Ms. Shaw: Yes.

Mr. McGuirk: Please state your name and address.

Ms. Shaw: My name is Rachelle Shaw. My address is 70 Dayton Lane, East Hampton.

Mr. McGuirk: Thank you, so go ahead please.

Ms. Shaw: Okay. So I will try to make it quick. I have multiple sclerosis and I tell you that because that is the purpose of the pool. It is a therapy pool, we made it as small or as thin as possible eight by 36 eight, 8 wide, 36 long, and a pool for us is an expensive proposition so I want to be able to get two things out of it. Number one is exercise so that is why it is thin and long for my MS to be able to keep walking, and my second thing is looking at water helps people with MS and other neurological disease. So I want to be able to see the pool from the house. Our windows are towards the west of the house and I think there is a picture around showing that, and I want to be able to see the pool. If the pool is moved to the east closer to the neighbor who does not want it, then we can't see the pool from the house at all. The house is placed west or to the left and so we want to put the pool right behind the house. So the house is 10 feet from the west neighbor and we want to continue the pool in that same 10 feet line of which it is an eight-foot-wide pool, eight foot of water, wide pool. And to move it to the east moves it closer to the neighbors complaining but more so puts it in the middle of the yard so you won't be able to see it from the house and also makes the yard completely pool in the middle and not usable for anything else to the right where there already is a garden and trees and everything kind of blocking the east neighbor who complained, she can't see us because there is already has a garden, so for me to pay the money for a pool I want to be able to use it and see it. I am not putting a big pool and I do not like to break any rules. There are many houses on this street that have a pool or a garage that is 10 feet from the side neighbors. And so I am a good swimmer. I went swimming in the ocean last summer but a wave came and knocked me down and a lifeguard had to come get me, and so I can't swim in the ocean anymore. And so I want to be able to keep, able to be able to walk. I am sorry about the emotions. So the pool is not just for aesthetics, it is for therapeutic, it is totally for therapeutic. And if we move it closer and closer to the house now, we are talking about the variance from the back of the house if we move it in closer than 12 feet, then we are getting close to the Bilco, and you won't be able to get into the Bilco, and that makes that Bilco and that basement unusable. That is where the 12 foot came from to be able to use the basement.

Mr. McGuirk: And Laurie, we had it at 10 feet previously from the back of the school.

Ms. Wiltshire: No, yes, she moved it two feet further from that driveway.

Mr. McGuirk: Okay. Anybody have any comments? I think I can live with it.

Mr. O'Connell: I think I really want it centered. I mean I am very sympathetic to your position but you are in a position where you can meet the side yard setbacks on both sides.

Ms. Shaw: But I won't be able to see it from the house at all because there is no windows there so I can't see the pool so there is no benefit to have a pool tucked away from the house. The house I want it centered on the house so I can see it and also so I can reach it. The farther away you put it from the entrance which is on that west side of the house, then you are making it further for me to get to the pool. So I say to you I want to be able to reach it and what's making you not and you know I do not want to break rules.

Mr. O'Connell: We are compromising on the setback on the back, the other compromise is that it gets centered so that you meet setbacks. It is part of our job to find...

Ms. Shaw: Okay so why, other houses on the street have a garage that is there that is much bigger or their house or any other type of built-in thing that is much bigger on that side. We are just talking about eight feet and that is the neighbor that we are friendly with and okay with it. And otherwise to me it is not worth it because I can't see the pool.

Mr. McGuirk: Okay.

Mr. O'Connell: That is a choice you will make then. Thank you.

Mr. McGuirk: All right, Joe, do you have any comments?

Mr. Rose: Yes, I have a question/comment and it has to do with tucking the pool closer to the house regarding setback. The Bilco door that you are concerned about is located where?

Ms. Shaw: It is located...

Mr. Rose: That what says CE, cellar entry, is that what...

Ms. Shaw: Yes.

Mr. McGuirk: Yes.

Ms. Shaw: Yes.

Mr. Rose: Okay. And how far now, what is the distance between the pool and cellar entry?

Ms. Wiltshire: I have a scale here.

Mr. McMullan: About eight feet. What is the required setback from the side yard?

Mr. Hajek: If I could just interrupt, I am trying to share my screen I do not know if everyone can see that, I put the survey up.

Mr. McGuirk: That is great Billy.

Mr. Hajek: That is helpful? So the swimming pool, if I could just interject, is 12 feet off of the rear yard lot line which is the school and the variance that is being sought is 10 feet from the westerly property line. The required setback is 20 feet. So the swimming pool would have to be shifted 10 feet to meet the required side yard setback which would put it, the westerly side of the pool would put it roughly where my mouse is to be in a conforming location.

Mr. Rose: Billy, what's the rear yard setback require?

Mr. Hajek: The required rear yard setback is 20 feet and it is proposed to 12.

Ms. Wiltshire: But do not forget in the aerial photograph what's behind us, first of all this entire property is completely screened with stockade fencing and very tall trees, evergreens, very tall. So, it won't be seen from the school or from the neighbor.

Mr. Rose: Can I...

Ms. Wiltshire: But also, it is not a school that is behind us, it is a driveway for the school.

Mr. Rose: I would just like to understand what the dimension actually is between the entrance to the Bilco door and the edge of the swimming pool.

Ms. Wiltshire: It is eight feet which is probably the amount of distance you would need to be able to turn and move your chaise lounges downstairs for the winter.

Mr. McMullan: And that wood deck there is about 18 feet wide, correct?

Ms. Shaw: It is not a deck.

Ms. Wiltshire: The little wood deck?

Mr. McMullan: Yes, the steps going outside they're about 18 feet wide.

Ms. Wiltshire: Yes.

Mr. Hajek: That is correct. Jimmy, I just scaled it, it is 18 feet.

Mr. McMullan: Yes, so if the pool was moved 10 feet to adhere to the side yard setback, you'd still have eight feet of the pool being able to be seen from the windows there or the doors.

Ms. Shaw: It would not be in the, it would be all the way over. I have drawn it out so to see that and you can't, so if you are in the house, sitting at the table there, and if the pool was 20 feet to the, let me make sure I get my directions right, to the east, which is closer to the neighbor, then besides destroying the garden that is there and the trees that are there, you cannot sit in the house and see it, you won't be able to see it. So it is way too, it will be out of sight.

Mr. McGuirk: Okay.

Ms. Wiltshire: I mean I am just, because you can't see it, I am really just, this is such a big deal. I understand setbacks are setbacks for a reason but it is fully screened, no one's going to be able to see this pool, and it is even got sound attenuation by the stockade fencing and large evergreens.

Mr. O'Connell: You know if you take that cannot be seen argument to its logical conclusion, you wind up, you can build out anything that you can screen.

Ms. Shaw: Well firstly the windows are not 18 feet, the deck is 18 feet, the windows are not 18 feet.

Mr. McGuirk: Laurie...

Ms. Shaw: It is not, and that is not the argument. The argument is not to build anything that you so you can see it. The argument is that it is a therapy pool and so I am fighting for my therapy.

Mr. McGuirk: We are not, we are giving you your pool.

Mr. Rose: Mr. Chairman, I think we have had...

Mr. McGuirk: Yes.

Mr. Rose: I think the Board can deliberate on it. Is there any new, additional information that we need for the purpose of the hearing? I mean I think there is a discussion that we will have to have about this but I do not know if there is a need for-

Mr. McGuirk: Yes, we are going around in circles here.

Ms. Shaw: So, can I just say we want to be sure that the neighbor that is where we want to put closer is okay with it to the west. It is the neighbor to the east that was complaining about it and that is the one we had the buffer. So if you move it over to the east, it is closer to the complaining neighbor and it destroys the garden that is there, and it makes the whole yard the pool.

Mr. McGuirk: We will duly note that. So have a motion to close the hearing?

Mr. Rose: So moved.

Mr. McGuirk: Second?

Mr. O'Connell: Second.

Mr. McGuirk: All in favor?

Mr. O'Connell: Aye.

Mr. Rose: Aye.

Mr. Humphrey: Aye.

Mr. McGuirk: Okay. Thank you. Pam, are you back on?

Ms. Bennett: I am here.

# ORIGINAL HEARING 38 Two Mile Hollow LLC - 38 Two Mile Hollow Road SCTM #301-10-1-32

Mr. McGuirk: Can you please read 38 Two Mile Hollow LLC?

Ms. Bennett: Sure. Application of 38 Two Mile Hollow LLC SCTM#301-10-1-32 for a Variance from Chapter 124 Preservation of Dunes Section 124-1.B.(2)(a) and (d) to permit the planting of ornamental vegetation south of the 20-foot contour line where disturbance of native vegetation and planting of non-native vegetation is prohibited. The subject property is 108,015 square feet in area and is located at 38 Two Mile Hollow Road in Residence District R-160. The property adjoins the ocean beach and this project is classified as a Type II Action in accordance with SEQR.

Mr. McGuirk: Is the applicant here?

Ms. Reichert: Yes, hi my name is Martha Reichert. Twomey, Latham, Shea, Kelley, Dubin & Quartararo, 33 West 2nd Street, Riverhead, New York 11901. I am here on behalf of the applicant 38 Two Mile Hollow LLC. May I share my screen?

Mr. McGuirk: Yes.

Ms. Reichert: Okay. All right so I have prepared a PowerPoint to sort of walk us through what we are dealing with here. This is the applicant's property 38 Two Mile Hollow Road. It is an adjacent to the Two Mile Hollow Beach public parking lot. As you can see this lot is very narrow and long and what we are dealing with is a 2.4-acre lot in the R-160 zone, this is a Type II action pursuit to SEQR, and the applicant, 38 Two Mile Hollow Road, only recently purchased this property in August 2020. And what we are looking to do here, this yellow line right here is the 20-foot contour line which you can see forms the southerly edge of the existing pool is we want to plant 10 arborvitae south of the 20-foot contour line and the reason for this is because the applicant needs a privacy screening. As everyone knows here Two Mile Hollow Beach is a very popular beach at all hours of the day and throughout the year. The pool, the patio, and the spa area are highly visible from all parts of parking lot. I walked the parking lot and there was no, at no point was there any part of the parking lot where I did not have a clear view of the area

right here which is where we are seeking to plant the privacy screening. You know I counted the number of parking stalls and it is actually about 205 parking stalls so you know during the summer every one of those stalls is generally filled, but also another thing to take into account is that on the westerly path leading to the beach over the primary dune is also a beach access point. So you have vehicles traversing past the applicant's property as well and so those are really the overarching needs to put some screening. there are parking spots right here in the parking lot which are about you know anywhere from 30 to 45 feet from the spa, the patio, and the area, so the application is hoping that this tree will provide year-round sort of privacy for them and they have minor children so that is a concern for them. So the proposed plantings, as I showed you before, are 10 trees they will go right here, they are proposed south of the 20-foot contour line and they do need a variance from 124.1B 2a and d although I do want to stress that there will be no actual clearing, grading, or fill being brought in this is an already disturbed area of the property, and but I believe that you know once we have a chance to go over this today, you will see that the application meets the variance standards. And for the first one, there will be no undesirable change to the character of the neighborhood or a detriment to nearby properties. Privacy screens are used commonly throughout the village. This is the intersection of Further Lane and Two Mile Hollow just to show how close to the neighborhood we are talking about. Here we have very tall privet hedge and across the street even if technically that is in the Town of East Hampton you can see the use of conifers and arborvitae as a privacy screen.

Mr. McGuirk: Martha, can I interrupt?

Ms. Reichert: Yes.

Mr. McGuirk: But they are not in the Double Dune area.

Ms. Reichert: No, I completely understand that.

Mr. McGuirk: That is a big difference.

Ms. Reichert: Sure. I think that what I what I want to sort of bring home with this particular photo is that it is common for the public on a public street or byway so I am thinking of the impact on people coming to the Two Mile Hollow parking lot who would probably be the people seeing the landscape screen first that it is common to see this. And I do note that but I will address that a little bit more further on in my presentation. So the other question here is you know the next standard if whether or not the benefit can be achieved by some method other than a variance. This property is constrained because of its narrow width that is

something that this Zoning Board has recognized in prior approvals. This is sort of to show you again the area that will be screened by the arborvitae, but you know there is really no place to put this because the 20-foot contour line forms is part of the southern edge of the pool. So in order to create any sort of privacy screen you would have to go below the 20-foot contour line. There is no other place to do it. You know we looked at all the different options. I think that a fence would be an even greater variance. Trees are more minimal and you know provide year-round screening. as for the third variance standard whether or not the variances are substantial. I would hold that they are the minimum necessary. I also put forth that there is no other location to do this without having to go south of the 20-foot contour line. And you know if you look at the benefit that the applicant is trying to achieve here which is privacy in their home especially in an area that is exposed to a tremendous amount of traffic, I mean if we were looking at a parking lot that was only you know only 10 stalls it'd be a different thing but this is a very busy public beach with a lot of glare from cars and just visibility. So these two photos that I have here are to show the prior existing conditions. This Board granted variances in 2012 I believe to the prior owner. So the area where we are talking about putting in the arborvitae was previously lawn and as this Board made a finding of fact in that 2012 decision it was a mix of lawn and ornamental and invasive species. Since then there have been native plantings put in, but to go back sort of to the 2012 finding that the ZBA made they found that this would not negatively impact the integrity of the Double Dune system and there was a report in that prior decision submitted by Inter-Science finding that you know although we are in an area below the 20 foot contour line, this property is a little bit different from a lot of the other Double Dunes properties in that you are really looking at more of a succession area that is not actually dune and that was confirmed by McDonald Geoscience doing test holes and looking at the soil characteristic and the Board noted that in their 2012...

Mr. McGuirk: I think we believed it was filled in over time with soil.

Ms. Reichert: I beg your pardon?

Mr. McGuirk: I believe we thought it was filled in with soil over time.

Ms. Reichert: I did not read that in the decision and I did not watch the hearing so that may have been something that was discussed. But you know I just wanted to focus on that it is of course an adjacent area and that is important when it comes to protecting the integrity of the dunes, I fully admit that. But I just wanted to sort of give a little context that we are not clearing virgin, native vegetation here. This is

an area that has been disturbed prior and you know and was sort of, this Board granted variances for you know I think much more intensive development of the property. Here we are sort of looking at 10 trees to provide some much-needed privacy screening for the applicant, and I think that that you know is I believe the benefit that the applicant seeks to achieve here should be taken into consideration for the plantings. There are currently several bayberry bushes that are there and the applicant's landscape architect who is also available for questions by the Board. You know will be able to keep them on the property so we won't have a loss of any of the native plants that were put there. This is sort of an area to show you that these are the arborvitae trees that are currently in place on the property that are north of the 20-foot contour line and this is the area where they would be planted. You can see the parking lot here. You know I think that when we considered the alternatives and what to do, we felt that the arborvitae were perhaps the best choice only because they are you know although not native, they are not an invasive species. They do not self-seed and saplings tends to be quickly nipped in the bud by deer browsing, they tolerate the sea spray and the ocean climate and require a lot less maintenance than other vegetation. You know we looked at cedar trees but they really do not do well in this environment unless they're planted as very young saplings which again would require the applicant to wait many years before achieving the needed privacy. So you know we felt they were a much better choice than something like privet which would provide the privacy screening but I think we have found quickly spreads into places where we do not want it.

Mr. Humphrey: Can I ask a question?

Ms. Reichert: Yes?

Mr. McGuirk: Go ahead.

Mr. Humphrey: Where you just showed those arborvitae, they're arborvitae, right?

Ms. Reichert: Yes.

Mr. Humphrey: Okay. Then it is that line of trees stops. If you were to walk behind those trees is where the wire fence is?

Ms. Reichert: Yes, if you look at the picture that is on the screen right now you can see there is the wire fence.

Mr. Humphrey: Right. That is below the 20-foot contour line, right?

Ms. Reichert: Pardon?

Mr. Humphrey: That fence is below the contour line.

Ms. Reichert: Correct. The fence is below the 20-foot contour line and...

Mr. Humphrey: So, you are not going to put these trees anywhere but on the contour side of the fence, right?

Ms. Reichert: Absolutely.

Mr. Humphrey: Okay.

Ms. Reichert: Yes. So you can see right here we have a couple bayberry bushes.

Mr. Humphrey: Yes.

Ms. Reichert: They will be swapped out for the trees and we will find a place on the property for them.

Mr. Humphrey: John, as far as I am concerned as long as these trees do not go beyond that wire fence, I am fine with this.

Mr. McGuirk: Thanks Craig. Do we have any anybody else on the line here who would like to talk about this besides a Board member? Okay. Any of the Board members like to jump in here or Billy would you like to make any comments?

Mr. Hajek: Good afternoon. Sure. I just would like to add a few, I mean I have had some history with this property, some experience with it in the last...

Ms. Baldwin: Billy just has to get sworn in, sorry.

Mr. Hajek: Oh.

Ms. Bennett: Sorry Billy.

Mr. Hajek: It is okay.

Ms. Bennett: Please raise your right hand and state your name and address for the record.

Mr. Hajek: Billy Hajek, 88 Newtown Lane, Village of East Hampton.

Ms. Bennett: Do you swear to tell the truth, the whole truth, and nothing but the truth?

Mr. Hajek: I do.

Ms. Bennett: Thank you.

Mr. Hajek: So as I indicated the, or as Martha said, the current owner purchased the property in August of 2020 and prior to that real estate closing the prior owner was in the process of securing a C. of O. and it was discovered that they had encroached into the what was the undisturbed or re-vegetated Double Dune area. So that area was restored, they brought back vegetation so that it was consistent with the 2012 approval from the Zoning Board. And that property owner was then issued a C. of O. and the real estate transaction occurred. About a month later this property owner was issued a notice of violation for reintroducing the plantings which are subject of this application. So they removed, put the plantings in, removed them again, we signed off on the vegetation that is shown on this photograph. So this is the third round of putting arborvitaes back in an area that, in 2012, I just want to point out what the Zoning Board had done in that application it was a variance for the swimming pool which was I believe the Zoning Board had five or six work session or hearing meetings to discuss that project which started out with a swimming pool that was south of the 20-foot contour line, and as a compromise, the Board accepted the argument by the applicant that the pool was being proposed in an area that was at the 20 foot contour line which violated the setback but the idea was to adhere to the contour line and that the area south of the contour line would be restored with a heath-type of dune, you know a dune environment that was, the northern end of the Atlantic Double Dunes transitions from a traditional dune system to a heath, to a heath forest which consists of highbush blueberry, lowbush blueberry, pine trees, oak trees, sassafras it is a diversity of vegetation, but it is still technically a dune environment and what the Board had approved was a transitional re-vegetation plan for that area. So that was considered to be mitigation for the variance for the swimming pool. So what this project would do would be eliminating that mitigation that was required in the 2012 determination. My personal opinion or recommendation would be to fully explore the possibility of proposing a native you know a native planting plan here that would act as screening and I think the prior owner had received permission to put in cedar trees along the property line adjacent to the parking lot so I am not sure that the photograph that was shown of the house under construction, I do not think that was completely reflective of the current conditions of the property. I think actually here you can actually see some of the cedar trees that were planted to act as a buffer. So you know I think one good question of the applicant would be to fully explore the possibility of native trees. I understand the issue of deer browse but you know arborvitaes are suspect to deer browse just as much as cedars or holly trees are so.

Mr. McGuirk: Okay thank you Billy. I agree with Billy. I think we spent a lot of time on this in 2012 trying to get this right. I think that a native planting plan really should be in effect at this property. Any other members like to comment?

Mr. Rose: Mr. Chair I think that is correct. I agree with Billy, I agree with what you just said, and I think that the especially where the Board has heard it before where there are conditions that are imposed as mitigation and where there is an agenda that is, the applicants desire for enhanced screening is understandable. The advice from the town planner to use native and explore more fully native vegetation is correct.

Mr. McMullan: I agree with that.

Mr. O'Connell: I also feel that the, I concur with what was said previously, I feel that the applicant went into this with eyes wide open knowing what they were getting, and I would like to see native a native planting plan as opposed to arborvitae.

Ms. Reichert: I believe that we have the applicant himself and also, we have our landscape architect. Could we, would the Board consider hearing from them?

Mr. McGuirk: I do not, we can hear from them but I do not think it is going to change our mind, but if you'd like to go ahead, please.

Ms. Reichert: If Geoffrey Nimmer is there, I would love for him to be able to sort of address some of the native planting requests of the Board. Just perhaps we can even get further clarification.

Mr. Nimmer: I am here.

Ms. Reichert: All right great.

Mr. McGuirk: Geoffrey you going to get sworn in by Pam. Pam?

Mr. Nimmer: Sure.

Ms. Bennett: Please raise your right hand and state your name and address for the record.

Mr. Nimmer: My name is Geoffrey Nimmer. My address is 123 Stephen Hands Path, East Hampton.

Ms. Bennett: Do you swear to tell the truth, the whole truth, and nothing but the truth?

Mr. Nimmer: I do.

Ms. Bennett: Thank you.

Mr. McGuirk: Go ahead Geoffrey.

Mr. Nimmer: So I am a big fan of native plants and red cedars in particular. The issue with them here is that, as Martha said earlier, small ones will do okay and become acclimated to this seaside exposure, but to bring in decent sized trees that will actually make a difference in the screening they do not typically do well was my biggest concern.

Mr. McGuirk: Anybody have a comment?

Mr. O'Connell: Some things take time.

Mr. McMullan: Would there be anything else that you could use other than the red cedar?

Mr. Nimmer: There is American holly but they're the same way.

Mr. McMullan: Yes, and if these things are planted kind of along the property line or along the parking area, if there is deer browse, would that be low enough that you would not kind of see it because that that hill kind of progresses up to the house so you are really looking for the top portion of these trees to be blocking the view from the parking lot, is that correct?

Mr. Nimmer: That is correct.

Mr. McGuirk: Okay. Martha, you have anybody else that would like to speak?

Ms. Reichert: Yes, I have the applicant himself, Tim Luke, would like to speak as well.

Mr. McGuirk: Okay Tim, Pam has to swear you in please.

Ms. Bennett: Please raise your right hand and state your name and address for the record.

Mr. Luke: Okay my name is Tim Luke. I am a resident at 38 Two Mile Hollow Road in East Hampton.

Ms. Bennett: Do you swear to tell the truth, the whole truth, and nothing but the truth?

Mr. Luke: I do.

Ms. Bennett: Thank you.

Mr. McGuirk: Go ahead Mr. Luke.

Mr. Luke: Thank you and thank you all so much for being kind enough to hear our application for a variance here. The idea for us here is that, clearly as you can see the house is next to a very large carpark and the people in the carpark have direct view into our house and all we are trying to do is to achieve a point where we do not have the people in the carpark looking at our children and have direct view of the carpark in order to have a small degree of privacy there. Obviously, there will be noise but the sort of visual impact is significant. So, we are just trying to be thoroughly respectful to all the things that Billy has been kind enough to let us know you would like us to do in terms of native plantings etc. in any way we possibly can. We just wanted to add 10 trees there to prevent the carpark viewing us and prevent us viewing the carpark, that was all. And we were just looking for the most visible and efficient and the best outcome for you and for us in order to be able to do that. The strong advice that we had had from the experts being Geoffrey who has been very active in the area was that the only way to do that really was to choose this particular type of tree, hence we had wanted to use 10 of those trees. And we obviously wanted to do that just within the confines of the property and the fence and do it in as a minimally disruptive manner as we possibly could. I have to say when we moved into the property, we did not know that it would not be possible to have something that screened out the carpark. The prior owner the property has, as you know, had never lived in the property. So, we obviously moved into the property and the first thing we wanted to do was to provide some screening from the 200-person carpark that was all. Happy to take any questions. And again, appreciate you are taking this and considering it.

Mr. McGuirk: Anybody, Jimmy or Joe?

Mr. Luke: And again, we are flexible, we are really trying to do this in the least disruptive way possible and the most respectful way to the Board, to the natural habitat which we adore, and trying to be, and to do whatever you think is the prudent thing but also at the same time to have something which does act as a screen from the 200-lot carpark that is all John.

Mr. McMullan: I take into consideration what you said John before that that you were on the Board before when the previous came in front of the Board and you guys had some long discussions about this. I would really hope that they could really go back and see if they could find some alternative that maybe is in keeping with the natural vegetation. I feel for you and I know how privacy is something that everyone wants especially from a parking lot but I think if we can find something else maybe that can be used, I then would not have a problem with it.

Mr. Luke: Okay.

Mr. McMullan: Something more native.

Mr. Luke: May I ask Geoffrey, who is the expert, is there anything else that you could consider might work? Because otherwise you just have a house next to a 200-person carpark with no screening.

Mr. Nimmer: Based on the list of native plants it is the stuff that we talked about already red cedars or American hollies which like I said bringing in you know bigger ones that will actually make a difference they typically do not do well in that setting.

Mr. Rose: My only observation, Mr. Chairman, would be that it is likely that in order to get the applicant's desired effect, it may take, the reality is using the natural, the native vegetation may take a little time for it to grow into the appropriate level, but that is a reality of the condition.

Mr. McGuirk: You know, I am sympathetic to your needs, but I think that we did spend a lot of time back in 2012 on this to get this right and we'd really like to see native vegetation.

Ms. Reichert: Could I share my screen and show the plan that was approved by the Board in 2012?

Mr. McGuirk: You can.

Ms. Reichert: All right. Just one second. This is the 2012 ZBA decision and let me make this a little bit bigger for you to see. What we are talking about here is so we would be putting the proposed plantings right here which in 2012 is where the ZBA had approved the path. And it looks there were plantings proposed along here and you know in looking at that, I do not know if that would actually achieve again the applicants benefit of having any privacy. I mean it would certainly grow in over time and do something but I am seeing bayberry, you know barberry, you know pretty low, low plantings but you know I just I want to sort of like bring it back to the fact that we would be here on the inside of the fence and that previously this was where the pathway was supposed to go. So I do not know if that that changes the Board's calculus to see what was actually approved in 2012 but you know when I met with Billy, you know there is not a lot of places where we could do mitigation work here. You know we have proposed that any of the bayberry bushes that get moved, we would keep on the property, there is some space over here. You know I do not know if the Board would consider something because you know the, below the 20-foot contour line we have, you know it is very densely vegetated so there is not really any mitigation work we could do there. I would also ask the Board to consider I mean we will go back and we will look to see if we can do anything differently re-vegetation-wise but this is really the only option that we have right here to achieve that that desired effect of privacy because it is very exposed. I walked the property myself. The photographs that I showed with the construction are not from 2012 they're from January 2020. So those are recent photos and it is an exposed area. When you are at the top of the dune you can certainly see what everyone is doing on the patio on the porch so I would ask the Board to keep all that in mind as they consider this application.

Mr. McGuirk: So Martha, we can close the hearing or do you want to come back with an alternative plan?

Ms. Reichert: No, I would like to keep it open and we will sort of, we will confer we will see if we can come back with an alternative plan. I have heard the Board's recommendations and suggestions. So we would like to come back at a later date.

Mr. McGuirk: That is great. Okay. So let us adjourn this hearing, Pam.

Ms. Bennett: Yes.

Mr. Luke: Thank you for your time.

Mr. McMullan: Thank you.

Mr. McGuirk: Thank you.

Ms. Reichert: All right. will be at the next meeting or a future meeting?

Mr. McGuirk: I think when you are ready. Pam?

Ms. Bennett: Let us do May 14th and then we will go from there.

Ms. Reichert: Thank you, Pam, I appreciate it.

Ms. Bennett: You are welcome.

Mr. McGuirk: Thank you.

Mr. McGuirk: Pam, can you, and I am not sitting on this application, I believe

Andy Baris is.

Ms. Bennett: Okay.

Mr. McGuirk: Thank you.

## ORIGINAL HEARING Michael S. and Joan B. Hass – 19 Dunemere Lane SCTM #301-9-4-1

Ms. Bennett: Application of Michael S. and Joan B. Hass SCTM#301-9-4-1 for Area Variances from Chapter 278 Zoning to construct an addition to an existing residence. A 777 square foot variance is requested from Section 278-3.A.(13)(a) to permit an 80 square foot addition resulting in a residence containing 3,195 square feet of gross floor area where the maximum permitted gross floor area is 2,418 square feet. The legally preexisting residence contains 3,115 square feet of gross floor area. An 8.2-foot variance is requested from Section 278-3.A.(3)(a) to construct the addition 21.8 feet from the front yard lot line where the required setback is 35 feet and any other relief necessary. The subject property is 14,178 square feet in area and is located at 19 Dunemere Lane in Residence District R-40. This project is classified as a Type II Action in accordance with SEQR.

Mr. McMullan: Thank you Pam. I believe the representative for the applicant is here. Trevor, would you like to kind of walk us through this first

Mr. Darrell: Certainly. Good morning, Trevor Darrell, Fleming and Darrell PLLC, on behalf of the Hass's who are the applicants here and they I think they're also on the video as well. What we have here is, I think to give the Board a little reprieve for the morning has nothing to do with any natural features, we are dealing with straight setback variances and a GFA variance which, as Billy noted in his memo to the Board, the variance actually that we are requesting is a 777 square foot variance but that is misleading in that what we are actually asking for is an 80-foot, 80 square foot additional bump out to an existing nonconforming residence. So the applicant, Mrs. Hass currently uses a walker and she does not use the stairs, she can go about you know one or two stairs up, it is all she is able to handle, and she may ultimately be in a situation where she is needed to use a wheelchair so the bedroom that they use is on the first floor currently is the same room where we are proposing bump out. It does have a clean bed for her and her husband but she has there is no space to get around the bed with the use of the walker. So we are asking for the additional 80 square feet bump out which is the 4 by you know distance that allows her then would give her the ability to traverse around the bedroom to get into the side of the bed which would allow her access and mobility to that bedroom. The front yard setback is based on the location of the current existing bedroom so we are adding onto the structure where it is and not going up so the roof line where it comes out continues off of the existing house out towards the street. From the roadside looking at the residence, while we are asking for setback relief from the road frontage, the neighboring parcels both on our side of the street to our east and our west actually sit nearer the street than our proposed new addition would sit. So we are certainly staying within conformity to the neighborhood and while the variance, like I said appears substantial what we are actually asking for as far as relief is minimal for what we would need to accomplish the benefits to the applicant. And I think certainly the benefit to the applicant outweighs any detriment that is created by this application in that the applicant needs this addition, it is not a want variance, this is a need variance, and we have come forward with the most minimal application that you know benefits the applicants and allows them to obtain the additional square footage that they need.

Mr. McMullan: Great. Actually, it does appear that this is the most minimal application you could do. You are asking for four more feet out to allow for access for the resident around the bed and everything. So I do not really see a problem

with this on my end. I would ask that the other Members of the Board please give their opinion. Andy?

Mr. Baris: I think it is pretty minimal. I have no problem with this application.

Mr. McMullan: Okay. Joe?

Mr. O'Connell: Anybody from the public?

Mr. McMullan: Oh, I am sorry, yes, is there anyone from the public that would like to speak?

Mr. Gambino: Currently there is no callers on the line.

Mr. McMullan: Great. Joe?

Mr. Rose: I think there is a legitimate case that has been made. I do not have a problem.

Mr. McMullan: Okay. Craig?

Mr. Humphrey: No, I do not have any problem. Do the shrubs that are there will they be disturbed or can you move them out or can you just leave them alone?

Mr. Darrell: Yes, I believe they can be left alone, the ones on the street you mean?

Mr. Humphrey: Yes, I am fine with this.

Mr. McMullan: Okay. Great thank you. And how about you Phillip?

Mr. O'Connell: I do not see any other way to accomplish what the applicant's trying to do in this situation and I also concur with what Mr. Darrell said about it fitting into the neighborhood based on if you are facing the home, the houses to the left and the right and where they sit in relation to the street. So I would be in favor of this application.

Mr. McMullan: Okay. Thank you. So I would ask that we move to close the hearing on this for determination.

Mr. O'Connell: I make a motion.

Mr. Humphrey: I will move.

Mr. Baris: Second.

Mr. McMullan: All in favor.

Mr. Humphrey: Aye.

Mr. Rose: Aye.

Mr. Baris: Aye.

Mr. McMullan: Thank you. I will turn it back over to John.

Mr. Darrell: Thank you.

Ms. Baldwin: Here he comes. John, you just have to hit start video.

Ms. Bennett: And unmute.

Ms. Baldwin: And unmute.

Mr. McGuirk: Okay. Thank you, Jimmy. Pam, can we move on to the next

hearing?

### ORIGINAL HEARING Orion Properties LLC – 40 Further Lane – SCTM #301-9-6-10.3

Ms. Bennett: Sure. Application of Orion Properties LLC SCTM#301-9-6-10.3 for Area Variances from Chapter 278 Zoning to make alterations to a single-family residence. Variances of 22.4 feet 8.7 feet and 15 feet are requested from Section 278-3.A.(3)(a) to construct alterations 27.6 feet 41.3 feet and 35 feet from the side yard lot line where the required setbacks are 50 feet and any other relief necessary. The subject property is 100,585 square feet in area and is located at 40 Further Lane in Residence District R-160. This project is classified as a Type II Action in accordance with SEQR.

Mr. McGuirk: Laurie, please?

Ms. Wiltshire: Yes, hi, Pam, do you want to swear me in?

Ms. Bennett: Sorry. Please raise your right hand and state your name and address

for the record.

Ms. Wiltshire: Laurie Wiltshire with Land Planning Services, 231 C Pantigo Road in East Hampton.

Ms. Bennett: Do you swear to tell the truth, the whole truth, and nothing but the truth?

Ms. Wiltshire: I do.

Ms. Bennett: Thank you.

Ms. Wiltshire: The application is for three, oh by the way, Bailey Heck, the project architect, is on the call too so I am sure he will address you when I am done. This application is for three side yard variances to construct two shed dormers and to remove an existing landing and a stair and change the door to windows. All the requested variances are required due to the location of the preexisting nonconforming residence, the front porch of which is only 36.5 feet from the north property line and the house itself sits 9.2 feet from the east property line. Granting the requested variances will not cause a change in the character of the neighborhood or produce a detriment. This is a flag lot which is heavily landscaped with shrubs and mature trees. The neighboring properties will not see any of this proposed work. The shed dormer and the windows on the north side of the house are proposed in order to add light and openness to the kitchen. The southerly dormer is decorative. The exterior landing and stairs have been removed and the door changed to windows because the door opened into the middle of a newly constructed stair case going down to the basement presenting an unsafe situation for the contractor and his employees who are currently doing interior renovations and installing a cupola. Due to the location of the pre-existing nonconforming one-story residence and the odd shape of the lot along the northerly property line, there is no other way to achieve the benefits other than the variances. Since the requested variances may be considered substantial, this is due strictly to the location of the house and that should not preclude the granting of the variances. There will no adverse impact on the environment or the physical conditions of the neighborhood. The nearest structure to the area of the house where the work is proposed is a one-story framed garage just to the east of the residence. The front side and rear yards are already well screened visually with fencing and extensive landscaping. There are no wetlands and the property is environmentally benign. Given the location of the existing residence the alleged difficulty is not self-created and there is no alternative method other than obtaining the variances.

Mr. McGuirk: Okay. Thank you, Laurie. Are there, anybody on the line that would like to speak about this from the public?

Mr. Gambino: There are currently no callers on the line.

Mr. McGuirk: Okay. Thank you. Anybody on the Board like to make a comment?

Mr. O'Connell: Yes, I would like to make a comment. I am in support of this application.

Mr. McGuirk: I am also in support.

Mr. McMullan: I am as well. It does not seem like it is changing any really the footprint or anything it is just letting some natural light in. It is not seen from the street or anything so I do not have a problem with it.

Mr. McGuirk: Okay. All right, I think, Joe, you are okay?

Mr. Rose: Yes.

Mr. McGuirk: Okay. Motion to close the hearing.

Mr. Humphrey: So moved.

Mr. McGuirk: Second?

Mr. McMullan: Second.

Mr. McGuirk: All in favor.

Ms. Wiltshire: Thank you.

Mr. Rose: Aye.

Mr. Humphrey: Aye.

### ORIGINAL HEARING 25 Cross Highway LLC – 25 Cross Road – SCTM #301-13-4-7

Mr. McGuirk: Now onto our last hearing. Pam would you please read the notice?

Ms. Bennett: Sure. Application of 25 Cross Highway LLC SCTM#301-13-4-17 for Area Variances from Chapter 278 Zoning to construct a covered patio fireplace and to legalize a shed within the front yard setbacks. A 25.7-foot variance is requested from Section 278-3.A.(5)(a) to construct a covered patio and outdoor fireplace 9.3 feet from the front yard lot line where the required setback is 35 feet. Variances of 22.2 feet and 17.4 feet are requested from Section 278-3.A.(5)(a) to construct a patio 12.8 feet and 17.6 feet from the front yard lot lines where the required setbacks are 35 feet. A 27.6-foot variance is requested from Section 278-3.A.(5)(a) to legalize a shed located 7.4 feet from the front yard lot line where the required setback is 35 feet. Variances of 13.9 feet and 20 feet are requested from Section 278-3.A.(3)(a) to construct a portico 16.1 feet and 10 feet from the front yard lot line where the required setbacks are 30 feet and any other relief necessary. The subject property is 16,651 square feet in area and is located at 25 Cross Road in Residence District R-80. This project is classified as a Type II Action in accordance with SEQR.

Mr. McGuirk: Is it Andy or is it Lenny?

Ms. Baldwin: Just one second, just make sure Joe has recused himself I believe? Just so we know who the Board members are here.

Mr. McGuirk: Pam, can you please read who's sitting on this application? Pam?

Ms. Bennett: I keep getting thrown off my internet.

Mr. McGuirk: Go ahead, Pam.

Ms. Bennett: Yes. Mr. Rose has recused himself? Yes?

Ms. Baldwin: Joe, can you just state for the record that you've recused yourself from this application?

Mr. Rose: Sorry. I state for the record that I recuse, thank you.

Ms. Bennett: Thank you.

Mr. Rose: I am going back on mute.

Ms. Bennett: Thank you. So, it will be Mr. McGuirk, Mr. McMullan, Mr. O'Connell, Mr. Humphrey, and Mr. Baris.

Mr. McGuirk: Okay.

Mr. Goldstein: Andy's going to take it, John.

Mr. McGuirk: Okay. Andy?

Mr. Goldstein: Thank you. Andrew Goldstein, Ackerman and Partners, for the applicant. The applicant is a young family, a married couple, with a 20-month-old infant expecting another child actually in the next several months. They bought the property in 2019 and having lived in it were using the area on the south side of the house to sit and to BBQ and to eat outside. And that use led to plans to create a more livable space, a covered patio and an outdoor fireplace to be used principally to cook. The need for the variance is prompted by the triangular shape of the property and its small size and the fact most importantly that it has two front yards it is at the confluence of Baiting Hollow Cross Road and Accabonac not Accabonac, Apaquogue I am sorry. This property is located in the, if you look at the comprehensive plan and the map of the neighborhoods that were delineated in the comprehensive plan, it is located on the cusp and the border of the Jericho neighborhood and the historic summer colony neighborhood. It is probably, in terms of its character, I think it the historic is probably more aligned with Jericho neighborhood which is essentially relatively large houses on relatively large lots. And this house in some, this property is an outliner because it exists on this 16,000 square foot lot and there is been, as near as I can make out, there is been a house on this property and here's a building I was able to locate was 1963. But there has been a house on this property, as, and that little strip on Baiting Hollow Road was developed with three quarter acre lots, and this house and its location has been a part of the neighborhood probably for 60 years. The house has been renovated since then but it is essentially been in the same location. the as I said the property the applicants use that area of the property for seating and dining and so the use of the property as is contemplated through these proposed structures, is not going to change and it is not going to be intensified. This is the way the property has been used since it was acquired at least by the applicant. So as we go through the variance standards, the first question, does it create an undesirable change in the character of the neighborhood or any detriment to any nearby neighbor? And what we are seeking is a covered patio which looks like a porch and an outdoor fireplace. And these are typical residential amenities. There is nothing unusual about them in this neighborhood. In fact, I will note that there is an outdoor fireplace on the property to the rear of this on 148 Georgica Road and the property immediately adjacent at 48 Baiting Hollow has a fire pit and a patio both of which actually received variances from this Board which some you even voted for. So is

this, we have on the screen a sort of a rendering of what, of where this covered patio and fireplace are going to be relative to the screening on the Baiting Hollow side, and Nick, could you throw up the other one that, that is what it looks like from the Cross Road side. So the structures are pretty much obscured by the hedges, they do not loom over any neighbor and any neighbors actually has a street between them, and while we do not have a picture of it the picture of the property at the confluence of the three streets, the apex of the triangle you can't see back through it at all because there are a number of pine trees, fir trees, cryptomeria trees whatever they are that completely obscure the view from the apex of the triangle. So, while I know Mr. O'Connell pointed out that that is not a rationale but the fact is zoning is not a metaphysical construct, [inaudible] to have an effect and there is no visual impact from these structures at all. And I think the question is when one talks about an undesirable change in the character of the neighborhood, this is a very nice neighborhood, I have lived there for myself for 30 years and the question is will this in any way derogate the character of the neighborhood? And I say no. I mean people are still going to move to this neighborhood. People aren't going to say reject the neighborhood because it does not introduce any commercial activities. It facilitates the residential activity, a purely residential activity, which has been going on since the applicant purchased the property. So I do not, this is not, it does not create an undesirable change in the character or the neighborhood. Indeed, area variances are not uncharacteristic of the neighborhood. The property next door received sort of a similar variance for a patio and a fire pit and that was held, not to that variance and the proximity of those structures to the property line was held not to violate, create an undesirable change in the character of the neighborhood. So if there is a contrary feeling on the Board as to that aspect, I guess I would ask for when you discuss the application. We would also say that it does not create an undesirable change, a detriment to any nearby property owner. And in that regard three neighbors do not like this application, and I think it pays to sort of look at what they have to say and see whether or not there is any rebuttal and whether or not these objections are well-founded. The property at 17 Apaquogue Road has filed a letter in which it complains about a fire pit in the apex of the triangle and I think the Board can take judicial notice that there is no fire pit on this property, and it talks about the amount of party noise that travels from their current fire pit in the triangle section of their property. This is a family with an infant. They haven't, and recently in the last since they've owned the property, we have been under COVID rules. So I am not sure what parties there are being complained about. I mean the applicant, the client reports to me, the applicant reports to me that there was an instance you know there they did have four people over four New Year's Eve and they did BBQ lamb in the, there is a BBQ outside now, it is some kind of smoking BBO, they said they were indoors by 8:00

o'clock. And again, I am not sure what noise could've been created here. This is a desire to have a patio and it is just so people can sit outside and talk and to the extent that noise is a threat, the applicant would certainly agree that, there should never be, and speakers and to certainly enforced that would file a covenant and restriction on the properties to that effect. So I am not sure, I spoke to Mr. Reid, he said that he went over once and there was some spinning going on, it may have been the barbecue that they saw but again that would not have been late at night, and I note that Mr. Reid's property, using the rough estimates from the GIS, Mr. Reid's property is 200 feet from the edge of the applicant's property. Mr. Reid's house is 250 feet from the edge of our property. So that is actually from the side of the proposed patio. So that is Mr. Reid's. Mr. Slifka has just beat the clock and got in a comment letter. And again, I have to say I am surprised at this because I spoke to Mr. Slifka and when I explained what was going on he had no problems with it at all, but I guess Mr. Slifka does not seem to understand what's being proposed because letter is also unclear exactly what the proposed addition encompasses. Well, I mean I do not know if he saw the plans or what. He makes the point he says the proposed structure will be ugly enclosed unnecessary noise. Well, I do not think it is an ugly structure it looks like any other porch. I note it is not going to loom over Mr. Slifka's yard which is across the street and has his own 15-foot edge. So I am not sure Mr. Slifka could really be able to see it. I note that the Village does not have architectural review for private residences that are not in a historic zone but I do not, I think that this not a neither a fireplace, nor the shed, nor the patio, covered patio, are any way out of character with the architecture in the neighborhood. You know, unnecessary noise, I mean again this is a family a small family that just like to sit outside in an area that won't get muddy. You know maybe eat outside but in an area that does not get muddy I am not sure what the big complaint about this is. He has a vehement objection but again I am not sure that it is well founded. And now we turn to the last which is the property at 25 or 23 Apaquogue Road which Mr. Whalen represents them. I do not know if he's here to comment on this or not but Mr. Whalen filed on behalf of this property a letter which is well-crafted. And I think the first thing we have to note about 23 Apaquogue Road is that the edge of this property is 135 feet away from the apex of the triangle. And I guess the most salient fact about this property is that it is vacant. There is no house on it. And if there were a house to be built, the house would be 205 feet from the apex of the triangle and so possibly, I misspeak, it is from the patio not the apex of the triangle. So, Mr. Whalen on behalf of this vacant property writes a letter in which he talks about zoning and what the zoning is designed to prevent, and then he talks about what might possibly ensue here and I would suggest to you that the effect of all of this, is what he's complaining about is totally speculative since there is no house on the property. But he talks about present

application proposes to set a busy outdoor dining and entertainment area. So again, you have two adults and one and a half infants living in this house. I do not know how busy it is going to be even if they invite a couple over for dinner once or twice. I mean I am not sure if that is an untoward activity. The nature of the proposed use is such that it would encourage outdoor social activity. Now think about that. If you are going to say that the outdoor physical activity in an area, albeit nonconforming, that is used for that purpose now would propose a detriment to a neighbor is basically using zoning to cycle all you know just ordinary life. I mean I find it, he talks, he complains that we want to incorporate the actual patio into the flow of the life of the house itself.

Mr. McGuirk: We just lost Andy.

Mr. McMullan: We lost Andy.

Mr. Spadola: Give me one moment I will try to get him back.

Mr. McGuirk: Okay. Oh, I am having the same issue here.

Mr. Goldstein: So in any event, Mr. Whalen complains that the, that somehow this outdoor patio we intend to incorporate into the flow and the use of the house as though that that is somehow inappropriate, and somehow a detriment to this neighbor. Again, I think it is entirely speculative to the extent that this could be used for any kind of noise, speakers, I mean there will be no speakers and we are willing to C. and R. to that effect. They bring up the other side of the house as a potential location for this, and I will note that this house received a variance to trying to enlargement and the enlargement also within the setback as it happens. Nick, could you put that the survey with the marking with the black line around it?

Mr. Spadola: I apologize, Andy, can you repeat that?

Mr. Goldstein: Could you put the survey with the yellow marking with the with black line around it?

Mr. Spadola: Yes, my apologies.

Mr. Goldstein: So that is the area, that is an approved addition to that house and it is right on top of the swimming pool, and you could say well you know he does not have to build the addition and he does not have to build the addition, actually he does not intend to build the addition, but the problem with washing that away is

that it is built into the value of the house and he paid for that, as part of the purchase price. So I think it would not be right to require him to...

Mr. McGuirk: But on the 2004 ZBA decision, it shows on here that the original decision, it shows a proposed porch and enclosed porch. So that is what he has the right to build as of now, right?

Mr. Goldstein: I do not know what he has, yes, but he does not want it there John.

Mr. McGuirk: Okay.

Mr. Goldstein: I mean let us be clear. That requires, that will require a variance also and when all is said and done, and the issue here is that the feasibility of that site is measured by the applicant. And so, the applicant's use of the property which he's using in this way right now.

Mr. McGuirk: Can I just make one more comment, not arguing with you. If you put the front porch on this house and, listen, I love front porches, nobody sits on their porch more than I do, if you take that porch and put it out further, it is going to push the barbecuing and the grilling because you are not going to grill underneath the porch, and it is going to push it out even further.

Mr. Goldstein: Well, we asked for the out, it is in the fireplace, that is where we want to do it.

Mr. McGuirk: So let us, thank you, anybody on the line would like to...

Mr. Goldstein: But we I am not finished.

Mr. McGuirk: Okay go ahead.

Mr. Goldstein: So again, the question becomes what this area of the property is used for now. And it is, again, patios in particular are not deemed to be significant structures, this is a porch, like you yourself like porches.

Mr. McGuirk: Love them.

Mr. Goldstein: And the question is what real negative effect will this have on any neighbor? This is a significant variance. It is a big variance on a percentage basis but the mitigation on that is that the nature of the property and the nature of the two front yards, the shape of the property has two front yards, will mean that this will

have actually, virtually no precedential effect. I do not know how many triangular pieces of property there are in the Village of East Hampton but those are the only other neighbors their properties that could say, okay, you did it here now you've got to do it for us. There is no discernible change, no change in the neighborhood character at all as a result of this. and I believe that the complaints from the neighbors are not substantive and one in particular is totally speculative the piece of vacant land but there is no environmental issues with this the application. And while the applicants purchase the property with the zoning in place, it is the shape of the property and the two front yards of the property that caused the problem. I will note that the area, probably the patio at least, would conform to an accessory structure setback which you know they can't use because of the two front yards. You may go.

Mr. McGuirk: Thank you. Somebody like to speak, anybody in the public out there?

Mr. Whalen: Richard Whalen.

Mr. McGuirk: Good morning Mr. Whelan.

Mr. Whalen: Good afternoon actually now.

Mr. McGuirk: It is, very much so.

Mr. Whalen: You can hear me okay?

Mr. McGuirk: Yes sir.

Mr. Whalen: All right. Good afternoon Members of the Board, Richard Whalen, I represent, as Mr. Goldstein indicated, I represent the owners of 23 Apaquogue Road. That is pretty much due south of the subject property. It is right across the other side of Apaquogue Road and I would argue probably the property that would be most affected by the proposed variance. I submitted a letter yesterday, I just want to make sure that you have received that.

Mr. McGuirk: We have, yes, we have. Pam?

Mr. Whalen: Well I am, okay if you have my letter, I am not going to add much to it.

Ms. Bennett: Yes, we have the letter.

Mr. McGuirk: Okay. Thank you.

Mr. Whalen: All right, thank you. I just have a couple of points here. I mean Mr. Goldstein's arguments are well put but the nature of the family occupying the house right now I do not think is that relevant. The variances that would be granted would run with the land. Virtually all the proposed covered patio was within the front yard setbacks either from Cross Road or from Baiting Hollow Road. So the structure almost all of the structure requires a front yard variance, and I am including in that the you know the fireplace as well. In 2004, as Mr. Goldstein indicated, the Zoning Board did grant a rather small variance from Baiting Hollow Road for an addition to this existing house. The addition was never built but it is pretty clear from the variance in 2004 that it was granted because the Zoning Board felt that the most appropriate place to add onto this house if an addition is been to be made, whether it is a house or a patio is to the north of the existing structure because then you can put the addition, the new construction either fully or primarily within the legal building envelope. So, I think that is the obvious place to build something new on the property, is not south of the existing house where you are building almost entirely within the required front yard but north of the house, and that gives the applicant an alternative, obviously it is not their ideal alternative, but there is a legal place on the property to build an addition and you know that is where we think that that should be built. My last question, my last comment I just want to make the point that while 23 Apaquogue Road, my clients own that property, is currently vacant, they do have plans to build a house on that property in the near future. So, you know their concerns here are not merely speculative.

Mr. McGuirk: Just for the record here they have the shed that is put on the side there is that part of the application?

Mr. Goldstein: Yes.

Mr. McGuirk: Okay.

Mr. Goldstein: The shed is on there, so the shed is like a closet.

Mr. McGuirk: Yes, we saw it, I do not think anybody has, I do not have an issue with the shed part. Anybody else with shed part?

Mr. Ackerman: John, John this is Lenny. Could I just spend just two minutes on this application for a minute?

Mr. McGuirk: Okay.

Mr. Ackerman: John, you know your judgment is very good on these things, and I am not patronizing you, what were you suggesting when you were talking to Andy, I had some difficulty hearing, what were you suggesting with respect to perhaps either making this patio projection application smaller or?

Mr. McGuirk: I just think that you know if you are going to put that porch on there, you are actually going to push the, you know we were up there, there is three grills, they like to barbecue, I love it, but they've got a smoker, they've got a grill, and I think they have something else, it looks like they make paella with, or I do not know I was with Jimmy, going to push them actually further out because you are not going to cook on that porch.

Mr. Ackerman: Andy, Andy wait one second, just one second.

Mr. Saper: Can I explain, sorry, this is Alex Saper, I am one of the owners, can I explain how I would use it?

Mr. Ackerman: Sure Alex.

Mr. Saper: Just to respond in to that.

Ms. Bennett: Let me swear you in.

Mr. Saper: Sure.

Ms. Bennett: Please raise your right hand and state your name and address for the record.

Mr. Saper: Alex Saper, 25 Cross Road.

Ms. Bennett: Do you swear to tell the truth, the whole truth, and nothing but the truth?

Mr. Saper: Yes.

Ms. Bennett: Thank you.

Mr. Saper: So let me just, I just want to hit that point very quickly so you understand. I do love to cook, I am in the food business, it is one of my favorite things to do, part of the reason that I wanted to do this is because you know in my

opinion having kind of these three grills the way it is it is just a mess and you know there is not really a good place to put it right now. There is no pavement on it, it ruins the grass, and my kitchen and all the doors face out that way which is why we did not want the porch on the other side because it just does not make any sense with the house right now. You really have to redo the whole entire house in order for it to make sense. And so the reason we were going to do the fireplace is because I can do everything that I do currently with those grills within that fireplace. And so, I would not want to see those grills, I would not be grilling outside furthering to where that is. The whole reason for that fireplace is that I was going to use that to grill. There is a nice ledge there that I can put food, I have some storage, and so just so you understand that it is not going to change where I grilling fact if anything will just make it much more palatable because I do not have to have you know two, three grills there. So, I just wanted to explain that piece of it because I thought it was important so people did not get the wrong idea.

Mr. McGuirk: Thank you. Any comments from the Board?

Mr. O'Connell: Yes. So you know one of the tests is whether the benefits sought by the applicant can be achieved by some other feasible method. In this case you already have a variance that allows you to build a porch as well as an enclosed porch. So, it is very clear, although it might not be the most desirable spot that you know you have that opportunity back there, and the variance is substantial, it is 65 percent approximately on the Baiting Hollow side. And it is just under 50 percent on the Cross Road side. I think it will have an adverse physical impact of the massing you know as you come out to the triangle, the house already protrudes into the front yard setbacks and will intensify that mass, you know the neighbors are talking about the noise. I personally like hearing people around but you know, and it is self-created. The applicant knew what they were buying. Even a lay person can look at that lot and see obviously they were advised, as Andy said, because part of the value of what they paid was that pre-approved, the approval from the ZBA to get that addition on the back. So you know this is not something I am in support of.

Mr. Goldstein: May I just say something. When we talk about feasibility, Phil, you, Mr. Saper has just said that in order for them to utilize the porch on the other side of the house, you have to redo the entire house in order to get the same benefit from putting the porch on the south side of the house. So know that certainly goes against the feasibility of that. The other aspect of that is that the proximity of an open porch to the swimming pool, you know, with one and soon it is going to be two small children, I mean I think that part of this was to separate from the

swimming pool so that they could be able to watch the children a little better. So, you have a safety issue, and, again, feasibility and with regards to substantiality, again, I think you have to deal with the entire circumstances of the application and there is, I would be curious to see how, what someone could say about how this affects neighborhood character at all, let alone an adverse effect on neighborhood character.

Mr. O'Connell: And your points are well taken. And with regard to the pools and the safety of you know, we constantly see baby fences around pools or child gates around pools until children are old enough to swim, while they're not the prettiest things, they are probably the safest things to have there. I note that there is a door going right into where the enclosed porch will be on the back. You know many of these smaller houses are older houses you have to walk through, you know down a hallway or out to get to your backyard.

Mr. Goldstein: Is the architect...

Mr. McGuirk: Excuse me, Andy, Andy, excuse me.

Mr. Goldstein: Yes. The architect is on the call also.

Mr. McGuirk: Andy, I would like to hear from the other Board members first up before we talk to the architect.

Mr. Goldstein: Maybe he could influence them.

Mr. McGuirk: Andy, what do you, Andy Baris?

Mr. Baris: Yes. I agree with Phil. I mean I think that I disagree with the fact that you can't see it from the street. I think it'd be it would be very visible from the street. I feel like there would be other places to put this. I think the size is, I do not like the application at all as is.

Mr. McGuirk: Okay, Craig?

Mr. Humphrey: Is, you can't do both of these things, is that correct, because of the size of the lot? You can't, let us say right now they put something on the back, could they turn around and then later on put the porch on the front?

Mr. McGuirk: Billy?

Mr. Goldstein: It is a variance, they're allowed to do that.

Mr. McGuirk: Yes, they are. The variance runs in perpetuity.

Mr. McMullan: One question I had to build off yours Craig, is that they have a variance already in place for the rear-

Mr. Humphrey: The back.

Mr. McMullan: Addition, yes, rear edition with the porches and the covered porches, if that is in place and now we have this other one going in, I mean I think we are opening ourselves up to a lot of, I mean this thing is going to grow exponentially and on a small lot it is definitely...

Mr. Saper: Do you mind if I just...

Mr. Goldstein: There is no coverage in GFA's.

Mr. McMullan: Yes, but the problem is is the massing and everything is in the front setback lines, and the other thing that I had from your rendering is I do not think that chimney is an actual accurate display of what that is going to be because there is a code that says A wood burning fireplace has to be two feet higher than anything within 10 feet. So that chimney is going to go about halfway up that roof, so it is going to be a much taller chimney and that is nothing about the design of it, it is just the code and that has to be taken into account as well.

Mr. McGuirk: So we have heard from Andy. Craig?

Mr. Humphrey: Well I did not really think much about the backyard and the fact that they've got a go on that already and it takes the activity inside the lot more so than the front porch does the noise thing may in fact be reduced. So it is a tough call for me. I like the idea of the porch in the front as proposed but I think that if they already have permission to do it in the back and it is going to reduce the possibility of noise being transferred outside the property, I think I am going to have to go with that.

Mr. Saper: Do you mind if I just say one more thing? I am sorry. Is that okay?

Mr. McGuirk: Go ahead.

Mr. Saper: Thanks very much. I appreciate it. Just to give the full picture. Look, I fully understand if people think that it is not going to look good, you know I am happy to work on what the size of it is, whatever it is, but I think what we decided when we bought this place is it is not worth investing another million or whatever it costs to do the expansion on the other side. It is just not the way we want to use the house.

Mr. Humphrey: The back you mean.

Mr. Saper: So in order to use the house, hold on let me just let me just finish.

Mr. McGuirk: Let him finish, Craig.

Mr. Saper: So in order to use the house the way you guys are proposing, I would really have to redo the house because of the way that I live. I realized that that is specific to me but I am just kind of trying to explain to you guys what the impetus. I am not really going to stop using the house the way that I use it so if you say I can't do this patio because of looks or whatever it is I mean, you know, it is up to the Board, and I understand that, and that sort of is what it is, but I am still planning on cooking out there and still planning, it is just easier because of where the doors are with all that stuff. The way that I live my life, the way that we live our lives it is going to be more on that side. So I was hoping that we could clean up that area a little bit and make it look nicer and make it feel more like a home from that perspective. I fully understand the argument about that it is already approved, that it needs to be on the other side, but that was real envisioning a different form of house. When the original owner took that into, when the original owner wanted to do it. And with regard to noise, I just want to say one thing because it is really surprising to me that there were noise complaints. I understand that this is also in perpetuity, someone else could come, and maybe it is not, but it was just very surprising that someone said there was noise because if anyone ever said to me you are making too much noise, we try to be very respectful neighbors. Like Andy said, we have one child, we have another one on the way, we do not play loud music, we do not have parties. So I was really surprised to hear that the spinning thing was me barbecuing on New Year's Eve, and, like I said, I had four people over and we were inside by eight o'clock. So to the extent that there was anyone who ever had a problem with noise that I was making, I would love to just that so we can be quieter because regardless, I am going to sit on that side of the house. That is just the way I am going to use the house because of where the doors are and because of what's more comfortable. So you guys, everyone can decide the patio does not make sense here from a visual perspective but in terms of the way

that I am going to use the house, it is really not going to change from that standpoint. And if there is an issue with noise, I would love to know about it so that I can make sure that we aren't noisy in any way, shape, or form. So I just want to...

Mr. Ackerman: Alex, just hand on for a second. John, just everybody, just give me two more minutes, Alex, I have to ask you a question, Alex, would you forego the variance on whatever that is the north side or the south side?

Mr. Saper: Sure.

Mr. Ackerman: In lieu of this?

Mr. Saper: Yes, because I am not going to, I am never going to make that investment.

Mr. Ackerman: Okay, okay, Alex, that is okay. John, that is a significant mitigation. Could we think about that?

Mr. McGuirk: Yes. I think we could think about it, I think we have

Mr. Ackerman: You know without making any decisions could you think about it.

Mr. McGuirk: Yes, I do not know if I can make it today, I have to talk to Beth.

Mr. Ackerman: No, no, I do not want you to make it today.

Mr. McGuirk: Okay.

Mr. Goldstein: Adjourn, adjourn.

Mr. Ackerman: I think you should think about it, I think I should think about it. I think it is significant. I think this, the prior variance was done by another family, at another time, different circumstances with different neighbors, Alan Slifka was not in his house, Randy was in his house, I do not know the owners of the vacant lot business so I am not getting into that, but I think that is a significant piece of mitigation here. Why everybody is ganging up over a patio, I do not know, but nevertheless I think that is something that should be considered. And we'd like to put that out there for you, and since there is not going to be a determination made for another month anyway, why not use that opportunity to consider and think

about it and we would make that offer in writing you know post hearing. Is that okay, John?

Mr. McGuirk: Let us talk to our Counsel and we will we need to think about this a little bit so.

Mr. Ackerman: Okay, no, of course John, I understand. So let us keep the record open, okay?

Mr. McGuirk: So Pam...

Mr. Ackerman: Thanks for your time everyone. Thank you.

Mr. McGuirk: Pam?

Mr. Saper: Thank you.

Mr. Ackerman: Bye, bye.

Mr. Goldstein: So the hearing would be continued until the next meeting.

Mr. Ackerman: Yes Andy.

Mr. McGuirk: Pam?

Ms. Bennett: Yes?

Mr. McGuirk: The next meeting?

Ms. Bennett: Yes.

Mr. Ackerman: Thanks everybody.

Mr. McGuirk: Thank you.

Mr. Whalen: Just to clarify, will this be continued at your next meeting?

Mr. McGuirk: Yes.

Mr. McMullan: Yes.

Mr. Whalen: Okay.

Mr. McMullan: May 14th at this point.

Mr. McGuirk: Pam?

Ms. Bennett: Yes?

Mr. McGuirk: So note that May 14<sup>th</sup>, please.

Ms. Bennett: Yes.

Mr. McGuirk: So any, no new business or old business? I would like to make a motion, I know I do not want to make a motion, can somebody make a motion to close the hearing?

Mr. O'Connell: I make a motion to close the hearing.

Mr. Baris: Second.

Ms. Bennett: Close the meeting.

Mr. O'Connell: Close the meeting, I am sorry, my bad.

Mr. McGuirk: Okay. Second please.

Mr. Baris: Second.

Mr. McGuirk: All in favor.

Mr. Humphrey: Aye.

Mr. McMullan: Aye.

Mr. McGuirk: All right, thank you all.

The meeting was adjourned at 2:10 p.m.

continued on next page

#### NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the Zoning Board of Appeals of the Incorporated Village of East Hampton will hold a public meeting at the Emergency Services Building, One Cedar Street, East Hampton, New York, on Friday, April 9, 2021 at 11:00 a.m., or via video-conferencing if necessary, on the following applications and to conduct such other business as may come before the Board. If you would like to participate in the Zoom meeting, contact pbennett@easthamptonvillage.org. The applications can be viewed on the Village's website easthamptonvillage.org by clicking on the "Alerts"

Application of 106 Brian Patch Rd LLC, SCTM#301-12-4-21.1. 19.2 and 20.2, for Variances from Chapter 278, Zoning and Chapter 163, Freshwater Wetlands, to raze the existing improvements and construct a two-story residence, patios, retaining walls, and a swimming pool. A wetlands permit and variances are requested in accordance with Sections 163-2 and 163-3 and 278-3.A.(8) which require structures be set back 150 feet from wetlands and clearing be set back 125 feet from wetlands. Variances of 74.4 feet, 75 feet, 75 feet, 131 feet and 52 feet are required to construct a two-story residence 75.6 feet from wetlands, patios, the nearest being 75 feet from wetlands, a swimming pool 75 feet from wetlands, fencing 19 feet from wetlands, and a retaining wall 52 feet from wetlands. A 75foot variance is requested from Section 278-3.A.(8) to permit clearing of vegetation and revegetation approximately 50 feet from wetlands where a 125-foot setback required, and any other relief necessary. The subject property is 79,032

square feet in area and is located at 106 South Brian Patch Road in Residence District R-160. The property adjoins Georgica Pond and the project requires a wetlands permit from the New York State Department of Environmental Conservation. This project is classified as a Type II Action in accordance with SEQR. Application of 38 Two Mile Hollow LLC, SCTM#301-10-1-32, for a Variance from Chapter 124, Preservation of Dunes, Section 124-1.B.(2)(a) and (d) to permit the planting of ornamental vegetation south of the 20-foot contour line where disturbance of native vegetation and planting of non-native vegetation is prohibited. The subject property is 108,015 square feet in area and is located at 38 Two Mile Hollow Road in Residence District R-160. The property adjoins the ocean beach and this project is classified as a Type II Action in accordance Application of Michael S.

with SEQR. and Joan B. Hass, SCTM#301-9-4-1, Area Variances from Chapter 278, Zoning, to construct an addition to an existing residence. A 777 square foot variance is requested from Section 278-3.A.(13)(a) to permit an 80 square foot addition resulting in a residence containing 3,195 square feet of gross floor area where the maximum permitted gross floor area is 2,418 square feet. The legally preexisting residence contains 3,115 square feet of gross floor area. An 8.2-foot variance is requested from Section 278-3.A.(3)(a) to construct the addition 21.8 feet from the front yard lot line where the required setback is 35 feet, and any other relief necessary. The subject property is 14,178 square feet in area and is located at 19 Dunemere Lane in Residence District R-40. This project is classified as a Type

II Action in accordance with SEQR.

of Orion Application Properties, LLC, SCTM#301-9-6-10.3, for Area Variances from Chapter 278, Zoning, to make alterations to a single-family residence. Variances of 22.4 feet, 8.7 feet and 15 feet are requested Section 278-3.A.(3)(a) to construct alterations 27.6 feet, 41.3 feet, and 35 feet from the side yard lot line where the required setbacks are 50 feet, and any other relief necessary. The subject property is 100,585 square feet in area and is located at 40 Further Lane in Residence District R-160. This project is classified as a Type II Action in accordance with SEOR.

Application of 25 Cross Highway SCTM#301-13-4-17, for Area Variances from Chapter 278, Zoning, to construct a covered patio, fireplace, and to legalize a shed within the front yard setbacks. A 25.7-foot variance is requested from Section 278-3.A.(5)(a) to construct a covered patio and outdoor fireplace 9.3 feet from the front yard lot line where the required setback is 35 feet. Variances of 22.2 feet and 17.4 feet are requested from Section 278-3.A.(5)(a) to construct a patio 12.8 feet and 17.6 feet from the front yard lot lines where the required setbacks are 35 feet. A 27.6-foot variance is requested from Section 278-3.A.(5)(a) to legalize a shed located 7.4 feet from the front yard lot line where the required setback is 35 feet. Variances of 13.9 feet and 20 feet are requested from Section 278-3.A.(3)(a) to construct a portico 16.1 feet and 10 feet from the front yard lot line where the required setbacks are 30 feet, and any other relief necessary. The subject property is 16,651 square feet in area and is located at 25 Cross Road in Residence District R-80. This

project is classified as a Type II Action in accordance with SEQR. Said Zoning Board of Appeals will at said time and place hear all persons who wish to be heard in connection with the applications. Interested parties may be heard in person, by agent, or by attorney. Dated: March 19, 2021 By Order of John L. McGuirk III, Chairman, Zoning Board of Appeals, Inc. Village of East Hampton 37-2



VILLAGE OF EAST HAMPTON, NY DATE: May 17, 2021
TIME: 9:30 a.m.