

**Minutes
Zoning Board of Appeals
April 9, 2015**

Board Members Present: Donne Winslow, Alan Hall, Sr., Mark Morey, Harold Moffitt

Others Present: Jami Olden, Juanita Bradway, Michael Periard, Patti Corlew, Chris Belden (Zoning Administrator)

Meeting Commenced at 7:00 p.m.

Mr. Morey – This is the April meeting of the Town of Warrensburg Zoning Board of Appeals, and let the record reflect members present are Ms. Winslow, Mr. Hall, Moffitt and myself. The first item of business is minutes from the last meeting, which was October 9th. Any of the board members have any corrections?

Mr. Hall – I was not present for that meeting, so I have no corrections.

Mr. Moffitt – I read it, but I couldn't find anything.

Mr. Morey – I found one.

Mrs. Corlew – Okay.

Mr. Morey – It's on page 199. On Resolution 2014-11, it said, nays were none. If you refer back to the page before, Mr. Cooper voted negative to that.

Mr. Moffitt – Yeah.

Mrs. Corlew – Okay.

Mr. Morey – And that's all I have. Any other changes or revisions? Okay. Let the record reflect the minutes were approved by consensus.

The minutes of October 9, 2014 were approved by consensus of the board with the correction noted above.

Mr. Morey – First matter of business is use variance ZBA 2015-1. We'll start the way we usually do. Mr. Belden, can you tell us how this comes before us?

Mr. Belden – Sure. The, the property's actually owned by... Is it Monroe or Bradway?

Mrs. Bradway – Bradway.

Mr. Belden – Bradway. Juanita Bradway, she's the property owner at 46 Ridge. Jami Olden is her contractor/friend. I guess they're both kind of applicants on this application here. What they're looking to do is, they're asking to temporarily install a mobile home on the property. The property, there's, it used be a home down... The property had burnt back on, I believe, 2013, and they, following that, constructed a foundation to install a modular home, but I can let them explain exactly where, but they're waiting on, they're waiting on, I guess, a settlement and they're looking to install this mobile home temporarily until they get the settlement money until they finish constructing the modular. So I guess in short, they're in a residential recreation zone which does not permit mod, mobile homes. So they're requesting a use variance from the board tonight.

Mr. Morey – Okay. There's some... We had some correspondence from your office. Did you provide them with a copy of that?

Mr. Belden – Yes.

Mr. Morey – Anyone who, any members of the audience or the applicants who would be giving information to this board, I'd like you to raise your right hand. Do you solemnly swear that the statements that you are going to give the board are the truth, the whole truth and nothing but the truth?

(Mr. Olden, Mr. Periard and Mrs. Bradway nodded in yes).

Mr. Belden – Yes.

Mr. Morey – Any other the board members have any discussions before we start? Anything in particular that isn't going to be covered?

Mrs. Winslow – You're going to go over these questions?

Mr. Morey – Mr. Belden, I have a couple things. In the...

Mr. Belden – Sure.

Mr. Morey – There's no... I didn't see anything, but I think in our former ordinance, we have a provision where you could install temporary housing until... I don't remember what the time limit was for that. That wasn't... That was taken out by the Town Board when they did this, this amendment, this new ordinance?

Mr. Belden – Right. In, in their case though, it was a little bit different. There used to be, in the old pre-2012 code provision where you could, if you were going to upgrade a mobile home, you could, you could, there's a little bit of time you could take it off and put it on. That provision is no longer in the code. But these guys actually had a little bit longer than that old section, with that said. The home, the home that was there burnt down in 2013. The section...

(Tape inaudible).

Mr. Belden – Okay. Yep, 211-45E discusses restoration of a non-conforming use where there has been a destruction of fire, so on and so forth. They're given a time period of under subsection 3 of E, a valid building permit must be obtained within one year of the removal or destruction of the original structure and construction shall be complete within one year of the issuance of the valid building permit. One year extension within which to compel, complete the project and obtain the Certificate of Completion may be granted by the Zoning Board of Appeals. That time has come and gone that they would be permitted to get that. The fire was 12/16/2013, so that one year time period would have lapsed last December. I'm also... I know, I know that the, the applicants had put in here that it was a mobile home on, on the property before. One of the things I did is I looked at the Assessor's records. Under the Assessor's records, they had classified this as a one family residence; not a manufactured home, not a mobile home because of the fact that there are additions on this, on, on the home itself, garage... Well, the former house used to have a garage and porches and other things on it.

Mr. Morey – Yes. We... Well, the reason that I'm going through this is that a use variance in New York State is very hard to get because we don't have any leeway, all the conditions have to be met. It's really, it's an uphill battle, but we're supposed to explore any other method feasible to the applicant to accomplish what they want without, without, without going through the use variance procedure. So I have a question for you, Juanita. I understand there was a problem with the amount of the insurance. Was that insured as a mobile home or insured as a structure?

Mrs. Bradway – It was insured as a mobile home.

Mr. Morey - As a mobile home.

Mrs. Bradway - Yes.

Mr. Morey - So other than the fact that time frames expired, they would presumably be allowed to replace that if, if the town... We're not going to reargue the Schill thing, what...

Mr. Belden - Sure.

Mr. Morey - ...percentage has to be...

Mr. Belden - Let's not.

Mr. Morey - ...structure, but...

Mr. Belden - Yes, and I am, another thing, another thing to keep in mind with that, with that section of 211-45, they would've had to put a mobile home... Even though we're outside of that time frame, they would've had to put one on there that wouldn't enlarge beyond the original dimensions of the structure, the prior structure.

Mr. Morey - I don't know...

Mr. Olden - That's what we're trying to avoid, is putting the mobile home back where the foundation has been put, being that they still want to continue with their house project. They just don't have the funds available at this time, although it's coming. Also, if I may speak?

Mr. Morey - Yeah, sure.

Mr. Olden - It says in here that, in that section that he's reading, that it says discontinuance is in compliance with section or unless discontinuance is in compliance with Section E, and Section E states that if the building or structure which is a non-conforming use is conducted therefore removed voluntarily, destroyed by fire or wind, explosion, structural failure or whatever, so that word "unless" doesn't apply for Section E because it was destroyed by fire? Again, (inaudible) put it back where, where it was before.

Mr. Morey - Right.

Mr. Olden - They're trying to get (inaudible) doing that by, by putting it behind, just for temporary use until, until they can get their money to continue on with the original project.

Mr. Morey - There's still the date, the time frame for one year. I mean, that was fairly clear as I read it, that (inaudible) had a year to complete that. Is that correct? Am I...?

Mr. Belden - Yes.

Mr. Olden - (Inaudible) discontinuance (inaudible) non-conforming use shall expire or be deemed abandoned unless discontinuance is in compliance with Section E.

Mr. Belden - And E states that it...

Mr. Olden - Was destroyed by fire.

Mr. Belden - Destroyed by fire and has to be not, not enlarged beyond the original dimensions and a building permit must be obtained within the first year and it shall be completed within one year of the issuance of that permit and then you can also be granted an extension. And that one year has already expired on the 16th of December back in 2014. I think what that's saying there is the discontinuance is good for 12 months and after that, that non-conforming use is going to expire unless it's in compliance with subsection E, which grants people that follow these rules a little bit more time.

Mr. Olden - Now what about this section? It says a non-conforming building or structure may be replaced on an identical footprint within 24 months after its removal, so long as it is not added to, enlarged,

reconfigured in any manner in which may increase the non-conformity. After 24, after 24 months such non-conforming structures may not be rebuilt on same footprint.

Mr. Morey - And...

Mr. Olden - So there's another section that states 24 months.

Mr. Morey - It is, but we had the, we have a little problem with that as to whether it's a mobile home or not. And that the Town assessment records, you're saying, listed, and I read 'em. I read your... That's added to the application that that was, as they said, if you add enough square footage and which the threshold wasn't clearly established in that last go around that we had with that, that you effectively convert the mobile home into a, into a stick built structure. In the eyes of the town, it's no longer a mobile home. So any of the board members have any thoughts on that or..?

Mr. Olden - It was clearly a mobile home. I pulled the frame and tires out (inaudible).

Mr. Morey - I looked at it for years and years. It...

Mr. Olden - Also, every building in this section where we're trying to put it is a mobile home of older vintage than the one that we're trying to, to put in there. It's not like it's going to alter the town at all. It's not like we're trying to put a 1950's mobile home in the middle of Main Street. It will actually be an upgrade to the, to the area, ya know.

Mr. Morey - That may be...

Mrs. Winslow - But that's not zoned...

Mr. Morey - That's the trouble.

Mrs. Winslow - ...for that.

Mr. Olden - Even though, even though every other house on the street's not zoned for it either, but every other house on that street is a mobile home.

Mr. Morey - It's the, it's the Town Board that would have to address that. We, we don't have the right to change a, change the actual... All we can deal with is the code as it, we have it here. And you could maybe address that with the Town Board or maybe bring up the issue that they should have some sort of provision for having temporary structures that a person could live on while they were constructing and I'm sure they could be methods to, ya know, the minute the Certificate of Occupancy, for example, was issued then we'd have a time frame to remove...

Mr. Olden - That's exactly what we were looking for, was just an allotment of time.

Mr. Hall - Was there a delay in settling up the insurance on this?

Mrs. Bradway - Yes. I'm still fighting with the insurance company. We had to hire a lawyer to do that.

Mr. Olden - They had a public adjuster that originally told them what they were going to get, I don't know the exact number, but a set number of, a set amount of money to do this project and that's what they based this project on, and they had received approximately half of that from their insurance company. Like I said, when we went and got the building permit and started this project, ya know, at that point in time, we were (inaudible) were available to complete the project.

Mr. Morey - Any other comments or questions?

Mrs. Winslow - All these are on Stacey Street though.

Mr. Olden – That's where the house is, even though it has.

Mrs. Winslow – Well, it's on the, it's on the corner. It's on the bottom. I went, I looked at it. But I didn't notice any other trailers on Ridge itself.

Mr. Olden – Yeah, the trailer on the opposite corner of Ridge and Stacey is a trailer as well.

Mr. Belden – If I, if I could just interject. I did provide a map. I labeled it attachment #5 showing surrounding parcels by property class. Even though there are, there are, there's a higher number of mobile homes located down there, it's definitely not the only, it's definitely not the only thing going on down there. There are a lot of single family homes down there that are not mobile homes.

Mr. Morey – It would be more appropriate if we proceed to, with the variance. I mean, right now we're trying to find some method (inaudible).

Mrs. Winslow – I'm sure neighbors were invited to this?

Mrs. Corlew – Yes, they were.

Mr. Morey – The, in our, in the training, I had a note that temporary variances can be granted if the use is temporary. We haven't done that here at this board at the time that I've been on it. You remember anything like that, Alan? You've been here longer than I have.

Mr. Hall – (Inaudible).

Mr. Olden – Again, that's all we're looking for, is just a temporary variance (inaudible). They do want to continue with the building of their single family home.

Mr. Morey – The problem with that is even though we don't, I don't personally like to use the word precedence because I think that everybody that comes in here should get a fair hearing of their circumstance and just the fact that you might be the third or fourth person this year and we say we've granted enough, I mean, that's, we don't do that. But in would kind of open the door to something that, it's, that's really, the Town Board should address that. We can't create law or exemptions. So if there, if no one sees any other way to...

Mrs. Winslow – Temporary is kind of open ended to me. I mean, there's not an end date.

Mr. Olden – We did provide that; that we would...

Mrs. Winslow – Five, maybe five years, ya know, that's...

Mr. Olden – I do believe, as a board, if you issued the temporary variance, that you could put that date in there.

Mr. Morey – We would have to have to, issue a use variance and to do that, we'd have to, we'd have to go through, we have to meet every one these standards and it really, they're very hard to meet and as much as I'm sure every member of this board would like to help someone, we can't really consider, I guess you'd say compassion isn't something we aren't allowed to use. So if there's nothing else, I guess we'll proceed to go through the variance.

Mrs. Winslow – Go through the use variance?

Mr. Hall – Chris, can I ask you a question?

Mr. Belden – Sure.

Mr. Hall – That trailer of Hudson Headwaters Health Net down there, which is field office.

Mr. Belden – Hm hm.

Mr. Hall – That definitely not in an area marked for trailers.

Mr. Belden – True.

Mr. Hall – That is under what? What allows that to be there?

Mr. Belden – Section 211-28, Temporary Structures. It's a building, mobile home, trailer or other structure accessory to a construction project for office storage or related construction use may be permitted upon issuance of a permit by the Zoning Administrator. Such installation to be temporary and continued only for the duration of the construction project to which it is accessory. And such facility shall not be designed or used for living accommodations except for the non-permanent accommodation of the clerk of works or night watchman and shall be promptly removed upon the completion of the construction project. It goes on. That's the nuts and bolts of it though.

Mr. Hall – That'll explain that then.

Mr. Belden – Yeah. It's not to be used... And that one down there, I was in it. It was an office.

Mr. Hall – Yeah, I was in there too. I know it's an office, but it was a temporary...

Mr. Belden – Temporary structure...

Mr. Hall – Structure for, and, I wondered how, because it is a house trailer or office trailer or whatever. It's on wheels and on a steel frame. I wanted to know why that could be and this couldn't.

Mr. Belden – and that's nothing new in the code either. It was (inaudible) this exact, written this exact way, but in the old code there was, there was a provision in our general provisions for temporary structures, for construction.

Mr. Morey – Mr. Moffitt?

Mr. Moffitt – I can't think of anything.

Mr. Morey – Then at that, at this time, we'll, we'll go down through the variance conditions or the questions and we'll allow you to fill out your answers, I mean, with the, you've noted some of the, the notes that were given to us by staff and you have something you want to add. Under the applicable zoning regulations, the applicant cannot realize a reasonable return provided that lack of return is substantial as demonstrated by competent financial evidence: and you, say, "see attached". Can you, was that...?

Mr. Belden – That was the yellow sheet, I think.

Mr. Morey – Yellow sheet?

Mrs. Winslow – Ours is white.

Mr. Belden – Oh, okay. The...

(Tape inaudible).

Mr. Olden – It was yellow when he got it.

Mr. Belden – My yellow sheet. Copier doesn't print yellow.

Mr. Morey – In a use variance, the courts, there was a landmark decision they, known as the Otto Decision, and that has been pretty codified what, what could be accepted as proof and as it would meet the standards and it says a mere showing of present loss is not enough, but you've got to show that there would no reasonable return for any use for that lot in the, for a use permitted in that zone. So for us to grant you a variance, a use variance, we would, you'd have to show that you couldn't use that lot for anything that's permitted in that zone, not single family residential. I don't know what's all in the recreational zone. I don't know what they mean by that really, but it... Do you have anything you could add to your..? I read your

letter and I'm sure the other board members must have and it's, your circumstance is unfortunate, ya know, where you, where they, you got a nice foundation there, but it really pretty much precludes even if you could put a mobile home back in the same place or precludes that.

Anyone want to help out with question number one? Do you feel that there, that you... The only use you're... You're asking for a temporary permit and I know this doesn't really fit what you want.

Mr. Olden - Right.

Mr. Morey - But it's what we have, barring any other...

Mr. Hall - That's what we gotta work with.

Mr. Morey - It's what we've got to work with.

Mr. Olden - Now what you had stated earlier though that you guys do have the right to issue a temporary variance, how does that work with this. I'm confused. I mean...

Mr. Morey - Well...

Mr. Olden - ...we're going after a temporary variance and I believe that applies to a (inaudible) variance but we're not, we're not trying to get a full variance (inaudible) temporary time allotment for the use.

Mr. Morey - And you don't want it permanent.

Mr. Olden - We don't want it permanent.

Mr. Belden - They can approve with condition which I believe that's... You can either approve, disapprove or approve with condition, approve conditionally and that condition would be temporary.

Mr. Morey - Correct.

Mr. Belden - I guess that's what your..

Mr. Morey - Right.

Mr. Belden - But it's still a use variance.

Mr. Morey - We still have to go through the use variance. It, the...

Mr. Olden - So I guess there would be a financial loss if, if there wasn't a temporary use variance there because their only other option would be to sell the property there, ya know, which wouldn't grant them financial, or give them financial money but it wouldn't be the volume of what the property would be worth when they're done with the project.

Mr. Morey - Now, where you're living now, your letter stated that you had to move, you had to move or you want to move?

Mrs. Bradway - Where we're living now?

Mr. Morey - Yes.

Mrs. Bradway - We have to move from there.

Mr. Morey - You have to move.

Mrs. Bradway - Yes. (Inaudible) apartment that we have to move out of.

Mr. Morey - With the... It's a convoluted thing, but with a use variance, we, we have to approve, you have to meet the conditions to get a use variance, even if it's, even if it's temporary. If the... If there were another option, if, if the Town had provided the temporary housing while you're doing construction, I mean, that, we wouldn't be here tonight. But unless some of the other board members...

Mr. Olden - They couldn't be, they couldn't be construed to be the night watchmen? They are actually going to be construction, constructing the building. The other temporary housing does give permission for people to stay there as a property watchperson.

Mr. Morey - If you can talk Mr. Belden into that, then you don't need to be here for this. Number 2, the alleged hardship relating to the

property in question is unique, and does not apply to a substantial portion of the district or neighborhood. You answered it, you answer, "no. Most homes in the neighborhood are mobile homes and older than my 1996 model. Mobile homes are permitted across the street from this property". I don't think they're talking about changing their neighborhood there. They're more talking about whether the hardship is unique to the lot or even unique to the area. One of the examples they get in uniqueness...

Mr. Olden – That paperwork was filled out by my lawyer, so...

Mr. Morey – Well, that's...

Mr. Olden – ...(inaudible).

Mr. Morey – That's why we're here, is you have the opportunity to add to what's here and we realize that a lot of time people, most time people don't know what, how to answer but that has never prevented us from, if, if we can get the proper answer in there, we, we work towards doing that so. It says there must at least be proof that a particular property suffers a singular disadvantage through the operation of a zoning regulation before a variance can be allowed for, that would be for unnecessary hardship but that's (inaudible), I don't think that property has a singular disadvantage. I mean it's pretty, it's shared by everyone down there and they drew an arbitrary line where they could have a mobile home and you're on the wrong side of the street. Correct?

Mr. Belden – Correct.

Mr. Morey – Mr. Hall, you can help me out here anytime you'd like.

Mr. Hall – Last time I helped you out, you weren't happy. They've already got a foundation and they've overstayed the time limit the town allows to do the construction or replacement, the trailer. I understand that the town is hesitant to issue a temporary trailer deal, because then they've got to go through all the paperwork, the money and so on to remove that trailer if at the end of the temporary permit, you're still unfinished and still stuck. My only suggestion would be to go to the Town Board who can make these or change these rules that we can't. Offer to put up a bond that you will remove that trailer at the end of a temporary use certificate, if you will, issued by the town, by the decree of the town, the Town Board. And maybe you could sell your point that way. But we're in a narrow time, narrow frame here. We either abide by these laws or we can't.

Mr. Moffitt – Yeah.

Mr. Hall – And it, if we can't, then we're subject to litigation ourselves. We can't step outside the framework that's supplied us to work with, as much as I'd like to tell you to put it on there tomorrow morning.

Mr. Morey – There... Understand that what you're asking for, there really isn't any tool in the code, in the ordinance that we can use to, to help you, as far as I can see. I mean, without... There is if all these conditions could be met, then we would be able to issue a use variance and we may be able, the other board members, (inaudible) still we haven't voted yet and I'm still open to being convinced in any direction. But...

Mrs. Winslow – If they could get a, if they could get a temporary variance with a time frame, and a time frame from the town. No? In writing.

Mr. Olden – (Inaudible).

Mr. Morey – The Town can't give a variance.

Mrs. Winslow – No. I know. I mean, if they could issue a temporary permit.

Mr. Morey – Well, they would have to change the zoning to do that.

Mrs. Winslow – Oh, for a temporary permit.

Mr. Morey – We could...

Mr. Olden – Although who do I go to for clarification because me and Chris had a slight disagreement on the actual writing in that book, whether it is 12 months or 24 months. Basically my understanding and such was my lawyer's was that if we want to go ahead and put that trailer on that piece of property, as long as we put it within the foundation limits of what was there before, that we could.

Mr. Morey – Except for the town's contention that it's, it wasn't a mobile home. That it had been converted to a, to a structure.

Mr. Belden – To add to that, I think what he's, what he's alluding to is, he was, there, there's a few different sections within Chapter 8?

Mr. Olden – 8.

Mr. Belden – 8, and ya know, one of them deals with non-conforming uses. One of them deals with the non-conforming building structures. One of them deals with non-conforming lots. What he's talking about is for that 24 month period to re-install a non-conforming building. I'm talking about a 12 month period, which would fall under non-conforming use. I'm saying that we have in our, in our code, we, we define a mobile home as a use. So I guess what I'm trying to say is that the issue at hand is that this is a non-conforming use, not a non-conforming building like a setback issue or something to that effect. The actual occupation of that structure is the issue.

Mr. Morey – The, you may have an argument in another venue that, because you could ensure that it was a mobile home. I mean, most people, if the insurance adjuster's... My wife coached me on this a little bit. If there is any... If the insurance adjusters or even the insurance agents determine that it at any time really was any part mobile home, they, they won't give you insurance for a, ya know, a stick built home.

Mr. Olden – And again, that was insured as a mobile home.

Mr. Morey – Yeah. And, but that's not, that's a moot issue for us now because the Town, the timeline has passed possibly, that, as far as putting that other mobile home in that place in that spot, the former Code Administrator and this board, they and the Town Board allowed mobile homes larger than what originally existed because a lot of, couldn't be, you couldn't buy that size, the older sized mobile homes. So they were allowed to be... That rule...

Mr. Belden – And that period was about, it was either six months or 90 days, I can't remember.

Mr. Morey – Hm hm.

Mr. Belden – But that was a lot shorter than what's being offered here.

Mr. Morey – There were a number of people in here that wanted to replace a mobile home.

Mr. Belden – And that was more for an upgrade. I mean, these, these guys had originally planned to put a conforming structure on the property after the home burnt originally. Yeah, but even, what I was saying before was even outside of the framework of, is this a mobile home, is this a stick built, is this some sort of hybrid thing, even

just assuming that it is a mobile home, it's a non-conforming use that is the issue, not that it is a non-conforming structure. So there are different time frames that apply to those. Under our definition of use.

Mr. Morey – In the eyes of the town and obviously the insurance company, there, those arguments would, we can't answer here.

Mr. Olden – So who do those arguments go in front of, I guess?

Mr. Morey – Well, I, I don't know. I would talk to my lawyer again, ya know. I mean, you have some, in my opinion, some, some points to, ya know, arguable points, but if you argue it's a mobile home, you're still passed the deadline, unless Section E bails you out of that. And that may be arguable too. So...

Mr. Olden – It does say 12 months in the last (inaudible).

Mr. Belden – You've passed that time limit.

Mr. Hall – Just, just as a point of interest, I owned a trailer lot with a trailer on it, and when I pulled the trailer off, decided I didn't want to put one back on it, my aunt then became bedridden and I said, okay, I go put a trailer right back on my trailer lot, which is right next door to my house. 14 months had gone by. I fought it. There is no trailer lot, trailer on that trailer lot. It's gone. Once that time period went by, I could not convince the Board without going through a lot of legal, Article 78, or whatever you want to call it and the lawyer said, forget it. You'll never win it. So, I mean, don't think I'm prejudiced against trailers. I'm not. I lost the use of a trailer lot too. I know where you're coming from, but just the way these things are written up, I had, I didn't have a leg to stand on. You might make out a little better with the Town Board under these conditions than you will with us.

Mr. Olden – Also, with the (inaudible) of the house, it says unless Section E applies.

Mr. Morey – Hm hm.

Mr. Belden – But you've passed that time frame too. It...

Mr. Morey – Not if Section E applies. You got two years.

Mr. Belden – They would've had to obtain the building permit within the first year, and that ended in December of last year.

Mr. Morey – That's another issue. I guess we'll proceed with ours. Number three, the requested variance, if granted, will not alter the essential character of the neighborhood. You answer, "yes. Most of the homes in this neighborhood are mobile homes". I kind of agree with you on that one.

Mr. Hall – Yep. I do too.

Mr. Morey – The point's debatable whether it, it, I don't believe that would alter the essential character of the neighborhood at all.

Mr. Olden – Again, the trailer that we're trying to put in, I believe is as new or newer than most of them in that area. And that's, again, only, we're only looking for a temporary thing too so that we can complete and comply with your building code as it is now.

Mr. Morey – Comments? Number four, the alleged hardship has not been self-created. And you answer, "the prior mobile home burned in December of 2013". I don't know. Your, your lack of a place to live, at least being able to live where you want to certainly wasn't your fault because you were, you were living there. But I guess the hardship is your ability to live on that lot until you finish your other structure, so the town, the zoning for that, one way of looking

at it would be that if, if it's a mobile home as you say it was, the town's zoning with that lot is not mobile home even though a lot of them are around it, but that still isn't unique to that area. There's other people that are in the same zone that may want a mobile home but couldn't put it there either. I don't know if I made that clear or if that's clear to anyone besides me, but... And on the self-created, you really didn't do anything that qualifies creating that yourself. I mean, you didn't buy that lot knowing it was in a zone that didn't permit mobile homes and then say I want to put one on there. That, that's, that's pretty self-created.

Mr. Hall – Well, how did the mobile home wind up on that lot in the first place if it wasn't allowed there?

Mr. Morey – Pre-existed.

Mr. Hall – Pre-existed, okay.

Mr. Belden – Yes. Pre-existing... It was...

Mr. Hall – Pre-existing, non-conforming, okay.

Mr. Belden – It was pre-existing.

Mr. Olden – And actually wasn't that zoned trailers before the last zoning went through?

Mr. Belden – Hm hm.

Mr. Olden – Before your adoption of this last zoning, the zoning before that allowed (inaudible).

Mr. Morey – Hm hm.

Mr. Olden – The only time (inaudible) '96?

Mr. Belden – 2012.

Mr. Olden – 2012 (inaudible).

Mr. Morey – We had an issue with that with Merrill Magee House.

Mr. Hall – Hm hm.

Mr. Morey – It was kind of an unintended consequence to that zoning, but, that re-zoning.

Mr. Belden – I guess, I, if the, the original intention of the applicant was to put a conforming structure on there. And this fire did occur after the zoning had changed. They really had no intention at that time to do that. So, and by allowing that time to pass, I guess it would just be our standpoint that it was maybe not intentionally self-created, but it was self-inflicted.

Mr. Olden – (Inaudible) self-inflicted either. Ya know, like I said, again, we were, want to complete that complete that project, but in the beginning when the project was started when the blueprints were drawn up, when the (inaudible) they were told they had x amount of dollars to do this project with and that did not go through, I don't see how that's self created.

Mr. Morey – That's not... I don't think that's self-created.

Mr. Olden – Again, their intention was to do exactly what this was saying.

Mr. Morey – It's unfortunate, it's from the compassionate point of view if we consider that.

Mr. Hall – We can't.

Mr. Morey – Pretty strong argument for us but we're not allowed by law to do that. Did this have to go to the County for approval?

Mr. Belden – No, it did not.

Mr. Morey – Too far away. At this time then I'll, I guess... They filled out the Short Environmental Assessment Form. Does that mean that this is a Type II listed action?

Mr. Belden – This is a unlisted action.

Mr. Morey – Yeah. I read down through those and it was, that wasn't really that clear.

Mr. Belden – Area vari... You don't normally see these because area variances don't require... They, they are... Area variances are a Type II action, so they're not subject to this. Use variances are an unlisted action. Yeah, and I don't think you opening the... Not, not to interfere, but I don't know if you... Did you open the public hearing?

Mr. Morey – No, but we haven't been doing that.

Mr. Belden – Not that there's...

Mr. Morey – (Inaudible).

Mr. Belden – ...an audience, but...

Mr. Morey – Well, I'll make a motion that, I don't know... Can we back date those things?

Mrs. Corlew – You can open in now.

Mr. Belden – Open it now and close it before you...

Mrs. Corlew – It doesn't have to be open any certain amount of time.

Mr. Morey – Public hearing for ZBA 2015-1 is open. Is there a second?

Mr. Moffitt – I'll second.

Mr. Morey – All, all in favor, say aye.

RESOLUTION #2015-1

Motion by: Mark Morey

Second by: Harold Moffitt

RESOLVED, to open the public hearing for application ZBA 2015-1 by Juanita Bradway and Jami Olden, for a use variance.

DULY ADOPTED ON THIS 9TH DAY OF APRIL, 2015 BY THE FOLLOWING VOTE:

Ayes: Donne Lynn Winslow, Alan Hall, Mark Morey, Harold Moffitt

Nays: None

Mr. Morey – I'll make another motion that this is unlisted environmental... What, what will be the correct term for this?

Mrs. Corlew – Unlisted action.

Mr. Belden – It's an unlisted action. It's not a Type I. It's not on the list for Type I. It's not on the list for Type II.

Mrs. Corlew – Unlisted Action under SEQRA review.

Mr. Morey – Okay. I make a motion that this is an unlisted action under SEQRA review. Is there a second?

Mr. Hall – I'll second.

Mr. Morey – All those in favor.

Mr. Morey – We'll proceed to the short environmental assessment form. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule? We've got no answer to that. I assume...

Mr. Belden – Hm, you're just to do the... I know you guys don't do these too often, but the applicant's responsible for the Part I.

Mr. Morey – Hm hm.

Mr. Belden – You're, you're responsible for part, the Part II.

Mr. Morey – Okay. Well, he didn't answer the block, so is that your...

Mr. Belden – They did miss a couple blocks.

Mr. Morey – Who yells at him for that?

Mr. Belden – You can, but I'm not advocating for.. They did fill out the rest of the sheet though. They may have not had that information.

Mr. Corlew – You don't have to... You don't have to go through the whole thing. You just have to...

Mr. Hall – Just go through the shorter SEQRA form.

Mr. Morey – We'll go through Part II.

Mr. Belden – Yep.

Mr. Morey – The Impact Assessment. Will the proposed action create a material conflict with an adopted land use or zoning regulation? I guess the answer to that would be yes.

Mr. Belden – You, your, and your answers in these, in these, for these questions will be either a no or small impact or that there's a moderate to large impact.

Mr. Morey – Then I would say small impact. Is there agreement, disagreement?

Mrs. Corlew – Anyone of you can answer it and just go right down through.

Mrs. Winslow – Oh, okay.

Mr. Morey – Will the proposed action result in a change in the use or intensity of land, of use of land?

Mrs. Winslow – No.

Mr. Morey – Will the proposed action impair the character of the quality of the existing community?

Mr. Hall – No.

Mr. Morey – Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area? I don't believe there's one there. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit or biking or walkway?

Mr. Hall – No.

Mr. Moffitt – No.

Mr. Morey – Will the proposed action cause an increase in the use of energy if it fails to incorporate reasonable, reasonably available energy conservation or renewable energy opportunities.

Mr. Hall – No.

Mr. Morey – Will the proposed action impact existing public/private water supplies?

Mr. Moffitt – No.

Mr. Morey – Or public/private wastewater treatment utilities? Is that on the sewer down there?

Mr. Olden – Yes.

Mr. Morey – Yes, it is.

Mr. Hall – The water table's so high in there, it's gotta be.

Mr. Morey – Will the proposed action impair the character or quality of important or historical archaeological, architectural or aesthetic resources?

Mr. Moffitt – No.

Mr. Morey – Will the proposed action result in an adverse change to natural resources (example wetlands, water bodies, groundwater, air quality, flora and fauna)? Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?

Will the proposed action create a hazard to environmental resources or human health?

Mr. Belden – As long as you answered them all in the first category, then there's no reason to go on to Part III.

Mr. Morey – We don't have to make a determination that potential impact would not be significant?

Mrs. Corlew – Right.

Mr. Belden – Exactly. You need a resolution for that?

Mrs. Corlew – It goes hand in hand with that.

Mr. Morey – I make a motion...

Mrs. Corlew – He already did actually make the motion.

Mr. Morey – We make the motion to go through the form or unlisted action.

Mrs. Corlew – That it was an unlisted action.

Mr. Morey – Right.

Mrs. Corlew – And therefore, there's no significant impact 'cause you went through the application. So it's, it can all be in one.

Continue and I'll...

Mr. Morey – Can I say by consensus agree that the Board that there's no significant impact?

Mrs. Corlew – Sure.

Mr. Moffitt – Correct.

RESOLUTION #2015-2

Motion by: Mark Morey

Second by: Alan Hall

RESOLVED, to deem application #2015-1 by Juanita Bradway and Jami Olden, tax map #211.17-3-23, for a use variance, as an unlisted action under SEQRA review and finding that there is no significant environmental impact.

DULY ADOPTED ON THIS 9TH DAY OF APRIL, 2015 BY THE FOLLOWING VOTE:

Ayes: Donne Lynn Winslow, Alan Hall, Mark Morey, Harold Moffitt

Nays: None

Mr. Morey – Okay. Now discussion on variance, what do the board members think about that?

Mr. Hall – I think we're treading on dangerous ground.

Mr. Morey – I agree, but the question needs to... No takers?

Mrs. Winslow – I don't (inaudible) to ask.

Mr. Morey – Okay. I didn't move in the affirmative that we approve the application, ZBA 2015-1 like Jim usually did before we did the discussion. I'll do that now. Is there a second?

Mrs. Winslow – I'll second it.

Mr. Morey – Okay. All those in favor. Are we ready to proceed to a vote? A no vote would deny the variance and a yes vote would approve it.

Mr. Olden – Is there a vote for a condition attached to it?

Mr. Morey – No one.

Mrs. Corlew – No one motioned and seconded.

Mr. Morey – No one offered a motion for it. Ms. Winslow?

Mrs. Winslow – Start with me? No.

Mr. Morey – Mr. Hall?

Mr. Hall – Reluctantly no.

Mr. Morey – Mr. Moffitt?

Mr. Moffitt – No.

Mr. Morey – I have to vote no as well. We didn't meet the conditions. I'm sorry that we couldn't you relief. You, as I said, hopefully you've still got other recourse with your argument with the, as far as Section E and...

RESOLUTION #2015-3

Motion by: Mark Morey

Second by: Donne Winslow

RESOLVED, to approve application #2015-1 by Juanita Bradway and Jami Olden, tax map #211.17-3-23, located at 46 Ridge Avenue, for a use variance, to allow temporary installation of a mobile home.

DULY ADOPTED ON THIS 9TH DAY OF APRIL, 2015 BY THE FOLLOWING VOTE:

Ayes: None

Nays: Donne Lynn Winslow, Alan Hall, Mark Morey, Harold Moffitt

Mr. Olden – Yeah, the...

Mr. Morey – ...determinations...

Mr. Olden – The only difference with that is, is that I'm (inaudible) require us to tear down the foundation and put it back on the existing spot.

Mr. Morey – No, I wouldn't, I wouldn't agree to that at all. I mean...

Mr. Olden – The way that it's written in the code book is that it has to go back in the existing location.

Mr. Morey – It does, but if you go to the Town Board and ask them to create a temporary or a, make a provision where someone could install temporary housing with provisions to, (inaudible) sunset (inaudible)

Mr. Hall suggested, that you put up a bond to be sure that you do the minute the house is completed when the time frame is up, then that has to go and then...

Mr. Olden – So we need to take that in front of the Town Board you said?

Mr. Morey – I would (inaudible).

Mr. Belden – You're talking about an amendment to the zoning.

Mr. Morey – They do those... It's not really spot zoning, but they've had... I've seen in the paper where they've changed a few things to accommodate some people around town.

Mr. Belden – I would still... I mean, I know he's disputing it. My interpretation of Section D and E, he's still passed that time period, so he would still have to come back... Even if that was to come about, he would still have to come back, in my opinion, to get, to get a use variance from you guys.

Mr. Morey – I don't think we're talking about the same thing. I'm not talking about changing the zoning for that lot. I'm talking about the Town allowing anyone who wanted to build a house or whatever, to put some temporary housing there until they complete it. Like we had before.

Mr. Belden – Right. And that would be applicable... And a change that like would be applicable anywhere irregardless of neighborhood and so on and so forth.

Mr. Morey – Yeah. It would obviously be pretty restricted. I mean, they wouldn't want camping there...

Mr. Belden – And we do...

Mr. Morey – ...for ten years.

Mr. Belden – ...allow that, well in our mobile home areas, but in the hamlet here and outside the hamlet here, which is a lot of town, you can do that type of thing. It's just here, you can't.

Mr. Morey – Well, that would be my argument, that you know it's allowed outside. It was allowed before. There's a situation... They may want to...

Mr. Olden – Actually it is allowed here as long as you don't live in it.

Mr. Morey – As long as you don't live in it, exactly.

Mr. Olden – It's all a question on how that's all (inaudible). I guess another question, I don't know if this is the proper time to ask it or not. But who, who or what, if they don't actually go for a Certificate of Occupancy for that place, who's to say whether it's a construction trailer or a residence?

Mr. Morey – I don't know. There's probably...

Mr. Hall – Probably him (indicating Mr. Belden).

Mr. Belden – The code, the code does. It's to be used as an office. You're, you're saying if you were to...

Mr. Olden – If we were to put the trailer on the lot, who's to say whether it's a res... If they don't actually go for a Certificate of Occupancy, it's not considered a residence. I know from... I have actually personally lived in a house for almost six months that was a new construction house without a C.O. waiting for a sale, but just, I mean, it was still considered under construction or whatever. So I mean, without a C.O., who's to say it's actually a residence?

Mr. Belden – A C.O. is issued by the Building Department. I... You'd be in violation with the Town Zoning ordinance.

Mr. Olden – If you were to put a trailer in there and say it was a construction trailer, I mean, it's...

Mr. Hall – I'd say, have you met Charles Wallace?

Mr. Olden – Who?

Mr. Hall – The County Code Enforcement?

Mr. Olden – No, I know Charlie Wallace.

Mr. Hall – He is going to have to sign off on your eventual...

Mr. Belden – And I'm...

Mr. Hall – ...residence.

Mr. Belden – ...I'm going to have to authorize him to even issue a building permit, and you wouldn't... The building permit process starts with the zoning and you don't meet the zoning, so you wouldn't (inaudible) it there anyways.

Mr. Olden – But for a construction trailer, that wouldn't (inaudible), correct?

Mr. Belden – But you're not looking to put an office there.

Mr. Olden – That could be the construction office.

Mrs. Corlew – That's for another day. That's not for now.

Mr. Morey – Okay, at this time, we'll close the public hearing and we have other business. You're welcome to stay and listen if you have

nothing else to do. It... We've got to do the organization of the board. Once again, I'm sorry we, we couldn't help you. It's the way the, the law is written. It just, we don't have any leeway there.

Mr. Moffitt - We'd be in big trouble if we...

Mr. Morey - We, most of the time, can find a way to help someone if it's possible, but with a use variance, not just for you, but for anybody, it's, very, very few of those are granted. It's, it's an uphill battle anytime you try to change the zoning, is what your, in effect, doing. The courts have not looked on that kindly and, and because of that, there's, there's a lot of case law about what we can't do. So, and a lot of variances have been overturned and nullified by the courts afterwards (inaudible). So once again, I'm sorry.

Mr. Hall - And believe me, if I could have found a way, I would've 'cause of my past experiences. I know what you're going through. I couldn't even win my own.

Mr. Morey - I voted for you, Al.

Mr. Hall - Yeah, but my neighbor who lived in the house trailer couldn't. He voted no.

Mr. Olden - Alright. Thank you, guys.

Mr. Hall - Okay. You know, you're a bit of a disappointment tonight. I expected you to show up in a suit and a tie, in keeping with our past...

Mr. Belden - No, that, that left. That's gone forever.

(Laughter).

Mr. Morey - I figured I'll show up with that over at Alexander's and that'll be the next time.

(Laughter).

Mr. Hall - Marrying and burying suit. Right you are.

Mr. Moffitt - If you see me in a tie and suit, you know I'm doing something else.

Mr. Morey - 40 years ago, I was married and (inaudible).

Mr. Hall - I hope there's another 40 (inaudible).

Mr. Morey - I don't know, the suit will probably still fit. I don't it wear until (inaudible).

(Laughter).

Mr. Morey - Okay, the next item of business is the organization of the board. The first part of that is appointment of a Vice Chairperson and a Secretary. Who'd like to be Vice Chairperson.

Mrs. Winslow - I nominate Al.

(Laughter). (Tape inaudible).

Mr. Hall - You're what?

Mrs. Winslow - I nominate you. Al.

Mr. Belden - Well, no one gets to it, sooner. So I mean...

Mrs. Corlew - She's so quick.

Mrs. Winslow - (Inaudible) Chairperson?

Mrs. Corlew - You're so quick.

Mr. Belden - Chair's already been appointed by the Town Board, so.

Mrs. Winslow - You don't have a choice.

Mr. Morey - (Inaudible) Vice Chairman or is..?

Mr. Moffitt - I'd rather not.

Mrs. Winslow - He's the Secretary, isn't he? Or do we have to do that again?

Mr. Hall - Which means you get to sit in the hot seat.

Mrs. Corlew - You have to do that again.

Mr. Hall - (Inaudible).

Mr. Morey - That's right. Or you who has experience.

Mr. Hall - I had that once and I came up against a couple of those environmental lawyers...

Mrs. Winslow - Mark will... Mark will always be here.

Mrs. Corlew - Mark will always be here. He promises.

Mr. Moffitt - Al...

(Tape inaudible; people talking at once).

Mr. Moffitt - I could visualize you as the Vice Chairman.

(Tape inaudible).

Mr. Hall - We are looking for another person for this board, are we not?

Mr. Belden - Yeah.

Mrs. Corlew - I guess.

Mr. Belden - Do you know anybody?

Mrs. Winslow - I'm asking people.

Mr. Morey - Ms. Winslow has, has nominated Mr. Hall, unless he refuses.

Mr. Hall - Are you sure after the last application, you want me (inaudible) again?

Mr. Moffitt - I'll second.

Mr. Hall - I'll accept it, but somebody's going to have to do some heavy coaching on it.

(Laughter)

Mrs. Corlew - We'll guide ya.

Mr. Belden - We'll hold up cue cards for you.

Mrs. Winslow - There won't be a quorum if Mark's not here.

Mr. Morey - Secretary, I believe you're Secretary now, Donne?

Mrs. Winslow - No, I think, I think Harold is, isn't he?

Mr. Morey - Harold, you're secretary.

Mr. Moffitt - Yeah. I was away at a church meeting and got (inaudible).

Mrs. Corlew - Yes.

Mrs. Winslow - I mean...

Mr. Hall - So you got nominated.

Mr. Morey - (Inaudible) too tough for you.

Mrs. Corlew - I think he was, yes. So you might as well, stay it.

Mrs. Winslow - You might as well stay it.

(Laughter)

Mr. Moffitt - Thank you, girls.

Mr. Morey - All those in favor, vote aye.

Mrs. Winslow - Aye.

Mr. Morey - Aye. Okay, that, is this night good for the meetings and the times.

Mr. Moffitt - It is.

Mr. Morey - With everyone? It is for me too.

Mr. Hall - Same...

Mrs. Winslow - We don't get together very often so.

Mr. Belden - Yeah, since October, so.

Mr. Hall - That's about it.

Mr. Morey - Okay. Then all those in favor, say aye.

Mr. Moffitt - Aye.

Mrs. Winslow - Aye.

Mr. Hall – Aye.

Mr. Moffitt – Let the record reflect that Mr. Hall is the Vice Chairman and Mr. Moffitt remains the Secretary and the meeting nights and times remain the same.

Alan Hall was appointed Vice Chairperson and Harold Moffitt as Secretary. Meeting night and time is designated as the third Thursday of each month at 7:00 p.m.

Mr. Morey – Any other business?

Mrs. Corlew – Nope.

Mr. Belden – Just the training session on the, I guess, the 23rd. If we get anything else, we'll send them your way. We're, we'd like some more zoning board members, even some alternates, so if you guys know anybody...

Mrs. Winslow – I've asked one person, but he... I said, we don't meet that often. It's not that big... But... It's not that big a deal.

Mrs. Corlew – That didn't attract them?

Mrs. Winslow – No.

Mr. Belden – You're not a very technical bunch, ya know. I mean, other towns, they can get awful technical, so it, I don't, ya know.

Mr. Morey – Alright, at this time we'll close the meeting. I'll make a motion to close the meeting. Do we have a second?

Mr. Hall – I'll second.

Mr. Morey – All those in favor.

Mrs. Winslow – Aye.

Mr. Moffitt – Aye.

Motion by Mark Morey, second by Mr. Hall and carried to adjourn Zoning Board meeting of April 9, 2015 at 8:01 p.m.

Respectfully submitted,

Patti Corlew
Recording Secretary

Zb04092015

RESOLUTION #2015-1

Motion by: Mark Morey
Second by: Harold Moffitt

RESOLVED, to open the public hearing for application ZBA 2015-1 by Juanita Bradway and Jami Olden, for a use variance.

DULY ADOPTED ON THIS 9TH DAY OF APRIL, 2015 BY THE FOLLOWING VOTE:

Ayes: Donne Lynn Winslow, Alan Hall, Mark Morey, Harold Moffitt
Nays: None

RESOLUTION #2015-2

Motion by: Mark Morey
Second by: Alan Hall

RESOLVED, to deem application #2015-1 by Juanita Bradway and Jami Olden, tax map #211.17-3-23, for a use variance, as an unlisted action under SEQRA review and finding that there is no significant environmental impact.

DULY ADOPTED ON THIS 9TH DAY OF APRIL, 2015 BY THE FOLLOWING VOTE:

Ayes: Donne Lynn Winslow, Alan Hall, Mark Morey, Harold Moffitt
Nays: None

RESOLUTION #2015-3

Motion by: Mark Morey
Second by: Donne Winslow

RESOLVED, to approve application #2015-1 by Juanita Bradway and Jami Olden, tax map #211.17-3-23, located at 46 Ridge Avenue, for a use variance, to allow temporary installation of a mobile home.

DULY ADOPTED ON THIS 9TH DAY OF APRIL, 2015 BY THE FOLLOWING VOTE:

Ayes: None
Nays: Donne Lynn Winslow, Alan Hall, Mark Morey, Harold Moffitt