

INCORPORATED VILLAGE OF GREENPORT  
ZONING BOARD OF APPEALS

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*In the Matter of*

CYNTHIA SCHOLL and DONALD SCHOLL,  
174 Sterling Street, Greenport  
(SCTM No. 1001-002.00-03.00-016.000)

*Applicants.*

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**APPLICANTS' MEMORANDUM OF LAW IN SUPPORT OF THE APPLICATION  
AND  
IN OPPOSITION TO THE APPEAL OF LGTS PROPERTY TRUST CHALLENGING  
THE DETERMINATION OF THE BUILDING INSPECTOR**

*Submitted February 17, 2026*

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### **List of Exhibits:**

- Exhibit A – Notice of Disapproval, dated November 7, 2025
- Exhibit B – 1977 Building-Structure Inventory Form for 174 Sterling Street
- Exhibit C – Certificate of Occupancy, dated May 4, 1994 with Survey dated April 8, 1995 prepared by Anthony W. Lewandowski
- Exhibit D – Certificate of Occupancy, dated June 11, 2015 and Building Permit #02483
- Exhibit E – Letter from Division of Historic Preservation of the NYS Office of Parks, Recreation, and Historic Preservation (OPRHP), [date]
- Exhibit F – NYSDEC Letter of No Jurisdiction
- Exhibit G – Notice of Disapproval, dated April 9, 2024
- Exhibit H – ZBA Transcript, July 16, 2024
- Exhibit I – ZBA Transcript, December 16, 2025
- Exhibit J – Annotated Map of the Greenport Historic District
- Exhibit K – FIRM Panel Number 361004-001-C
- Exhibit L – Survey of 174 Sterling Street by Young Associates, last revised September 19, 2025
- Exhibit M – 172 Sterling Street Documents
- Exhibit N – 230 Fourth Street Documents
- Exhibit O – Near Map Aerial with house footprint analysis
- Exhibit P – 178 Sterling Street Documents

## **NATURE OF THE APPLICATION**

Pursuant to Village Law §7-712-a(5)(b), this variance application of Cynthia and Donald Scholl (“Applicants”) to the Village of Greenport (“Village”) Zoning Board of Appeals (“ZBA”) is taken from the written determination of the Building Inspector, George Pfriendr (“Building Inspector”), in a “Notice of Disapproval,” dated November 7, 2025. The Building Inspector reviewed the Applicants’ survey and building permit plans (“Proposed Project”) to construct a new two-story addition to the existing single-family residence located at 174 Sterling Street, Greenport, which is identified on the Suffolk County Tax Map as No. 1001-002.00-03.00-016.000 (“Premises”).

Upon his review of the Proposed Project, the Building Inspector denied the Applicants’ building permit application and determined that the following variance relief is required: (1) a side yard variance of 1.7 feet from the easterly lot line where 10 feet is required; and (2) a side yard variance of 3.1 feet where 10 feet is required. A copy of the Notice of Disapproval is attached as *Exhibit A*.

This Memorandum of Law is submitted in support of the Applicants’ application for the variances identified on the November 7, 2025 Notice of Disapproval and in opposition to the appeal, dated January 6, 2026, taken by opposing neighbors, LGTS Property Trust, the owners of 178 Sterling Street, to challenge the Building Inspector’s determination.

### **STATEMENT OF FACTS**

#### **A. *Current Site Conditions***

The premises at 174 Sterling Street is an improved single-family residential parcel fronting on the north side Sterling Street in the R-2 zoning district and the Greenport Village Historic District. It has a lot area of 11,675 sq. ft. and is improved with a contributing historic single-family

residence, a bulkhead along its entire northerly waterfront property line, and a residential dock that extends into the state waters of Sterling Basin.

The footprint of the existing residence has an area of 808 sq. ft. with a covered front porch (269 sq. ft.) and a wood deck on the westerly side of the residence (113 sq. ft.), for a total building area footprint of 1,190 sq. ft. As shown in *Figure 1* below, the existing residence is smaller than the other nearby residences, many of which benefit from multiple additions and new construction utilizing the footprint of prior preexisting nonconforming structures and their setbacks.



*Figure 1 - April 9, 2025 NearMap Aerial showing 174 Sterling Street with proposed addition outlined in pink and a list of footprint area of structures on neighboring properties. Source: NearMap for footprint area data.*

With respect to the subject Premises, the existing westerly side yard setback is 6.7 feet, and on the easterly side, the existing side yard setback is 12.0 feet. Existing lot coverage is 1,261.5 sq. ft. or 10.7% of lot area.

**B. Property History**

**1. The Contributing Historic Dwelling**

According to the 1977 Building-Structure Inventory Form prepared by the New York State Office of Parks and Recreation, Division of Historic Preservation (*Exhibit B*), the residence at 174 Sterling Street was constructed by Ernest Rogers circa 1905. Porches and a bathroom were added circa 1910, and the kitchen was remodeled in 1965. *Id.* The residence is listed as a contributing structure to the Greenport Historic District, further corroborating its legally preexisting nonconforming status.

The dwelling first appears on the 1909 Sandborn Map (*Figure 2*) as part of a larger parcel. However, by the publication of the 1917 Sandborn Map (*Figure 3*), 174 Sterling Street had become its own parcel, appearing much as it does today. These historic documents and maps show that

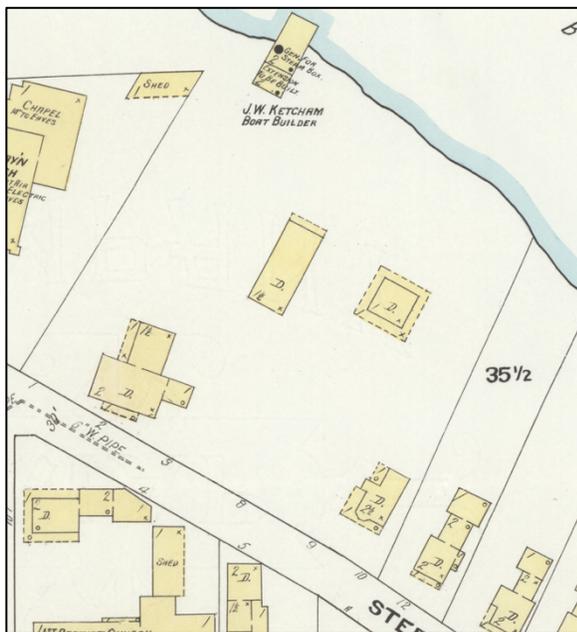


Figure 2 - 1909 Sandborn Map

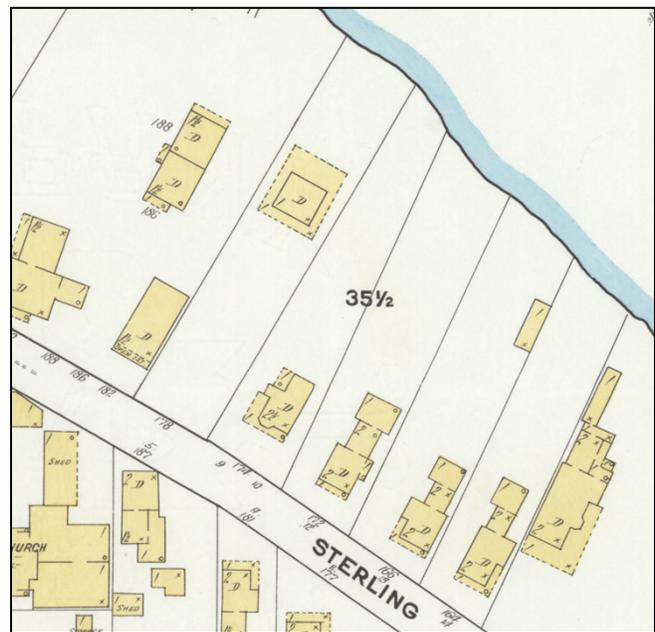


Figure 3 - 1917 Sandborn Map

the residence and its existing side and front yard setbacks are legally preexisting and were constructed before the enactment of the Village zoning ordinance in October 1971.

On May 4, 1994, a Certificate of Occupancy was issued for the existing “2 story frame single family residence with front and side porch.” (*Exhibit C*). A survey dated April 8, 1995 prepared by Anthony W. Lewandowski confirms that the legally preexisting front yard setback is 23.3 feet. *Id.* On June 11, 2015, a Certificate of Occupancy was issued to close out Building Permit #02483, issued on November 4, 2014, to “[r]ebuild existing porch deck and handrails, to include replacement porch header and columns, repair and replace as required.” (*Exhibit D*). According to the Building Department records, no variances were required for this repair and reconstruction.

**C. *ZBA History***

No prior applications have been made to the ZBA for any variance relief for this property.

**D. *The Proposed Project***

The Applicants propose to construct a 1,273 sq. ft., two-story addition at the rear or seaward side of the existing dwelling, as shown on the floor plans and elevations by Robert I. Brown Architect, P.C. dated last revised September 24, 2025, and the survey by Young Associates, last revised September 19, 2025. The total footprint of the proposed residence will be 2,081 sq. ft (808 sq. ft. (existing) + 1,273 sq. ft. (addition)). Taking into account the footprint of the 269 sq. ft. existing front porch (where no alterations are being proposed), the resulting dwelling will have a total footprint of 2,350 sq. ft. Proposed lot coverage will increase to 2,422 sq. ft. or 20.6% where 30% is the maximum permitted in the R-2 district. As such, the size of the proposed dwelling is well within what is permitted under the Village’s zoning code.

**1. Other Agency Approvals**

The Division of Historic Preservation of the NYS Office of Parks, Recreation, and Historic Preservation (OPRHP) found that the project design for the addition is appropriate and will have

no adverse impact on the historic house. (*Exhibit E*). The NYS Department of Environmental Conservation (NYSDEC) has issued a Letter of No Jurisdiction pursuant to the Tidal Wetlands Act for the for all activities landward of the bulkhead. (*Exhibit F*). The proposed addition is entirely within FEMA Zone X, which is to say that no part of the residence or the addition is not within the 100 year floodplain.

Remaining approvals include a Certificate of Appropriateness from the Village's Historic Preservation Commission pursuant to Village Code Chapter 76.

## **2. SEQRA**

The granting of area variances for a single-family residence is a Type II action under SEQRA (see 6 NYCRR 617.5(c)(17)). The Village has adopted the NYSDEC's Type I and Type II actions lists promulgated in 6 NYCRR Part 617. *See* Village Code §61-3. Pursuant to 6 NYCRR §617.4(a)(2) [former §617.12(a)(2)], no agency may designate as a Type I, any action which NYSDEC has specifically classified as Type II in 6 NYCRR §617.5 [former §617.13]. As such, variances for a single family residence remain a Type II action even when located within or adjacent to a state or national register eligible historic district. This accords with the ZBA's practice and is consistent with the advice of current Village Attorney and his predecessors.

Finally, contrary to the position of opposing appellants and other opposing neighbors that the Proposed Project is inconsistent the Village's Local Waterfront Consistency Review, the Village is clear that all type II actions are exempt from Local Waterfront Consistency Review. *See* Village Code §§139-4, 139-6 ("Actions identified as Type II, excluded or exempt as those terms are defined in 6 NYCRR Section 617.2 of the same Environmental Quality Review Law as are hereby deemed consistent and do not require any further deliberation."). Accordingly, such contentions are not relevant in the consideration of whether to grant the requested area variances and are beyond the scope of the ZBA's review in the instant matter.

**NOTICE OF DISAPPROVAL**

**A. *Original Notice of Disapproval, Dated April 9, 2024***

The Applicants received their first Notice of Disapproval (“NOD”), dated April 9, 2024, which was issued by the former Building Inspector Alex Bolanos. (*Exhibit G*) The NOD listed the following four (4) variances:

<p><b><u>Front Yard Setback Requirements.</u></b></p>	<p><u>150-12 Schedule Regulations</u> R-2 District: Minimum Front Yard Requirement: 30 feet.</p> <p>The plans show the front yard setback of 23’3” This would require an area variance of 6’7”</p>
<p><b><u>Side Yard Setback Requirements</u></b></p>	<p><u>150-12 Schedule Regulations</u> R-2 District: Minimum Side Yard Requirement: 10’</p> <p>The plans show the side yard setback of 7’4” This would require an area variance of 2’8”</p>
<p><b><u>Side Yard Setback Requirements.</u></b></p>	<p><u>150-12 Schedule Regulations</u> R-2 District: Minimum Side Yard Requirement: 10 feet.</p> <p>The plans show the side yard setback of 7’6” This would require an area variance of 2’6”</p>
<p><b><u>Combined Side-Yard Setback Requirements.</u></b></p>	<p><u>150-12 District Regulations</u> R-2 District: Minimum Combined Side-Yard Setback: 25 feet.</p> <p>The plans show a combined side yard-setback of 14’10” This would require an area variance of 10’2”</p>

Based upon this April 9, 2024 NOD, the Application was placed on the ZBA’s July 16, 2024 agenda for the purpose of accepting the application, scheduling the public hearing, and scheduling a site visit. At the meeting, Counsel for the Applicants requested that the ZBA hold off from scheduling the public hearing because Counsel believed the building inspector had inadvertently failed to apply Village Code §150-13(E)(1), known as the “Four-tenths rule,” which reduces, as of right, the required combined side yard requirements and individual side yards setbacks for narrow lots. This relief provision is based on applying mathematical computation rather than applying the dimensional regulations in Village Code §150-12.

However, at this meeting, the ZBA Chairman questioned the applicability of the four-tenths rule to the Application, and indicated that as a matter of ZBA policy, the four-tenths rule only applies to new construction on vacant parcels. *See Exhibit H, ZBA Transcript, July 16, 2026 at 26:12-27:21.*

The ZBA agreed to table scheduling the public hearing until the Applicants' counsel could consult with Building Inspector. Bolanos. However, on July 30, 2024, the day Counsel was to meet with him, she was informed that Mr. Bolanos taken ill, and his return date was unknown.

**B. *Current Notice of Disapproval, dated November 7, 2025***

A new Notice of Disapproval was not issued until November 7, 2025 by the new Building Inspector, Mr. George Pfriendler. The instant appeal is taken from this later NOD, which differs from the original April 9, 2024 NOD in two ways:

- First, Mr. Pfriendler applied the four-tenths rule pursuant to Village Code §150-13(E)(1) because the Applicants' Property has a lot width of 50-feet where 60-feet is the minimum required in the R-2 zone.
- Second, Mr. Pfriendler no longer required a front yard variance to "legitimize" the legally preexisting front yard setback since it is not being changed, altered, or modified by the proposed addition, and because the Village has adopted a new policy no longer requiring "legitimizing" or "housekeeping" variances for preexisting nonconformities.

On December 16, 2025, the Application appeared on the ZBA's agenda to the schedule the public hearing and the site visit for February 17, 2026. At the meeting, the ZBA Chairman questioned whether the number of variances was correct and again disputed the applicability of the four-tenths rule. *See Exhibit I, ZBA Transcript, December 16, 2025 at 47-92*

**APPEAL OF LGTS PROPERTY TRUST**  
**CHALLENGING THE NOVEMBER 7, NOTICE OF DISAPPROVAL**

On January 6, 2026, opposing neighbors LGTS Property Trust filed an appeal pursuant to Village Code §150-26(A) and Village Law §7-712-a(4) to challenge the Building Inspector’s determinations in the November 7, 2025 NOD on the following grounds:

- 1) The November 7, 2025 NOD fails to mention the additional variances required in the April 9, 2024 NOD for a front yard setback variance and a combined side-yard setback variance under Village Code §150-12(A).
- 2) Pursuant to Village Code §150-21, the proposed project increases the property’s degree of existing non-conformity, thus requiring the additional variances.
- 3) The NOD does not require a Wetlands Permit under Chapter 142 of the Village Code.
- 4) The Building Inspector misapplied the “four-tenths rule” under Village Code §150-13(E) to the Proposed Project.
- 5) The Proposed Project does not fall within the exceptions set forth in Village Code §150-13(D).<sup>1</sup>

For the reasons discussed in the Argument Section of this Memorandum, the Applicants oppose this challenge and submit that the November 7, 2025 Notice of Disapproval and the Building Inspector’s determination contained therein should be upheld in all respects.

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<sup>1</sup> To the extent that the opposing appellants’ application narrative in support of its appeal consists of nothing more than bald, conclusory statements, Applicants cannot address this claim without more information, since no exception was claimed by them pursuant to Village Code §150D-13(D). Furthermore, the Applicants’ are unaware that the Building Inspector’s November 7, 2025 NOD is based on such section of the Village Code.

## ARGUMENT

### POINT I THE BUILDING INSPECTOR PROPERLY APPLIED THE FOUR-TENTHS RULE TO THE APPLICANTS' PROPERTY

#### A. *The Four-tenths Rule in Village Code §150-13(E)(1)*

Village Code §150-13(E)(1), known as the “four-tenths rule,” provides in pertinent part:

(E) **Existing small lots.** A lot, owned individually and separately and separated in ownership from any adjoining tracts of land, which has a total lot area or lot width less than prescribed in this chapter may be used for a one-family dwelling, provided that such lot shall be developed in conformity with all applicable district regulations.

(1) The total dimensions of both side yards for a principal building shall be computed on the basis of four-tenths of the lot width; however, no side yard dimension shall be less than four-tenths of the total dimensions of both side yards computed as aforesaid, and no side yard dimension shall be less than 10 feet.

Essentially, the four-tenths rule allows a preexisting small or narrow residentially-zoned lot to be developed using a mathematical computation calculated as four-tenths (0.4) of the lot's width to determine the combined side yard setbacks individual side yard setbacks that should apply to the lot instead of the dimensional requirements of Village Code §150-12A. This relief provision or some variation of it, which recognizes the challenges faced by developing a legally preexisting nonconforming narrow lot, can be found in other the local zoning ordinances.<sup>2</sup> Greenport Village's zoning ordinance has long contained the four-tenths rule, and even retained it as part of the Village's comprehensive amendment of its zoning ordinance in its entirety in 2023.

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<sup>2</sup> *E.g.*, The Town of East Hampton has a four-tenths rule in its [Town Code §255-1-43](#) (Non-conforming Lots); [East Hampton Village Code §278-3A\(6\)](#) provides a more complicated formula for lots which are nonconforming: each side yard setback shall be reduced to 20% of the average lot width. The calculation shall be the average of two chords measured at the required front lot width and the required rear lot width.

The rationale behind this relief provision is common sense, flexibility, equity, and judicial economy. It alleviates property owners from the burden caused by narrow lots by permitting a degree of development as of right that would otherwise trigger the need for variances. It also alleviates strain on the ZBA's resources. This is especially important in older neighborhoods and historic districts and throughout the Village of Greenport, where many lots were created and developed, like the Applicants', prior to the enactment of zoning in 1971, which are generally nonconforming with respect to modern setbacks and dimensional requirements.

**B. *The Building Inspector Did Not Err Because the "Four-Tenths" Rule is a Non-Discretionary Provision that Applies as of Right to Narrow, Single-Family Residential Lots***

The necessary elements for a lot to qualify for the four-tenths rule are set forth in Village Code §150-13(E)(1):

- (1) Is the lot in single and separate ownership; and
- (2) Does the lot have a width "less than prescribed in this chapter"; and
- (3) Is the lot used for a single-family residence?

If the answer to those three questions is yes, then the four-tenths rule applies. In the case of 174 Sterling Street, the subject Premises meets all three elements and therefore qualifies because:

- (1) It has been held in single and separate ownership in Cynthia Scholl's family for over 100 years; and
- (2) The lot has a width of 50 feet where 60 feet in the R-2 District; and
- (3) The lot is used as single family residence; and

The formula provided in Village Code §150-13(E)(1) changes the computation of the combined side yard setbacks for a principal building as follows:

<b><u>Village Code §150-13(E)(1):</u></b>	<b><u>Applicants' Property</u></b>
<b>Combined side yard = (0.4 × lot width)</b>	<b>0.4 x 50' = 20'</b>
<b>Each Side Yard must be:</b> <ul style="list-style-type: none"> <li>• At least 10 feet;</li> <li>• “no side yard dimension shall be less than four-tenths of the total dimensions of both side yards computed as aforesaid”</li> </ul>	<b>≥ 10'</b>

**C. *The ZBA Cannot Deny the Applicants Their Right to Use the Four-Tenths Rule Based on Arbitrary “Policies”***

The plain language of Village Code §150-13(E)(1) is unambiguous. Determining whether four-tenths rule applies is a product meeting the objective threshold elements of §150-13(E)(1) and applying a simple math equation. There is no need for the Building Inspector’s discretion or specialized knowledge to determine whether the four-tenths provision applies. Opposing appellant LGTS Property Trust alleges that the four-tenths rule was improperly applied to the Applicants’ Property without any further explanation.

Both the Building Inspector and the ZBA are tasked with applying the Village Code uniformly to all properties in a particular zoning district. The ZBA has no legislative authority to change the uniform application of the Village Code (in derogation of Village Law §7-702) by supplying limiting or qualifying language not found in the plain language of Village Code §150-13(E)(1) so that it only applies to new construction on vacant parcels only, as suggested by the Chairman on July 16, 2024.

It is a settled principle that a ZBA **cannot** impose standards or criteria that are not explicitly stated in the zoning ordinance. In the *Matter of Boni Enters., LLC v Zoning Bd. of Appeals of the Town of Clifton Park*, 124 AD3d 1052 [3d Dept 2015], the court found that the ZBA erred in deferring to its own interpretation of the zoning ordinance because the plain language of the ordinance, strictly construed, did not support the ZBA's position. *Id.* 124 A.D.3d at 1053. Similarly, in *Matter of Winterton Props., LLC*, the court reiterated that:

In interpreting a zoning law, a zoning board of appeals “**may not insert conditions or criteria into a zoning ordinance governing allowable uses in a zoned district that are not contained in the statutory language adopted**” (*Matter of Saratoga County Economic Opportunity Council, Inc. v Village of Ballston Spa Zoning Bd. of Appeals*, 112 AD3d 1035, 1037, 977 NYS2d 419 [2013]). Moreover, respondents' proposed definition would, even if accepted, merely evidence an “**ambiguity in the language employed [that] must be resolved in favor of the property owner**” (*Matter of Subdivisions, Inc. v Town of Sullivan*, 92 AD3d 1184, 1185, 938 NYS2d 682 [2012] [internal quotation marks and citation omitted], *lv denied* 19 NY3d 811, 976 NE2d 250, 951 NYS2d 721 [2012]; see *Matter of Albany Basketball & Sports Corp. v City of Albany*, 116 AD3d at 1137; *Matter of Atkinson v Wilt*, 94 AD3d 1218, 1220, 941 NYS2d 798 [2012]).

*Matter of Winterton Props., LLC v Town of Mamakating Zoning Bd. of Appeals*, 132 AD3d 1141, 1143 [3d Dept 2015] (emphasis added).

When a ZBA's interpretation of a zoning ordinance runs counter to the clear wording of the provision, such interpretation lacks a rational basis, and courts give little weight to the ZBA's determination. See *Matter of Fox v Town of Geneva Zoning Bd. of Appeals*, 176 AD3d 1576, 1577-78 [4th Dept 2019].

In fact, a review of the ZBA's past applications reveals that the four-tenths rule has been applied to multiple applications involving existing developed lots:

<b>Address</b>	<b>Zoning</b>	<b>Historic District</b>	<b>4/10's Rule Applied</b>	<b>SEQRA</b>	<b>Outcome</b>	<b>ZBA Minutes</b>	<b>Project Description</b>
320 Carpenter Street	R-2	YES	Yes	Type II	Approved	<b>ZBA 12/17/2024:</b> p. 49: SEQRA Designation; p. 53: Approval	§150-13(E) cited in NOD Proposed car port in front yard of corner lot
412-414 Carpenter Street	R-2	Yes	Yes	Type II	Approved	<b>ZBA 1/15/19:</b> p. 28-68, accept application and discuss 4/10 <sup>th</sup> rule. <b>ZBA 2/19/19:</b> p. 40-41: discussion & SEQRA & approval	§150-13(E) cited in NOD Addition to preexisting nonconforming residence
151 Central Avenue	R-2	Yes	Yes	Type II	Approved	<b>ZBA 11/19/2024</b> p.3-27. Accept application <b>ZBA 12/17/2024</b> – p. 60: Type II Designation. Approval	Demolition of non-historic one-story kitchen at rear of house, rear deck, and non-historic garage at rear of house. Construction of new deck in approximate footprint of existing.
148 Bay Avenue	R-2	Yes	Yes	Type II	Approved	<b>ZBA 12/21/21:</b> p. 32: SEQRA p : whether legitimizing variances are needed. p.37-39: 4/10's Rule Discussion <b>ZBA 1/22/22:</b> p.3-10: Accept findings	§150-13(E) cited in NOD Proposed renovation to existing house, convert porch to habitable space; extend rear of house by 32 sq ft on the first floor and by 269 sq ft on the second floor, create one uniform back wall to the house to add 498 sq ft addition to house; and create a habitable third floor.
129 Bay Ave	R-2	Yes	Yes	Type II		<b>ZBA 9/20/2016:</b> p.168 – Discussion p.172 – SEQRA Type II Designation p. 182-183 – 4/10's Rule Discussion	Proposed Pool
137 Sterling Ave	R-2	No	Yes	Type II		<b>ZBA 3/19/19:</b> p.14-20 p.81-85	§150-13(E) cited in NOD Additions to existing single family dwelling
217 Monsell Place	R1	No	Yes	Type II	Approved	<b>ZBA 7/19/16:</b> p. 33-34 accept application p. 34-35 (§150-13(E) - four-tenths discussion) <b>ZBA 9/20/16:</b> p. 16-18 public hearing; p.16-17 4/10's Rule Discussion <b>ZBA 11/15/16,</b> p. 7-8 (findings adopted)	New construction of single-family residence on vacant lot.

<u>Address</u>	<u>Zoning</u>	<u>Historic District</u>	<u>4/10's Rule Applied</u>	<u>SEQRA</u>	<u>Outcome</u>	<u>ZBA Minutes</u>	<u>Project Description</u>
432 Front Street	R-2	Yes	---	Type II	Approved	<b><u>ZBA 5/20/25</u></b> p. 1-4 (Paragas & Epperson - 432 First St.) p104. SEQRA Designation p.109 Approved <b><u>ZBA 6/17/2025</u></b> p.3 Approved findings	<i>Restoration/renovation of an existing one and a half story wood framed accessory structure.</i>
175 Fifth Street	R-2	No	Yes	Type II	Approved	<b><u>ZBA 5/18/21</u></b> , p.6-7 Saladino discusses whether 4/10 <sup>th</sup> rule might apply. <b><u>ZBA 6/15/21</u></b> , Public Hearing p.11 SEQRA p.14 Approval	Finish basement and build required egressed at existing residence

In fact, since 2014, 217 Monsell Place has been the only application to build a new residence on a vacant parcel that benefitted from the four-tenths rule. At the meeting to accept the application, Chairwoman Gordon remarked, “This is new construction, something we don't see all that often.” ZBA Transcript, July 19, 2016 at 34:14-15. Member Saladino had the following exchange with the applicant discussing the applicability of the four-tenths rule:

MR. SALADINO: I understand, but I have a couple of questions for the applicant. Mr. Nicholson, from reading your application, you can build this house without a variance.

MR. NICHOLSON: Okay.

MR. SALADINO: Am I correct?

MR. NICHOLSON: According to the code, I believe that the building envelope on the lot wouldn't allow for it. If you're saying it does, then it does.

MR. SALADINO: **If it is four-tenths of the width, it comes out to 16 feet and a few inches and from looking at your plan, you have ten feet on either side, so I'm kind of curious as to why you would ask for a variance when you don't need one.**

ZBA Transcript, July 19, 2016 at 34:23 – 35:19 (emphasis added).

Mr. Saladino continued, while deferring to the Building Inspector:

MR. SALADINO: Well, **it's my understanding with the Village Code on an undersized lot, you do four-tenths and that's the combined, so this would be 16.8 feet**, but the Building Inspector is here, you can ask her, but I'm reasonably certain I'm correct.

ZBA Transcript, July 19, 2016 at 44:4-10.

At the public hearing for 217 Monsell Place on September 20, 2016, the following pertaining to the four-tenths rule, which was read into the record:

The applicant seeks a side yard setback variance to construct a new single family dwelling with a footprint of approximately 979 square feet, including a covered entry porch, Section 150-13E. Existing small lots. A lot owned individually and separately and separated in ownership from any adjoining tracts of land, which has the total lot area or lot width less than prescribed in this chapter may be used for a one family residence provided that such lot shall be developed in conformity with all applicable district regulations. The total dimensions of both side yards for a principal building shall be computed on the basis of four-tenths the lot width; however no single side yard dimension shall be less than four-tenths of that total dimensions of both side yards computed as aforesaid. **Everybody understand that? And no side yard dimension shall be less than ten feet. That's the key. The proposed house setback is five feet from the east property line, requiring a side yard setback variance of 5.0 feet.**

ZBA Transcript, September 20, 2016 at 16:16-17:18 (emphasis added).

As shown in the table above, all other applications where the four-tenths rule has been invoked and applied dealt with additions and alterations to existing dwellings on developed lots, many of which are legally preexisting nonconforming, and located within the R-2 zone and the Historic District. *Exhibit J*, contains an annotated map of the Historic District that shows several of the applications where the four-tenths applied and variance relief was granted from the four-tenths setbacks.

As New York’s highest court, the Court of Appeals, has held, it is axiomatic that a Zoning Board of Appeals decision is “arbitrary and capricious” if it neither adheres to its own prior precedent, nor provides a reason for reaching a different result on essentially the same facts. E.g., *Knight v. Amelkin*, 68 NY2d 975 [1986]; *see also Matter of Campo Grandchildren Trust v. Colson*, 39 AD3d 746 [2d Dep’t 2007]; *Matter of Marguilies v. Town of Ramapo*, 226 A.D.3d 783 [2d Dep’t 2024].

Accordingly, the Building Inspector did not err when he applied the four-tenths rule to the Premises to prepare the November 7, 2025 Notice of Disapproval.

**D. *A Combined Side Yard Variance is Redundant Relief in this Application, and the Building Inspector Did Not Err by Leaving It Off of the Notice of Disapproval***

Below is table that shows how four-tenths rule is applied across varying lot widths. The computed combined side yard total decreases as lot width decreases. However, the 10’ minimum side yard language in Village Code §150-13(E)(1) becomes a controlling constraint, so the minimum individual side yard actually stays 10’ in every case.

<b>Lot width W (ft)</b>	<b>Computed combined side yards C = 0.4W</b>	<b>40% of combined S<sub>40%</sub> = 0.4C</b>	<b>10’ minimum applies?</b>	<b>Governing minimum individual side yard S(min)</b>
50’	20.0 ft (20’-0’)	8.0 ft (8’-0’)	Yes	<b>10.0 ft (10’-0’)</b>
45’	18.0 ft (18’-0’)	7.2 ft (7’-2.4’)	Yes	<b>10.0 ft (10’-0’)</b>
40’	16.0 ft (16’-0’)	6.4 ft (6’-4.8’)	Yes	<b>10.0 ft (10’-0’)</b>
35’	14.0 ft (14’-0’)	5.6 ft (5’-7.2’)	Yes	<b>10.0 ft (10’-0’)</b>
30’	12.0 ft (12’-0’)	4.8 ft (4’-9.6’)	Yes	<b>10.0 ft (10’-0’)</b>

This means that one effectively lands at 10’ + 10’ = 20’ combined side yard, even though 0.4 of lot width is smaller on lots with a width of less than 50 feet. As such, when dealing with a 50-foot wide lot, the true benefit of the four-tenths provision is the reduction in the combined setback requirement of 25 feet to 20 feet, although it still requires 10 foot individual side yards.

Although normally, combined side yards reflect an amount greater than the sum of the individual side yard setback, that is not the case here. With a 50-foot wide lot, such as the Applicants, the combined side yard of 20 feet ends up being the same as the sum of the individual side yard setbacks – 10 feet on each side for a combined side yard requirement of 20 feet. The table below demonstrates that the amount side yard relief listed by the Building Inspector in the November 7, 2025 NOD **results in the same amount of relief** as a combined side yard variance and individual side yard variances were required.

	<b><u>Required Side Yard Setback</u></b>	<b><u>Proposed setback</u></b>	<b><u>Variance Relief Required</u></b>
<b><i>Westerly Side Yard</i></b>	10	6.9	3.1
<b><i>Easterly Side Yard</i></b>	10	8.2	1.8
<b><i>Combined Side Yard</i></b>	20	15.1	<b>4.9</b>

While the Applicant cannot speak for the Building Inspector, the fact that there is no difference between the sum of two 10’ side yard setbacks and a 20’ combined side yard is why the Applicants maintain that the Building Inspector did not error by leaving off a separate combined side yard setback. Simply put, a combined side yard variance is redundant in this case.

**POINT II**

**NO FRONT YARD SETBACK IS REQUIRED FOR A LEGALLY PREEXISTING STRUCTURE**

Opposing appellant LGTS Property Trust asks the ZBA to find that a front yard variance should be required for a legally preexisting nonconforming dwelling *even* though the Proposed Project does not involve any change or alteration of the preexisting front yard setback. The application of 148 Bay Avenue, which was discussed at the ZBA’s December 21, 2021 meeting is germane to this issue. At that meeting, member Gordon questioned the Village’s policy at that time, which required “legitimizing” or “housekeeping” variances for an existing dwelling’s nonconforming setbacks in the R-2 zone and the Historic District. As former Village Attorney

Robert Connelly noted, these kinds of variances are not necessary because by law preexisting nonconformities are in fact legal. *See People v Miller*, 304 NY 105, 107 [1952].

16 MS. GORDON: It seems to me  
17 that a couple of these requests for  
18 variances are based on preexisting  
19 nonconforming situations which have not  
20 changed, and I'm wondering why -- this  
21 is really for the Building Department,  
22 I guess. **Why do we have to deal, for**  
23 **instance, with a front yard setback?**  
24 **The front yard is not changing and it**  
25 **was -- it is clearly nonconforming.**  
1 Everybody on the block is  
2 nonconforming.

3 ATTORNEY CONNELLY: **I agree. It's**  
4 **a preexisting nonconforming property.**

5 MS. GORDON: Right. **So why do we**  
6 **have to have this front yard setback**  
7 **variance?**

\* \* \*

12 ATTORNEY CONNELLY: I mean, for  
13 the alteration to the property I would  
14 agree that the variances are needed,  
15 but for what is currently there it's a  
16 preexisting nonconforming.

17 MS. GORDON: **So you don't think we**  
18 **need to be ruling on those matters that**  
19 **are preexisting nonconforming and are**  
20 **not going to change.**

21 ATTORNEY CONNELLY: **I don't, no.**

22 MS. GORDON: Good. Less work for  
23 us.

\* \* \*

23 CHAIRMAN SALADINO: I always  
24 thought -- if I could, I always thought  
25 that by doing this, since the Building  
1 Department had adopted this policy, by  
2 doing it we were just legitimizing  
3 these nonconformities.

4 MS. GORDON: Does that make them  
5 any less nonconforming?

6 CHAIRMAN SALADINO: No, not in the  
7 least, but it makes them legal.

8 ATTORNEY CONNELLY: **Well, the fact**  
9 **that they're preexisting nonconforming**  
10 **makes them legal too.**

11 MS. GORDON: **They're already**  
12 **legal.**

ZBA Transcript, December 21, 2021 at 12:14-15:12 (emphasis added).

This exchange accords with the Second Department's determination in *Matter of Hannett v Scheyer*, 37 AD3d 603, 604 [2d Dept 2007], in which the court determined that petitioners in were not required to obtain front yard and side yard setback variances where the new construction did not alter the existing footprint of a preexisting nonconforming building. In that matter, as is the case here, the court found that "the original dwelling was not required to conform with the setback requirements of the current zoning ordinance." *Id.*

**The protection afforded to legally preexisting, nonconforming structures is one of the cornerstones of zoning and land use law.** "[N]onconforming uses or structures in existence when a zoning ordinance is enacted, are, as a general rule, constitutionally protected and will be permitted to continue, notwithstanding the contrary provisions of the ordinance." *People v. Miller*, 304 NY 105, 107; *see also* 15 Warren's Weed New York Real Property §160.01; *City of New York v. Bilynn Realty Corp.*, 118 AD2d 511 [1st Dept 1986].

In the instant application, Applicants take no issue with the Building Inspector's determination that side yard relief is required for the new construction that extends *but does not increase* the existing nonconforming setback of the existing residence. *See Matter of Frisenda v*

*Zoning Bd. of Appeals of Town of Islip*, 215 AD2d 479, 480 [2d Dept 1995]; *Matter of Rembar v Board of Appeals of Vil. of E. Hampton*, 148 AD2d 619, 620 [2d Dept 1989].

It is conceivable that opposing appellants may not be aware of recent changes to the Village’s policy on these unnecessary “legitimizing” or “housekeeping” variance. the Village has, on the advice of its counsel, has adjusted its policies to be more in keeping with the court’s determination in *Hannett v Scheyer, supra*. In the application of 229 Sixth Street, which involved a 50 foot wide lot with an existing residence that has side yard setbacks of 5.9 feet and 7.9 feet. Where the proposed addition continued the nonconforming line of the 7.9 side yard setback, the Building Inspector deemed that the only variance needed was for the new addition in the amount of 2.1 feet. No “legitimizing” variances were required for the preexisting 5.9 setback on the southerly side of the property.

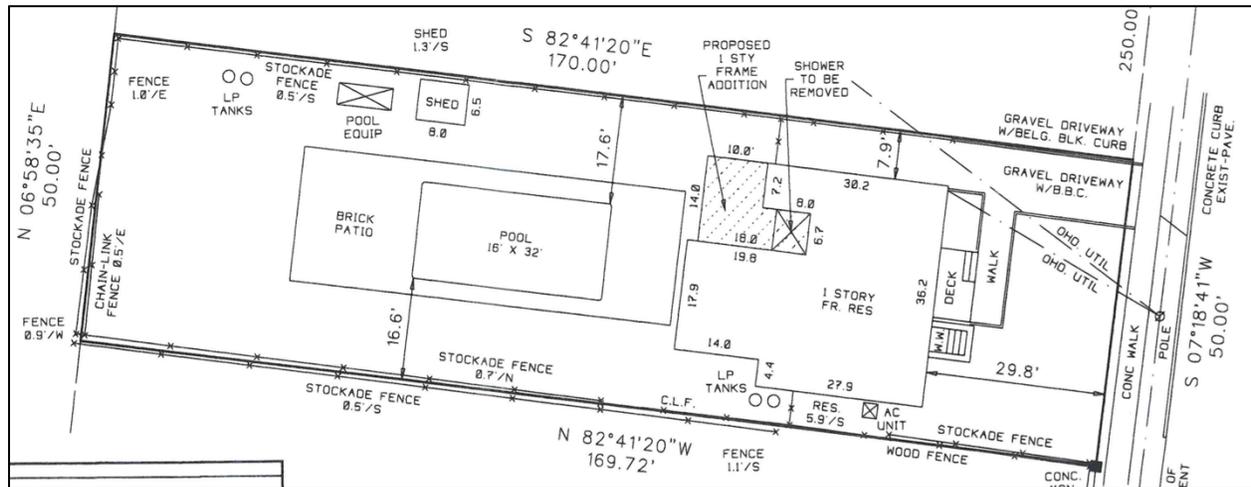


Figure 4 - Detail from Survey of 266 Sixth Street.

As Chairman Saladino explained when another board member asked him why the ZBA was not being asked to grant a variance for the residence’s preexisting southerly side yard setback, the Chairman explained:

MEMBER REARDON: Right. But we have always taken on the variances for the existing nonconformities.

CHAIRMAN SALADINO: I think there's been -- I can't speak with any authority because I don't have any authority, but I think what our attorney decided at -- the guy that usually sits there -- he decided at a previous or a couple of previous ago meetings that the new policy, although we don't have that, but the new policy will be that anything preexisting and nonconforming that's there, the only thing that will be addressed is the new nonconformity.

MEMBER REARDON: Makes perfect sense. Thank you. So no, I have no questions.

ZBA Transcript, January 20, 2026 at 9:22 – 10:15 (emphasis added).

Accordingly, there is no basis for LGTS Property Trust's frivolous claim that a front yard setback is needed where no changes are being proposed to the residence's legally preexisting nonconforming front yard setback. The proposed addition is located at the rear of the dwelling, and like the application of 229 Sixth Street, it extends the line of existing deck on the residence's westerly side and of the dwelling on the easterly side. On the easterly side, the new addition to the residence maintains a conforming 11.6-foot side yard setback, and side yard relief on the easterly side is only needed for stairs and a Bilco cellar entrance.

For the foregoing reasons, the Building Inspector's determination should be upheld.

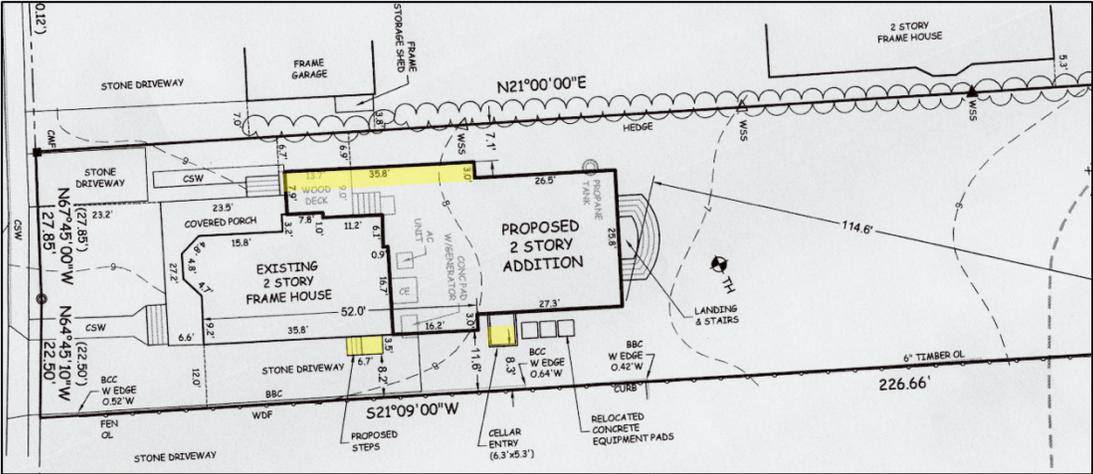


Figure 5 – Application of 174 Street. Detail from Young Associates Surve, dated last revised September 19, 2025. Highlighted areas are the portions of the addition that are nonconforming.

### POINT III

#### **THERE IS NO WETLANDS PERMIT JURISDICTION FOR THE APPLICANTS' PROJECT**

The Proposed Project is not located within a regulated wetland, adjacent area, or coastal floodplain as defined under Village Code Chapter 142, and no wetlands permit is required for work on a fully bulkheaded parcel located entirely in FEMA Zone X. The opposing appellant's contention that a wetlands permit is required is unsupported by federal flood regulations, state tidal wetlands regulations, and the Greenport Village Code.

**A. *Zone X Is Outside the FEMA defined Special Flood Hazard Area and the Floodplain as Incorporated into the Village's Wetlands Law in Chapter 142.***

Under federal regulations a "Special Flood Hazard Area" ("SFHA") is defined as "the land area subject to a one percent or greater chance of flooding in any given year." 44 C.F.R. §59.1 (Definition of "area of special flood hazard"). Areas within the SFHA are designated on FEMA Flood Insurance Rate Maps ("FIRMs") as Zones AE, VE, A, AO, AH, and similar classifications. *Id.* Zone X, by contrast, is expressly outside the 1% annual chance floodplain. *See* 42 U.S.C. §4012a(a) (no flood insurance required for Zone X); *see also* 44 C.F.R. §60.3.

Chapter 142 of the Village Code contains the Village's wetlands regulations and defines the "coastal floodplain" as:

all tidal waters and marshes and contiguous uplands which are inundated regularly or intermittently from normal tidal cycles and/or peak lunar and storm tides. The upland limit of peak storm tide and, hence, limit of the coastal floodplain shall be established as more fully set forth the Flood Insurance Rate Map for the Village of Greenport as prepared by the National Flood Insurance Program, Federal Emergency Management Agency, such map bearing Community Panel Number 361004-001-C, as revised.

Village of Greenport Code §142-3.

Attached as *Exhibit K*, is a copy of FIRM Panel Number 361004-001-C. Because the Village Code ties the coastal floodplain boundary to the FEMA FIRM depiction of the upland limit of peak storm tide — i.e., the 1% annual chance coastal flood boundary – a proposed project located entirely within Zone X is by definition outside the “coastal floodplain.” See Village Code§142-3.

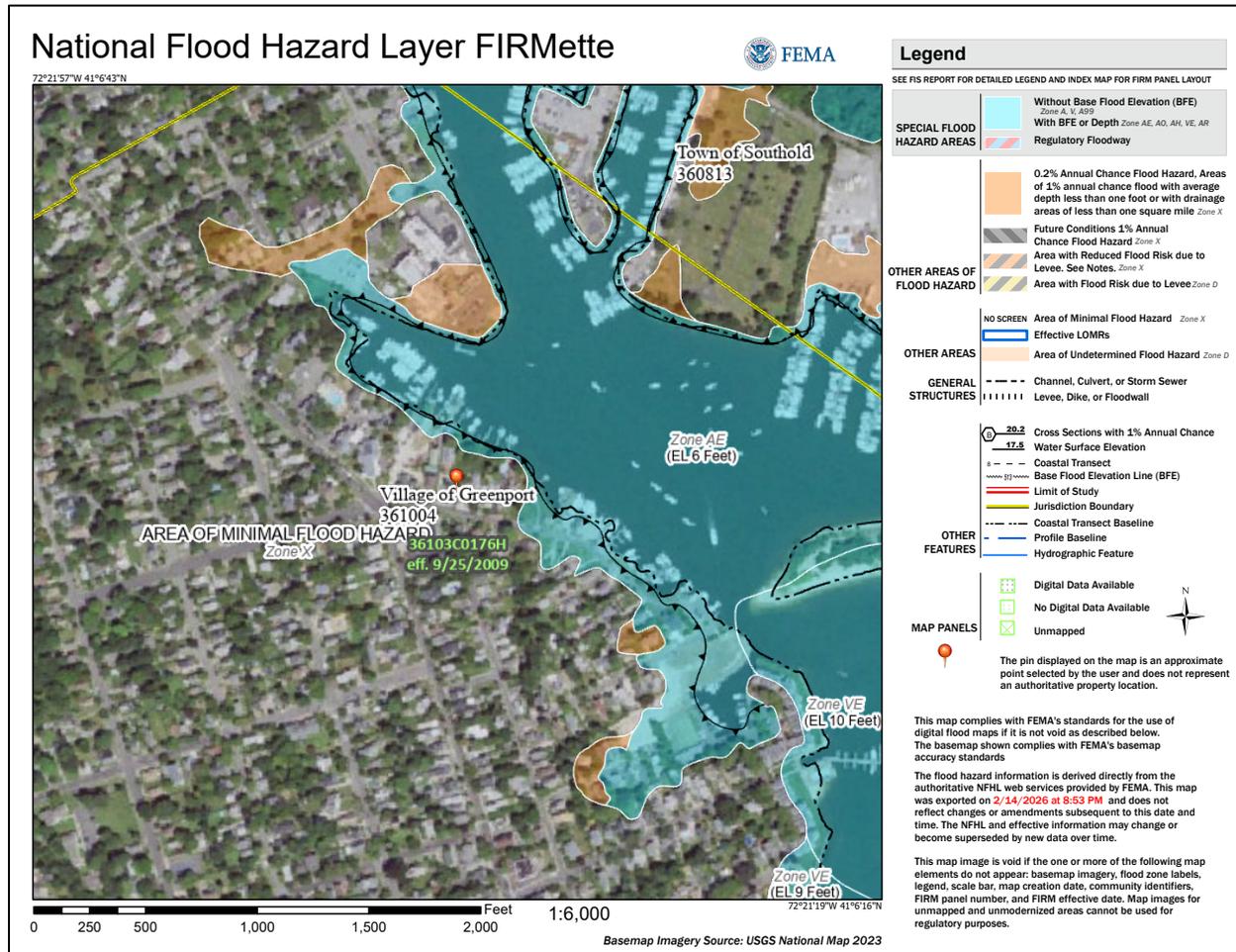


Figure 6 - FEMA FIRMette. Source: FEMA National Flood Hazard Layer (NFHL) Viewer.

Furthermore, the definition of the upland limit of the coastal floodplain as “The upland limit of peak storm tide and, hence, limit of the coastal floodplain” indicates that the upland limit of the coastal floodplain is not the landward limit of the SFHA of the AE6 zone, but is actually the

Line of Moderate Wave Action (LiMWA),<sup>3</sup> which is located at the bulkhead showing that even during moderate storm events, no part of the Project Area experiences any type of tidal inundation. Therefore, the Proposed Project is not in an area regulated by the Village Wetlands Law.

Finally, as shown on the FEMA FIRMette” Map, above in *Figure 6*, if Zone X were considered part of the “coastal floodplain” regulated by Chapter 142, then virtually every property located in the Village would require a wetlands permit.

**B. *The Property Does Not Meet the Definition of a Regulated Wetland Under Village Code Chapter 142***

Village Code Chapter 142 requires a wetlands permit where activities are proposed *within* regulated wetlands and their associated areas. Pursuant to Village Code §142-4(A)(1), it is prohibited to do the following without obtaining a wetlands permit:

Place or deposit, or permit to be placed or deposited, debris, fill or any materials, including structures, ***into, within or upon*** any tidal waters or other watercourses, coastal wetlands, tidal marshes, floodplain lands, freshwater wetlands, watersheds, water recharge areas or any natural drainage system.

Village Code §142-4(A)(1) (emphasis added).

The use of the prepositions “into, within, or upon” is unambiguous that the requirement for a wetlands permit under the Village Code requires the regulated activity to be taking place within one of the specified areas where a wetlands permit is required. To wit:

**1. The Proposed Project is not taking place in “Tidal Waters”**

The Proposed Project area is clearly not taking place in Tidal Waters as defined in the Village Code §142-3:

[A]ll waters bordering on or within the Village boundaries subject to fluctuations in depth from storm, peak lunar or normal tidal

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<sup>3</sup> The “Limit of Moderate Wave Action” (“LiMWA”) is the inland limit of the area subject to wave heights between 1.5 and 3 feet during the base flood (1% annual chance flood). See 44 C.F.R. § 59.1 (definition of “base flood”); FEMA, *Coastal Construction Manual*, FEMA P-55 (4th ed.).

action, and shall include but is not limited to all brackish and salt waters of streams, ponds, creeks, estuaries, bays, sounds, inlets and the ocean, and may include certain freshwaters.

**2. The Proposed Project is not taking place in a “Watercourse”**

The Proposed Project area is clearly not taking place in a “Watercourse” as defined in the Village Code §142-3 as “All water bodies other than tidal waters, including freshwater streams, marshes, swamps, bogs, vernal ponds, ponds and lakes.”

**3. The Proposed Project is not taking place in a “Coastal Wetland”**

The Proposed Project area is clearly not taking place in a “Coastal Wetland” as defined in the Village Code §142-3 as:

[A]ll lands and submerged lands bordering on or within the Village boundaries which are covered by tidal waters, permanently or intermittently, from normal or peak lunar tides.

The Survey of the property (*Exhibit L*) confirms that mean high water (MHW) is located at the property’s bulkhead, and no part of the property’s upland is inundated by tidal action. This is the case even in most storms events where FEMA’s FIRM map shows that the Line of Moderate Wave Action (LiMWA) is located at the bulkhead meaning, no part of the Proposed Project area experiences any type of tidal inundation and cannot be considered a wetland.

The Applicants’ property is fully bulkheaded, and there is no marsh vegetation, there are no hydric soils, and no tidal exchange occurs upland of the bulkhead. This is why the NYSDEC issued its letter of nonjurisdiction indicating that no tidal wetlands permit is required from NYSDEC for any regulatory activities taking place landward of the bulkhead.

**4. The Proposed Project is not taking place in a “Tidal Marsh”**

The Proposed Project area is clearly not taking place in a “Tidal Marsh” as defined in the Village Code §142-3 as:

[T]hose coastal wetlands inundated by tidal waters from normal tidal action, and/or peak lunar tides, exhibiting salt marsh peat at their undisturbed surface and upon which grow some or all of the following indigenous vegetation: salt-meadow grass (*Spartina patens*), spike-grass (*Distichlie spicata*), black grass (*Juncus gerardi*), cordgrass (*Spartina alterniflora*), saltworts (*Salicornia* spp.), sea lavender (*Limonium carolinanus*), salt-marsh bulrushes (*Scirpus robustus* and *Scirpus poludosus* var. *atlanticus*), sand spurry (*Spergularia marina*), tall cordgrass (*Spartina pectinata*), high tide bush (*Iva frutescens* and *Iva buccarus*), cattails (*Typha augustifolia* and *Typha latifolia*), spike rush (*Eleocharis rostellata*), chairmaker's rush (*Scirpus americanus*), bent grass (*Argostis polustria*) and sweet grass (*Hierochloe odorata*).

As established above, the Subject Property contains no “coastal wetlands,” which means it cannot contain any tidal marsh. Furthermore, none of the obligate tidal wetlands plant species identified in the tidal wetlands definition are located on the Applicants’ Property.

**5. The Proposed Project is not taking place in “Floodplain Land”**

The Proposed Project area is clearly not taking place in “floodplain lands,” *which is an undefined term* in the Village Code. However, as established above, the entire project is taking place in Zone X, which is by its very nature outside of the 100 year floodplain and special flood hazard areas. Furthermore, under the Village’s Floodplain Management regulations in Chapter 62, which require a permit for work occurring *within* the floodplain, no floodplain permit is required for a project located within Zone X.

**6. The Proposed Project is not taking place in “Watersheds, Water Recharge Areas or any Natural Drainage System”**

No part of the Proposed Project is taking place in any area that fall under the definitions in Village Code 142-3:

**NATURAL DRAINAGE SYSTEM**

Those uplands, floodplain lands and watercourses, including coastal wetlands, designated on the Official Map of Greenport Village. Such lands and waters may include but not be limited to *all uplands exhibiting fifteen-percent or greater slopes*; all fresh, salt or

brackish water; swamps; bogs; marshes; streams; vernal ponds; ponds; lakes and **all lands within the coastal floodplain**, whether intermittently or permanently **saturated or covered by ground-, surface or tidal waters**.

#### **WATER RECHARGE AREAS**

All land surface areas which by nature of their surface and/or subsurface soil characteristics are determined to contribute to the replenishment of subsurface water supplies.

#### **WATERSHED LANDS**

All land surface areas bounded peripherally by a water parting and draining ultimately to a particular watercourse. Such lands shall include all surface water catchment areas or drainage basins from which the watercourses are drawn via surface drainage.

The Premises is not part of a natural drainage system or watershed lands because the property is relatively flat. There are no slopes in excess of 15%, and no part of the Project Area is regularly inundated or saturated. In fact, the soil boring, which was taken at the most seaward location of the Proposed Project area confirms that there are no hydric soils and that there is no ground saturation. *See Exhibit L*, Survey of 174 Sterling Street.

The test hole subsurface investigation performed on Shawn Barron, M.S. on August 7, 2024 demonstrates a soil profile consisting of loamy sand (SM) overlying coarse sand with gravel (SP), with groundwater encountered at approximately 6.8 feet below grade. The profile contains no clay, silt lenses, or confining strata and is characteristic of the permeable glacial outwash soils common throughout the North Fork.

If such soils alone were sufficient to constitute a regulated “Water Recharge Area,” without any other criteria or standards pursuant to Chapter 142, then **virtually all land** within the Village would fall within that category. “Since zoning and [land use regulations] are in derogation of the common law, they must be strictly construed against the municipality which has enacted and seeks to enforce them.” *Matter of Allen v Adami*, 39 NY2d 275, 277 [1976]; *see also Incorporated Vil. of*

*Saltire v Feustel*, 40 AD3d 586, 587 [2d Dept 2007]). Therefore, any ambiguity in the language must be resolved in favor of the defendants as the property owners. *See Matter of Allen v Adami*, 39 NY2d at 277). The Applicants' property thus cannot be said to constitute a "Water Recharge Area" absent clear standards and definitions in the Village Code.

In sum, Village Code Chapter 142 contemplates regulation of activities located within wetlands or the "coastal floodplain," and no portion of the Applicants' Proposed Project area is located within these areas or the other areas mentioned are requiring a wetlands permit in Chapter 142.

**C. *The Opposing Neighbor's Request that the ZBA Determine Whether a Wetlands Permit is Required is Inappropriate and Outside of the ZBA's***

Under New York law, the jurisdiction of a zoning board of appeals is generally limited to matters arising **under the zoning ordinance**, unless otherwise provided by local legislation. The ZBA's authority is primarily appellate in nature, allowing it to hear and decide appeals from decisions, orders, or determinations made by administrative officials charged with enforcing the zoning ordinance. *See Village Law §§7-712; §7-712-a; 7-712-b(1)*.

The ZBA may interpret provisions of the zoning ordinance, when such interpretation is necessary to resolve an appeal or application properly before it. For example, the ZBA has the authority to interpret whether a proposed use is permitted under the zoning ordinance, either on appeal from an administrative official's determination or upon referral by another official or board, if local law so provides. *See Matter of Smith v. Town of Thompson Planning Bd.*, 233 AD3d 1107, 1109 [3d Dept 2024]. However, the ZBA does not have the authority to issue interpretations of sections of a town or village code **that fall outside the zoning ordinance unless explicitly authorized by local legislation**. Village Law §7-712-a(4) provides:

Unless otherwise provided by local law, the jurisdiction of the board of appeals shall be appellate only and shall be limited to hearing and

deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of **any local law adopted pursuant to this article**. (emphasis added).

New York courts have consistently held that the ZBA's jurisdiction is confined to the scope of the zoning ordinance unless expanded by local law. For instance, in *Matter of Smith v. Town of Thompson Planning Bd.*, *supra*, 233 A.D.3d at 1109-10, the court emphasized that the ZBA's jurisdiction is appellate **unless** local legislation grants it original jurisdiction to interpret zoning code provisions. Similarly, in *Gaylord Disposal Service, Inc. v. Zoning Bd. of Appeals*, 175 AD2d 543 [3d Dept 1991], the court noted that the ZBA's powers are limited to those specifically conferred by statute or local ordinance.

Here, the Greenport zoning ordinance is codified in Village Code Chapter 150. Village Code §150-26, sets forth the scope of the ZBA's jurisdiction.

**§ 150-26 Powers and duties.**

The Board of Appeals shall have all the powers and duties prescribed by §§ 7-712-a and 7-712-b of the Village Law ***and by this chapter***, which are more particularly specified as follows, provided that none of the following provisions shall be deemed to limit any power of the Board that is conferred by law:

A. Interpretation. On appeal from an order, requirement, decision, interpretation or determination made by an administrative official, or on request by any official, board or agency of the Village, to decide any of the following questions:

(1) Determination of the meaning of any portion of the ***text of this chapter*** or of any condition or requirement specified or made ***under the provisions of this chapter***. (emphasis added).

Accordingly, there is nothing in the Village Code that confers jurisdiction upon the Village of Greenport ZBA to determine whether a wetlands permit is required for the instant project or any other matter outside of Chapter 150 unless expressly authorized to do so. The only authorization that the

ZBA has been granted with respect to wetlands under Chapter 142 is found at Village Code §142-5(E), which grants to **both** the Planning Board and the ZBA, the authority to whether any portion of a lot of subdivision in a “coastal floodplain, watershed, recharge lands, tidal marsh or freshwater wetland or natural drainage system may be used in calculating the area and yard requirements for the zoning district in which the remainder of the lot or subdivision is situated.” Village Code §142-5(E).

As discussed above under the definition of the “coastal floodplain” the upland limit should be the LiMWA and not the landward limit of a SFHA. However, the Applicants provide the following analysis, assuming *arguendo*, that the coastal floodplain is synonymous with the landward extent of the AE6 SFHA. The portion of the Applicants’ property located within the AE6 zone is 1,740 sq. ft. Should the ZBA determine this area, which is landward of the LiMWA line, a functional bulkhead, and contains no wetlands vegetation, must be deducted from the lot’s total area, such deduction does not result in the need for a wetlands permit **or** any additional variances from the dimensional regulations.

<b><u>174 Sterling Street Lot Analysis</u></b>		
<b>Total Lot Area</b>	11,765 sq. ft.	
<b>Less AE6 Zone</b>	-1,748 sq. ft.	
<b><i>Net Lot Area</i></b>	<b>10,017 sq. ft.</b>	
<b>Minimum Lot Area in R-2 Zone</b>	7,500 sq. ft.	<i>No Lot Size Variance Required</i>
<b>Maximum Lot Coverage based on Lot Area less AE6 Zone (30%)</b>	10,017 x 0.3= 3,005 sq. ft.	
<b>Total Proposed Lot Coverage</b>	2,422 sq. ft.	<i>No Lot Coverage Variance Required</i>

This analysis illustrates that even where the ZBA’s has some role regarding wetlands regulation, it is limited to solely to determining a purely zoning issue, and the Code provides the Planning Board the same authority as the ZBA to when that board has matters before it, such as a site plan or subdivision. Accordingly, unlike other matters where the appellate authority to interpret the

zoning code is exclusive to the ZBA, here Village Code §142-5(E) grants two boards this same authority during the course of their respective duties.

However, since neither the Building Inspector nor the opposing neighbor have raised this question of whether a lot coverage variance or a lot area variance is required, the Zoning Board has no authority to reduce the Applicants' lot area. *See Capetola v. Town of Riverhead*, 192 AD3d 789, 792 [2d Dep't 2021] (“[I]n the absence of an administrative determination to review, a zoning board of appeals is without power to grant a variance or render a de novo determination with respect to an issue not determined by an administrative official.”).

Furthermore, deducting the AE6 zone from the Premises Lot Area plainly conflicts with the definition of “Lot Area” under Village Code §150-2, which provides:

**LOT AREA**

The total horizontal area contained within and enclosed by the outer boundary lines of any lot; provided, however, that for any purpose for which it must be calculated under the provisions of this chapter, “lot area” shall not include the following:

**(1) That portion of a lot which is seaward of the mean high water mark;**

**(2) Any area within a public street, road or right-of-way;**

**(3) That portion of a lot which is wetland or watercourse.**  
(emphasis added)

First no portion of the Applicants' parcel is seaward of the mean high water line. *See Exhibit L*. Second no portion of the lot is a “wetland” or a “watercourse.” See Village Code 142-3 (Definition of “Coastal Wetlands,” “Freshwater Wetlands,” and “Watercourse”).

Furthermore, the ZBA cannot issue advisory opinions or interpret provisions of municipal law or the New York State Building Code unless there is a specific statutory or local authorization to do so. This limitation ensures that the ZBA's role remains focused on zoning matters and does not extend to broader municipal code interpretation.

In conclusion, the ZBA cannot issue interpretations of sections of a town or village code that are outside the zoning ordinance unless local legislation explicitly grants such authority, which the Greenport Village Code does not. The ZBA's jurisdiction is otherwise confined to zoning-related matters contained with Chapter 150.

**D. *The Village's Precedent Shows that No Wetlands Permit is Required Here***

There are several examples that support Applicants' position that no wetlands permit is required for the instant Project because the seaward extend of the Proposed Project is located more than 100 feet from the bulkhead. *See Exhibit L.*

**1. 178 Sterling Street (1995)**

In 1994-1995, the owners of 178 Sterling Street (now owned by Gillooly and Spiradakis) received permission from the HPC to demolish a contributing single story residence to the Historic District and build within the footprint of the existing residence's footprint including porches, a larger 2-story residence with only a 5.3 feet setback from the Applicants' property. Furthermore, this new construction did not require any variances from the ZBA, a wetlands permit., which has been in effect since 1982. *See Exhibit P.*

**2. 172 Sterling Street (1987)**

In June 1987, the owner of 172 Sterling Street (now owned by Kohut) received variances from the ZBA to build a two-story seaward addition to an existing dwelling that doubled the size of the existing residence. The new addition continued the 5-foot setback of the legally preexisting nonconforming dwelling from the easterly property line. The Villages records show that a public hearing was held in 1987 for a wetlands permit, but that after the hearing was held, no action was taken and a building permit issued. There, a NYSDEC letter of no jurisdiction was submitted into the record that no NYSDEC Tidal Wetlands permit was required landward of the bulkhead. *See*

*Exhibit M.* In fact the chronology in the Village's records contains the following notation regarding the public hearing on the wetlands:

11/23/87      Wetlands hearing (no decision made, thus in effect approving the wetlands application closed). **Actually we had no grounds on the wetlands to deny the application** Village Bd minutes)

*See Exhibit M* (emphasis added)

**3.      230 Fourth Street (2014)**

At 230 Fourth Street, the owner proposed to construct an approximately 2,600 sq. ft. addition to the seaward side of an existing residence and a swimming pool located 75 feet from the property's bulkhead. A portion of the proposed pool was entirely located within the VE9 zone, however, the colloquy at the public hearing held on November 14, 2024 between Mayor Nyce (presently a member of the instant ZBA) and then Village Attorney Joseph Prokop, Esq. demonstrates that the property owner was permitted to proceed to obtain demolition and building permits from the Village for the residence **prior** to the issuance of the wetlands permit because the wetlands permit was only required for construction measured 100 feet from the bulkhead regardless of the fact that the VE9 zone was located on the upland portions of the property. *See Figure 7* below.

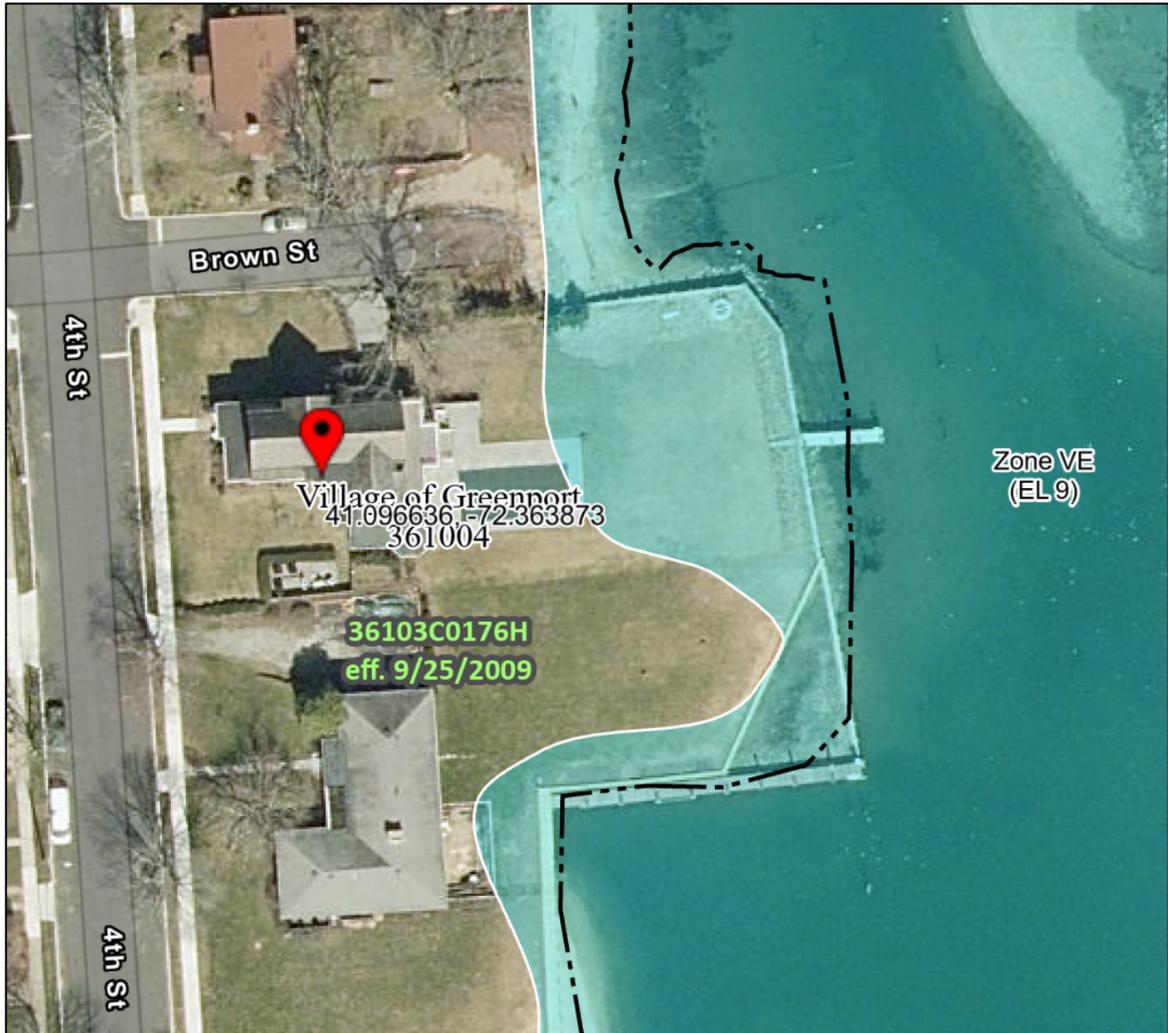


Figure 7 – 230 Fourth Street showing swimming pool build in VE9 flood zone and was only structure that required wetlands permit measured 75 feet from the bulkhead.

Specifically at the public hearing November 14, 2014 the following was discussed:

**MAYOR NYCE:** So if you could do that, and then we would approve the wetlands permit [for the pool], which is the only thing we're going to approve anyhow. All of the other building permit stuff you can do as of right through the Building Department, and wouldn't -- yeah, you wouldn't need further authorization from us for the building permit?

\*\*\*

**MAYOR NYCE:** Yes.

**MR. PROKOP:** Is the building going to be within the wetlands buffer, the wetlands area or buffer?

**MS. MARTIN:** No.

**MR. PROKOP:** The building that you're talking about?

**MR. BROWN:** No.

**MR. PROKOP:** No?

**TRUSTEE ROBINS:** It's existing.

**MR. PROKOP:** Then it's okay.

**TRUSTEE ROBINS:** It's a pre-existing building.

**MS. MARTIN:** Well over 100. The building itself is over 100 feet from the wetlands.

**MAYOR NYCE:** Right.

**MR. PROKOP:** That's fine. So *you just can't have any activity within the wetlands area until* --

**MS. MARTIN:** The pool is 75 feet.

**MAYOR NYCE:** Right. The pool is 75, so the pool would fall within the 100 feet. So you'd have to wait a week on starting the pool, but you could certainly start on the house, if that's --does that seem a reasonable resolution?

**TRUSTEE MURRAY:** (Nodded yes.)

**TRUSTEE HUBBARD:** Yes.

Village Board of Trustees Minutes November 17, 2014 at 15:24-16:5, 16:11-17:12 (emphasis added)).

What is clear is that the Village Board of Trustees' uncodified policy of requiring a wetlands permit within 100 feet of the wetlands boundary is measured from the bulkhead and not from the landward limit of the VE9 zone. If that were the case, then no permits should have issued for the demolition and construction of the residential addition ahead of the issuance of the wetlands permit.



Sterling Street, whose principal residence is located further to the north. Furthermore, there is no overlap between the two residences, and 178 Sterling Street will not be deprived of light or air. The area of the proposed addition that requires variance relief is adjacent to the preexisting, nonconforming garage and shed on 178 Sterling Street, which structures have of 7 feet and 3.8 feet, respectively.

*Easterly Side Yard*

The easterly side yard setback of the proposed addition is a conforming 11.6 feet pursuant to Town Code §150-13(E)(1). Variance relief on the easterly side of the Premises is minimal at 1.7 feet, and is requested to permit the construction of uncovered stairs measuring 3.5’ x 6.7’ (23.45 sq ft.). The stairs will provide entry into the residence adjacent to the main parking area of the existing driveway. No part of the proposed residential addition requires side yard relief on the easterly side of the Premises. There is no detriment to the adjoining property to the east, as the location of proposed stair will not deprive the easterly neighbor of light or air. *See Figure 8* above; *see also Exhibit L*, “Survey of 174 Sterling Street”).

Third, the requested side yard relief for the residential addition is in keeping with the character of the neighborhood. As seen in the aerial in *Figure 1*, above, the majority of properties on the northerly side of Sterling Street have nonconforming side yard setbacks and have similarly narrow lot widths of 50 feet where 60 feet is required in the R-2 District. *See Village Code §150-12(A)*.

<b>Property</b>	<b>Side Yard Setbacks</b>
178 Sterling Street (Gillooly & Spiradakis)	Residence: <sup>4</sup> 5.3’ (east side) 8.3 (west side) Garage: 7.9’(east side) Frame Shed: 3.8’(east side) Cottage: 0’ (west side) 0.7(south side – from bulkhead)

<sup>4</sup> Village records show that the contributing historic home at 178 Sterling Street was demolished and a new larger residence was built in the footprint of the demolished dwelling and the footprint of the porches - all without requiring any variances. *See Exhibit P*.

<b>Property</b>	<b>Side Yard Setbacks</b>
182 Sterling Street (Mundus)	Residence: 1.8' (east side)
172 Sterling Street (Kohut)	Residence: 5.0' (east)

While no variances are needed for lot coverage, neighbors in opposition have claimed that the proposed addition is too large and out of character with the neighborhood. This is not so. The aerial in *Figure I*, above, and the additional aerials in *Exhibit O*, show that the proposed 2,350 sq. ft. footprint of the residence is in keeping with the size of residences on either side of the Premises and along the northerly side of Sterling Street.

Furthermore, the length of the proposed dwelling at approximately 86 feet is average for the northside of Sterling Street:

<b><u>House Length</u></b>	<b><u>in feet</u></b>
<b>160 Sterling</b>	131
<b>162 Sterling</b>	80
<b>168 Sterling</b>	72
<b>172 Sterling</b>	102
<b>174 Sterling (proposed)</b>	87
<b>178 Sterling</b>	66
<b>182 Sterling</b>	67
<b>AVERAGE HOUSE LENGTH</b>	<b>86.43</b>

This objective data demonstrates that the proposed addition will not change character of the community. The addition falls well within the neighborhood average, noting that at least 3 properties (#178, 172, and 160) have residences and cottages extending farther seaward than the Applicants' addition. *See Figure 9*, below.

Furthermore, the ZBA should note, as did the court and the ZBA in *Matter of Sclafani v Rodgers*, Index No. 15-11661 [Sup Ct, Suffolk County 2018], affd 161 AD3d 1084 [2d Dept 2018], "there is no provision in the Village Code which guarantees a property owner's view or, for

that matter, his privacy.” *Id.* at 2. In that matter, noted that “the applicants are entitled to build a home (“as-of right”) that would have a much greater impact on the objectants” view across the applicants’ property” *Id.* The same is the case here, however, the Scholls desire to build an addition to their family home.

Additionally in *Scalfani*, the ZBA and the court noted that “we have permitted encroachments into currently required side yard set-backs, but typically only to the extent the existing dwelling encroaches.” *Id.* This is line of reasoning is in keeping with the Greenport ZBA’s precedent of granting variances from the set-back requirements to the extent of permitting a dwelling to be constructed within the same minimum side yards presently existing. *See Id.*

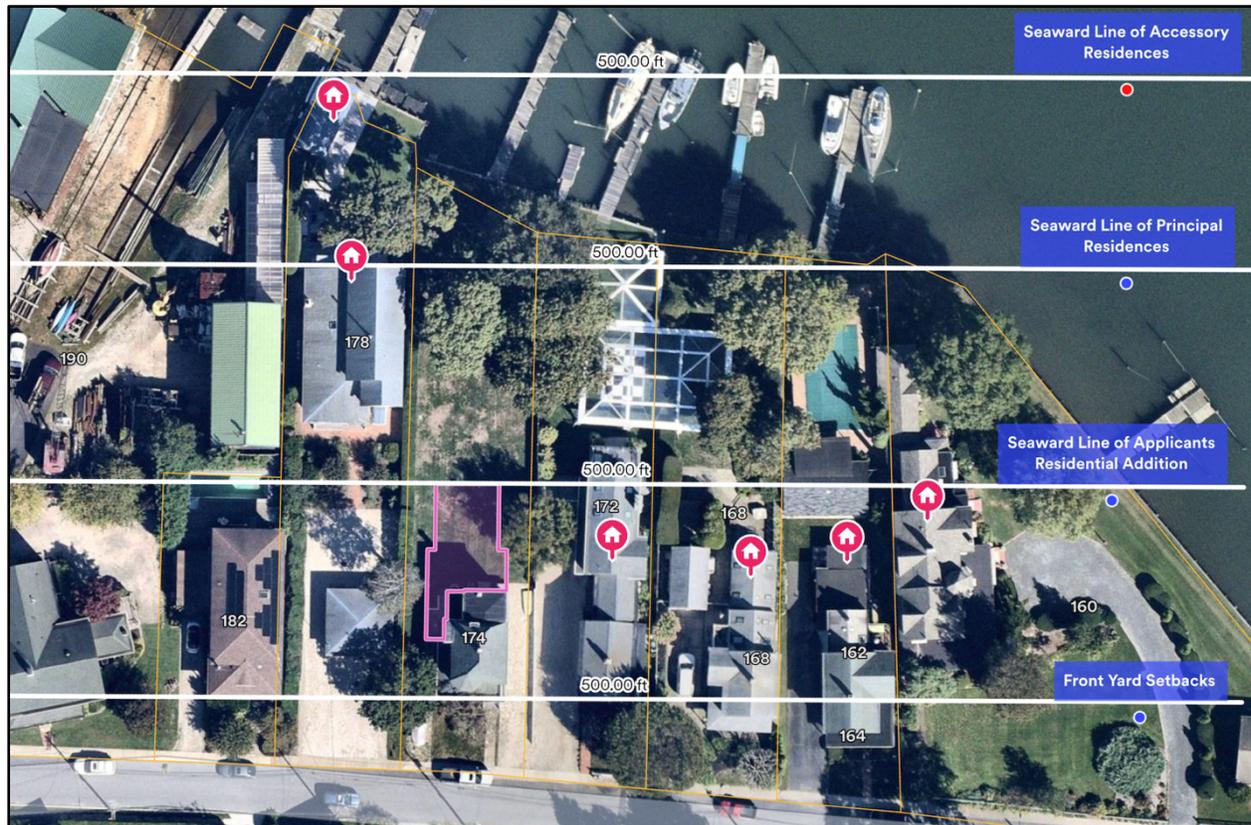


Figure 9 – Aerial showing residential average front yard; seaward line of proposed residential addition, most seaward line of principal residences in neighborhood, and most seaward line of accessory residential units.

**2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance:**

No, the benefit cannot be achieved by some method other than the requested variances. Due to the narrow nature of the lot and the historic preexisting nonconforming residence, it is not possible to meet the Applicants' needs to expand the existing residence without obtaining a variance. The portion of the westerly side of the addition that requires variance relief is needed to create a first floor bedroom of a sufficient size allow the Scholls to "age in place". This addition has been designed in keeping with Mrs. Scholl's background as a nurse and personal experience with caring for her mother towards the end of her life in their family residence.

**3. Whether the requested area variance is substantial:**

Although there is no hard and fast standard for determining whether a variance is substantial, "[t]he substantiality of the requested variance must be considered in light of the overall variance requested." 15 Warren's Weed New York Real Property §161.10 [2025]. For the reasons discussed in Section 1 regarding the lack of any change to the character of the community or detriment to nearby properties, the Applicant submits that the requested variance is not substantial. Numerically, the requested variance represents relief of 26%, although this percentage itself does not tell the whole story. See *Matter of Davydov v. Mammina*, 2010 NY Slip Op 33146(U), 2010 N.Y. Misc. LEXIS 5427, \*5 [Sup Ct, Nassau County 2010], *affd* 97 AD3d 678 [2d Dept 2012], *citing* Rice, *Supplementary Practice Commentaries McKinney's Cons. Laws of NY* Book 61 ("[I]n assessing the substantiality of a variance, the overall effect of granting the relief and not the percentage deviation from the mandated requirements of a zoning regulation, is the relevant inquiry").

In the instant matter, the overall effect of granting the requested relief will be setbacks that are no less than the existing setbacks. In other words, there is no increase to the degree of existing

non-conformity because the Applicants are not intensifying the encroachment into the side yard. The addition maintains the same side-yard setback as the existing dwelling and does not move any closer to the lot line. Accordingly, the proposed addition does not increase the degree of nonconformity. *See* Village Code §150-21; *see also Sposato v Zoning Bd. of Appeals*, 287 AD2d 639, 640 [2d Dept 2001] (where new construction maintains the same dimensional relationship to the lot line, the nonconformity is not worsened); *Matter of Petrocelli v Zoning Bd. of Appeals*, 281 AD2d 423 [2d Dept 2001].

Similar to the instant application, in *Martens v Zoning Bd. of Appeals*, 195 AD2d 974 [4th Dept 1993], adjoining property owners challenged the ZBA's approval for the addition of a second story to a nonconforming structure. There, the court sustained a board determination that an alteration did not increase setback nonconformity there was not expansion closer to the lot line.

#### **4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district:**

As a Type II action under SEQRA (*see* 6 NYCRR 617.5(c)(17)), area variances for a single family residence are generally not presumed to have any adverse impacts on environmental conditions. The NYS OPRHP has already determined that the proposed addition will not have any negative impact on the historic home or the historic district.

The proposed addition will not have a negative impact on environmental resources. It has received a letter of non-jurisdiction from the NYSDEC, and no part of the addition is located in special flood hazard area. Furthermore, even with the addition, the Premises will remain one of the most landward residences and the Property preserves more permeable surface area than a majority of neighboring properties, especially 178 Sterling Street, which has no meaningful permeable or unimproved areas. *See Figure 7* above.

**5. Whether the alleged difficulty was self-created:**

No, to the extent that existing home is legally preexisting nonconforming with regard to side yard setbacks and the Premises is considered a small lot because of its narrow width, the hardship is not self-created. The Premises has been in Cynthia Scholl's family for over 100 years. The Applicants have Designed an appropriate addition that is in keeping with the ZBA's precedent to approve similar expansions and additions the immediate neighborhood and within the R-2 zoning district and the historic district. Accordingly, the extent to which this application may be a self-created, Village Law §7-712-b(3)(b)(5) provides that even where an alleged difficulty is self-created, such self-created hardship "shall not necessarily preclude the granting of the area variance." As such, we submit that whether or not the alleged difficulties are self-created, the benefit to the Applicant outweighs any potential detriment to community.

**CONCLUSION**

For the reasons set forth herein, it is respectfully submitted that the Applicants have met the standards of Village Law §7-712-b(3)(b), and the Zoning Board should grant the requested variance relief identified in the November 7, 2025 Notice of Disapproval, and that the Building Inspector's determination contained therein should be upheld in all respect

Dated: Riverhead, New York  
February 17, 2026

Respectfully submitted,

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