, I think we'd be on  
5 pretty solid ground to say it should be a  
6 three-family.

7 MR. CORWIN: All right. That's what I  
8 want to hear you all say, that's it's a  
9 three-family, period.

10 MR. ABATELLI: I would think so. I  
11 mean, I'm not --

12 MS. WINGATE: I don't know. Both May  
13 and John are good at that kind of stuff.

14 MR. CORWIN: Well, yeah, there you go.

15 MS. WINGATE: It's a big enough house  
16 for it to be a six-family, you know.

17 CHAIRMAN MOORE: Now, did you have a  
18 second --

19 MR. CORWIN: No, it's not.

20 CHAIRMAN MOORE: To move things along,  
21 did you have another question, being question  
22 number two.

23 MR. CORWIN: I had a second thing, and  
24 it's going to take some time.

25 CHAIRMAN MOORE: Yes.

1 MS. WINGATE: It's a very big house,  
2 I'll leave it at that.

3 I have a question for you, though, Joe.

4 CHAIRMAN MOORE: Mr. Corwin, if he could  
5 finish his question.

6 MS. WINGATE: Yes.

7 CHAIRMAN MOORE: And then we could close  
8 the meeting.

9 MS. WINGATE: Yes.

10 CHAIRMAN MOORE: Sorry.

11 MR. CORWIN: This idea of these studios,  
12 and I know three of them are right in that  
13 neighborhood around North Street and First  
14 Street, and it's beyond me where anybody can  
15 find in the Building Code that you can build a  
16 two-story structure as a studio.

17 The Zoning Code says that you can have a  
18 studio, such office or studio is incidental to  
19 the residential use of the premises, and is  
20 carried on by a resident thereof with not more  
21 than two residences. Such offices -- office  
22 or studio shall occupy not more than 30% of  
23 the area on the ground floor of the main  
24 building. So it's very clear what a studio  
25 is.

1           This was designed, because back in the  
2           day when they passed this, there were a lot of  
3           doctors and dentists that had their offices in  
4           their homes. Then somehow it got to be --  
5           down to the end of the Code, it says something  
6           about you can have an accessory building.  
7           There's no real definition of accessory  
8           building. To me, an accessory building is it  
9           could be a garage, maybe it could be a little  
10          workshop, like that gentleman, McDonald, did  
11          on Main Street. It could be you go up to  
12          Peconic and get one of those little buildings  
13          to store your tools in. But no way is an  
14          accessory building a two-story studio garage  
15          or a two-story studio. I don't think that's  
16          right.

17                 If the Board of Trustees wants to make  
18          the definition of an accessory building a  
19          two-story studio with a garage, fine, but I  
20          don't think this is right the way these things  
21          have been given out. Every time somebody  
22          comes in and says, "I'm an artist," give them  
23          whatever they want, you know, I'm just against  
24          that.

25                 CHAIRMAN MOORE: I can make a comment on

1 that. As preparation for this meeting, I  
2 reviewed some case material that were both at  
3 some times before the Planning Board or the  
4 Zoning Board, and when it came to the Zoning  
5 Board, even for a construction, a new  
6 construction of a studio, the issues had to do  
7 with area variances such as setbacks or  
8 building height, and at no time was the studio  
9 aspect of the building discussed. And that's  
10 on several cases of First Street.

11 And I can also say that I think the  
12 Village Board is aware of some of these  
13 inconsistencies because there exists many of  
14 these in use, whether old or new buildings.

15 And Code Committee has been charged with  
16 looking at accessory buildings, I think  
17 principally because of residency issues and  
18 some problems, but I believe also accessory  
19 uses and perhaps the changing desires of  
20 property owners. So that I believe this is  
21 coming up for discussion and it's uncertain  
22 where you --

23 MR. PROKOP: Well, the idea is --

24 MR. CORWIN: Well, the way the Code  
25 is --

1           MR. PROKOP: The idea is that it's been  
2 the interpretation of the Building Inspector  
3 for a long time that somebody that owns --  
4 owns and or -- I'm sorry -- somebody that  
5 resides at the property can use a portion of  
6 the garage. And I don't mean build another  
7 building that's a studio, I don't mean that.  
8 I mean use a portion of the garage for a  
9 studio, woodworking, things like that. You  
10 know, that's interpreted and I'm okay with  
11 that.

12           The problem that I have, and this is why  
13 I tortured you guys with the -- you people,  
14 I'm sorry, with the discussion before, we  
15 don't get full information from the Building  
16 Department on these applications. We get bits  
17 and pieces, and it's really hard to figure out  
18 what's going on.

19           So what we need -- you know, that's the  
20 first thing. But the second thing is the --  
21 I'm not aware of -- I'm not aware of -- I'm  
22 sure that it's happened, and somebody's going  
23 to point this out to me, but I'm not aware of  
24 ever being involved in an application where  
25 somebody actually built a building that was a

1 dedicated studio. I hope that this building  
2 doesn't --

3 MS. WINGATE: That place for Tom.

4 MR. PROKOP: -- end up in it. And,  
5 see -- and, you know -- I knew that something  
6 was going to come up. But the -- and that was  
7 not granted.

8 MS. WINGATE: Raphael Ferrer, they were  
9 both before ZBA.

10 MR. PROKOP: Ferrer was a house, a  
11 portion of a house.

12 MS. WINGATE: No.

13 MR. CORWIN: No.

14 MS. WINGATE: Before that.

15 CHAIRMAN MOORE: In a separate building.

16 MS. WINGATE: Ferrer was a separate  
17 building for a studio.

18 MR. PROKOP: Well, it shows what I know.

19 MR. ABATELLI: Galleries, that's what it  
20 is.

21 MR. PROKOP: But anyway, in this  
22 particular application before us tonight, the  
23 language of the variance has to specify that  
24 that woman is going -- the user of that studio  
25 resides at the property.

1 CHAIRMAN MOORE: Yes.

2 MR. PROKOP: There's a minimum  
3 requirement, because the last thing we want to  
4 do now is to have people just converting  
5 buildings to so-called studios and renting  
6 them out.

7 MR. CORWIN: And that's exactly what's  
8 going to happen.

9 MR. PROKOP: Yes. We're not going to  
10 allow that.

11 MR. CORWIN: And I have to contend -- if  
12 the Village Board, when they passed this Code,  
13 put studios in one place and accessory  
14 buildings in another place, they were not  
15 talking about studios when they said accessory  
16 buildings.

17 MR. PROKOP: But there's threshold  
18 questions. When these people come into the  
19 Building Department, there's threshold  
20 questions that have to be asked by the  
21 Building Department. They can't -- it can't  
22 just come to us and then -- you know, if we  
23 ask the question, fine. If we don't ask the  
24 question --

25 MS. WINGATE: This is a good time to --

1 CHAIRMAN MOORE: Okay. May I offer a  
2 motion to adjourn and ask for a second?

3 MR. BENJAMIN: Second.

4 CHAIRMAN MOORE: And all in favor?

5 MR. CORWIN: Aye.

6 MR. BENJAMIN: Aye.

7 CHAIRMAN MOORE: Aye.

8 So we're adjourned.

9 (Whereupon, the meeting was adjourned at  
10 7:15 p.m.)

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<b>A</b>				
<b>abandoned</b> 44:6	78:14 93:22	<b>advise</b> 27:4	117:14	101:10,16,21
<b>abandoning</b> 41:17	124:14	<b>affair</b> 19:19	<b>anymore</b> 37:23	107:2 115:1,6,10
<b>Abatelli</b> 1:19 31:3	<b>activities</b> 40:24	<b>affidavits</b> 113:16	100:15 111:4	120:24 121:22
31:6,20 46:16	51:12 71:10 77:24	115:5,16	<b>anyway</b> 24:7	<b>applications</b> 62:5
105:23 108:23	<b>activity</b> 27:20 39:3	<b>affiliation</b> 18:23	121:21	120:16
109:3 111:13	61:3 65:6 69:6	23:7 24:4	<b>apartment</b> 29:18	<b>apply</b> 80:14
113:23 114:7	<b>actual</b> 57:21	<b>afternoon</b> 18:25	30:21 83:25 111:1	<b>applying</b> 76:24
115:20,24 116:10	<b>add</b> 19:12 26:19	59:12	111:2	82:17
121:19	32:9 41:2	<b>age</b> 16:1	<b>apartments</b> 15:14	<b>appreciated</b> 14:2
<b>ability</b> 25:11 73:14	<b>addition</b> 2:25 3:2	<b>Agency</b> 47:1 66:9	24:20 26:11	<b>approached</b> 13:17
<b>able</b> 4:4 5:10 87:25	4:24 5:7 6:12 9:4	78:12	<b>apologies</b> 66:5	<b>approaching</b> 16:11
93:4,6	32:19 36:13 40:5	<b>agenda</b> 1:4 2:13,19	<b>apologize</b> 3:13	<b>appropriate</b> 18:24
<b>absolutely</b> 11:13	46:7 54:22 57:7	2:20 33:22 105:1	<b>apparently</b> 22:22	44:18 92:5
40:9,11	61:6 63:2 65:8	<b>agent</b> 23:9	36:3 106:10	<b>appropriately</b> 9:20
<b>accept</b> 84:16 87:2,3	101:24 107:6	<b>ago</b> 5:2 25:23 28:13	<b>appealing</b> 15:9	106:8
89:8,21 98:16	110:22	37:18 38:6 115:25	<b>Appeals</b> 1:2 2:6	<b>approval</b> 14:22
99:13 101:9	<b>additional</b> 4:2,18	<b>Aha</b> 72:12	50:16 51:9 52:1	41:18 64:22,23
102:20 107:20	84:5 95:25	<b>ahead</b> 4:7 30:3	65:11 68:18 69:16	84:23 87:9 88:6
<b>acceptable</b> 45:17	<b>additionally</b> 92:3	46:19 77:18 86:25	90:3	106:18
109:8	<b>additions</b> 26:7	89:3	<b>appearance</b> 36:14	<b>approvals</b> 84:5
<b>accepted</b> 101:16	<b>address</b> 9:1 10:14	<b>air</b> 30:13	60:12,15	104:11,16
<b>accepting</b> 89:20,23	10:19 18:23 22:22	<b>alleged</b> 7:7 50:13	<b>APPEARANCES</b>	<b>approve</b> 33:25 51:9
<b>accessory</b> 9:10	22:24 23:7	68:15 80:12 81:11	1:12	69:4 82:5 90:16
35:16,17 40:11	<b>adequate</b> 15:12	<b>Alleluia</b> 28:13	<b>appeared</b> 55:25	91:1,7,7,10,11
65:6 69:8 118:6,7	57:22 97:2	<b>allow</b> 5:8 11:15	<b>appears</b> 35:20	103:13 107:12
118:8,14,18	<b>adjacent</b> 5:4 9:22	12:5 122:10	<b>Applicant</b> 2:24	108:6
119:16,18 122:13	13:13,21	<b>allowance</b> 73:11,17	4:14,22 6:8,9 8:2	<b>approved</b> 14:23
122:15	<b>adjoining</b> 10:10,14	75:4	9:3 12:22 21:17	46:11 53:9 70:6
<b>accommodate</b> 7:13	10:20 11:9,22	<b>allowed</b> 75:5	37:13 45:5,17	83:24 90:22
26:8,9,10 72:21	98:19	<b>allowing</b> 42:14	48:11,12,22,24	103:15 104:10
<b>accommodated</b>	<b>adjourn</b> 109:19	<b>allows</b> 7:14	67:10,11 75:15	106:25 107:19
43:16 72:3	123:2	<b>alter</b> 81:1	78:25 79:19 84:22	108:14
<b>accommodating</b>	<b>adjourned</b> 123:8,9	<b>alteration</b> 58:23	85:4 105:16	<b>approves</b> 91:24
14:20	<b>adjudicating</b> 92:11	<b>altered</b> 100:1	<b>Applicants</b> 99:19	<b>approving</b> 90:21,23
<b>accommodations</b>	<b>Adjutant</b> 28:16	<b>American</b> 37:17	<b>application</b> 4:6,7	101:23 102:17
16:19	<b>administrative</b>	<b>amount</b> 53:25	5:21 8:3 12:23	104:15,19
<b>accomplish</b> 98:11	84:4	59:25 60:20 72:2	20:18 23:21 34:2	<b>April</b> 28:15,15
<b>accrue</b> 76:8	<b>administratively</b>	77:13	43:20 45:9 51:9	<b>Architect</b> 7:17
<b>accurately</b> 104:9	84:17 87:8 89:8	<b>ample</b> 40:6	51:10 52:1 53:16	30:23
<b>achieved</b> 6:8 48:11	<b>Administrator</b> 1:19	<b>answer</b> 3:15 6:1	54:23 55:15 62:6	<b>architecturally</b>
48:23 67:10	<b>admit</b> 35:13	17:16 53:7 64:15	62:23 63:13,15	44:11
105:16	<b>adults</b> 113:18	79:12,23 80:24	64:9,25 69:5	<b>Arden</b> 2:22 4:22
<b>acronym</b> 71:2	<b>advance</b> 92:14	<b>answers</b> 48:13	70:18 71:25 75:7	6:4 34:3,9 41:22
<b>act</b> 71:1,7 88:1 95:8	<b>advanced</b> 98:1	<b>Anthony</b> 99:16	84:16 86:7 87:8	<b>area</b> 3:4 4:8 5:10
<b>action</b> 47:2,3 66:10	<b>adverse</b> 6:24 50:1	108:20	88:6,12,21 91:17	6:10 9:14 13:9
	68:5	<b>anticipate</b> 63:6	91:20 92:1 93:7	25:21,24 31:12,16
	<b>advice</b> 3:16	<b>anybody</b> 28:3 30:3	93:23 98:16 99:13	35:21 48:2,13,24

49:15 50:17 51:9 58:9 63:19 65:3 66:22 67:2,12,20 68:20 69:4 77:21 82:5,10 84:17 85:7,15,19 98:17 108:17 117:23 119:7	<b>attic</b> 111:24 <b>Attorney</b> 1:18 38:16 42:24 56:6 70:23 87:15 <b>attracts</b> 20:1 <b>audience</b> 4:16 <b>augmentation</b> 98:8 <b>August</b> 86:15,19 93:1,3,16 95:15 99:1,1 108:16 <b>authorize</b> 88:18 90:2 <b>authorizes</b> 93:8 <b>auxiliary</b> 36:8 <b>available</b> 4:3 7:17 7:18 30:17 37:25 48:20 86:20,22 103:24 <b>Avenue</b> 2:23 84:25 98:21 109:7 <b>avoid</b> 92:12 <b>aware</b> 13:21 56:22 57:21 60:10 119:12 120:21,21 120:23 <b>aye</b> 8:14,15,16,17 8:18 21:4,5,6,7,8 33:12,13,14,15,16 47:9,10,11,12,13 53:2,3,4,5,6,7 66:14,15,16,17 78:18,19,20,21 99:7,8,9 101:13 101:14,15 102:25 103:1,2 106:22,23 106:24 107:16,17 107:18,25 108:1,2 108:2,11,12 109:15,16 123:5,6 123:7	91:18,22 99:11 104:14 111:12,14 113:12 118:1 <b>background</b> 86:6 <b>backyard</b> 25:23 <b>balance</b> 77:12 <b>based</b> 3:22 4:3 65:19 74:11 77:6 93:14 112:18 <b>basically</b> 10:9 14:22 24:5 76:5 <b>basis</b> 66:22 111:9 <b>bathroom</b> 16:2 60:21 65:16,17 69:9 <b>bathrooms</b> 15:23 <b>Beach</b> 107:4 <b>bear</b> 10:7 34:5 53:13 66:19 70:10 <b>Beatrice</b> 10:20 13:18 22:9 <b>bed</b> 26:3 <b>beginning</b> 33:23 98:25 111:15 <b>behalf</b> 70:19 <b>belabor</b> 97:25 <b>believe</b> 10:22 11:6 12:8,11 20:11,13 22:1 23:23 29:25 32:1,2 35:2,10 39:12 45:25 46:9 48:17 54:2 57:8 57:10 59:23 60:19 71:1 72:6,23 90:19 92:19 93:6 107:3 119:18,20 <b>belong</b> 106:1 <b>benefit</b> 6:6,7 48:10 48:22 67:9 88:7 105:15 <b>benefits</b> 76:7 <b>Benjamin</b> 1:14 8:17 21:7 33:15 47:12 48:5 49:3,4 49:22,23 50:10,11 50:25 51:1 53:5,7 61:4,10,22,25	64:24 66:16 67:6 67:7,17,18 68:1,2 68:12,13,25 69:1 70:2,3 74:16,17 74:18,22 76:22 77:3 78:16,21 80:8,9,22,23 81:8 81:9,20,21 82:7,9 83:21,22 99:8 101:14 103:1 106:23 107:17,23 108:1,4,12 109:9 109:17 123:3,6 <b>best</b> 15:18 <b>better</b> 6:3 7:5 72:16 <b>Betz</b> 22:21 <b>beyond</b> 117:14 <b>big</b> 26:15 36:21 97:9 112:1 116:15 117:1 <b>bills</b> 27:7 <b>Bishop</b> 28:1,14 <b>bit</b> 8:24 14:16 17:21 31:13 34:3 35:20 42:9,9,21 42:21 51:5 70:25 82:3 84:4 87:14 <b>bits</b> 120:16 <b>blah</b> 94:15,15,15 111:24,24,25 <b>block</b> 25:25 31:7 95:24 98:21 <b>blood</b> 124:15 <b>Board</b> 1:2 2:6,11 2:19 4:5,21 5:21 7:16 8:5 11:12 14:21,23 15:8,17 17:1 20:7,20 26:21 32:6 33:5 34:17 35:13 36:11 37:8 41:5 42:25 45:3,8,16 46:19 50:15 51:8 52:1 62:4,15 63:5 64:19 65:11,21 68:18 69:16 74:15 77:12,17 78:7,23	79:8 84:18,19,23 86:7 87:5,7,20 88:5,8,11,20 89:9 89:14,22 90:3,20 90:23 91:2,12,14 91:18,18,22,23,24 91:25 92:7,13 93:8,10,15,23 94:13,17,19 95:5 95:8 96:20 97:21 97:23 98:3,19 102:16 104:18 106:14 118:17 119:3,4,5,12 122:12 <b>Board's</b> 90:17 <b>Boat</b> 14:6,8,12 17:12,24 <b>boats</b> 14:13,14 <b>body</b> 92:12 <b>boiler</b> 103:9 <b>bound</b> 91:23 <b>Braaten</b> 124:7,22 <b>break</b> 47:20 <b>breakfasts</b> 26:3 <b>brick</b> 58:2 <b>bricks</b> 57:24 <b>brief</b> 4:15 <b>briefly</b> 9:18 <b>bring</b> 5:9 13:4 25:16,18 56:9 105:3 <b>bringing</b> 25:8 76:2 <b>brings</b> 6:13 <b>Broad</b> 9:1 10:21 11:10,17 12:1,3 110:1 <b>broken</b> 64:11 <b>broker</b> 19:20 <b>Brooklyn</b> 19:21 <b>brought</b> 39:14 59:24 <b>brushes</b> 16:4 <b>build</b> 4:23 5:7 9:3 37:13 46:7 59:2 61:6 117:15 120:6 <b>building</b> 1:20 3:1
<b>argument</b> 37:16 <b>arguments</b> 104:3 <b>arranged</b> 100:1 <b>art</b> 17:10 41:14,23 <b>article</b> 58:22 99:21 <b>artificial</b> 37:24 <b>artist</b> 5:6,12 9:5 11:16 12:6 16:24 16:24 17:4,5,6 19:11 20:2 36:5,7 36:9 38:20 41:13 42:2 43:4 60:24 118:22 <b>artists</b> 19:24,25 <b>artwork</b> 41:8 <b>asked</b> 14:1 122:20 <b>asking</b> 5:16 43:22 59:18 88:20 89:19 92:3,6 <b>asleep</b> 16:18 <b>aspect</b> 88:9 119:9 <b>aspects</b> 75:19 88:14 <b>assembly</b> 71:15,18 <b>assessment</b> 71:23 92:7 <b>asset</b> 19:17 <b>assign</b> 28:8 <b>assigned</b> 28:11 <b>assist</b> 22:3 <b>assistants</b> 27:6 <b>associated</b> 41:21 43:18 <b>assume</b> 60:9 83:7 <b>assure</b> 17:7 <b>Atlantic</b> 2:22 <b>attached</b> 45:11 <b>attempt</b> 17:16 <b>attended</b> 15:8 <b>attention</b> 96:4	<b>B</b> <b>B</b> 105:15 <b>back</b> 2:10 11:4 15:1 18:11 20:5 35:10 37:19 41:20 54:12 54:15 86:17 91:1			

4:24 6:14 7:11 21:20 24:12 26:15 29:6,14 30:12,17 30:24 35:16,16,22 36:14 39:4 41:23 43:10 44:13 54:2 54:12,23 55:1,1 56:24 57:2,4,6,9 57:11,18,22 58:6 58:11,15,19,25 59:2,4,6 60:3,11 60:13,23 61:14 62:5 63:12 69:12 72:5,21 86:10 95:22 96:23 99:19 99:24,25,25 100:13,23 101:3 103:8,10,14 104:15,18 107:7 114:7,10 117:15 117:24 118:6,8,8 118:14,18 119:8,9 120:2,7,15,25 121:1,15,17 122:19,21	<b>called</b> 24:7 27:12 28:17,21 <b>calls</b> 46:10 <b>campaign</b> 24:17 <b>Canon</b> 28:17 <b>capable</b> 25:8 <b>capital</b> 24:17 <b>care</b> 27:8 <b>carefully</b> 78:24 <b>Carlos</b> 22:24 <b>Carol</b> 10:19 11:7 11:20 101:22 102:21 <b>carried</b> 51:13 117:20 <b>carries</b> 8:21 21:11 33:19 70:5 99:10 <b>carry</b> 51:24 <b>case</b> 5:18 27:2 37:6 40:20 43:6,10 70:17 97:8 100:11 112:14,15 119:2 <b>cases</b> 10:2 33:24 119:10 <b>catch</b> 11:2 <b>category</b> 113:7 <b>center</b> 58:2 <b>certain</b> 72:2 77:9 <b>certainly</b> 16:21,22 36:13,23 38:3 40:23 41:13 46:18 60:14 74:8 96:2 111:17 113:6 114:19 <b>Certificate</b> 52:12 111:5 115:11 <b>certify</b> 115:17 124:9,13 <b>chair</b> 16:17 <b>Chairman</b> 1:13 2:3 4:10,20 7:20,25 8:9,12,18 10:6 11:1 15:19 16:9 16:25 17:13,17 18:16,20 20:16,24 21:1,8 22:5,11,13 23:14,22,25 29:24	30:7 31:11,23 32:4,8,9,11,15,24 33:8,10,16 34:10 35:1,5,8 36:2 39:12,22 40:2,10 41:9,24 42:6,11 42:14,22 44:4,17 45:20 46:2,9,15 46:17,23 47:6,13 48:8,16,21 49:3,5 49:8,13,18,20,22 49:24 50:6,8,10 50:12,20,23,25 51:2 52:8,11,19 52:23 53:6,12 54:7,16,19 55:11 55:14,17,22,25 56:5 57:20 58:4 58:13 59:14,17,20 60:9 61:9,13,19 61:24 62:13,16,21 62:24 63:9 64:18 65:1,14,19,25 66:13,17 67:4,6,8 67:15,17,19,24 68:1,3,10,12,14 68:23,25 69:2,22 69:25 70:2,4,10 70:14 71:5 72:9 72:12 73:1,4,7,9 74:3,17,20,24 76:10,13,16 77:2 77:5,11 78:7,10 78:17,22 79:11,15 79:19 80:1,6,8,10 80:18,20,22,24 81:5,8,10,15,18 81:20,22 82:1,8 82:11,21,24 83:3 83:6,14,17,19,21 83:23 84:3,10,13 86:25 87:4 88:3 88:19,23 89:1,6 89:12,16 90:1,5,8 90:11,19,24 92:2 92:19,25 93:21 94:11,17,25 95:7	95:12,19 96:7,19 97:11,14,20 98:10 98:14 99:6,9 100:8,11,21 101:1 101:8,12,15 102:4 102:9,19,24 103:2 103:5,7 104:7,24 105:2,12,22,25 106:4,12,14,17,21 106:24 107:10,15 107:18,24 108:2,5 108:10,13,22,25 109:5,10,14,16,18 109:22 111:9 112:3,9,13,18,22 112:25 113:3,8,21 114:1,5,24 115:4 115:7,12,19,23 116:17,20,25 117:4,7,10 118:25 121:15 122:1 123:1,4,7 <b>Chairperson</b> 87:7 <b>challenge</b> 36:3 113:21 <b>chance</b> 7:21 101:20 <b>change</b> 5:22 25:3 26:5,5 47:24 51:25 58:7 66:24 78:3 <b>changed</b> 19:22 <b>changes</b> 26:8 31:6 72:20 <b>changing</b> 114:23 119:19 <b>character</b> 5:23 47:25 66:24 81:2 <b>charged</b> 119:15 <b>Charles</b> 1:14 <b>Charlie</b> 108:3 109:16 <b>chart</b> 47:16 <b>check</b> 70:24 <b>child</b> 110:14 <b>Christian</b> 26:25 <b>church</b> 22:18 23:11 24:4 26:23,24	27:2,12,19,23 29:15 31:25 70:19 72:10,14,16 73:6 73:7,13,18,19,21 74:6 75:21 76:20 77:15,24 80:3,4 82:13,16 <b>churches</b> 26:2,25 <b>cigarette</b> 19:5 <b>Cindy</b> 12:7 14:5 15:13 <b>City</b> 22:22 <b>Claudio</b> 10:20 13:18 22:9 <b>clean</b> 6:4 45:2 51:19 <b>cleaned</b> 44:21,23 44:24 <b>cleaning</b> 38:10 <b>cleanup</b> 38:3 39:10 40:1 45:24 46:4 52:10,14 <b>clear</b> 27:22 42:20 117:24 <b>clearly</b> 6:1 35:16 37:5 116:4 <b>close</b> 8:7 20:22 33:5 33:6 117:7 <b>closed</b> 8:22 21:12 29:13 <b>closest</b> 13:15 <b>closing</b> 8:6 20:20 <b>Code</b> 3:5 9:9,15 26:9 39:13 44:25 45:23 46:9 56:23 59:1 63:4,15,18 63:23 69:15 71:25 85:21 97:22 111:16 112:6 113:1 117:15,17 118:5 119:15,24 122:12 <b>coffee</b> 27:15 <b>color</b> 37:25 <b>combination</b> 36:8 <b>combined</b> 85:17,19 85:21 86:2,4
<b>C</b> <b>C</b> 52:9 115:6,7 124:1,1 <b>CAC</b> 105:21,23 106:9 <b>calendar</b> 87:19 <b>call</b> 24:6 25:6 49:11 83:15				

<b>come</b> 17:8 18:22 19:25 24:22 32:12 45:16 73:16 104:8 109:6 121:6 122:18,22	<b>conclude</b> 6:17 75:11	85:18 86:12 102:11 105:5,13 119:5,6	82:22,25 83:2,5 83:17,18 86:24 87:1 89:4,7,13,25 90:2,6,9,12 91:6 91:10 92:15,23 93:20 94:5,12,24 95:2,16 96:5,8 97:9,12,15 98:5 98:13 99:5,7 100:7,9,13,17,19 101:7,11,13 102:18,23,25 103:3,6,8,16,19 104:2,23 105:1 106:16,20,22 107:14,16,25 108:9,11,21 109:13,15,20,24 110:9,12 111:7,19 114:15,19,22 116:7,14,19,23 117:4,11 119:24 121:13 122:7,11 123:5	<b>criteria</b> 5:20 74:21 75:8 <b>currency</b> 37:23 <b>current</b> 7:13 112:5 115:17 <b>currently</b> 102:6 <b>cycles</b> 87:15 <b>Cynthia</b> 11:16 12:6 12:8 17:20
<b>comes</b> 27:13 75:8 87:18 88:3 118:22	<b>condition</b> 14:23 39:1,24	<b>contact</b> 12:19	101:7,11,13 102:18,23,25 103:3,6,8,16,19 104:2,23 105:1 106:16,20,22 107:14,16,25 108:9,11,21 109:13,15,20,24 110:9,12 111:7,19 114:15,19,22 116:7,14,19,23 117:4,11 119:24 121:13 122:7,11 123:5	<hr/> <b>D</b> <hr/>
<b>comfortable</b> 38:13 45:6	<b>conditions</b> 6:25 7:13 39:5,6 43:7,8 45:11 50:2 51:11 68:6 83:10	<b>contains</b> 124:10	<b>Costello</b> 8:25 12:7 12:24,25 15:25 16:13 17:6,14 20:5,6 22:7,10,11 53:17 54:5 58:1 62:20 66:4 70:8 70:13 109:25 111:20	<b>Dank</b> 26:18,20,22 30:18,22 72:24 77:7 84:1
<b>coming</b> 119:21	<b>conduct</b> 88:1	<b>contend</b> 122:11	109:13,15,20,24 110:9,12 111:7,19 114:15,19,22 116:7,14,19,23 117:4,11 119:24 121:13 122:7,11 123:5	<b>date</b> 14:7 86:20 93:15,16 105:3
<b>comment</b> 12:23 33:2 118:25	<b>confidence</b> 29:22	<b>continuation</b> 2:21 4:12 39:9	<b>controversial</b> 104:16	<b>dates</b> 87:23
<b>comments</b> 4:18 8:1 17:17 32:13 33:23 36:12 37:8,11	<b>confirms</b> 78:5,6	<b>continue</b> 73:18 101:3	<b>convened</b> 2:1	<b>Dave</b> 32:16 113:12 114:13
<b>commercial</b> 17:23 29:9 34:19,20 36:18 37:5 40:24 41:1,11,25 43:24 44:1,13,15 51:12 51:14,16,20 61:3 65:5 69:6	<b>conform</b> 56:22,23	<b>continuing</b> 36:4 61:20	<b>convenience</b> 98:25	<b>David</b> 1:15,19 4:21 10:15 100:24 104:21
<b>Committee</b> 119:15	<b>conformance</b> 59:24	<b>control</b> 28:10 38:22	<b>converting</b> 122:4	<b>day</b> 16:1 37:19 118:2 124:18
<b>commodity</b> 5:12	<b>conformed</b> 102:6	<b>corner</b> 3:7 5:14,19 31:12	<b>cool</b> 26:14	<b>days</b> 16:7 28:20
<b>community</b> 19:18 20:3 78:2	<b>conforming</b> 13:8 40:7,15	<b>corners</b> 10:11	<b>cooler</b> 18:10	<b>dead</b> 91:17
<b>compared</b> 57:4,6	<b>conformity</b> 6:18	<b>correct</b> 54:4 55:16 62:17 90:5 91:9 95:19 107:8 114:13 124:11	<b>cooling</b> 18:10	<b>deal</b> 29:3,22
<b>compelled</b> 40:14	<b>confused</b> 35:14	<b>correction</b> 82:12	<b>corner</b> 3:7 5:14,19 31:12	<b>death</b> 13:25
<b>compelling</b> 71:19 71:21,23 72:1	<b>confusion</b> 49:14	<b>corrections</b> 106:15 107:1	<b>corners</b> 10:11	<b>Debra</b> 22:23
<b>competent</b> 79:3,22	<b>congregation</b> 25:10	<b>correctly</b> 98:6	<b>correct</b> 54:4 55:16 62:17 90:5 91:9 95:19 107:8 114:13 124:11	<b>decision</b> 41:3 46:20 50:15 63:1 65:22 68:18 77:19 90:18 90:20 92:14 95:13 101:23 102:21 104:8,20
<b>complaint</b> 113:22 113:25 114:2	<b>conjunction</b> 90:17	<b>correspondence</b> 30:1 60:6	<b>correction</b> 82:12	<b>decisions</b> 104:17
<b>complete</b> 39:25 46:4 55:8	<b>connection</b> 5:3 30:2 44:9	<b>Corwin</b> 1:15 8:15 10:15 21:5 30:5,9 30:10,15 31:3,18 31:24 33:13 34:25 37:10 42:23 43:22 44:19 46:14,21 47:10 48:7,15 49:11,18,19 50:6 50:7,21,22 53:3 65:24 66:2,18 78:19 79:14,16 80:1,2,18,19 81:5 81:6,16,17 82:19	<b>corrections</b> 106:15 107:1	<b>declare</b> 46:25 78:12
<b>completed</b> 51:22 52:10	<b>consider</b> 20:15 86:17 96:11 98:4 102:17	<b>correctly</b> 98:6	<b>correctly</b> 98:6	<b>declared</b> 78:13
<b>completely</b> 55:7 59:3 64:14,17	<b>consideration</b> 50:14 68:17 75:22 77:12 79:5 89:1 94:4 105:17	<b>correspondence</b> 30:1 60:6	<b>correctly</b> 98:6	<b>declares</b> 66:9
<b>completion</b> 39:10 45:21 52:13	<b>considerations</b> 60:17	<b>County</b> 2:23 9:1 21:15 85:1 99:17 104:22 107:5 124:5	<b>correctly</b> 98:6	<b>declaring</b> 66:10
<b>complicated</b> 2:14 51:5 88:4	<b>considered</b> 36:25 86:12 113:16	<b>couple</b> 25:4 26:6	<b>correctly</b> 98:6	<b>decreasing</b> 60:1
<b>complication</b> 92:12	<b>considering</b> 73:14 74:12	<b>course</b> 22:17 36:6 42:3 51:23 52:13 57:10 63:6 65:4 65:14 98:22	<b>correctly</b> 98:6	<b>dedicated</b> 121:1
<b>computer</b> 28:8	<b>constant</b> 29:15	<b>Court</b> 124:7	<b>correctly</b> 98:6	<b>deemed</b> 58:22
<b>concerning</b> 77:14	<b>construct</b> 2:25 6:12 21:17 85:5 99:20 107:5	<b>cover</b> 97:8	<b>correctly</b> 98:6	<b>deficiency</b> 62:17
<b>concerns</b> 27:5	<b>constructed</b> 7:12	<b>create</b> 41:23	<b>correctly</b> 98:6	<b>definitely</b> 62:20
	<b>construction</b> 35:11 40:7 45:21 46:11 46:11 52:13 55:8 59:21 63:24,25 64:1,7,10 82:12	<b>created</b> 48:1 67:1	<b>correctly</b> 98:6	<b>definition</b> 118:7,18
		<b>creates</b> 85:9	<b>correctly</b> 98:6	<b>degree</b> 58:7

<b>DeJesus</b> 22:25 32:2 32:19	72:13 74:20 78:24 98:2	52:3 68:7 72:6,18 73:24 80:15 83:8 99:18,21,22,23 102:6 105:7,7	22:20	77:25
<b>delaying</b> 88:9	<b>differently</b> 89:18	<b>divide</b> 25:2 29:19	<b>Eastern</b> 26:1	<b>essential</b> 29:6 81:1
<b>delays</b> 3:13	<b>difficult</b> 37:22 74:4 81:23 82:2	<b>divided</b> 82:19,25 83:2	<b>easy</b> 104:16	<b>estate</b> 13:17,24 19:20
<b>deliberate</b> 88:16	<b>difficulties</b> 76:21	<b>doctors</b> 118:3	<b>economically</b> 26:16	<b>Eunice</b> 22:18
<b>deliberation</b> 104:12	<b>difficulty</b> 7:8 42:11 50:13 68:16	<b>document</b> 41:3 63:1 101:23 102:5 102:9,17,21 104:9 104:20 106:9,18 106:25 107:8,12 107:19	<b>effect</b> 6:24 38:7 41:7 50:1 68:5 83:4	<b>evaluate</b> 5:21
<b>deliberations</b> 69:11	<b>dig</b> 8:24	<b>documentation</b> 76:25	<b>efforts</b> 51:19	<b>evaluating</b> 66:21
<b>demand</b> 28:12	<b>Diocesan</b> 28:1	<b>documents</b> 64:8 74:23 101:18	<b>Eileen</b> 1:20 10:5 22:6 116:3,3	<b>evaluation</b> 64:22 114:6
<b>demonstrate</b> 71:17	<b>direct</b> 18:17 32:5 80:15	<b>doing</b> 24:1,15 40:15 89:20 90:6 100:19 103:21	<b>either</b> 43:4 58:14 65:18 111:14 112:16	<b>Eve</b> 10:16
<b>demonstrated</b> 79:2 79:21	<b>directing</b> 93:23	<b>door</b> 18:11 22:22	<b>Ellen</b> 1:16 84:6	<b>event</b> 93:17
<b>denial</b> 93:14	<b>direction</b> 35:14 54:6 79:13 81:23 104:1	<b>doors</b> 19:2 25:4	<b>employees</b> 73:6,19 75:21 82:15	<b>everybody</b> 48:3 86:20,22 101:19
<b>denied</b> 87:21	<b>directions</b> 65:20	<b>dormers</b> 60:12	<b>enables</b> 75:21	<b>evidence</b> 79:3,22 80:3
<b>Denise</b> 1:17 2:8 33:10	<b>directly</b> 10:9 25:24 34:21 45:22	<b>double</b> 5:14	<b>encompass</b> 98:21	<b>exactly</b> 56:21 75:23 102:13 122:7
<b>dentists</b> 118:3	<b>disappear</b> 82:23	<b>Doug</b> 1:13	<b>ended</b> 62:8	<b>exceed</b> 21:22
<b>deny</b> 87:25 92:1 93:17	<b>discharge</b> 102:10	<b>downward</b> 27:23	<b>Enforcement</b> 39:13 44:25 112:6	<b>exchange</b> 38:9
<b>denying</b> 93:24	<b>discontinue</b> 112:16 112:22	<b>do-over</b> 90:9	<b>engage</b> 70:22	<b>excuse</b> 31:20 65:12 102:1
<b>Department</b> 103:10 120:16 122:19,21	<b>discontinued</b> 112:20	<b>draw</b> 5:11	<b>engraving</b> 37:19,21 37:22	<b>executors</b> 13:24
<b>dependent</b> 76:7	<b>discuss</b> 33:24 88:11 109:20	<b>drawings</b> 15:21 63:24,25 64:2	<b>enlargement</b> 58:24	<b>exercise</b> 71:14
<b>depends</b> 103:12	<b>discussed</b> 13:10,23 14:25 66:1 79:4 104:10 119:9	<b>draft</b> 104:25	<b>enormous</b> 78:1	<b>exist</b> 5:9 27:23 76:6 7:10 9:4 12:10 21:18 51:20 54:22 56:2,3,24 64:10 100:12,23 101:24 107:6 115:11
<b>described</b> 37:2	<b>discussing</b> 39:17	<b>drawn</b> 7:18	<b>entertain</b> 4:18 8:5 20:20 33:4	<b>existing</b> 2:25 4:24 7:10 9:4 12:10 21:18 51:20 54:22 56:2,3,24 64:10 100:12,23 101:24 107:6 115:11
<b>design</b> 17:4	<b>discussion</b> 7:22 8:12 21:1 33:11 34:17 40:3 41:4 41:24 47:6 52:24 53:18 64:19 70:23 74:14 77:18 88:22 109:22 119:21 120:14	<b>driveway</b> 15:14,15	<b>entire</b> 95:24 98:21 106:2	<b>exists</b> 62:17 119:13
<b>designed</b> 100:2 118:1	<b>discussions</b> 35:15	<b>dual</b> 72:17	<b>entirely</b> 36:20	<b>exiting</b> 36:19
<b>desire</b> 24:19 36:4	<b>disinterested</b> 113:17	<b>due</b> 54:10 87:6	<b>entities</b> 25:1	<b>expand</b> 74:7 97:23
<b>desired</b> 36:12	<b>displaced</b> 53:15	<b>dwelling</b> 21:23 100:4 101:25 105:5	<b>entity</b> 17:9	<b>expanded</b> 95:23 97:2
<b>desires</b> 119:19	<b>distinguishing</b> 36:6	<b>dwindling</b> 28:3	<b>entrances</b> 26:9	<b>expansion</b> 26:15 37:12 38:13
<b>despite</b> 105:17	<b>distributed</b> 102:2		<b>entrust</b> 106:14	<b>expect</b> 96:3
<b>detached</b> 21:22 100:10,12	<b>district</b> 21:16,19 32:22 35:18 50:3	<b>E</b>	<b>environment</b> 6:25 50:2 68:6	<b>expected</b> 36:20 95:9
<b>deteriorating</b> 101:4		<b>E</b> 124:1	<b>environmental</b> 50:2 68:6	<b>expensive</b> 28:18
<b>determination</b> 93:5 101:18,23 102:14 102:20 104:20 113:13		<b>eager</b> 28:24	<b>Episcopal</b> 22:18 26:24 27:12 31:25 70:19	<b>experience</b> 28:23 44:25 104:14
<b>determined</b> 112:11		<b>earliest</b> 98:24	<b>equipment</b> 36:18 36:19 41:11 42:1 51:17	<b>explain</b> 87:4
<b>detriment</b> 5:24 47:25 66:25		<b>early</b> 111:15	<b>erected</b> 100:1	<b>expressing</b> 36:15 55:12
<b>dialogue</b> 61:1		<b>east</b> 3:3 10:14	<b>Eric</b> 10:16	
<b>Dick</b> 28:14 29:5 30:18			<b>especially</b> 76:11	
<b>difference</b> 86:9				
<b>different</b> 64:15				

## F

**F** 124:1  
**face** 59:22  
**faces** 75:6  
**facilities** 24:17  
 25:13,19  
**facility** 41:10 44:12  
 44:13  
**fact** 58:5 63:1  
 73:25 77:16,22  
 102:2 111:7  
 112:14 114:15  
 115:15  
**factually** 55:16  
**fairly** 36:23  
**fallen** 16:18  
**familiar** 114:9  
**families** 110:16  
**family** 19:8 28:20  
 114:9  
**far** 9:19 10:11  
 25:20 28:3 36:11  
 52:4 58:5 59:14  
 60:4 61:13 63:18  
 107:10  
**fast** 29:2  
**favor** 8:13 20:15  
 21:3 33:11 37:11  
 47:8,18 53:1  
 66:13 69:22 78:17  
 83:14 99:6 101:12  
 102:24 106:21  
 107:15,24 108:10  
 109:14 123:4  
**feasible** 6:9 26:16  
 48:12,23 67:11  
**February** 42:7,19  
**Federal** 71:1  
**fee** 29:8  
**feel** 36:22 40:13,23  
 115:14  
**feeling** 54:13  
**feelings** 23:16  
 36:15 37:7 54:18  
**feet** 3:2 9:7,10,16  
 11:15,20 12:5,16

12:18 16:7 54:3  
 60:10 85:10,12,12  
 85:13,15,16,18,24  
 85:25 86:1,3,5,5  
**fence** 25:22 38:10  
 39:11 40:1 52:15  
 52:16,19  
**Ferrer** 121:8,10,16  
**Fifth** 84:25 98:21  
 109:7  
**figure** 120:17  
**file** 9:18 10:5 11:3  
 22:2 34:6,11  
 53:19 113:15  
 114:11  
**fill** 70:25  
**final** 109:18  
**finally** 86:2  
**finances** 74:19 79:6  
**financial** 24:23,24  
 74:22 75:19,22  
 76:3,7,19 77:13  
 79:3,22 80:3  
**financially** 25:7  
**find** 10:23 34:6  
 53:14 117:15  
**Findings** 101:18,22  
 104:20  
**fine** 41:21 44:14  
 63:8 84:11 118:19  
 122:23  
**finish** 38:25 46:16  
 103:22 110:9  
 117:5  
**finished** 38:4  
**Firehouse** 1:9  
**first** 2:21 3:14  
 11:25 13:9 17:19  
 19:1,24 22:17  
 30:11,16 32:21  
 34:2 39:15 46:25  
 47:23 51:12 55:4  
 66:8 78:11 92:22  
 93:1 101:21  
 109:25 117:13  
 119:10 120:20  
**Fish** 5:3

**fisheries** 42:1  
**five** 2:7 9:16 54:3  
**five-family** 110:23  
**fix** 13:4  
**fixed** 19:7  
**flat** 15:7  
**flexibility** 53:25  
**floor** 9:6,12 30:11  
 30:11,16,16 56:1  
 57:12 117:23  
**follow** 87:17  
**following** 51:11  
 105:8  
**follows** 85:7 102:13  
 102:17  
**foot** 9:12 18:6  
**footage** 30:10,15,18  
 30:19  
**footprint** 40:18  
**force** 2:10  
**foregoing** 124:10  
**forget** 112:17  
**forgot** 66:6 70:14  
**formal** 103:9,11,14  
 103:21,24 104:4  
**former** 28:1  
**formerly** 24:7  
**fortunate** 19:11  
**forward** 29:2 62:25  
 64:22 65:2,21  
 66:8 74:12 78:8  
 89:9 90:1  
**forwarded** 84:18  
 87:8  
**forwarding** 87:10  
 96:21  
**forwards** 89:22  
**found** 97:6  
**foundation** 53:24  
 55:9 57:22 58:2  
**four** 11:20 12:18  
 28:13 82:1  
**Fourteen** 36:1,2  
**Fourthly** 68:4  
**four-family** 110:13  
 110:17,22 111:8  
 113:20 114:14,16

114:18 116:2,4  
**four-foot** 9:13  
 54:10  
**frame** 45:4,5  
**friends** 17:8 20:13  
**front** 3:4,6,8 4:21  
 5:15 32:16 40:20  
 62:4 111:1  
**Fry** 10:16  
**full** 2:8,10,11  
 120:15  
**fully** 40:15 60:7  
 100:12  
**full-time** 24:8,13  
**funeral** 25:25  
**further** 3:12 47:3  
 52:1 70:25 78:14  
 93:24 103:3  
 124:13  
**furtherance** 71:19  
**furthering** 71:21  
**future** 29:21 43:13  
 76:6

## G

**Gail** 19:1  
**gain** 7:2  
**Galleries** 121:19  
**gallery** 36:7 40:25  
 51:15  
**garage** 4:25 6:4 7:6  
 7:12 9:4 11:15,19  
 12:5,9,15,16,18  
 13:6 14:19 15:10  
 15:11 35:11,23  
 36:23 37:2 38:20  
 39:19 41:17,20,21  
 43:2,11,13,14,17  
 43:19,24 44:1,2,8  
 44:10 54:22 59:23  
 60:24 61:15,21  
 62:7,9 118:9,14  
 118:19 120:6,8  
**Gardiner** 22:19  
**gather** 9:21  
**general** 28:17  
 39:19 71:7,11

76:19 88:12  
**generally** 103:13  
 104:13 113:15  
**gentleman** 26:13  
 118:10  
**Gentlemen** 26:21  
**getting** 31:21 38:9  
 45:1  
**give** 23:15 34:3,13  
 38:8 45:4 75:21  
 88:12 92:8 118:22  
**given** 76:11 118:21  
**giving** 76:14  
**Glaser** 104:21  
 105:4  
**go** 17:10,19 18:11  
 18:12 25:6,15  
 27:17 35:14 38:10  
 38:11 41:14 45:24  
 47:19 56:25 86:17  
 86:25 89:3 90:15  
 91:17,22 96:17,25  
 99:11 103:3 104:1  
 116:14 118:11  
**God** 28:13  
**goes** 25:21 91:1  
 111:12,14 112:7  
 116:3  
**going** 7:4 13:21  
 17:9 19:23 24:2  
 24:21 27:5,22  
 28:4,5,6 29:13  
 33:21 37:18 38:10  
 38:11,11,18,19,21  
 41:19 44:21 47:16  
 54:3,21,23 55:1,5  
 55:7,9 56:12 57:3  
 57:12,14 59:12  
 61:16,17,18,22  
 64:12 75:24 79:14  
 79:17 84:8 89:14  
 89:25 91:3 92:17  
 92:24 94:13 95:2  
 95:4 96:10 97:10  
 97:13 98:7 101:17  
 110:20 111:21,21  
 111:23 116:24

120:18,22 121:6  
121:24 122:8,9  
**good** 2:11 18:25  
20:14 27:9 38:1  
42:22 53:12 70:6  
70:11 97:14  
116:13 122:25  
**government** 71:11  
71:16,19,21,24  
**governmental** 71:9  
**grant** 39:1 63:16  
76:17  
**granted** 35:9 56:8  
81:1 121:7  
**granting** 5:24 43:9  
48:2 50:17 67:1  
68:19 73:12 74:13  
74:18 76:14 106:5  
**great** 18:19 19:13  
29:22 98:14  
**Greenport** 1:1,9,10  
2:6 3:5 4:22 9:9  
9:15 10:21 11:11  
11:25 12:2 22:18  
22:19,25 23:11  
85:1,21 107:4  
**ground** 57:23 116:5  
117:23  
**grow** 29:20  
**guess** 19:5 31:7  
56:18 94:6  
**guests** 17:8  
**gutters** 106:6  
**guys** 120:13

---

**H**


---

**habitation** 39:3  
65:13  
**hairs** 35:20  
**Halina** 22:19  
**hall** 77:25  
**Hampshire** 28:22  
**hand** 47:17 124:18  
**handle** 44:22,22  
57:9,11  
**Hanff** 20:9  
**Hanff's** 14:6,8,12

17:12,23 18:4  
**hangs** 27:14  
**happen** 38:12 57:3  
74:5 94:2 122:8  
**happened** 29:11  
57:17 120:22  
**happening** 77:23  
**happens** 38:22  
**hard** 18:7 44:11  
120:17  
**hardship** 76:3,19  
80:12 81:11  
**havea** 75:1  
**head** 41:14 72:8  
**heading** 65:20  
**hear** 30:14 91:19  
116:8  
**heard** 55:4,5 59:11  
**hearing** 2:22 4:9,13  
8:6,8,22,23,25  
15:21 17:1 20:21  
20:23 21:11,13,13  
32:5 33:5,7,19  
34:4 42:12 55:20  
55:21 66:1 84:21  
88:1 89:11,15  
90:4,25 91:4  
93:14,19 94:21  
98:7 99:1,15  
**Hearings** 2:18  
34:16  
**Heart** 29:11  
**heat** 26:14  
**heated** 5:8  
**height** 9:6,7,9  
11:14 58:10 60:3  
62:7 63:19 119:8  
**held** 1:9 55:6  
104:14  
**help** 6:4 22:7 23:17  
25:17 38:16  
**hereunto** 124:17  
**He'll** 28:23  
**Hi** 17:20  
**higher** 15:6  
**Historic** 14:21 20:7  
**history** 4:25 37:18

**hold** 97:12  
**Holohan** 22:24  
**Holy** 23:10 26:22  
**home** 18:8 19:13  
25:25 58:22  
**homes** 118:4  
**honest** 30:24  
**hope** 2:17 16:1  
17:11 20:14 22:2  
28:15 83:25 88:10  
121:1  
**hopefully** 29:13,21  
87:24  
**Horton** 18:25 19:1  
**hospital** 26:1 27:17  
34:21 35:1  
**house** 13:3 16:6  
19:9,12 20:9  
21:19 24:9,22  
25:2,4 26:4,7 32:2  
32:3,3,19,20,20  
32:21,23 59:22  
110:1,2,4,13,15  
110:17,21,22,23  
110:24,25 111:3,6  
111:8,18 112:2  
113:20 114:16  
116:3,15 117:1  
121:10,11  
**houses** 31:16,25  
**housing** 24:25  
25:11 29:4 75:22  
77:8

---

**I**


---

**idea** 117:11 119:23  
120:1  
**ideal** 29:3  
**identifies** 102:6  
**identify** 18:22 23:6  
**II** 47:2 66:10 78:14  
**imagine** 44:11  
**immediate** 13:15  
53:20  
**immediately** 73:16  
**impact** 6:24 50:1  
68:5 73:10  
**impelled** 40:13  
**implement** 71:12  
**implications** 56:6  
**important** 5:12  
19:16 62:11 76:2  
**impose** 40:23 71:12  
**imposes** 71:13  
**imposition** 71:17  
**impression** 40:4  
**improve** 13:2,3  
**improved** 19:25  
**improvement** 6:2  
7:3 12:10,12  
13:25 36:13,21  
60:14  
**improvements**  
13:12 15:22  
**improving** 7:4  
**impulse** 114:25  
**inaudible** 42:10  
**inches** 9:7 11:15  
12:5,16 54:5  
60:10  
**incidental** 117:18  
**include** 65:18 95:24  
102:10  
**includes** 40:25  
72:14 94:19  
**including** 51:14  
52:15 71:15 94:8  
**income** 28:2  
**inconsistencies**  
119:13  
**incorrectly** 105:6  
**increase** 59:15  
**increasing** 60:1  
**indicate** 4:4  
**indicated** 3:23  
36:19 76:18 87:16  
**indicates** 79:23  
**indication** 60:21,22  
92:6,9  
**indications** 15:22  
**indirectly** 97:7  
**industrial** 6:3  
41:12  
**inform** 11:12 96:2

**information** 3:22  
32:8 34:12 55:21  
77:13 78:5 96:24  
120:15  
**informed** 95:18  
**inherited** 7:9  
**initials** 66:20  
**Inn** 10:12 32:22  
**inner** 76:11  
**input** 34:18 88:8  
92:13 93:9  
**inside** 25:18  
**insisted** 28:2  
**Inspector** 1:20 55:1  
57:2 58:11,15  
63:12 95:22 96:23  
100:13 120:2  
**install** 40:1  
**installation** 39:10  
106:6  
**installed** 53:24  
60:20 65:17 69:9  
69:10  
**institution** 27:25  
71:16,18 72:4  
75:6 79:7  
**institutional** 77:16  
**Institutionalized**  
71:6  
**instructors** 38:7  
**insulated** 14:9  
**insurance** 18:2  
**intact** 86:8  
**intend** 15:11,15  
**intended** 13:13  
16:23 100:2  
**intends** 14:17  
**intense** 37:1  
**intention** 16:13,20  
39:20  
**interest** 71:20,22  
71:24  
**interested** 124:16  
**interesting** 2:15,16  
70:17  
**interference** 71:9  
**interior** 26:8

<b>interpretation</b> 120:2	<b>Joseph</b> 1:18	87:22 88:23 96:10	<b>Levin</b> 22:20	112:7
<b>interpreted</b> 120:10	<b>July</b> 1:5 2:6 87:11	96:14,15 97:10,13	<b>liability</b> 18:2	<b>lose</b> 29:16 58:17
<b>interview</b> 29:2	97:1,2 124:12	97:18,21 100:25	<b>lifted</b> 55:5	<b>losing</b> 58:16
<b>introduction</b> 34:4	<b>June</b> 3:21 107:21	101:19 104:1	<b>light</b> 5:10,11 6:13	<b>loss</b> 112:4
<b>invest</b> 64:1	124:18	105:22 110:18,20	37:17 40:6	<b>lost</b> 93:20
<b>involved</b> 18:3	<b>Junior</b> 27:7	111:4,7,9,20,22	<b>lighting</b> 37:24,24	<b>lot</b> 5:19 9:16 14:12
120:24	<b>jurisdiction</b> 88:1	111:23 113:12	<b>limit</b> 46:10	18:5,6 21:23
<b>Island</b> 26:1	91:19	115:20,21,21	<b>limits</b> 9:9 45:21	34:22 35:2,9 45:1
<b>issuance</b> 102:14	<b>justifiable</b> 23:17	116:12,16 117:12	<b>line</b> 3:3 9:13,17	80:4 85:7,8,9,11
<b>issue</b> 14:11 35:20	<hr/> <b>K</b> <hr/>	118:23 120:10,19	31:4,10 54:3 62:4	85:13,14,23,23,25
35:21 56:9 60:4	<b>Kalin</b> 101:22	121:5,18 122:22	80:12 84:6	86:11 111:24
66:8 70:23 72:13	102:21	<b>knowledge</b> 32:18	<b>lines</b> 36:24	118:2
73:15 78:11 95:14	<b>Kapell</b> 4:20,21 7:24	<hr/> <b>L</b> <hr/>	<b>listen</b> 78:24	<b>lots</b> 85:5 91:21
103:13	31:9 32:7,10,14	<b>lack</b> 79:1,21 87:6	<b>little</b> 8:24 17:21	<b>Louise</b> 107:3
<b>issued</b> 5:1 103:9	32:16,16 39:8,20	<b>Ladies</b> 26:20	24:3 31:12,13	<b>lovely</b> 12:12 83:25
104:18	39:23 41:15 44:20	<b>land</b> 71:6,12	34:3 38:12 42:24	<b>low</b> 28:24
<b>issues</b> 2:14 7:19	46:1,3 52:17	<b>language</b> 121:23	51:5 70:22,25	<b>lower</b> 61:14
34:15 36:16 39:13	53:10	<b>large</b> 25:9,10 34:22	78:24 80:11 86:6	<b>Lucia</b> 124:7,22
56:10 60:19 63:3	<b>Kearns</b> 9:25	44:10	87:14 118:9,12	<b>luck</b> 53:12 70:6,11
65:9 69:14,16	<b>keep</b> 15:15 29:10	<b>lastly</b> 7:7 51:3 69:3	<b>live</b> 19:1 28:19	<b>lucky</b> 20:10
77:14 79:5 88:13	29:12 95:18	69:10 82:4	77:23	<b>lunch</b> 28:16
92:9 104:8 112:7	<b>kept</b> 28:5	<b>late</b> 18:12	<b>lived</b> 19:3 24:10	<b>LV</b> 10:12
119:6,17	<b>Kieran</b> 22:23	<b>laughter</b> 42:4	<b>living</b> 16:23	<hr/> <b>M</b> <hr/>
<b>item</b> 2:21 8:22 34:2	<b>kind</b> 16:11 25:17	<b>Laura</b> 29:5	<b>LLC</b> 10:12	<b>machine</b> 14:14
46:25 70:18 84:15	31:7 38:17 40:3	<b>Laurie's</b> 25:17	<b>located</b> 9:12 21:16	<b>mail</b> 96:11
86:16 93:13 98:14	42:25 56:12,13	<b>Law</b> 90:14	84:25 99:17	<b>mailed</b> 10:1
99:12 104:19,23	60:1 94:10 98:9	<b>lawn</b> 25:23	<b>location</b> 6:11 9:11	<b>mailing</b> 97:3
105:1,4 107:3	104:4 116:13	<b>lay</b> 27:2,24	40:4	<b>mailings</b> 22:1
<b>items</b> 60:23	<b>kinds</b> 77:22 113:9	<b>layout</b> 30:9	<b>loft</b> 36:7	<b>main</b> 10:15,16,17
<b>IV</b> 99:21	<b>kitchen</b> 60:22	<b>Lead</b> 47:1 66:9	<b>long</b> 4:25 19:9 26:1	16:9 21:14 22:25
<hr/> <b>J</b> <hr/>	<b>knew</b> 38:9 55:8	78:12	59:3 73:18 100:24	26:2 32:20 61:21
<b>James</b> 22:21 84:22	121:5	<b>leads</b> 106:7	100:25 114:12	77:21 99:16
101:21 102:21	<b>know</b> 5:2,11 7:22	<b>leave</b> 6:16 84:8,9	120:3	108:20 117:23
<b>Jarrett</b> 10:17	14:3 16:16,22	102:12 106:5	<b>longer</b> 37:6 42:8,19	118:11
<b>jeopardy</b> 115:14	18:1,11 19:24	117:2	83:4	<b>maintain</b> 25:12
<b>Jersey</b> 22:21	20:5,11,12,14	<b>leaves</b> 27:18	<b>long-range</b> 25:5	54:9 71:24
<b>Jimmy</b> 19:4	25:9 28:7,18,18	<b>left</b> 40:6	<b>Long-term</b> 24:19	<b>maintained</b> 24:11
<b>job</b> 20:14	29:10 31:1,14,14	<b>legal</b> 113:15	<b>look</b> 9:18 10:3 15:5	73:18
<b>Joe</b> 3:18 57:18	34:23 36:11 38:15	<b>Leonard</b> 26:17,18	75:9 93:7	<b>maintenance</b> 24:16
117:3	40:12 41:17,19	26:21	<b>looked</b> 15:8 62:8	29:12,15 58:23
<b>John</b> 8:25 12:7,24	42:9 43:6 44:2	<b>letter</b> 4:4 14:1	114:8	<b>making</b> 27:8 97:4
18:5 20:5,6 53:16	45:4,7,15 46:5	88:19 93:9	<b>looking</b> 10:3 13:6	98:15 113:11
116:13	55:20 56:15,16	<b>letters</b> 10:22 11:5	22:1,6 23:14 25:9	<b>male</b> 24:21
<b>John's</b> 114:23	57:1,3 59:14 72:1	12:21 30:1 53:19	34:8 61:12 72:3	<b>man</b> 29:18
<b>joint</b> 92:4	74:4 75:1,3,7 76:6	60:16	73:10 74:7 93:22	<b>manner</b> 6:13 71:13
	76:25 77:15 80:2	<b>level</b> 28:2 61:14,21	119:16	<b>Manor</b> 22:19,21
			<b>looks</b> 22:7 44:13	

31:10 32:22  
**map** 2:23 9:2 10:9  
 21:15 72:7 85:1  
 99:17 104:22  
 107:5  
**Margaret** 99:15  
 108:19  
**marine** 41:25  
**Marion** 22:20  
**Market** 5:4  
**marriage** 124:15  
**material** 4:2 119:2  
**materials** 42:3  
 51:21  
**matter** 124:16  
**May's** 110:25  
**McDonald** 99:16  
 108:20 109:3  
 118:10  
**mean** 16:2 23:19,25  
 38:18 41:8 56:15  
 56:25 57:2 61:19  
 62:2,19,23 87:2  
 110:7 112:19  
 113:13 116:1,11  
 120:6,7,8  
**means** 71:20 89:13  
**meant** 41:9 89:16  
 97:19  
**meet** 17:24 63:17  
 109:6  
**meeting** 1:4,9 2:1  
 3:20,22 4:11  
 33:20 45:18 86:15  
 87:6,20,23 92:4  
 92:17 95:15 96:25  
 97:7 108:15,17  
 109:11 117:8  
 119:1 123:9  
**meetings** 87:24  
**members** 4:20 8:2  
 18:20 20:17 29:25  
 33:1 64:19 74:14  
**membership** 2:8  
**mention** 75:16  
**mentioned** 5:13  
 75:15

**Merrick** 10:19  
**method** 6:8 48:11  
 48:23 67:11  
 105:17  
**mind** 40:13 66:7  
 71:8 73:17 79:8  
 86:13,20 107:11  
 108:16 109:10  
**minimum** 9:16  
 85:11,14,24 97:22  
 122:2  
**minister** 27:1,19  
**minute** 10:7,23  
 28:21 34:6 47:21  
 66:19  
**minutes** 64:13  
 103:23,25 107:20  
 108:7 115:25  
**mirror** 45:23  
**missed** 105:25  
 106:12  
**missing** 115:22  
**Mitchell** 19:4  
**mix** 26:3  
**mixed** 25:21 77:22  
**modest** 29:18  
**modification** 57:10  
**money** 27:6 28:5,12  
 80:5  
**Monsell** 35:2  
**month** 86:14 93:19  
 94:3 95:1 97:18  
**months** 38:6 46:3  
 51:22 112:17  
**Moore** 1:13 2:3  
 4:10 7:20,25 8:9  
 8:12,18 10:6 11:1  
 15:19 16:9,25  
 17:13,17 18:16,20  
 20:16,24 21:1,8  
 22:5,11,13 23:14  
 23:22,25 29:24  
 30:7 31:11,23  
 32:4,9,11,15,24  
 33:8,10,16 34:10  
 35:1,5,8 36:2  
 39:12,22 40:2,10

41:9,24 42:6,11  
 42:14,22 44:4,17  
 45:20 46:2,9,15  
 46:17,23 47:6,13  
 48:8,16,21 49:3,5  
 49:8,13,18,20,22  
 49:24 50:6,8,10  
 50:12,20,23,25  
 51:2 52:8,11,19  
 52:23 53:6,12  
 54:7,16,19 55:11  
 55:14,17,22,25  
 56:5 57:20 58:4  
 58:13 59:14,17,20  
 60:9 61:9,13,19  
 61:24 62:13,16,21  
 62:24 63:9 64:18  
 65:1,14,19,25  
 66:13,17 67:4,6,8  
 67:15,17,19,24  
 68:1,3,10,12,14  
 68:23,25 69:2,22  
 69:25 70:2,4,10  
 70:14 71:5 72:9  
 72:12 73:1,4,7,9  
 74:3,17,20,24  
 76:10,13,16 77:2  
 77:5,11 78:7,10  
 78:17,22 79:11,15  
 79:19 80:1,6,8,10  
 80:18,20,22,24  
 81:5,8,10,15,18  
 81:20,22 82:1,8  
 82:11,21,24 83:3  
 83:6,14,17,19,21  
 83:23 84:3,10,13  
 86:25 87:4 88:3  
 88:19,23 89:1,6  
 89:12,16 90:1,5,8  
 90:11,19,24 92:2  
 92:19,25 93:21  
 94:11,17,25 95:7  
 95:12,19 96:7,19  
 97:11,14,20 98:10  
 98:14 99:6,9  
 100:8,11,21 101:1  
 101:8,12,15 102:4

102:9,19,24 103:2  
 103:5,7 104:7,24  
 105:2,12,22,25  
 106:4,12,14,17,21  
 106:24 107:10,15  
 107:18,24 108:2,5  
 108:10,13,22,25  
 109:5,10,14,16,18  
 109:22 111:9  
 112:3,9,13,18,22  
 112:25 113:3,8,21  
 114:1,5,24 115:4  
 115:7,12,19,23  
 116:17,20,25  
 117:4,7,10 118:25  
 121:15 122:1  
 123:1,4,7  
**morning** 27:13  
**motion** 8:7,21  
 20:21,22 21:11  
 33:4,19 47:3 51:4  
 66:11 69:3,18,19  
 70:5 82:4 83:9  
 84:16 86:22 87:1  
 89:2,7 93:13 94:8  
 96:22 98:3,16  
 99:3,10,13 100:5  
 101:9 102:20  
 106:19 108:6,14  
 109:11,19 123:2  
**motions** 103:10,11  
 103:14  
**motive** 75:4  
**move** 2:17 4:7,19  
 8:23 30:3 33:6,21  
 46:19 52:20 54:3  
 62:25 64:21 65:1  
 65:21 66:7 74:11  
 77:18 78:8 101:17  
 107:12 116:20  
**moved** 66:2 78:15  
 107:21 108:7  
**moves** 110:19  
**moving** 56:21,22  
 57:19 58:24 59:24  
 70:16,17

---

**N**


---

**N** 124:1  
**name** 12:24 18:23  
 18:25 23:6,8  
 26:21  
**names** 49:12  
**Nancy** 107:3  
**nearby** 5:24 48:1  
 66:25 77:23 97:5  
 98:20  
**Neary** 10:19 11:7  
 11:20  
**necessarily** 50:16  
 68:19  
**necessary** 3:24 4:6  
 23:12 58:4,8 98:2  
**necessitates** 5:15  
**need** 4:11 6:18  
 16:22 17:25 18:3  
 18:8 20:7 25:10  
 25:12,16 28:6,23  
 29:15 34:6 55:23  
 64:24 74:22 84:8  
 103:20 104:4  
 108:24 113:14  
 120:19  
**needed** 40:22 54:8  
**needing** 37:14  
**needs** 5:10 7:14  
 16:2 29:18 40:15  
 58:15 72:21,22  
**Neff** 1:16 8:7,16  
 10:25 17:3 20:22  
 21:6 22:4 31:14  
 33:6,14 34:8 35:6  
 40:9 41:6 46:22  
 47:11 48:6,19  
 49:2,20,21 50:8,9  
 50:23,24 52:22  
 53:4 57:25 60:8  
 65:23 66:12,15  
 67:4,5,15,16,24  
 67:25 68:10,11,23  
 68:24 69:20,25  
 70:1 72:25 73:3  
 75:16,18,25 77:20

78:20 79:17 80:6 80:7,20,21 81:7 81:18,19,24 82:10 83:13,19,20 84:8 84:12 <b>neighbor</b> 7:4 10:14 11:9,22,25 60:5 97:5 114:3 <b>neighborhood</b> 5:23 6:6,25 7:2 13:7,22 25:20 28:25 30:4 34:15 47:25 50:2 66:25 68:7 74:10 80:15 81:2 97:3 117:13 <b>neighbors</b> 13:11,16 20:13 22:23 30:4 53:20 60:5,16 94:9,22 95:3,17 95:21,23 96:3,9 96:13 98:20 <b>net</b> 6:2 7:1 <b>never</b> 111:2 <b>new</b> 1:10 10:15 12:9 22:24 23:1 25:7 28:14,22 39:6 40:18 53:24 55:8,9,21 56:9,11 59:3,6,21 61:24 63:4 65:9 85:1,5,6 85:6,18 86:11 102:11 105:5 107:4 115:13 119:5,14 124:3,8 <b>newspaper</b> 94:21 98:24 <b>nice</b> 13:6 <b>night</b> 18:12 19:19 <b>nobody's</b> 112:11 <b>Nodded</b> 46:13 72:11 <b>noise</b> 47:21 <b>noncommercial</b> 43:19 44:1 <b>nonconformance</b> 59:15 <b>nonconforming</b> 3:1	37:12 38:14 58:25 101:25 107:6 111:10 112:10 113:7,14 <b>nonconformity</b> 58:17 <b>nonprofit</b> 77:17 <b>nonresidential</b> 34:22 65:15 69:8 <b>nonretail</b> 43:19 <b>normally</b> 26:25 27:7 40:19,21 41:11 88:17 <b>north</b> 5:9,11 6:13 12:1 13:14 31:9 32:22 37:17,20 40:5 54:4,8 59:22 60:6 85:8 117:13 <b>Notary</b> 124:8 <b>note</b> 38:2 102:5 <b>noted</b> 105:6 <b>notice</b> 9:21,24 23:3 23:3 54:21 55:16 96:11,18 97:2,17 97:23,24 98:1,2,8 98:23 <b>noticed</b> 9:19 21:25 <b>notices</b> 9:19 21:25 22:6 94:14,18 95:14,17 96:17 97:6,16 <b>notification</b> 13:20 94:9,21 95:21 98:18 <b>notifications</b> 9:25 10:1,8 96:25 <b>notified</b> 9:23 70:15 <b>notify</b> 95:2 98:19 <b>noting</b> 31:24 <b>notwithstanding</b> 95:16 <b>not-for-profit</b> 75:2 <b>no-brainer</b> 29:19 <b>nuisances</b> 39:14 <b>number</b> 66:23 67:9 67:20 68:15 116:22	<b>numbers</b> 105:3 <hr/> <b>O</b> <hr/> <b>O</b> 52:9 115:6,7 124:1 <b>object</b> 11:18 <b>objection</b> 11:13 12:15,17 39:8 <b>objections</b> 12:13 <b>obtained</b> 75:13 <b>obviously</b> 66:2 75:2 93:6 <b>occupancy</b> 52:12 72:17 111:5 <b>occupied</b> 82:15 <b>occupy</b> 117:22 <b>occupying</b> 39:21 <b>occur</b> 14:4 61:2 93:2 94:25 <b>occurred</b> 34:14 <b>occurs</b> 39:4 104:12 <b>offer</b> 32:10 41:15 106:17 123:1 <b>office</b> 16:17 117:18 117:21 <b>Officer</b> 112:7 <b>offices</b> 117:21 118:3 <b>official</b> 84:19 87:5 87:9,20 89:10 94:8 96:11 98:18 <b>officially</b> 89:21 93:4 94:1 95:5,8 96:20 110:18 <b>off-street</b> 15:12 <b>Oh</b> 10:6 11:3 30:7 42:13 65:25 89:16 109:22 110:8 111:12 112:1,22 <b>okay</b> 4:10 11:3 17:13 18:19 22:12 24:5 31:23 32:4 32:24 46:23 47:17 47:23 49:8,9 53:8 54:7 55:11,17 62:13 64:3,6,16 64:18,21 65:19	70:16 72:12 75:25 78:10 80:6 82:21 82:24 84:3,7,10 84:13 89:2,20 94:11,24 97:20 98:10 101:8 104:6 106:13 110:11 112:9 115:19 120:10 123:1 <b>old</b> 27:25 104:25 113:17 119:14 <b>old-fashioned</b> 28:1 28:7 <b>Olinkiewicz</b> 84:22 86:9 108:18 109:7 <b>once</b> 7:1,8 19:15 44:22 70:10 78:11 <b>ones</b> 2:15 10:2 75:20 102:1,3 <b>one-family</b> 21:19 21:22 31:4,19 32:1 38:21 43:4 105:5 <b>one-foot</b> 54:9 <b>Oops</b> 9:23 <b>open</b> 25:3 32:11 <b>operating</b> 16:24 17:9 <b>operation</b> 5:3 37:5 <b>opinion</b> 40:16 55:12 59:8 <b>opportunity</b> 18:17 37:13 <b>opposed</b> 8:19 21:9 33:17 40:25 47:14 58:6 86:11 <b>order</b> 25:12 <b>orderly</b> 6:5 <b>Ordinarily</b> 5:16 <b>Ordinary</b> 28:17 <b>organization</b> 75:2 <b>organize</b> 51:4 <b>original</b> 35:23 57:18 <b>originally</b> 86:8 <b>outcome</b> 124:16 <b>outfitting</b> 16:11	<b>outside</b> 18:11 72:20 <b>overview</b> 23:15 <b>owned</b> 37:3 <b>owner</b> 10:13 11:24 12:25 36:18 39:7 43:12,13 44:2 96:1 115:13,25 <b>owners</b> 9:23 119:20 <b>owner's</b> 17:18 <b>owner-occupied</b> 44:3 <b>owns</b> 120:3,4 <b>o'clock</b> 27:14,15 <hr/> <b>P</b> <hr/> <b>package</b> 24:23,24 <b>paint</b> 16:3 <b>painting</b> 13:4 <b>paper</b> 51:6 <b>papers</b> 77:4 <b>paragraph</b> 105:19 106:3 <b>parcel</b> 72:7 73:21 <b>parish</b> 25:7 28:9 <b>Park</b> 19:20,22 <b>parking</b> 15:12 34:22 35:1,9 <b>parsonage</b> 24:6 <b>part</b> 17:1 19:12 21:21 23:20,20 24:22,23 34:18 35:12 53:17 59:20 94:20,22 99:25 100:3 <b>participating</b> 66:5 <b>particular</b> 63:21 121:22 <b>parties</b> 94:12 124:14 <b>partner</b> 14:5 <b>pass</b> 39:5,6 44:22 76:16 104:17 105:18 <b>passed</b> 13:19 118:2 122:12 <b>passive</b> 36:23 <b>Pastor</b> 24:14 27:1
--	--	---	---	---

<b>path</b> 87:16	<b>Phil</b> 19:7	<b>plus</b> 96:3	<b>prevent</b> 58:22	52:15,18 54:14,17
<b>Patricia</b> 10:18	<b>Phillips</b> 42:8,18	<b>point</b> 15:20 16:10	<b>priced</b> 29:8	54:20 55:10,12,15
22:25	<b>phonetic</b> 19:4 71:3	24:12 26:19 42:15	<b>Priest</b> 24:8,21 25:7	55:19,23 56:11,15
<b>pay</b> 27:7 28:3 29:7	<b>physical</b> 6:24 50:1	44:4 53:18 77:20	25:12 26:14 27:1	56:18 57:1,6,13
96:4	68:6 72:20 77:3	94:7 97:4 114:15	27:4,11,12,13	58:11,14 59:5,8
<b>peak</b> 60:11	<b>piece</b> 5:19 32:7,10	120:23	28:11,19,22 29:17	61:16 62:2,14,19
<b>peaked</b> 60:12	51:6	<b>pointed</b> 34:16	73:2,3,4	62:22 63:8,11,22
<b>Pease</b> 11:16 12:6	<b>pieces</b> 120:17	<b>poll</b> 79:8	<b>priests</b> 28:9	64:3,6,9,16 65:12
14:5 15:13 17:20	<b>pin</b> 55:23	<b>polling</b> 69:23	<b>principal</b> 35:15	65:16 71:4 74:25
<b>Peconic</b> 118:12	<b>pitch</b> 13:7	<b>Pope</b> 107:3	<b>principally</b> 119:17	75:17,23 76:1,11
<b>Pell</b> 37:3	<b>pitched</b> 15:6	<b>portion</b> 80:14	<b>printed</b> 107:10	76:15 87:18 88:17
<b>Pell's</b> 5:3	<b>placard</b> 9:20 98:22	120:5,8 121:11	<b>prior</b> 3:21 7:10,10	88:25 91:5,9,16
<b>pending</b> 52:13	<b>placarded</b> 23:3	<b>position</b> 33:24	88:23 90:16,22	92:21 93:12 94:16
77:18 84:18 87:9	<b>placarding</b> 94:19	96:16	103:9	97:21 100:14,16
87:23 89:9 93:25	94:22	<b>positive</b> 20:2	<b>private</b> 18:1,8	110:5,7 112:6,11
<b>people</b> 4:16 19:14	<b>placards</b> 96:17	<b>possible</b> 15:16 78:3	73:22 74:10	112:15,20,24
20:1,6 27:3,24	<b>place</b> 9:21 18:9	88:16	<b>privately</b> 18:7	113:9,24 114:4
42:17 45:1 63:25	22:19,21 26:15	<b>possibly</b> 98:5	<b>probably</b> 5:11 16:6	115:3,6,8,18
113:17 120:13	35:3 39:15 41:14	<b>postage</b> 94:14	38:12 86:19 98:25	119:23 120:1
122:4,18	55:6 69:7 87:12	<b>posting</b> 94:10	<b>problem</b> 39:23,25	121:4,10,18,21
<b>people's</b> 27:5	121:3 122:13,14	<b>posts</b> 57:23 58:1	41:17 43:10 74:25	122:2,9,17
<b>Perforce</b> 27:21	<b>placed</b> 56:1	<b>potential</b> 64:23	75:1,13 104:2	<b>prominence</b> 77:21
<b>perimeter</b> 58:3	<b>plan</b> 63:23 90:23	<b>potentially</b> 33:25	111:19 120:12	<b>promise</b> 95:17
<b>period</b> 9:22 32:6	<b>planned</b> 97:16	<b>precipitate</b> 115:13	<b>problems</b> 16:14	<b>promised</b> 95:3
45:12,17,19 116:9	<b>Planning</b> 84:18,19	<b>precipitated</b> 114:2	119:18	<b>pronunciation</b> 71:2
<b>permissible</b> 46:18	84:23 87:5,7,19	<b>preclude</b> 50:16	<b>procedure</b> 104:4	<b>proof</b> 113:15
87:16	88:5,8,10,20 89:9	68:19	<b>proceed</b> 2:20 86:10	<b>properly</b> 23:2
<b>permission</b> 29:20	89:13,22 90:17,19	<b>preexisting</b> 111:10	94:3	<b>properties</b> 5:24
<b>permit</b> 2:24 21:20	90:23 91:2,14,18	112:10 113:14	<b>proceeded</b> 87:12	10:10,10 13:14
99:19 103:8,14	91:18,22,23,24,25	<b>prefer</b> 15:3	<b>proceedings</b> 17:2	20:9 22:17 34:19
104:18	92:7,13 93:9,15	<b>premises</b> 42:9	88:10 93:2 124:12	45:2 48:1 67:1
<b>permits</b> 104:15	93:22 94:13,19	99:24 105:9	<b>process</b> 3:12 65:4	74:10 79:6
<b>permitted</b> 5:1	95:5,8 96:20	117:19	74:12 77:19 88:5	<b>property</b> 3:3,9 5:13
35:17,22 72:18	98:18 119:3	<b>preparation</b> 94:20	94:23 98:8 115:1	5:14 6:2,5,11 7:5
102:12	<b>plans</b> 7:18 12:8,9	119:1	<b>produced</b> 5:22	7:11 9:13,23
<b>person</b> 71:15,18	13:11 15:23 19:17	<b>prepared</b> 46:19	47:24 66:24	10:18,20 11:18,23
110:19	59:5 62:8 63:14	64:21 65:21 77:17	<b>profit</b> 75:3,4,5	13:1,2 15:1 19:2
<b>personal</b> 32:18	63:17	78:7 102:16	<b>program</b> 29:6,12	21:15 23:2 24:2
36:15 37:3 40:16	<b>plate</b> 103:9	<b>present</b> 36:16	<b>progress</b> 93:24	24:11 26:13 31:9
54:12,17	<b>play</b> 39:14 76:12	<b>presented</b> 62:1,14	96:13	31:25 34:14,19,21
<b>Persons</b> 71:7	<b>please</b> 12:19 20:24	<b>presently</b> 53:23	<b>project</b> 3:24 11:10	35:9 36:17,20,22
<b>pertain</b> 63:4	33:8 48:3 49:12	105:9	23:5,9	37:9 38:3,17,23
<b>pertinent</b> 15:20	52:21 78:15 83:11	<b>Preservation</b> 20:7	<b>projection</b> 25:5	39:15,19 44:5,21
<b>perused</b> 10:5	107:22 108:8	<b>preserve</b> 44:12	<b>Prokop</b> 1:18 3:11	51:13,14,20,21,24
<b>petition</b> 115:16	109:12,19 110:10	<b>presume</b> 16:5	3:15,19 23:19,23	52:14 72:9,14,14
<b>phase</b> 7:22 33:20	<b>plenty</b> 95:14	<b>pretty</b> 86:7 114:12	38:24 43:6,25	72:17 73:13,21
34:17 53:18	<b>plumbing</b> 15:22	116:5	44:16 45:3 52:6,9	74:1,5 75:10,13

77:14 80:13 82:18 82:19,25 84:25 85:5 96:1 98:23 102:12 106:7 119:20 120:5 121:25 <b>proposal</b> 61:10 <b>propose</b> 51:8 62:16 <b>proposed</b> 3:2 6:23 9:6,11 11:10 49:25 52:20 54:11 61:5,5 68:4 72:5 82:7 85:9,13,18 85:23 86:2,8 105:13 <b>proposes</b> 4:23 5:7 9:3 21:17 86:10 91:20 <b>provide</b> 24:25 78:1 88:15 95:22 96:23 <b>provided</b> 79:1,20 <b>provisional</b> 108:21 <b>provisionally</b> 84:16 87:1,2 89:7,23 98:16 108:22 <b>public</b> 2:18,22 4:9 4:13,18 8:2,6,7,21 8:23,25 9:19 15:20 17:1,4,19 17:25 18:3,21 20:17,21,22 21:11 21:13 23:3 29:25 32:5,12,13 33:1,5 33:7,19 34:4,16 34:18 54:21 84:21 89:11,14 90:4,25 91:3 93:14,18,18 94:18,21 98:7,23 99:15 124:8 <b>pull</b> 51:6 <b>purpose</b> 14:19 18:14 90:13 100:3 <b>purposes</b> 37:3 39:18 74:6 <b>pursuant</b> 5:1 <b>pursue</b> 6:9 48:12 48:21,24 67:11	<b>put</b> 11:4 16:2 25:22 26:13 30:23 42:25 43:7,8,12 76:4 113:6 122:13 <b>puts</b> 95:25 <b>putting</b> 14:25 <b>p.m</b> 1:6 2:2 123:10 <hr/> <b>Q</b> <hr/> <b>quarters</b> 16:23 <b>question</b> 3:14 15:20 16:10 30:6,8 44:19 47:23 48:19 54:25 55:18 61:4 63:12 64:13 79:16 80:13 86:24 100:7 103:6 116:21,21 117:3,5 122:23,24 <b>questions</b> 7:17,21 12:20 15:17 16:25 17:14 18:15,17 32:5 41:4 47:20 70:21 78:23 82:2 122:18,20 <b>Quick</b> 29:2 <b>quiet</b> 7:3 <b>quite</b> 14:9,16 16:8 27:22 44:10 <b>quorum</b> 87:6,21,25 <hr/> <b>R</b> <hr/> <b>R</b> 124:1 <b>radius</b> 95:23 98:20 <b>raise</b> 11:14 12:4,15 27:6 <b>raised</b> 19:7 <b>raising</b> 14:19 <b>RALUPIA</b> 71:3 <b>Raphael</b> 121:8 <b>Rathbun</b> 1:17 8:11 8:14 20:25 21:4 33:9,10,12 47:5,9 48:4,14,16,18 49:7,10,16,17 50:4,5,18,19 53:2 66:14 67:2,3,13 67:14,22,23 68:8	68:9,21,22 69:21 69:23,24 78:9,18 79:9,10,24,25 80:16,17 81:3,4 81:13,14 83:12,15 83:16 <b>Rathbun's</b> 2:9 <b>razed</b> 29:14 <b>reaction</b> 60:4 <b>read</b> 11:7 21:24 23:12,24 53:17 60:6 71:7 79:16 79:17 85:2 90:13 <b>reading</b> 3:10 <b>ready</b> 2:3,20 <b>real</b> 19:20 35:20 118:7 <b>realize</b> 78:25 79:20 <b>really</b> 18:13 19:13 19:25 24:19 26:16 38:15 41:25 43:16 75:14 76:3,6 92:5 114:8 115:10 120:17 <b>reason</b> 35:12 43:15 43:15 87:19 <b>reasonable</b> 29:8 45:5,16 73:11 74:2 75:12 79:1 79:20 <b>reasonably</b> 15:7 <b>reasons</b> 24:1 <b>rebuild</b> 59:2 61:8 61:11 101:5 <b>rebuilding</b> 24:16 25:18 <b>rebuilt</b> 58:7 <b>recall</b> 40:2 <b>recalling</b> 98:6 <b>recap</b> 4:15 98:15 <b>received</b> 30:1 97:6 <b>recommend</b> 74:11 105:12 <b>recommendation</b> 38:25 <b>recommendations</b> 88:21	<b>recommended</b> 70:24 <b>recommending</b> 72:19 <b>reconstruct</b> 56:24 <b>reconstruction</b> 58:24 59:9,13,21 63:2 65:7,8 69:11 69:12,14 70:7 113:4,6 <b>record</b> 11:8 23:13 23:24 42:12 47:17 76:4 <b>rectory</b> 24:6,7 <b>recuperating</b> 2:10 <b>recusing</b> 65:24 66:3 <b>reducing</b> 53:25 <b>reference</b> 17:1 47:1 76:19 <b>references</b> 88:13 <b>referencing</b> 78:12 <b>referring</b> 39:18 <b>reflection</b> 62:20 <b>reform</b> 29:20 <b>regarding</b> 8:3 37:9 61:2 65:9 69:14 92:10 <b>regardless</b> 91:11 <b>regular</b> 1:4 2:5,19 33:21 93:1 108:15 <b>regulation</b> 71:13 <b>related</b> 43:8 51:17 124:14 <b>relating</b> 45:22 80:12 <b>relationships</b> 66:4 <b>relative</b> 34:23 63:3 65:2 66:9 69:14 88:14 <b>relatively</b> 28:23 <b>relaxation</b> 72:2 <b>relay</b> 63:1 <b>relevant</b> 50:15 68:17 <b>relief</b> 40:21 43:9 54:8 <b>religious</b> 27:20,24	71:6,10,14,15 72:4 <b>remain</b> 60:24 61:15 61:17 <b>remains</b> 17:11 <b>remember</b> 48:20 96:8 110:15,16 113:19 <b>remind</b> 45:7 <b>removal</b> 52:16 58:18 <b>rent</b> 14:8 17:12 29:8 <b>rental</b> 44:2 <b>renting</b> 122:5 <b>rents</b> 14:6 <b>repair</b> 27:9 58:23 <b>replace</b> 26:6 58:5 <b>replaced</b> 56:12 58:6 <b>replacement</b> 52:17 52:18 56:13 <b>Replacing</b> 52:19 <b>replicated</b> 74:9 <b>report</b> 111:18 <b>Reporter</b> 124:7 <b>represent</b> 16:12 <b>representative</b> 4:14 12:22 23:4 <b>represented</b> 44:20 110:1 <b>represents</b> 104:9 <b>request</b> 6:22 17:18 23:10,16 30:2 93:8 95:22 115:17 <b>requested</b> 4:8 6:15 11:14 12:4,14 34:1 49:15 54:1 65:2,3 67:20 69:4 80:25 82:5 <b>requesting</b> 24:20 92:4 <b>require</b> 40:14 48:25 51:25 54:10 65:10 69:15 <b>required</b> 9:22 15:1 23:19,24 40:19
---	---	---	--	--

90:21 97:23,24 <b>requirement</b> 6:20 46:5 94:18 122:3 <b>requirements</b> 63:18 65:10 73:23 83:8 <b>requires</b> 3:6 9:16 58:8 84:24 85:11 85:14,21,24 86:4 <b>requiring</b> 3:3 9:7 9:13 47:2 78:14 85:7,12,15,19,25 86:5 <b>rescinded</b> 45:10,13 <b>reserve</b> 7:23 <b>residence</b> 16:12 38:21 39:2,21 40:12 43:4 65:13 72:15 73:19 82:14 85:6 105:10,14 <b>residences</b> 117:21 <b>residency</b> 119:17 <b>resident</b> 11:17,24 117:20 <b>residential</b> 16:14 16:18 21:18 35:18 36:9 39:15,16,18 40:7 42:2 44:7,8,9 52:2 60:23 82:13 99:20,22,23 117:19 <b>residents</b> 72:22 <b>resides</b> 120:5 121:25 <b>resolution</b> 103:25 <b>respect</b> 63:14 <b>respond</b> 48:3 <b>response</b> 8:4,20 20:19 21:2,10 23:12 33:3,18 47:7,15 52:25 60:18 64:20 <b>rest</b> 27:18 84:3 106:5 <b>restoring</b> 14:13 <b>restrict</b> 43:23 61:3 <b>restricted</b> 43:25	44:3 <b>restriction</b> 43:12 82:17 <b>restrictions</b> 43:1 <b>restrictive</b> 71:20 <b>result</b> 40:17 69:10 73:12 <b>retail</b> 39:3 <b>retain</b> 106:7 <b>return</b> 75:10,12,14 79:1,2,20,21 <b>returned</b> 63:5 <b>revert</b> 38:18 41:20 43:2 73:23 83:7 <b>review</b> 3:12,17 4:3 14:21 24:1 33:22 34:13 63:24 65:10 78:14 101:20 <b>reviewed</b> 63:14 119:2 <b>reviewing</b> 62:4 <b>revisit</b> 45:18 <b>revolving</b> 41:25 <b>reword</b> 64:25 106:8 <b>re-notice</b> 4:11 <b>re-review</b> 69:15 <b>Richard</b> 9:25 21:14 23:8 70:18 <b>right</b> 9:24 18:19 19:13 24:13,20 30:3 31:11 44:16 44:24 47:22 51:5 55:25 57:25 58:18 58:20 60:8 64:11 70:16 71:8 81:25 83:5 87:18 88:17 91:4 93:10 94:5 96:5 97:1 100:16 101:7 102:3,4,8 103:16 106:11 111:14 114:25 115:9 116:7 117:12 118:16,20 <b>RLUIPA</b> 71:4,5 76:12 <b>road</b> 15:3,4 97:17 97:18 107:4	<b>Roe</b> 11:16 12:6,7 13:1 14:5 15:13 17:15,20,20 18:19 70:9,12 <b>roll</b> 83:15 <b>Ronald</b> 10:13 11:21 12:20 22:20 <b>roof</b> 12:4,15 13:7 15:6,7 60:13 <b>room</b> 40:6 111:24 <b>Rose</b> 10:13 11:21 12:20 <b>rule</b> 71:8,11 <b>run</b> 16:6 113:10 <b>running</b> 16:3 27:24 <b>runoff</b> 106:7 <b>runs</b> 27:1 <b>R-1</b> 21:16,19 31:12 32:21 52:2 72:6 72:18 83:8 102:7 105:7 <b>R-2</b> 99:17,20 102:7 105:7	<b>scheduled</b> 29:6 66:1 <b>schematics</b> 64:8 <b>Scott</b> 2:22 4:22,23 34:3,9 36:1 42:5,7 42:13,17 44:20 <b>seafood</b> 37:4 <b>seafont</b> 28:25 <b>second</b> 3:10 4:3 5:18 8:10,11 9:3,6 9:12 11:21 20:24 20:25 21:18 30:11 30:16 33:8,9 43:20 47:4,5 52:20,22 53:16 54:15,25 56:1 57:7,11 61:6 66:11,12 69:19,20 69:21 78:15,16 83:10,12,13 99:4 99:5,20 100:6 101:10,11 102:22 102:23 104:21 106:19,20 107:13 107:14,21,23 108:7,9 109:12,13 109:19 116:18,23 120:20 123:2,3 <b>seconded</b> 33:11 <b>secondly</b> 48:10 73:20 80:11 <b>section</b> 3:4,10 9:8 9:14 21:19 58:21 85:10,14,20,24 86:3 99:21 <b>see</b> 15:3,21 17:8 19:15,17 20:8 22:5 40:16 43:11 43:11 107:11 121:5 <b>seeing</b> 10:1 25:6 <b>seek</b> 99:19 <b>seeking</b> 66:11 84:23 <b>seeks</b> 2:24 72:16 85:4 <b>seen</b> 15:2 59:5	<b>self-created</b> 7:8 50:14 68:16 81:12 81:16 <b>sell</b> 17:10 111:22 <b>send</b> 88:19 96:1 <b>sends</b> 95:6 96:20 <b>Senior</b> 26:18,22 <b>sense</b> 75:3 93:24 <b>sent</b> 4:4 13:19 <b>sentence</b> 103:22 <b>separate</b> 25:1 26:9 70:21 72:7 73:25 94:14 121:15,16 <b>separated</b> 73:21 <b>September</b> 24:14 <b>SEQRA</b> 47:1 66:9 78:13 <b>service</b> 27:14,15 <b>servicing</b> 78:2 <b>session</b> 2:5,16 3:14 38:5 87:10 88:11 92:8,16,24 93:1 95:10 <b>set</b> 70:21 71:8 74:20 124:18 <b>setback</b> 3:6 5:17 6:19 9:14 40:17 40:19 54:9 56:8 58:9 85:17,22 86:4 <b>setbacks</b> 119:7 <b>sets</b> 22:7 <b>seven</b> 2:7 <b>Sexton</b> 24:15,24 72:23,24,25 73:1 73:2,3 <b>Sextons</b> 24:10 <b>Shapiro</b> 22:23 <b>Shook</b> 72:8 <b>shop</b> 14:14,15 <b>show</b> 19:14,14 <b>showed</b> 12:7 13:11 13:12 <b>shower</b> 65:18 69:8 <b>showers</b> 16:21 <b>shows</b> 121:18 <b>side</b> 5:17 6:19,19
<b>S</b>				
<b>Sacred</b> 29:11				
<b>sale</b> 13:22 112:5				
<b>sales</b> 19:23				
<b>sanctified</b> 115:15				
<b>satisfactory</b> 98:12				
<b>satisfy</b> 40:14				
<b>save</b> 87:14				
<b>saw</b> 9:24 90:14 96:4				
<b>saying</b> 19:21 28:5 31:22 42:12 59:10 77:1 81:15 91:14				
<b>says</b> 27:13,15 54:21 56:23 91:12,13,16 91:21 111:21 113:1 115:24 117:17 118:5,22				
<b>scale</b> 60:10				
<b>schedule</b> 84:20,20 86:14,18 89:10,11 92:15 93:14 99:14 99:15 108:15				

9:13 11:18,19,22 12:1,17,18 17:18 37:14,20 40:5 54:12 85:17,19,22 86:2,4 <b>Siemaszko</b> 22:20 <b>sign</b> 17:24 96:4 <b>signage</b> 94:14 <b>Signed</b> 12:20 <b>significant</b> 75:20 <b>signs</b> 94:10 <b>similar</b> 43:2 <b>simple</b> 41:16 63:10 <b>simplified</b> 73:24 <b>simply</b> 45:23 62:18 62:25 89:21 109:6 112:5 <b>Sincerely</b> 11:20 <b>single</b> 24:21 29:17 72:13 <b>single-family</b> 105:9 105:14 <b>site</b> 57:20 61:3,7 66:3 69:7 78:4 84:20 86:14,21 87:13 89:10,14 90:3,23,25 91:6 99:14 108:19 <b>sitting</b> 19:20 <b>situation</b> 3:7 35:12 74:9 <b>six</b> 9:7 11:15 12:5 12:16 46:3 51:22 60:10 112:17 <b>six-family</b> 116:16 <b>six-month</b> 46:10 <b>size</b> 30:20,22 56:21 85:11 <b>skipped</b> 86:17 99:12 <b>sleep</b> 16:16,16,17 <b>sleeping</b> 16:20 <b>Slope</b> 19:21,22 <b>slow</b> 42:24 <b>small</b> 4:23 5:7 25:7 59:25 <b>smoked</b> 19:5	<b>sold</b> 38:17,19,23 43:3,23,24 51:24 73:22 82:20,25 83:2 114:22 <b>solid</b> 57:9,11 116:5 <b>solution</b> 29:19 63:10 <b>somebody</b> 25:8 27:16 38:8 114:24 118:21 120:3,4,25 <b>somebody's</b> 111:23 113:11 120:22 <b>somewhat</b> 35:13 73:24 <b>soon</b> 89:23 <b>sorry</b> 9:24 22:13 30:7 31:23 34:10 41:9 52:7 54:14 59:23 62:2 70:14 82:11 89:3,17 104:24 105:3 112:25 117:10 120:4,14 <b>sort</b> 33:22 <b>sought</b> 4:15 6:7 48:10,22 67:9 85:3 105:15 <b>sound</b> 63:10 <b>sounds</b> 59:12 76:23 114:9 <b>south</b> 31:7,25 59:25 <b>Southampton</b> 10:17 <b>so-called</b> 122:5 <b>space</b> 5:8 17:22,23 18:1,8,14 <b>speak</b> 4:17 8:3 14:10 16:15 18:21 20:17 23:5 42:15 <b>speaking</b> 76:23 <b>specific</b> 7:21 93:22 <b>specifically</b> 96:9 113:19 <b>specify</b> 121:23 <b>spectrum</b> 37:25 <b>speed</b> 25:16,19 <b>spent</b> 3:25	<b>spiral</b> 27:23 <b>splitting</b> 35:19 <b>spoke</b> 3:21 <b>spot</b> 17:11 <b>square</b> 30:10,18,19 85:10,11,12 SS 124:4 <b>stability</b> 78:1 <b>stair</b> 9:11 59:16,17 <b>stairs</b> 14:25 54:11 <b>stairway</b> 63:22 <b>standards</b> 13:5 <b>start</b> 46:16 110:5,6 <b>started</b> 113:12 <b>state</b> 71:8 124:3,8 <b>stated</b> 51:10 58:20 <b>statement</b> 105:8 113:11 <b>states</b> 77:8 97:22 99:22 <b>status</b> 34:23 94:6,6 94:9 111:10 112:5 115:17 <b>statutes</b> 97:22 <b>stay</b> 18:12 24:22 <b>Sterling</b> 10:12 <b>stickler</b> 62:3 <b>stink</b> 97:9 <b>stipend</b> 28:24 <b>stipulate</b> 39:9 65:5 69:13 <b>stipulating</b> 39:25 <b>stipulation</b> 41:7 52:5 77:9 102:10 <b>stipulations</b> 40:24 61:2 69:6 73:15 82:14 <b>stop</b> 91:13 106:4 <b>storage</b> 36:17 41:1 41:10,20 42:18 51:16 <b>store</b> 41:7 118:13 <b>stored</b> 51:21 <b>stores</b> 41:14 <b>story</b> 9:4 57:7 61:6 <b>straight</b> 62:12 63:10	<b>straighten</b> 79:13 <b>straightforward</b> 111:20 <b>street</b> 1:10 4:21 9:1 10:11,13,15,16,16 10:17,21 11:10,18 11:25 12:1,3,12 13:9,18 15:16 19:1 21:14 22:25 25:24 26:2 31:8 32:17,21 34:20 35:5 37:4 77:21 97:6 99:16 104:22 108:20 110:1 117:13,14 118:11 119:10 <b>strictly</b> 36:9 <b>strongly</b> 53:19 <b>structural</b> 58:23 <b>structure</b> 5:5 12:10 16:12 37:14 40:8 40:11,12,18 41:18 43:3 44:7 53:22 56:2,3,7,9,11 61:20 63:4 65:6 76:20 86:10 117:16 <b>studio</b> 5:6 9:5 11:16 12:6 14:20 16:4,24 17:5,5,6 18:6 19:13 35:17 35:24 36:5,5,7,8 36:10,24 38:20 41:1,13 43:5,16 43:20 44:6 51:18 51:24 60:25 110:23 117:16,18 117:18,22,24 118:14,15,19 119:6,8 120:7,9 121:1,17,24 <b>studios</b> 117:11 122:5,13,15 <b>stuff</b> 46:7 94:10 116:13 <b>subdivide</b> 85:4 91:15	<b>subdividing</b> 86:11 <b>subdivision</b> 84:24 85:9 88:7,14 90:14 91:8 92:10 92:11 93:5,25 <b>subject</b> 5:14 <b>submission</b> 87:14 <b>submit</b> 5:25 <b>submitted</b> 10:23 11:5 23:20 <b>subsequent</b> 3:25 45:19 <b>substandard</b> 91:20 <b>substantial</b> 6:16,21 6:22 7:3 49:16 67:21 71:14 79:2 79:21 80:14 113:3 113:5 <b>sufficient</b> 5:17 76:9 <b>Suffolk</b> 2:23 9:1,20 21:14,25 85:1 99:16 104:22 107:4 124:5 <b>suggest</b> 62:24 86:13 95:20 <b>suggestion</b> 46:1 <b>summertime</b> 18:10 <b>Sunday</b> 27:13 <b>supply</b> 27:12,13 28:4 29:4,17 77:8 <b>supplying</b> 115:4 <b>support</b> 19:10 37:5 <b>supported</b> 60:7,15 <b>supporting</b> 53:20 <b>supports</b> 77:25 <b>supposed</b> 56:20 75:9,9 <b>sure</b> 7:25 10:18 13:20 17:15 22:14 23:6 27:8 30:23 32:14 44:23 71:1 75:17 81:24 103:7 111:13 114:4 120:22 <b>surprised</b> 55:20 <b>surrounding</b> 22:16 34:18
---	---	--	--	---

**survey** 113:23,24

113:24

**sustain** 78:4

## T

**T** 124:1,1

**table** 87:22

**take** 3:11 28:23

47:20 69:6 116:24

**taken** 124:12

**takes** 27:8

**talk** 17:21 105:20

**talking** 26:7 63:20

75:19,20 79:7

122:15

**tax** 2:23 9:2 21:15

72:7 85:1 99:17

104:22 107:5

**tear** 57:12,15 61:11

**tear-down** 61:7

69:12

**technical** 7:19

**technically** 40:20

**tell** 14:18 42:7 58:5

58:15

**telling** 20:8

**tenant** 11:17 14:6

15:13

**terms** 5:20

**test** 47:19

**testimony** 3:12

**thank** 3:19 4:10

7:20,24 10:6

17:13 18:18 20:15

20:16 22:15,15

26:20 29:23,24

32:15,24 42:22

53:10,11 64:6

70:8,9,12,13 84:1

84:2 108:5

**thanks** 64:16 76:2

**thereof** 117:20

**they'd** 112:16

**thing** 2:12 16:8

20:2 41:22 88:3

93:12 96:12

109:25 114:22,25

115:12 116:23

120:20,20 122:3

**things** 2:17 15:24

25:3 27:4 29:9

34:13 53:14 62:12

77:22 93:11

100:10 104:3

109:21 113:4,10

116:20 118:20

120:9

**think** 2:3,15 4:5

6:17,20,21 14:7

15:25 16:9 19:16

19:16 25:3 26:12

34:15 35:19 36:12

36:21 37:21 38:6

39:16,18 40:17

41:13,24 44:4,14

45:15,15 46:18

51:3 57:23 58:10

61:1 65:4 72:1

74:8 76:1,8 77:5

77:11 82:16 87:15

88:7 92:5 95:7

97:4 98:1,10

103:20 104:4,7,12

109:1 113:1

114:10,11 115:13

116:2,4,10 118:15

118:20 119:11,16

**thinking** 76:22

**Third** 1:10

**thought** 3:23 60:3

**three** 2:18 19:2

29:9 31:17,17,18

31:24 38:6 67:20

101:19 112:17,21

114:9 117:12

**three-car** 9:4 15:10

15:11 54:22 61:15

61:21

**three-family** 19:8

110:2,4,15,21

111:5 114:12

115:25 116:1,6,9

**three-foot** 85:19

**threshold** 122:17

122:19

**Thursday** 92:22,22

92:23 93:1 95:11

**Thursday's** 96:24

**tickled** 13:25

**tight** 104:11

**time** 3:23,25 7:23

9:22 19:9 36:3

45:4,5,12,16,19

45:20 46:10 49:14

51:22 55:4 84:6

87:14 88:9 94:7

95:4,7,13,14

97:24 100:24

108:23,24 109:2

113:10 114:12

116:24 118:21

119:8 120:3

122:25

**times** 9:20 21:25

119:3

**tired** 115:21

**today** 3:18 11:6

37:25 55:4

**today's** 13:5

**told** 42:19 57:14,18

96:13,14 100:14

**Tom** 25:16 29:5,16

121:3

**tonight** 2:8,11,13

43:21 57:17 59:8

96:22 103:17

121:22

**tools** 118:13

**torn** 53:23 54:24

55:2,3 56:7

**tortured** 120:13

**totally** 42:1 44:6

**touched** 20:10

**tour** 111:18

**Townsend** 31:10

32:22

**traffic** 14:12,16

18:6

**training** 38:5

**transcription**

124:11

**transcriptionist**

31:21

**transferred** 114:10

**trigger** 112:3

**triggers** 112:4

114:5

**Trinity** 23:11 26:22

**trouble** 45:1

**truck** 4:25 6:3 7:5

7:12

**true** 57:5 124:11

**truest** 75:3

**truly** 19:10

**Trustees** 118:17

**try** 25:6 26:14

53:13

**trying** 7:13 13:1,2,4

25:18 82:16 87:13

89:4

**tub** 65:18 69:9

**tuned** 104:13

**turned** 19:8 34:11

110:21

**twenty** 92:19

**Twenty-seventh**

92:21

**two** 3:8 10:2,25

11:5,13 12:4,13

12:21 13:10 15:13

20:12 22:7 24:19

25:1,15 26:9,10

27:2 31:17,18

37:18 38:5 39:6

53:19 67:9 73:6

82:13 85:5,6

87:23 97:17

110:16 113:16

116:22 117:21

**two-family** 26:4

31:5,16 32:3,20

32:23 85:6 99:22

99:23 100:3

**two-story** 117:16

118:14,15,19

**type** 47:2 60:23

66:10 78:13 79:7

98:2

**T.V** 37:18

## U

**UELLEND AHL**

30:20 35:4,7

53:11

**unanimous** 48:9

66:18 104:17

**unaware** 55:7

**uncertain** 119:21

**uncomfortable**

14:10

**undecided** 50:21

**understand** 12:3

41:6 61:14 77:2

89:5,8 90:12

**understanding**

53:22 100:17

**undesirable** 5:22

47:24 66:23

**unfortunately**

99:12

**Uniform** 63:14,18

**unique** 74:8 79:5

80:13

**unit** 21:18,23 99:20

**units** 82:13

**unrelated** 42:1

**untrained** 27:3

**unusual** 3:7 35:11

44:10 55:19

**upcoming** 99:1

**upside** 82:3

**upstairs** 111:2

**up-to-date** 28:8

**use** 3:24 4:5 6:5

7:10 15:11 17:12

17:22 21:21 26:12

34:23 35:17,23

36:9,22,24 37:1,9

38:14,17 40:25

41:10,12,12,17

42:2,3,8 43:1,13

43:18,19,23,24

44:1,5,6,9,15

51:14,17,23,25

61:20 65:13,15

70:20 71:6,12  
 72:16 73:12,19,22  
 74:7,18 75:8  
 76:24 77:14,16  
 80:25 82:7,8,12  
 83:7,24 99:14  
 101:3 110:5  
 111:11 112:10,16  
 112:21,23 113:7  
 113:14,19 115:8,9  
 115:11,11 117:19  
 119:14 120:5,8  
**user** 121:24  
**uses** 5:21 37:12  
 43:18 69:8 119:19  
**usual** 24:3  
**usually** 27:3 103:18  
 103:23  
**utilities** 60:20

---

**V**


---

**vacant** 105:11  
**value** 78:1  
**variance** 3:4,24 4:6  
 5:1,15,21,25 6:10  
 6:15,19,23 9:8,14  
 11:19 12:17,23  
 15:2 23:10 35:10  
 35:21 37:15 39:1  
 39:5,7 43:1,8  
 44:22 45:10,14,22  
 46:20 48:2,13,25  
 49:1,15,25 50:17  
 51:10 53:9 54:1  
 54:10 56:7,10  
 58:8,9 62:7 63:16  
 64:5 65:2,3,9  
 66:22 67:2,12,21  
 68:4,20 69:4 70:6  
 70:20,20 73:12,15  
 74:13,18 75:8  
 76:14,17,24 80:25  
 82:5,7,12,22 83:3  
 83:24 84:17 85:12  
 85:15,20,25 86:5  
 90:20 93:25 94:3  
 98:17 99:14 101:5

101:24 102:15  
 104:21 105:18  
 106:5 108:17  
 115:2,16 121:23  
**variances** 4:8 11:14  
 12:4,14 33:25  
 34:24 59:4 84:24  
 85:7 90:22 91:1  
 91:13,25 119:7  
**vast** 12:9  
**versus** 75:10,11  
**viability** 77:15  
**Village** 1:1,18,19  
 1:20 3:5,21 4:1  
 9:9,15 45:1 56:5  
 70:23 85:20 87:15  
 119:12 122:12  
**Village's** 29:20  
**violation** 112:8  
**visit** 17:4 27:17  
 78:5 84:20 86:14  
 86:18,21 87:13  
 89:10,14 90:3,25  
 91:6 99:14 103:17  
 103:19,20  
**visiting** 108:19  
**Visually** 26:4  
**vote** 70:4 83:23  
 84:19 88:18,18  
 89:10 92:17 95:9  
 96:21 105:15  
**voted** 45:13 81:24  
 103:13  
**voting** 102:13  
 105:14

---

**W**


---

**wait** 28:21 49:10,10  
 95:5 96:20 98:17  
 103:10,23  
**waiting** 38:24  
**walking** 26:2  
**want** 15:4,5 16:8  
 18:13,22 19:10,15  
 20:4 22:14 26:6  
 26:17 39:9 41:18  
 42:8,15,19 51:6

55:13 64:1 77:20  
 79:13 96:14 97:12  
 103:16,19 110:18  
 110:19,20 116:8  
 118:23 122:3  
**wanted** 17:21 97:10  
**wants** 41:22 97:25  
 118:17  
**Ward** 21:14 23:8,8  
 24:5 30:13 31:1  
 32:6 70:19 73:2,6  
 73:8 74:2 84:2  
**Warden** 23:9 26:18  
 26:22 27:7,21  
 72:22  
**wardens** 27:2  
**warm** 18:9  
**wash** 16:3  
**wasn't** 3:16,20  
 57:21  
**watching** 37:17  
**water** 16:3,5  
 102:11  
**waterfront** 34:20  
**Watson** 19:7  
 110:17 114:19  
**wavelength** 96:6  
**way** 6:5 7:14 46:8  
 48:20 59:25 60:1  
 60:2 61:5,23,25  
 62:22 73:9,20  
 75:18 76:5 93:10  
 101:4 103:21  
 111:12,14 113:12  
 118:13,20 119:24  
 124:15  
**Webb** 31:8  
**week** 13:23 27:18  
 95:12  
**weeks** 37:18 97:17  
**welcome** 12:11  
**welding** 14:15  
**went** 4:1,1 13:11,20  
 14:21 28:14  
**weren't** 45:12  
**west** 9:13 11:9,19  
 12:18 13:15 37:14

40:6 54:12  
**we'll** 2:20 7:20  
 18:16 32:11 39:25  
 87:21,25 95:20  
 96:9  
**we're** 2:3 5:16  
 16:10 20:10 24:12  
 24:13,20 25:6,8  
 25:17,21 26:6  
 27:3,5 33:24  
 39:18 42:14 55:20  
 59:25 61:12 65:20  
 70:17 75:9,19  
 79:7 87:13 89:19  
 89:20,25 90:6  
 92:3,5 96:5 98:15  
 100:19 101:6,17  
 104:13 115:21  
 122:9 123:8  
**we've** 13:2,3,19  
 24:10 95:24  
**WHEREOF**  
 124:17  
**wholeheartedly**  
 20:11  
**width** 85:13,15,23  
 85:25  
**wife** 12:8 24:24  
**willing** 28:13 29:7  
**Wilson** 29:5  
**windows** 26:6  
 37:20  
**Wingate** 1:20 10:5  
 22:6,9,12 46:13  
 55:3 56:3,14,17  
 56:20 57:5,8,17  
 58:20 59:7,11,16  
 59:18 63:20,23  
 64:4,7,14,17 72:8  
 72:11 95:11  
 100:18,22 101:2  
 102:1,8 103:12,18  
 103:22 104:6,14  
 105:11,19 106:2  
 106:11,13 107:9  
 110:3,6,8,11,24  
 111:12,17 112:1

113:1,5 114:17,21  
 116:12,15 117:1,6  
 117:9 121:3,8,12  
 121:14,16 122:25  
**wintertime** 14:8  
 18:10  
**wise** 26:12  
**wish** 4:17 20:17  
 23:15 33:1 34:1  
**wished** 18:21  
**withheld** 52:12  
**WITNESS** 124:17  
**woman** 121:24  
**wonder** 114:5  
**wondering** 112:14  
**wooden** 14:13,14  
**woodworking**  
 120:9  
**worded** 89:18  
**words** 26:19 48:25  
 55:3 91:12 93:21  
 96:12 101:9  
 110:13  
**work** 17:5,7 18:1,7  
 18:9,12,13 29:7  
 87:10 88:11 92:8  
 92:16,24 95:9  
**worked** 24:12  
**working** 13:3 14:13  
**workshop** 118:10  
**wouldn't** 16:15  
 40:13  
**write** 14:1 66:20  
 93:8  
**written** 69:5  
**wrong** 27:5 105:20

---

**Y**


---

**yard** 3:4,6 5:15  
 6:19,19 9:14  
 11:19 12:17 13:22  
 14:6,9,13 17:12  
 17:24 40:21 85:17  
 85:19,22 86:3,4  
**yards** 3:8  
**yeah** 11:1 38:8 40:2  
 46:15 81:24 91:14

104:7 106:2 111:13 112:1 115:3 116:14 <b>year</b> 25:14,15 46:10,12,14,15 113:2 <b>years</b> 5:2,6 19:3 24:9,10 25:2,23 27:10 28:13 35:25 36:2 110:13 111:22 <b>York</b> 1:10 10:15 22:24 23:1 85:1 107:4 124:3,9 <b>young</b> 28:14,19,20 110:14 <b>Yup</b> 11:2	<b>#7</b> 105:4 <b>#8</b> 107:3 <b>#9</b> 107:20 <hr/> <b>1</b> <hr/> <b>1</b> 85:9 <b>1st</b> 24:14 93:16 <b>1,000</b> 31:2 <b>10</b> 27:15 <b>1001-02-05-0292</b> 9:2 <b>1001-2-2-14</b> 2:23 <b>1001-2-3-5</b> 21:15 <b>1001-2-6-50</b> 99:17 <b>1001-3-3-32</b> 107:5 <b>1001-4-2-35.2</b> 104:22 <b>1001-4-4-29</b> 85:2 <b>102</b> 9:1 11:10,17 12:1,3 <b>11944</b> 1:10 <b>12.18</b> 85:16 <b>120-year-old</b> 29:14 <b>14</b> 108:7 <b>15</b> 3:2 9:10 <b>15th</b> 28:16 <b>15-foot</b> 3:3 5:16 40:17 <b>150-year-old</b> 29:15 <b>150-12A</b> 3:5 85:10 85:14,20,24 86:3 <b>150-13A(1)(a)</b> 9:8 <b>150-13A(1)(b)</b> 9:15 <b>150-21A</b> 58:21 <b>150-7</b> 21:20 <b>150-8</b> 99:21 <b>17</b> 1:5 124:12 <b>17th</b> 2:7 28:16 <b>17.9</b> 86:3 <b>18</b> 54:5 <b>19</b> 107:21 <b>190</b> 10:12 <b>1971</b> 113:18 <b>1973</b> 35:10 <hr/> <b>2</b> <hr/> <b>20</b> 9:7 11:15 12:5	12:16 60:10 111:22 115:25 <b>2013</b> 1:5 107:21 108:7,16 124:12 124:18 <b>21st</b> 86:15,19 93:3 95:15 99:2 108:16 <b>22</b> 10:20 85:18 <b>221</b> 84:25 <b>23</b> 24:9 27:10 <b>23rd</b> 124:18 <b>236</b> 1:10 <b>25</b> 24:9 25:2,22 86:4 <b>25-foot</b> 85:21 <b>28th</b> 92:20 <hr/> <b>3</b> <hr/> <b>30</b> 5:2 40:21 <b>30%</b> 117:22 <b>30-foot</b> 3:6 <b>301</b> 2:22 22:20 <b>314</b> 22:19 <hr/> <b>4</b> <hr/> <b>4:20</b> 108:25 109:1,4 109:5 <b>4:40</b> 86:19 108:18 109:7 <b>40</b> 5:2 10:14 <b>400</b> 4:21 32:16 <b>45</b> 19:3 <b>47.82</b> 85:13 <hr/> <b>5</b> <hr/> <b>5</b> 68:15 <b>5.6</b> 9:7 <b>5:00</b> 1:6 <b>5:07</b> 2:2 <b>50</b> 16:7 <b>50%</b> 12:25 <b>52.35</b> 85:23 <hr/> <b>6</b> <hr/> <b>6,587</b> 85:10 <b>60</b> 85:15,25 <b>629</b> 99:16	<b>639</b> 10:15 <hr/> <b>7</b> <hr/> <b>7</b> 104:23 105:1 <b>7,500</b> 85:11 <b>7.1</b> 86:5 <b>7.65</b> 86:1 <b>7:15</b> 123:10 <b>70s</b> 111:15 <b>711</b> 10:16 <b>715</b> 11:24 <b>718</b> 21:14 <b>727</b> 19:1 <b>744</b> 32:20 <b>754</b> 22:25 <hr/> <b>8</b> <hr/> <b>8</b> 27:14 107:4 <b>80th</b> 10:15 <hr/> <b>9</b> <hr/> <b>913</b> 85:12 <b>93</b> 10:17
<hr/> <b>Z</b> <hr/> <b>ZBA</b> 47:1 66:8 78:12 84:24 89:17 90:15,15,24 91:11 91:16,21,24 93:25 94:13,20 97:12 101:5 107:20 108:6,15 121:9 <b>zone</b> 31:6 <b>zoned</b> 32:1 <b>zoning</b> 1:2 2:6 23:10 31:5 42:25 51:8 62:3 63:5 65:9,11 69:15,16 71:25 73:23 86:7 90:2 91:12 117:17 119:4,4 <hr/> <b>\$</b> <hr/> <b>\$170,000</b> 28:6 <hr/> <b>#</b> <hr/> <b>#1</b> 8:22 85:8 <b>#2</b> 8:24 85:23 <b>#3</b> 21:13 70:18 <b>#4</b> 99:12 <b>#5</b> 84:15 93:13 98:14 <b>#6</b> 104:19			