

**VILLAGE OF MONROE
ZONING BOARD OF APPEALS
PUBLIC HEARING
January 10, 2023**

DRAFT

PRESENT: Chairman Baum, Members Zuckerman, Gilstrap, Czerwinski, Alternate Member Doherty, Board Attorney Naughton, and Assistant Building Inspector Proulx

Absent: Member Margotta

Chairman Baum called the meeting to order at 8:00 pm with the Pledge of Allegiance.

Chairman Baum appointed Alternate Member Doherty in as a voting member for this meeting.

Applications:

The continuation of the application of Ziad Abou El Ardat, for an area variance from the Table of District Use and Bulk Regulations, SR-20 Zoning District, to add a 15' two-story addition to a single-family house which will have less than the required minimum side yard setback of 20' (14.5' is proposed). The property which is the subject of action by the Board is located in SR-20 district and is identified as Section: 230 Block: 2 Lot: 3 on the Tax Map of the Village of Monroe and is known as 97 Fredrick Drive.

The applicant, Mr. El Ardat and Architect, Marcie Weisberg, were present. Mr. El Ardat asked the Board to look at the memo he had submitted to the Board about the hardships he would encounter if he built the addition out the back side of the house verses putting the addition on the side. Mr. Ardat stated that at the last meeting he took the Board's advise and got an architect and made a list of the hardships he would encounter if the addition went out the back of the house verses adding to the side of the house. The list included the following items:

- A large seventy-five-year-old tree would need to be disturbed. The family loves this tree.
- It would reduce the play space in the back yard for his children. The grass area would be reduced in order to accommodate the addition.
- Would require a reconfiguration of the back yard that the family has already invested money in with a pool and a trex-deck. The yard slopes to the side so a plan would have to be made for the slope.
- Would require a major reconfiguration of the exterior and interior of the house. The exterior of the house would be an L-shape. The interior would be blocked from getting natural light. A kitchen window that looks out to the back yard would have to be eliminated.
- Access to the garage would be affected. An addition on the side would allow straight access into the garage but they would lose space to turn around. The addition cannot be built upwards as the Building Code does not allow a third floor.

Chairman Baum asked if the kitchen was on the second floor. Mr. El Ardat stated yes. Mr. El Ardat stated even with the side addition his house would be forty-feet from his neighbor's house.

Member Zuckerman stated the Board looks at the distance from the property line not the distance from one house to the other.

Ms. Weisberg stated this house was a model home and the layout is different from the other houses. It is the only house in the neighborhood with this plan. There is no actual living space on the upper level, just the kitchen, dining room and a bedroom. Working with this family the house does not meet their needs. This design is the most straight forward and least destructive plan for this house. There is a pool, a large deck and the property drops-off in the back. Chairman Baum asked if this plan called for a family room to be added upstairs. Ms. Weisberg stated no, the plan was to add the family room downstairs so it allowed access to the back yard from the family room. Ms. Weisberg stated there is a living room on the first floor not a family room. It does not open out to the back yard like a family room would. Chairman Baum stated the plan calls for the current garage to be converted to a larger family room which will have a walk out to the back yard. Ms. Weisberg stated yes, that is correct.

Mr. El Ardat stated that the addition would extend the master bedroom, and add a new walk-in closet, a home office and a gym.

Member Zuckerman stated the size of the addition is a concern. The current situation is that the cars come into the driveway, make a turn and go into the garage. There is room to turn the car(s) around to exit onto the street going forward. With this new plan they would have to back out into the street from the garage as there would no longer be a turnaround in the driveway. Mr. El Ardat stated yes, but it is not a busy street. Member Zuckerman stated there is a safety concern backing out into the street. Member Zuckerman stated the average one car garage could be as large as 12 feet in width but the plans call for the garage being 15 feet wide. Mr. El Ardat stated he measured his car and it needs 15 feet so the car doors can fully open. Ms. Weisberg stated garages are now built bigger and 12 feet is small for a one car garage. Member Czerwinski asked if they considered a smaller garage, as the Board looks at the size of a variance not just what the variance is. If the garage was smaller the variance would be smaller. Ms. Weisberg stated she was not sure that was an option. She felt 12 feet wide was too small for a garage.

Member Zuckerman stated this property is in the SR-20 district, which means you have to be 20-feet from the property line. This request is pushing that down by five and a half feet. In the SR-10 district it is 15-feet to the property line. This request is asking for a property in the SR-20 district to have almost the same size set back as the smaller properties in the SR-10 district. This means he is getting too close to his neighbor. Mr. El Ardat stated he has spoken with his neighbor who is fine with the plan but he will not submit a letter or anything to the Board about that. Member Gilstrap stated it is normal for the neighbor to submit a letter and it is odd that he will not submit the letter. Member Zuckerman stated the variance stays with the land and the next neighbor may not agree.

Member Gilstrap stated the Board needs to see what minimum variance would be necessary and adequate and if this can be done without a variance. You have stated the reasons you cannot go out the back of the house, but can the garage go off the back? What is the essence of this request? The essence is you need a new garage in order to convert the current garage into a family room and you want to add additional space on top of the garage for various purposes and it would appear that this is a way to do that. But, it is tough to say it is necessary to bring the addition off the side. Mr. El Ardat stated it is not feasible for all the reasons listed earlier. Ms. Weisberg stated the current garage depth is one-half of the width of the house, and putting the garage in the back would

impact the back yard. And, as for the interior level, what interior rooms become obstructed by the addition going out the back of the house

Mr. El Ardat stated the problem is with the interior, the family needs a family room, the kitchen needs natural light. He states the addition going out the back effects the natural lighting in the interior of the house and impacts the kitchen's view. Member Gilstrap stated that as an architect they are looking at this as the best way to meet the client's needs but the Board is looking at what is necessary and needed. If there wasn't a problem with the side setback, this plan would fulfill Mr. El Ardat's needs. We do have a setback issue here and the Board needs to look at what is necessary and adequate. I am still looking for the argument that this is necessary to be built this way.

Member Czerwinski asked Mr. El Ardat to explain why the extra three feet for the garage is needed and why a slightly smaller garage would not work. Mr. El Ardat stated they need a bigger garage to accommodate their SUV but more importantly the three feet is needed for the interior space and the rooms that will be added. Ideally Mr. El Ardat would like a two-car garage but he is fine with a one car garage as it is the minimum they need. This design is the minimum amount of space the family needs.

Chairman Baum stated this is a new community and if the Board starts giving variances it will affect the community at large and the look and feel of the neighborhood. What precedence does this set? If we are saying this is the only way this can be done for the family and this is the minimum needed, that is one thing, but Chairman Baum is not sure this is the case. If the Board has looked at every alternative and examined every means necessary then it would not be setting a precedence. Every situation is unique but the Board wants to make sure it has looked at all feasible alternatives. Has the Board looked at all the alternatives? Is there another way to do this? Chairman Baum stated while every application and property is unique, all alternatives need to be looked at.

Chairman Baum stated even though he is not an architect, based on the layout of the house, is there a way you can meet the needs of this family without a variance by going into the back or decreasing the size of the structure? Or some sort of combination of the two? Ms. Weisberg stated she would have to look again. She and Mr. El Ardat have already looked at the alternatives and this plan is the best option. Ms. Weisberg stated there is always another way to do it but at what cost? In this particular case because of the money spent on the backyard and the slope it would be very costly to reconfigure the back yard. And, it would change the look and feel of the house. This plan would be more in keeping with the neighborhood. Due to the property being on a corner you can see into the back-yard. Also unusual is that the retaining pond for the neighborhood is on the property.

Chairman Baum stated that the Board is asking if this addition went into the back yard what would have to be done. What would be the level of disturbance? What would that entail? Ms. Weisberg showed the drawn plans. Ms. Weisberg stated they already did that exercise and pointed out on the plans what they are doing. Chairman Baum stated that this was not done before the Board. Can they show the Board what that looks like? Chairman Baum stated they may have but the Board did not see that. Chairman Baum stated he is not convinced that if they go out the back they will lose the large tree. He appreciates they did the exercise but it is part of the Board's job to see the exercise to determine if this plan is best.

Member Gilstrap asked if Mr. El Ardat knew what type of tree was in his back yard. Mr. El Ardat stated he did not know. Member Gilstrap stated he believes it is a maple tree as he has maple trees

on his property as well. If it is a maple tree Mr. El Ardat could contact an arborist to see how much stress the tree could take. Member Gilstrap stated has spoken to an arborist in regards to his tree and found that maple trees are very hardy. They can stand a certain amount of stress and they may be able to withstand work being done in the backyard without being affected, maple tree roots can be cut and can withstand stress from some degree of construction.

Chairman Baum stated that all the Board is asking at this point is if they could go back and take a look at the plan. Ms. Weisberg stated they have already done that exercise and this is the best plan. This plan is more straightforward. Chairman Baum stated he appreciates they did that but the Board needs to see that. It is the Board's job to look at all plans and decide which is the best course of action. The architect cannot just say in their professional opinion this is the best plan of action. Show the Board that exercise.

Member Gilstrap stated this is not about finding the best solution which is what you have done but finding what is necessary and needed. This means you may have to look at it differently from how you have been looking at it up to this point. It does not take into consideration whether the powder room is the right size or if the gym is big enough. The Board takes into consideration if this meets what is necessary and needed. This is not the kind of argument that the Board needs to hear. Without the alternatives being presented to the Board, there is no need for the Board as all applicants can just outline their arguments for what they want. Applicants need to prove to the Board that there is no other solution that will work except what is being presented. The Board needs to make sure the variance is the minimum needed.

Mr. El Ardat asked if the garage was 13-feet would the Board work with that? Member Gilstrap stated Mr. El Ardat and Ms. Weisberg should look at that. Member Gilstrap stated they should try to come up with a plan that is a little less wide that the applicant would be happy with. If they do that they can come back to the Board, and amend the application. Ms. Weisberg asked if they said the garage would be 13-feet could the Board make that determination tonight. Member Gilstrap stated no, the new plan would have to be reviewed and the application would need to be amended.

Chairman Baum stated the Board can grant less relief that they are seeking but he is still not convinced that this is the only feasible alternative and that is what the Board needs to see. If there is a large cost involved in having the addition go out back then what is that number, what are the problems, what are the cost associated with those problems? If no other alternative plan is feasible the Board may have to consider this plan.

Member Gilstrap stated what the Chairman is trying to say is there may be an alternative plan that has not been considered. There could be a no variance solution here. The Board needs to be shown those alternatives.

Mr. El Ardat stated he understands what the Board is saying but nothing else will help his family. His wife has agreed to the 15-foot addition. We have discussed this either we do a 15-foot addition or we move. So go ahead and vote on the application as it stands now.

Member Zuckerman explained there are New York guidelines that the Board has to go through. One of the guidelines that we have to decide on, is whether request is substantial. If you could prove that you would still need a variance, you should get as close to the set-back for an SR-20 as you can get.

Chairman Baum stated it looks like the applicant does not want to look at alternatives and wants us to vote on the application as it stands and he does not want to come back to the Board. Chairman Baum asked Mr. El Ardat if that was his position. Mr. El Ardat stated yes, that is his position.

Chairman Baum asked if there was anyone from the public who would like to speak. There was no one from the public present to speak on this matter.

On a motion by Chairman Baum and seconded by Member Czerwinski it was resolved: **The public hearing for 97 Fredrick Drive be closed.**

Aye – 5

Nay – 0

Absent: Member Margotta

On a motion by Chairman Baum and seconded by Member Gilstrap it was resolved: **This application is classified as a type 2 SERQA action and is not subject to any further action.**

Aye – 5

Nay – 0

Absent: Member Margotta

The Board had a discussion on the five New York State area variance guidelines:

- 1) Will this have an undesirable change in the character of the neighborhood or a detriment to nearby properties will be created by granting an area variance? Chairman Baum stated this does have a possibility to create an undesirable change because it would impact the zoning scheme in that neighborhood which is relatively new. This neighborhood was not pieced in from forty or fifty years ago. This change could disrupt what the Planning Board spent a lot of time and energy to decide on. It has the potential to set a precedence which could change the whole character of the neighborhood. The Board members agreed that the answer was yes.
- 2) Can the benefit sought by the applicant be achieved by some other feasible method and would not require a variance? Chairman Baum stated we do not know the answer to that and we have asked the applicant to explore potential alternatives but he has declined to do so. In the absent of being able to explore that the Board cannot say there is no other feasible alternative at this point in time. There may be a feasible alternative. Member Czerwinski stated there are other options theorized tonight but the applicant does not want to consider them. The Board members agreed that the answer was yes.
- 3) Is the request for an area variance substantial? Chairman Baum stated while it is only a 5.5 feet variance being requested it represent a more then 25% reduction for the set-back. Member Zuckerman stated while the Board has tried to determine whether it is substantial or not, substantial could also include if it is a precedent and therefore, would be of a nature that is beyond just measuring the size numerically. Therefore, it is substantial. The Board members agreed that the answer was yes.
- 4) The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood? Chairman Baum stated he did not think it would have an adverse or environment impact to the neighborhood. Member Zuckerman stated while he does know there is no law in New York State, about backing out of your drive way, he does feel it is a safety concern. The plan eliminates the driveway turnaround. The Board members agreed that the answer was yes.
- 5) Is the difficulty self-created? Chairman Baum believes this was a self-created difficulty. While this is relevant to the Board's determination it does not preclude the voting for this issue. Member

Gilstrap explained to Mr. El Ardat that all applications almost always get the same answer for this one. The Board members agreed that the answer was yes.

Having discussed the factors for an area variance, and in considering and weighting the application an evidence, the Board determined to make a motion to deny the application.

On a motion by Chairman Baum and seconded by Member Zuckerman it was resolved: **that the application for an area variance for 97 Fredrick Street be denied.**

Aye – 5

Nay – 0

Absent: Member Margotta

129 Spring Street Apartments:

The application of the Planning Board Village of Monroe for review of administration determination or order of the Building Inspector. The property which is the subject of action by the Board is located in the URM district is identified as Section: 207 Block: 4 Lot: 11.1 and Lot 15 on the map of the Village of Monroe and is known as Spring Hill Apartments LLC 129 Spring Street.

Member Zuckerman recused himself. Chairman Baum stated that with Member Zuckerman recusing himself it leaves the Board with four voting members as Member Margotta was absent. Chairman Baum asked the applicant if they would like to adjourn or proceed. Elizabeth Cassidy, Attorney for the Planning Board, stated they would like to proceed.

Attorney Cassidy stated we were here tonight because we are utilizing a process codified in the code. Normally the Building Inspector makes decisions in respect to applications and this Board's purpose is to be a safety valve when the Building Inspector, who is human, makes mistakes.

We are here tonight solely on one issue: the stone façade that is installed or is in the process of being installed on the property. You have before you the application which was prepared by myself pertaining to the Planning Board's site plan approval which incorporates the rendering that was of much discussion for the Planning Board. In the application are pictures of what was actually installed versus the rendering and you will see those are two very different items. With me here tonight is the Chairman of the Planning Board Jeff Boucher and Member of the Planning Board Fred Kelly.

Before we start I am compelled to address a letter received by the ZBA dated January 6, 2023. I just received it this evening and I did have an opportunity to review it. I want it on the record, as there is an allegation that the property owner has not been properly served. I have a copy here for you of the building application that was filed on the property. I note that the application lists 175 Quackenbush Lane Monsey New York which matches the address on file with the New York Department of State for processing. We had that address last cycle and notified that address. In addition, we sent a full copy of the application by Priority Mail to that address and I have proof of mailing to that address. I also note that the application references PRGReality@gmail.com as well as a phone number of (845) 590-5540. The applicant is listed as the owner. I note that both that email address and that phone number are the contact information for Mr. Lipa Deutsch who states he is not the owner. While I appreciate he may or may not be the owner, this is the information given to us on the Building Application as the contact information. Long story short the record owner has been served. I will present those materials to your Board Secretary.

I also note for the record that your secretary also happens to be the Planning Board secretary and I have correspondence with the secretary that she has attempted more than once to contact that phone number as early as if not earlier than November 8, 2022 in order to explain what was going on and to attempt to notify the owner. We also attempted to notify the development team of record, that the Planning Board took exception with the stone being installed.

Chairman Baum stated before you go on, I am glad you brought that up, as that was going to be my question. Do we know for a fact that Spring Hill Developers LLC is the owner of the property? Or did the property change hands since the building started? Ms. Cassidy stated Spring Hill Developers LLC was the developing entity of the property. After the property received its approval, it was changed to Spring Hill Apartments LLC at the 175 Quackenbush Lane Monsey address and the current listed owner is Spring Hill Apartments LLC. I will note based on my review that the PRGReality@gmail.com was frequently used throughout the email chain. I cannot confirm but it appears that they are related. The Planning Board as well as the Planning Board secretary made every effort in good faith to contact the owner. I know counsel is here on behalf of Mr. Deutsch. It was certainly not for the lack of trying to contact the owner.

Chairman Baum stated the notice was sent to the Spring Hill Apartments LLC which is both the address shown on the Building Application as well as with the Department of State for the State of New York. Planning Board Attorney Cassidy stated yes, Spring Hill Apartments is the current record owner and we also sent notice to 129 Spring Street Monroe New York as well, as that is the assessment address. And, for both cycles the 129 Spring Street notices were returned as there is no mail receptacle at that address to receive mail as it is a construction site.

Board Attorney Naughton stated that the county web site shows that the property was transferred from Spring Hill Developers LLC to Spring Hill Apartments LLC as the owner in August of 2021. However, for the purpose of mailing it was mailed to Spring Hill Developers LLC at the address listed for them.

Chairman Baum asked if Spring Hill Apartments is the current owner, and what their address is? Attorney Cassidy stated 129 Spring Street Monroe New York. Chairman Baum asked if that was the address on the tax rolls. Attorney Cassidy stated yes. Chairman Baum asked if that was the address on the Department of State for the State of New York's web site. Attorney Naughton said she would check that. Attorney Cassidy stated both addresses were served. Chairman Baum asked if the notice that was sent to 129 Spring Street Monroe New York was the address that was returned and that is the address on the tax rolls. Attorney Cassidy stated yes, that is correct. Chairman Baum asked if it was also mailed to 175 Quackenbush Lane Monsey New York. Attorney Cassidy stated yes. Chairman Baum asked where the 175 Quackenbush Lane Monsey New York address came from, was it the address on the application. Attorney Cassidy stated yes. Board Attorney Naughton stated on the Department of State web site for the State of New York it lists 175 Quackenbush Lane Monsey New York for Spring Hill Developers as the address to notice. Chairman Baum stated the Department of State for the State of New York has the address for service as 175 Quackenbush Lane Monsey New York and the tax rolls have the address listed as 129 Spring Street but the application has the address as 175 Quackenbush Lane Monsey New York and that is where you mailed the materials to? Attorney Cassidy stated yes. Chairman Baum asked how was that mailed. Attorney Cassidy stated via Priority mail with tracking and she received proof of delivery.

Chairman Baum asked Board Attorney Naughton if she looked at this and that the service upon the property owner was adequate. Board Attorney Naughton stated yes, this complies with the Village Code.

Chairman Baum asked the Board members if they had any problems or objections to the method that the property owner had been served. Member Czerwinski stated no, the owner had plenty of opportunity to appear here tonight as they were notified.

Chairman Baum told Attorney Cassidy to proceed. Attorney Cassidy stated that she wanted to address the letter from Zarin & Steinmetz.

Chairman Baum reviewed the letter and stated they were asking for an adjournment. Chairman Baum asked the Board members if they had the letter from January 6, 2023. The Board members stated yes, they had the letter. The Board secretary stated she had emailed a copy when the letter arrived and made hard copies that were on the Board members desk tonight.

Chairman Baum asked if the Board was okay with the Board hearing this matter despite the objections in the letter. Chairman Baum stated based on advice of counsel and what he has heard he was okay with proceeding. Member Gilstrap stated he would like to hear a little and wondered if there was someone from that firm here to explain the letter.

Attorney Cassidy respectfully requested that the public hearing be opened. Chairman Baum stated he did not want to open a public hearing if there is a valid objection to the Board hearing this application. Attorney Cassidy stated at this point the Village Planning Board has noticed this application twice and has done everything within its control to provide notices as required by the Village Code to notify the owner. Chairman Baum understands that and what was done. He appreciates the effort and steps that were taken to notify the applicant, but we have our advice of counsel. Board Attorney Naughton advised the Board that they should not be hearing full testimony as this time, but to keep the questions limited to the letter. Chairman Baum stated before we continue with testimony in regards to the application we will hear from the representative for Mr. Lipa Deutsch regarding their request for continuation and why this Board should not hear this matter tonight.

Attorney Lee Lefkowitz from Zarin & Steinmetz, spoke on behalf of Mr. Deutsch. Attorney Lefkowitz stated he was there to speak for Mr. Deutsch as the property manager not the property owner. There is no representative here for the property owner. Besides the issue notifying the owner there are other reasons we are here. Zarin & Steinmetz served a FOIL request on December 21, 2022 to the Planning Board asking for documents and communications relating to the project. We are trying to understand what precipitated this issue. Those documents are needed so I can properly and fully represent my client which is the primary reason we asked for the adjournment. For that reason and the ambiguity of serving the owner we are asking for an adjournment.

Chairman Baum stated okay but you are not representing the property owner. Attorney Lefkowitz stated they are because he represents the construction manager Mr. Deutsch. Chairman Baum asked if Mr. Deutsch works for Spring Hill Apartments LLC or Spring Hill Development LLC. Chairman Baum stated he was going to be blunt. You are coming to this Board and saying you are not the owners and you do not represent the owner but you want an adjournment on behalf of the applicant but you are not going to tell the applicant that this is going on and because I don't know why. And, the owner does not want to come forward, but you are going to come forward as an interested party. Just because Mr. Deutsch is the facilitator it does not make him privy to the

project nor is he a necessary party to the application, so I am not clear as to the nature of the application. This would be like a neighbor coming down and saying I don't want you to hear this thing, I don't represent the owner but we still don't want you to hear it for some reason. Attorney Lefkowitz stated he was there to defend this project even though they are not the owner. Chairman Baum asked if they have standing to defend this matter. Do you have any standing whatsoever to be here and defend this project when you are not dealing with the owner? Attorney Lefkowitz stated yes, as you are not required to have standing to speak at a public meeting, and I am here to defend it. I raised the ambiguity in regards to notifying the owner merely to point it out to the Board. Again, our main reason is we need a response to our FOIL request so we can fully understand and represent the project. I do not see the harm in allowing one more month to get the response to the FOIL request.

Member Gilstrap asked if Attorney Lefkowitz represented Mr. Deutsch who is an employee of the owner, is that right? Attorney Lefkowitz stated that is correct. Member Gilstrap stated he does not understand why he was there speaking in defense of the project but not as a representative of the owner. Mr. Deutsch has rendered his service to the owner and that is the end of his part in this. By Mr. Deutsch asking you to represent him, is he trying to stand in place of the owner. How does that work exactly? He cannot stand in the place of the owner to defend the project unless the owner has authorized you, or unless Mr. Deutsch has some kind of authority thru the owner. Attorney Lefkowitz stated he is not trying to represent the owner and he feels we are getting hung up on serving the owner. The main reason we are here is that we need the FOIL document.

Chairman Baum asked Attorney Cassidy for a response. Attorney Cassidy stated this is a very narrow issue and she does not believe the FOIL request will provide much information on this issue. The Board has before it the application. The stone that was installed either conforms to the site plan rendering or it doesn't. No level of FOIL request will make a difference. All the information that has been provided to the Board, has been provided to the applicant, so we are really at a very narrow issue. That is all we are asking this Board to review, does the stone match the rendering. To adjourn for this FOIL request, looking at the nature of the request, I don't think will matter in this issue. The sole question is: does the stone match the approval? All the material needed to answer that question is in the application. The application was handed to Zarin & Steinmetz at the last meeting. That is the extend of what the Planning Board is asking this Board to evaluate.

Chairman Baum polled the Board to see if anyone had any objections to proceeding or if they wanted to adjourn for the benefit of Attorney Lefkowitz and Mr. Deutsch. Chairman Baum felt the Board should proceed and Attorney Lefkowitz can speak up as a member of the public. Member Czerwinski stated he agrees that there was good faith effort and best effort was done to reach the owner who has chosen not to appear. A person who has contact with the owner did receive those papers and as Mr. Lefkowitz stated he does not represent the owner and the owner has made the determination not to defend the project. The Board can hear them speak as members of the public so we will hear what they have to say.

Member Gilstrap stated he has a couple of questions for Mr. Lefkowitz or Mr. Deutsch. Looking at the letter dated December 6, 2022 it advises the Board that the owner was not served properly. How did you establish that the owner was not served? Attorney Lefkowitz was advised by Mr. Deutsch that was not done. Member Gilstrap stated that last month when this Board heard this matter there was good reason to believe that the owner was not served, but now Mr. Deutsch who works for the owner has spoken to the owner. Mr. Deutsch stated he has not spoken to the owner. Member Gilstrap asked how can the letter state the owner has not gotten notice if you have not

talked to the owner? Chairman Baum agreed. Member Gilstrap stated the letter states the owner has not been properly noticed, how did you establish that? Attorney Lefkowitz stated Mr. Deutsch told him the owner was not notified. Again, I pointed this out as it appears there is ambiguity whether service was done properly or not. Member Gilstrap asked Mr. Deutsch directly, are you saying you have not spoken to the owner about these proceedings, is that correct? Mr. Deutsch stated yes, he has not. Member Gilstrap stated maybe the service has taken place and the word has not reached Mr. Deutsch or Attorney Lefkowitz.

Member Gilstrap asked Attorney Lefkowitz what could be revealed in the FOIL response that would affect whether or not we should not go forward. Can you tell the Board what you are looking for?

Attorney Lefkowitz stated the FOIL request asks for all communications, and documents. What we expect to show here is that the stone at issue here does in fact conform to the rendering, we encourage you to look at the renderings. Attorney Lefkowitz stated they do not know what they are going to get. They asked for all communications but we don't know what they will show. If you look at the rendering and the stone they look the same. We cannot understand why we are here tonight over stone that appears to be identical to the rendering. Member Gilstrap stated we are going too far into the details at this point. Member Gilstrap stated he has satisfied his concerns about whether we should proceed or not. Member Gilstrap stated he understand Mr. Deutsch is the day-to-day manager and he feels quite reasonably he should speak to issues that come up with the project and he has retained Attorney Lefkowitz to do that. But, on the other hand he is not the owner which is the problem I have. If Mr. Deutsch had the authority from the owner I would feel differently. While we want everything to be done properly, I have a hard time stopping everything for a member of the public.

On a motion from Chairman Baum and seconded by Member Gilstrap it was resolved that: **The letter to adjourn the hearing requested in Zarin & Steinmetz letter dated December 6, 2022 be rejected and the hearing proceed.**

Aye – 4

Nay – 0

Absent: Member Margotta

Chairman Baum asked Attorney Cassidy to proceed with the case. Attorney Cassidy stated in front of you is the application prepared by myself and signed by the Planning Board Chairman who is here tonight. After I have finished my comments he will speak. From the history of this project we know that the applicant started to install what appeared to be a skim coat which was troweled to look like stone. As you will see this was not on the approved site plan resolution or the rendering.

Chairman Baum asked Attorney Cassidy to walk the Board through the application. Attorney Cassidy identified which page(s) had each piece of information.

Chairman Baum, looking at the Planning Board resolution for the project, stated that in item Number 7 it states who made the renderings. He wanted to know where the renderings were and why they were not marked and labeled. For example: Where is the last revision date? Who made the renderings? How does he know these are the correct renderings? Chairman Baum stated he does not know and, how does he know these were the renderings referred to in the resolution if they are not marked as such? Which renderings are you referring to when the Planning board

approved this project? Attorney Cassidy stated these are the renderings on file and are the only renderings.

There are a number of conditions in the approval. In the resolution there is a materials list which is Exhibit B in the application. The renderings were produced by the applicant's architect. Item Number 4 states the stone will be two-inch thick stone veneer with a natural stone, grey in color, and with similar size and pattern to match the rendering. It could not be ledgerstone or cultured stone. It will have a natural bluestone cap of one and one-half inch in width sloped to the outside face. The color match flashing will go under the stone, and should not stick out more the one and one-half inches from the siding. You will see the Planning Board Chairman's signature on that document. Chairman Baum asked where in the resolution of approval does it talk about these things? Why the specs were not part of the resolution? Attorney Cassidy stated condition Number 7 in the resolution states all improvements will conform to the renderings.

Chairman Baum stated the materials letter was dated August 26, 2021 and is signed by the Chairperson. The materials list is dated July 21, 2021, five months after the resolution was approved, which is March 23, 2021. Why is that? Attorney Cassidy stated there were several conditions that had to be met before the final site plan could be signed.

Chairman Baum asked if you have the list that Kevin Brody, the Architect sent to the Building Inspector on July 21, 2021, that was signed by the Planning Board Chairman August 26, 2021, why were the specs not included in the resolution of approval? Why was this done five months later? Attorney Cassidy stated in hindsight she wishes it was part of the resolution. The original draft of the resolution did not have a reference to the renderings. One of the Planning Board members stated the renderings needed to be referenced in the final resolution because that was the building they approved and they wanted to make sure it conforms to what they approved. It became a condition of the resolution for site plan and special permit use. Chairman Baum asked if there was something in the minutes that he could verify these were the renderings he was looking at. Attorney Cassidy referenced the minutes for January 13, 2020, June 2020 and March 23, 2021, which is the approval date.

Chairman Baum stated it says "approved color renderings" which you are referring to as Exhibit C which is attached to this application. Attorney Cassidy stated yes.

Member Gilstrap stated he knows Chairman Baum is trying to establish the renderings, but he does not understand how this Board has the jurisdiction to hear this case. Attorney Cassidy stated that the Village code provides jurisdiction in this matter. The Zoning Board of Appeals has the jurisdiction to hear cases that question the Building Inspector's decisions. It is an unusual situation but the Zoning Board of Appeals does have jurisdiction.

Member Gilstrap stated he heard of a case where that section was put in doubt. It was a determination in Chestnut Ridge New York, that says this type of thing should not be done. Board Attorney Naughton stated she has looked into what Member Gilstrap is saying and she has looked into if this Board has jurisdiction and found as this is a hybrid request, it is an appeal to the Building Inspector's determination as well as an interpretation in the Village code. The Chestnut Ridge case is not the same as this case. Attorney Naughton stated her reading of the Chestnut Ridge case stated there was no determination from the Building Inspector. In this case you do have a determination by the Building Inspector which she stated was informed of via an email. Member Gilstrap stated he wonders about that, Village Law states an appeal to an administrative official, in this case the Building Inspector, charged with upholding the local law, shall appeal that

determination within five days of the determination and shall be a public record. How did an email function as a determination? Board Attorney Naughton stated the Building Inspector has made the determination to approve the stone. Member Gilstrap stated the Building Inspector's email is referencing a determination he made at an earlier date so the email is not a decision. It is a reference to a determination that was already made. Board Attorney Naughton stated yes, it is a reference to a determination that was made earlier. Member Gilstrap asked if that determination was written and stored in that official's files within five business days as a public record? Normally, the Board receives a written determination from the Building Inspector stating the determination and why that determination was made and we do not have that here. Attorney Cassidy stated she requested a written determination from the Building Inspector and the email is the response she received, which is included in the application for this case. The Building Inspector stated the determination was verbal and was not written. Board Attorney Naughton stated her thought on this matter is even if there is only one email, which was not filed, it would trigger the five days' notice for an appeal but not the appeal itself. The Building Inspector is supporting that determination which is now a public document. Member Gilstrap stated the email is between two Village Official's and is not public. Board Attorney Naughton stated it is a public record as it is not attorney/client privilege and is subject to a FOIL request. Inter-agency communications can only be redacted under certain circumstance and is now public due to this application. Attorney Cassidy stated the Planning Board made an effort to get a written determination. The email is the only written document of the determination.

Member Gilstrap asked Assistant Building Inspector Proulx how often are you asked to approve or give a determination about something on a project such as this one? Assistant Building Inspector Proulx stated when a project is being constructed, never. Building Inspectors get called to do inspections, and have conversations. They look at the plans, they try to work with the contractors, they make sure the site plans are followed, but no, we are not called on to make determination. What the Building Inspector will do is log the conversation in the notes section of the inspection, we might write an email to the person doing the project, but it not any kind of determination. Unless the people from the project come to the Building Department and asked for it. If a change was needed, we would communicate with the Planning Board and it would need Planning Board approval. Member Gilstrap stated then it's not strange there was no written determination. Assistant Building Inspector Proulx stated you don't go out on an inspection and come back and put it in a formal letter. Determination are usually done ahead of time before they do the project. Member Gilstrap stated that leaves us without the documentation we normally have which is the explanation as to why the determination was made. Assistant Building Proulx stated decisions are made based on the documentation provided from the Planning Board and the Building Department was no provided with the rendering.

Chairman Baum wanted to know when a signed site plan comes into the Building Department's office, is that signed site plan now the basis for the Building Department to issue building permits for this project. At that point the Building Department will have all the building plans. Assistant Building Inspector Proulx stated they would get a site plan from the applicant and they would then compare the site plan they are given, to the site plan approved by the Planning Board. Chairman Baum then explained the Building Department would then make sure they conform to what was approved and that the plans adhere to New York State fire code, is that correct? Assistant Building Inspector Proulx stated yes.

Chairman Baum asked when the applicant submits their plans does it include a list of materials? Assistant Building Inspector Proulx stated no, the materials list was given to them by the Planning Board. The applicant's plan will list materials but not in as much detail as to the color or model.

What the Building Department went by is the materials list given to them by the Planning Board. Chairman Baum asked if the list being referred to was the one from July 2021 which he referred to earlier. Assistant Building Inspector Proulx stated yes. Chairman Baum asked if that list would have been used to make the determination on the stone? Is it the position of the Building Department that the materials used on the building meet the requirements of the August 26, 2021 letter signed by the Planning Board Chairman? Assistant Building Inspector Proulx stated yes. Attorney Cassidy stated that per the email from the Building Inspector it stated the determination was made for the stone based on the July 2021 letter. Chairman Baum stated then the Building Inspector looked at the letter, he looked at the plan and he looked at what material was being proposed and in the Building Inspector's opinion what was being proposed met the requirements and in the Planning Board's position is, it does not. Attorney Cassidy stated yes.

Chairman Baum read the letter that was Exhibit D in the application. He stated it read as follows: 2-inch thick natural stone veneer, in grey color, similar sizes and pattern to match the rendering, not ledgerstone or cultured stone. This will have a natural one and one-half inch blue stone cap sloped to the outside face. Chairman Baum asked Attorney Cassidy if what was put up does not meet that requirement. Attorney Cassidy stated correct. Why doesn't it meet that requirement? Attorney Cassidy stated it does not match the rendering. It does not match in pattern, or size and does not have that natural stone look. It was also called for not ledgerstone or cultured stone. This appears to be ledgerstone. Chairman Baum stated on the materials letter there is no specific reference to which rendering to look at. Chairman Baum stated it is the Planning Board's position that this rendering depicts stone of a particular kind and only that type of stone was approved for use in the construction of the building. Attorney Cassidy stated correct. Chairman Baum stated in the letter from Kevin Brody, the Architect for this project, there are no specs that list the manufacture, model, or product number, when you got this letter did you question the applicant and ask for the specs on the stone? Did the Planning Board look at samples? Did you act as the Architect Review Board when you approved the project? Attorney Cassidy stated yes, the Planning Board acted as the Architect Review Board but in regards to samples we typically don't look at samples for supply reasons. In light of this application we will now be defining specifics.

Chairman Baum asked if we could go back to the minutes. Attorney Cassidy pointed out in the minutes of March 23, 2021, a Board member talked about the approved color renderings. Where else is it discussed? What other meeting minutes does it appear? Attorney Cassidy stated the other dates are January 13, 2020 and June 10, 2020. Chairman Baum stated he is looking at the January 13, 2020 meeting minutes and at that point it was only a conceptual plan. Looking at the meeting minutes from June 10, 2020 does the Planning Board have the renderings as well as the site plan? Attorney Cassidy stated in terms of the project it is still evolving so no. Chairman Baum stated there were no renderings at that point just discussion on the site plan but there were no specific renderings. Attorney Cassidy stated no, not at that point. Chairman Baum stated that leaves us with March 23, 2021 being the only other reference to the renderings. Chairman Baum stated in what other meetings was there a specific discussion about the renderings, that would show the exact stone approved by the Planning Board? Attorney Cassidy stated in the September 14, 2020 meeting minutes there is mention of the renderings, that something was wrong and they said they were going to correct it. Chairman Baum stated the conversation in those meeting minutes discussed the entrances to the building but not about the materials.

Chairman Baum stated from his understanding when the Planning Board approved these plans and rendered this resolution they believed they were approving a specific stone and finish. And, that the Building Inspector did not follow that determination. Attorney Cassidy stated in the meeting

minutes for September 14, 2021, at the public hearing, the applicant presented the rendering and the stone was discussed.

Chairman Baum stated he had no further questions and asked the Board members if they had any more questions. No one from the Board had any questions. Chairman Baum asked if there were any witnesses that the Planning Board would like to present. Attorney Cassidy stated the Planning Board Chairman would speak as it was his signature on the documents. This determination to bring this item before this Board was unanimous and it was not taken lightly.

Planning Board Chairman Boucher stated he appreciates the Board for taking the time to look into this issue. Planning Board Chairman Boucher stated he would like to bring some clarity to some of the issues or series of events that were brought up. As you can understand as being Board members, the stone on a project would not be discussed at a lot of meetings. The Architect Review Board does not take place until well into the project, so the earlier minutes would rarely speak about the stone. While the Planning Board requires the applicant to bring the stone in, they could not. They could not provide the type of stone as it was out of stock and if they brought the stone in today it would be out of stock tomorrow, which is why we said do a rendering for us. The applicant stated that was costly. The Planning Board needed the rendering and the only rendering that the Planning Board looked at is the rendering before you. It was well understood by all Planning Board Members, and the Building Inspector. The Building Inspector was at if not all the meetings almost every meeting. The Building Inspector was aware that these were the renderings and they were submitted to the Building Department with the signed site plan. Even if the Building Department did not get the rendering, the resolution stated it "must comply with the rendering". Knowing the Building Inspector, he would ask where are these renderings if he did not receive them. He knew about the renderings, they were presented at two different meetings.

Planning Board Chairman Boucher stated he wanted to take us back to when the issue started. After the approval process and construction began, in September of 2022 I was heading out for vacation passing the building, and saw the initial skim coat, I called the Building Department, the Building Inspector was out so I talked to the Assistant Building Inspector. She stated they already knew and a stop work order has been issued. Two weeks later, when I returned from vacation, work was being done on the building. In between I was called by the owner directly. The owner asked to take me the Planning Board Chairman Boucher, to lunch. Planning Board Chairman Boucher stated he was only one member of a seven-member Board and the owner would need to speak with the full Board. Chairman Baum asked who did you speak to, what was his name? Planning Board Chairman stated he only got his first name, Ben. Chairman Baum stated then he did not speak with the owner. Planning Board Chairman Boucher stated he believed it was the owner as the person he was speaking with was fully informed on the project. Chairman Baum stated the point I am making is you do not know who you spoke to on that day or that he was actually the owner. Planning Board Chairman Boucher stated no, he did not know, but the person was fully informed about the project. Planning Board Chairman Boucher stated he told the caller at least three times he had to go back before the Planning Board for a field change. All field changes need Planning Board approval.

Planning Board Chairman Boucher stated that when he came back from vacation they were installing another material. Planning Board Chairman Boucher called the Building Inspector to find out what was going on. Chairman Baum stated so if I understand this correctly, you objected to the first material and they started to install a second material and you objected to that material as well. Planning Board Chairman Boucher stated yes, that is correct and the second material is what is up on the building now. The second material I also objected to. The Building Inspector stated yes, they were putting up another material. I informed him I had to call counsel. I asked

how did this happen? The Building Inspector stated the contractor presented the material to him and he checked the material list along with the renderings. What the material list stated was “not ledgestone”. The material they were using is ledgestone. I brought up a Google search to describe what ledgestone is. Ledgestone emphasizes the horizontal joints which is the very thing the Board spoke about that they don’t like. What is up there is clearly ledgestone. Chairman Baum asked how do we know that? Planning Board Chairman Boucher stated it is based on everybody in the building industry knowing this. Chairman Baum asked if there was an expert present that can tell me they went and examined this material to confirm it is ledgestone? Planning Board Chairman Boucher stated he did not.

Chairman Baum stated he is looking at the material list letter and he finds it funny. It is a letter that discusses all the materials, all the materials listed except the stone have very specific manufactures, product numbers or some identifying number, color, very specific. Including the paint, roof and decking. When it comes to the stone veneer no model number, no manufacture, no product number, nothing except “natural stone veneer 2-inch thick in grey color” not ledgestone or cultured stone. I don’t know if it is ledgestone. I have not heard any evidence that it is ledgestone or cultured stone.

Chairman Baum asked do you take issue with the color or the size or the pattern? Because it doesn’t match the rendering? Planning Board Chairman Boucher stated if you take the rendering, the sizing is completely different, the pattern and color do not match the rendering. Chairman Baum stated the stone on the materials list is very vague and you expected the Building Inspector to match this exactly? When all the other materials were very specific. Planning Board Chairman Boucher stated that all the Planning Board members looked at this and unanimously agreed it was not what the Planning Board approved. That makes seven witnesses that agree this is not the same material. Three of whom are present tonight.

Member Gilstrap asked when was it that all seven members of the Planning Board agreed and voted on the stone? Attorney Cassidy stated September 27, 2022. Chairman Baum asked if a copy of that resolution was in the application. Attorney Cassidy stated no, but she can get a copy to this Board.

Planning Board Chairman Boucher stated he was asked what was the field change. The field change was whether a completely different stone meets the material list or not; that requires the Planning Board approval. Member Gilstrap asked if he could get a definition on field change. Planning Board Chairman Boucher stated it is a change in material or a change in a number of things. Board Attorney Naughton stated she had the actual definition: A change or an adjustment to an already approved site development plan due to field conditions that will not substantially change or alter the intent, layout or design. Chairman Baum stated it is usually related to field conditions. Attorney Cassidy stated under the Village code (200-72H) the site should be developed with strict conformity with the approved site development plan except a field change may be instituted by the Building Inspector or other appropriate Village consultant, upon request of the applicant in writing or upon approval of the Planning Board. No field change shall be valid unless the requested change has been approved by the Planning Board, and details and/or drawings of the approved field change are attached to the approved site plan. Chairman Baum asked what field conditions would have been at play for this? When I see field changes or field conditions I think something like a pipe they found when digging and was not expected or they had to do something they discovered while they were in the construction process that prevented them from carrying the plans approved to the letter of the law. Member Gilstrap stated the building was being built according to specification so where is the field change? Planning Board Chairman Boucher stated

he said earlier there was a stop work order which triggered the phone call from the owner, or whomever he spoke to. Member Gilstrap stated he wanted to know where the deviation from the plan occurred. Planning Board Chairman Boucher stated once you stop a project because they are putting the wrong material up, then you expect the right material to be put up but it wasn't. Member Gilstrap stated when did this all occur. Based on what Planning Board Chairman Boucher stated there was a stop work order that was issued before he went on vacation. Member Gilstrap stated that Planning Board Chairman Boucher stated before he went on vacation he spoke with the alleged owner, they talked about a field change, which is a deviation from the agreed plan, there was a deviation, the stuff that was being sprayed on the building and that was stopped. It was to be corrected in accordance with the approved site plan, so where is the change from the existing plan? I don't see a change from the agreed plan?

Attorney Cassidy stated the mortar was put on the building, then the phone conversation happened and Mr. Boucher told the owner that a field change needed to be approved by the Planning Board. A stop work order happened, and what Planning Board Chairman Boucher said at that time, was this would require a field change. Chairman Baum stated the term field change is being used loosely. Member Gilstrap stated unless the owner stated I want to leave that mortar on, that would call for a field change. From what we are being told that situation was done and the stone had to be corrected. Did the owner state he wanted the mortar instead? Planning Board Chairman Boucher stated that situation was being corrected. Assistant Building Inspector Porulx stated the situation was being dealt with and a stop order was being issued. Planning Board Chairman Boucher stated he thinks the situation is being misinterpreted so he would like to clarify it. When the Planning Board is looking at this as part of the Architect Review Board, we clearly put out the renderings, included it in our resolution, the only renderings that was there. Chairman Baum asked if this was the only rendering, the first time the Planning Board saw it they approved it? Planning Board Chairman Boucher stated no, it was not approved the first time they saw it. Chairman Baum asked if the Board can see the other renderings that were submitted to the Planning Board for consideration? Chairman Baum stated he does not know that this rendering was approved. I am looking at the resolution, if this is the one that was approved, because normally these things contain some kind of identifier, which would include the last revision date, who drew the plans, some sort of reference to the plan so it could be identified clearly in sub sequential documents. What you lead me to believe was there was only the one rendering and this was it. Attorney Cassidy stated it was one of three and they are in the application. Chairman Baum stated he understands that but the renderings show the finished stone, were there other renderings that showed the stone where the Board stated they did not like the stone and they came back with a different stone and the Board said we like that stone. Attorney Cassidy stated no, that did not happen. Chairman Baum stated this is the first rendering they showed you and the Board said yes, we like the stone, that is the rendering we approved. Planning Board Chairman stated the Planning Board told the applicant what they wanted, then the applicant produced the rendering. The applicant did not come up with that, the Planning Board came up with it and told the applicant what they wanted based on what would fit into the character of the Village. Chairman Baum asked where was that reflected in the minutes? Planning Board Chairman Boucher stated the minutes are not a word for word transcription. Chairman Baum stated so it was discussed at one point and you provided the applicant with some details and they produced the rendering. Planning Board Chairman Boucher stated yes, in all the meetings this was what was discussed. The Building Inspector was present for all the meetings, he understood what the Board wanted.

Planning Board Chairman Boucher asked Member Gilstrap if that cleared it up for him. Member Gilstrap stated no, he was still not clear on what the field change was. Planning Board Chairman stated what he told the owner was that due to the stop work order he has to come back before the

Planning Board and fix it. Member Gilstrap asked what was he going to fix? Planning Board Chairman Boucher stated the owner thought he could use the same stuff and just fix it. Member Gilstrap asked Mr. Boucher if the applicant was going to fix it or go over it? Planning Board Chairman Boucher stated they wanted to fix it. Member Gilstrap asked if they were going to fix it or were they trying to adhere to the specs? Planning Board Chairman Boucher stated as far as he knows that wasn't even a question because they had to come back before the Planning Board. Member Gilstrap asked why would they come before the Planning Board if they were planning on fixing it?

Member Gilstrap stated he had questions for the Building Department, he wanted to know what happened and when did it happen.

Assistant Building Inspector Proulx stated over the summer, in August 2022, the Building Department noticed the skim coat going up and contacted the builder, the builder was told that they needed actual stone and what they were doing was not actual stone. There was no stop order issued. I did have a conversation with Planning Board Chairman Boucher and we told him we were working on it. But, to issue a stop work order would be counter-productive because all worked is stopped and nothing can be done. Member Gilstrap asked Mr. Deutsch if he had spoken to the Building Inspector. Mr. Deutsch stated yes, he had. Mr. Deutsch stated that when he found out the stone was not right he brought some samples of stone to the Building Inspector. The Building Inspector looked at the samples on August 30, 2022. Assistant Building Inspector Proulx stated the Building Inspector pulled the letter out to review it, he looked at the size and color, it was a natural stone, it was a thin veneer. The Building Inspector stated the sample fit the letter. Member Gilstrap stated this would not be a field change. Mr. Deutsch stated he was not happy as the sample material was more expensive. Mr. Deutsch stated he wrote a letter to the company to verify it was natural stone. In Mr. Deutsch's letter to the manufacture Mr. Deutsch gave the manufacture the requirements for the stone and the sample was the option they came up with.

Planning Board Chairman stated if you look at the letter that is part of the resolution, it needs to match in size, you will see it does not match in size. That one word should stop it there. Chairman Baum asked what was the size? Planning Board Chairman stated it is multiple sizes. It states size and pattern. The pattern is completely different. Chairman Baum stated it says it should match the rendering and this letter that is signed five months after, by the Planning Board Chairman. Chairman Baum stated the letter states two-inch thick veneer grey in color, with similar pattern and size to match the rendering. Assistant Building Inspector Proulx stated the Building Department does not have the rendering. They have the signed site plan and the letter but not the rendering. Chairman Baum asked in reviewing the letter where it states to match the renderings would you have asked for the renderings? Building Inspector Proulx stated they only had the signed site plan and the letter. Chairman Baum asked who reviews the site plans to confirm all the conditions have been met before the Planning Board Chairman signs the site plan? Planning Board Chairman Boucher stated there is a conditional approval of the site plans that the Building Inspector would have to look at, they would have to. Chairman Baum asked if the Planning Board Chairman signed the site plan, which includes pages stapled together, with all the details, was the rendering attached to those plans? Planning Board Chairman Boucher stated when he signs site plans the Board Secretary puts a packet all together which includes everything and gives it to the Building Department. Chairman Baum asked if the renderings were present when Planning Board Chairman Boucher signed the site plan. Planning Board Chairman Boucher stated yes.

Chairman Baum stated he thinks we have all we need. Chairman Baum summarized: the Building Inspector saw the material that was being up, said no, that is not the right material, contacted the

builder who then brought in samples. The Building Inspector looked at the samples, looked at the letter and approved the sample. The Planning Board Chairman saw what was going up and said no, that is not what was approved. Planning Board Chairman Boucher stated the whole Planning Board agreed it was not the stone that was approved. It wasn't just him. Chairman Baum stated the Planning Board filed the appeal because the Planning board feels the Building Inspector made a mistake approving the material which the Board feels does not match what was set forth in the resolution, in the letter and on the rendering. Planning Board Chairman Boucher stated that is correct. Chairman Baum stated that was basically the case in a nut shell.

Chairman Baum asked if anyone had any more questions. Member Gilstrap asked about the rendering. You expected the Building Inspector to match the rendering to a tee? Planning Board Chairman stated yes, or something similar. I never said to a tee. Chairman Baum asked similar but not same, is it not similar? Planning Board Chairman Boucher stated if you look at the pattern and you think it's similar there is your vote.

Member Gilstrap asked how are you going to transmit the similarities that are important to you? Member Gilstrap stated if the Building Inspector can deviate, how is he lacking when there are no specific products mentioned to assure what you get on this building? What does the Building Inspector have to help him to determine what degree of similar he can use if deviation is permitted? Planning Board Chairman Boucher stated the Planning Board Engineer could be called upon to help. The Engineer's job was to help collaborate on the final decision. He also had the Planning Board to ask. I have been at every meeting and I know the Planning Board was extremely concerned about the stone, and the outward look of the building. I knew they made a big mistake in the first place, I wanted to make sure we get this right. Chairman Baum asked if that would be the Building Inspectors deferring his administrative discretion to you? Planning Board Chairman Boucher stated yes, if that was the final decision. Chairman Baum stated this was the final decision. The Building Inspector looked at this and said this looks good to me and I think it meets the requirements, what we are trying to find out at what point in the deviation is the Building Inspector supposed to pause and think now I have to go to the Planning Board or I have to go to someone else as I cannot make this determination on my own anymore as it is beyond my powers. Planning Board Chairman Boucher stated Mr. Gilstrap's question was if there was help available to the Building Inspector. Member Gilstrap stated it is not just where the Building Inspector can get help but what the procedure is for interpreting a rendering like this when the rendering is understood to not be precise and there are no precise specifications. You stated he has resources such as the Planning Board Engineer and the Planning Board but what is the expected procedure for each and every decision? Your expectation was that he should have consulted the Board about this decision? Planning Board Chairman Boucher stated the Engineer and the Building Inspector were to collaborate on the final decision. That's all I am saying. Chairman Baum asked if the Engineer looked at this and said yes, that's good? Attorney Cassidy and Planning Board Chairman Boucher stated they did not know. We don't believe the Planning Board Engineer was consulted based on a conversation counsel had.

Member Gilstrap stated the rendering does not have the blue stone cap on it. Did the engineer consult with the Building Inspector about that and get back to you about that? Planning Board Chairman Boucher stated they did not. Member Gilstrap asked if it would have been a problem if the builder didn't put in the blue stone cap? Planning Board Chairman Boucher stated he was not sure if that would have been a problem because if you put up stone you cap it so the cap could be assumed. Member Gilstrap stated his point was there is a great deal missing from the rendering as you can see with the blue stone cap.

Chairman Baum stated on March 23, 2021 you approved the resolution, and stated it was subject to the renderings. On July 21, 2021 the materials list was created. You signed off on the plan on August 26, 2021. Where are the minutes or the resolution that any of these things were discussed? My question is, did the Planning Board see this letter and approve it or did you just approve it? After July 21, 2021 when this letter was given to the Board did the Planning Board reconvene and approve this letter? Was this letter specificity reviewed and approved by the Planning Board? Planning board Chairman Boucher deferred to counsel. Attorney Cassidy stated the letter was not voted on by the Board. Who approved these final specifications? Planning Board Chairman Boucher stated he did. The letter was distilled down from the approvals. Planning Board Chairman Boucher stated it was from the minutes, and from the Planning Board members in-put. Chairman Baum stated this is not in the minutes as this was already covered. Planning Board Chairman Boucher stated he is reading from the minutes where it says Engineer O'Rourke will oversee and coordinate this project with the Building Department to ensure that everything is completed on the site plan and the Building Department closes out site plan permits. Member DeAngelis requested the rendering be part of the Planning Boards files, which it is. The renderings are part of the site plan and anyone looking at the renderings can see the pattern of the stone is not similar. Chairman Baum asked Attorney Cassidy if she had anything else she would like to add. Member Doherty asked the date of the minutes that were read. The date is March 23, 2021.

Member Czerwinski asked how much oversight does the Building Inspector usually have over a project of similar size? And, what kind of decision-making authorities would the Engineer have? Attorney Cassidy stated we rely on the Engineer to use his engineering knowledge if something meets codes, usually that goes hand-in-hand with the site plan approval. Member Czerwinski asked about something like the stone siding? Attorney Cassidy stated typically he would not get involved but this is an unusual situation. The Planning Board views this as a field change and the Building Department does not which is the crux of this issue. It is the Planning Boards position that the stone is not the same as the rendering. Member Czerwinski asked what type deviation is allowed being that this is more of a visual issue not an engineering issue. Therefore, this is more in line with the Building Inspector's purview. Attorney Cassidy stated generally speaking yes but this is an unusual situation because usually there is a good dialogue with the Building Inspector.

Chairman Baum asked the Assistant Building Inspector what type of things does the Engineer inspect versus the Building Inspector? Assistant Building Inspector Proulx stated the Engineer will be there for the original infrastructure work, water lines, opening sewer lines, opening up streets, when the street has to be opened, sidewalks and storm water issues. When the building goes up that is more under the Building Inspector purview. Chairman Baum stated the engineer would oversee and inspect the site improvements but when it comes to the purview of the building that is the Building Department not the engineer. Assistant Building Inspector Proulx stated yes. Issues might come up that they may reach out to him but it would be related to the infrastructure and storm water issues.

Chairman Baum opened the meeting to public comment.

Mr. Lefkowitz, Attorney for Mr. Deutsch, stated he wanted to go over one point that wasn't mentioned which is a crevice in the law that the Building Inspector's is given credence. There were a lot of materials listed in the letter and one of them is not a brand item, or model of stone but as was said earlier "something similar" to the rendering. The questions here is was the Building Inspector's determination so irrational that it is worth reversing or not. That is really the question that is before the Board today. If the Planning Board wanted a particular brand or model of stone they could have asked for it like they did for many of the other materials listed. In fact a spray on

stone was used which the Building Inspector determined was not similar enough, and the contractor had to change it. If you look at the pictures and the rendering you can see that the stone is similar enough for the Building Inspector to make his decision. If the Planning Board is going to proceed with this unusual case, pre-occupancy there is an element in the Village code where people can make complaints to the Building Department and it has to be signed. Maybe then we would have a formal determination from the Building Department but that is not what happened. There was a lot that was done here that I would call “informal” and “unusual” I would say. If the Planning Board is going to take this very unusual, very strange step that I have never seen before in all my years of practice, it should have some precision. There was no precision on how this was done, there is no precision in the resolution in what type of stone was to be used. I think the Building Inspector's determination was similar enough, as he was given a sample and approved it, this was at great expense, I would ask that your Board affirm the Building Inspector's determination that the stone was appropriate.

Chairman Baum asked if there was anyone else from the public who would like to speak.

Mr. Deutsch stepped forward, he asked the question why are we here tonight? I have no idea and I am sure other people have asked the same question. We did a nice project, I want to bring out the specific letter and the definition of similar. I have been in touch with the Building Inspector multiple times about the project and we wanted to do different materials, same look, but different materials, and it was a defiant no. I was not happy because we spent about \$17,000 more because of the specific materials listed to follow the Planning Board resolution. We followed that list exactly. Going to the Planning Board minutes on the Village web site, we are missing some, missing are September, October, November and December of 2022. Why because they are trying to hide the process of the Planning Board. Not putting out an agenda, not telling anyone about this unanimous vote, no one has any idea of what the discussion was. According to the December Planning Board meeting minutes the discussion for the minute's approval was tabled. Why was that? They are trying to hide and make sure no one knows what was discussed at the Planning Board meeting.

Chairman Baum stated he would like to understand what Mr. Deutsch is saying here. The meeting minutes from the July 22, 2022 meeting is on the web site. Mr. Deutsch stated the last set of minutes that was on the web site was July 22, 2022. After that is November was there and the discussion on the minutes was tabled. A FOIL request was submitted. Something improper was done by the Planning Board. At the beginning of this project there were changes from the mayor about the water hook up that had to be changed. This did not go through the Planning Board. This was because they did not want to open Spring Street to get to the water and it was changed to opening up Franklin Street. Chairman Baum stated let's direct our comments to what we are discussing here tonight. Mr. Deutsch stated he was talking about changes. The sidewalks were changed because they did not think they were straight. I asked the Village engineer if we followed the plans, he said yes. The changes did not go to the Planning Board as we did what the Village was requesting. We did follow everything with the Planning Board. They were very specific. I was trying to save money for the owner but I had to spend the money for them. Same thing for the stone. Thank you for hearing me.

Chairman Baum asked for any other member from the public to speak. Fred Kelly, a Planning Board member, came forward. Mr. Kelly stated he wanted to address Mr. Deutsch's brazen and insulting comments that there is something lurid about the lack of Planning Board minutes. He is skipping over the fact that the Village has a moratorium in place and the Planning Board has not

met as there are no applications in front of the Planning Board. The minutes were not tabled to hide anything. It is insulting and outrageous to say so. Thank you.

Chairman Baum asked if there was anyone else from the public who wanted to speak. No one came forward. Chairman Baum stated at this time we will close the public hearing.

On a motion by Member Czerwinski and seconded by Member Gilstrap it was resolved: **to close the public hearing.**

Aye – 4

Nay – 0

Absent: Member Margotta

Chairman Baum asked Attorney Cassidy if she had any final words. Attorney Cassidy did not. Chairman Baum asked if the Board members had any comments. Member Czerwinski stated he felt the Building Inspector was well within his purview in making this decision. From the questions that were asked about the engineers' inspections it sounds like he would not have gotten involved at all so that leaves the Building Inspector to make the determination and he did so. And, he felt it was compliant with the resolution.

Member Gilstrap stated he finds this rather difficult, he would like to know exactly what the Building Inspector had in front of him when he made this determination as it is unclear what the Building Inspector had to work with to make the decision. We have heard different ideas of what he may have been exposed to, but what did he have when he made this determination when Mr. Deutsch presented the samples. It is not clear if he had the rendering.

Chairman Baum stated according to the Assistant Building Inspector Proulx the Building Department did not have a rendering, all they had was the site plan and the letter.

Member Czerwinski stated that the letter was vague in regards to the stone, I still stand behind the Building Inspector. Member Gilstrap stated the letter says it needs to be grey and a similar pattern and size and to match the rendering, which was not provided, not ledgerstone, not culture stone. We have not gotten to the bottom of the ledgerstone. It is an industry term and it does not seem there is a real hard and fast definition of that, so there was nothing there that the Building Inspector could object to. I wish the Building Inspector was here to talk to when his determination is so central to the case, why is he not here? And, why, if he is acting in his legal capacity, why he does not have legal representation from the Village. If he was here we could ask him what did he think about this, what was going through his mind? Board Attorney Naughton stated the Board has to look at this as if the Board was standing in his shoes. You have all the information that may or may not have been available to him, and it is up to the Board to figure out what determination ought to have been made. Member Gilstrap stated he still has questions if this is a jurisdictional thing and this Board should be hearing this.

Member Gilstrap asked Chairman Baum if he was comfortable if this Board has jurisdiction here. Chairman Baum stated he was comfortable with this Board having jurisdiction over this matter and he is following the advice of counsel, which has advised us that the Board does have jurisdiction and that this appeal is proper. I am relying on counsel. I have been doing planning and zoning for 30 plus years and I have never seen anything like this.

Member Doherty stated she understands what Member Gilstrap is saying as she feels the stone is different from one to another. The sizing, pattern and color are wrong. Member Gilstrap stated as he looked at the rendering, if I was the Building Inspector the less I would rely on it because it seems to be in-precise. Member Gilstrap stated he thinks Mr. Lefkowitz may have a point; There should be some deference given to the Building Inspector and if you want something exact, specify it. If the product is not available come back to us with a product to show us and we will tell you if it is acceptable or not. I sympathize with the Planning Board here because the stone does not look like the rendering in the way that is important to you. I get it. The pattern on the drawing looks better to me personally but if we are going to have a system where we hold the Building Inspector to account with that degree of precision it is only right to have a way to specify exactly what it is you want.

As the Chairman has pointed out we have specific products listed by point elsewhere, we didn't have a problem doing that elsewhere. If the problem is that the product goes in-and-out of stock, is that not the same problem for the other materials? I would like to see that there are specifications for exactly what we want, so we don't have this type of conversation anymore. And, I would like to see a well-defined procedure; Who is going to sign off on things and for it to be something that can be followed in a big project. This notion that everything has to come back to the Planning Board may not work in the real world. The procedure should specify on a day-to-day bases to ensure this does not happen again. I find it disturbing that this is the way we are handling this point of disagreement but this is where we are. If this is the kind of precision you want, you need to give the Building Inspector precise, well-defined instructions that are supported by a well-defined procedure. I want that too. We rely on the Planning Board but in this instance, I feel there wasn't the right kind of direction for the Building Inspector in terms of specs and procedure, for the Building Inspector to make sure he got you exactly what you wanted to ensure it looks like that picture. It sounds like when things did go off track, the Building Inspector made sure to get it back on track.

Member Doherty stated she agrees with what member Gilstrap said. Chairman Baum stated he agrees as well and the Building Inspector acted within the parameters of his purview and we owe him the deference of his decision. When I look at the facts I agree. They could have put a specification for the stone stating model, color, product number and manufacture. If it wasn't available they go back to the Planning Board and tell them they cannot get that stone, show them something that looks like it and ask the Planning Board to approve it. I don't think the Planning Board was clear. I don't think the Planning Board communicated the proper rendering and even if they had I think the Building Inspector acted within his best discretion and I am not willing to overturn it.

On a motion by Chairman Baum and seconded by Member Gilstrap it is resolved: **To deny the appeal and uphold the determination of the Building Inspector.**

Aye – 4

Nay – 0

Absent: member Margotta

On a motion by Member Czerwinski and seconded by Member Doherty it is resolved: **approve the November 8, 2022 meeting minutes.**

Aye – 3

Nay – 0

Abstain: Chairman Baum and Member Gilstrap

Meeting Minutes:

On a motion by Member Gilstrap and seconded by Member Zuckerman it is resolved: **to approve the December 13, 2022 meeting minutes subject to the change Member Gilstrap submitted.**

Aye – 3

Nay – 0

Abstain: Chairman Baum and Member Czerwinski

Member Czerwinski stated tonight will be his last night as a Board member as he is resigning due to personal obligations. He thanked the Board for having him and stated he has learned a lot and been inspired by everyone on the Board. Member Czerwinski stated he hopes the Board will consider Alternate Member Doherty for his position as she always shows up prepared and ready. She has extensive instructional knowledge of Board procedures. I just wanted to say thank you.

Chairman Baum stated he wanted to say thank you to Member Czerwinski because when the Chairman first approached Member Czerwinski to be on the Board he had some hesitance, because of these other obligations he had, and you still came on board. Even if you are not able to continue it was really great to have you here and we are better for having you here.

On a motion by Chairman Baum and seconded by Member Gilstrap it is resolved: **that the meeting be adjourned at 11:35.**

Aye – 4

Nay – 0

Absent: Member Margotta