

Minutes of the **Regular Meeting** of the Zoning Board of Appeals of the Village/Town of Mount Kisco held on **Tuesday, October 16, 2018 at 7:08 pm** in the Frank J. DiMicco Board Room, Village Hall, 104 Main Street, Mount Kisco, New York

Members Present: Linda Greenberg (acting Chairperson)
Nancy Coyne
George Hoyt

Members Absent: Chairman Harold Boxer
Wayne Spector

Staff Present: Whitney Singleton, Board Counsel
Peter J. Miley, Building Inspector

Ms. Greenberg stated I'd like call the meeting to order this evening and approve the minutes from...

The Secretary stated June 19th.

Ms. Greenberg stated June 19, 2018.

Ms. Coyne stated does she need a motion?

The Secretary stated someone needs to make a motion and a second.

Whitney Singleton stated just one second.

The Secretary stated do we not have a quorum?

Whitney Singleton stated you do not have a quorum. You have to have a quorum which is 3 members of Board members that were present and there are only two here. So we will have to defer that to the next meeting.

The Secretary stated table them to the next meeting.

Ms. Greenberg stated okay, so we'll defer that to the next meeting.

1. **Patrick Croke**
70 Woodland Street
Mount Kisco, NY 10549
(SBL) 80.49-1-14

Case# ZBA 18-11
Area

The Secretary stated you first case, 70 Woodland Street, requested an adjournment to the November meeting.

Mr. Hoyt stated pretty efficient already.

Ms. Greenberg stated so we'll move to case ZBA 18-12, HVA Realty.

2. **HVA Realty, LLC**
271 North Bedford Road
Mount Kisco, NY 10549
(SBL) 69.50-2-4, 5, 6, 7, 8, 9, 10

Case# ZBA18-12
Area

Mr. Zach Mintz of Zarin & Steinmetz and Mr. Tom Kriz of the Premier Group were present.

Whitney Singleton stated Chairwoman, Acting Chairwoman, as you will recall at your last meeting the applicant presented, and Zach are you going to do a whole new presentation?

Mr. Mintz stated sure. I do not intend to but I will defer to you and the Board particularly of how you would like me to present.

Whitney Singleton stated and at that meeting your Board entertained the application but could not formally vote because the applicant had not submitted an environmental assessment form. But you did do a straw poll and your Board indicated a desire to pass it. So what I have done, is I have updated the resolution that I had prepared for you as a draft at the last meeting and you can use that as a guide. The only thing that, if the applicant would like to continue presenting this application, that's up to them. I believe, were you all here at the last meeting?

Ms. Greenberg stated I was not.

Whitney Singleton stated so I guess, the only thing you should probably inform this applicant is because there's only 3 members tonight. The applicant is entitled, the applicant must receive 3 affirmative votes in the event that he receives less than three votes, his application is deemed denied. So based upon the fact that there's only 3 members, the applicant can make an election to have your Board vote tonight or come back at a subsequent meeting.

Mr. Mintz stated understood and I think it might be productive to do an abbreviated review of what we presented last time just so you have some sense of what you're looking at, more than just what's in front of you in the resolution and I'm happy to go through this briefly so. First off, my name is Zach Mintz, here from the law firm Zarin & Steinmetz here on behalf of HVA Realty. I'm joined by Tom Kriz of HVA Realty. What we're here tonight to talk about is 271 North Bedford. I apologize I don't have an easel so I'm going to be holding things up and talking at the same time here. This is a motor vehicle dealership that was for a very long time Nissan and is existing as Volvo and Lincoln. What we have made an application for is Site Plan that will mostly keep the existing building. So just a little bit of information about the existing building which should be here, got it. Alright, so the existing building currently goes up to the side yard lot line, immediately adjacent to an easement over here that is shared and used by the neighboring properties. There are several curb cuts onto the site from North Bedford and those are leading into a two-way drive aisle that's in front of the building. So again, these are the current conditions. There are currently no landscaping buffers, there's currently no landscaping whatsoever in the front yard and the building itself comes about 22 feet away from the front lot line. So the setback, pardon me, the variances that we're here to request tonight are related to the side yard and the front yard. In both cases, it is a variance as to the setback and as to the buffer. So what we are proposing now is to effectively keep as much of the building footprint as possible, so you'll see it still goes up to the lot line here but what we've done is a couple of things that we think are major improvements to the site. First, we've closed up all but one curb cut, so when you're coming off of North Bedford, what you'll be doing is either entering the site off of the curb cut immediately before the dealership or actually entering through the easement. In changing the circulation pattern we've also made this front drive aisle, a one way drive aisle and added landscaping here. So the landscaping is still not sufficient to meet the Zoning Code requirement but it is an improvement. The front yard setback requirement is actually only put into play by a small portal design, there is basically a front door that extends out over the front yard setback by about two feet, so that is where that variance comes in. The side yard variances are basically just to retain the existing building footprint, it is both for the side yard and lack of landscaping on the side as well. In short, what we've done is basically maintained as much of the existing building footprint as possible and tried to make the site much more functional, add improved landscaping and improve the circulation pattern. That really covers it, I'm happy to answer questions, I realize I'm doing a short abbreviated version, I'm sure the rest of the Board can speak to the fact that this was a little bit lengthier last time but I don't want to put you in a position where you feel you have unanswered questions, so by all means.

Mr. Hoyt stated since we last spoke, what's happened to the proposal? Have you met with the Planning Board, have there been any changes?

Mr. Mintz stated we've met with the Board of Architectural Review and we got feedback, we are working, we actually are going to the Board of Architectural Review tomorrow. And the changes that were suggested were things related to coloring, locations of signs, things like that. To be completely candid, signs are not even actually a part of this application right but we have provided with updated plans to the BAR as a result, as well as answers to some of their questions. Some of the changes are things like we've changed the design of the door that's going to be used at the service entrance and things like that. Much of what, much of the design can't really be changed because it comes directly from Lincoln Corporate or from Volvo Corporate, so we've included some of our conversations from Volvo and from Ford, actually, explaining the design elements, why they are the way that they are and we will be able to explain that to your Board of Architectural Review tomorrow.

Mr. Hoyt stated do you anticipate any changes to that flow that we talked about last time? That was subject to the Planning Board, I think had focused on.

Mr. Mintz stated are you talking about the traffic flow in the easement area?

Mr. Hoyt stated yeah.

Mr. Mintz stated so I believe what has been decided is that the parking spaces here in the front of the easement, which were I think the biggest concern, are going to end up being eliminated. I can't say that we've made any formal submission to the Planning Board at this point. But I do know that I believe our engineer met with Town, pardon me, with Village Staff, including Peter Miley and Jan Johannessen, earlier

this week and I think it was decided that these 4 spaces will end up being effectively moved over to this side, so that they are maintained. But it will also make and there will be actually a handicap space added here as well but it will make this circulation pattern and the easement a little bit better.

Ms. Coyne stated I wanted to make a comment. The two 2 foot variances, the setback and buffer on the front, that's minimal, 2 feet is kind of nothing. But could you highlight for me the other two, which one is the 10 foot and one is the 5 foot, which actually doubles the...

Mr. Mintz stated these are related to the existing building footprint and the side yard here. So what you'll see is the 5 yard line, pardon me, 5 foot line here is and there 10 foot line is here. You might recall that if we look back at the existing building footprint, it's the same thing. I apologize that we don't actually have the lines drawn here but you can see that this is the property line and this is the property line. So the building is pretty much in the exact same spot, as a matter of fact, on this particular part, it is in the exact same spot. The only addition really is this portal design element up front, here.

Ms. Coyne stated okay, that's the 5 foot variance, correct?

Mr. Mintz stated correct.

Ms. Coyne stated and where is the 10 foot to the side yard setback?

Mr. Mintz stated sure, same thing. So the 5 foot is here and the 10 foot is here.

Ms. Coyne stated oh, I see, okay.

Mr. Mintz stated one is for the buffer and one is for the actually building, so...

Ms. Coyne stated okay, thank you.

Mr. Mintz stated you're welcome.

Whitney Singleton stated just while you're reviewing, as part of their application, you'll notice in the package that they submitted, Zach has included in environmental assessment form...

Mr. Mintz stated yes, I believe it was the last attachment to the September 25th submission.

Whitney Singleton stated it's pretty far in the back.

Mr. Mintz stated yeah, I believe it is literally the last attachment.

Whitney Singleton stated it's the one that shows, it's the one on that page following the picture of the Danbury Volvo dealership.

Mr. Mintz stated I can point you to it, I believe it is the Short EAF, I think he's referring to.

Whitney Singleton stated so your Board needs to take two actions this evening since generally you're not accustomed to reviewing the environmental assessment forms. The reason you're not generally accustomed to dealing with those is because most residential application is exempt and when there's a commercial application, it's usually in connection with a Site Plan or a Subdivision or Special Use Permit and the Planning Board acts as lead agency. So it's not something your Board is familiar with but suffice it to say, that they have submitted what is known as a Short EAF, short environmental assessment form and your Board needs to make a determination as to whether or not you feel as though there are any significant environmental impacts associated with this application or whether there are not. So you need to make a determination in that regard and you also need to make a determination as to whether or not you wish to grant the four areas variances or a portion thereof, based upon the presentation by the application and you have a draft resolution in front of you.

Mr. Mintz stated I will just add briefly on the environmental question, it is actually kind of rolled into the variance test and we would submit that there is not going to be any adverse environmental impact as a result of this action. Effectively, the dealership is going to maintain much of the same footprint and use a lot of the same space. So there's not going to be a change in use, there's not going to be any change in the building design. If anything we are going to be stream lining traffic and adding a little bit more greenspace to the property. So we would view these all as environmental positives.

Ms. Greenberg stated does anyone want to look over the resolution or are we ready to...

Whitney Singleton stated would you like me to go through it?

Mr. Hoyt stated why don't you go through it.

Whitney Singleton stated I can go through it with you, particularly with a new member. This is a format that we usually use, in paragraph one, we just identified the property, paragraph two sets forth the requirements of the Code and the nature of the variances being sought as the applicant has pointed out to you all four of the variances and arguably there's really only two variances here but they're just covering themselves. The Planning Board usually waives buffer requirements, so you don't but the Building Inspector determined that it was a noncompliance issue, so they're seeking a variance for it. So those are the four area variances that they're requesting. Listing of the property, the Zoning district, then just a better analysis of what's required, what's proposed, and the extent of the variance needed under paragraph four. Paragraph five sets forth the dates of the public hearings and the anticipated date of action. Paragraph six is whether or not we've received any comments of the public hearing, which to date, there have been none. Paragraph seven sets forth the materials that have been submitted in connection with this application and they've been updated to reflect the most recent submissions. Paragraph anticipates but does not mandate that you are going to determine that you're going to issue a negative declaration or adopt a negative declaration determining that the action has no significant affect on the environment. Paragraph nine would be, I would put in approved if your Board does in fact approve it. Paragraph ten sets forth the five criteria which your Board has previously entertained at the last meeting. Paragraph eleven sets forth the conditions of approval that you would impose on the application, and those can be deleted, they can be supplemented, they can be modified, anything you deem to be appropriate. The first condition is a standard condition. The second condition is something that I kind gleaned from the last time you guys discussed this and that had to do with if there's any safety concerns that the Planning Board has and impose those conditions, those would be incorporated as part of this resolution. And then paragraph twelve is the vote and the execution.

Ms. Greenberg stated do I have a motion to adopt a negative declaration determining that the proposed action will not have any adverse environmental impact?

Mr. Hoyt stated I move.

Ms. Greenberg stated second?

Ms. Coyne seconded the motion.

Ms. Greenberg asked for all favor. The motion carried by a vote of 3 to 0.

Ms. Greenberg stated do I have a motion to adopt the draft resolution granting the four variances?

Mr. Hoyt stated yes, I move.

Ms. Coyne seconded the motion.

Ms. Greenberg asked for all in favor. The motion carried by a vote of 3 to 0.

Ms. Greenberg stated now what?

Whitney Singleton stated you said nay right?

Ms. Coyne stated no, I didn't.

[Laughter].

Whitney Singleton stated speak up, Nancy.

Ms. Coyne stated I said aye already, you didn't hear me.

Whitney Singleton stated okay. Okay, you're done.

Ms. Greenberg stated okay.

Mr. Mintz stated thank you very much everyone, appreciate your time tonight.

Mr. Kriz stated thank you.

Mr. Hoyt stated looking forward to seeing the work in action.

Mr. Mintz stated we are too. If you want to see more of what it's going to look like, show up tomorrow at BAR.

Ms. Greenberg stated goodnight.

Mr. Hoyt stated we are done? Are we adjourned?

The Secretary stated you have one more.

Ms. Greenberg stated we have one more case. The next case is ZBA 18-14, Nancy Carulli, 114 Beverly Road.

**3. Nancy Carulli
114 Beverly Road
Mount Kisco, NY 10549
(SBL) 80.23-1-8**

**Case# ZBA 18-14
Area**

Mr. David Coffin of Sawmill Studio Architecture was present representing the applicant.

Mr. Coffin stated good evening, my name is David Coffin, I'm the architect and representing Nancy Carulli. She currently lives in Arizona and is in the process of selling her home. So in an effort to enable her to you know, move forward in the sale, one of the things that has to be done is making sure that the deck on the back side of the house is legal, okay. So I don't know, have you have a chance to read over the basis of all the...

Ms. Greenberg stated I have...

Ms. Coyne stated yes.

Mr. Coffin stated have you, okay. Just to give you a little background on this, the house was built in 1965 and then Nancy and her husband bought the house in 1974, I think it was. At the time that the house was built, it didn't show on the existing drawings that were on file, it did not show a deck. However, within that same time frame, it shows it on the survey, on the site survey. So the Certificate of Occupancy obviously did not include. So at any rate, unbeknownst to Nancy and her husband, when they purchased the property the deck was there and then as time went on, they enlarged the deck. Originally the deck, if you scale off the survey, it's about 12 or 14 feet and then they expanded it to 16 feet, alright. So it's well beyond, as it turned out, well beyond and into the setback and the property itself is a noncomplying piece of property, it butts right up against, the rear of it, butts up against the Mount Kisco parkway property, goes down to the Kisco River and so essentially it's all wild back there, really there are no neighbors except on either side. So you know, after I, we got an updated survey as a result, the original survey did not give a dimension from the corner of the house to the back property line, so there was no way of establishing what the setback would be. So think if you look at the drawing A0.1, if you have a copy of it, that's the existing main deck plan and what I've done is I've drawn in the 20 foot rear setback. Okay and this, I met with the Building Department of course, you know he was the one that said there is what we have to work with. Now, unfortunately with that kind of a setback, it doesn't allow you to really construct much of a deck, it's more of a walkway which they do have from the existing driveway, along the back and then connecting to the existing main deck. Here you go, that's, so this is the driveway, the connecting walkway and of course the deck and then here is the setback, okay. So what we did, we assumed that the original deck was 12 feet, actually when you measure it off the survey, it's more like 14 feet. So what we're...

Mr. Hoyt stated I'm sorry, why would you assume the original deck was 12?

Mr. Coffin stated based upon an old survey that they had.

Mr. Hoyt stated okay.

Mr. Coffin stated yeah, the survey was actually made back in 1965, at the time or just after the house was built but unfortunately it didn't accompany the Certificate of Occupancy, so really you know, going to a situation where we have a noncompliant piece of property, we don't have a CO even for the deck because it's on the back, the original deck and this is all unbeknownst to the Carulli's when they purchased the property back in '75. So what they would like to do is maintain a similar kind of square footage, 16 by 16 and make the deck wider but then cut it back so we minimize the amount of projection beyond the 20 foot setback and that shows on the drawing A0.2, the next drawing, okay. Now, one of things also that happened, there was stairway that was, if you go back to the existing drawing, the stairway also went into that setback and what we're proposing is to get rid of it all together, it makes absolutely no sense quite

honestly. And what we're going to do is have a stair go to the side and stay within the 10 foot side yard setback, so there's not variances required for that. There are a lot of issues structurally you know, with the deck, so we're going to remediate all of those but before we move ahead or can move ahead of course, we need to have some sort of a variance. You know, if I think, in reading my write up for this, there's really no impact on the neighborhood and I think it's pretty much in keeping you know, with the surrounding neighborhood. In fact, I worked on the property right next door, 104 Beverly and the homeowner there referred the current 114 homeowner to me. There, the way the property line works with the house, there we had to just cut back the deck but we were able to create a deck that was 13 feet, I think and unlike this situation where we really have no room for a deck. And it would be a shame to have that kind of beautiful piece of property and of course not have a deck, so. At any rate, I was wondering if you happen to have any questions about this.

Mr. Hoyt stated I'm surprised that this issue didn't come up when they first bought house, honestly.

Mr. Coffin stated well you know back in '75, in a residentially...

Mr. Hoyt stated they're left holding the bag, huh?

Mr. Coffin stated yeah, and I'm doing an awful lot of legalizations with homeowners that are trying to you, know sell their property and they're finding people, you know they purchased the house where the basement was finished and there's not a CO for it. So consequently we have to get a legalization and go back but there's so many instances like that, this happens to be one of them.

Mr. Hoyt stated it's buyer beware, they should have asked at the time.

Mr. Coffin stated it is and consequently what's happening is a lot of the realtors, I mean they're, first of all, all of your municipalities are wise to this. So consequently, all of your realtors really, it behooves them to go into the Building Department, do some research, find out what they have CO's for and what they don't and then bring it to the attention to the homeowner. Now the homeowner has the option, if they find a seller, do they want to lower the price of their house or do they want to go ahead and legalize the property. In this case, the homeowner decided, you know they wanted to go ahead and try to get a variance and have a deck there for the homeowner.

Ms. Coyne stated did they do that small expansion of the deck without a permit? Because wouldn't it have come to light at that point, if they had applied for a permit.

Mr. Coffin stated it would have, probably but they did it something like 20 years ago, again something like a deck, I mean there are so many homeowners that built decks without going in for a building permit. Even up until 20 years ago, it happens all the time but they told me they were unaware of it, so I have to take them at their word.

Mr. Hoyt stated and the upgraded deck, the new deck, if you will, same material, same...?

Mr. Coffin stated it's going to be pressure treated but what we're doing, the columns, some of the steel columns quite honestly are rusted out, so we are going to replace all of columns, all of the posts supporting. We're adding additional connectors, we're connecting to the house properly, and we're making all the connections for the joists onto the beam and we're totally stabilizing.

Mr. Hoyt stated Whitney, the Building Inspector, who certifies that the new deck is in appropriate condition, meets the Code, et cetera, how's that work?

Whitney Singleton stated they would have to get a Certificate of Occupancy from the Building Inspector or a Certificate of Compliance.

Mr. Hoyt stated so once they get through, theory, the variance, you can fix the deck and get a C. O., got it.

Mr. Coffin stated correct, yeah. We really can't move ahead, get a building permit, without having this variance.

Whitney Singleton stated and this is a condition of your contract or sale? Your client's contract or sale.

Mr. Coffin stated it is apparently, and they do have a buyer from what I understand.

Whitney Singleton stated I'll say to the Board, obviously the fact that it's a condition of their contract of sale is of no weight on you. Your Board is to determine whether or not the benefit to the applicant outweighs or is outweighed by the detriment to the neighborhood and to the Village. And if you care to, I

do, in lieu of a site visit, I do have an aerial photograph showing this property and others in the neighborhood in proximity to the rear line, we have photographs...

Mr. Coffin stated we do.

Mr. Coyne stated thank you.

Mr. Coffin stated yeah, I figured it would give you a little better idea of what this was like.

Whitney Singleton stated if you want to take a look at this, it's up to you. All you need to do is the one in yellow is the house in question, there's the deck and there's the staircase going down and if you want to go down the street to see what other houses do, you can see what other houses do. This is the first, I think this is all the way out...

Mr. Hoyt stated this is the same thing.

Mr. Coffin stated you have another one.

Whitney Singleton stated this is [Route] 133.

Mr. Hoyt stated so Whitney, are you, is your, is that suggesting that these decks are prevalent in that neighborhood.

Whitney Singleton stated no, what I'm saying is, what I'll show you is this and keep in mind these lines are necessarily accurate. This is a house that's two houses away that is [inaudible] close to the property line with it's walls being at or over the property line. Here is an adjoining property owner, is that a pool right there? There's something right there. This is the house in question and I don't know that that's any closer to the property line than this house is right here in this corner. As you go down the thing, homes are setback a little bit further...

Mr. Coffin stated that's 104 [Beverly Road] I believe.

Whitney Singleton stated it's not 100%, your Board can grant some, all or none of what their requesting. I think what he's saying is they're going to saw next to a support beam and cut it back X many feet and they can...

Mr. Coffin stated correct.

Whitney Singleton stated they're going to take those support columns and they're going to, currently...

Mr. Coffin stated actually it's, yeah, this is the existing right here.

Whitney Singleton stated they're going to use these and cut off that...

Mr. Coffin stated this actually could...

Whitney Singleton stated theoretically though, just for your Board's benefit...

Mr. Coffin stated yes.

Whitney Singleton stated and I'm not suggesting this either, theoretically, you could cut back to here. It's a question of what your Board thinks is appropriate for the conditions of the neighborhood. I have not evaluated, I am assuming that your not over on building or development coverage.

The Secretary stated there's a coverage calculation worksheet in the packet.

Mr. Coffin stated no and in fact I did attached with my submission the calculations, we're well within that.

Whitney Singleton stated thank you.

Mr. Coffin stated yeah, I mean it's unfortunate, they purchased the property in 1975 or '74 and certainly the deck was there and was probably greater than 12 feet, if you look at that old survey. So you know, I advised them that I thought that it would be best if you went back to the way it was when you purchased it and certainly we'll still have to go in for a variance but it seemed to be a reasonable request. And because it backs up against all this natural woodland and the parkway, Mount Kisco parkway, really there are no neighbors that are going to see the and if you look at the site, I mean it slopes away, it's a very, very

difficult site and I'm sure that when the developer developed these properties, what I found, actually not only in this house but also in the house next door, the plans that were submitted, the actual floor plans were not the way the house was built because of the way the site sloped. The actual drawings are for a flat site, not a sloped site. So you know, the site really not only is it nonconforming but also because of the slope, it's created a multitude of problems for the homeowner. But I don't feel that it will be a detriment to any of the neighbors. I mean he can barely see, quite honestly, any of the neighbors on either side.

Ms. Greenberg stated any questions? I want to bring to your attention that there are only three of us tonight, so if we decided or if you decided for us to make a determination...

Mr. Coffin stated all three of you have to say...

Ms. Greenberg stated yes and if we say no...

The Secretary stated it has to be unanimous.

Ms. Greenberg stated it has to be unanimous tonight.

Mr. Coffin stated okay.

Ms. Greenberg stated or you can wait for the next meeting.

Mr. Coffin stated well I know that the homeowner, like I said, is living in Arizona with her daughter, so she's on pins and needles about this whole thing and I understand that technically it has nothing to do with your decision but it's just something that the homeowner is trying to deal with.

Mr. Hoyt stated yeah, I don't have a problem with it. I'm sympathetic to them purchasing the house without a CO, that being said, the deck isn't offensive to me. I don't see how it harms any, I think it's inoffensive.

Ms. Greenberg stated are you okay with it?

The Secretary stated are you here to speak on behalf of this application?

Unknown Speaker stated okay.

The Secretary stated no, okay. You have to close the public hearing, there's not public comment, close the public hearing...

Ms. Coyne stated does she need a motion to do that?

The Secretary stated you will need a motion to close the public hearing.

Ms. Coyne stated I move to close the public hearing...

Ms. Greenberg stated may I have a motion to close the public hearing?

Ms. Coyne stated I move to close the public hearing.

Ms. Greenberg stated second?

Mr. Hoyt seconded the motion.

Ms. Greenberg asked for all in favor. The motion carried by a vote of 3 to 0.

The Secretary stated and if you want to go through the five factors, you can.

Whitney Singleton stated can I just ask a question? Do you have in your package, where exactly is it delineated on the plan, exactly the relief you're requesting? The proposed deck on A0.2, where does it show the proposed setback?

Mr. Coffin stated the diagonal line.

Whitney Singleton stated no the building setback but the extent of the variance that you're seeking. Where is that delineated? I can see the 20 foot rear setback line but I can't analyze how far, how much of a variance you're seeking there.

Mr. Coffin stated yeah, one side it's 7 foot 2 inches, plus or minus and on the other side it's 4 foot 10 inches plus or minus, just because of the property line being at a diagonal.

Whitney Singleton stated I understand that, I just wanted to, it doesn't seem to be called out anywhere, unless it's your narrative.

Mr. Coffin stated it's on the plan, can I show it to you?

Whitney Singleton stated oh it is? You're saying it's 4 foot 2 inches...

Mr. Coffin stated that's it right there and then...

Whitney Singleton stated oh okay, gotcha.

Mr. Coffin stated I know there is a lot of information crammed into the...

Ms. Greenberg stated so would you like us to make a vote tonight?

Mr. Coffin stated if you're all going to yes, yes.

Mr. Hoyt stated do you want to go through the factors?

Ms. Greenberg stated I think we should.

Mr. Coffin stated want me to leave?

Ms. Greenberg stated no. So granting the variance would not be detrimental to the neighborhood nor the Village. Are we okay with that?

Ms. Coyne stated I think that's a no.

Ms. Greenberg stated the lot in nonconforming to start with, so is there another way to get to where we're going?

Whitney Singleton stated did, maybe we can go through one again.

Whitney Singleton presented the 5 Factors:

1. *Whether an undesirable change will be produced in the character of the neighborhood or detriment to nearby properties will be created by the granting of the area variance.*

Whitney Singleton stated do you deem it to create an undesirable change.

Mr. Hoyt stated no.

Whitney Singleton stated I just wanted to make sure I heard you.

Ms. Greenberg stated thank you.

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

Whitney Singleton stated in other words, could they build a deck somewhere else, they probably could but the question is whether or not that's feasible.

Mr. Hoyt stated I don't think it's feasible.

Ms. Greenberg stated no.

Whitney Singleton stated alright, so that correct. And I assume that the area walks out to the deck has a sliding glass or French glass doors that might not be on the other side.

Mr. Coffin stated correct.

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

Whitney Singleton stated whether or not a variance of 4 feet 2 inches on one side and 7 feet 2 inches on the other side, is substantial giving the 20 foot setback and given the existing conditions or actually cutting it back.

Mr. Hoyt stated what's the implication if it's substantial?

Whitney Singleton stated it's just a factor, if you're asking for a 1 inch variance on a 100 foot setback, that's clearly not substantial. If you're asking for you know, 99 feet on 100 foot setback, that's another story.

Mr. Hoyt stated well we hear about that 100 foot radio tower?

Whitney Singleton stated 100 foot radio tower, next to their house, that's going in?

Mr. Hoyt stated in the other memo with the court cases about this factor. Substantial is obviously very subjective.

Whitney Singleton stated subjective, yes.

Ms. Coyne stated so this is 7 feet on a 20...

Whitney Singleton stated at its largest point and you could argue that not only is it 7 feet out of 20, you could also argue that's it's a reduction from the currently existing condition. Albeit a legal condition.

Mr. Hoyt stated I agree and that benefit here is they have a new, presumably safer deck.

Mr. Coffin stated correct.

Whitney Singleton stated okay, so I presume that you do not deem it to be substantial.

Ms. Greenberg stated correct.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.

Whitney Singleton stated it's an existing condition that's being reduced, so...

Mr. Hoyt stated I agree, I don't think so.

Ms. Coyne stated I'd say no.

Mr. Hoyt stated if nothing else it's a safety improvement, probably, who knows what kind of paint is on that thing, old. You're not removing the entire deck, right?

Whitney Singleton stated and to Mr. Hoyt's point, the last one is...

5. Whether the alleged difficulty was self-created which consideration shall be relevant to the decision of the Board which shall not necessarily preclude the granting of the area variance.

Whitney Singleton stated which is not in and of itself fatal to an area variance application. And I will offer some legal input on it. You can make your own conclusion. Anyone that buys a piece of property is charged with constructive knowledge of the Zoning requirements and the existing conditions on the site. They bought the house with this as an existing condition and the setbacks have not changed in this neighborhood, so therefore, they are computed with knowledge of the condition of it being self-created. So unless your Board sees it another way, it would be self-created on their party. But I don't vote, that's a determination you need to make.

Mr. Coyne stated I agree with that but it's not a deal breaker, as you say.

Whitney Singleton stated right. Okay, then it sounds like your Board seems to be in favor of it. So the next question is would you require any conditions as a condition of granting this variance. As a predicate to granting this variance. Generally the conditions we provide are that it's for these plans and these plans only, it shall not be modified or altered in anyway to increase it. I don't know that, it's up to you to determine whether or not a paint color, elimination or prohibition against lighting, handing thing off of it, landscaping buffers, whether any of that is appropriate or necessary. What normally comes to mind in the

case of a deck to make sure that it's consistent with the color that's already out there or some other color that you choose, that there not be any additional lighting and that no trees, no additional trees be removed that would create further visibility.

Mr. Hoyt stated by approving this, we're not overriding the tree committee, we're not superseding any of the conditions they already live under. Whether there's any painting conditions in neighborhood, I doubt it, right? We're not giving carte blanche to do whatever you want with the deck, they still have to comply with the Code and they can't chop down trees with more than X number in diameter...

Whitney Singleton stated correct, there's a process to go through. But one of the things that your Board is authorized by statute to do is to impose reasonable conditions that can mitigate any of the impacts associated with the granting of a variance. So for example, taking it out of this, let's just say they were building this deck, on the side yard right next to their neighbors and the neighbors have a picnic area right next to their site. If they were encroaching on their yard, one of the conditions you might impose on an applicant is to put up some landscaping, to put up a fence, to not have spotlights in that area so as to not negatively impact and encroach upon the neighbors. I don't know that there's any mitigation that can be done here, I'm just trying to throw out things that are typically done. And in those circumstances, the fact that you want to put in landscaping or fencing, that is separate and apart from anything that the tree committee might do or the Planning Board might do. If there are conditions that are imposed by your Board, those are conditions that other Boards can officiate.

My. Hoyt stated okay.

Whitney Singleton stated but it is a policing issue, so if you don't feel there are conditions that are warranted to mitigate, you don't have to impose them.

Ms. Greenberg stated I would suggest no additional lighting to impact...

Mr. Coffin stated and I think they would agreeable to that, absolutely.

Ms. Coyne stated and what about the paint color? Consistent with the neighborhood, it can't be hot pink or something like that.

Whitney Singleton stated it will match the existing deck?

Mr. Coffin stated we're just matching the existing deck, that's all. What's interesting about this is that the walkway, that 4 foot wide walkway, so we know it had to be connected to something that was there. I think that was done, allegedly before the current homeowner purchased the home, '66, '67 somewhere in that timeframe.

Ms. Greenberg stated any other questions?

Whitney Singleton stated Chairwoman, because this is a residential yard setback, it is deemed under SEQRA to be a Type II action and not require any action on your Board, as far as making an environmental determination. It's determined to have no impact.

Ms. Greenberg stated thank you.

Whitney Singleton stated so you just need to vote on a resolution, based on your discussion.

Ms. Greenberg stated okay, thank you. Do I have a motion to adopt the draft resolution granting the rear yard variance, ranging from 7.2 to 4, is that 7...?

Mr. Coffin stated 4 feet 10 inches.

Whitney Singleton stated .2, 10 inches.

Ms. Greenberg stated 4 foot 10 inches for the deck?

Mr. Hoyt stated do we include the conditions that no changes be made, et cetera.

Whitney Singleton stated right, I will incorporated the things that you guys authorized.

Mr. Hoyt stated we didn't talk about those, I just wanted to make sure.

Whitney Singleton stated the changes that I would, based upon what we discussed would be that it's solely for these plans and no others, and that there shall be no additional lighting facing the rear of the property and that the color shall match the existing deck color.

Mr. Coffin stated that's reasonable.

Mr. Coyne stated okay, so that's the motion?

Whitney Singleton stated yup.

Ms. Coyne stated pass.

Mr. Hoyt seconded the motion.

Ms. Greenberg asked for all in favor. The motion carried by a vote of 3 to 0.

Mr. Coffin stated thank you very much. The homeowner will be incredibly pleased.

Ms. Greenberg stated motion to adjourn?

Mr. Hoyt second the motion.

The Secretary stated all in favor...

Ms. Greenberg asked for all in favor. The motion carried by a vote of 3 to 0.

The meeting adjourned 7:55 pm.