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INCORPORATED VILLAGE OF OCEAN BEACH

FIRE ISLAND, NEW YORK

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ZONING BOARD OF APPEALS

PUBLIC HEARING

SPECIAL PERMIT APPLICATION NUMBER BP2023-052

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August 5, 2023  
11:03 a.m.  
Boat House  
Ocean Beach, New York

-----x

A P P E A R A N C E S :

JOEL BURRIS, CHAIRMAN

KEVIN LOWRY, MEMBER

JEREMY CONWAY, MEMBER

CRAIG SHERMAN, MEMBER

CONSTANTINE KARALIS, MEMBER

JACQUELINE RULON, DEPUTY CLERK

KENNETH GRAY, ESQ., VILLAGE ATTORNEY via Zoom

D. Leigh Chapman  
Court Reporter

1           ALSO APPEARING:

2

3           Michael Murtha  
4           Murtha Construction  
5           1100 Prospect Avenue  
6           West Islip, New York 11795

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1           CHAIRMAN BURRIS: It is 10:03, it is 11:03 on  
2 August the 5th, 2023, and this a meeting of the  
3 Ocean Beach Zoning Board of Appeals. I see that  
4 we have a quorum present. Please say "present"  
5 when I call your name.

6           Jeremy Conway?

7           MEMBER CONWAY: Present.

8           CHAIRMAN BURRIS: Myself, Joel Burris, I am  
9 Chairman of the committee.

10          Kevin Conway?

11          MEMBER LOWRY: Kevin Lowry.

12          CHAIRMAN BURRIS: Kevin Lowry. Kevin Conway  
13 was an old member, and I apologize, Kevin, Deputy  
14 Chairman. And Craig Sherman, our newest member.

15          MEMBER SHERMAN: Present.

16          CHAIRMAN BURRIS: Constantine Karalis?

17          MEMBER KARALIS: Present.

18          CHAIRMAN BURRIS: Okay. We do have a quorum  
19 present, and we have a Zoom call tied in right  
20 now. Counsel to the Board and the Village, I  
21 guess, Ken Gray. Ken, can you hear us?

22          MR. GRAY: Yes, I can. I'm present.

23          CHAIRMAN BURRIS: Wonderful. Let me first  
24 call the meeting to order, and let everybody know  
25 that before the meeting, all of the Board members

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1 present went to the site in question on Cottage  
2 Walk, 278 Cottage Walk for a site inspection.  
3 There was no deliberation at the site inspection,  
4 rather just an inspection of the site and the  
5 situation which we're addressing today.

6 Today's meeting addresses Variance  
7 Application Number P, I'm sorry, BP2023-052,  
8 which is a property owned by Mitchell and Risa  
9 Gosset located at 278-279 Cottage Walk, Ocean  
10 Beach, New York.

11 The applicant on the hearing is Michael  
12 Murtha, who I believe was their contractor and  
13 the original builder of the house. The  
14 application was for a bump out on the rear deck  
15 that's approximately three feet in width and  
16 approximately seven feet in length, which  
17 extrudes into the eight-foot required property  
18 setback line under the Village of Ocean Beach  
19 Code. And the applicants submitted a building  
20 permit for this enlargement of the deck area,  
21 which was the denied by the building inspector  
22 by a denial letter dated May 11, 2023. And the  
23 denial letter basically reads that the bump out  
24 goes into the required setback area. There's an  
25 eight-foot setback area, and the bump out is

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1 three feet, which meets a five-foot setback area  
2 to the property line.

3 There was a couple of notices received from  
4 the public. Actually, one letter that, I think,  
5 was sent twice from somebody who I see is here.  
6 So that, eventually, will go -- well, it is in  
7 the record now. It's a letter sent, an email  
8 sent by Louis Shore dated July 31st, 2023, sent  
9 to the Village of Ocean Beach Office and then  
10 there's a subsequent email from Louis Shore to  
11 the Village of Ocean Beach Office dated  
12 August 3rd, 2023. It's rather lengthy and  
13 rather than reading it, when the meeting is open  
14 to the public, Louis may elect to make  
15 statements. I don't know, but it is in the  
16 record.

17 We also have a letter from the United  
18 States Department of the Interior, signed  
19 7/11/23, in which they basically say that the  
20 bump out exceeds their regulations and that it's  
21 nonconforming and that they do not waive their  
22 right of condemnation. It's their objection to  
23 the bump out, but the United States Department  
24 of Interior sends a similar letter with every  
25 building permit ever issued in Ocean Beach, and

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1           what they're saying is they have the right to  
2           condemn if it's built. Which, frankly, I think  
3           by law they have that right anyway, but it puts  
4           them on record.

5                     There's no other correspondence that I have  
6           in the file. I see there are members of the  
7           public here today, and I thank you for coming.

8                     I would ask the applicant, first, a  
9           question. Was notice delivered to each of the  
10          homeowners in all of the --

11                    MR. GOSSET: Yes. That's on the application  
12          as well.

13                    CHAIRMAN BURRIS: On the application. It  
14          doesn't list the names and addresses of the  
15          homeowners, but if it's been delivered to them,  
16          that's fine.

17                    MR. GRAY: Mr. Burris, may I chime in for a  
18          second?

19                    CHAIRMAN BURRIS: Yes. That's Counsel.

20                    MR. GRAY: Ken Gray here. I think it's  
21          important to note that the work that was performed  
22          was done prior to the building application being  
23          submitted and prior to the denial letter. The  
24          work has already been completed. I think that  
25          just needs to be made part of the record.

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1           CHAIRMAN BURRIS: Thank you for the  
2 clarification. The Board is aware of that. It is  
3 clear from the application, and I very much  
4 appreciate you noting that on the record.

5           MR. GRAY: Thank you.

6           CHAIRMAN BURRIS: I was remiss in not doing  
7 that, and if I'm remiss in anything else, please  
8 chime in. That's why you're Counsel.

9           First, I'd like to structure this meeting  
10 so that the applicant presents what they're  
11 proposing, and I say "proposing", as Counsel  
12 pointed out, what they have built because it's  
13 different than the proposal and why they think  
14 the variance should be granted for this. Then I  
15 will open it to the public's comments and along  
16 the way, the Board, I'm sure, will have  
17 questions to interject to the applicant, the  
18 homeowner, and perhaps the public.

19           So if the applicant or the homeowner would  
20 like to make the presentation as to what their  
21 proposing to legalize.

22           MR. MURTHA: Sure. Absolutely.

23           Can you hear me? Is that good?

24           Good morning, Mr. Chairman and Board  
25 members.

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1           CHAIRMAN BURRIS: I'm not sure it's on.  
2           Raise up the microphone so everyone can hear.

3           MR. MURTHA: Good morning. Thank you for  
4           taking the time for me today, and thank you for  
5           the opportunity to present the variance  
6           application on behalf of Risa and Mitchell Gosset  
7           who are here in attendance today.

8           CHAIRMAN BURRIS: Please introduce yourself.

9           MR. MURTHA: I'm Michael Murtha. Sorry about  
10          that. I represent them as builder, contractor,  
11          and friend.

12          We're seeking your approval to retain a  
13          three-foot by seven-foot deck addition with a  
14          rear yard setback of five feet instead of the  
15          required eight feet.

16          I do acknowledge that this is a self-  
17          inflicted wound or situation. At the time there  
18          was such a de minimis add on and the fact that  
19          it keeps in character with the surrounding  
20          properties and neighborhood and we didn't feel  
21          it was a big deal, but I was wrong with that one  
22          and take responsibility for that.

23          In 2022, we removed a dilapidated house and  
24          designed a new home. Although we didn't have to  
25          design a home that was, we designed a home that



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1 was consistent with traditional Ocean Beach  
2 homes by design. We did that because we wanted  
3 to fit into the character of the neighborhood  
4 although we didn't have to.

5 The new house was constructed as a  
6 traditional Ocean Beach home. Unfortunately,  
7 the rear deck/pool area wasn't designed with  
8 enough location for a grill. I didn't have the  
9 forethought to find a spot for the grill, and  
10 that's why we're here today.

11 We're asking for relief based on safety and  
12 quality of life reasons. Last summer, a friend  
13 of mine was grilling and his daughter's arm got  
14 burned on the grill because his deck is really  
15 very small, as you guys have seen it, and the  
16 pool is there and there's egress from the stairs  
17 coming down from the second floor. So the  
18 logical solution, what we thought, was to do a  
19 small bump out to contain the grill in a safe  
20 area and we thought that was the best solution.

21 We even thought about putting the grill on  
22 the ground below, but there's no egress from the  
23 rear to get down to the grass level, so that was  
24 not really an option.

25 This is a 21-foot de minimis addition in my

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1 view. It does not change the character of this  
2 neighborhood in any way, shape, or form. In  
3 fact, it's virtually unseen from anywhere except  
4 if you go on the deck itself.

5 MEMBER LOWRY: Mike, excuse me.

6 MR. MURTHA: Yes?

7 MEMBER LOWRY: For clarification, it's not  
8 21-foot, it's 20 square feet.

9 MR. MURTHA: Yes, thank you. It's  
10 21-square-foot addition. Like the Chairman said,  
11 it's three-foot by seven-foot, and I can  
12 demonstrate that.

13 (Mr. Murtha puts down paper on the floor to  
14 represent the size of rear deck extension.)

15 The paper on the floor, essentially,  
16 represents the ask today. It's pretty small.

17 MR. GRAY: Can you cook me a hot dog?

18 MR. MURTHA: Maybe. It all depends on the  
19 verdict today.

20 This application is extremely minor in  
21 change of community or house and has no adverse  
22 affects esthetically or safety wise and we are  
23 still nine feet away from the property line  
24 although four of that feet is the delivery lane.  
25 We know that. So it's nine feet from the

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1 property line, but, yes, five feet from the  
2 buildable property line.

3 Chairman mentioned about the Department of  
4 the Interior. I think it's just a moot point.  
5 I don't want to address it. It's a moot point.

6 I would like to introduce two decks in the  
7 community that have relief on rear yard  
8 extensions. The first one is one I actually  
9 built myself. I got relief from, I know Kevin,  
10 and Joel, you were on the Board about seven  
11 years ago, Tony and John Sullivan at 957  
12 Surfview Walk. We were allowed to leave a  
13 two-foot rear yard instead of the required  
14 eight-foot on that deck.

15 CHAIRMAN BURRIS: Was that a situation in  
16 which the deck was also already built and then the  
17 hearing to us after it was constructed?

18 MR. MURTHA: Uh, yes, uh, no. It was  
19 replacement and enlarging of an existing deck.

20 CHAIRMAN BURRIS: It was brought to us after  
21 it was constructed?

22 MR. MURTHA: No, before. That was brought  
23 before it was constructed. That's in the record.  
24 I remember some of the comments you addressed to  
25 me saying it was very thorough. I don't know why,

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1 but I do remember it.

2 The second one is 358 Denhoff Walk. On  
3 May, 2023 it was granted Certificate of  
4 Occupancy and it's for a nonconforming rear  
5 deck. This deck is approximately 38 feet long  
6 and the rear property line is approximately  
7 two feet instead of the required eight-foot  
8 setback. This is approximately 228 square feet,  
9 making it more than ten times the relief that  
10 I'm asking for today. More than ten times.

11 CHAIRMAN BURRIS: Was that a new deck? Was  
12 that a deck that existed?

13 MR. MURTHA: I don't, I think it existed. I  
14 believe it was an existing deck and the building  
15 inspector, as I said, about five months ago, less,  
16 granted a certificate and that house happens to be  
17 right behind Mr. and Mrs. Gosset's house, the  
18 adjoining house and that was granted.

19 CHAIRMAN BURRIS: And the deck was built  
20 before the zoning law was changed or it was  
21 preexisting deck. Very different than this  
22 situation.

23 MR. MURTHA: Is it?

24 CHAIRMAN BURRIS: The Board will deliberate  
25 that.

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1           MR. MURTHA: I don't believe we are asking  
2 for any major relief that hasn't already been  
3 granted before by the Village. As a matter of  
4 fact, what we're asking for is far less than the  
5 previous grants. For the reasons stated above, I  
6 respectfully request that you grant this  
7 application and thank you. I can answer any  
8 questions.

9           MEMBER CONWAY: Could you just repeat the  
10 address on the Surfview Walk property that you  
11 quoted?

12           MR. MURTHA: Surfview Walk is 957 Surfview.

13           MEMBER LOWRY: What was the other one?

14           MR. MURTHA: The other one is 358 and I think  
15 359 Denhoff.

16           CHAIRMAN BURRIS: The other one didn't come  
17 before the Zoning Board and we issued the Surfview  
18 Walk one -- you're saying we approved a setback?  
19 What were the extenuating circumstances in that  
20 situation since you were involved in it? Please  
21 tell us.

22           MR. MURTHA: I think they had small children  
23 and it may have been, that's all I remember. The  
24 small children thing and really no other place  
25 where you could play without getting ticks and all

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1 that good stuff. So I don't remember.

2 CHAIRMAN BURRIS: You're saying we approved a  
3 new deck because there were small children and  
4 they wanted an enlarged deck for the children to  
5 play on? I don't recall that.

6 MR. MURTHA: Yeah. It may have been an  
7 existing deck, preexisting deck.

8 CHAIRMAN BURRIS: Preexisting, that's what I  
9 recall. Thank you.

10 MR. MURTHA: Okay. Any questions?

11 CHAIRMAN BURRIS: No. I don't have any.  
12 Does anyone else on the Board have any?

13 MEMBER LOWRY: Is there any place else on  
14 that deck where a barbecue could reasonably go?

15 MR. MURTHA: Not reasonably go, no. Like I  
16 said, somebody already got burned once. We did  
17 explore, you know, how to get down to the ground  
18 level. You saw the house. It really makes no  
19 sense to do that, but no.

20 CHAIRMAN BURRIS: Every other deck in Ocean  
21 Beach that I'm aware of has a barbecue without it  
22 being in an enclosure, which I question for  
23 safety. In fact, not only do you have it in an  
24 enclosure, but even the first three or four inches  
25 in front have kind of lips on it to seal it back

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1           there. So it really can't even be wheeled out  
2           very quickly if there were a fire. I don't know,  
3           you must have assembled it in the spot --

4           MR. MURTHA: It slips right in there. Very  
5           simple.

6           CHAIRMAN BURRIS: But there definitely are  
7           lips around it. And it seemed to me, and I was  
8           very conscious of the deck and the space on the  
9           deck, but there's a pool with a walk on the right  
10          side. The left side, there's substantial area to  
11          put a barbecue, and, yeah, it may interfere with  
12          having a lounge chair. Maybe you'll have one less  
13          lounge chair, but the area where the table is,  
14          you could move the table closer to the house.  
15          It's not unreasonable to use alternative spaces  
16          without having to obtain a variance to put a  
17          barbecue. Am I wrong on that? If I am, please  
18          tell me.

19          MR. MURTHA: It's a very limited space there.  
20          I don't want to say you're wrong on that, but it's  
21          a very limited space. We tried it. It just was  
22          always in the way.

23          MEMBER LOWRY: I think safety concerns could  
24          be made on both sides of this issue. I took a  
25          photograph of it, and it's only the table on this

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1 side. On the north side of the deck, there's a  
2 table that seats eight people, which is certainly  
3 not an unreasonable number of people to be seated  
4 in a beach house where we have enormous numbers of  
5 guests coming through all the time. And given  
6 that limited space, there are safety issues to be  
7 addressed with people coming too close to the  
8 barbecue, possibly getting burnt. Certainly, on  
9 the side where the pool is, you can't put it. You  
10 fall into the pool when you try to cook. There's  
11 no spot there.

12 I just wanted, my observation tells me  
13 that, yeah, there might be a safety issue with  
14 it being tucked away, but if it caught fire, I  
15 don't think you'd want to pull it out anyway.

16 CHAIRMAN BURRIS: You have 28 feet from the  
17 pool. No, not 28 feet. Less the, what? Twenty  
18 feet from the side of the house. About 20,  
19 assuming there's an eight-foot setback. You know,  
20 it's a magnificent pool, a magnificent house. You  
21 did a great job on it. When you constructed the  
22 house, you did it to code. You have an eight-foot  
23 setback that you intentionally, I'm sure, was  
24 designed by your architect to make sure it  
25 complied with code. So when you constructed the



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1 house, you knew what the code was with the  
2 eight-foot setback and you did a great job in  
3 positioning everything there and making a  
4 beautiful pool, while leaving a large area for  
5 entertaining on the left. I assume you could have  
6 placed that pool in the middle of the deck. I'm  
7 sure a lot of thought went into that. Pushing it  
8 to right side to enlarge the seating area, to  
9 enlarge the dining area, to enlarge the barbecuing  
10 area. So, yes, it's nice to have a bump out.  
11 Everybody would like to be in their setbacks, but  
12 it's something that you added that I don't view as  
13 a necessity. Unless you can tell me that there  
14 was no another place.

15 MEMBER LOWRY: The homeowner wants to come up  
16 and speak.

17 MR. GOSSET: Yeah, I appreciate it.  
18 Mr. Chairman and Board, I'm Mitch Gosset, the  
19 homeowner.

20 Before he built the bump out, I tried the  
21 barbecue in two spots on the deck. The first  
22 spot was adjacent to the shower, to the outdoor  
23 shower. And I even went through the expense, if  
24 you look at the original plan, I made the shower  
25 smaller from when I bought the house and I paid

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1 money to Mike to make the shower not come out as  
2 far towards the backyard in hopes of putting the  
3 barbecue there. I put it there, and I felt hat  
4 it was too close to the table. When you have  
5 eight people at the table, sometimes there's  
6 other people kind of congregating around the  
7 table on a deck. It seemed to me like that was  
8 not a spot when we're doing a barbecue that  
9 would be safe to have people around that table,  
10 around that area.

11 Then I moved it back to the far left  
12 corner, towards the bay side. You know, to that  
13 side, in that corner and the same thing. There  
14 wasn't enough space between the table and the  
15 chairs. If someone gets up while we're  
16 barbecuing, I didn't feel it was safe. So now I  
17 spent more money to do the bump out, but I  
18 originally tried to solve the problem by  
19 shortening the shower. If you look at the  
20 original plan to what's there now, I spent money  
21 to do that to try to accommodate the barbecue on  
22 the deck.

23 CHAIRMAN BURRIS: I appreciate you saying  
24 that. As, I guess, a 35-year resident in Ocean  
25 Beach, I recall many, many years where we didn't

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1 have barbecues. They were illegal because of the  
2 fire issue. Probably was great for the  
3 restaurants. It drove all of us crazy. You still  
4 can't have charcoal barbecues. When you have a  
5 barbecue, I believe it cannot be up against a  
6 combustibile wall. I know I have around my  
7 barbecue this insulation, and it's not up against  
8 a wall. You've enclosed the barbecue in a wood,  
9 combustibile wall with power lines not far away.  
10 So, frankly, I expected you to come here and say  
11 to us, you know what? I understand these issues.  
12 I'll put the barbecue someplace else. Let me keep  
13 the bump out.

14 That's not what you're saying. What you're  
15 saying to me is, that's the only place I can put  
16 a barbecue. There are no alternatives, and I  
17 don't agree with that.

18 MR. GOSSET: Okay. I understand.

19 CHAIRMAN BURRIS: Correct me if I'm wrong.

20 MR. GOSSET: I respectfully just disagree on  
21 the best place for the barbecue. I'm not opposed  
22 to potentially moving it, but when I did it  
23 originally, I thought that that was the best spot.  
24 Would it help if I put some type of fireproofing  
25 on the back wall or side walls of the bump out? I

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1 don't know. I'm willing to work with the town and  
2 my neighbors to make it safe and, you know, where  
3 everyone's okay with it. So if you have a  
4 solution, I'm willing to accept that solution and  
5 try to work with it.

6 MEMBER LOWRY: I think we would take that  
7 under consideration when we deliberate.

8 MR. GOSSET: I appreciate it.

9 MEMBER SHERMAN: Mitch, you said that you  
10 tried the barbecue in a lot of different places.  
11 Is this the same barbecue (showing photograph of a  
12 barbecue) you tried in a lot of different places  
13 before the bump out?

14 MR. GOSSET: Yes. It was the barbecue that  
15 was included with the purchase of the house, yes.

16 MEMBER SHERMAN: I would recommend, as a  
17 homeowner who has a similar deck, a smaller  
18 barbecue, for starters. That will definitely give  
19 you the ability to move it somewhere else. That  
20 barbecue is massive for the size of your deck.

21 MR. GOSSET: Okay.

22 CHAIRMAN BURRIS: Constantine, do you have  
23 anything?

24 MEMBER KARALIS: Yes. It seems to me that  
25 you have an area of 20 feet by 25 feet of deck

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1 before you put anything in it. I would think that  
2 then, forgetting about furniture and things like  
3 that, there would be tables, chairs, barbecues,  
4 and all this stuff. That dimension excludes the  
5 area taken by the pool.

6 So you have an area 20 by 20 feet, 25 feet.  
7 I would think that the solution there would be  
8 find a place to put everything, instead of  
9 building without a permit into a prohibited  
10 area.

11 So I would try to solve the problem with  
12 the area that I have. Every house in this town  
13 is restricted in terms of expansion and space.  
14 So try to solve the problem with the 20-foot by  
15 25-foot area that you have instead of just going  
16 into the setback.

17 And that would have been the case before  
18 you built this thing that now you want to  
19 legitimize, which I say I have no idea why that  
20 would stand.

21 MR. GOSSET: Yeah, I thought looking at the  
22 alternatives, having the barbecue away from the  
23 seating space was the best option.

24 CHAIRMAN BURRIS: I don't think anybody would  
25 disagree. The house is beautiful. The best

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1 option is obviously to put it as far away as  
2 possible. We are unfortunately, or fortunately,  
3 in the situation of balancing equities and  
4 balancing the code, and I guess what I really want  
5 to say is this is uncomfortable for the Board and  
6 that's okay because that's our job. But whatever  
7 the outcome of the decision and whatever the  
8 community says, please, we're a community. We  
9 must all still work cohesively and be together.

10 So the fact that I think I would prefer, I  
11 know I would prefer that it not be there, and  
12 I'm hearing similar things from the Board. When  
13 this is all over, we are not enemies either way  
14 that it goes. And I say this to you, and I say  
15 this to the neighbors who sent letters, one  
16 neighbor. That we want to do what's right for  
17 the community and maintain the integrity of the  
18 code in the Village.

19 I don't know if any other Board members  
20 have anything they want to add or something you  
21 want to add before I open it up to the community  
22 to speak.

23 MR. GOSSET: Just that, if there's any  
24 recommendations, like I said, putting some type of  
25 fireproofing or anything you can think of that

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1 would make it more safe and more palatable for the  
2 Board and community, I'm all for it.

3 CHAIRMAN BURRIS: If the Board were to  
4 approve this, that would be a mandatory condition  
5 that we wouldn't set. We would have to have you  
6 get permission from the fire department as to  
7 what's necessary on that. We're not fire experts.  
8 We're just able to read the code that says not up  
9 against combustible areas, et cetera. So, yes, if  
10 it's permissive to stay, that would be the  
11 requisite.

12 MR. GOSSET: Just to ask you, like, what's  
13 the norm in Ocean Beach? If you have a deck, how  
14 far away from the deck should you place a barbecue?  
15 Most people don't put it the middle of their deck.  
16 They're putting it somewhere --

17 CHAIRMAN BURRIS: That's a very interesting  
18 question because for years, there was an inspector  
19 and when you got a permit, the inspector would  
20 come and look at the barbecue and would have to  
21 certify where it is. I know that in my situation,  
22 we had to move it away from certain areas and we  
23 had to have a hose within a certain number of feet  
24 of it and all sorts of other things to keep it  
25 safe. I know we had to have fireproof mats.

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1 MEMBER SHERMAN: I have the answer.

2 CHAIRMAN BURRIS: Okay. You have the answer?

3 Great.

4 MEMBER SHERMAN: You need three feet in all  
5 directions, rear, sides --

6 MR. MURTHA: Of combustible material.

7 MEMBER SHERMAN: Yeah, you're near  
8 combustible material.

9 MR. MURTHA: So if we eliminate the  
10 combustible piece, we can put it as close as we  
11 want to. That would be, as the Chairman said,  
12 we'd certainly do that with metal or some kind of  
13 concrete material and enclose the insides and take  
14 that off the issue. But I don't think that's a  
15 big issue for you guys.

16 MEMBER SHERMAN: It also can't be ten feet  
17 from an inhabitable structure. I think really the  
18 issue is safety is obviously paramount to the  
19 community, but it's a secondary issue. It's the  
20 nonconformity of the structure.

21 MEMBER LOWRY: Craig, can you tell us the  
22 source of that?

23 MEMBER SHERMAN: It's from the Village of  
24 Ocean Beach Barbecue Permit Application.

25 MEMBER LOWRY: Thank you.



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1           CHAIRMAN BURRIS: Anybody on the Board have  
2 any other questions for the applicant?

3           (No verbal response given.)

4           If the applicant doesn't have any  
5 additional statements, and we'll give you a  
6 chance to come back, I want to open the hearing  
7 up to community comments.

8           The first is, frankly, in lieu of having to  
9 read three pages of emails, which are in the  
10 record, I see neighbor Louis Shore here, who  
11 sent fairly detailed email and concerns that he  
12 had and I think that's because in the community,  
13 he's probably the person affected the most  
14 because it's within a couple of feet of his  
15 property lines. So, Louis, do you want to say  
16 anything?

17           MR. SHORE: Yes, please.

18           CHAIRMAN BURRIS: Is it okay if I don't read  
19 the emails into record, please? But they are in  
20 the file.

21           MR. SHORE: Thank you. First, let me thank  
22 you all for taking time on a Saturday morning.

23           MEMBER SHERMAN: If you could step closer.

24           MR. SHORE: Is that better? I'll try to  
25 speak louder.

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1 CHAIRMAN BURRIS: I want to make sure the  
2 applicant can hear you.

3 (Lots of outside noise interfering with the  
4 audio because the windows are open.)

5 MR. SHORE: First, I just want to give a  
6 little bit of background. My wife's family has  
7 been at --

8 MEMBER LOWRY: Could you introduce yourself  
9 and give your address?

10 MR. SHORE: I'm Louis Shore, part of the 358  
11 Denhoff family. My wife, Denise, is sitting over  
12 here. Our sons, Joshua and Alec, have been here  
13 their whole life. My wife's family has been at  
14 the 358 Denhoff Walk property for about 75 plus  
15 years. So we're very familiar with the homes that  
16 existed previously with Marty Bales (phonetic),  
17 who was the youth group counselor to my wife's  
18 oldest brother Peter. Just to give you some idea.

19 So I get the sense that the Village agrees  
20 with my concerns about safety, which is one of  
21 the primary reasons that I took the trouble to  
22 enter so much information into the record. So I  
23 don't want to repeat it and take more time from  
24 the Board, but I do want to add that in addition  
25 to the barbecue and its propane tank, that a

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1 spare tank may be in that region as well and/or  
2 maybe the previous tank that was running low.  
3 So we're very concerned that our family's safety  
4 and the community's safety is at risk. Where  
5 the power lines are only a few feet away from  
6 this bump out extension, which invades into our  
7 home.

8 Mr. Murtha gave the impression that nobody  
9 could see this, but the 278 Cottage Walk home is  
10 raised higher than ours. This bump out is in  
11 our face 24/7. My wife keeps the blinds in the  
12 master bedroom that's facing the home drawn, and  
13 when we're out on the deck, which is where we  
14 spend most of our time together, all we see is  
15 this bump out and we think of the potential  
16 liability.

17 Now I have two other things just to enter  
18 into the record because Mr. Murtha created the  
19 impression that he could reference our home at  
20 358 Denhoff as a rationale for why the Board  
21 should approve this variance.

22 So in 2006, June of 2006 our contractor,  
23 Patrick Heron (phonetic), submitted to Ted  
24 Minsky (phonetic), the Building Inspector, the  
25 Code Enforcement Officer for Ocean Beach, a

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1 survey and the other information that was  
2 requested and we got a clean certificate of  
3 completion, which I have provided to the Board  
4 for that home.

5 Subsequently, the building department  
6 inspector issued on May 1st a Certificate of  
7 Occupancy which we didn't realize we even had  
8 it. But in this situation where some potential  
9 noncompliance was brought up, I felt it would be  
10 good to have that in the file. Now, Mr. Murtha  
11 seems to feel it was his bad. You know, he  
12 didn't ask for a building permit. But the  
13 record shows that on April 27th, when the  
14 building inspector went to visit this site after  
15 receiving an email from me with a picture of the  
16 ongoing construction, he wrote:

17 "Louis, please go into the Village Office  
18 tomorrow and fill out a complaint. If my memory  
19 serves me correctly, that deck went to the  
20 setback line. So if the photo of the bump out  
21 you sent me is correct, then, yes, it is a  
22 violation of the Village of Ocean Beach that  
23 requires a permit, presumably a variance. What  
24 surprises me is that the builder should know  
25 better, and even more troubling is that he

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1 thought he was going to do it under your radar.  
2 Sometimes people simply don't think. So you say  
3 you don't want to cause a problem for the new  
4 homeowners. That's what's going to happen.  
5 It's totally within your right, and the Village  
6 encourages reports of noncompliance. Again, I  
7 need to look at the survey again. Mike"

8 On May 5th, Mike went over and he  
9 documented in email that the setback was in fact  
10 in violation, and I won't take the Board's time  
11 to read it. This was more than some oversight  
12 because the construction started in April. It  
13 was formally made notice to the Village but  
14 construction continued.

15 So April 27th, there's a time stamped  
16 picture of the construction. May 1st, the  
17 building inspector goes over and says, yes, this  
18 is in violation of code. And then on May 11th,  
19 the Village denies the building permit. But on  
20 May 18th, this is completed. The bump out  
21 extension is completed as documented by a time  
22 stamped, date stamped photograph, digital image  
23 that I submitted to the Village. So there's  
24 layers of infractions.

25 So I'm here today to basically request that

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1 the Board focus on safety; that's my first  
2 concern.

3 Maintaining the rule of law. The precedent  
4 that would be set. If this variance application  
5 were to be approved, the owners of 278 Cottage  
6 Walk might elect in the future to expand their  
7 entire east-facing deck relying in part on the  
8 hypothetical approval of the current variance  
9 application. Further, the bump out approval  
10 could serve as the Village wide rationale for  
11 many homeowners to request equal application of  
12 the law in modifying setback restrictions and  
13 given how close the houses are now, that could  
14 have all kinds of negative ramifications.

15 So I also want the Village to consider the  
16 potential liability to the Village if something  
17 horrendous happened. And if as a result of this  
18 bump out extension there was a fire and it  
19 caused physical harm to any of my family members  
20 or friends of my home or the property, the  
21 Village would be subject to potential liability.  
22 Why would the Village put itself in such a  
23 position?

24 So I'm here today to ask that the rule of  
25 law prevail as part of uniformly upholding and

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1 adjudicating the codes on a Village wide basis.  
2 And as part of rejecting, denying this  
3 application, I would ask the Board to insist, to  
4 mandate that the bump out extension be removed  
5 immediately and completely after the summer  
6 season when construction is allowed to commence  
7 and that starting with the Board's decision to  
8 deny the application, no barbecue or any propane  
9 tanks can be situated in that space.

10 If you have any questions, now would be the  
11 time, and thank you for your consideration.

12 CHAIRMAN BURRIS: Thank you for the  
13 presentation.

14 The Board's position, and I'll have to  
15 discuss with Counsel, is that -- not the Board's  
16 position. The Board's authority is really to  
17 approve or reject a variance application. If we  
18 approve it, there are certain situations in  
19 which we could put conditions on it, I believe.  
20 I've heard what you said, but I think as far as  
21 the Board, if they decide that it should be  
22 removed, mandating how and when, et cetera, I  
23 don't think that's within our purview.

24 We'll have an executive session in light of  
25 the potential of litigation here on either side

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1 with Counsel, and that's one of the issues that  
2 we will probably raise now.

3 So I appreciate your comments. Our  
4 jurisdictions is, in my opinion, limited to an  
5 acceptance or rejection of a variance  
6 application, but that will be clarified with  
7 Counsel.

8 MR. SHORE: Thank you. If the Board wants, I  
9 have an image taken from the website when the  
10 house was up for sale to pictorially demonstrate  
11 where the barbecue could be situated other than  
12 the bump out, just for the Board's consideration.

13 CHAIRMAN BURRIS: You want to enter that into  
14 evidence? You say this was marketing material for  
15 the property?

16 MR. SHORE: Yes, it was up on the website.

17 CHAIRMAN BURRIS: Is this the same barbecue?  
18 This is a photograph. This isn't a drawing.

19 MR. SHORE: This is the one put up on the  
20 website.

21 MR. GRAY: Joel, you're gonna have to take  
22 possession of his cell phone then.

23 CHAIRMAN BURRIS: I don't want possession of  
24 his cell phone. How about if he sends a text of  
25 this to the Village Office. Will that do it?



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1           MR. GRAY: No. Just saying, he submitted his  
2 cell phone.

3           CHAIRMAN BURRIS: I'm not accepting the  
4 submission of his cell phone. Maybe you don't  
5 want to submit this into evidence, unless you  
6 submit the picture itself by --

7           MR. SHORE: Why don't I ask the owners if  
8 this picture (inaudible).

9           CHAIRMAN BURRIS: No, but it still needs to  
10 go into the record.

11          MEMBER SHERMAN: The owners say the barbecue  
12 came with the house (perusing the cell phone  
13 photograph), and that appears to be something they  
14 can verify.

15          CHAIRMAN BURRIS: How 'bout withdrawing that  
16 picture?

17          MEMBER LOWRY: You know, you could describe  
18 to us using the compass coordinates; north, south,  
19 east, west, what you're proposing --

20          CHAIRMAN BURRIS: He's not proposing  
21 anything.

22          MEMBER LOWRY: What he's proposing is --

23          MR. SHORE: I'm merely calling out this bump  
24 out extension, respectfully, be denied and in the  
25 interim before it's taken down, that no propane or

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1 barbecue be allowed to remain in that area because  
2 it presents a clear and present danger to my  
3 family and my neighbors as well. Thank you.

4 MEMBER LOWRY: I have a question. I  
5 understand your concerns with safety, and you  
6 described it very specifically to the fact that  
7 the barbecue is three feet closer to your house  
8 than it's supposed to be. There's a propane tank,  
9 possibly a second propane tank, which we all do.  
10 There's no doubt.

11 My only quandary there is as to why it  
12 would be safer if it was three feet further away  
13 from your house?

14 MR. SHORE: The further away, the safer.  
15 It's just the simple physics of it. But I also  
16 want to emphasize that while safety is my primary  
17 concern, I'm also concerned about the negative  
18 precedent that an approval would generate because  
19 I could see all kinds of other applications coming  
20 to the Zoning Board that say, hey, you approved  
21 this bump out. I want a bigger deck too. It's  
22 not fair. Why can they get it at 278 Cottage Walk  
23 and not me?

24 I'm a believer in the rule of law. The  
25 Village Codes that have been derived and

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1 maintained over the years because the ruling  
2 decision makers at the time felt that those laws  
3 were important and they were made for the  
4 benefit of the community. I'm asking the Zoning  
5 Board to stand behind those rules. They could  
6 say to Mitch and Risa and others, if you don't  
7 like the laws, work to change them. But while  
8 the laws are on the books, it's the  
9 responsibility of homeowners, contractors, the  
10 businesses here to abide by those laws.

11 MEMBER LOWRY: Clearly.

12 CHAIRMAN BURRIS: Thank you.

13 Is there anybody else in the community that  
14 would like to make a statement? Yes? Please  
15 state your name.

16 MS. BRAVIN: I'm Karen Bravin. I'm at 357  
17 Denhoff, next to the Shores, and I was surprised  
18 to be invited to a variance meeting, post the  
19 build out already happening. For me, that's new.  
20 I've never received anything before about a  
21 variance. It was disingenuousness to being asked  
22 to show up here because it basically pits neighbor  
23 against neighbor and that is an uncomfortable  
24 position to be in as friends and neighbors to  
25 Louis, as a potential friend and neighbor to the

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1 Gossets. And so, basically, Louis mentioned it  
2 and spoke to the idea of precedent.

3 So you know, I very much appreciate that  
4 Murtha designed it to fit into the character of  
5 the neighborhood, as he said. It does, but it  
6 doesn't fit into the character of  
7 neighborliness, and that is a really big issue  
8 for me going forward. Thank you.

9 CHAIRMAN BURRIS: Thank you.

10 MR. CHASE: My name is Tyler Chase. I'm at  
11 276 Cottage Walk and have been there for, well, 58  
12 years. It's been in my family since the '30s.

13 I would like to first welcome the Gossets  
14 to the neighborhood. We have not officially met  
15 yet, so I think their house is beautiful.

16 My issue, concerns are the issue of  
17 precedent, again, to back up what Louis said.

18 Last year, we wanted to enlarge our deck.  
19 We do not have a pool. We do not have a big  
20 house, but the deck does have a low spot that,  
21 or, I'm sorry, there's a concrete slab and we  
22 were hoping to extend the deck over the concrete  
23 slab so we didn't have flooding in the backyard.  
24 All reasons I thought were good.

25 What I did was I called the building

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1 inspector and I live in northern New York, so I  
2 couldn't come out here and work what him. But  
3 he said he would walk right down and take a look  
4 and he looked at what I was proposing and said,  
5 "Well, you're cutting into setbacks. You can't  
6 do exactly what you're proposing."

7 I sent him a diagram and all. So we  
8 adjusted. We haven't built anything yet, but  
9 we've taken that into consideration.

10 My concern is, in looking back, would it  
11 have been better if I just built it and then beg  
12 forgiveness at this Board? Or did I go through  
13 the proper channel, which I thought I did,  
14 talking to the building inspector and preparing  
15 a building permit before I did that. So my  
16 issue is precedent. If this does get approved,  
17 what's it going to say? Like, what you've heard  
18 from other neighbors. And I agree with, I'm  
19 sorry I didn't get your name.

20 MS. BRAVIN: Karen Bravin.

21 MR. CHASE: Karen, and I agree with Karen  
22 that this is uncomfortable because I don't know  
23 our new neighbors and I heart-fully welcome them  
24 to the neighborhood and I don't like being in this  
25 position. But I do think this is an important

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1 precedent for you to consider. Thank you.

2 CHAIRMAN BURRIS: Thank you very much, and  
3 you did do the right thing.

4 Is there anybody else in the community who  
5 would like to speak? Yes?

6 JOSHUA SHORE: Joshua Shore, lifelong  
7 resident, I guess it's 45 years now.

8 On the record, I really like Mitch. Good  
9 basketball player. This is, like,  
10 uncomfortable. We play every weekend, and I  
11 might even take him on my team later when we  
12 draft today. So with everyone saying this is  
13 uncomfortable, I live in Arizona. I come here  
14 every summer for community. I grew up for the  
15 main part of the year on the other side, on the  
16 mainland. I consider this home.

17 I just wanted to speak on a couple things  
18 and I'll be brief. Not like my dad. You're not  
19 getting my cell phone. No chance.

20 I heard the word "reasonable" thrown around  
21 a bunch of times and I want to be respectful and  
22 you do fantastic work, but how could it be  
23 reasonable that he didn't think about it and  
24 just did it?

25 I work in technology and if I didn't

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1 securitize a client's data, I would be fired and  
2 out of the industry. So that's the first.

3 The second is, I just saw the America pull  
4 in. What I can't stop thinking about is how we  
5 can't bring propane tanks on a passenger ferry.  
6 Why? Because they're basically bombs, right?  
7 We talk about would three feet make a difference  
8 here or there? Then they wouldn't strategically  
9 position the tanks when they come over on the  
10 freight boat from the engine and under where the  
11 people are situated and driving the boat.  
12 Right? And they would be allowed on the  
13 passenger boat.

14 So, again, when you take those two things  
15 into consideration as you deliberate and make  
16 your decision, just come back to the word  
17 "reasonable". That's it. I don't know.

18 Mitch and I spoke. This is not going to  
19 affect our relationship. I just, my parents  
20 are brave enough to live out here all year round  
21 and I was around when Sandy happened.

22 CHAIRMAN BURRIS: Did you say brave or crazy?

23 JOSHUA SHORE: Well, no, no. I'm friendly  
24 with Joel, and I wouldn't call Joel crazy. I went  
25 through Sandy. I see power lines go down. I see

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1 houses wash away. I know how difficult it is to  
2 get money from insurance companies, so, obviously,  
3 we're going through worse case scenarios. But  
4 anyway, as you deliberate, I want you to come back  
5 to the word "reasonable" and whatever happens, you  
6 and I are good. You know that. Thank you.

7 CHAIRMAN BURRIS: Thank you very much. If  
8 there are no other comments from the -- there is  
9 another.

10 MS. WOLKOFF: I don't understand. I mean, I  
11 understand that everybody's worried about being  
12 safe.

13 CHAIRMAN BURRIS: Could you state your name  
14 and introduce yourself?

15 MS. WOLKOFF: Kathy Wolkoff, 368 Denhoff.

16 CHAIRMAN BURRIS: Thank you.

17 MS. WOLKOFF: I been here 70 something years.  
18 I understand all of that. But we have codes and  
19 we have setbacks to protect the little bit of  
20 space we have. And going beyond that, you should  
21 have a really good reason. Not just, I have to  
22 have an eight-foot table instead of a six-foot  
23 table. I mean, for you to go into those lanes  
24 should be thought really long and hard. Thank  
25 you.



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1 CHAIRMAN BURRIS: Thank you.

2 For the record, there are set New York  
3 State criteria that we evaluate a variance  
4 application under, and they are criteria that we  
5 have to evaluate.

6 MS. WOLKOFF: I know that. I was on the  
7 Board at one time.

8 CHAIRMAN BURRIS: So anybody else?

9 MR. GOSSET: I just wanted to respond Louis',  
10 what do you call, testimony. So I have no  
11 intention of keeping spare propane tanks on my  
12 deck as it's small enough as it is. They're not  
13 stored anywhere near his property. I have one  
14 spare propane tank and it's stored in a completely  
15 different area, so to that one concern I wanted to  
16 completely alleviate.

17 Secondly, I have no plans in my wildest  
18 imagination to do other work or expand further.  
19 This was strictly a one-time thing for the  
20 purposes that we indicated, and I would go on  
21 the record stating in front of all of you that  
22 this wouldn't be something that I would say,  
23 oh, let's expand further or do anything. I just  
24 wanted to put that on the record.

25 MS. WOLKOFF: But your neighbor, your

1 neighbor might.

2 MR. GOSSET: I can't control, but in response  
3 to that, I would think that's what a variance is  
4 for. Anybody can apply for a variance, and the  
5 rules are the rules. But the Board has the  
6 opportunity here for both sides to make a decision  
7 based on the merits of a specific situation.  
8 Thank you.

9 CHAIRMAN BURRIS: Thank you.

10 MRS. SHORE: I'm Denise Shore, formally  
11 Denise Shaw (phonetic). I have been here my whole  
12 life.

13 I just don't understand how they didn't ask  
14 for a permit to begin with. We had Cosomo  
15 Morano (phonetic) come out to just do some  
16 boards and fix our collapsing steps. Not only  
17 did we pay for the permit, like all of us have  
18 to do, but he had to get special insurance that  
19 he told us later that other construction guys  
20 said they don't even need. You know, we did  
21 what we had to do. So that's the first thing.  
22 I don't get it.

23 You know, I started to see them building  
24 this thing and I climbed up and I said, "What's  
25 going on?"

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1           And at first they said this and that and  
2 then, you know, I just waited to see if they'd  
3 get a permit, that they'd stop building this  
4 platform. Anyway, I just don't get that part.

5           CHAIRMAN BURRIS: Thank you. What I'd like  
6 to --

7           MEMBER LOWRY: I just want -- go ahead.

8           MR. SHORE: In response to what Mitch said,  
9 and I do appreciate the positions he's taken, what  
10 if he rents the home? How do we know the renters  
11 aren't going to put a propane tank there? I just  
12 want to call attention to the variables at play,  
13 and I can't police it. My wife can't police it.  
14 So thank you.

15           MEMBER LOWRY: Just for the edification of  
16 everyone involved, we do have, each application is  
17 considered on its own merits. Let me just address  
18 this gentleman's issue. Certainly, if you feel  
19 that you have a flooding issue, you're welcome to  
20 bring that before us.

21           We do have five specific criteria that we  
22 have to consider when we are going to make a  
23 decision on this or any other variance  
24 application. And although we feel extremely  
25 strongly and we bristle tremendously at those



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1           MEMBER CONWAY: It's physical evidence. We  
2 went and looked at it. Maybe Ken Gray can tell  
3 me why I'm supposed to think that there's nothing  
4 there while I'm considering an application for a  
5 variance. I just don't understand. It's not what  
6 you said; it's my limitations.

7           Ken, can you explain to me how that works?

8           MR. GRAY: Um, I'm more than happy -- can you  
9 hear me?

10          MEMBER CONWAY: Yes.

11          MR. GRAY: I'm more than happy to answer the  
12 question. I don't know if you want me to give  
13 legal advice in open session.

14          CHAIRMAN BURRIS: I don't think this is for  
15 discussion right now. What I would like to do is  
16 call an executive session.

17          I see Michael Murtha has one comment, and I  
18 would like to hear his comment, go into  
19 executive session to discuss legal issues, such  
20 as what Jeremy is asking and then come back in.  
21 Michael?

22          MR. MURTHA: So I am aware of the five  
23 criteria points that the Variance Committee has  
24 and I have addressed each and every one of them, I  
25 think, satisfactorily. May be a gray area, but

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1 that's four against one. I don't know if one  
2 knocks you out of the box or not. The gray area  
3 might be there's another location for the barbecue  
4 which, fair enough.

5 We're here for a variance. There's a  
6 reason why there's a variance Board here, right?  
7 Because there's things that are always not  
8 perfectly the same and there's a reason why you  
9 have this high paying job that you guys have.  
10 Otherwise, it would be a building inspector  
11 saying, no, cut and dry. We're looking for you  
12 guys to give us relief.

13 The other thing is the house behind  
14 Mr. Gosset's house, however it got there, it's  
15 within two feet of the property line.

16 CHAIRMAN BURRIS: Not relevant. Okay?

17 MR. MURTHA: I understand but --

18 MEMBER LOWRY: An argument could also be  
19 made, Mike, that it's self-created. Not that you  
20 built it, but that the design of the deck without  
21 having adequate space for the barbecue could be  
22 considered as self-created.

23 MR. MURTHA: Fair enough.

24 CHAIRMAN BURRIS: We don't have to go through  
25 that. Just know that each one of us has a

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1 disagreement with your findings on the number of  
2 matters of five that are met, but that's something  
3 that the Board --

4 MR. MURTHA: Thank you and do your good work.  
5 Thank you for your time.

6 CHAIRMAN BURRIS: Ken, do you want to hang  
7 up, and we'll call you on your cell phone since we  
8 can't move the Zoom call into the other room?  
9 Ken? Hello, Ken?

10 MR. GRAY: Yeah, that's fine. If you want to  
11 call me on my cell, that's fine.

12 CHAIRMAN BURRIS: I think that's the best way  
13 to do this because Marco can't physically move the  
14 Zoom call.

15 I make the motion to go into executive  
16 session to discuss the issue.

17 MEMBER CONWAY: Second.

18 CHAIRMAN BURRIS: All in favor?

19 ALL MEMBERS: Aye.

20 CHAIRMAN BURRIS: Anybody opposed?

21 (No verbal response given.)

22 Okay. We will try to do this quickly so we  
23 don't ruin everybody's Saturday.

24 (The Board went into executive session.)

25 \*\*\*\*\*

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1           CHAIRMAN BURRIS: Okay. I'd like to call the  
2 hearing back in session. We have completed an  
3 executive session with our Counsel. Our Counsel  
4 being present online. Are you back in the Zoom  
5 meeting, Counsel?

6           MR. GRAY: I am, sir.

7           CHAIRMAN BURRIS: Okay. I see the applicant  
8 is here. The public is less than before, but --

9           MR. GRAY: Is there anymore comment from the  
10 public or applicant at this point?

11          CHAIRMAN BURRIS: Yes. Joel?

12          MR. SILVERBERG: No.

13          CHAIRMAN BURRIS: There's no more comment.  
14 Yes?

15          MR. MURTHA: After the decision, are we  
16 permitted to comment?

17          CHAIRMAN BURRIS: It depends if it's  
18 relevant. I think after a vote, we gonna close  
19 the meeting.

20          MR. MURTHA: It will be relevant.

21          CHAIRMAN BURRIS: Not if it's gonna be an  
22 attack of a neighbor.

23          MR. MURTHA: No, no, no, sir.

24          CHAIRMAN BURRIS: Depending on the relevance.  
25 The Board has consulted --



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1 MR. GRAY: I'm sorry. Chairman Burris?

2 CHAIRMAN BURRIS: Yes.

3 MR. GRAY: Is there no further comment from  
4 the public or the Board at this point?

5 CHAIRMAN BURRIS: There is no further  
6 comment. Michael Murtha, the applicant, asked if  
7 he could speak after the vote, I believe, and I  
8 said only if it's relevant to the matter. And I'm  
9 not really sure after the vote what the relevance  
10 would be. So I would really prefer you to speak  
11 before. The closing statements should be made  
12 before if that's what you're making.

13 MR. MURTHA: I don't know the procedure, but  
14 that's fine. Just so, if we are not successful,  
15 we are planning on filing a Article 78 with  
16 Suffolk County Variance and we'd like the time to  
17 do that and keep things the way they are. We  
18 don't want to, if we're not successful this is.  
19 If we're successful, I take all this back. But,  
20 um, and we need time to do that and stay on  
21 anything you'd want us to do until we get the  
22 variance decision from New York State.

23 CHAIRMAN BURRIS: In light of your comment, I  
24 want to call this to another executive session  
25 because you just threatened litigation. I need

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1 the advice of Counsel on this.

2 MEMBER LOWRY: There have been threats of  
3 litigation from both sides of the room, and that  
4 serves absolutely no purpose. It only clouds the  
5 issues, and it does have nothing to do with our  
6 criteria or the way we're going to vote on this.

7 MR. MURTHA: Then I retract that statement.

8 CHAIRMAN BURRIS: The statement is retracted,  
9 but I have a feeling there's a threat of  
10 litigation and I want to close the public session  
11 and go into executive session.

12 MR. MURTHA: Not litigation by any means.

13 CHAIRMAN BURRIS: Article 78 is litigation.

14 MR. MURTHA: I thought that was just another  
15 avenue we could pursue.

16 CHAIRMAN BURRIS: That's litigation, that's  
17 filing a lawsuit. Okay? Motion to executive  
18 session.

19 MEMBER CONWAY: Second.

20 CHAIRMAN BURRIS: Anyone opposed?

21 (No verbal response given.)

22 MR. GOSSET: I'm the homeowner. I'm not  
23 filing a litigation against the Village.

24 (Second executive session commenced.)

25 \*\*\*\*\*

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1 CHAIRMAN BURRIS: Counsel, are you on the  
2 line?

3 MR. GRAY: I am, sir.

4 CHAIRMAN BURRIS: Okay. We are back in the  
5 hearing room, out of executive session, and I move  
6 that we go out of executive session and back into  
7 the public hearing.

8 MEMBER SHERMAN: Second the motion.

9 CHAIRMAN BURRIS: All in favor?

10 ALL MEMBERS: Aye.

11 CHAIRMAN BURRIS: Okay.

12 MR. GRAY: Are you going to now close the  
13 public hearing?

14 CHAIRMAN BURRIS: Well, I'm going to close it  
15 if there are no further comments from the public.  
16 Okay.

17 MR. SHORE: One quick question. Will the  
18 ruling be made today or --

19 CHAIRMAN BURRIS: Louis, we'll get to that.  
20 Yes?

21 MR. GOSSET: Yeah, I wasn't aware of what was  
22 happening. So I'm the homeowner and I intend to  
23 abide by the decision made by the Board and not  
24 take any further action. I didn't even know there  
25 was any further action that could potentially be

1 taken.

2 CHAIRMAN BURRIS: Thank you very much, and  
3 that's much appreciated, your comment.

4 Let you know, that, I guess, closing the  
5 public hearing and let everybody know that the  
6 Board has deliberated and evaluated the  
7 situation very carefully with extensive  
8 discussions regarding both the potential of  
9 litigation, which is a potential in all  
10 applications, and more importantly, the criteria  
11 set forth by New York State and in which this  
12 Zoning Board of Appeals is subject to in making  
13 decisions one way or the other. It's a  
14 balancing act and you have to look at five  
15 specified criteria, which I believe everybody  
16 here is aware of from what I've heard from both  
17 the applicant and at least one of the neighbors.

18 These five criterias (sic) have been  
19 dissected, analyzed carefully with the given set  
20 of facts to reach what I believe will be the  
21 decision today after a vote.

22 What I would like to do is make a motion to  
23 not approve the variance. That is to deny the  
24 variance application, and the criteria have each  
25 been discussed. But I would like Counsel, to

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1 ask Counsel, if he can, to please articulate the  
2 findings and the criteria as found on the  
3 situation by the Board.

4 MR. GRAY: Mr. Chairman, I will formulate a  
5 motion for you to make, and let me know if you  
6 agree with it or not.

7 But there's a motion to deny the variance  
8 application for the three-foot rear yard setback  
9 request based upon the fact that it would be of  
10 detriment to the nearby properties. Will be  
11 creating a safety issue to the neighboring  
12 properties.

13 Two. It been determined that the barbecue  
14 in question can be placed on other locations  
15 within the property. So, therefore, there are  
16 alternate methods to achieve what the applicant  
17 is seeking to do.

18 Three. It is a substantial variance in  
19 that it is a 37.5 percent variance requested  
20 concerning the rear yard setback.

21 CHAIRMAN BURRIS: That is three feet out of  
22 eight feet.

23 MR. GRAY: That's 37.5 percent variance.

24 It may have an adverse environmental affect  
25 on the neighborhood. In that it will be closer

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1 to the property lines and the electrical lines  
2 above them.

3 And it is self-created in the sense that  
4 it's already been built. The applicant has  
5 already built this extension of his deck, and  
6 therefore, this is a -- without a building  
7 permit -- and therefore, this is a self-created  
8 situation.

9 So I think that's the motion, and I think  
10 part of the motion is to direct the applicant to  
11 remove the offending structure on the deck  
12 forthwith.

13 Is anybody making that motion?

14 CHAIRMAN BURRIS: Thank you, Counsel. You  
15 have articulated the motion well and it reflects  
16 what we had discussed and findings at least with a  
17 portion of the board. But I would like to adopt  
18 your motion or our motion that you articulated and  
19 vote on it as a Board.

20 Do I have a second on the Board?

21 MEMBER CONWAY: Second.

22 CHAIRMAN BURRIS: Jeremy Conway seconded it.

23 Can we have a role call vote, Jessica  
24 (sic)?

25 DEPUTY CLERK RULON: Joel Burris?

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1 CHAIRMAN BURRIS: In favor of the motion.

2 DEPUTY CLERK RULON: Jeremy Conway?

3 MEMBER CONWAY: In favor of the motion.

4 DEPUTY CLERK RULON: Kevin Conway, sorry,  
5 Lowry?

6 MEMBER LOWRY: Kevin Lowry, and I'm opposed.

7 DEPUTY CLERK RULON: Craig Sherman?

8 MEMBER SHERMAN: In favor.

9 DEPUTY CLERK RULON: And Constantine Karalis?

10 MEMBER KARALIS: In favor.

11 CHAIRMAN BURRIS: The motion has passed and  
12 the variance has not been approved, which is  
13 always a very uncomfortable situation with the  
14 Board and something that we try hard not to do.  
15 Because we recognize the importance of having a  
16 community and we recognize the importance of  
17 community relationships and friendships within the  
18 community.

19 We are all part of a very small and,  
20 hopefully, tightknit group here to support each  
21 other, protect each other, and help each other  
22 when we need, want things, or just on general  
23 daily courtesy basis. We are a Village, and I  
24 generally try to work out compromises with  
25 situations because I don't like a situation

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1 where a board votes something down without  
2 alternatives that might work for all parties.

3 This is one of the few situations in my  
4 being Chairman for over ten years that we've  
5 actually voted something down without  
6 structuring some type of alternative for it.  
7 And I ask that the applicant please understand  
8 there is nothing personal and I know it's hard  
9 to see in this. And the vote basically was  
10 because we have legislative guidelines that we  
11 kind of have to abide by and we have community  
12 input to see when a variance might be acceptable  
13 and warranted, as well as the balancing of the  
14 tests. And we did do that. I am sorry that the  
15 vote was not in favor of your application, but I  
16 think we did what we had to do to serve the  
17 community appropriately.

18 So, I ask for your acceptance of this  
19 without hard feelings towards the Board that is  
20 hesitant to do such things. I also ask that two  
21 neighbors not become enemies here, and I know  
22 that's very hard.

23 I had a neighbor cut off my deck 30 years  
24 ago. It was just atrocious. The deck had been  
25 up for 20 years, and they cut off a piece of it.



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1 I never could forgive him for that. Should I  
2 have? Probably not because he didn't take the  
3 proper channels. You took the proper channel  
4 coming to us today, and that should be  
5 appreciated.

6 So I ask the neighbor behind and neighbors  
7 adjoining that you all still remain neighbors  
8 and friends and I have to believe that there was  
9 nothing personal, no animosity between either of  
10 you towards one another.

11 Now I'm not a cleric. I'm not a rabbi.  
12 I'm not a minister, but I ask for unity in the  
13 community and for everybody to work together.  
14 That also holds true with Mike Murtha. Mike's a  
15 fine builder, builds a beautiful house. We all  
16 walked by your house and said this is beautiful.  
17 So nobody's holding anybody as a villain, and I  
18 hope that you're able to place the barbecue in a  
19 place that it's not objectionable to you and  
20 that you're able to find what you need on your  
21 deck.

22 And I probably said too much already. On  
23 that note, I'm going to close the meeting and  
24 thank everybody for attendance.

25 MEMBER LOWRY: I second.

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1 ALL MEMBERS: Aye.

2 CHAIRMAN BURRIS: Thank you.

3 (Time Noted: 12:53 p.m.)

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## CERTIFICATION

I, D. Leigh Chapman, a Notary Public  
in and for the State of New York, do hereby certify:

THAT the forgoing is a true and  
accurate transcript of my stenographic notes.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 11th day of 2023.

*Leigh Chapman*

D. LEIGH CHAPMAN

	<b>278-279 [1]</b> 4/9	<b>again [4]</b> 29/6 29/7 36/17 39/14
<b>ALL MEMBERS: [3]</b> 47/19 51/10 58/1	<b>279 [1]</b> 4/9	<b>against [6]</b> 19/5 19/7 23/9 35/23 46/1 50/23
<b>CHAIRMAN BURRIS: [88]</b>	<b>27th [2]</b> 28/13 29/15	<b>ago [3]</b> 11/11 12/15 56/24
<b>DEPUTY CLERK RULON: [5]</b> 54/25 55/2	<b>28 [2]</b> 16/16 16/17	<b>agree [4]</b> 19/17 37/18 37/21 53/6
55/4 55/7 55/9	<b>3</b>	<b>agrees [1]</b> 26/19
<b>JOSHUA SHORE: [2]</b> 38/6 39/23	<b>30 [1]</b> 56/23	<b>ahead [1]</b> 43/7
<b>MEMBER CONWAY: [9]</b> 3/7 13/9 44/19	<b>31st [1]</b> 5/8	<b>Alec [1]</b> 26/12
45/1 45/10 47/17 50/19 54/21 55/3	<b>35-year [1]</b> 18/24	<b>all [32]</b> 3/25 6/10 10/18 13/23 13/25 16/5 19/3
<b>MEMBER KARALIS: [3]</b> 3/17 20/24 55/10	<b>357 [1]</b> 35/16	21/4 22/9 22/13 23/2 23/24 24/4 25/22 27/14
<b>MEMBER LOWRY: [21]</b> 3/11 10/5 10/7	<b>358 [5]</b> 12/2 13/14 26/10 26/14 27/20	30/14 34/9 34/19 36/24 37/7 39/20 40/18
13/13 14/13 15/23 17/15 20/6 24/21 24/25	<b>359 [1]</b> 13/15	41/21 42/17 47/18 49/19 51/9 52/9 55/19 56/2
26/8 33/17 33/22 34/4 35/11 43/7 43/15 46/18	<b>368 [1]</b> 40/15	57/7 57/15
50/2 55/6 57/25	<b>37.5 [1]</b> 53/23	<b>alleviate [1]</b> 41/16
<b>MEMBER SHERMAN: [12]</b> 3/15 20/9	<b>37.5 percent [1]</b> 53/19	<b>allowed [4]</b> 11/12 31/6 34/1 39/12
20/16 24/1 24/4 24/7 24/16 24/23 25/23 33/11	<b>38 feet [1]</b> 12/5	<b>along [1]</b> 7/15
51/8 55/8	<b>3rd [1]</b> 5/12	<b>already [9]</b> 6/24 11/16 13/2 14/16 35/19 44/23
<b>MR. CHASE: [2]</b> 36/10 37/21	<b>4</b>	54/4 54/5 57/22
<b>MR. GOSSET: [14]</b> 6/11 17/17 19/18 19/20	<b>45 [1]</b> 38/7	<b>also [10]</b> 2/1 5/17 11/16 24/16 30/15 34/15
20/8 20/14 20/21 21/21 22/23 23/12 41/9 42/2	<b>5</b>	34/17 46/18 56/20 57/14
50/22 51/21	<b>58 [1]</b> 36/11	<b>alternate [1]</b> 53/16
<b>MR. GRAY: [18]</b> 3/22 6/17 6/20 7/5 10/17	<b>5th [2]</b> 3/2 29/8	<b>alternative [2]</b> 15/15 56/6
32/21 33/1 45/8 45/11 47/10 48/6 48/9 49/1	<b>7</b>	<b>alternatives [3]</b> 19/16 21/22 56/2
49/3 51/3 51/12 53/4 53/23	<b>7/11/23 [1]</b> 5/19	<b>although [4]</b> 8/24 9/4 10/24 43/24
<b>MR. MURTHA: [32]</b> 7/22 8/3 8/9 10/6 10/9	<b>70 [1]</b> 40/17	<b>always [3]</b> 15/22 46/7 55/13
10/18 11/18 11/22 12/13 12/23 13/1 13/12	<b>75 [1]</b> 26/14	<b>am [7]</b> 3/8 15/17 15/17 45/22 48/6 51/3 56/14
13/14 13/22 14/6 14/10 14/15 15/4 15/19 24/6	<b>78 [2]</b> 49/15 50/13	<b>America [1]</b> 39/3
24/9 45/22 46/17 46/23 47/4 48/15 48/20		<b>analyzed [1]</b> 52/19
48/23 49/13 50/7 50/12 50/14		<b>animosity [1]</b> 57/9
<b>MR. SHORE: [13]</b> 25/17 25/21 25/24 26/5		<b>another [6]</b> 17/14 40/9 46/3 49/24 50/14
26/10 32/8 32/16 32/19 33/7 33/23 34/14 43/8		57/10
51/17	<b>9</b>	<b>answer [4]</b> 13/7 24/1 24/2 45/11
<b>MR. SILVERBERG: [1]</b> 48/12	<b>957 [2]</b> 11/11 13/12	<b>any [18]</b> 10/2 13/2 13/7 14/10 14/11 14/12
<b>MRS. SHORE: [1]</b> 42/10		14/13 22/19 22/23 25/2 25/4 30/19 31/8 31/10
<b>MS. BRAVIN: [2]</b> 35/16 37/20	<b>A</b>	43/23 50/12 51/24 51/25
<b>MS. WOLKOFF: [5]</b> 40/10 40/15 40/17 41/6	<b>a.m [1]</b> 1/9	<b>anybody [9]</b> 21/24 25/1 35/13 38/4 41/8 42/4
41/25	<b>abide [3]</b> 35/10 51/23 56/11	47/20 54/13 57/17
'	<b>ability [1]</b> 20/19	<b>anymore [1]</b> 48/9
'30s [1] 36/12	<b>able [3]</b> 23/8 57/18 57/20	<b>anyone [2]</b> 14/12 50/20
'bout [1] 33/15	<b>about [17]</b> 8/9 9/21 11/3 11/10 12/15 16/18	<b>anything [11]</b> 7/7 20/23 21/1 22/20 22/25
-	21/2 26/14 26/20 32/24 34/17 35/20 38/23	25/16 33/21 35/20 37/8 41/23 49/21
-----x [3]	39/4 39/7 40/11 44/5	<b>anyway [4]</b> 6/3 16/15 40/4 43/4
1/2 1/8 1/12	<b>above [2]</b> 13/5 54/2	<b>anywhere [2]</b> 10/3 41/13
<b>0</b>	<b>absolutely [2]</b> 7/22 50/4	<b>apologize [1]</b> 3/13
<b>052 [2]</b> 1/6 4/7	<b>accept [1]</b> 20/4	<b>APPEALS [3]</b> 1/4 3/3 52/12
<b>1</b>	<b>acceptable [1]</b> 56/12	<b>APPEARING [1]</b> 2/1
<b>10:03 [1]</b> 3/1	<b>acceptance [2]</b> 32/5 56/18	<b>appears [1]</b> 33/13
<b>11 [1]</b> 4/22	<b>accepting [1]</b> 33/3	<b>applicant [16]</b> 4/11 6/8 7/10 7/17 7/19 25/2
<b>1100 [1]</b> 2/4	<b>accommodate [1]</b> 18/21	25/4 26/2 48/7 48/10 49/6 52/17 53/16 54/4
<b>11795 [1]</b> 2/4	<b>accurate [1]</b> 59/7	54/10 56/7
<b>11:03 [2]</b> 1/9 3/1	<b>achieve [1]</b> 53/16	<b>applicants [1]</b> 4/19
<b>11th [2]</b> 29/18 59/9	<b>acknowledge [1]</b> 8/16	<b>application [26]</b> 1/6 4/7 4/14 6/11 6/13 6/22
<b>12:53 [1]</b> 58/3	<b>act [1]</b> 52/14	7/3 8/6 10/20 13/7 24/24 30/4 30/9 30/11 31/3
<b>18th [1]</b> 29/20	<b>action [2]</b> 51/24 51/25	31/8 31/17 32/6 41/4 43/16 43/24 44/12 45/4
<b>1st [2]</b> 28/6 29/16	<b>actually [3]</b> 5/4 11/8 56/5	52/24 53/8 56/15
<b>2</b>	<b>add [4]</b> 8/18 22/20 22/21 26/24	<b>applications [2]</b> 34/19 52/10
<b>20 [5]</b> 10/8 16/18 21/6 21/6 56/25	<b>added [1]</b> 17/12	<b>apply [1]</b> 42/4
<b>20 feet [1]</b> 20/25	<b>addition [4]</b> 8/13 9/25 10/10 26/24	<b>appreciate [7]</b> 7/4 17/17 18/23 20/8 32/3 36/3
<b>20-foot [1]</b> 21/14	<b>additional [1]</b> 25/5	43/9
<b>2006 [2]</b> 27/22 27/22	<b>address [4]</b> 11/5 13/10 26/9 43/17	<b>appreciated [2]</b> 52/3 57/5
<b>2022 [1]</b> 8/23	<b>addressed [3]</b> 11/24 16/7 45/24	<b>approach [2]</b> 44/7 44/11
<b>2023 [7]</b> 1/9 3/2 4/22 5/8 5/12 12/3 59/9	<b>addresses [2]</b> 4/6 6/14	<b>appropriately [1]</b> 56/17
<b>21-foot [2]</b> 9/25 10/8	<b>addressing [1]</b> 4/5	<b>approval [4]</b> 8/12 30/8 30/9 34/18
<b>21-square-foot [1]</b> 10/10	<b>adequate [1]</b> 46/21	<b>approve [5]</b> 23/4 27/21 31/17 31/18 52/23
<b>228 [1]</b> 12/8	<b>adjacent [1]</b> 17/22	<b>approved [6]</b> 13/18 14/2 30/5 34/20 37/16
<b>23 [1]</b> 5/19	<b>adjoining [2]</b> 12/18 57/7	55/12
<b>24/7 [1]</b> 27/11	<b>adjudicating [1]</b> 31/1	<b>approximately [5]</b> 4/15 4/16 12/5 12/6 12/8
<b>25 feet [2]</b> 20/25 21/6	<b>adjusted [1]</b> 37/8	<b>April [3]</b> 28/13 29/12 29/15
<b>25-foot [1]</b> 21/15	<b>adopt [1]</b> 54/17	<b>April 27th [2]</b> 28/13 29/15
<b>276 [1]</b> 36/11	<b>adverse [2]</b> 10/21 53/24	<b>architect [1]</b> 16/24
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	<b>affect [2]</b> 39/19 53/24	22/2 22/13 25/9 25/19 26/4 27/5 30/13 31/18
	<b>affected [1]</b> 25/13	35/8 36/16 39/11 39/20 40/6 40/8 41/2 41/4
	<b>affects [1]</b> 10/22	42/5 43/22 46/7 47/2 48/4 48/15 49/14 49/15
	<b>after [9]</b> 11/17 11/20 28/14 31/5 48/15 48/18	49/17 51/1 51/4 51/12 51/15 53/15 55/19
	49/7 49/9 52/21	55/23
		<b>area [23]</b> 4/20 4/24 4/25 5/1 9/7 9/20 15/10

**A**  
area... [16] 15/13 17/4 17/8 17/9 17/10 18/10 20/25 21/5 21/6 21/10 21/12 21/15 34/1 41/15 45/25 46/2  
areas [2] 23/9 23/22  
aren't [1] 43/11  
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articulate [1] 53/1  
articulated [2] 54/15 54/18  
as [45] 6/12 7/11 7/20 8/10 9/5 9/15 12/15 13/3 17/12 18/1 18/24 20/16 22/1 22/1 23/6 24/10 24/10 24/11 27/1 27/20 29/21 30/10 30/17 30/25 31/2 31/20 31/20 34/3 34/11 35/24 35/25 36/5 39/15 40/4 41/12 41/12 44/11 44/23 45/20 46/22 53/2 54/19 56/13 56/13 57/17  
ask [15] 6/8 10/16 23/12 28/12 30/24 31/3 33/7 42/13 44/1 53/1 56/7 56/18 56/20 57/6 57/12  
asked [2] 35/21 49/6  
asking [7] 9/11 12/10 13/1 13/4 35/4 44/2 45/20  
assembled [1] 15/3  
assume [1] 17/5  
assuming [1] 16/19  
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August [3] 1/9 3/2 5/12  
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