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TOWN OF SMITHTOWN

BOARD OF ZONING APPEALS

-----X
In the Matter of :
 :
 PUBLIC HEARING :
 :
 Pursuant to the Provisions of :
 the BUILDING ZONE ORDINANCE :
 of the TOWN OF SMITHTOWN :
-----X

AT: The Eugene A. Cannataro Senior Citizen Center

DATE: July 25, 2017

Met, Pursuant to Notice

B E F O R E:

- EDWARD BENZ, Chairman
- ADRIENNE GIANNADEO, Member
- WILLIAM VALENTINE, Member
- ANTHONY L. TANZI, JR., Member {absent}
- STEVEN GARGIULO, Member
- PAUL HENNINGS, Board Attorney
- BLAISE DONADIO, Planner

RJ RICCOBONO, RPR
OFFICIAL NYS SUPREME COURT REPORTER

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BOARD OF ZONING APPEALS

I N D E X

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BOARD OF ZONING APPEALS

CHAIRMAN BENZ: All right.

Good evening and welcome to tonight's Zoning Board hearing.

Let me introduce some members of Town government that assist this Board.

To my left is Paul Hennings, attorney to the Board.

And to his left is Blaise Donadio, a planner in the Planning Department.

You're here tonight seeking relief from the Smithtown zoning ordinances, it's our job to try to help you achieve the relief that you are requesting, wherever possible.

It's up to you to provide us with precise accurate information so we, as a Board, can make a decision based on the facts that you present tonight.

We, as a Board, must consider the following five considerations listed here:

BOARD OF ZONING APPEALS

The Five Considerations:

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

2. Whether the benefit sought by the applicant can be achieved by some other means.

3. Whether the variance is substantial.

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

5. Whether the alleged difficulty was self-created.

BOARD OF ZONING APPEALS

Procedures:

Cases will be called in the order that they are advertised.

When you are called, please come up and present your certificate of postings and mailings to Mr. Donadio.

Then you will be asked to go to the podium where you can state your name and address for the record and proceed to tell us why you need the variance.

At the end of your presentation, if anyone in the audience would like to speak on your case, they will be given one opportunity to do so.

When they are done, you can come back to the podium to answer their concerns.

Once the public hearing is closed, no further information will be accepted on that case.

BOARD OF ZONING APPEALS

CHAIRMAN BENZ: All right.

Blaise, please.

MR. DONADIO: Yes, Mr. Chairman.

The first case on the agenda is:

Case Number 17777:

Curtin, Deborah.

Location: South side of Sunrise Lane,
1,184 feet west side of Brookside Drive,
Smithtown.

Property Zoned: R-21 Zoning District.

Suffolk County Tax Number: 127-2-18.

Request: Variance to reduce the
minimum front yard from 50 feet to 36 feet
(existing) adding to the existing
non-conforming structure for a proposed
415 square foot first floor addition;
reduce the minimum side yard from 16 feet to
1 foot for existing 96 square foot wood shed;
reduce the minimum side yard from 16 feet to
7 feet for an existing 150 square foot metal
shed; reduce total side yards from 34 feet to
8 feet; reduce the minimum front yard setback
from 50 feet to 28 feet for an existing 6 foot
stockade fence.

BOARD OF ZONING APPEALS

{WHEREUPON DOCUMENTS WERE SUBMITTED}

CHAIRMAN BENZ: Good evening.

MR. GLENTER: Good evening.

How are you?

CHAIRMAN BENZ: Good.

And are you the applicant?

MR. GLENTER: I work for the
architect's office, yes.

I'm representing Mr. Seidell.

CHAIRMAN BENZ: Are you the applicant?

MR. GLENTER: Yes.

CHAIRMAN BENZ: I need you first.

MR. CURTIN: Okay.

CHAIRMAN BENZ: Good evening.

Would you state your name, spell
your last name and give us your address for
the record, please.

MR. CURTIN: John Curtin,
80 Sunrise Lane, Smithtown, New York.

CHAIRMAN BENZ: Fine.

Would you like this gentleman to speak
on your behalf?

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MR. CURTIN: Yes, I would.

CHAIRMAN BENZ: Fine.

Thank you.

Now, would you state your name,
spell your last name and give us your address
for the record, please.

MR. GLENTER: James Glenter.

G-L-E-N-T-E-R.

Do you want the address of the firm or
my home address?

CHAIRMAN BENZ: Either one.

MR. GLENTER: 202-11 East Shore Road,
Huntington, New York 11743.

CHAIRMAN BENZ: Thank you.

MR. GLENTER: The house is existing
nonconforming. We're proposing to do an
extension on the left side, keeping the
nonconformity.

Do you want me to read the answers to
the questions or...

CHAIRMAN BENZ: I'm sorry?

MR. GLENTER: Respond to your five
questions.

CHAIRMAN BENZ: If you'd like.

BOARD OF ZONING APPEALS

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2 MR. GLENTER: Whatever you'd like.

3 The house is existing nonconforming.
4 Obviously, it was built some time in the 50's
5 or the 60's; probably prior to the existing
6 zoning being in place.

7 We're not looking to go past what's
8 existing.

9 And the amount we're going out on the
10 side is within the setback.

11 CHAIRMAN BENZ: Okay.

12 Thank you.

13 Does anyone on the Board have any
14 questions?

15 MR. VALENTINE: No questions.

16 {NONE}

17 CHAIRMAN BENZ: Adrienne?

18 MS. GIANNADEO: No questions.

19 CHAIRMAN BENZ: Blaise?

20 MR. DONADIO: My only question would
21 be regarding the two sheds.

22 I notice that they are very close
23 to the side property lines. Is there any way
24 that they could be relocated away from the side
25 yards?

BOARD OF ZONING APPEALS

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2 MR. GLENTER: I mean, they've been
3 there for a number of years. They were even
4 there the last time they went before the Board
5 to get the barn. So I think if we moved them,
6 they'd probably deteriorate.

7 They are premanufactured and, you
8 know, brought in on a dolly and dropped on the
9 lot.

10 CHAIRMAN BENZ: All right.

11 Thank you.

12 All right.

13 Is there anyone in the audience who
14 would like to be heard on this application?

15 {NONE}

16 CHAIRMAN BENZ: No?

17 All right.

18 Hearing none, I'll entertain a motion
19 to close this case, please.

20 MS. GIANNADEO: So move.

21 MR. VALENTINE: Second.

22 CHAIRMAN BENZ: Regularly moved and
23 seconded, all those in favor?

24 MS. GIANNADEO: Aye.

25 CHAIRMAN BENZ: Aye.

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BOARD OF ZONING APPEALS

MR. VALENTINE: Aye.

MR. GARGIULO: Aye.

CHAIRMAN BENZ: Opposed?

{NONE}

CHAIRMAN BENZ: Motion carried.

Thank you very much.

MR. GLENTER: Thank you.

{WHEREUPON THE ABOVE HEARING CONCLUDED}

BOARD OF ZONING APPEALS

1
2 CHAIRMAN BENZ: All right.

3 The next case, please.

4 MR. DONADIO: Yes, Mr. Chairman.

5 The next case on the agenda is:

6 Case Number 17780:

7 Mastronardo, John.

8 Location: 4 Overhill Drive, east side
9 of Overhill Drive, 102 feet east of Lower Road,
10 Smithtown.

11 Property Zoned: R-21 Zoning District.

12 Suffolk County Tax Number: 74-1-18.

13 Request: Variance to reduce minimum
14 front yard setback from 50 feet to 45 feet;
15 reduce side yard setback from 16 feet to
16 12 feet; reduce total side yards from
17 34 feet to 28 feet for a proposed
18 578 square foot first floor addition.

19 CHAIRMAN BENZ: Good evening.

20 MR. MASTRONARDO: Hi.

21 CHAIRMAN BENZ: Your name and address,
22 please.

23 MR. MASTRONARDO: John Mastronardo,
24 4 Overhill Drive, Smithtown, New York.

25 CHAIRMAN BENZ: Okay.

BOARD OF ZONING APPEALS

1
2 Would you like this gentleman to speak
3 on your behalf?

4 MR. MASTRONARDO: Yes, I would.

5 CHAIRMAN BENZ: Fine.

6 Thank you.

7 MR. MASTRONARDO: Okay.

8 CHAIRMAN BENZ: Good evening.

9 MR. MORBILLO: Good evening.

10 For the record, my name is
11 Michael Morbillo, architect, Enspire Design
12 Group. My office is located at 1560 Sycamore
13 Avenue, Bohemia, New York.

14 So, as the call of the meeting
15 addressed three matters that are here before
16 you tonight, one is for a reduction in the
17 front yard.

18 My client is proposing a master
19 bedroom addition on to the side of his home
20 and he's seeking to get a reduction in the
21 front yard. He's actually looking to line up
22 with an existing front porch that's on the home
23 that had been approved on a prior ZBA grant.

24 He's looking to also go into the side
25 yards. He's looking for a 25 percent reduction

BOARD OF ZONING APPEALS

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2 from 16 feet down to 12 feet. And that's
3 affecting his total side yards with about an
4 18 percent reduction from 34 feet to 28 feet.

5 He doesn't have another means of where
6 to place the bedroom, it's sort of the bedroom
7 side of the house is where he's placing the
8 addition.

9 And it won't create an undesirable
10 change in the character of the neighborhood
11 or have an impact on the environment.

12 And the condition of the property is,
13 he didn't create those conditions, they were
14 already there.

15 So if the Board has any questions
16 at this time, I'd be happy to answer them.

17 CHAIRMAN BENZ: All right.

18 Thank you.

19 Okay.

20 Does anyone on the Board have any
21 questions?

22 MS. GIANNADEO: No.

23 {NONE}

24 CHAIRMAN BENZ: Planning?

25 MR. DONADIO: No, thank you.

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CHAIRMAN BENZ: Okay.

Is there anyone in the audience who
would like to be heard on this application?

{NONE}

CHAIRMAN BENZ: No?

All right.

Hearing none, I'll entertain a motion
to close this case, please.

MS. GIANNADEO: So move.

MR. VALENTINE: Second.

CHAIRMAN BENZ: Regularly moved and
seconded, all those in favor?

MS. GIANNADEO: Aye.

CHAIRMAN BENZ: Aye.

MR. VALENTINE: Aye.

MR. GARGIULO: Aye.

CHAIRMAN BENZ: Opposed?

{NONE}

CHAIRMAN BENZ: Motion carried.

Thank you.

{WHEREUPON THE ABOVE HEARING CONCLUDED}

BOARD OF ZONING APPEALS

1
2 CHAIRMAN BENZ: All right.

3 The next case, please.

4 MR. DONADIO: Yes, Mr. Chairman.

5 The next case on the agenda is:

6 Case Number 17781:

7 Carbonara, Andrew.

8 Location: 42 Baylor, east side
9 of Baylor Drive, 445 feet south of Dartmouth
10 Drive, Smithtown.

11 Property Zoned: R-10 Zoning District.

12 Suffolk County Tax Number: 82-5-65.9.

13 Request: Special Exception for
14 temporary living quarters for a family member;
15 reduce minimum front yard setback from 40 feet
16 to 37 feet for an existing 55 square foot
17 portico.

18 CHAIRMAN BENZ: Good evening.

19 MR. MASTRONARDO: Good evening.

20 Hi. I've handed in limited power
21 of attorney form for this hearing to the
22 Town Attorney.

23 And for the record, again,
24 Michael Morbillo, architect representing
25 the applicant Andrew Carbonara.

BOARD OF ZONING APPEALS

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2 My office is located at 1560 Sycamore
3 Avenue, Bohemia, New York.

4 Just to start off very briefly.

5 As the call of the meeting stated, the
6 application is for a 400 square foot temporary
7 living quarters for parents -- for a parent.
8 And also, we are seeking to legalize a small
9 front porch that's on the front of the house
10 which is encroaching.

11 I'm assuming that you have the
12 Planning Advisory Report of July 17th; and
13 we are in full agreement with the report.
14 There's some recommendations in there and based
15 on the requirements for a special exception,
16 we meet all those criteria.

17 And the reduction in the front yard
18 request from 40 feet down to 37 is less than
19 at a 10 percent request.

20 So if the Board has any questions
21 at this time, I'd be more than happy to answer
22 them.

23 CHAIRMAN BENZ: All right.

24 Thank you.

25 MR. MORBILLO: Sure.

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CHAIRMAN BENZ: All right.

Does anyone on the Board have any questions?

MS. GIANNADEO: No.

{NONE}

MR. DONADIO: Mr. Chairman, the Planning Department prepared a Planning Advisory Report and I'm sure the Board has read it. And we'd be in favor of the application.

CHAIRMAN BENZ: All right.

Thank you.

Is there anyone in the audience who would like to be heard on this application?

{NONE}

CHAIRMAN BENZ: No?

All right.

Hearing none, I'll entertain a motion to close this case, please.

MS. GIANNADEO: So move.

MR. VALENTINE: Second.

CHAIRMAN BENZ: Regularly moved and seconded, all those in favor?

MS. GIANNADEO: Aye.

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CHAIRMAN BENZ: Aye.

MR. VALENTINE: Aye.

MR. GARGIULO: Aye.

CHAIRMAN BENZ: Opposed?

{NONE}

CHAIRMAN BENZ: Motion carried.

Thank you.

MR. MORBILLO: Thank you very much.

{WHEREUPON THE ABOVE HEARING CONCLUDED}

BOARD OF ZONING APPEALS

CHAIRMAN BENZ: All right.

And now we'll go to the adjourned
hearings.

MR. DONADIO: Yes, Mr. Chairman.

Case Number 17761:

Fox, James.

Location: 82 Riveria Drive,
southeast corner of Riviera Drive and
Alder Drive, Kings Park.

Property Zoned: R-10 Zoning District.

Suffolk County Tax Number: 20-1-29+.

Request: Variance to reduce minimum
required lot area from 10,000 square feet
to 9,628 square feet; reduce minimum required
front yard from 25 feet to 20 feet on Riviera
Drive for existing patio and roof over patio;
reduce minimum front yard from 25 feet to
0 feet on Alder Drive for existing dwelling
and existing retaining wall; reduce minimum
required east side of yard from 12 feet to
5 feet for roof over patio; to increase the
maximum permitted paved surface in the west
front yard on Alder from 25 percent to
approximately 38 percent; to permit a two

BOARD OF ZONING APPEALS

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2 story shed; to permit accessory structure
3 (roof over patio) in the required front and
4 east side of yards; to enlarge or expand
5 a structure on a non-conforming lot and
6 structure; increase maximum permitted
7 gross floor area of lot from 30 percent to
8 100 percent; decrease minimum required distance
9 from any rear lot line from 6 feet to 2 feet;
10 permit environmentally sensitive lands
11 to be altered.

12 CHAIRMAN BENZ: Good evening.

13 MR. FOX: Good evening.

14 James Fox, 152 Highland Drive.

15 I'm the owner of 82 Riveria.

16 I've submitted to the Planning
17 Department a test bore showing the depth
18 to groundwater was at 14 feet.

19 And I believe that this mitigates
20 any environmental conditions on that particular
21 property.

22 And I have no intention of changing
23 anything that's been existing there for quite
24 some time.

25 Thank you.

BOARD OF ZONING APPEALS

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2 CHAIRMAN BENZ: All right.

3 Thank you.

4 Any questions?

5 {NONE}

6 MR. DONADIO: No, thank you.

7 CHAIRMAN BENZ: We were just waiting
8 for the test hole results, right?

9 MR. DONADIO: We have them, and the
10 test boring results indicate that the boring
11 hit groundwater at 14 feet below grade. So
12 there is no environmentally sensitive land on
13 the property with respect to high groundwater.

14 Any variances that were called out
15 regarding ESL variances are not applicable
16 in this case.

17 CHAIRMAN BENZ: Thank you.

18 Is there anyone in the audience who
19 would like to be heard on this application?

20 MR. FANELLI: Hi.

21 How are you?

22 My name is Steve Fanelli.

23 I live at 147 Alder Drive.

24 I live right next door to the property
25 on Riviera that Mr. Fox owns.

BOARD OF ZONING APPEALS

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2 COURT REPORTER: Would you spell your
3 last name, please.

4 MR. FANELLI: Sure.

5 My last name is Fanelli:

6 F-A-N-E-L-L-I.

7 COURT REPORTER: Thank you.

8 MR. FANELLI: No problem.

9 Basically my concern, maybe it's
10 just the way things are written in the
11 legalities for variances here.

12 I do not have any issues with
13 any of the structures that are already on the
14 property.

15 Some of the things in the variance,
16 the wording just concerns me, regarding an
17 increasing maximum permitted gross floor area
18 from 30 percent to 100 percent, things of that
19 nature, that they are going to expand on their
20 property that pushes out to the set lines and
21 all the other things.

22 You are shaking your head at me.

23 Am I reading this incorrectly?

24 MS. GIANNADEO: No.

25 MR. FANELLI: No?

BOARD OF ZONING APPEALS

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2 CHAIRMAN BENZ: No.

3 Go ahead.

4 MR. FANELLI: Okay.

5 My concern is, just that the house
6 can't be expanded in great detail to everything
7 that's on here.

8 If it expands everything that's
9 on here, it doesn't fit the neighborhood.
10 It makes it more urban building out to the
11 property lines. It destroys my property value.
12 It destroys the -- umm -- it's on the corner
13 of Riviera if you push out to all the setbacks
14 that they are requesting here. There's a
15 traffic concern.

16 If you are going to do building,
17 it's right next to the river, so there are
18 environmental concerns.

19 So these are my concerns about it.

20 As far as the existing structures,
21 the shed, the roof over the patio, the
22 driveway, things like that, retaining walls,
23 I have no objection to what's currently on
24 the property that Mr. Fox owns, but I do object
25 if there's going to be a massive rebuilding.

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Those are my concerns.

CHAIRMAN BENZ: All right.

I think we went over this last time
also.

MR. FANELLI: We did go over this last
time. But to be honest, I just saw a sign pop
up the other day. I didn't get another letter.
I don't know what's going on. This stuff is
new to me. So I don't do this that often.

CHAIRMAN BENZ: We're just waiting
for the test hole results.

MR. FANELLI: Yes, I understand.

CHAIRMAN BENZ: We'll bring the
applicant back and address your concerns.

MR. FANELLI: Yeah.

That's fine.

Thank you.

CHAIRMAN BENZ: Thank you.

MR. DONADIO: Mr. Chairman, do you
want me to address Mr. Fanelli's concerns?
Only because I want him to be aware of what's
going on.

CHAIRMAN BENZ: Sure.

MR. FANELLI: I would appreciate that.

BOARD OF ZONING APPEALS

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2 MR. DONADIO: There are a number of
3 variances that were called out in the meeting
4 that are related to what we call
5 environmentally sensitive land.

6 In this case, it is considered to
7 be high groundwater. High groundwater is
8 water that is less than 10 feet less than
9 surface of grade on anybody's property.

10 MR. FANELLI: Okay.

11 MR. DONADIO: Mr. Fox had a test
12 boring done recently and he submitted the
13 results of that test that show that the
14 groundwater exceeds the 10 feet. They
15 actually didn't encounter groundwater
16 until 14 feet below grade.

17 MR. FANELLI: Okay.

18 MR. DONADIO: So a number of these
19 variances actually disappear. For example,
20 I'm sure this is the one you are probably most
21 concerned about, is that increasing the
22 permitted gross floor area from 30 percent to
23 100 percent.

24 MR. FANELLI: Yes, that is a major
25 concern of mine.

BOARD OF ZONING APPEALS

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2 MR. DONADIO: The reason why it goes
3 from 30 percent to 100 percent, is that if the
4 property were deemed to be in high groundwater,
5 that means you have zero -- technically, you
6 have zero buildable lot area.

7 Therefore, any structure that you
8 build on the property is considered to take up
9 all of the buildable lot area.

10 In this case, that 100 percent goes
11 away --

12 MR. FANELLI: Okay.

13 MR. DONADIO: -- because it's no
14 longer environmentally sensitive land.

15 And I might be speaking out of turn,
16 but I would imagine that at the point that the
17 Board is ready to vote on this application,
18 that that particular variance request would
19 probably be denied.

20 MR. FANELLI: Okay.

21 Okay, very good.

22 All right.

23 Thank you for your time.

24 CHAIRMAN BENZ: All right.

25 Thank you.

BOARD OF ZONING APPEALS

1
2 Anyone else who would like to be
3 heard?

4 {NONE}

5 CHAIRMAN BENZ: Okay.

6 Would you like to come up?

7 MR. FOX: No.

8 As long as you are happy.

9 CHAIRMAN BENZ: Okay.

10 I think Mr. Donadio explained
11 it properly.

12 MR. FOX: Very well.

13 CHAIRMAN BENZ: Okay.

14 MR. FOX: Have a good night.

15 Thank you.

16 CHAIRMAN BENZ: All right.

17 Thank you.

18 Could I have a motion to close this
19 case, please.

20 MS. GIANNADEO: So move.

21 MR. VALENTINE: Second.

22 CHAIRMAN BENZ: Okay.

23 Regularly moved and seconded, all
24 those in favor?

25 MS. GIANNADEO: Aye.

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BOARD OF ZONING APPEALS

CHAIRMAN BENZ: Aye.

MR. VALENTINE: Aye.

MR. GARGIULO: Aye.

CHAIRMAN BENZ: Opposed?

{NONE}

CHAIRMAN BENZ: Motion carried.

{WHEREUPON THE ABOVE HEARING CONCLUDED}

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BOARD OF ZONING APPEALS

CHAIRMAN BENZ: Okay.

And that concludes the cases for
tonight.

Thank you.

And have a good evening.

BOARD OF ZONING APPEALS

DECISIONS

CHAIRMAN BENZ: All right.

The first case is:

Case Number 17777:

Curtin, Deborah.

Location: South side of Sunrise Lane,
1,184 feet west side of Brookside Drive,
Smithtown.

Property Zoned: R-21 Zoning District.

Suffolk County Tax Number: 127-2-18.

Request: Variance to reduce
the minimum front yard from 50 feet to
36 feet (existing) adding to the existing
non-conforming structure for a proposed
415 square foot first floor addition;
reduce the minimum side yard from 16 feet to
1 foot for existing 96 square foot wood shed;
reduce the minimum side yard from 16 feet to
7 feet for an existing 150 square foot metal
shed; reduce total side yards from 34 feet to
8 feet; reduce the minimum front yard setback
from 50 feet to 28 feet for an existing 6 foot
stockade fence.

MR. GARGIULO: Does anybody have a

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problem with the one foot on the shed?

MS. GIANNADEO: I thought that was a little extreme. Only because it's in R-21 District.

MR. GARGIULO: Yeah, I agree.

What do you think, 3 feet?

2 feet?

MS. GIANNADEO: At least 3.

MR. GARGIULO: I'm good with 3.

CHAIRMAN BENZ: What were in the other ones?

MS. GIANNADEO: 16 to 7 for the other one, the metal shed.

MR. DONADIO: The request to reduce the total side yards is basically 75 percent reduction of what they are required to have by the ordinance.

So I guess whatever you decide as far as what you feel is acceptable as a minimum side yard setback is going to hopefully have a positive affect on that and bring that percentage down.

As it stands right now overall, it's a 75 percent reduction in the side yards.

BOARD OF ZONING APPEALS

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2 CHAIRMAN BENZ: All right.

3 3 feet wouldn't make a difference.

4 MR. GARGIULO: Okay.

5 Would you like me to make a motion and
6 see how everyone votes?

7 MS. GIANNADEO: Sure.

8 CHAIRMAN BENZ: All right.

9 MR. GARGIULO: Okay.

10 On Case Number 17777, Deborah Curtin.

11 Variance to reduce the minimum front
12 yard from 50 to 36 foot adding to the existing
13 nonconforming structure for a proposed 415
14 square foot first floor addition, be approved.

15 Reduce the minimum side yard from
16 16 feet to 3 feet for an existing 96 square
17 foot shed, be approved.

18 Reduce the minimum side yard from
19 16 feet to 7 feet for an existing 150 square
20 foot metal shed, be approved.

21 Reduce the total side yard from
22 34 feet to 8 feet, be approved.

23 Reduce the minimum front yard setback
24 from 50 feet to 28 feet for an existing 6 foot
25 stockade fence, be approved.

BOARD OF ZONING APPEALS

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2 MR. DONADIO: Well, instead of being
3 from 34 feet to 8 feet for the total side
4 yards, it would be from 34 feet to 11 feet.

5 MR. HENNINGS: Okay.

6 So that would have to be changed then,
7 that approval?

8 MR. DONADIO: Yes.

9 MR. GARGIULO: Okay.

10 MR. HENNINGS: So the Board says, yes,
11 it's approved to 11 feet.

12 MR. DONADIO: For total side yards?

13 MR. HENNINGS: Right.

14 CHAIRMAN BENZ: All right.

15 Do we have a second?

16 MR. VALENTINE: Second.

17 CHAIRMAN BENZ: All right.

18 Regularly moved and seconded, all
19 those in favor?

20 Aye.

21 MR. VALENTINE: Aye.

22 MS. GIANNADEO: Aye.

23 MR. GARGIULO: Aye.

24 CHAIRMAN BENZ: Opposed?

25 {NONE }

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BOARD OF ZONING APPEALS

CHAIRMAN BENZ: Motion carried.

4 - 0, as recited.

BOARD OF ZONING APPEALS

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2 CHAIRMAN BENZ: All right.

3 The next case on the agenda is:

4 Case Number 17780:

5 Mastronardo, John.

6 Location: 4 Overhill Drive, east side
7 of Overhill Drive, 102 feet east of Lower Road,
8 Smithtown.

9 Property Zoned: R-21 Zoning District.

10 Suffolk County Tax Number: 74-1-18.

11 Request: Variance to reduce minimum
12 front yard setback from 50 feet to 45 feet;
13 reduce side yard setback from 16 feet to
14 12 feet; reduce total side yards from
15 34 feet to 28 feet for a proposed
16 578 square foot first floor addition.

17 MR. GARGIULO: All right.

18 Case Number 17780, John Mastronardo,
19 Mr. Chairman, I'll make a motion to approve
20 as presented.

21 MR. VALENTINE: Second.

22 CHAIRMAN BENZ: All right.

23 Regularly moved and seconded, all
24 those in favor?

25 Aye.

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BOARD OF ZONING APPEALS

MR. VALENTINE: Aye.

MS. GIANNADEO: Aye.

MR. GARGIULO: Aye.

CHAIRMAN BENZ: Opposed?

{NONE }

CHAIRMAN BENZ: Motion carried.

BOARD OF ZONING APPEALS

1
2 CHAIRMAN BENZ: All right.

3 The next case on the agenda is:

4 Case Number 17781:

5 Carbonara, Andrew.

6 Location: 42 Baylor, east side
7 of Baylor Drive, 445 feet south of Dartmouth
8 Drive, Smithtown.

9 Property Zoned: R-10 Zoning District.

10 Suffolk County Tax Number: 82-5-65.9.

11 Request: Special Exception for
12 temporary living quarters for a family member;
13 reduce minimum front yard setback from 40 feet
14 to 37 feet for an existing 55 square foot
15 portico.

16 MR. GARGIULO: I'll make a motion to
17 approve as presented.

18 MR. VALENTINE: Second.

19 CHAIRMAN BENZ: All right.

20 Regularly moved and seconded, all
21 those in favor?

22 Aye.

23 MR. VALENTINE: Aye.

24 MS. GIANNADEO: Aye.

25 MR. GARGIULO: Aye.

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BOARD OF ZONING APPEALS

CHAIRMAN BENZ: Opposed?

{NONE}

CHAIRMAN BENZ: Motion carried.

BOARD OF ZONING APPEALS

CHAIRMAN BENZ: All right.

Next, on the adjourned cases.

Case Number 17761:

Fox, James.

Location: 82 Riveria Drive,
southeast corner of Riviera Drive and
Alder Drive, Kings Park.

Property Zoned: R-10 Zoning District.

Suffolk County Tax Number: 20-1-29+.

Request: Variance to reduce minimum
required lot area from 10,000 square feet
to 9,628 square feet; reduce minimum required
front yard from 25 feet to 20 feet on Riviera
Drive for existing patio and roof over patio;
reduce minimum front yard from 25 feet to 0
feet on Alder Drive for existing dwelling
and existing retaining wall; reduce minimum
required east side of yard from 12 feet to
5 feet for roof over patio; to increase the
maximum permitted paved surface in the west
front yard on Alder from 25 percent to
approximately 38 percent; to permit a two
story shed; to permit accessory structure
(roof over patio) in the required front and

BOARD OF ZONING APPEALS

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2 east side of yards; to enlarge or expand
3 a structure on a non-conforming lot and
4 structure; increase maximum permitted
5 gross floor area of lot from 30 percent to
6 100 percent; decrease minimum required distance
7 from any rear lot line from 6 feet to 2 feet;
8 permit environmentally sensitive lands to be
9 altered.

10 MR. GARGIULO: I'll make a motion to
11 approve as presented.

12 MR. VALENTINE: Second.

13 CHAIRMAN BENZ: All right.

14 Regularly moved and seconded, all
15 those in favor?

16 Aye.

17 MR. VALENTINE: Aye.

18 MS. GIANNADEO: Aye.

19 MR. GARGIULO: Aye.

20 CHAIRMAN BENZ: Opposed?

21 {NONE}

22 CHAIRMAN BENZ: Motion carried.

23 MR. DONADIO: I just want to let you
24 know. Being that they don't need any variances
25 for environmentally sensitive land, you may

BOARD OF ZONING APPEALS

1
2 want to deny anything related to that.

3 MS. GIANNADEO: Like, increase maximum
4 gross floor area from 30 percent to 100.

5 MR. DONADIO: Yes, I would definitely
6 deny that.

7 MS. GIANNADEO: Yes.

8 CHAIRMAN BENZ: Let's go one-by-one.

9 MR. GARGIULO: All right.

10 On Case Number 17761, James Fox:

11 Variance to reduce the minimum lot
12 area from 10,000 square feet to 9,628 square
13 feet, be approved.

14 Reduce the minimum required front
15 yard from 25 feet to 20 feet on Riveria Drive
16 for existing roof over patio, be approved.

17 Reduce minimum front yard from
18 25 to 0 feet on Alder drive for existing
19 dwelling and existing retaining wall,
20 be approved.

21 Reduce minimum required each side
22 yard from 12 feet to 5 feet for roof over
23 patio, be approved.

24 Increase the maximum permitted
25 paved surface on west front yard on Alder

BOARD OF ZONING APPEALS

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2 from 25 percent to approximately 38 percent,
3 be approved.

4 Permit a two story shed, be approved.

5 Permit accessory structure and roof
6 over patio on required front and east side
7 yard, be approved.

8 To enlarge or expand a structure
9 on a non-conforming lot and structure, be
10 approved.

11 Increase maximum permitted
12 gross floor area of lot from 30 percent to
13 100 percent, be denied.

14 Decrease the minimum required distance
15 from any rear lot line from 6 feet to 2 feet,
16 be approved.

17 Permit environmentally sensitive lands
18 to be altered, be denied.

19 MR. VALENTINE: Second.

20 CHAIRMAN BENZ: All right.

21 Regularly moved and seconded, all
22 those in favor?

23 Aye.

24 MR. VALENTINE: Aye.

25 MS. GIANNADEO: Aye.

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BOARD OF ZONING APPEALS

MR. GARGIULO: Aye.

CHAIRMAN BENZ: Opposed?

{NONE}

CHAIRMAN BENZ: Motion carried.

4 - 0.

BOARD OF ZONING APPEALS

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2 CHAIRMAN BENZ: All right.

3 Next, on the postponed calendar.

4 MR. DONADIO: Yes.

5 Case Number 17764:

6 FRC Indian Crest, UC.

7 Location: 262 Indian Head Road,
8 west side of Indian Head Road, 1470 feet south
9 of Ellen Place, Kings Park.

10 Property Zoned: RMGA Zoning District.

11 Suffolk County Tax Number: 42-1-11.1.

12 Request: Variance to permit a
13 retaining wall higher than 6 feet to 11 feet
14 (wall D); permit a retaining wall higher than
15 6 feet to 12 feet (wall E).

16 Apparently, there's been a lot
17 of bad information floating around my office
18 about this case.

19 My most recent understanding of this
20 case goes something like this.

21 About a year ago there was a
22 different architectural company working
23 on this application with the applicant that
24 came up with the site plan showing grading
25 and retaining walls that were different than

BOARD OF ZONING APPEALS

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2 what you've been looking at now.

3 Apparently, throughout the course
4 of the application that architectural firm
5 was dismissed, another one was brought in.
6 They redesigned the property with different
7 types of grading and different size and heights
8 of retaining walls.

9 It's my understanding that the
10 Engineering Department has approved the
11 retaining walls on the plan that you looked at.
12 However, the Town Engineer and the planner
13 from my department that reviews all of the
14 site plan applications believed that the site
15 can be constructed in a way where the retaining
16 walls can be tiered and not be, you know, a
17 continuous 10 or 11 foot high retaining wall.
18 Possibly not even need variances. And the
19 grading can be done in a way where it all
20 works out, with no variances required.

21 The Engineering Department is willing
22 to provide the Board with a sketch showing how
23 the grading and the retaining walls can be
24 designed so that it does actually meet zoning.

25 So it's up to you whether or not you

BOARD OF ZONING APPEALS

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want to vote on it tonight, which you can,
or if you want to postpone decision.

CHAIRMAN BENZ: In showing us the
grade plan, would you show the applicant that
too?

MR. DONADIO: I would think we'd have
to.

CHAIRMAN BENZ: Yeah.

MR. DONADIO: Yeah, without a doubt.

MR. GARGIULO: But the hearing is
closed.

MR. DONADIO: Yes, the hearing is
closed.

MS. GIANNADEO: You'd have to reopen
it and he'd have to reapply.

But if he does that, then he doesn't
need any variances.

MR. DONADIO: Right.

You can just deny it without
prejudice because then as long as he agrees to
do it that way, he doesn't need any variances.

MS. GIANNADEO: Right.

So he wouldn't have to come back.

CHAIRMAN BENZ: What's your feeling on

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it; to deny it?

MR. GARGIULO: I think so.

MR. HENNINGS: Is the property near
the hockey rink?

MR. DONADIO: Right next to it.

MR. HENNINGS: Yeah.

MR. DONADIO: I'm only going to
say for myself, I haven't seen any drawings
yet either from the Engineering Department
or my department. So I can't give you any
assurance that it can be done. But I am told
it can be done. So...

CHAIRMAN BENZ: That doesn't give you
a warm and fuzzy feeling.

MR. DONADIO: Yeah.

MR. VALENTINE: Should we look at the
plans first before we vote on it?

CHAIRMAN BENZ: At the next meeting,
can you show us a plan?

MR. DONADIO: Whatever the Engineering
Department gives us, I can bring it to the next
meeting.

CHAIRMAN BENZ: I'd rather look at the
plan and see if it can be done.

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MR. DONADIO: Sure.

MS. GIANNADEO: And the applicant is going to be told; am I correct?

MR. DONADIO: Well, whatever sketch Engineering comes up with, they're going to have to be provided a copy of it.

CHAIRMAN BENZ: Right.

MS. GIANNADEO: You have the plans here on this case?

MR. GARGIULO: Let me look.

CHAIRMAN BENZ: It's in the back of the property.

MR. DONADIO: Yes, it's all the way at the back of the property.

Building number 1, is the most westerly portion of the property where it's being developed.

MS. GIANNADEO: And there's a home behind it.

MR. DONADIO: I can't remember the name of it. But the condos and townhouses.

MS. GIANNADEO: Oh.

Country...

MR. DONADIO: Yeah.

BOARD OF ZONING APPEALS

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2 CHAIRMAN BENZ: Well, I'd like to see
3 a drawing and I'd like to see something from
4 them saying it can be built.

5 Really, to say to this guy, no, you
6 can't have this, we want to see this, but you
7 can't build it. You know?

8 Unless we just want to give it to him
9 as presented.

10 MR. DONADIO: Well, if that's how you
11 feel about it, that's fine.

12 As it stands, that's the way the
13 property is proposed to be developed.

14 The only property that I believe that
15 would be impacted by that wall would be the
16 ice-skating rink to the south. And I think it
17 would be the back parking lot where you would
18 actually be seeing that retaining wall.

19 I think.

20 MR. HENNINGS: Which is sort of a
21 remote area.

22 MS. GIANNADEO: Yeah.

23 MR. DONADIO: Yeah.

24 MR. HENNINGS: As far as that hockey
25 rink is concerned.

BOARD OF ZONING APPEALS

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2 MS. GIANNADEO: And I don't think
3 anyone was here to object.

4 CHAIRMAN BENZ: No.

5 MS. GIANNADEO: No one was here to
6 object.

7 MR. HENNINGS: No.

8 What was it, two weeks ago?

9 MR. DONADIO: I think it was two
10 meetings ago.

11 MR. GARGIULO: All right.

12 On Case Number 17764, I'll make
13 a motion that we approve as presented.

14 MR. VALENTINE: Second.

15 CHAIRMAN BENZ: All right.

16 Regularly moved and seconded, all
17 those in favor?

18 Aye.

19 MR. VALENTINE: Aye.

20 MS. GIANNADEO: Aye.

21 MR. GARGIULO: Aye.

22 CHAIRMAN BENZ: Opposed?

23 {NONE}

24 CHAIRMAN BENZ: Motion carried.

25 *****

BOARD OF ZONING APPEALS

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2 CHAIRMAN BENZ: All right.

3 The next case on the agenda is:

4 Case Number 17772:

5 Bienz, Andrew.

6 Location: 17 Greene Drive, east
7 side of Green Drive, 323 feet north of Genesee
8 Drive, Commack.

9 Property Zoned: R-10 Zoning District.

10 Suffolk County Tax Number: 117-2-17.

11 Request: Variance to reduce minimum
12 side yard setback from 12 feet to 10 feet and
13 total side yards from 28 feet to 23 feet for
14 a proposed 408 square foot attached garage
15 addition.

16 I think we were waiting for the
17 receipts to be handed in.

18 MR. DONADIO: Yes.

19 This case and the next case, they
20 didn't hand in their certified receipts.

21 We got them for both.

22 MR. GARGIULO: All right.

23 On Case Number 17772, Andrew Bienz,
24 I'll make a motion to approve as presented.

25 MR. VALENTINE: Second.

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BOARD OF ZONING APPEALS

CHAIRMAN BENZ: All right.

Regularly moved and seconded, all
those in favor?

Aye.

MR. VALENTINE: Aye.

MS. GIANNADEO: Aye.

MR. GARGIULO: Aye.

CHAIRMAN BENZ: Opposed?

{NONE}

CHAIRMAN BENZ: Motion carried.

4 - 0.

BOARD OF ZONING APPEALS

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2 CHAIRMAN BENZ: All right.

3 The next case on the agenda is:

4 Case Number 17776:

5 Standridge, Daniel.

6 Location: 28 Orchard Drive,
7 Fort Salonga, northwest corner of Orchard Drive
8 and Orchard Drive, Fort Salonga.

9 Property Zoned: R-21 Zoning District.

10 Suffolk County Tax Number: 11-4-14.

11 Request: Variance to reduce minimum
12 distance from pavement on south side of Orchard
13 Drive from 20 feet to 8 feet for an existing
14 6 foot fence.

15 The same thing, we're waiting for the
16 receipts.

17 MS. GIANNADEO: This is a 6 foot
18 fence.

19 CHAIRMAN BENZ: A 6 foot fence.

20 MS. GIANNADEO: From 20 feet to 8.

21 MR. DONADIO: I think it was pointed
22 out at the hearing that it was in the Town
23 right-of-way.

24 CHAIRMAN BENZ: Yeah.

25 MS. GIANNADEO: That's right.

BOARD OF ZONING APPEALS

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2 MR. DONADIO: Yeah. And the Board
3 has a standard that they like to use when
4 approving fences. Usually to 16 feet.

5 MR. GARGIULO: And if we do go to
6 16 feet, it's no longer on the Town property.

7 MR. DONADIO: Right.

8 MR. GARGIULO: All right.

9 On Case Number 17776:

10 Request variance to reduce minimum
11 distance from pavement on south side of Orchard
12 Drive from 20 feet to 16 feet for an existing
13 6 foot fence, be approved.

14 MR. VALENTINE: Second.

15 CHAIRMAN BENZ: All right.

16 Regularly moved and seconded, all
17 those in favor?

18 Aye.

19 MR. VALENTINE: Aye.

20 MS. GIANNADEO: Aye.

21 MR. GARGIULO: Aye.

22 CHAIRMAN BENZ: Opposed?

23 {NONE}

24 CHAIRMAN BENZ: Motion carried.

25 *****

BOARD OF ZONING APPEALS

CHAIRMAN BENZ: All right.

We have some requests for extensions.

Case Number 17178:

Charles Muller, 7 Seashell Lane,
5-6 Sea Shell Lane, and 28 Marion's Lane,
north side of Marions Lane, 457' east of
Lister Circle, Ft. Salonga.

Property Zoned: R-43 Zoning District.

Suffolk County Tax Number: 1-1-9.

Request: Certificate of existing
use for two dwellings without separate
frontage; variance to permit more than one
single family dwelling on a lot to three
single family dwellings; use variance to
expand a non-conforming use (dwelling without
separate frontage); variance to repair, alter,
or reconstruct a non-conforming use by more
than 75 percent; permit environmentally
sensitive land (depth to ground water less
than 10 feet) to be used to calculate the
permitted density, floor area or minimum lot
area; permit environmentally sensitive land
(depth to ground water less than 10 ft.); to
be altered; reduce setback from wetlands from

BOARD OF ZONING APPEALS

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2 100 feet to 56 feet (existing); reduce
3 setback from flood hazard zone and from slopes
4 greater than 15 percent from 10 feet to 0 feet
5 (existing); increase the max. Number of stories
6 for a building from 2 1/2 to 3 (7 Seashell
7 Lane); increase the gross floor area of a
8 lot in LWRP from 6,086 square feet to 8,724
9 square feet; permit less than 75 percent of
10 the buildings to be screened from surface
11 water.

12 MR. DONADIO: Yeah, there's two
13 extensions.

14 CHAIRMAN BENZ: Yeah.

15 Charles Muller is asking for an
16 extension of time.

17 I don't have a problem with that one.

18 MR. HENNINGS: Well, this is in an
19 Article 78 presently anyway.

20 CHAIRMAN BENZ: Oh.

21 MR. HENNINGS: Yeah.

22 So it shouldn't me a problem.

23 CHAIRMAN BENZ: All right.

24 So on Case Number 17178, Charles
25 Muller, could I have a motion on this case

BOARD OF ZONING APPEALS

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2 requesting an extension of time, please.

3 MR. GARGIULO: Mr. Chairman, I'll
4 make a motion that we grant the request for
5 an extension of time.

6 MR. VALENTINE: Second.

7 CHAIRMAN BENZ: Regularly moved and
8 seconded, all those in favor?

9 Aye.

10 MR. VALENTINE: Aye.

11 MS. GIANNADEO: Aye.

12 MR. GARGIULO: Aye.

13 CHAIRMAN BENZ: Opposed?

14 {NONE}

15 CHAIRMAN BENZ: Motion carried.

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BOARD OF ZONING APPEALS

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2 CHAIRMAN BENZ: All right.

3 The next case on the agenda is:

4 Case Number 1-15280, Lawrence Flynn.

5 MR. DONADIO: He's basically asking
6 for a 2 1/2 year extension.

7 His approval expired -- his last
8 extension expired June 26th of 2015. So
9 he's looking to have his approval extended
10 to December 26th of this year which would be
11 a total of five- six month extensions.

12 MR. GARGIULO: And what's the reason?

13 MR. DONADIO: It's part of a
14 subdivision. It's a lot within a subdivision
15 that hasn't been developed. And I believe
16 that he's requesting the extension because
17 he may have a buyer.

18 CHAIRMAN BENZ: Well, can I ask you
19 a question?

20 When the extension expires,
21 does someone let him know or is it up to him
22 to --

23 MR. DONADIO: It's up to him.

24 MR. HENNINGS: It's up to him.

25 CHAIRMAN BENZ: It's up to him.

BOARD OF ZONING APPEALS

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Okay.

So does he have to pay for all those extensions separately?

MR. DONADIO: Yes.

MS. GIANNADEO: Is it \$50?

MR. DONADIO: No, it was increased to \$100 per extension.

MS. GIANNADEO: Oh.

MR. VALENTINE: Do you charge him for the time he extends?

MR. DONADIO: Yes. He basically has to pay for the extensions.

MR. VALENTINE: He does?

MR. DONADIO: Yes.

CHAIRMAN BENZ: All right.

I don't have a problem with it.

Do you have a problem with it?

MR. VALENTINE: No.

CHAIRMAN BENZ: All right.

On Case Number 1-15280.

Lawrence Flynn.

Could I have a motion on this case requesting an extension of time, please.

MR. GARGIULO: Mr. Chairman, I'll

BOARD OF ZONING APPEALS

1
2 make a motion that we grant the request for an
3 extension of time.

4 MR. VALENTINE: Second.

5 CHAIRMAN BENZ: Regularly moved and
6 seconded, all those in favor?

7 Aye.

8 MR. VALENTINE: Aye.

9 MS. GIANNADEO: Aye.

10 MR. GARGIULO: Aye.

11 CHAIRMAN BENZ: Opposed?

12 {NONE}

13 CHAIRMAN BENZ: Motion carried.

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BOARD OF ZONING APPEALS

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2 CHAIRMAN BENZ: All right.

3 There's Other Matters.

4 Case Number 17436:

5 Kolodny, Erik and Robyn.

6 Location: 30 Amherst Lane, west side
7 of Amherst Lane, 165 feet south of Leslie Lane,
8 Smithtown.

9 Property Zoned: R-10 Zoning District.

10 Suffolk County Tax Number: 95-3-42.

11 Request: Variance to increase the
12 maximum height of an existing fence on top of
13 retaining wall from 6 feet to 17 feet; reduce
14 the setback of a 11 foot high retaining wall
15 from any lot line from 11 feet to 0 feet;
16 reduce the setback of a 6 foot fence from an
17 11 foot retaining wall from 11 feet to 0 feet.

18 MR. DONADIO: I don't know if you
19 remember this case or not, it's probably a
20 couple years old at this point, but it was
21 for a retaining wall in the backyard that
22 was 11 feet tall.

23 CHAIRMAN BENZ: Right.

24 MR. DONADIO: And the neighbors came
25 out complaining that the retaining wall was on

BOARD OF ZONING APPEALS

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2 their property. And there was an issue with
3 a LIPA pole and a whole bunch of other stuff.

4 So the Board had conditionally
5 approved it that he has to -- at that time he
6 had to remove the portion of the retaining wall
7 that was on the neighbor's property. Or get
8 some kind of an easement agreement with the
9 neighbor that the wall could stay. And that
10 the wall would have to be completed, repaired
11 or upgraded per whatever engineering told them
12 to.

13 So at this point, they are in the
14 middle of getting their easement agreement
15 and dealing with the LIPA pole. So they want
16 to come back and I guess talk to the back about
17 leaving the LIPA pole where it is or who knows.

18 MR. HENNINGS: They want to reopen the
19 case?

20 MR. DONADIO: Yeah, they want to
21 reopen the case.

22 CHAIRMAN BENZ: But they are working
23 on an easement with the neighbor.

24 MR. DONADIO: As far as I know.

25 MR. GARGIULO: Then why would they

BOARD OF ZONING APPEALS

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need to reopen the case?

MR. DONADIO: I think there was a condition in there about the LIPA pole.

There was an issue with the retaining wall. There was an issue with the encroachment on the neighbor's property. And there was --

CHAIRMAN BENZ: I don't think the pole can be moved though.

MR. DONADIO: It could be, but it was expensive. Yeah, without a doubt.

CHAIRMAN BENZ: Yeah.

MR. DONADIO: It was expensive.

MS. GIANNADEO: I don't see any conditions here about the pole.

I don't see any conditions on this that says they have to remove the pole.

MR. DONADIO: I don't have a copy in front of me, so I don't know what it says.

CHAIRMAN BENZ: Yeah.

"The applicant shall remove a portion of the retaining wall on the neighbor's property to the southeast and relocate it onto the applicant's property.

The wall shall be extended eastward

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1
2 in accordance with the Engineering Department's
3 recommendation to 21 feet."

4 MR. DONADIO: So I think in lieu
5 of removing it, they want to come back and
6 basically submit the easement agreement, in
7 lieu of moving the wall.

8 CHAIRMAN BENZ: And Engineering is
9 okay with that?

10 MR. DONADIO: I haven't spoke to
11 the Town Engineer yet about it.

12 MR. GARGIULO: So they have the
13 neighbor's agreement?

14 MR. DONADIO: I believe that's what
15 his attorney said. Yeah.

16 CHAIRMAN BENZ: If they enter into
17 an easement, Paul, with the neighbor, that
18 satisfies them; right?

19 MR. HENNINGS: Yeah. Sure.

20 The neighbor can do that, yeah.

21 Absolutely.

22 What they are doing is retaining
23 their property and allowing the applicant to
24 use it for purposes of having his retaining
25 wall.

BOARD OF ZONING APPEALS

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2 MR. DONADIO: So does it become
3 necessary for them to come back to the Board
4 to ask for another decision to allow the
5 easement agreement?

6 MR. HENNINGS: What was the decision
7 made? Did it account for that possibility?

8 MR. DONADIO: I don't believe so.

9 CHAIRMAN BENZ: It says, they've
10 reached a tentative agreement.

11 MR. HENNINGS: It's better if they
12 come back and put that on the record.

13 MR. DONADIO: Yeah. All right.

14 MR. HENNINGS: Because as it stands
15 now, they'd be in violation of the agreement.
16 I mean, in violation of the record; regardless
17 of what they and the neighbor have privately
18 agreed to.

19 So it would be a little cleaner and
20 better for everybody's concern, including your
21 own, if they had it reopened and they placed
22 it on the record. Assuming it's all agreed to
23 by this Board, then there's no reason why they
24 shouldn't.

25 MR. DONADIO: But you'd rather not

BOARD OF ZONING APPEALS

1
2 have them come back until they actually have
3 the agreement in their hands.

4 CHAIRMAN BENZ: Yes, that would help.
5 Because if they come back and they say, it's
6 tentative, that could go on for another two
7 years.

8 MR. HENNINGS: Then it's uncertain.

9 CHAIRMAN BENZ: Right.

10 MR. DONADIO: So maybe we send them
11 a letter that says the Board has considered
12 your request and as such time as you can
13 produce a signed executed agreement between
14 the neighbor and the applicant, then the
15 Board will grant your requested relief.

16 CHAIRMAN BENZ: Yes.

17 Because they are just going to come
18 in and say the same thing again, if they don't
19 have anything in hand.

20 MR. HENNINGS: Sure.

21 MR. GARGIULO: Well, you might say
22 that the Board would then vote on reopening it.

23 MR. DONADIO: They'll consider your
24 request.

25 MR. HENNINGS: Right.

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BOARD OF ZONING APPEALS

MR. DONADIO: All right.

We can do that.

That's easy.

CHAIRMAN BENZ: All right.

I think it would be better.

MR. DONADIO: Okay.

BOARD OF ZONING APPEALS

1
2 CHAIRMAN BENZ: All right.

3 The next case on the agenda is:

4 Case Number 17049:

5 Georges, John and Gaye,

6 11 Creek Road, Smithtown, New York 11787.

7 Location: West side of Creek Road,
8 202 feet south of Croft Lane, Smithtown.

9 Property Zoned: R-43 Zoning District.

10 Suffolk County Tax Map Number:

11 126-3-64.1.

12 Request: Variance to reduce minimum
13 front yard setback from 60 feet to 36 feet
14 for an existing 200 square foot shed; reduce
15 distance from wetlands for an accessory
16 structure from 100 feet to 75 feet.

17 MR. HENNINGS: This is a case where
18 the Judge -- and I don't remember the Judge
19 offhand -- following an Article 78 application
20 by the Georges, directed this Board to issue
21 findings of fact. And that's what is being
22 done right now.

23 CHAIRMAN BENZ: Yes.

24 All right.

25 On Case Number 17049.

BOARD OF ZONING APPEALS

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16595.

What does that say?

The Georges, case 17049.

MR. HENNINGS: No way.

That's too recent.

MS. GIANNADEO: John and Gaye Georges,
right.

MR. HENNINGS: 17409; it's possible.

MR. DONADIO: Is that the actual copy
of the findings?

MS. GIANNADEO: That's what you gave
me, the proposed findings.

MR. DONADIO: Right.

It should cite the other case number
too.

MR. HENNINGS: They might have had two
cases.

MS. GIANNADEO: I think they did.

MR. DONADIO: Yeah.

It's prior ZBA Case Number 16595.
The case that we're actually talking
about is 17049.

That's the one we're actually on.

MR. HENNINGS: All right.

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2 So that's the one that these findings
3 pertaining to?

4 MR. DONADIO: Yes.

5 MR. HENNINGS: Case Number 17049.

6 CHAIRMAN BENZ: All right.

7 So on Case Number 17049, we have the
8 findings of facts.

9 Have the members of the Board read the
10 findings of facts?

11 BOARD MEMBERS: Yes.

12 CHAIRMAN BENZ: I'd like to vote on
13 adopting the findings of facts.

14 Is everybody in agreement?

15 BOARD MEMBERS: Yes.

16 CHAIRMAN BENZ: All right.

17 So on Case Number 17049, I'll
18 review the findings of facts at this time
19 for the record, which they are as follows:

20
21 PROPOSED DECISION:

22 RE: Case# 17049

23 Georges, John & Gaye

24 North side of Creek Road, 202 feet
25 west of Croft Lane Smithtown

BOARD OF ZONING APPEALS

R-43 Zoning District.

SCTM# 800-126-3-64.1 5/3/2017

A. Purpose of the Application:

This is an application for 2 area variances to permit the applicant to maintain an existing built-prior shed.

B. Relief or Approval Sought:

1. Variance to reduce the minimum front yard setback from 60 feet to 36 feet for an existing 200 square foot shed.

2. Variance to reduce the distance to wetlands for an accessory structure from 100 feet to 75 feet.

C. Subject Site:

The area of the site is 54,450 square feet or 1.25-acres. The site consists of one tax lot on the west side of Creek Road, 202 feet south of Croft Lane in Smithtown. It is a polygonal shaped parcel with 254 feet of road

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1
2 frontage on Creek Road. A large portion of the
3 required front yard (60 foot setback) is
4 located within 100 feet of wetlands.

5 The property is developed with one
6 single-family home, which is approximately
7 1,630 square feet, an 880 square foot barn
8 and a paddock. To the north, east, south
9 and west is R-43 zoning developed with
10 single-family homes.

11 Directly east of the site, across
12 Creek Road, are wetlands.

13
14 D. Public Hearing Testimony:

15
16 The Board conducted a public hearing
17 on December 10, 2013. The applicant addressed
18 the Board, presenting testimony in support of
19 the variances requested, including when the
20 shed was originally constructed.

21 Additionally, the applicant stated
22 that the shed would not produce any impact on
23 adjacent properties because of it's location,
24 the request was not substantial because of
25 the age of the shed, the benefit could not be

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1
2 achieved by another alternative because moving
3 the shed would be expensive and the variances
4 would not impact the environment.

5 The applicant also stated that the
6 difficulty was not self-created because the
7 shed existed prior to purchasing the home.
8 After the applicant's presentation, members
9 of the Board asked questions regarding a prior
10 variance case (BZA case #16595) involving
11 variances for fencing. The request was for a
12 variance to reduce the front yard setback from
13 60 ft to 0 feet for an existing 6 foot fence.

14 The application included a survey
15 of the applicant's property indicating the
16 location of the fencing, and the shed in
17 question marked on the survey to be removed.

18 The Board stated that the applicant
19 requested the variance for the fencing with
20 the intent of removing the shed.

21 The applicant stated they recalled
22 needing the variances for the fencing and were
23 hoping to keep the shed. There was a question
24 regarding proper notification by mail due to
25 the applicant not having return receipts or

BOARD OF ZONING APPEALS

certified mail receipts.

The applicant did have an electronic notification from the post office regarding delivery. There were no residents in attendance to speak, and the case was closed.

E. Area Variances:

To decide an area variance, section 267B(2) of Town Law requires boards of appeals to determine whether the benefit to the applicant in granting the variance outweighs the detriment to the public health, safety, or general welfare.

To make the determination, boards must use the following five considerations:

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

2. Whether the benefit sought by the applicant can be achieved by some method,

BOARD OF ZONING APPEALS

1
2 feasible for the applicant to pursue, other
3 than an area variance.
4

5 3. Whether the requested variance
6 is substantial.
7

8 4. Whether the proposed variance
9 will have an adverse effect or impact on the
10 physical or environmental conditions in the
11 neighborhood or district.
12

13 5. Whether the alleged difficulty
14 was self-created, which consideration shall
15 be relevant to the decision of the board, but
16 shall not necessarily preclude the granting
17 of the area variance.
18

19 In making its determination
20 in this case, the Board applied the five
21 considerations as follows:
22

23 1. The requested area variances will
24 produce an undesirable change in the character
25 of the neighborhood or a detriment to nearby

BOARD OF ZONING APPEALS

1
2 properties because the reduction of the front
3 yard from 60 ft to 36 ft for a structure is
4 not in the character of the neighborhood, and
5 approving the variance could set a precedent
6 for future applications for this type of
7 variance.

8
9 2. The benefit sought by the applicant
10 can be achieved by another alternative that
11 does not need a variance.

12 The applicant has a large parcel,
13 with a 100 foot front yard setback of the
14 existing home.

15 The existing shed could be relocated
16 in the front yard to meet the required 60 feet
17 front yard setback and be at least 100 feet
18 from the wetlands.

19 Alternatively, given the deteriorating
20 condition of the existing shed, the applicant
21 could construct a new shed that would meet the
22 zoning requirements of the R-43 zoning district
23 and the setback from the wetlands.

24
25 3. The request to reduce the

BOARD OF ZONING APPEALS

1
2 minimum front yard setback from 60 feet to
3 36 feet is substantial because it represents
4 a 4 - 0 percent reduction of the required
5 setback.

6
7 4. The variance to reduce the
8 setback from the wetlands from 100 feet to
9 75 feet could have an adverse impact on the
10 physical conditions in the neighborhood because
11 of the potential for contamination to the
12 wetlands from the deteriorating building
13 and the contents stored inside of it.

14
15 5. Any alleged difficulty in complying
16 with the ordinance is self-created inasmuch as
17 the applicant purchased the property with the
18 existing zoning requirements already in place
19 and needing for variances for the existing
20 shed.

21
22 F. Summary of Findings:

23 Based on the facts presented in
24 Section E, the Board denies the application.
25

BOARD OF ZONING APPEALS

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2 Can I get a motion to approve these
3 findings as I've just read into the record?
4

5 MR. GARGIULO: Yes, Mr. Chairman,
6 as previously discussed and enumerated on the
7 record, I'll move that the Board accepts these
8 finds of fact and would make a motion that
9 we approve same as stated on the record.

10 MR. VALENTINE: Second.

11 CHAIRMAN BENZ: All right.

12 Regularly moved and seconded, all
13 those in favor?

14 Aye.

15 MR. VALENTINE: Aye.

16 MS. GIANNADEO: Aye.

17 MR. GARGIULO: Aye.

18 CHAIRMAN BENZ: Opposed?

19 {NONE}

20 CHAIRMAN BENZ: Motion carried.

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CHAIRMAN BENZ: All right.

Can I get a motion to close the
Zoning Board meeting for this evening, please?

MR. GARGIULO: Madam Chair, I'll make
a motion that we close the Zoning Board meeting
for this evening.

MR. VALENTINE: Second.

CHAIRWOMAN GIANNADEO: Regularly moved
and seconded, all those in favor?

Aye.

MS. GIANNADEO: Aye.

MR. VALENTINE: Aye.

MR. GARGIULO: Aye.

CHAIRWOMAN GIANNADEO: Opposed?

{NONE}

CHAIRWOMAN GIANNADEO: Motion carried.

The meeting is now closed.

Thank you.

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BOARD OF ZONING APPEALS

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

I, RJ RICCOBONO, AN OFFICIAL
NEW YORK STATE SUPREME COURT REPORTER AND A
REGISTERED RPR, CERTIFIED BY THE NATIONAL COURT
REPORTER'S ASSOCIATION, DO HEREBY CERTIFY THE
FOREGOING MINUTES TO BE A TRUE AND AN ACCURATE
COPY THEREOF.

RJ RICCOBONO, OCR - RPR

#	16 ^[13] - 7:18, 20; 13:15; 15:2; 32:17, 19; 33:13; 34:16, 19; 37:13; 56:4, 6, 12 165 ^[1] - 63:7 16595 ^[2] - 71:2, 21 17 ^[3] - 2:6; 53:6; 63:13 17049 ^[9] - 2:11; 70:4, 25; 71:4, 23; 72:5, 7, 17, 22 17178 ^[2] - 57:4; 58:24 17409 ^[1] - 71:9 17436 ^[1] - 63:4 17761 ^[3] - 21:6; 41:4; 43:10 17764 ^[3] - 2:7; 46:5; 52:12 17772 ^[3] - 2:8; 53:4, 23 17776 ^[3] - 2:9; 55:4; 56:9 17777 ^[4] - 2:4; 7:6; 32:5; 34:10 17780 ^[4] - 2:5; 13:6; 37:4, 18 17781 ^[3] - 2:6; 17:6; 39:4 17th ^[1] - 18:12 18 ^[1] - 15:4	3	44:15; 46:13, 15; 55:14, 17, 19; 56:13; 63:13, 16; 75:13 6,086 ^[1] - 58:8 60 ^[8] - 2:10; 70:13; 73:14; 74:3; 75:13; 78:3, 16; 79:2 60's ^[1] - 10:5
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