

ZBA Minutes – September 10, 2020  
ZONING BOARD OF APPEALS  
TOWN OF RIVERHEAD  
SUFFOLK COUNTY  
RIVERHEAD, NEW YORK  
(631) 727-3200

These minutes are a summary of the September 10, 2020 Town of Riverhead Zoning Board of Appeals meeting held at the Town of Riverhead Town Hall, Riverhead, NY.

PRESENT:	ABSENT:
Leroy Barnes	Frank Seabrook
Otto Wittmeier	
Ralph Gazzillo	
Fred McLaughlin	
Dawn Thomas, Counsel	

Chairman McLaughlin stated, good evening. In these extraordinary times, I'd like to welcome you to the September 10<sup>th</sup> meeting of the Zoning Board of Appeals. I'd ask anybody that's on the Zoom don't hit the unmute button until you're called upon.

### RESERVE DECISION

**Appeal 2020-024 – Patricia Panchak – 70 Park Road, Riverhead – SCTM No. 600-16-3-5 – RA40 Zoning** - for variances and/or relief from Chapter 301 Section 11 where proposed impervious surface coverage is 47.8% and maximum allowed is 15%; where proposed side yard setback is 7.5' and minimum required is 10'; where proposed front yard setback is 22.9' and minimum required is 50'; and Section 9 where proposed detached garage is 5' from rear and side property lines and minimum required is 20'.

A motion was made by Mr. McLaughlin and seconded by Mr. Wittmeier that the appeal be granted as sought. The motion carried by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	ABSENT
Mr. Gazzillo	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

### DETERMINATION OF THE ZONING BOARD OF APPEALS

APPEAL NO: 2020-024

SUMMARY: Proposed Additions and Detached Garage

APPLICANT/PROPERTY OWNER: Patricia A. Panchak, 58 Tyler Drive, Riverhead, NY 11901

RELIEF SOUGHT: for variances and/or relief from Chapter 301 Section 11 where proposed impervious surface coverage is 47.8% and maximum allowed is 15%; where proposed side yard setback is 7.5' and minimum required is 10'; where proposed front yard setback is 22.9' and minimum required is 50'; and Section 9 where proposed detached garage is 5' from rear and side property lines and minimum required is 20'.

LOCATION: 70 Park Road, Riverhead

SCTM#: 600-16-3-5

ZONING DISTRICT: Residence A-40 (RA40)

SIZE OF PROPERTY/REQUIRED SET BACKS: The property is approximately 6,000 sq. ft. or 0.138 acres. Minimum lot area is 40,000 square feet; minimum lot width is 150 feet; maximum impervious surface is 15%;

maximum height of residential buildings is 35 feet; minimum front yard depth is 50 feet; minimum either side yard width is 25 feet; minimum both side yards, total width is 55 feet; minimum side yard abutting side street is 50 feet; minimum rear yard depth is 60 feet; accessory in side yard setback is 20 feet; accessory in rear yard setback is 20 feet; accessory setback to side/rear street line is 50 feet.

DATE OF HEARING: 8/27/2020

INSPECTION DATES: 8/17/20, 8/24/20, 8/27/20

SUFFOLK COUNTY PLANNING COMMISSION: Pursuant to the Suffolk County Administrative Code Sections A14-14 to 23 referral of this matter to the Suffolk County Department of Planning and Development was not required.

SEQRA: The Zoning Board of Appeals has visited the property under consideration and reviewed the application and the Town's environmental planner determines that this review falls under Type II 617.5 c(12) and does not require any further action pursuant to SEQRA.

PLEASE TAKE NOTICE that at the public hearings of the Town of Riverhead Zoning Board of Appeals on the above referenced dates, the above referenced appeal was heard, evidence placed into the record and the application was duly considered. Based upon the foregoing, the Zoning Board of Appeals takes the following action:

#### HISTORY/PROPERTY FACTS

1. Property received Certificate of Occupancy (7197 from permit ZB10163) dated March 11, 1987 for alteration to residence (new windows and door).
2. Application submitted to the Building Department on May 27, 2020 for construction of 1<sup>st</sup> floor addition, 2<sup>nd</sup> floor addition, and detached garage. (Remove rear yard wood deck, shed and plastic fence.)
3. A denial letter was sent from the Building Department on June 4, 2020, and an application was made to the Zoning Board of Appeals on June 25, 2020.
4. After reviewing the application, the history of the property and information gathered at the public hearing pursuant to the criteria set forth in Town Law 267-b this Board makes the following findings of fact:
  - a. The property is presently improved with the following structure(s):
    - i. One-story frame house, garage under
    - ii. Wood deck (in disrepair) – to be removed
    - iii. Plastic shed (8'x5.5') – to be removed
    - iv. Brick patio - to be removed

FINDINGS: Pursuant to NYS Town Law 267-B, the Board reviewed the evidence presented at the hearing and on record with the Town of Riverhead and has balanced the benefit of granting the area variance request to the applicant against the detriment to the health, safety and welfare of the community and finds as follows:

1. At a public hearing held before this board on August 27, 2020 which was held virtually as mandated by the Emergency Order of the Town's Emergency Operations Coordinator Police Chief David Hegermiller, James V. De Lucca, representative for the applicant, testified under oath that the property owners, Robert and Patricia Panchak, have an existing single family dwelling and would like to increase the floor area on the first floor and add a second floor as well as a detached garage. Mr. De Lucca noted that there is presently a garage under the house which cannot be accessed due to the height of the foundation walls, and due to the preexisting nonconforming nature of the lot, the garage must be five feet off each property line "to make entry into the garage feasible." As for the dwelling, Mr. De Lucca testified that the owners

are seeking to square off the first floor with a 119 sq. ft. addition, and the proposed second floor will lay directly over that envelope which will be 32.2' x 28'. The existing front yard is 23.4 feet, and with the 119 sq. ft. proposed addition, the front yard setback will be 22.9 feet, an increase in nonconformity of only 0.5 feet. Mr. De Lucca then explained that the current side yard setback of the existing dwelling is 7.5 feet, while the setback for the addition is 8 feet; therefore, the actual addition does not intrude further on the existing nonconforming setback.

2. In furtherance of the application, Mr. De Lucca stated that the house is for a family member; the renter is leaving, and a family member will move in. He believes it is the daughter. A board member, Leroy Barnes, surmised that if the dwelling will be occupied by the owner's daughter or a family member, whoever occupies the residence has a vested interest in it. He then explained to Mr. De Lucca that some concerns brought up by a neighbor (in email dated August 25, 2020 from Keith Fowley, 58 Park Road) referenced drainage. Mr. Barnes asked Mr. De Lucca if drainage will be addressed in the design and if he will work with the building inspector to make sure the drainage is mitigated as not to affect neighboring properties, ensuring runoff is maintained as the code requires; Mr. De Lucca responded, "Absolutely." Mr. Barnes noted another concern raised in the email regarding the five foot setback and an existing block wall which Mr. Barnes explained is typically an allowed situation. Mr. Barnes then asked for verification that the brick patio encroaching on Mr. Fowley's property shall be removed; Mr. De Lucca confirmed that the shed, patio, and fence will all be removed. Mr. Barnes added that with a family member proposed to reside there, the owners are certainly looking to fix the house up and do a nice job on it.
3. Keith Fowley of 58 Park Road, Riverhead offered sworn testimony at the August 27, 2020 public hearing and also submitted correspondence to the board dated August 25, 2020 expressing his opposition to "all of the improvements and requests for variances," specifically, concerns of drainage, privacy, and nonconformity of setbacks. Mr. Fowley, under oath, stated that his "main concern is the fellow that's been renting there...has often told him he can watch his [Mr. Fowley's] television in his den when he [the neighbor] doesn't feel like watching his own. That's how close it is already." He added that he does not want his privacy invaded to that point where it's 7.5 feet to 8 feet off the property line. Mr. De Lucca explained to Mr. Fowley that the proposed addition does not encroach further on the existing 7.5 foot side yard setback; this setback already exists. The setback for the addition itself is more conforming than the existing setback. Mr. De Lucca noted that in reviewing the site, the neighbor's [Mr. Fowley] house is at least forty feet away from the subject parcel with trees between the properties.
4. In response to Mr. De Lucca's testimony, Mr. Fowley then added that the second story window would look into his master bedroom. Mr. Barnes explained that he understands the concern, but this is common in areas that have nonconforming lots. Mr. Fowley asked for the addition to be repositioned to the opposite side of the house, the north size, to which Mr. De Lucca stated that doing so would affect the driveway and create a more awkward shape of the house. He also noted that the owner is permitted to add a second story by code; if the footprint of the first floor were not to be altered, no variances for the dwelling would be required. Mr. De Lucca then offered to alter the layout of the proposed additions to place windows facing Mr. Fowley's residence that won't affect him [Mr. Fowley] to such a degree. Mr. Fowley again expressed his opinion that the expansion and garage are not reasonable. Board member, Ralph Gazzillo, believed there was a three-story house across the street and another two-story home north of it to which Mr. De Lucca confirmed there are. Mr. De Lucca testified that he also spoke with the neighbor across the street, and she has no problem with the application. Mr. Fowley speculated that "the only reason she said that is because the Panchaks have never cleaned the house...since they rented it out fifteen years ago."

5. Board member, Otto Wittmeier, verified with Mr. De Lucca that proposed lot coverage will decrease to which Mr. De Lucca confirmed the decrease from 57% to 47.8% due to the removal of the brick patio, plastic shed and wood deck.

#### DETERMINATION

1. Upon review of facts and sworn testimony, this board finds the variance sought would not produce a negative impact on adjacent properties or the neighborhood as the proposed side yard setback will not increase the existing side yard setback. The overall impervious surface is being reduced and the setback nearest the objecting neighbor is not exacerbated by the proposed addition. Further, there are similar houses with similar setbacks in the immediate neighborhood. Moreover, the second story addition alone does not require relief from this board. Additionally, the proposed detached garage is to be positioned on the preexisting nonconforming lot such as to have as little impact on the adjacent properties as possible. Granting of such relief will not diminish or impair values within the neighborhood. In fact, the improvements to this residence will serve to benefit the neighborhood as the
2. The requested variance is numerically substantial as it would be a substantial departure from the required dimensions, but case law tells us that when addressing variances, the concern is about the impact of the variance and its effect on the character of the community, not so much the mathematical number. The variances requested are minimal, less intrusive in many ways, in comparison to what the existing setbacks are. Additionally, and perhaps most importantly, the subject parcel, and all other parcels within the immediate vicinity, were created and improved long before the existing zoning was applied to them. Accordingly, all of the existing dimensions are non-compliant with the current zoning which mandates variances for the vast majority of improvements on these properties. Based upon the fact that many of the neighborhood properties have been similarly developed and the fact that the proposed project seeks to reduce some of the pre-existing nonconformity on the property, this Board finds that there will be no impact on the environment or on the character of the neighborhood and that the variance itself is not substantial.
3. The benefit sought by the applicant cannot be achieved by some alternative means because any modification to the footprint of the home or inclusion of an accessory structure requires relief from this board due to the undersized nature of the pre-existing, non-confirming lot.
4. The requested variance will not have an adverse impact on the physical or environmental conditions in the neighborhood/district as the proposed is an addition to a single family dwelling with accessory structure in a residential neighborhood.
5. The alleged difficulty that the property owner is experiencing was not self-created as the difficulty is solely due to the nonconforming lot size.

The motion was made by Mr. McLaughlin and seconded by Mr. Wittmeier, that the aforementioned determination be approved:

#### **THE VOTE**

**MR. SEABROOK: ABSENT MR. BARNES: AYE**

**MR. GAZZILLO: AYE MR. WITTMEIER: AYE**

**MR. MCLAUGHLIN: AYE**

**This determination X was \_\_\_ was not  
therefore duly adopted**

Based upon the foregoing, the following area variance is **GRANTED** and, if granted, is subject to the following conditions which, based upon the evidence presented, will minimize the adverse impacts that the variance would have on the community or district as identified above.

**NO CONDITIONS**

**PUBLIC HEARINGS**

**Appeal 2020-026 – Zabela Dilis – 173 Deer Run, Wading River – SCTM No. 600-57-1-7.40 – RB80 Zoning**  
- for variances and/or relief from Chapter 301 Section 31 where proposed impervious surface coverage is 34.8% and maximum allowed is 15%.

Larry Buscemi, 15 Vineyard Way, Mount Sinai, NY, representative for the applicant, was sworn in and stated, this application resulted from a building permit application to extend the back of the house and kitchen area by about...well, 8 x 31...so, a couple hundred square feet and also to extend a deck. Now, that resulted in an increase in the lot impermeable surface coverage from the existing 34.6 to 34.8%. So, it's a difference of 0.2%. It actually...the deck itself is being reduce by a little bit even though they're applying for an extension because it's overcompensating for the extension of the kitchen. This is a situation where the difference is 90 sf on an acre parcel, an acre parcel which is flat as a pancake and has no runoff issues. Also, a lot of the calculations for the impermeable surfaces seem to include pavers and decks, which to me are not entirely impermeable; decks, in particular, are permeable. Really, this application will have no effect on the neighbors; it's not visible by the neighbors. Everybody's got a large piece of property over there. Again, it's a perfectly level piece of property, and there's no runoff conditions whatsoever. Mr. McLaughlin asked, any board members have any questions? Mr. Wittmeier asked, is that shed in compliance, the one all the way up there in the left hand corner next to lot 32? Mr. Buscemi stated, I'm sorry; I can't hear the question. Can you repeat it, please? Mr. Wittmeier replied, I was asking a board member...is the shed that's 6.3 off of the property line, is that in compliance? It's over 100 sf. Mr. Barnes replied, I don't know because I wouldn't have any of the C/O's or the documents to back that up. The file is reviewed by the building inspector and anything open would be addressed. I'm hoping. Mr. Wittmeier responded, gotcha. Mr. Buscemi noted, we would either add that to the application if necessary or if necessary to move it, we'll move it. It'll be dealt with with the Building Department. Mr. Wittmeier stated, I withdraw the question. Mr. McLaughlin asked, is there anyone else to be heard about this matter? Mr. Barnes asked, are there any other people that would be online waiting to address us on this issue? Mr. McLaughlin stated, if there's anyone on the Zoom that wants to speak about this application, please unmute yourself. (There were no public comments.)

A motion was made by Mr. Gazzillo and seconded by Mr. Wittmeier that the appeal be granted as sought. The motion carried by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	ABSENT
Mr. Gazzillo	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

**DETERMINATION OF THE ZONING BOARD OF APPEALS**

**APPEAL NO:** 2020-026

**SUMMARY:** Addition - Residential

**APPLICANT/PROPERTY OWNER:** Zabela Dilis, 173 Deer Run, Wading River, NY 11792

RELIEF SOUGHT: for variances and/or relief from Chapter 301 Section 31 where proposed impervious surface coverage is 34.8% and maximum allowed is 15%.

LOCATION: 173 Deer Run, Wading River

SCTM#: 600-57-1-7.40

ZONING DISTRICT: Residence B-80 (RB80)

SIZE OF PROPERTY/REQUIRED SET BACKS: The property is approximately 44,998 sq. ft. or 1.033 acres. Minimum lot area is 80,000 square feet; minimum lot width is 175 square feet; maximum impervious coverage is 15%; maximum height of residential buildings is 35 feet; minimum front yard depth is 60 feet; minimum either side yard width is 30 feet; minimum both side yards, total width is 65 feet; minimum side yard abutting side street is 60 feet; minimum rear yard depth is 75 feet; accessory in side yard setback is 25 feet; accessory in rear yard setback is 20 feet; accessory setback to side/rear street line is 60 feet.

DATE OF HEARING: 9/10/2020

INSPECTION DATES: 9/3/2020, 9/8/2020, 9/10/2020

SUFFOLK COUNTY PLANNING COMMISSION: Pursuant to the Suffolk County Administrative Code Sections A14-14 to 23 referral of this matter to the Suffolk County Department of Planning and Development was not required.

SEQRA: The Zoning Board of Appeals has visited the property under consideration and reviewed the application and the Town's environmental planner determines that this review falls under Type II 617.5 c(12) and does not require any further action pursuant to SEQRA.

PLEASE TAKE NOTICE that at the public hearings of the Town of Riverhead Zoning Board of Appeals on the above referenced dates, the above referenced appeal was heard, evidence placed into the record and the application was duly considered. Based upon the foregoing, the Zoning Board of Appeals takes the following action:

### HISTORY/PROPERTY FACTS

1. Property received the following certifications: Certificate of Occupancy (ZB22139) dated April 7, 2000 for inground swimming pool; Certificate of Occupancy (ZB31586) dated January 18, 2007 for rear wood deck & hot tub with roof over; Certificate of Occupancy (ZB13941) dated January 29, 1998 for single family residence with attached two car garage, covered front porch; Certificate of Occupancy (ZB 34285) dated June 16, 2009 for alteration to residence for finished basement with outside entrance.
2. Building permit application received on May 18, 2020 to enlarge existing kitchen and family room, remove part of existing deck and relocate sliding glass doors, enlarge rear deck.
3. A denial letter was sent from the Building Department on June 4, 2020 and an application was made to the Zoning Board of Appeals on July 2, 2020.
4. After reviewing the application, the history of the property and information gathered at the public hearing pursuant to the criteria set forth in Town Law 267-b this Board makes the following findings of fact:
  - a. The property is presently improved with the following structure(s):
    - i. Two-story frame house and garage
    - ii. Roof over wood porch
    - iii. Wood deck
    - iv. Outdoor fireplace
    - v. Frame pavilion
    - vi. Inground swimming pool
    - vii. Frame garage (10.3' x 20.3')
    - viii. Concrete slab with basketball backboard post
    - ix. Frame shed (8.3' x 14.2')
    - x. Stone waterfall

**FINDINGS:** The evidence in the record establishes that weighing the benefit of granting the area variance request against the detriment of granting the area variance request to the health, safety and welfare of the community and finds as follows:

1. The variance sought would not produce an impact on adjacent properties or the neighborhood as it will not diminish or impair values within the neighborhood; the difference between existing impervious coverage and proposed is only 0.2%.
2. The requested variance is not substantial as the proposed modifications increase the impervious surface by only 0.2%.
3. The benefit sought by the applicant cannot be achieved by some alternative means because any outward extension to the dwelling or structures will increase the impervious surface coverage.
4. The requested variance will not have an adverse impact on the physical or environmental conditions in the neighborhood/district as it is a single family dwelling in a residential neighborhood.
5. The alleged difficulty that the property owner is experiencing was self-created as existing impervious surface already surpasses permitted coverage, and any increase to that coverage increases the degree of nonconformity; however, that fact does not prohibit this board from granting the relief sought.

The motion was made by Mr. Gazzillo and seconded by Mr. Wittmeier, that the aforementioned determination be approved:

**THE VOTE**

**MR. SEABROOK: ABSENT MR. BARNES: AYE**

**MR. GAZZILLO: AYE MR. WITTMER: AYE**

**MR. MCLAUGHLIN: AYE**

**This determination X was \_\_\_ was not  
therefore duly adopted**

Based upon the foregoing, the following area variance is **GRANTED** and, if granted, is subject to the following conditions which, based upon the evidence presented, will minimize the adverse impacts that the variance would have on the community or district as identified above.

**NO CONDITIONS**

**Appeal 2020-027 – Global Montello Group Corp. – 1733 Old Country Road, Riverhead – SCTM No. 600-119-1-8 – BC Zoning** - for variances and/or relief from Chapter 301 Section 93A where proposed rear yard setback of building is 6.8' and minimum required is 25'.

Sean Walter, Esq., representative for the applicant, was present on Zoom. Mr. Walter stated, good evening, Mr. Chairman, members of the board. Thank you for allowing us to present this application this evening. My name is Sean Walter, 1938 Wading River Manor Rd, Wading River, NY. I represent Global Montello Group Corp for this application. I have on the line with us should you need to ask any questions, David Bittner from High Point Engineering and Havet Lebeci [?], the operator of the store. I represent the application, and Mr. Bittner will be available if you have any further technical engineering questions. This application is rather simple; we are seeking to build a 985 sf addition to the convenience store bringing the total store...the total square footage of the store...to 2,667. Because of the proximity of the fuel tanks, there is no place to extend the store except in the back; it is a rather large piece of property. Some of you may have gotten gas there; it's relatively cheap. I know I get gas there all the time. I shouldn't make that (inaudible) announcement, but... the existing building encroaches on the rear line at 6.8 feet. What we are proposing is an expansion that will be roughly the same as the 6.8 feet; it's actually a little bit further from the property line, 6.9 feet. The addition is designed to maintain roughly the same rear yard setback as the preexisting condition. Again, if they could build this any other way, they would, but the fuel pumps are basically right in front of the front door. When you are in pump 1, you can't even drive around it, so that is

the sum and substance of the application. Mr. McLaughlin asked, any board members have any questions? Mr. Gazzillo answered, not me. Mr. McLaughlin asked again, nobody has anything? Mr. Wittmeier asked, anybody in the wait room? Mr. McLaughlin stated, if there's anyone else to be heard on this matter, in opposition I would imagine, just unmute, and we'll get you on. (There were no public comments.)

A motion was made by Mr. Gazzillo and seconded by Mr. Barnes that the appeal be granted as sought. The motion carried by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	ABSENT
Mr. Gazzillo	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

DETERMINATION OF THE ZONING BOARD OF APPEALS

APPEAL NO: 2020-027 SUMMARY: 7-Eleven Convenience Store Expansion

APPLICANT/PROPERTY OWNER: *Owner:* Leemilts Petroleum c/o Getty Properties Corp., 2 Jericho Plaza, Wing C, Suite 110, Jericho, NY 11753; *Applicant:* Global Montello Group Corp., 800 South Street, Suite 500, Waltham, MA 02454

RELIEF SOUGHT: for variances and/or relief from Chapter 301 Section 93A where proposed rear yard setback of building is 6.8' and minimum required is 25'.

LOCATION: 1733 Old Country Road, Riverhead

SCTM#: 600-119-1-8 ZONING DISTRICT: Business Center (BC)

SIZE OF PROPERTY/REQUIRED SET BACKS: The property is approximately 30,423 sq. ft. or 0.6984 acres. Minimum lot area is 20,000 square feet; minimum width lot at front street is 100 feet; maximum building lot coverage without sewer is 15%; maximum building lot coverage with sewer is 20%; maximum building lot coverage with transfer of development rights is 30%; maximum impervious surface is 75%; maximum height of buildings is 35 feet; maximum floor area ratio without sewer is 0.15; maximum floor area ratio with sewer is 0.20; maximum floor area ratio with transfer of development rights is 0.60; minimum front yard depth is 50 feet; minimum depth for each side yard of an interior lot is 15 feet; minimum combined depth for 2 sides of an interior lot is 30 feet; minimum depth facing side street of corner lots is 25 feet; minimum combined depth for 2 sides of corner lot is 40 feet; minimum rear yard depth is 25 feet.

DATE OF HEARING: 9/10/2020 INSPECTION DATES: 8/31/2020, 9/8/2020, 9/10/2020

SUFFOLK COUNTY PLANNING COMMISSION: Pursuant to the Suffolk County Administrative Code Sections A14-14 to 23 referral of this matter to the Suffolk County Department of Planning and Development was not required.

SEQRA: The Zoning Board of Appeals has visited the property under consideration and reviewed the application and the Town's environmental planner determines that this project is a Type II action pursuant to 6NYCRR Part 617.5(c)(9), "construction or expansion of a primary or accessory/appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls, but not radio communication or microwave transmission facilities."

PLEASE TAKE NOTICE that at the public hearings of the Town of Riverhead Zoning Board of Appeals on the above referenced dates, the above referenced appeal was heard, evidence placed into the record and the application was duly considered. Based upon the foregoing, the Zoning Board of Appeals takes the following action:

HISTORY/PROPERTY FACTS

1. Property received the following certifications: Certificate of Occupancy (ZB2702) dated July 22, 1967 for three bay gas station, Certificate of Occupancy (ZB8938) dated March 22, 1989 for two (2) 10,000 gallon tanks, Certificate of Occupancy (ZB27714) dated October 29, 2004 for removal of two (2) 500 gallon above ground tanks and the installation of one 2,000 gallon underground diesel tank, Certificate of Occupancy (ZB27715) dated December 14, 2004 for Canopy over pump island and replacement of existing pump island, Certificate of Occupancy (ZB27667) dated December 15, 2004 for conversion of bays to convenience store and removal of fuel storage tanks in rear, Certificate of Occupancy (ZB34778) dated September 23, 2009 for Occupancy Type M and Construction Type III B, Certificate of Occupancy (ZB35162) dated March 2, 2011 for removal of UST's, underground piping, dispensers, vent and piping – backfill to grade (replace pavement to match existing) new permit, new permit required to install new tanks as per Town Attorney, Certificate of Occupancy (ZB36563) dated July 27, 2011 for interior alteration to food service area, Certificate of Occupancy (ZB36603) dated October 4, 2011 for removal of underground tanks and replace with one (1) 10,000 and one (1) 12,000 gallon tank, and Certificate of Compliance (17-0749) dated January 23, 2018 for generator installation at rear of building.
2. Site Plan Application was made to the Planning Department on October 11, 2019 for expansion of convenience store with site work and rebranding of canopy to Shell.
3. A denial letter was sent from the Building Department on May 28, 2020 and an application was made to the Zoning Board of Appeals on July 6, 2020.
4. After reviewing the application, the history of the property and information gathered at the public hearing pursuant to the criteria set forth in Town Law 267-b this Board makes the following findings of fact:
  - a. The property is presently improved with the following structure(s):
    - i. One-story masonry building
    - ii. 10,000 gallon fuel storage tank
    - iii. 12,000 gallon fuel storage tank
    - iv. Four (4) fuel dispensers on concrete islands
    - v. Stone area with fountain
    - vi. Asphalt paving/associated parking

FINDINGS: The evidence in the record establishes that weighing the benefit of granting the area variance request against the detriment of granting the area variance request to the health, safety and welfare of the community and finds as follows:

1. The variance sought would not produce an impact on adjacent properties or the neighborhood as the proposed extension is along County Road 58 in the Business Center Zoning District. The property is surrounded by commercial buildings, and the use of the property and proposed extension are in complete harmony with the surrounding business uses in the area.
2. The requested variance is not substantial because the proposed extension does not increase the degree of nonconformity of the existing building. The existing building only has a rear yard setback of 6.7 feet while the proposed extension has a similar rear yard setback of 6.8 feet.

3. The benefit sought by the applicant cannot be achieved by some alternative means because the original building and gas pumps were set back toward the rear of the property leaving a wide open parking lot in the front; therefore, this building cannot be expanded at all without relief from this board.
4. The requested variance will not have an adverse impact on the physical or environmental conditions in the neighborhood/district as the effect to the environment would be de minimus as the proposed extension totals 985 square feet, and the proposed construction will be over previously disturbed paved land.
5. The alleged difficulty that the property owner is experiencing was not self-created as the original structures were built at the back end of the property. Had the structures been constructed toward the open area at the front of the property pursuant to the current zoning code there would be no setback issues.

The motion was made by Mr. Gazzillo and seconded by Mr. Barnes, that the aforementioned determination be approved:

**THE VOTE**

**MR. SEABROOK: ABSENT MR. BARNES: AYE**

**MR. GAZZILLO: AYE MR. WITTMEIER: AYE**

**MR. MCLAUGHLIN: AYE**

**This determination X was \_\_\_ was not  
therefore duly adopted**

Based upon the foregoing, the following area variance is **GRANTED** and, if granted, is subject to the following conditions which, based upon the evidence presented, will minimize the adverse impacts that the variance would have on the community or district as identified above.

**NO CONDITIONS**

**Appeal 2020-030 – Barclay Ehrler - 1871 Old Country Road, Riverhead – SCTM No. 600-119-1-36 – DRC Zoning** - for variances and/or relief from Chapter 301 Section 107A where proposed impervious coverage is 81.7% and maximum permitted is 75%; and, Section 107C where proposed contiguous landscaped area is 18.3% and minimum required is 20%.

Phillip Butler, Farrell Fritz, PC 100 Motor Parkway, Hauppauge, NY was sworn in and stated, I'm gonna share my screen if that's alright. I provided the board with this collection of materials for the presentation so you could have a hard copy; thank you to Carissa for providing those. The property is 67,359 sf located at the southwest corner of Old Country Road and Kroemer Avenue. It's directly across from the Northwell Urgent Care and Bob's Furniture; I'm sure you're all familiar with the site. Currently, it is (inaudible) of a 13,400 sf retail building. Originally, the property was roughly 72,000 sf; however, as the board may be aware, there were two significant dedications from my client to the county and then to the town. The first was 5,000 sf on Old Country Road for turning improvements. I guess for making the right-hand turn onto Kroemer Avenue. The second was for over 2,000 sf, a strip of land on Kroemer Avenue, for some drainage improvements because flooding in that area is a problem. So, roughly, my client has lost 7,700 sf of lot area through these voluntary dedications to both the county and the town. This is significant for purposes of the application because but for those dedications the impervious coverage, which is one of the reliefs we are seeking, we would be within less than 1% of the allotted...permitted...impervious coverage. So, as some of the board members may be aware, this is actually the fourth time this application is before you. The last time was in June of 2015 during which building lot coverage, unoccupied setback and continuous landscaped areas were granted. The contiguous landscape variance granted at the time was for 15%. Pursuant to the instant application, we're proposing 3.3% more contiguous landscape so that's an increase of approximately 445 sf. The layout of the property is substantially the same as it was the last time this was presented to the board, so I won't go into great detail unless the board wants to discuss it. If we're looking at the factors, and I won't belabor the points, basically the property has sat fallow and undeveloped now

for almost a decade. Really, any improvement that we can do at this point will only improve the condition of the property. My client is proposing ample landscaping on the two frontages that are on Old Country Road and Kroemer Avenue. There is a landscape plan in your materials. They are also providing onsite stormwater runoff which would be the concern most likely associated with the additional impervious coverage. We're providing ten onsite pools. In addition, my client is providing two offsite drywells to a catch basin on Kroemer Avenue which he is funding privately through his own funds. The variances are both under 10%; I believe they're a 6.7% variance for the impervious coverage and a 1.7% variance for the landscaping. Unfortunately, there's really no way for us to reduce the amount of impervious and still get the specific layout of the property; the building's already there, and the parking areas are what they are in order to be compliant with the requirements under the current code standards. As for the problem being self-created, there is some degree of self-creation in the sense that the property could potentially be reconfigured to eliminate some of the impervious, but again, not much. In order to accommodate the necessary parking and as much landscaping as possible, this is the minimum relief we can really seek. We did attempt to provide some additional landscaping on the median that is toward the entrance on Old Country Road; however, that created a sight distance issue. So, that's going to be a general paver style concrete with a pattern on it. That's really all I have for the board, so if you have any specific questions, I'm happy to address them; otherwise, we are asking that the application be granted. Mr. McLaughlin asked, Leroy, you have any questions? Mr. Barnes replied, no. I read the application, I looked at it. It's fine. I have no issue. Mr. McLaughlin replied, okay. Anyone else? Is there anyone else on the Zoom to be heard? If anyone else is on, please unmute yourself. (There were no public comments.)

A motion was made by Mr. Gazzillo and seconded by Mr. Barnes that the appeal be granted as sought. The motion carried by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	ABSENT
Mr. Gazzillo	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

#### DETERMINATION OF THE ZONING BOARD OF APPEALS

APPEAL NO: 2020-030

SUMMARY: Amended Site Plan

APPLICANT/PROPERTY OWNER: Barclay Ehrler, 18 Central Ave, Hauppauge, NY 11788

RELIEF SOUGHT: for variances and/or relief from Chapter 301 Section 107A where proposed impervious coverage is 81.7% and maximum permitted is 75%; and, Section 107C where proposed contiguous landscaped area is 18.3% and minimum required is 20%.

LOCATION: 1870 Old Country Road, Riverhead

SCTM#: 600-119-1-36

ZONING DISTRICT: Destination Retail Center (DRC)

SIZE OF PROPERTY/REQUIRED SET BACKS: The property is approximately 67,359 sq. ft. or 1.546 acres (72,540 sq. ft. or 1.665 acres before County Road 58 dedication). Minimum lot area is 40,000 square feet; minimum lot width at front street is 200 feet; building lot coverage (footprint) maximum without sewer is 10%; building lot coverage maximum with sewer is 15%; building lot coverage maximum with transfer of development rights is 30%; maximum impervious surface is 75%; maximum height of buildings is 35 feet; floor area ratio maximum without sewer is 0.10; floor area ratio with sewer is 0.20; floor area ratio maximum with transfer of development rights is 0.60; minimum front yard depth is 50 feet; minimum depth of each side yard of interior lots is 25 feet; minimum combined depth for 2 sides of interior lots is 50 feet; minimum depth for each side yard of

corner lot is 25 feet; minimum combined side yard depth of corner lots for 2 sides is 50 feet; minimum rear yard depth is 50 feet.

DATE OF HEARING: 9/10/2020

INSPECTION DATES: 9/3/2020, 9/8/2020, 9/10/2020

SUFFOLK COUNTY PLANNING COMMISSION: This application was referred to the Suffolk County Planning Commission on July 17, 2020 and by letter dated August 10, 2020 the application was deemed a matter of local determination.

SEQRA: The Zoning Board of Appeals has visited the property under consideration and reviewed the application, and it is noted that the Town of Riverhead Planning Board reviewed the site plan application, and per Resolution No. 2020-024 dated May 7, 2020 the Planning Board assumed Lead Agency, classified the application as an Unlisted Action pursuant to SEQRA, and issued a negative declaration.

PLEASE TAKE NOTICE that at the public hearings of the Town of Riverhead Zoning Board of Appeals on the above referenced dates, the above referenced appeal was heard, evidence placed into the record and the application was duly considered. Based upon the foregoing, the Zoning Board of Appeals takes the following action:

HISTORY/PROPERTY FACTS

1. Zoning Board of Appeals determination 05-57 dated July 28, 2005 granted relief to erect a building with nonconforming lot coverage, setbacks, and landscaping.
2. Site Plan application was received by the Planning Department on August 23, 2006 for a 14,500 sf retail store with associated parking and landscaping improvements, and Planning Board Resolution No. 60 dated July 17, 2008 approved site plan of E&E Enterprises, Inc. Barclay Ehrler for construction of a 14,400 sf retail store. Zoning Board of Appeals determination 05-57 expired and subsequent variance was granted for the same relief by determination 10-03 dated January 14, 2010. Planning Board Resolution 2011-0011 dated February 3, 2011 granted a twelve month site plan extension (expiring 7/12/2012). Site plan eventually expired.
3. Zoning Board of Appeals determination 12-48 dated October 25, 2012 was then granted (for same relief as 05-57 and 10-03) as previous determination had expired.
4. Planning Board Resolution 2013-0012 dated January 13, 2013 granted approval of identical site plan originally approved on July 17, 2008.
5. Planning Department received amended site plan application on September 26, 2014. At the January 7, 2016 Planning Board meeting it was determined that the applicant would amend the site plan and resubmit. On April 21, 2016 an updated site plan application for the building and revised amended plans were received for construction of a 14,400 sf building for a retail store and related improvements, including paved parking areas, landscaping, public sidewalks, walkways, drainage structures, and exterior lighting. Zoning Board of Appeals determination 12-48 had expired and was reopened on June 11, 2015, granting modified relief for lot coverage, setbacks and contiguous landscaped area. Planning Board Resolution 2016-0091 dated September 15, 2016 approved amended site plan with conditions, including a dedication to the Town of an area along Kroemer Avenue.
6. Building Department issued permit (ZB150940) dated December 30, 2016 for land clearing of vegetation only, no exportation or importation. Application was made to the Building Department on January 24, 2017 to construct 14,440 sf retail building.
7. On May 8, 2018 the Planning Department received an amended site plan application which did not show the offer of dedication to the Town of Riverhead as conditioned in the approval resolution.

8. After a mandated 30-day SEQRA coordinated review period, Planning Board Resolution 2020-024 dated May 7, 2020 approved Planning Board as Lead Agency and issued a negative declaration pursuant to SEQRA for the amended site plan application and assessed that the most current revised site plan showed a 10 foot wide area delineated by metes and bounds matching the latest survey labeled "Parcel to be of Dedication to the Town of Riverhead for Highway Purposes, Area=2,283 sf," which is a dedication required by the Planning Board for possible future improvements at the Old Country Road/Kroemer Avenue intersection.
9. A denial letter was sent from the Building Department on June 22, 2020 and an application was made to the Zoning Board of Appeals on July 15, 2020.
10. After reviewing the application, the history of the property and information gathered at the public hearing pursuant to the criteria set forth in Town Law 267-b this Board makes the following findings of fact:
  - a. The property is presently improved with the following structure(s):
    - i. Masonry building under construction

FINDINGS: The evidence in the record establishes that weighing the benefit of granting the area variance request against the detriment of granting the area variance request to the health, safety and welfare of the community and finds as follows:

1. The variance sought would not produce an impact on adjacent properties or the neighborhood as the proposal calls for abundant trees, greenery and other landscaping along both frontages of the subject premises on Old Country Road and Kroemer Avenue. Improvements to the subject premises will greatly increase the attractiveness of the site, which is highly visible and located at the intersection of two major roads in this area of town. Approval from this board was previously granted in 2015 and has since lapsed. Relief sought by this variance increases the contiguous landscaping of a previous approval by 3.3%, thereby decreasing the degree of nonconformity.
2. The requested variance is not substantial because both of the requested variances are 10% or less, suggesting they are not substantial in nature. Additionally, case law on the issue of substantiality holds that the impact of the desired variances determines substantiality, not mathematics. The requested variances are not substantial in that the proposed improvements include abundant trees and landscaping.
3. The benefit sought by the applicant cannot be achieved by some alternative means as the two required dedications to both the Town and County significantly reduce the size of the subject premises thereby increasing lot coverage ratio and decreasing the lot area available for contiguous open space. If the applicant eliminated parking spaces to reduce the variances, the impervious surface coverage would decrease and the landscaping could increase; however, that reduces the available parking to less than what is necessary.
4. The requested variance will not have an adverse impact on the physical or environmental conditions in the neighborhood/district as the project includes installation of new drainage structures that will comply with the Town Code requirements for stormwater management; therefore, the increased impervious surface coverage will not result in any adverse environmental impacts. The reduction in contiguous landscaping will not present adverse impacts in that the proposal still calls for adequate landscaping along the two lot frontages on Old Country Road and Kroemer Avenue.
5. The alleged difficulty that the property owner is experiencing was partially self-created as the owner could reduce parking to better mitigate the degree of nonconformity; though, doing so will reduce available parking. This fact does not prohibit this board from granting the relief sought.

The motion was made by Mr. Gazzillo and seconded by Mr. Barnes, that the aforementioned determination be approved:

**THE VOTE**

**MR. SEABROOK: ABSENT MR. BARNES: AYE**  
**MR. GAZZILLO: AYE MR. WITTMEIER: AYE**  
**MR. MCLAUGHLIN: AYE**

**This determination X was \_\_\_ was not  
therefore duly adopted**

Based upon the foregoing, the following area variance is **GRANTED** and, if granted, is subject to the following conditions which, based upon the evidence presented, will minimize the adverse impacts that the variance would have on the community or district as identified above.

**NO CONDITIONS**

**Appeal 2020-033 – Twin Fork Beer Co Inc. – 807 Raynor Avenue, Riverhead – SCTM No. 600-108-2-12 – IND C Zoning** - for variances and/or relief from Chapter 301 Section 122 C(2)(a) where retail use shall not exceed 10% of the gross floor area or 3,000 sq. ft. (whichever is less) of the wholesale business; proposed is 1,650 sq. ft. and maximum permitted is 1,148 sq. ft.

Dan Chekijian, Twin Fork Beer Company, 807 Raynor Avenue, Riverhead was sworn in and stated, the case is ...the process is to increase our allowable use in the tasting room by 3% to accommodate social distancing in the taste room in our brewery. We feel that this is an insignificant increase in the allowable use, and it's only a 3% increase so we feel it's...you should entertain it. Mr. Barnes asked, when the covid is over are you gonna put it back to what it's supposed to be or do you want the variance permanently? Mr. Chekijian replied, we'd like the variance permanent; we are not necessarily looking for an increase in occupancy. We just feel it would be safer to have our patrons in a distanced manner. Mr. Barnes responded, okay. To me it appears to be a good thing to increase your space area. It's unfortunate that the code was only written to allow about 1,000 sf. So, I'd be happy to grant it, at least me, personally. I don't know how the other members feel. Mr. Wittmeier noted, I don't have any questions, Mr. Chairman. Mr. Gazzillo added, I have no problem with it. Mr. McLaughlin asked (to someone signed in on Zoom), Anita, would you unmute? Is there one more to be heard? Unmute if you want to talk. Mr. Gazzillo asked, is she in favor or opposed? Do you know? Mr. Chekijian replied, I have a feeling she's in favor. Mr. McLaughlin asked, she's your wife? Mr. Chekijian answered, no, it's my mother. (All members laughed.) Mr. McLaughlin added, I would imagine your mom is for it, so...there's nobody in opposition on Zoom. Let's have a reading.

A motion was made by Mr. Wittmeier and seconded by Mr. Barnes that the appeal be granted as sought. The motion carried by a roll call vote of all members present:

Mr. Barnes            AYE  
Mr. Seabrook        ABSENT  
Mr. Gazzillo         AYE  
Mr. Wittmeier       AYE  
Mr. McLaughlin     AYE

**DETERMINATION OF THE ZONING BOARD OF APPEALS**

APPEAL NO: 2020-033

SUMMARY: Revised Floor Plan to Expand Tasting Room

APPLICANT/PROPERTY OWNER: *Applicant:* Twin Fork Beer Co Inc, 807 Raynor Ave, Riverhead 11901  
*Owner:* ADPC Raynor LLC, 807 Raynor Ave, Riverhead 11901

RELIEF SOUGHT: for variances and/or relief from Chapter 301 Section 122 C(2)(a) where retail use shall not exceed 10% of the gross floor area or 3,000 sq. ft. (whichever is less) of the wholesale business; proposed is 1,650 sq. ft. and maximum permitted is 1,148 sq. ft.

LOCATION: 807 Raynor Ave, Riverhead

SCTM#: 600-108-2-12

ZONING DISTRICT: Industrial C (IND C)

SIZE OF PROPERTY/REQUIRED SET BACKS: The property is approximately 91,357.3 sq. ft. or 2.097 acres. Minimum lot area is 80,000 square feet; minimum lot width at front street is 300 feet; maximum building lot coverage with and without sewer is 40%; maximum impervious surface is 60%; maximum height of buildings is 30 feet; maximum floor area ratio with and without sewer is 0.40; minimum front yard depth is 30 feet; minimum depth for each side yard of an interior lot is 30 feet; minimum combined depth for 2 sides of an interior lot is 60 feet; minimum depth facing side street for a corner lot is 30 feet; minimum combined depth for 2 sides or a corner lot is 60 feet; minimum rear yard depth is 50 feet.

DATE OF HEARING: 9/10/2020

INSPECTION DATES: 9/3/2020, 9/8/2020

SUFFOLK COUNTY PLANNING COMMISSION: Pursuant to the Suffolk County Administrative Code Sections A14-14 to 23 referral of this matter to the Suffolk County Department of Planning and Development was not required.

SEQRA: The Zoning Board of Appeals has visited the property under consideration and reviewed the application and the Town's environmental planner determines that this review falls under Type II 617.5 c(13) and does not require any further action pursuant to SEQRA.

PLEASE TAKE NOTICE that at the public hearings of the Town of Riverhead Zoning Board of Appeals on the above referenced dates, the above referenced appeal was heard, evidence placed into the record and the application was duly considered. Based upon the foregoing, the Zoning Board of Appeals takes the following action:

HISTORY/PROPERTY FACTS

1. Site plan application submitted to the Planning Department on April 6, 2017 for construction of a one-story 11,480 sf brewery and additional site improvements. Planning Board Resolution 2018-013 granted final site plan approval on February 15, 2018.
2. Application was made to the Building Department on July 23, 2018 to construct one-story pre-engineered building on slab for brewery with accessory office, storage & tasting room for Twin Fork Beer with associated site improvements per Planning Board approval.
3. A denial letter was sent from the Building Department on June 26, 2020 and an application was made to the Zoning Board of Appeals on August 3, 2020.
4. After reviewing the application, the history of the property and information gathered at the public hearing pursuant to the criteria set forth in Town Law 267-b this Board makes the following findings of fact:
  - a. The property is presently under construction

**FINDINGS:** The evidence in the record establishes that weighing the benefit of granting the area variance request against the detriment of granting the area variance request to the health, safety and welfare of the community and finds as follows:

1. The variance sought would not produce an impact on adjacent properties or the neighborhood because the foot print of the approved building is not being altered, the proposed modifications are interior only.
2. The requested variance is not substantial as the increase in retail space proposed is minimal at less than 5% of maximum permitted.
3. The benefit sought by the applicant cannot be achieved by some alternative means as due to the pandemic and mandated social distancing guidelines, the tasting room size must be increased to accommodate the original approved occupancy.
4. The requested variance will not have an adverse impact on the physical or environmental conditions in the neighborhood/district as no alterations to the footprint or exterior of the structure are proposed.
5. The alleged difficulty that the property owner is experiencing was not self-created as the guidelines of Covid-19 pandemic have necessitated changes.

The motion was made by Mr. Wittmeier and seconded by Mr. Barnes, that the aforementioned determination be approved:

**THE VOTE**

**MR. SEABROOK: ABSENT MR. BARNES: AYE**  
**MR. GAZZILLO: AYE MR. WITTMEIER: AYE**  
**MR. MCLAUGHLIN: AYE**

**This determination X was \_\_\_ was not  
therefore duly adopted**

Based upon the foregoing, the following area variance is **GRANTED** and, if granted, is subject to the following conditions which, based upon the evidence presented, will minimize the adverse impacts that the variance would have on the community or district as identified above.

**NO CONDITIONS**

**Minutes of August 27, 2020** - A motion was made by Mr. Wittmeier and seconded by Mr. Barnes that the minutes be adopted. The motion was approved by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	ABSENT
Mr. Gazzillo	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

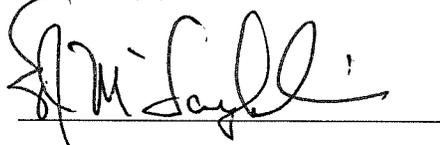
**NEXT MEETING DATE** – September 24, 2020 at 7:00 PM

A motion to close the meeting was made by Mr. Wittmeier. The meeting was closed by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	ABSENT
Mr. Gazzillo	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

Approved and Dated: 9/24/2020

Very truly yours,

A handwritten signature in black ink, appearing to read "Fred McLaughlin", written over a horizontal line.

Fred McLaughlin, Chairman  
ZONING BOARD OF APPEALS