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2 VILLAGE OF GREENPORT

3 COUNTY OF SUFFOLK : STATE OF NEW YORK

4 -----X

5 ZONING BOARD OF APPEALS

6 REGULAR SESSION

7 -----X

8 Station One Firehouse

9 Third & South Streets

10 Greenport, New York 11944

11 6:00 p.m.

12

13 BEFORE:

14 JOHN SALADINO ~ CHAIRMAN

15 DINNI GORDON ~ MEMBER

16 SETH KAUFMAN ~ MEMBER

17 DAVID NYCE ~ MEMBER

18 JACK REARDON ~ MEMBER (absent)

19

20

21

22

23 All other interested parties

24

25

2 (The Meeting was Called to

3 Order at 6:02 p.m.)

4 CHAIRPERSON SALADINO: Good

5 evening, folks. It's 6:02 and

6 this is the Zoning Board of

7 Appeals Regular Meeting.

8 Item Number 1 is a motion to

9 accept the minutes of the

10 August 20, 2024, Zoning Board of

11 Appeals meeting. So moved.

12 MEMBER GORDON: Second.

13 CHAIRPERSON SALADINO: All in

14 favor?

15 MEMBER NYCE: Aye.

16 MEMBER GORDON: Aye.

17 MEMBER KAUFMAN: Aye.

18 CHAIRPERSON SALADINO: And I

19 vote aye.

20 Item Number 2 is a motion to

21 schedule next Zoning Board of

22 Appeals meeting for October 15,

23 2024, at 6:00 p.m., Station One

24 Firehouse, Third and Center

25 Street, Greenport, New York 11944.

2 So moved.

3 MEMBER NYCE: Second.

4 CHAIRPERSON SALADINO: All in
5 favor?

6 MEMBER NYCE: Aye.

7 MEMBER GORDON: Aye.

8 MEMBER KAUFMAN: Aye.

9 CHAIRPERSON SALADINO: And
10 I'll vote aye.

11 Item Number 3 is 181 Fifth
12 Street. Is this is a motion to
13 accept the findings and
14 determinations for 181 Fifth
15 Street, LLC. This property is
16 located in the R-2, One- and
17 two-family district and is not
18 located in the Historic District.

19 The Suffolk County Tax Map Number
20 is 1001-7-4-19. So moved.

21 Everybody read the findings?

22 MEMBER KAUFMAN: Yes.

23 MEMBER GORDON: Yes.

24 MEMBER NYCE: Yes.

25 CHAIRPERSON SALADINO: So

2 moved.

3 MEMBER NYCE: Second.

4 CHAIRPERSON SALADINO: All in
5 favor?

6 MEMBER NYCE: Aye.

7 MEMBER GORDON: Aye.

8 MEMBER KAUFMAN: Aye.

9 CHAIRPERSON SALADINO: And
10 I'll vote aye.

11 Item Number 4 is 218 Sixth
12 Street. This is a continuation of
13 a reopened public hearing
14 regarding the application of Frank
15 Uellendahl on behalf of Sandra
16 Benedetto and Elizabeth Gertz.

17 The relief requested is on the
18 agenda. The property is located
19 in the R-2, one- and two-family
20 district. It's not located in the
21 Historic District and the Suffolk
22 County Tax Map Number remains the
23 same as 1001-7-2-4. Is there
24 anyone from the public that would
25 like to speak?

2 MR. UELLENDAHL: Good evening
3 my name is Frank Uellendahl. I'm
4 on behalf of my clients, Sandra
5 Edwards (sic) and Elizabeth.
6 Anyway, I just want to introduce
7 my clients to you.

8 I'm very happy that you granted
9 the variance for the most
10 important part of our application,
11 which is the addition of -- for
12 the first floor addition to
13 improve the kitchen garden room
14 area.

15 What's left to be discussed
16 today is the deck extension. We
17 were trying to get an extension of
18 the existing deck of five feet and
19 there was a problem based on an
20 application, a building permit
21 application, back in the 90's,
22 which we're we were not aware of
23 that the building inspector
24 decided that the deck that was
25 supposed to be built, was supposed

2 to be set back five feet off the
3 property line.

4 For some reason the deck was
5 built and my clients received a
6 C of O for the deck as built. So
7 this is what we're here for.

8 We're going -- we would like to
9 basically settle this tonight.

10 There are a couple of other
11 designs that were in discussion,
12 but we really would like to get
13 back to the original design to
14 have you grant the five-foot
15 addition of the existing deck
16 close to the property line.

17 With that, I would like to
18 introduce Ms. Gertz who will get
19 more into detail with it. Thank
20 you.

21 CHAIRPERSON SALADINO: Thank
22 you.

23 MS. GERTZ: Thank you. Good
24 evening, Mr. Chair, members of the
25 Board. Elizabeth Gertz, 218 Sixth

2 Street, Greenport, New York.

3 I want to first raise some
4 procedural issues that I would
5 like to have clarified from both
6 of the last two hearings. I will
7 say that I contacted counsel,
8 Mr. Stolar, that I intended to
9 raise these issues and hoped we
10 could talk. We were not able to.
11 We did have a short e-mail
12 exchanged, but the issues were not
13 resolved.

14 So I would like to raise them
15 now, in large part because they
16 effect both the substance of the
17 issues and, you know, what happens
18 here ways basically, just not
19 procedurally.

20 At the July 16th hearing, all of
21 you, but Mr. Kaufman were here
22 then. There was a tie vote to
23 deny the variance with respect to
24 the deck. At that time, we
25 discussed numerous things. The

2 chair asked the attorney what they
3 did then and the attorney said
4 it's a no decision and you will
5 discuss it at next month's meeting
6 and you will deliberate and you
7 can still deliberate even if
8 there's only four people here. If
9 it turns out the other vote is a
10 know, have you a three to one vote
11 at that time. If it turns out the
12 other way, you'll know what the
13 vote is and you'll vote it in
14 September and make the final
15 decision then.

16 The Village ZBA, as I'm sure you
17 know, governed by the Village Code
18 and the Village Law. Village Law
19 Section 7-712-A-13 provides voting
20 requirements. 7-712-A-13-A
21 provides that as -- except as
22 provided in Subdivision 12 of this
23 session, which pertains to
24 rehearings, every ZBA motion shall
25 require for its adoption the

2 affirmative vote of a majority of
3 all the members of the Board of
4 Appeals.

5 7-712-A-13-B goes on to provide
6 that when an affirmative vote of a
7 majority of the Board is not
8 attained on a motion or a
9 resolution to grant a variance, it
10 is deemed a default denial.

11 13-B also expressly provides
12 that such a failed motion may be
13 reconsidered and amended without
14 being subject to the rehearing
15 process as set forth in
16 Subdivision 12 of this section.

17 This is important because
18 Subdivision 12 requires a
19 unanimous vote to reverse a
20 decision. Subdivision 13-B makes
21 clear that that requirement does
22 not apply when there's a default
23 denial and a reconsideration. Not
24 a rehearing, a reconsideration,
25 which you can do at any time.

2 So that's one thing I would like
3 to have clarified in terms of how
4 we're proceeding. Because at the
5 end of the last hearing, the Chair
6 stated that we needed a unanimous
7 vote of all members in order to
8 reverse the denial. So I'd like
9 to -- I'd like to understand
10 which -- you know, how we're
11 proceeding here on that.

12 Obviously -- and to be totally
13 transparent, you know, as you all
14 should know from the couple of
15 months that we've been here, we're
16 not likely to get a unanimous
17 vote. That's been sort of made
18 clear to us. But we might get a
19 majority vote and I'd like to have
20 that opportunity to have that vote
21 taken. So are there any questions
22 for me about that?

23 CHAIRPERSON SALADINO: I
24 don't have any questions. I have
25 a response, but I'm not sure if I

2 should make it now or after we --
3 I'll be -- this Board is required
4 to go for training every year.
5 And in those training seminars,
6 it's been the policy of this Board
7 and the understanding of this
8 Board and from those people giving
9 that training seminar, that a
10 two -- two vote was a denial.
11 That's the policy of this Board.

12 I'm on this Board nine years.

13 Diana has been here --

14 MEMBER GORDON: A little
15 longer.

16 CHAIRPERSON SALADINO: -- a
17 little longer. David is a former
18 mayor. Seth's been on the Board
19 for a while. That's been the
20 policy of this Board.

21 Sometimes -- and I wouldn't say
22 this attorney, but we had a
23 previous attorney that worked in
24 other jurisdictions -- that this
25 Board doesn't have original

2 jurisdiction.

3 If we had original jurisdiction

4 and we were ruling on something

5 like a site plan, a two-two tie

6 just keeps going, it carries on.

7 But a two-two tie, from our point

8 of view, was always a denial.

9 When I spoke to our attorney

10 about it, we weren't -- I wasn't

11 sure -- I was sure of my position.

12 I wasn't sure of his position and

13 I thought it warranted a

14 discussion later between him and I

15 where since that time, since from

16 when you quoted the minutes, we

17 received and voted on the findings

18 and determinations for your

19 application.

20 And in the findings it's -- the

21 variances for the front yard

22 setback and shed side yard setback

23 are existing conditions. The

24 expansion of the dwelling and deck

25 addition are enlargements.

2 It's here somewhere. I have it
3 underlined here somewhere. As to
4 the deck with regards to the front
5 yard setback, shed setbacks,
6 addition to the house, they would
7 not interfere fear and we voted to
8 affirm that.

9 As to the deck, it's proposed
10 extended location would increase
11 and relocate -- I'm reading
12 from -- I apologize. I'm reading
13 from the balancing test, which I
14 have it here.

15 This position of application for
16 the reasons set forth herein, the
17 Board denies the variance
18 necessary to extend the deck. You
19 were here when we got these
20 findings.

21 MS. GERTZ: I would like to
22 respond to that at some point too.

23 CHAIRPERSON SALADINO: Also,
24 so as far as the findings and
25 determinations for that

22 But as far as the determination,
23 the application was denied.

24 MS. GERTZ: Yes, it was

denied. It was denied on a tie

2 vote, which is called a default
3 denial.

4 CHAIRPERSON SALADINO: No, I
5 have the vote in front of me.

6 AUDIENCE MEMBER: Right, and
7 the statute addresses that
8 particular kind of denial in a
9 very particular kind of way. It
10 differentiates it. It
11 differentiates it by saying it can
12 be reconsidered.

13 The statute is pretty here clear
14 as I read it. And especially if
15 you read it in conjunction with
16 the previous subsection, 13-A,
17 which says every motion must be --
18 requires, prior to adoption,
19 requires a vote of the majority.

20 CHAIRPERSON SALADINO: To be
21 adopted.

22 MS. GERTZ: To be adopted.

23 Well, there was no majority.

24 That's why they have a default
25 denial provision, which says --

2 CHAIRPERSON SALADINO: But
3 there --

4 MS. GERTZ: -- says when
5 there's not a majority. There was
6 not a majority vote.

7 CHAIRPERSON SALADINO: There
8 was a quorum.

9 MS. GERTZ: There was a
10 quorum, but there was not a
11 majority.

12 CHAIRMAN FARLEY: Which means
13 that it failed.

14 MS. GERTZ: No -- yes, it
15 failed by default when it's less
16 than the majority. I wonder if
17 your counsel might address this
18 because the statue is very clear
19 that it says, in exercising the
20 appellate jurisdiction -- not
21 original jurisdiction --

22 CHAIRPERSON SALADINO: No, I
23 understand.

24 MS. GERTZ: -- but an
25 appellate jurisdiction. If an

2 affirmative vote is not attained,
3 it's a default denial and may be
4 amended without being subject to
5 the rehearing process as required
6 in Subdivision 12.

7 That seems to be very clear that
8 what should have happened here is
9 that the hearing should have been
10 continued, which is sort of was,
11 and we should have had an
12 opportunity for another vote.

13 CHAIRPERSON SALADINO: Well,
14 let me ask you this: If this
15 Board -- because if you recall on
16 that Board, there was one
17 member -- there was one member
18 that didn't -- that was --

19 MS. GERTZ: Absent.

20 CHAIRPERSON SALADINO: --
21 reluctant to vote to have a
22 rehearing.

23 MS. GERTZ: It wasn't a
24 rehearing though. That's the
25 thing. That's one of the other

2 things that I want to point out.

3 You reopened the hearing. This

4 was not a rehearing and that

5 brings me to the second issue.

6 CHAIRPERSON SALADINO: Just

7 if I could explain.

8 MS. GERTZ: Okay.

9 CHAIRPERSON SALADINO: We

10 reopened the hearing. We didn't

11 have to. We didn't have to reopen

12 that hearing. The vote could have

13 stood at two-two. You could have

14 claimed it's a default denial.

15 We understood it to be a denial.

16 It's in the findings and

17 determinations. And 62 days

18 later, without any more comment or

19 addresses from this Board, it

20 would have became an official

21 defile, not a default denial. And

22 as a courtesy to you, we reopened

23 the hearing.

24 MS. GERTZ: It wasn't just --

25 okay. It wasn't just a courtesy

2 to me. There was more information
3 that the Board was interested in
4 having. They wanted the
5 Certificate of Occupancy.

6 CHAIRPERSON SALADINO: That
7 wasn't brought up until the
8 following month.

9 MS. GERTZ: It certainly one.

10 CHAIRPERSON SALADINO: No,
11 not at that meeting.

12 MS. GERTZ: Well, one of the
13 members stated that they wanted
14 the Building Department file to
15 see what was in it. The
16 Certificate of Occupancy was in
17 it.

18 You know that's actually not my
19 client though. My point is simply
20 that the statute requires
21 something that didn't happen here.

22 And the second point I wanted to
23 make was about the findings and
24 determinations, which, as you
25 noted at one point, can be

extended. The time can be extended. I had no idea when you voted to accept those findings and determinations that that covered the deck as well. Because as far as I knew, the issue of the deck was left -- was reopened.

9 CHAIRPERSON SALADINO: I told
10 you that the findings, after we
11 voted and accepted them, could be
12 extended?

13 MS. GERTZ: No. You said
14 that earlier on at one point,
15 which is correct. That the time
16 to issue the findings and
17 determinations can, upon mutual
18 consent of the Board and
19 applicant, be extended. We
20 haven't didn't have an opportunity
21 to even ask for that.

22 And as I just said, I had no
23 idea that those findings and
24 determinations covered the deck
25 application because as far as I

2 knew, at the July hearing, the
3 issued of the deck application was
4 reopened, not for a rehearing, but
5 for further consideration. And
6 that's why we came in with
7 additional evidence, including the
8 Certificate of Occupancy and
9 testimony from our neighbor.

10 VILLAGE ATTORNEY STOLAR:

11 Chair? Can I suggest we go into
12 executive session for legal
13 advice?

14 CHAIRPERSON SALADINO: I'll
15 put it to the Board.

16 MEMBER GORDON: Of course.

17 CHAIRPERSON SALADINO: Should
18 we adjourn to -- I make a motion
19 to adjourn into executive session.

20 MEMBER GORDON: Is it adjourn
21 though?

22 VILLAGE ATTORNEY STOLAR:

23 Well, we adjourn to a private
24 location for executive session and
25 then we'll come back into public

2 session. So there's a motion.

3 MEMBER NYCE: I'll second the
4 motion.

5 CHAIRPERSON SALADINO: All in
6 favor?

7 MEMBER NYCE: Aye.

8 MEMBER GORDON: Aye.

9 MEMBER KAUFMAN: Aye.

10 (Whereupon the Board went into
11 executive session.)

12 CHAIRPERSON SALADINO: Folks,
13 I'm going to make a motion that we
14 exit the executive session and
15 reenter the regular meeting. So
16 moved.

17 MEMBER KAUFMAN: Second.

18 CHAIRPERSON SALADINO: All in
19 favor?

20 MEMBER NYCE: Aye.

21 MEMBER GORDON: Aye.

22 MEMBER KAUFMAN: Aye.

23 CHAIRPERSON SALADINO: And
24 I'll vote aye.

25 Is there anything else?

2 MS. GERTZ: There are a
3 number of other things, but I
4 guess I would like to hear if
5 there's something relevant I
6 should be told.

7 CHAIRPERSON SALADINO: There
8 absolutely is something relevant.
9 That we're going to, without
10 assigning blame to anybody, we're
11 going to reissue the findings with
12 a correction.

13 And even though we followed the
14 specific process for years, we're
15 going to -- I'm searching for the
16 word. I want to say acquiesce.
17 --- we agree with our lawyer's,
18 our attorney's advise.

19 I take blame for this. I
20 reopened the public hearing with
21 less than -- normally our process
22 would have been just leave the
23 public hearing closed and the
24 decision the way it was. Since we
25 reopened the public hearing -- it

2 was pointed out to us, since we
3 reopened the public hearing, we're
4 going to continue with this public
5 hearing tonight and if there's a
6 motion for a discussion and a vote
7 on -- after we close the public
8 hearing, if there's a motion to
9 discuss and vote on this
10 application tonight, we'll do
11 that.

12 Acquiesce: Okay. I do have
13 a question. When you say you're
14 going to reissue the findings and
15 determination, what's going to
16 change?

17 CHAIRPERSON SALADINO: The
18 attorney will go over the findings
19 and determinations and make any
20 corrections. After the discussion
21 tonight, he'll make any
22 corrections on the findings that
23 he thinks is necessary.

24 MS. GERTZ: Can you be more
25 specific?

2 MEMBER GORDON: -- a
3 separation of the issue from the
4 deck from the rest of it.

5 CHAIRPERSON SALADINO: I'm
6 responding to her question, what's
7 going to be different.

8 MEMBER GORDON: I was
9 thinking that the answer, as we
10 understood it from the attorney,
11 was that the issue of the deck
12 would be separated from -- simply
13 removed from the findings and
14 determinations because we haven't
15 made a determination that holds.

16 CHAIRPERSON SALADINO: Well,
17 I think it's -- are you prepared
18 to relitigate the house and the
19 shed and?

20 MEMBER GORDON: No.

21 CHAIRPERSON SALADINO: So I
22 think it just makes sense that the
23 issue that we're talking about is
24 the deck.

25 MEMBER GORDON: Yeah.

2 MS. GERTZ: But it wasn't
3 clear to me that that's what you
4 were talking about. So you're
5 saying the findings and
6 determinations with respect to the
7 deck will be removed from the
8 findings and determinations that
9 were issued on August 20th?

10 CHAIRPERSON SALADINO: That
11 portion of the findings
12 we're going to -- I'm going to
13 leave it to our attorney to reword
14 it. He's here. He's been part of
15 the discussion. He was part of
16 the executive session. He has
17 access to the minutes. He was
18 here for the meeting that we
19 voted, and he'll draft the
20 findings to reflect what's
21 happened.

22 MS. GERTZ: All right but,
23 you know, I'm sorry, it's a little
24 vague and I want to know how we're
25 proceeding. Are we proceeding now

2 to reconsider the application on
3 the deck without any findings and
4 determinations made on it? Is
5 that the status of where we are?

6 CHAIRPERSON SALADINO: I
7 believe it is.

8 VILLAGE ATTORNEY STOLAR:
9 There was no effective
10 determination with regard to the
11 deck. That hearing is still open.

12 MS. GERTZ: Okay.

13 MS. BENEDETTO: I see.

14 MS. GERTZ: Okay, and then am
15 I correct in considering that we
16 are able to reconsider the
17 application for the deck without
18 the Section 12 requirements of a
19 unanimous vote?

20 VILLAGE ATTORNEY STOLAR: So
21 I'll be clear. The Board reopened
22 the hearing --

23 MS. GERTZ: Yes.

24 VILLAGE ATTORNEY STOLAR:
25 Rather than await the 62 days for

2 a default denial. So the two-two
3 vote was a non-vote at the time.
4 Now, having reopened it, the Board
5 can consider it in the same manner
6 as an original application.

7 MS. GERTZ: Okay. All right,
8 so that leads me to want to go
9 back and, at least, summarize our
10 original request and the reasons
11 for it.

12 I will say that when the hearing
13 was reopened on August 20th, we
14 did bring in -- it was mostly and
15 for the purposes of the member who
16 wasn't here and may not have had a
17 chance to read the transcript --
18 but we brought in new evidence
19 including the Certificate of
20 Occupancy to address the issue of
21 legality of the deck and we had a
22 neighbor come in and testify on
23 our behalf.

24 And that next door neighbor,
25 Dave Kapel his name was -- is,

2 came in and said, we have
3 absolutely no objection whatsoever
4 to their building a deck where the
5 existing deck is one foot off the
6 property line. We feel it would
7 be an improvement to the
8 neighborhood. The bottom line is
9 the house was built 100 years ago
10 effectively on the property line.
11 We bought the house with a
12 certificate -- we meaning
13 Ms. Benedetto and I -- bought the
14 house with a Certificate of
15 Occupancy, not only for the house,
16 but for the deck and relied on
17 that in making an investment.
18 So if you're suggesting that the
19 deck should be -- the C of O
20 should be revoked, you're actually
21 taking away and damaging us.
22 He further stated, add and I'm
23 quoting him because I've said
24 this, but he may have said it more
25 pointedly.

The deck was, in a logical manner, built as an extension of the north side of the house. That's what any rational person would choose. Why this Board would go against that when there's nobody being damaged by approving the application is beyond me.

10 We're the only ones that would be
11 adversely effected and we are in
12 support of it.

2 issues as it simply being too
3 close to the property line to be
4 reasonable. Also that it would
5 not give any relief to the
6 neighbors to have a deck so close.
7 But the neighbors came in and very
8 clearly stated they had no problem
9 with it. I don't know how any
10 harm could be done to the
11 neighbors who are, in fact,
12 supporting it.

13 And as to the question or the
14 issue or concern that was raised
15 as to future property owners next
16 to us, Mr. Kapel said, "We're not
17 going anywhere." But even if he
18 is, to think about -- I mean, to
19 think about what somebody 10, 15,
20 20 years down the road might think
21 about what we're doing does not
22 seem reasonable to me.

23 I don't know -- and in going
24 through -- I mean, you could say
25 that, you could say that about any

2 variance that anybody requested
3 that some years down the road
4 somebody is going to object to it.

5 I don't think that's on balance, a
6 reason to deny this variance.

7 I have a few other points and
8 then I'll stop. Okay, just to
9 address those sort of balancing
10 points. Two of the ones that were
11 not considered favorably by a
12 couple of the Board members, not
13 interfering with the neighbors
14 enjoyment. That's one of the
15 factors to consider.

16 This is not interfering with the
17 neighbors' enjoyment and we don't
18 know what will happen in the
19 future.

20 No adverse impact on the
21 neighborhood. I don't see how
22 this can have an adverse impact on
23 the neighborhood. Our neighbors
24 support it and recommend it. It
25 will improve our property. It

2 will make our life better and it's
3 not going to hurt any of the
4 neighbors or the community. As
5 you know, this Village is filled
6 with houses close to the property
7 line. Many of them have extended
8 beyond and beyond and beyond, two
9 and three extensions beyond. So
10 they're nonconforming proximity to
11 the property line has been
12 continued.

13 We are asking to do that also.
14 And it is close to the property
15 line, granted, there's no dispute
16 of that, but this is a minor
17 extension. And as to whether a
18 deck versus --

19 CHAIRPERSON SALADINO: Can I
20 just interrupt one second?

21 MS. GERTZ: Yes.

22 CHAIRPERSON SALADINO: We're
23 not talking about an extension.

24 AUDIENCE MEMBER: Yeah, we
25 are.

2 CHAIRPERSON SALADINO: No,
3 we're not. We're not talking
4 about a five-foot extension to the
5 east. We're talking about the
6 proximity to the property line.

7 MS. GERTZ: Yes.

8 CHAIRPERSON SALADINO: The
9 five foot extension, as exhibited
10 in part of the plan, is not in
11 question.

12 MS. GERTZ: Right, the
13 five-foot attention along the
14 property line --

15 CHAIRPERSON SALADINO: No.

16 MS. GERTZ: -- that's what
17 I'm saying.

18 CHAIRPERSON SALADINO: Well,
19 I misunderstood because the plan
20 calls for a five-foot extension to
21 the east of the deck. To the
22 east, not to the north.

23 MS. GERTZ: Yeah, along the
24 property line. To the east, along
25 the property line.

2 AUDIENCE MEMBER: On the
3 northern property line.

4 MS. GERTZ: Yeah, on the
5 northern property line, but it's
6 going to the east. I mean, I'm
7 not sure. The deck is here and we
8 want to add a little bit here
9 (indicating). That's what we're
10 saying. That's all we're saying.
11 I mean, I have the original
12 drawing if anybody wants to see
13 it.

14 CHAIRPERSON SALADINO: Yes.

15 MS. GERTZ: Yes, you want to
16 see it?

17 CHAIRPERSON SALADINO: No, we
18 have it.

19 MS. GERTZ: Okay. But my
20 point is, I mean, I don't think
21 there's a dispute about which
22 direction we're trying to extend
23 it. And that we're only trying to
24 extend it five feet. So I'm
25 simply saying that that's a pretty

2 minor change and on balance of, I
3 believe, that the benefit to us
4 does outweigh the disadvantage to
5 any of our neighbors or the
6 community.

7 You know, and as to the matter
8 that it is your job to eliminate
9 nonconforming uses, well, it's
10 actually not your job to eliminate
11 nonconforming uses. If that were
12 your job, there wouldn't be any
13 variances granted. Your job is to
14 determine whether a variance or,
15 you know, a variance would be an
16 undue -- would lack of a variance
17 be an undue hardship for us.

18 You're not, as was stated at the
19 last meeting, an enforcement
20 agency. You are, you know, you
21 are essentially, as our Court of
22 Appeals have said, a safety valve
23 invested with the power to vary
24 zoning regulations in specific
25 cases in order to avoid

2 unnecessary hardship or practical
3 difficulty arising from a literary
4 application of the Zoning Law.

5 This would create practical
6 difficulty for us if we had to
7 change the design of this deck.

8 We want simply to keep the deck in
9 line with the house. We are not
10 using up -- there's no issue of,
11 you know, coverage. There's no
12 issue of rather setback and
13 there's no issue of the other side
14 setback.

15 It's simply that we want to do
16 this as it was logically done in
17 the first place to extend it. The
18 reason we want to extend it is
19 because we are extending the house
20 five feet, which you have already
21 agreed we could do. So we're
22 taking that five feet that we're
23 losing from the deck and simply
24 seeking to put it on the end of
25 the deck again and have the same

2 size deck.

3 That's our request here. Happy
4 to answer any questions. If not,
5 I think Ms. Benedetto would like
6 to say a few words as well.

7 MS. BENEDETTO: Good evening.

8 My name is Sandra Benedetto. I
9 live at 218 Sixth Street,
10 Greenport, New York 11944. So I'm
11 just going to go to speak very
12 shortly and just reiterate some
13 things that I said the last -- at
14 the last meeting. I was not at
15 the first meeting because I was
16 ill. I'd say again, you know,
17 with COVID and illness we still
18 don't have a full Board to speak
19 to. I regret that.

20 But I just want to restate that
21 the house is, they tell us, built
22 in 1880. It was probably one of
23 the first houses in the area.
24 However the property was
25 subdivided, we now find ourselves

2 on the property line, inches from
3 the property line.

4 The deck was built over 30 years
5 ago. We do have a Certificate of
6 Occupancy for that deck. We
7 simply, as Betsy says, want to
8 extend it out.

9 But, you know, one of the things
10 that I want to point out, as I did
11 point out earlier, I'm a 70-year
12 old woman, aging. I'm having
13 difficulty with walking and
14 mobility and balance. It's been
15 suggested here, well, we could
16 just build step out the back of
17 our house to a patio. That won't
18 work for me. That is part of why
19 I want a deck. It will never work
20 for me to walk out of my house,
21 walk down four steps to a patio
22 with a platter of food to serve to
23 my guests. I need to just walk
24 out of my house and be able to be
25 at an area where I can feel safe.

2 To us ask us to move the entire
3 deck, and I heard you say earlier
4 Mr. Saladino -- and, you know, I
5 understand that the previous
6 findings may be revised -- but
7 that we don't have approval to
8 extend the deck. But even the
9 existing footprint, as I
10 understand it, even the existing
11 footprint of walking out and
12 having five feet cover the back of
13 the house has been, as I
14 understand it, is being denied and
15 I think that's unreasonable.

16 For me to open up sliding glass
17 doors, as I said the last time,
18 and step to the right and I step
19 on the deck, but step to the left
20 and there is a gap there because
21 the house -- the house is where it
22 is. I mean, we can't pick the
23 house up and move it. It's been
24 there for over 100 years just like
25 this.

2 So I just, again, want to, you
3 know, please ask you to consider
4 that. I don't think our request
5 is unreasonable. And I do think
6 it is not only aesthetic for the
7 design, but for me, you know,
8 safety in terms of not having to
9 walk down steps or walk -- or not
10 having to have a gap, you know, to
11 the left.

12 So, once again, I just want to,
13 you know, ask you to approve the
14 variance for the extension of our
15 deck along the property line to
16 the north and the extension is to
17 the east. Thank you.

18 CHAIRPERSON SALADINO: Just
19 one question.

20 MS. BENEDETTO: Yes, of
21 course.

22 CHAIRPERSON SALADINO: Did
23 you see the revised drawings that
24 the architect submitted to the
25 Board?

2 MS. BENEDETTO: I did see
3 those. I did see those. I'm not
4 sure the whole Board saw them, but
5 I do feel like I would like to go
6 back again and revisit the fact
7 that I do not want to have a gap.

8 CHAIRPERSON SALADINO: No,
9 that's fine. I just wanted to
10 know if you saw the drawings.

11 MS. BENEDETTO: Yes, of
12 course. He's my architect. But
13 we have not formally submitted
14 those. I think you received them
15 because you talked to the clerk.
16 I'm not sure that the rest of the
17 Board saw them.

18 CHAIRPERSON SALADINO: Well,
19 I was asking if you wanted us to
20 consider them and there was like
21 no response. So we just.

22 MS. BENEDETTO: Okay. I did
23 see them, yes.

24 CHAIRPERSON SALADINO: Okay.

25 MS. GERTZ: At the last

2 meeting I did say we wanted to go
3 back to the original plans.

4 CHAIRPERSON SALADINO: No,
5 and that's fine. That's your
6 right. It's your application.
7 You fill it out and you make the
8 request any way you want. I was
9 just curious if you saw them.

10 MS. BENEDETTO: Yes, I'm
11 aware.

12 CHAIRPERSON SALADINO: Is
13 there anyone else from the public
14 that would like to speak?

15 MS. NEFF: This is very high.
16 Am I speaking...

17 CHAIRPERSON SALADINO: Ellen,
18 we can hear you.

19 MS. NEFF: All right. I'm
20 Ellen Neff. I live at 629 Second
21 Street, Greenport.

22 I think the right meeting for me
23 to have been at to say something
24 was the July meeting, but I was at
25 the August meeting, which was, in

2 a lot of ways, it was what it was,
3 a small gap.

4 Anyway I have lived at 629
5 Second Street since 1974. My
6 house, like 218 Sixth Street is
7 more than 100 years old and sits
8 on the north property line. When
9 I wanted to add a 14 by
10 16 one-story addition to the rear
11 of the house, my plan got a notice
12 of disapproval. What a shock.
13 What did I know about all the
14 regulations?

15 I lived in a street -- this is a
16 map of Greenport in 1878
17 (indicating). My house is on it
18 and it's clustered with other
19 houses. The zoning map comes to
20 be in 1971. There's going to be
21 -- and, yes, we have gotten used
22 to the fact that late -- you know,
23 when I served on the Zoning Board
24 of Appeals for almost ten years, I
25 learned that this kind of surprise

2 that oh, my God, look, I live in a
3 jurisdiction that has rules that I
4 didn't know about when I bought my
5 house.

6 However, such unique challenges
7 for owners, for the Building
8 Department and certainly members
9 of the Zoning Board of Appeals,
10 you work through them and you make
11 some kind of adjustments.

12 In my case it was very easy to
13 do. If I followed the what the
14 Zoning Board zoning regulations
15 said, my house would not have
16 connected to the modest addition.
17 Moving it over five feet, getting
18 the permission of the ZBA to have
19 a five-foot distance from the
20 property line, I could go on with
21 my life and I have gone on with my
22 life.

23 However Sandy and Betsy want to
24 make changes that are necessary
25 for their continued safe enjoyment

2 of their property. What they want
3 to do is modest and in so many
4 ways, if we look around our
5 Village, it's exceedingly modest.
6 I urge the Board to grant them the
7 relief that they seek. The street
8 scape will not be changed. The
9 present owners, and I know that
10 they won't always be the owners of
11 the house next door, have no
12 objections. So that's -- my point
13 is, I urge you to grant them the
14 relief.

15 When I read just now, which I
16 had not seen before, the findings
17 and determination, I was like,
18 well, there's no way. But I think
19 there is a way forward because you
20 are reasonable people and what
21 they seek is a reasonable. Thank
22 you.

23 CHAIRPERSON SALADINO: Thank
24 you. Is there anyone else from
25 the public that would like to

2 speak?

3 (No response.)

4 CHAIRPERSON SALADINO: I'm
5 going to make a motion that we
6 close this public hearing.

7 MEMBER GORDON: Second.

8 CHAIRPERSON SALADINO: All in
9 favor?

10 MEMBER NYCE: Aye.

11 MEMBER GORDON: Aye.

12 MEMBER KAUFMAN: Aye.

13 CHAIRPERSON SALADINO: And
14 I'll vote aye.

15 We have -- as everyone is well
16 aware of, at this point in time,
17 we have 62 days to make a
18 decision. I think that's crazy.
19 I think we should discuss this
20 this evening and vote. That's my
21 idea. Is that the pleasure of the
22 Board?

23 MEMBER KAUFMAN: I agree.

24 MEMBER GORDON: Yes.

25 MEMBER NYCE: I agree.

2 CHAIRPERSON SALADINO: I have
3 a few comments I want to address
4 almost immediately because you
5 brought it up at the podium. The
6 Zoning Board's mandate is the
7 gradual elimination of
8 nonconforming uses. That's in the
9 code. It's in black and white.

10 The opinion that was given by a
11 neighbor who was never a member of
12 the Zoning Board, never served on
13 the Zoning Board who has an
14 opinion, which everyone does.

15 Part of Village Law also says
16 that the Zoning Board, the
17 exercise of its appellate power,
18 it's not only our function to
19 merely decide, but to, in fact,
20 act as a building inspector.
21 That's part of our role here.

22 So enforcement is part of all
23 Zoning Boards, not this Zoning
24 Board, all Zoning Boards' duties.

25 So I wanted to get that out of the

2 way that we were overstepping by
3 making these comments or bringing
4 that issue up.

5 A few of the comments that I
6 have is that -- it was brought up,
7 again, by a neighbor. The
8 neighbor testified that they have
9 no problem. For that particular
10 neighbor, the Zoning Board, since
11 it's a small town and since we
12 know a lot of people in town, as
13 you all do, we know that's
14 investment property for that
15 particular neighbor. That
16 neighbor doesn't live there.

17 So to say it's not an issue to
18 him, that very well might be true.
19 But the fact that of the matter
20 is, it makes a bigger difference,
21 in my mind, if someone came forth
22 and said I live there and it won't
23 bother me.

24 It was brought up that we would
25 be devaluing your property, there

2 would be a taking. In fact, my
3 opinion is that we enhanced the
4 value of your property. We
5 granted a new extension, a larger
6 extension to your home. I don't
7 see how that would devalue your
8 property.

9 We also gave you the option --
10 we didn't say you couldn't have a
11 deck. We just said you couldn't
12 have a deck right there. So you
13 have ample space to put a deck,
14 just not right there. I don't
15 know how that devalues the
16 property. I don't believe it
17 does.

18 My notes are disjointed because
19 I copy them as we go. It was
20 brought up that it's not a big
21 deal. Variances don't have the
22 weight of precedence, but they
23 should be consistent. In my
24 tenure on the Zoning Board -- and
25 so I'm guessing for David and

2 Seth, perhaps Dinni, since she
3 served prior to me coming to the
4 Zoning Board have seen -- but I've
5 never saw -- never saw this Zoning
6 Board issue a variance for an
7 accessory structure on a property
8 line. Never happen. Never saw
9 it.

10 So if we're going to -- there is
11 no precedent, but variance, as we
12 know, should be consistent.

13 MS. GERTZ: I'm sorry, I know
14 the public hearing is closed, but
15 I really need respond to that.
16 Because first of all, as is in the
17 record, it's not on the property.
18 It's a foot from the property
19 line.

20 CHAIRPERSON SALADINO: It's
21 .8 inches from the property.

22 MS. GERTZ: No, it is not.
23 It is 1.1.

24 CHAIRPERSON SALADINO: That's
25 the building.

2 MS. GERTZ: Yes, and the deck --

3 VILLAGE ATTORNEY STOLAR:

4 It's proposed at ten inches from
5 the property line.

6 MS. BENEDETTO: Right.

7 VILLAGE ATTORNEY STOLAR:

8 Which is .8.

9 MS. GERTZ: The deck will
10 follow the line of the building.

11 CHAIRMAN FARLEY: If I could,
12 I allowed you -- you know, I'm not
13 sure we're going to open it up to
14 the public again, but if I could
15 just go through my thoughts for
16 the Board because this is our
17 discussion now?

18 So my system for granting a
19 variance, Ellen brought it up, it
20 was always my belief some members
21 of the Board take an interpretive
22 view. I look at the code and read
23 it the way it's written, and I
24 have a formula for moderately
25 tailored relief. That's how I do

2 it.

3 I believe the deck would be an
4 intrusion on the neighbor. It's
5 elevated. It's unobstructed view
6 into the neighbor's backyard, the
7 side of their home. In fact, from
8 our inspection, we saw that you
9 even extended the side yard fence
10 an additional three feet or so,
11 which doesn't conform to code.

12 MS. GERTZ: It wasn't a
13 fence.

14 MS. BENEDETTO: A trellis.

15 MS. GERTZ: It's a trellis on
16 the deck.

17 CHAIRMAN FARLEY: It's a
18 structure.

19 MS. GERTZ: It's a trellis to
20 grow plants on.

21 CHAIRPERSON SALADINO: I
22 don't want to get into a debate
23 with you, but for the sake of a
24 code, a trellis, a wooden lattice,
25 is a structure according to our

2 code. And the side of the side
3 yard against fence, the structure,
4 can be six and a half feet.

5 So the next door neighbors
6 privacy does come into effect and
7 it is part of the balancing test.

8 The fact that the neighbor says
9 he's not going any place, how
10 often does this Board hear that?

11 We did offer two compromises to
12 the applicants. Both of them, in
13 my mind, were moderately tailored
14 relief. The later design that the
15 architect gave us allowed them to
16 have a deck elevated just five
17 feet from the property line. It
18 could have been as long as they
19 wanted. It fit his plan, he
20 designed it. It fit in his plan.

21 Both those compromises seem to
22 have been rejected. It's been
23 said that the deck has been there
24 a long time so somehow that makes
25 it legal. This Board nose that

2 the to be grandfathered to be
3 legal -- to be grandfathered at
4 all, it has to be legal to begin
5 with, which this deck is not.

6 We can go around; we can beat
7 around; we can circle around; we
8 can, semantics, the deck is
9 illegal as it stands now. It was
10 built outside the conditions of
11 the building permit. The CO says
12 that the CO was issued as per the
13 plans submitted. Those couldn't
14 be the plans that were submitted
15 because it didn't conform to the
16 building permit.

17 The CO becomes moot once you
18 tear the building down. Once you
19 add the extension and you tear up
20 the deck to build a new deck, the
21 CO becomes moot because any new
22 construction we know, while it's
23 preexisting nonconforming and we
24 gave you relief to build the
25 building, but once you tear the

2 building down, it becomes new
3 construction and a new CO would be
4 required. So that CO becomes
5 moot.

6 If the CO perhaps was issued in
7 error, I believe -- I think maybe
8 the lawyer -- it doesn't prohibit
9 the Village from enforcing its
10 code. So the new addition was
11 given the variance. We made -- we
12 decided that it wouldn't impose on
13 the neighbor. It was indoor
14 space. It was an extension of the
15 building. It wouldn't impose on
16 the neighbors rights. The deck
17 would.

18 My opinion is that since the
19 last -- I want to word it that I
20 don't get in trouble in legal. We
21 had a public hearing. A vote was
22 taken. In my mind, we agreed to
23 reopen the public hearing to allow
24 the principals to discuss the
25 compromises that the Zoning Board

2 offered and only those things. In
3 my mind nothing has changed from
4 the previous decision.

5 That's my opinion and unless --
6 you know, I'll kind of tip my hand
7 here -- unless my colleagues offer
8 something I haven't considered,
9 that opinion will probably be
10 expressed in my vote.

11 So that's what I have to say.

12 Is there -- Dave? Dinni? Seth?
13 Somebody?

14 MEMBER KAUFMAN: No, you
15 covered it.

16 MEMBER GORDON: I have some
17 comments.

18 CHAIRPERSON SALADINO: Sure.

19 MEMBER GORDON: I think a
20 number of factors have to be
21 weighed here. One is the reliance
22 of the applicants over a 25-year
23 period on the structure that
24 they've assumed would prevail if
25 they made changes.

And another is the idea that the deck is an accessory structure. I don't see the deck as an accessory structure. I see it as, you know --

CHAIRPERSON SALADINO: You
can't dispute the code.

8 MEMBER GORDON: All right,
9 but in terms of thinking about how
10 they make their existing house,
11 what it was before, with a little
12 bit of additional space and
13 comfort, I just, it's hard for me
14 to think of the deck as an
15 accessory structure, but rather as
16 an extension of what's now.

25 And I think all of these things

2 have to be weighed and they -- you
3 know, if the distance that they
4 wanted to extend it, this deck,
5 was greater, I would give less
6 consideration to the -- the,
7 consideration of whether their
8 house is really including the
9 deck.

10 I just feel as though these are
11 triple factors that cannot be
12 separated and that they're
13 combination makes it extremely
14 difficult to make a decision at
15 this point. And yet they need to
16 get on with their project. And it
17 just, when I look at how many
18 other projects we have or have had
19 that require much greater variance
20 from this than the standard that
21 the code sets, I think this is
22 really very minimal.

23 So I voted, as you know, in the
24 -- previously for granting this
25 variance and I will vote again to

2 grant the variance.

3 CHAIRPERSON SALADINO: Okay.

4 Anyone else? Dave? Seth?

5 MEMBER KAUFMAN: No.

6 MEMBER NYCE: Yeah. A couple
7 of thoughts. Oddly enough I agree
8 with everything that's been
9 stated. I take Dinni's point. I
10 also live in a house that's right
11 on the property line and I've
12 looked into the possibility of
13 extending the house. Part of
14 owning an old house is also, as a
15 homeowner, is you also have to
16 compromise.

17 My feeling on this is, having
18 seen the first set of plans,
19 seeing the nonsubmitted amendment
20 that Mr. Uellendahl put in and
21 also understanding that -- also
22 having been through the same thing
23 where there's a C of O or not a
24 C of O -- in this instance, if you
25 follow what John said, the

2 building permit, the initial
3 building permit for that deck
4 states it should be five feet off
5 the property line. Ae C of O says
6 it's built according to the plans,
7 we don't know if it was altered
8 post. We don't know -- we have to
9 go with the paperwork that's
10 there. The paperwork that's there
11 indicates to me that that deck
12 should be five feet off the
13 property line.

14 So in my mind, if you go back
15 and if that had been the case,
16 your design and plan would be very
17 different. So I understand that
18 in the situation and position that
19 you are now, you'd very much like
20 it to be the way it is. I see it
21 more as just a design function.
22 It's not necessarily a hardship
23 that your sliding door doesn't
24 exactly line up in the middle of
25 your deck. That to have the

2 portion of the deck that exists,
3 if you're not going to demolish
4 it, just any extension, what I'd
5 like to see is the compromise that
6 we not increase the nonconformity,
7 like, for a deck.

8 The other thing that I will
9 state is that a deck is used very
10 differently than a backyard. A
11 backyard is very much a passive
12 space. People who have a backyard
13 party, they tend to congregate on
14 a patio or a deck. So that deck,
15 to me, being where it is and the
16 on the property line, yes,
17 obviously, not with the current
18 neighbors, but in future could be
19 an imposition to the neighbor
20 that's next door because that
21 space is going to be used much
22 more actively than if it were
23 ground level and in the backyard.

24 All those things I would take
25 into consideration and think that

2 there are compromises to be made
3 and the indication, to me, is that
4 the applicant is not interested in
5 any sort of compromise other than
6 the application that is submitted
7 initially.

8 MS. GERTZ: That's not quite
9 accurate.

10 MEMBER NYCE: Those are my
11 thoughts.

12 CHAIRPERSON SALADINO: The
13 one thing I'll add to David and
14 Dinni's comments is that when
15 the -- this Board voted
16 originally, we did a balancing
17 test and the balancing test, we
18 felt, as it related to the
19 extension of the house, we thought
20 that it was -- that we were in
21 agreement that the balancing test
22 that the detriment to the Village
23 was less than the benefit to the
24 applicant when it came to the
25 extension of the house.

2 When we did the balancing test
3 for the deck, it was the opposite.
4 Four of the five questions -- I
5 have five of the five questions,
6 but I might not be reading one of
7 them right, the response, four of
8 the five questions, unanimously by
9 this Board, it failed the
10 balancing test.

11 So as -- we hear it from people
12 all the time, from friends and
13 from neighbors that it's not a big
14 deal. To some of us it is a big
15 deal. It's a precedence. Like I
16 said, there's no precedence when
17 it comes to the variances, but our
18 variances should be consistent.

19 Dinni, perhaps, she remembered
20 something that I didn't. I've
21 never voted on a variance to build
22 an accessory structure, be it a
23 deck, a garage, a shed, on
24 someone's property line. I think
25 it would be a mistake for this

2 Board to set that kind of policy
3 going forward.

4 MEMBER KAUFMAN: I would just
5 like to add, you know, the problem
6 I have with this is typically when
7 we legitimize nonconforming uses,
8 they're for things that were
9 created 100 years ago, 80 years
10 ago. No one knew what the rules
11 were.

12 With this we realize it's
13 something that was built in 1995.
14 Everyone knew what the rules were
15 at that point. The Zoning Code
16 was well established. That's my
17 biggest problem with this, it's
18 not the extent or whether the
19 neighbors like it or not. Let's
20 leave it at that. But ultimately,
21 we'd be legitimizing something
22 that should never have been there
23 in the first place.

24 MEMBER NYCE: You got a
25 point.

2 MS. BENEDETTO: But we didn't
3 realize that.

4 MEMBER KAUFMAN: I
5 understand. It's not -- no one's
6 assigning blame here. It's simply
7 --

8 MS. BENEDETTO: But we're
9 assuming the burden of it.

10 MEMBER KAUFMAN:

11 Unfortunately, sometimes --

12 MEMBER NYCE: That's the
13 case. That's the case.

14 MEMBER KAUFMAN: Sometimes
15 these things are not --

16 MS. BENEDETTO: I just want
17 to go on record that it's not that
18 we are refusing compromise. I
19 want to make that clear. We
20 wanted you to give us a
21 determination on the original
22 plan.

23 The other plans were not
24 formally presented and so now
25 you'll vote, and we will have to

2 look at your vote, then we will
3 proceed with the construction of
4 our house and once we understand
5 what will happen there, we
6 probably submit another
7 application.

8 But I do not want for everybody
9 to be here saying that we will not
10 compromise. Those plans, I think,
11 were submitted for some review,
12 but I don't believe the entire
13 Board looked at those plans. So I
14 want to make sure. They we're
15 denied before it got to the Board.

16 CHAIRPERSON SALADINO: Part
17 of our job is to offer reasonable
18 compromise to the applicant. So
19 the fact that we did that, it kind
20 of sounds like -- it almost sounds
21 like someone might be upset with
22 us that we offered alternatives to
23 the original plan that would have
24 progressed the application to
25 fruition.

2 MS. BENEDETTO: It's still
3 unclear to me, and I've heard
4 multiple people say, we deny the
5 extension of the deck, but it
6 sounds like you also denied the
7 existing footprint of the deck to
8 occupy the space where it is. And
9 that is not a compromise. That if
10 we were to leave the deck the way
11 it is and then compromise in an
12 extension, but it's unclear. I
13 keep getting --

14 CHAIRPERSON SALADINO: I'll
15 try to make it clear for you.

16 MS. BENEDETTO: Yes.

17 CHAIRPERSON SALADINO:
18 According to the plans that you
19 submitted, the deck right now and
20 the existing extension to the
21 house right now abut each other.

22 MS. BENEDETTO: Exactly.

23 CHAIRPERSON SALADINO: You're
24 going to tear down the current
25 extension to the house and extend

2 that five feet, which means you're
3 going to have to tear up five feet
4 of the deck. You're going to
5 have -- and from conversations
6 with your architect is
7 intentionally a little bit
8 ambiguous, oh, it's just a
9 five-foot extension. He admitted
10 that they'll try to save the deck,
11 but it will probably be ripped up.
12 So we're not talking about a
13 five-foot extension. We're
14 talking about a few deck.

15 MS. GERTZ: But we offered to
16 keep it the same footprint --

17 CHAIRPERSON SALADINO: But
18 you can't.

19 MS. GERTZ: -- that it is.

20 CHAIRPERSON SALADINO: But
21 you can't.

22 MS. GERTZ: Of course we can.

23 CHAIRPERSON SALADINO: No,
24 you can't. According to the plans
25 the architect submitted.

2 MR. UELLENDAHL: John? John?

3 MS. GERTZ: You know, there's

4 a house under construction now --

5 CHAIRPERSON SALADINO: We're

6 not talking about anything, but

7 218 Sixth Street.

8 MS. GERTZ: No, but it's

9 comparable. Let me just explain.

10 CHAIRPERSON SALADINO: No,

11 no, no. You're architect --

12 MS. GERTZ: Well, then let me

13 just say that --

14 CHAIRMAN FARLEY: No, no.

15 Your architect submitted a plan to

16 extend the extension of the house

17 an additional three or five feet?

18 MR. UELLENDAHL: Five feet.

19 CHAIRPERSON SALADINO: Five

20 feet. Your deck can't be the

21 original footprint if you're

22 extending the house five feet into

23 the deck.

24 MS. GERTZ: Sure we can. We

25 just don't extend the deck any

2 further than it is. We have a
3 smaller deck.

4 MR. UELLENDAHL: Yes. We can
5 do this, John.

6 MS. GERTZ: And I thought
7 Mr. Nyce had suggested that was a
8 possible compromise, which I
9 offered before.

10 CHAIRPERSON SALADINO: The
11 application that is in front of us
12 now, if and when we vote -- well,
13 we're reasonably certain.

14 MR. UELLENDAHL: But the
15 application does not include to
16 redo the entire deck. We are only
17 going to go for a five-foot
18 extension. We can save the
19 footings and everything that's
20 there.

21 CHAIRPERSON SALADINO: The
22 deck, regardless -- regardless
23 what you're intention is,
24 regardless what your plan is down
25 the road in the future, right now

2 that deck is illegal. Right now.

3 MEMBER NYCE: What we're
4 considering is the original
5 application, which is what was
6 represented.

7 CHAIRPERSON SALADINO: And
8 again, the application that you
9 gave us is what we're considering
10 now. We did SEQRA. Brian, we
11 don't have to do SEQRA again?

12 VILLAGE ATTORNEY STOLAR: You
13 did it previously, but --

14 CHAIRPERSON SALADINO: We'll
15 just do it.

16 VILLAGE ATTORNEY STOLAR:
17 There's no change in the
18 application effectively so you
19 don't have to do it, but you can.
20 You can do the same thing. It's a
21 Type II action anyway. It's no --

22 CHAIRPERSON SALADINO: So
23 I'll make a motion that the Zoning
24 Board of Appeals declare itself
25 lead agency for the purposes of

2 SEQRA. So moved.

3 MEMBER NYCE: Second.

4 CHAIRPERSON SALADINO: All in
5 favor?

6 MEMBER NYCE: Aye.

7 MEMBER GORDON: Aye.

8 MEMBER KAUFMAN: Aye.

9 CHAIRPERSON SALADINO: And
10 it's a Type II action. No further
11 action is necessary.

12 We've gone through the balancing
13 test more than once.

14 VILLAGE ATTORNEY STOLAR: You
15 don't have to separately go
16 through every element. What you
17 spoke about tonight --

18 CHAIRPERSON SALADINO: I
19 thought our conversation here
20 covers it.

21 VILLAGE ATTORNEY STOLAR:
22 Yes, it covers this.

23 CHAIRPERSON SALADINO: So
24 we're going to vote on this
25 application.

2 I'll make a motion that the
3 Zoning Board of Appeals grants the
4 application, that part of the
5 application for the rear yard
6 deck. Am I getting that right?

7 VILLAGE ATTORNEY STOLAR:

8 You're make a motion to approve,
9 to grant, the relief requested for
10 the deck.

11 CHAIRPERSON SALADINO: I'm
12 making a motion to approve the
13 variance, yes.

14 VILLAGE ATTORNEY STOLAR: So
15 to have the deck be at the point
16 where it meets the house 13 inches
17 from the property line and then 10
18 inches from the property line;
19 that's your motion to approve?

20 CHAIRPERSON SALADINO:
21 Where's ten inches?

22 VILLAGE ATTORNEY STOLAR:
23 It's on the plan.

24 MEMBER NYCE: Yeah, it's on
25 the survey.

2 CHAIRPERSON SALADINO: Oh,
3 the deck itself. The house is
4 1.1 feet and the deck is .8.

5 VILLAGE ATTORNEY STOLAR:
6 Correct, but you already made the
7 decision on the house. You don't
8 have to touch the house.

9 CHAIRPERSON SALADINO: The
10 house and the shed we don't want
11 to touch the house and the shed.

12 VILLAGE ATTORNEY STOLAR:
13 Okay, so your motion, which seems
14 to be contrary to your statements
15 earlier is to approve the variance
16 for the deck.

17 CHAIRPERSON SALADINO: It
18 would be contrary only if I vote
19 yes. If I vote no, then it's not
20 contrary.

21 VILLAGE ATTORNEY STOLAR:
22 Okay. Okay, all right. I don't
23 -- all right, fine. Got you.

24 MEMBER NYCE: So it would be
25 a motion to approve --

2 VILLAGE ATTORNEY STOLAR:

3 Okay, motion to approve, fine.

4 You can do that.

5 CHAIRPERSON SALADINO: Do you
6 want me to make the motion in the
7 negative?

8 VILLAGE ATTORNEY STOLAR: No,
9 you can do it any way you want.

10 You can do it any way you want.

11 CHAIRPERSON SALADINO: You're --

12 VILLAGE ATTORNEY STOLAR: No,
13 it doesn't matter. I just wanted
14 to clarify it. I thought you were
15 going to go in the other
16 direction. I did not realize you
17 would start out in that path.

18 It's fine.

19 MEMBER KAUFMAN: Can the
20 Board reply in the negative?

21 MEMBER NYCE: I'll second
22 John's motion.

23 CHAIRPERSON SALADINO: All
24 right, we'll take a vote. I'm
25 prepared to vote I vote no. Seth?

2 MEMBER KAUFMAN: No.

3 CHAIRPERSON SALADINO: Dinni?

4 MEMBER GORDON: Yes.

5 CHAIRPERSON SALADINO: David?

6 MEMBER NYCE: No.

7 CHAIRPERSON SALADINO: That's

8 it.

9 MEMBER GORDON: That's a

10 majority.

11 MS. BENEDETTO: So it

12 resulted in --

13 VILLAGE ATTORNEY STOLAR:

14 You're not done. So you have to.

15 It's in the negative, like Seth

16 said --

17 MEMBER KAUFMAN: I warned

18 you.

19 VILLAGE ATTORNEY STOLAR: So

20 you denied the -- okay,

21 technically you're done.

22 CHAIRPERSON SALADINO: Okay,

23 right now the findings will be --

24 the decision --

25 VILLAGE ATTORNEY STOLAR: You

2 know what, just thinking about it,
3 because there was another version
4 of the plan that was posted on the
5 Village website and considered by
6 the Board, I feel more comfortable
7 if you complete the process and
8 make a motion in the opposite
9 direction to the contrary.

10 CHAIRPERSON SALADINO: To
11 deny the deck?

12 VILLAGE ATTORNEY STOLAR: To
13 the deny the deck.

14 CHAIRPERSON SALADINO: Okay,
15 that's not usual and customary,
16 but we'll do that. We'll do that.
17 Whatever makes it easier for
18 judicial review. We want a
19 complete record and in case
20 there's judicial review, we want
21 to dot all the I's and cross all
22 the T's. So I'll make a motion
23 that the Zoning Board of Appeals
24 denies the variances for the deck.

25 VILLAGE ATTORNEY STOLAR:

2 Yes.

3 CHAIRPERSON SALADINO: So

4 moved.

5 MEMBER KAUFMAN: Second.

6 CHAIRPERSON SALADINO: Again,
7 we'll do a rollcall. I vote yes.

8 Seth?

9 MEMBER KAUFMAN: Yes.

10 CHAIRPERSON SALADINO: Dinni?

11 MEMBER GORDON: No.

12 CHAIRPERSON SALADINO: David?

13 MEMBER NYCE: No.

14 CHAIRPERSON SALADINO: So let
15 it be said; so let it be written.

16 MS. BENEDETTO: So this is a
17 denial of --

18 CHAIRPERSON SALADINO: One
19 second. Just let me get it on the
20 record for the stenographer.

21 MS. BENEDETTO: Sure.

22 CHAIRPERSON SALADINO: The
23 determination -- this Board's
24 determination on the vote will be
25 in the clerk's office within five

2 days as described by code. The
3 decision will be there in
4 five-days. It will be there for
5 the clerk in five days. The
6 findings we'll vote on next month.

7 To proceed with this, you'll get
8 a building permit from the
9 Building Department for
10 construction of the addition. And
11 as I noted right now, this deck,
12 as it is right now, is illegal
13 regardless of the CO or the --

14 So having said that, any members
15 -- any member have any comments as
16 far as that?

17 MEMBER GORDON: Irregardless
18 of -- you said regardless of the
19 CO and regardless of 26 years of
20 reliance.

21 VILLAGE ATTORNEY STOLAR: I
22 would leave --

23 CHAIRPERSON SALADINO: The
24 portion I'll bring out -- I'll
25 point out to you again Diana, is

2 that, to be grandfathered, even
3 those it's there 26 years, it has
4 to be legal to begin with. That's
5 my comment to Diana.

6 MEMBER GORDON: Yes.

7 VILLAGE ATTORNEY STOLAR:

8 Right, and the Building Department
9 can deal with that.

10 CHAIRPERSON SALADINO: That's
11 a Building Department issue.

12 VILLAGE ATTORNEY STOLAR: Yes.

13 CHAIRPERSON SALADINO: Item
14 Number 5 is any other Zoning Board
15 of Appeals business that might
16 properly become before this Board?

17 (No response.)

18 CHAIRPERSON SALADINO:

19 Hearing none, Item Number 6 is a
20 motion to adjourn. So moved.

21 MEMBER NYCE: Second.

22 CHAIRPERSON SALADINO: All in
23 favor?

24 MEMBER NYCE: Aye.

25 MEMBER GORDON: Aye.

2 MEMBER KAUFMAN: Aye.

3 CHAIRPERSON SALADINO: And

4 I'll vote aye. Thank you.

5 (Whereupon, the meeting was
6 concluded at 7:23 p.m.)

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C E R T I F I C A T I O N

4 I, REBECCA WOOD, a Shorthand Reporter and
5 Notary Public in and for the State of New York,
6 do hereby certify:

7 THAT the above and foregoing contains a
8 true and correct transcription of the
9 proceedings.

10 I further certify that I am not related,
11 either by blood or marriage, to any of the
12 parties in this action; and

13 THAT I am in no way interested in the
14 outcome of this matter.

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand this 3rd day of October, 2024.

Rebecca Wood
REBECCA WOOD