

TOWN OF WARWICK
ZONING BOARD OF APPEALS

Members Present:

Chairman Mark Malocsay

Attorney Jeremy Havens

Diane Bramich

Glenn Ehlers

Aaron Ubides

Bill Cerone

Mary Garcia, ZBA Recording Secretary

Other Considerations:

- ✓ ZBA Minutes of October 27, 2025
 - Motion to approve made by Bill Cerone, Second by Aaron Ubides
- ✓ December 22, 2025 ZBA Meeting: discussion whether to keep, cancel, or move the date
 - Board Members will decide in the upcoming days

PUBLIC HEARING OF Thomas Sibilla & Amy Sibilla - regarding property located in the RU district at 7 Skysail Ln., Warwick, NY 10990, and designated on the Town tax map as Section 27, Block 1, Lot 116 for renewal of a 280(a) variance previously granted on May 22, 2023 to allow for subdivision of land containing four lots with access from a shared private driveway. **Continued from the ZBA Meeting of April 28, 2025.**

Postponed per the request of Attorney John C. Cappello, representing Applicant

PUBLIC HEARING OF Jason Castellani - regarding property located in the RU district at 66 DeKay Rd., Warwick, NY 10990, and designated on the Town tax map as Section 41, Block 1, Lot 51.11 for area variances from Town Code §164-41N; §164-41(A)(1)(a); §164-41(A)(4) for a proposed 2,100 square foot garage measuring 42'x50' (including overhangs) where only 1,200 square feet in floor area is permitted, and where 48' is the greatest median dimension permitted, and with a proposed location of 57' from the front property line, within the required front yard setback, where a 75' front yard setback is required.

Representing the Applicant: Jason Castellani, Applicant

Jason Castellani: Jason Castellani. I have some updated forms. These are the EAF mapper and form completed and several copies of the updated setback measurement.

Attorney Havens: For the record, I wanted to note that the initial site plan showed a 100 foot setback whereas the zoning for this particular parcel requires a 75 foot front yard setback. I requested that the applicant revise the site plan to request the proper front yard setback.

Jason Castellani provides photographs to Board Members and explains his application and why he has chosen said location for the proposed structure.

Jason Castellani: This application is to create a garage or pole barn to house equipment. I have a tractor on the property that's exposed and I have a work pickup truck that's not a daily driver, a zero turn mower and a trailer for the mower. It's a large property and I do a considerable amount of work to improve the property. The location is selected due to flooding issues. I have a culvert that runs to the end of my property that accumulates all the water coming down on a graded road so that negates one-third of the property. I'm limited to my highest ground from a topography standpoint which is the border that you see the pole barn on. It's forward towards the road because water doesn't come through there. If it's pushed further back, water comes down from the neighbors right into the middle. When the road floods it comes over at the front of the house, but not towards the right side of the driveway. However, that's where we have a culvert. I want it to be aesthetically pleasing so I'm going with timber overhangs, black framed windows, white siding to give match the modern farmhouse look that our house has.

Attorney Havens: There's no known Building Department violations and no GML239 referral is needed. The applicant did update the application site plan as noted previously to reflect the 75' setback as opposed to the 100' setback that was originally submitted.

Chairman Malocsay: Any questions at this time? Public hearing is open. Please state your name.

John Lindstrom: John Lindstrom L-I-N-D-S-T-R-O-M, my wife Doreen.

Chris Gratzel: Chris Gratzel G-R-A-T-Z-E-L, and Christine Gratzel.

John Lindstrom: One of the concerns was that it was going to be over in the wetland area. You have an orchard; are you going into business?

Jason Castellani: No. It's 100' x 100' with about 15 different trees/bushes and the other half is garden but that's just for us.

Chairman Malocsay: We're going to leave the public hearing open. Any questions as of yet? So the front yard setback you addressed on why it had to be there and not setback the additional the 75 feet and a lot of the homes that are there are 50 feet, which is what the old one was. So the building itself is not going to look out of place. Not speaking for the other Board Members, but anybody that did a drive-by could

see that the the size of the building is fairly substantial as far as the variance and mostly, unfortunately because of the overhangs. Aesthetically the building doesn't look as big with it, and it does look nicer with overhangs as opposed to a steel building. Any other comments from anyone?

Attorney Havens: It qualifies as a Type 2 action under SEQR section 617.5 subsection C(12) and C(16). Will someone make a motion typing the application as a Type 2 action with no adverse environmental impact?

Aaron Ubides: I'll make a motion.

Bill Cerone: I'll second.

Chairman Malocsay: All in favor?

Board Members: Aye.

Diane Bramich: I have a problem with the size, it's double the size allowed. It's 5 acres. He's putting a double size building, which is partially in front of the house with all this land. I saw the pictures with the water on one side of the house and in the back, but nothing behind where he wants to put this building.

The applicant explains issues with flooding and measures he's taken to control the flooding. He explains placing the building partially in front of the main house rather than one side where there is plenty of space is due to flooding as well as a culvert. He then continues to explain why he has chosen the length of the building to be 50'.

Jason Castellani: I measured the length of my pickup truck and the length of the tractor which has a backhoe attachment to it as well. On the other side is my zero turn trailer area, attachments that I have for the mower, and my children's outdoor toys and stuff.

Attorney Havens: As a point of clarification, the actual proposed site plan identifies a 30 x 50 barn with an overhang on each side that extends an additional 6 feet the entire 50' length of the barn. That's what makes it 42 x 50. So the enclosed area is only 1500 square feet, correct?

Jason Castellani: Correct. The back overhang is practical because that's where I will be working most of the time—in the garden coming in and out of the barn. There's a single smaller garage door to take the lawn mower in and out without having to move cars around. The double overhang doors match and face the house's garage doors. I'm proposing a 6 foot overhang on the front to fit rocking chairs and there's a front door in the middle that won't be used much. It's just to give it a country style front porch look; aesthetic so it looks nice and not just a steel structure.

Diane Bramich: They look architecturally correct, but we have removed overhangs before, because of the size.

Chairman Malocsay: If the overhangs are only 6 feet there isn't much you can do with them. Because they have a roof over the top unfortunately they have to be added to the square footage of the structure. But they are going to be open space. We're looking at 30 x 50, 1500 square feet—the enclosed part of the building. The median distance is also another variance because it is over 48 feet by 2 feet. Any other thoughts?

Bill Cerone: How visible is it from the road?

Jason Castellani: It's visible—the trees aren't dense enough to block it. They aren't evergreens, they're regular trees with tall trunks before you get to branches.

Chairman Malocsay: Any other questions? Public hearing is closed.

Attorney Havens: When considering a zoning variance the ZBA is required to consider five statutory criteria. The first question, "Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by granting the variance requested?" The applicant states no. Reason given is "The pole barn is designed to match the aesthetics of the property and neighborhood, including timber supports, lean-tos, and black frame windows. It will enhance nearby properties by improving curb appeal and property values." Does the Board agree with the applicant?

Board Members: Yes.

Attorney Havens: Question 2, "Can the benefit the applicant seeks be achieved by some feasible method other than the variance?" The applicant states no. The reason stated is "without the variance there is no suitable alternative to house and protect the equipment and vehicles needed to maintain the 5-acre property. Other methods would compromise safety, appearance, and proper care of the property." Does the Board agree with the applicant?

Diane Bramich: No.

Board Members: Yes. (Chairman Malocsay, Aaron Ubides, Bill Cerrone, Glenn Ehlers)

Attorney Havens: Four 'yes', one 'no'. Question number 3, "Is the requested variance substantial?" The applicant states no for the reason given, "The size of the structure is proportionate to property, the technical measurements requiring the area variance are primarily the result of lean-to porches that enhance aesthetics, curb appeal, and property values. Allowing the variance mitigates visual impact of outdoor agricultural supplies and equipment necessary for proper upkeep and maintenance." Does the Board agree with the applicant that the variance is not substantial?

Chairman Malocsay: Remember that 30 x 50 is the enclosed structure. The other ones we're deeming as architectural. So from 1200 square feet to 1500 square feet, I do not consider that to be substantial.

Diane Bramich: But the variance for the front yard is substantial. It's 50 feet...

Chairman Malocsay: From 75, yes. And again we're looking at two different variances.

Attorney Havens: The proposed location is actually 57 feet back from the front property line where 75 is required.

Chairman Malocsay: It's not substantial because other properties in that area are at 50 feet.

Attorney Havens: Does the Board agree the variance is substantial, or is it not substantial?

Glenn Ehlers: I say yes, it is.

Aaron Ubides: It is substantial just based on the size.

Bill Cerone: I say yes, it is substantial.

Attorney Havens: Question 4, "Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?" The applicant states no. The reason given, "The pole barn will have no negative impact on environmental conditions. On the contrary, it will reduce outdoor equipment storage, minimize clutter, and help maintain a clean, safe, and organized property." Does the Board agree with the applicant?

Board Members: Yes.

Attorney Havens: Number 5, is the alleged difficulty self-created? The applicant says "partially." Does the Board agree with the applicant?

Board Members: Yes.

Diane Bramich: It's always yes.

Chairman Malocsay: Any other discussion?

Board Members: No.

Chairman Malocsay: Would somebody like to make a motion to approve or deny?

Glenn Ehlers: I'll make a motion to approve.

Aaron Ubides: I'll second it.

Chairman Malocsay: Do we have any further discussion? How do we vote?

Board Members: Aye.

at 35 Mission Land Rd., Warwick, NY 10990, and designated on the Town tax map as Section 3, Block 1, Lot 71.2 and Section 3, Block 1, Lot 65.2, for an area variance from Town Code §164-40N, where the existing structure is 47.1' or less from the front property line where a minimum of 50' front yard setback is required.

Representing the Applicant: John Ziobro, Attorney

John Ziobro: Hi, I'm John Ziobro, Attorney for MTAG. This is an existing structure for migrant housing. My client did a 2.9 foot overhang over the front of the structure. The building structure is 50 feet from the land. I'd like to point out that this is already there and it's pointing towards a private road, Mission Land Road. It's not foreseeable from an access of public road.

Attorney Havens: I do want to note that there are existing Building Department violations in relation to the failure to meet setback required. Those date back to August 2024. We're talking about the existing migrant housing that's an existing 670 square foot building set back 50 feet from a back road, correct?

John Ziobro: Correct.

Chairman Malocsay: Does that change anything with the front yard setback?

Attorney Havens: Its still a road but it's a back farming road.

John Ziobro: It is not something you would drive on. It is Mission Land Road, a farm road.

Aaron Ubides: I know it pretty well.

John Ziobro: And as you go further down, it deteriorates and it's a black dirt compacted road.

Attorney Havens: With respect to the short form EAF, question 12a, "Does the project site contain or is it substantially contiguous to a building archeological cider district, which is listed on the National State Historic Register Historic places, or that has been determined by the commissioner of the New York State Office of Parks Recreation and Historic Preservation to be eligible for listing on the state or state register of historic places?" The application states yes. Is the project site or any portion of it located in or adjacent to any area designated or sensitive for archeological sites on the New York State Historic Preservation Office, SHPO Archeological Site Inventory? And that states yes for 12b. Can you clarify for the Board, do you know what that is in reference to?

John Ziobro: Honestly, no I did not submit the application.

Attorney Havens: I know that SHPO has several different historic sites out there in the black dirt area.

John Ziobro: I am unaware of why he did this.

Attorney Havens: Is this proposing any new construction?

John Ziobro: No, this building has been up for decades.

Attorney Havens: Question 13a, does any portion of the site or proposed action or lands joining the proposed action contain any wetlands or other water bodies regulated by federal, state, or local agency? The form is checked yes. This is in the black dirt farmland area, it's all basically wetlands.

Chairman Malocsay: Did we open the public hearing for this last month? I thought there was a discussion that they shouldn't have been here because of not having the current denial from the Building Inspector.

Mary Garcia: No. Last month was just a discussion amongst Board Members, not a hearing.

Chairman Malocsay: Do we have any questions? Is there anyone from the public that wants to address the application? We're going to keep the public hearing open.

Attorney Havens: This application qualifies as a Type 2 action under section 617.5 Section C(4) and C(16). Can we have a motion typing the application as a Type 2 action with no adverse environmental impact?

Diane Bramich: So moved.

Bill Cerone: Second.

Chairman Malocsay: All in favor?

Board Members: Aye.

Attorney Havens: The Board needs to determine whether or not a site inspection is necessary.

Chairman Malocsay: As much as I know that road itself, the answer is no.

Aaron Ubides: I'm pretty familiar with the area, so no.

Attorney Havens: ZBA to consider whether any use restrictions or any other conditions are to be imposed?

Board Members: No.

Chairman Malocsay: Any other questions or comments for the applicant? Public hearing is closed.

Attorney Havens: Question 1, will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by granting the variance requested? The applicant states no because it's an existing structure. Does the Board agree with the applicant?

Board Members: Yes.

Attorney Havens: Question 2, can the benefit the applicant seeks be achieved by some feasible method other than the variance? The applicant states no and the reason is it's an existing structure. Does the Board agree with the applicant?

Board Members: Yes.

Attorney Havens: Number 3, is the requested variance substantial? The applicant states no. The reason given is the variance is for 2.9 feet. The variance requested is 47.1 when 50 feet is required.

Chairman Malocsay: No, it's not substantial.

Aaron Ubides: It's not substantial at all.

Attorney Havens: Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? The applicant states no because it's an existing structure. Does the Board agree with the applicant?

Board Members: Yes.

Attorney Havens: Number 5, is the alleged difficulty self-created? The applicant states "No. The structure has been that way for many years..." Does the Board agree with the applicant?

Board Members: It's self-created.

Chairman Malocsay: If there's no further discussion, would somebody like to make a motion?

Aaron Ubides: I'll make a motion to accept it.

Bill Cerone: I second.

Chairman Malocsay: Is there any more discussion? How do we vote?

Board Members: Aye.

PUBLIC HEARING OF Kraftify Holdings, LLC - , regarding property located in the OI zoning district at 251 State School Road, Warwick, NY 10990, and designated on the Town tax map as Section 46, Block 1, Lot 37 for an Interpretation of Town Code §164-22 and 46E regarding whether or not the proposed construction requires a variance as the relief sought is less intensive than the current setbacks, and that

the fire-pits do not constitute a structure which would trigger a variance for a rear-yard setback, and, if needed various area variances for front, side, rear yard setbacks for proposed improvements.

Representing the Applicant: Levi Kool, (Cleary, Giacobbe, Alfieri, & Jacobs), and Michael Kraai, Applicant

Levi Kool: Levi Kool on behalf of applicant Michael Kraai, owner of Kraftify LLC. The beer garden easement was an agreement with the Town when Mike (Kraai) acquired the property. They allowed a perpetual easement that would allow a beer garden to go down towards the water over the back of the property. It has become a highly sought after place to gather and because State School Road runs along the property, the applicant would like to close it in so people don't wander onto the road. We've tried to minimize setbacks but there's a line drawn 0.72 feet away from the property line so we can't really do much with that. The other setbacks were all pre-existing non-conforming. Our proposal is to expand along State School Road but it will be much farther set back than what the current edge of the building is. There's going to be the buffer for the right of way, a fence with landscaping, a little bit longer of a grass area. And then the building proposal. Our question to the Board for that portion, do we need a variance for that addition even though it's further setback? We do not believe it's expanding of a nonconforming setback because it is further or less nonconforming. The second question to the Board is whether or not the fire pits constitute structures.

Michael Kraai: We're going to do a paver patio, stones, and a gas fire pit about 4 x 4, impervious. The Planning Board referred us and asked for opinion on whether an additional variance is required.

Attorney Havens: It describes the fire pit as being a proposed 20 x 20 sunken gravel seating area around the fire pit and the edge of that sunken seating area would be 1.3 feet away from the side yard setback. This was referred to us by Benjamin Astorino, Planning Board Chairman, requesting we consider whether or not the fire pits constitute a structure requiring a backyard setback. They also want the ZBA to do an interpretation of the Town Code for front yard setbacks as well. Looking at the site plan, the front yard runs along State School Road where they intend to extend the building with a large covered seating area. One side yard would be the property line in the front of the building that is inside the parking lot. The other side yard would be this long angled line because there is a backyard over in the parking area. But that small line where it says 'existing employee parking' would be the line that would effectively be opposite the front yard line. So this is a side yard setback, but I wanted to make a note of that because the referral from the Planning Board requested rear yard setback consideration, whereas this is a side yard even though it's on the back of the building. There was an Orange County Department Planning GML 239 referral submitted by the Planning Board. The Planning Board comments noted a few environmental constraints, stream protection issues related to the Wawayanda Creek. But given that the application has been scaled back further away from the creek, none of the improvements are within the 100 foot setback from the wetlands buffer. Historic and archeological sites: the only relevance is the historic building directly across the parking lot from this building. For tree removal, they're making a recommendation that there be a one-to-one replacement for any significant trees that are removed. The Orange County GML 239 response is a recommendation of local determination with no other specific requirements. The site plan proposes a fence along the front property line appearing to be approximately 10 feet back from the property line. How tall is the proposed fence? It is identified as a kind of split rail, stockade type fence.

Levi Kool: It's going to be a split rail 4' standardized two or three split rail fence.

Diane Bramich: I thought this was just a covered area for people to come and sit. According to the plans, there's a ground floor, a second floor and a basement.

Clarification regarding the plans are discussed. It is explained that the current building contains the second floor. The plans show proposed usage on each floor and a distinction between the brewery manufacturing area as well as the public access areas. The proposal is for a roof for an existing open seating patio. There will not be a second floor to the patio, just a vaulted ceiling for protection from elements of weather.

Attorney Havens: The Planning Board asked the ZBA to consider whether or not fire pits constitute a structure which would trigger a variance for a rear yard setback but it's actually a side yard setback. So for our reference, the Board needs to consider whether these fire pits constitute a structure that would trigger the need for a variance for the side yard setback. Mr. Kool made reference to the definition of a structure under the code as 'anything constructed or erected, the use of which requires location on, in or under the ground or attached to something having location on the ground.' So the Board needs to determine whether this fire pit being a 20 x 20 sunken seating area with a smaller fire pit in the middle, does that constitute a structure that would require a variance?

Chairman Malocsay: What we've done in the past is we'll use, as an example, two things, retaining walls and patios that are usually done out of pavers. You don't usually need a building permit for them on a retaining wall unless it's over 4 feet. I'm still leaning towards you do not need a building permit. It's not a structure. It is hardscape /landscaping.

Aaron Ubides: I agree.

Chairman Malocsay: For years that's the way the Board has looked at these with retaining walls.

Diane Bramich: If this is being dug out and it's being sunken, does there have to be a concrete base?

Chairman Malocsay: No, not at all.

Diane Bramich: How are they going to hold the walls up if it's sunken?

Chairman Malocsay: If it's pavers or block that are doing they simply lay on gravel and they're built up from there. We could put a restriction in that there's no concrete.

Diane Bramich: So there's no concrete base?

Levi Kool: No concrete base.

Diane Bramich: There's nothing concrete in the walls?

Levi Kool: We want to make it impervious on its base so that the water is absorbed into the ground. We don't want to worry about drainage inside this fire pit.

Diane Bramich: How deep is it?

Michael Kraai: Two feet. It's just going to be grading work, there's a natural slope on the hill. A grading machine comes out and you put QP (quarry process) down, level it, put seats around it, and you put a fire pit in the middle. There's no footings.

Levi Kool: We're perfectly fine with that being a condition of this interpretation that there be no concrete utilized or any footings in that structure.

Chairman Malocsay: We've interpreted before as landscaping. A retaining wall, a pond, it's all landscaping. Generally there isn't a permit required by the Building Department. Again, 4 foot high restriction on the wall.

Attorney Havens: On the fire pit interpretation, based on a condition that there's no concrete or footings to be added in the construction of the fire pit, does the Board believe that the fire pit would be more like landscaping and not require a building permit? Or would it be a structure that does require a building permit and therefore it would require a variance?

Glenn Ehlers: Yes.

Aaron Ubides: I think so, I consider it hardscaping or landscaping.

Diane Bramich: If you put it that way, yes.

Chairman Malocsay: Yes.

Bill Cerone: Landscape because it's got rock.

Attorney Havens: You have 5 in favor of interpreting this fire pit as landscaping and therefore it would not require any side yard setback. The Planning Board also asked us to look at the front yard setbacks. Given that the existing building is closer to the front yard property line than the proposed new structure, would the new construction within the front yard setback require an area variance? If new construction within the front yard setback, but further behind, it's technically in the side yard because it's further behind the line demarcating the front of the building.

Diane Bramich: But it's still a new structure.

Attorney Havens: Correct, yes.

Diane Bramich: So it would need a variance. If it's a new structure, you can't put it with the old building.

Attorney Havens: In reality it's not a new separate structure. It's an expansion of the existing structure, becoming the same structure once completed and the front yard setback would still be 0.72 feet at the closest point where the existing building is closer to the property line than the proposed expansion. It's an extension of an existing structure because it's an adjoined continuous roof that's being added to the existing building.

Aaron Ubides: So the existing building is basically non-conforming already.

Attorney Havens: It's nonconforming.

Aaron Ubides: You're trying to make it conforming.

Attorney Havens: You can't make that building more conforming. But the addition is more conforming than the preexisting. And that's the rationale that the applicant is making; that this is not increasing the non-conformity.

Diane Bramich: Even though you are saying it's connected to the old building, it is still new construction. So what's the difference if we give them that variance and then they're clear?

Attorney Havens: That's an argument to be made. It's hard for me to tell whether or not one is necessary because is it in the front yard? Because it's behind the building, it's within the front yard set back, but is it in the front yard? Because the existing building sits closer to the property line than the proposed improvements.

Diane Bramich: But it's still in the same area so it would still need a variance.

Glenn Ehlers: Isn't it a general rule of thumb to prevent nonconformities from expanding?

Attorney Havens: That's a separate issue with respect to square footage that we will address once we deal first with specific issues the Planning Board asked us to address. But yes, generally speaking, on the expansion of a non-conforming building, town code 164-45B(1) prohibits the alteration or enlargement of a non-conforming building, except that the Planning Board may permit an expansion not to exceed 15% of the existing ground floor area. As said, non-conforming building provided that the most restrictive bulk requirements shall apply to any such extension". So we can get to that in a minute. What we're trying to figure out is whether the extension along the front yard...

Aaron Ubides: so the front yard is State Schoolhouse Road...

Diane Bramich: which is State School Road.

Attorney Havens: Correct.

Aaron Ubides: So I understand what you're saying is yes it technically is the front yard, no matter the fact that it's further back than the rest of the building doesn't matter, it still faces that road. So it is still the front yard...

Attorney Havens: still within the front yard setback.

Aaron Ubides: So I would say being that it's a front yard, it would need a variance because it's a front yard.

Diane Bramich: I agree.

Glenn Ehlers: I'm undecided.

Levi Kool: When we're talking about a setback, a variance, and to be very specific, we're not talking about the totality of the expansion. What we're talking about is whether or not this proposal—one square foot or a million square feet—scale doesn't matter, does it trigger a setback even though it's less intensive of a non-conformity?

Bill Cerone: So you're saying your position is you have the variance for the setback already?

Diane Bramich: No, it's non-conforming already.

Attorney Havens: They're saying it's pre-existing non-conforming and the current placement of the existing building is closer to the roadway than what they're proposing therefore, no variance is necessary.

Diane Bramich: That shouldn't matter. It's still a new construction and still too close to the road so you need a variance.

Glenn Ehlers: In your statement before, you're claiming it's going to reduce the non-conformity as it stands now?

Levi Kool: It's not going to reduce the non-conformity, we can't reduce that. We can only reduce the non-conformity for the expansion that we're proposing.

Attorney Havens: No variance was previously granted for the existing building. Non-conforming as is because the building existed before the property line was. The Town Board and the Planning Board approved the subdivision when they created that property line. And the Planning Board does have authority to create subdivisions with existing non-conforming properties. So they had the authority to approve that subdivision and that subdivision went before the Town Board too.

Levi Kool: If we do get forced down to variance, it is something that will come into consideration for hardship.

Attorney Havens: Well it's a point that you make is the hardship is...

Levi Kool: We didn't create it, it was created by the Town.

Attorney Havens: The Town created the property line and gave you a building with a less than one foot front yard setback as a non-conforming existing building. So that's a legitimate hardship.

Diane Bramich: What would be the difference if we said, 'okay, we'll give you the variance'? It's not going to change anything except now it's a legal variance for that building to be that far from the road.

Levi Kool: It is a different burden. We have to come before this Board and prove our basis for the variance. If we don't need that variance, it makes this an easier application. That's the reason we're here for this interpretation; we believe we're in proper legal standing to get this interpretation that doesn't require further variance.

Attorney Havens: Well, either the Board determines and interprets that no front yard variance is necessary for the extension of an existing building that already has a smaller front yard setback than what they're

proposing with the extension. Or the Board says the variance is necessary, and then we have to consider whether or not that variance is to be granted as applied for.

The Zoning Board discusses further questions among members regarding the whether a variance is needed. Further discussed is whether the variance would set a precedent, to which it is further debated that a variance would not but this is an interpretation, so it may.

Levi Kool: I don't believe that this stands as precedential for any future application. Each application including an interpretation, is applied to the specific facts of an application.

Attorney Havens: Absolutely every application does stand on its own.

Levi Kool: And that's my understanding as well for an interpretation referral, is that that interpretation referral is not considered to be binding on any...

Attorney Havens: My difficulty is from a practical aspect

Levi Kool: I didn't want to be argumentative, I just wanted to state my opinion.

Chairman Malocsay: Maybe we can clarify to help make the decision on interpretation preexisting non-conforming. I have a problem that it was approved by the Planning Board when the subdivision was made. The property was purchased knowing what the zoning requirements were. If we're assuming pre-existing nonconforming, the Planning Board does have the authority to make an expansion of 15%. Could you re-read what you read? This is very important to how I'm looking at it and making a decision.

Attorney Havens: Are you asking me to read the part that says '...provided that the most restrictive bulk requirements shall apply to any such extension?'

Chairman Malocsay: Yes. The Planning Board could not allow this without having that required setback. Now before us is to determine if that setback follows through for that front yard. My opinion is no, there's a setback there that's supposed to be 50 feet. And I do not feel comfortable interpreting that it follows through for the rest of it. But it does not say that just because it is closer that it follows through for the rest of the property. Does everybody understand that part that I said on the variance? Because when we look at the five criteria, they have three of them in their favor for us to give the variance and it could be substantial. They're asking for relief and interpretation and a variance. So the business grows, the business needs to expand. It has a lot of reasons that it can't expand because of the size of the property and the layout. Again, there's nothing wrong with somebody asking for a variance to allow for this expansion, preexisting nonconforming if we have our criteria to go through for a variance, but at some point the Board will say, it's only so big, it could only be so big. And it's hard to give those variances because it's going to be substantial.

Attorney Havens: Let's focus first on the question at hand, "Is a front yard setback variance required for the expansion of an existing building that doesn't meet the front yard setback for a preexisting nonconforming building?" Is a front yard setback variance needed under those circumstances?

Glenn Ehlers: I don't think we need a variance for this because the Town created this problem. Both the Board and the Planning Board.

Chairman Malocsay: I agree pre-existing non-conforming and just because it's there does not mean that we can interpret that that follows through and they don't need the front yard variance.

Glenn Ehlers: We can interpret that it does.

Chairman Malocsay: I can't.

Attorney Havens: So again, this isn't a question of whether or not we're granting a variance. This is a question of is a variance necessary for them to be able to construct a building that is set back from the front yard property line further than the existing nonconforming building, forgetting all the other details about square footage, distance, and everything else. Is a variance necessary for the issuance of a building permit to construct an extension of a building within the front yard setback where the existing building is preexisting non-conforming within the front yard setback. Yes or no?

Chairman Malocsay: Yes. In my opinion, yes it needs a variance.

Diane Bramich: Yes. My opinion is it needs a variance.

Bill Cerone: Yes.

Aaron Ubides: Yes.

Glenn Ehlers: No.

Attorney Havens: We have 4 yes, 1 no. We'll need a variance. Now that we have a resolution by the Board 4:1 in favor of needing a variance, we have to determine what variances this application is going to require. We have another interpretation to make to determine which variances are necessary. I specifically have a question that's going to need to be addressed before we can determine what variances can be granted. It's item number 5, the newly proposed covered porches constitute an expansion of the footprint of the existing non-conforming building. I'm trying to ascertain from the site plans what the size is. If you recall, that was one of the questions that I had asked the last time you were here. And you were going to have the calculations redone. There seems to be some differentiation between what's on the plans. So what I've added up is you have three new areas to be covered with open covered outdoor seating areas. One of 3,626 square feet, another one of 2,423 square feet, and another one of 943 square feet. That comes to 6,992 square feet of new covered outdoor area that's expanding the existing building. And then on sheet 4, which is identified as C201, if you look at the drawings, there's a note in the drawing that says Drowned Lands Brewery existing, and it's within the existing building and it says +/- 8,618 square feet. So that's the only reference I have that I could find anywhere on these site plans with respect to the existing square footage, except in your zoning code table on sheet 2 identified as C0.02 under zoning requirements SBL 46-1-37, the last item on the bottom minimum floor area, first floor principal building, and it says existing 9,042 square. And that's for the first floor of principal building and it's proposing 16,177 square feet in total with the expansion. So that 9,042 says it's for the first floor. On the other sheet it says 8,618 square feet for the existing building. However, your property tax records, I understand those could be wrong, they identify 7,736 square feet for one floor, 1,989 square feet for second floor, which is a total of 9,725 feet square feet for the 1st and 2nd floor. And then an additional 1,897 square feet of non-contributing space, which I presume is your basement area since they identified it on the tax records as non-contributing. If you're planning to propose to use that space in the basement and it's now going to be occupied, then we have to add that to the total building square footage, the floor area of the building. And according to your tax records, that would be 11,622 square feet of existing building with the basement to be included if it's occupied or to be utilized as occupiable space under the zoning code, which is defined as an area enclosed or covered, providing ceiling height of 7'0" or more intended for normal use by people on an occasional or more frequent basis. Occupied spaces may include basements, cellars, penthouses, attic space, or interior balconies or mezzanines if the space is intended for use or habitation. So if the basement space is going to be used as occupied space for patrons, then it counts as your gross floor area, which is defined as including the exterior building walls of all floors of a building or structure. The gross floor area shall include all occupiable areas minus the following deductions: Number 1, vehicular parking and loading areas within the structure. And number 2, floor area occupied by HVAC, heating, ventilating and air conditioning, mechanical electrical communications and security equipment or apparatus. On your site plans you identified elevators, stairway shafts, public restrooms, public lobbies,

common mall areas, atriums courtyards, etc. under the gross leasable area using the GLA calculations for parking purposes. I have no problem with you doing that for parking purposes, but for purposes of granting a variance, we're looking at gross floor area, not gross leasable area. Gross leasable area is only relevant for parking purposes under the off street parking provisions. Otherwise, for any type of area variance, that's to be granted with respect to gross floor area, we're considering all of those spaces except for essentially indoor covered parking or HVAC equipment. So stairways, etc. would all count. You need to recalculate that so that we know what variances we're granting. We cannot do this without proper measurements.

Levi Kool: We'll verify the calculations. It's going to be from an architect.

Attorney Havens: When you did the gross leasable area for the occupied space you did provide additional square footage. The architect calculated for example, a stairway at 270 square feet. So that was identified and we can identify that. I'd love it if you actually put in your table a solid figure so I don't have to sit and do the math. It's two different interpretations for two different purposes. What he did was appropriate for parking requirements. You'd calculate gross leasable area. But for the variance, we calculate gross floor area and that includes stairways, bathrooms, and common hallways. That also includes the basement area as well if you intend to use it for patrons. So we're going to need that gross floor area calculation of all the floors.

Levi Kool: Because we're going to need a variance you're saying?

Attorney Havens: What we need to calculate is what is the proportion of expansion relative because the code says you can't expand more than 15%.

Levi Kool: No matter what or without a variance?

Attorney Havens: Without a variance. Under my calculation so far, my first interpretation when you were here previously was based on the figures that were in there and knowing there was some disconnect between those and the public record, I calculated the expanded area was 81% of the size of the existing area. If your existing area is three floors and you add all of that up, including the basement, stairways, common areas, etc., now the ratio between your existing gross floor area and the expanded gross floor area is minimized.

Levi Kool: Noted and understood. We'll get that over to you as soon as we can.

Chairman Malocsay: One question because it's not before the Board yet and I don't know how the Planning Board is handling it because of the size of the building and the calculations and the size of your lot. I don't understand where they're coming up with where the parking is.

Levi Kool: We have a shared parking agreement with the Town; the entirety of that parking lot is a joint parking lot. There are 185 calculable spots.

Attorney Havens: I am familiar with the original transaction. The applicant paid for all the paving to expand that parking lot on town property for the mutual benefit of his business, the public park with the pavilion, and the historic building across the street (owned by the Town). They all have shared use of the parking space.

Levi Kool: The applicant also pays to maintain it all, plowing and upkeep.

Michael Kraai: We share the filing costs, but I manage it and I don't charge the town for it. I've always tried to be as beyond fair as possible.

Attorney Havens: The other thing that I would ask you to note on your plans is you're proposing a loading space coming off of State School Road, but there's no dimensions for that space. If you can note those dimensions on the site plan.

Michael Kraai: Loading is probably not the right verbiage. It's not going to be tractor trailers. It's more like taking garbage in and out; it's just like an access. But we will get you details.

Attorney Havens: Under the off street parking regulations, it's identified that you're supposed to have 1 per 30,000 square feet for an eating and drinking establishment and it's identified on your site plan as 1 loading space previously nonconforming. You're adding 1 which would make it conforming for parking requirements so we need the dimensions of the loading space.

Chairman Malocsay: Does anyone want to address the application? Public hearing will remain open.

Attorney Havens: The applicant will be on the next available agenda so we'll type it next time.

Chairman Malocsay: We need a motion for adjournment.

Aaron Ubides: Motion.

Glenn Ehlers: Second.