

## **Town of South Bristol Zoning Board of Appeals Meeting Minutes Wednesday, September 28, 2022**

**Present:** Thomas Burgie  
Carol Dulski (Zoom)  
Jonathan Gage  
John Holtz  
Barbara Howard

**Excused:** Martin Gordon

**Guests:** In-person: Rocco Venezia, Bessie Tyrrell, Bob Spada, Debra Gebhardt, Cathy & Jeremy Fields, David Fitch, Ericka Elliott, Jon Tantillo, Robert Brenner, Regina Cushing, Grant Cushing, Don Cheney, Jeanne Gage, John McKinnon, Amanda Harris, Jeff Graff, Scott Martin, Alan Pearce, Stephen Cowley  
Zoom: Erica, Amy, Alan S, Mr. Bill, Lewis Gould, Mark Buckley, Dan Marshall, Judy Voss

### **Call to Order**

The meeting of the Town of South Bristol Zoning Board of Appeals was called to order at 7:05 pm followed by the Pledge of Allegiance.

There was a roll call of board members with all present except for Martin Gordon.

### **Minutes**

Chairman Burgie called for a motion to approve the July 27, 2022 Zoning Board of Appeals meeting minutes as written. Jonathan Gage moved to approve the meeting minutes. Barbara Howard seconded the motion. The motion was unanimously adopted by all board members present.

### **Rules of Order**

Jonathan Gage read the Rules of Order.

### **New Business**

#### **Public Hearing**

##### Area Variance Application 2022-0025

Owner: Amanda Hurley (Harris)  
Representative: John McKinnon  
Property: 5862 Seneca Point Road  
Tax Map #: 178.11-1-9.112  
Zoned: LR (Lake Residential)

#### Legal Notice of Public Hearing

Please take notice that the Town of South Bristol Zoning Board of Appeals will hold a public hearing on the following application:

Town of South Bristol Zoning Board of Appeals Meeting Minutes 09.28.2022 Approved

2022-0025 for property owned by Amanda Hurley (Harris) located at 5862 Seneca Point Road, tax map #178.11-1-9.112. The owner is requesting a 24.14 foot variance for a 25.86 foot setback where 50 foot front setback is required by town code.

Said hearing will take place on the 28th day of September, 2022 beginning at 7:00 pm at the South Bristol Town Hall, 6500 West Gannett Hill Road, Naples, NY 14512. All interested parties may provide written comments, appear in person or by representative.

Diane Scholtz Graham, Board Assistant

Chairman Burgie: Here is where we would like to hear from the applicant what you are trying to do and a case for requesting the variance.

John McKinnon: Hello. I am John McKinnon. I am the contractor on the job. This is Amanda Harris, homeowner. Requesting a 24-foot variance. Want to come off the front of the house porch to the road. Screened in porch first floor, extension of the master bedroom above probably bath, two-story structure, match the house finishes, etc. I think it will blend in nice. I think there may be an issue of the detached garage becoming a bunk house extra bedroom type situation too. I do not know if that has to be addressed today as well.

Chairman Burgie: We are going to want to hear what amenities it has right now and then we are going to have to discuss whether that requires a special use permit.

John McKinnon: Right now it is just a garage. Basically, a 24 by 24 foot garage unfinished, unused storage. The idea is to dress it up, make it an overflow type situation. Definitely a bathroom, probably a simple kitchenette type thing, college frig, bathroom. No laundry.

Chairman Burgie: That is in the building permit application now to do that work on garage?

John McKinnon: Yes.

Chairman Burgie: At what point does that become a second residence?

Scott Martin: When it has all the requirements for living. Has ability to live in. Has bathroom, full kitchen and all that type of stuff.

Chairman Burgie: Bathroom, full kitchen. Obviously heating?

Scott Martin: Yes.

Chairman Burgie: Is there anything else?

Scott Martin: Not really.

Chairman Burgie: Is it going to have those items?

Amanda Harris: We do not have to. No full kitchen for sure.

John McKinnon: It is not a full kitchen. It would be a wet bar type situation. It is not a lot of space. We have to get a bedroom in there and a bathroom. It is 24 by 24. It is going to be pretty limited on what it is going to be. It is probably going to be a small living space with a pull-out couch. It is going to be pretty simple.

Chairman Burgie: So, what are your thoughts?

Scott Martin: It is right on the edge. I guess it would come down to the kitchen in my mind.

Chairman Burgie: I guess what we are going to have to do as far as the second living space has nothing to do with this variance. We can certainly address the variance tonight. We need more detail on exactly what you want to do in there. A special use permit is not difficult to do. There is a list of criteria which are very simple. If you meet those criteria, then we are required by law to grant the special use permit.

John McKinnon: Okay.

Chairman Burgie: If you do not meet any of those criteria, then we cannot vary or anything else grant the special use permit. The CEO can help you understand exactly what those are. It is very easy. Diane can give you a special use permit application so that you see what those are. With more detail, he can help you decide whether or not that is something we are going to need to do or just grant the building permit to go as is [if the special use permit is not required.]

John McKinnon: Understood.

Chairman Burgie: That is an easy one. We will not address that tonight since it is not really well understood what you are going to do there. Now it comes down to the rationale for the refusing a building permit for the enclosed porch and extension of the master bedroom, Scott.

Scott Martin: They do not meet the fifty-foot setback.

Chairman Burgie: To be clear you are going to be 25.86 feet from the right-of-way to closest point on the structure.

John McKinnon: That is correct.

Chairman Burgie: Where 50 feet is required. Many times it is very difficult for people to understand that a variance is what is not met in the required setback and how do you write that. The 25.86 feet is what you are requesting for a setback requiring a variance of 24.14 feet.

John McKinnon: That is correct.

Chairman Burgie: Okay good. Any visitation reports?

Jonathan Gage: I went down yesterday and looked over the site there. I have a few questions and observations do you want them now?

Chairman Burgie: Yes. Go ahead.

Jonathan Gage: First of all, the enclosed porch what is the distance for the house as it currently is from the road?

John McKinnon: It is non-conforming since we are requesting a twelve-foot addition. I guess we are twelve-foot too. We must be 38 feet off the road as it stands.

Jonathan Gage: So, you are looking for an additional twelve foot then from what the current structure is?

John McKinnon: Correct.

Jonathan Gage: I did notice that in my observation of standing out in the road looking at it that the garage to south end the neighboring property lives almost on the road. That was probably a preexisting one too. The house to the north end is closer to the road than where I would imagine your request is at.

I was also interested in the sloping down that occurs right at the house. What is your plan for the site for addressing that?

John McKinnon: We could probably regrade that a touch, but there is going to be some exposed block. I know Amanda was interested in dressing that up with some stone. That is all going to look very sharp.

Jonathan Gage: The structure itself is going to be more or less above the current sloping of the ground?

John McKinnon: Correct.

Jonathan Gage: Okay. That is my observation, Tom.

Chairman Burgie: Anybody else?

John Holtz: I went down yesterday also. It looks like you just want to eliminate that garden that is there and put a porch there instead?

John McKinnon: Yes.

John Holtz: So I understand what you are doing. Have you thought about maybe putting the porch attached at the south end of the house instead of the lakeside end just to eliminate coming here?

John McKinnon: That is the view right. You want to get the most out of your property and that is the direction to go.

John Holtz: When I was there I could see why you wanted it there. It almost seems like a natural fit the way the house is configured and everything.

John McKinnon: I think design wise it will look nice. We can extend the gable forward and it will blend in nice. The upstairs to that house is quite small. The upstairs will also expand the master bedroom and add a bath, which will be helpful.

John Holtz: Okay.

Barbara Howard: I did not. I have been back in town for about twelve hours.

Chairman Burgie: I did drive down today and take a look at it. I did not stop. Just observed it from the road. It appears that the existing house is probably twenty feet above the road level, approximately?

John McKinnon: I would guess, yes.

Chairman Burgie: Quite a bit, which the road is probably twenty feet above the lake level too. Obviously, having something up there as far as encroaching on any. The right-of-way protects the road itself with grading and things of that nature, but you are so far above the road that probably nobody is going to even notice it as part of the extension of the house. It did not appear from visual or character of the neighborhood or anything that would cause any problems to me. I guess that was my only thought. We are not going to address the garage tonight so that is all that I saw.

Carol did you have any ability?

Carol Dulski: I was there last week. I had the same observation as Jonathan about the slope. I think that has been addressed.

Chairman Burgie: Okay. Good. This is the time to address the SEQR status. SEQR is the State Environmental Quality Review Act for any modification, addition, or anything of that nature. Any variance request we need to do a SEQRA review and determine if there is any potential major impact to the environment. In reading your application it does include a letter from the Office of Parks Recreation and Historic Preservation we review the project and in accordance with NYS Historic Preservation Act and the bottom line is based upon its review it is the opinion of OPRHP that no properties including archeological and/or historic resources listed in or eligible from NYS and natural registers of historic places will be impacted by this project. I noticed that there is no endangered wildlife identified in the screening for it. That part of it is clear and the pertinent paragraph in the SEQR regulation. There are three different kinds of actions that take place. One is a Type I where there is potential major impact, and we would need to do a full environmental study. One is a Type II that the state has already reviewed these types of actions and determined that there is very little potential for any major impact and therefore, no further study is required. One is Unlisted if it is not in the Type I or Type II list. It is unlisted and we go through a short form to determine if we see anything that could cause a problem. This in fact is a Type II action according to paragraph 617.5 (c) (16) *"is granting of individual setback and lot line variances and adjustments."* That is what you are requesting here. According to that paragraph, this is a Type II action and no further study is required. We will capture that as the first finding when we get to that point. Findings will be our evidence that we have done our due diligence in looking at all the potential impacts, etc.

Here we open it up to the public hearing. Give the general public an opportunity to speak. Pros or cons, concerns, etc. Anybody on the Zoom that wishes to make a comment? Okay, I will close the public hearing.

Review any public or municipal officer's documentation as appropriate to this case. Do we have any public or municipal officer documentation?

Diane Graham: No written comments. We go have the SHPO letter with no impact.

Chairman Burgie: Then I open it up to the Zoning Board of Appeals members for discussion.

John Holtz: I went there and like you said from the road you are not even going to notice it in my opinion. I pulled up in the driveway next to the house and walked around a little bit to get a house view of it. They are going to eliminate that garden and everything. Truthfully, when you are driving down that road you probably are looking at the lake unless you are looking for cool houses. It is not in your field of vision at all. I do not think there will be any impact at all from it. It is probably more that fifty feet if you lay the tape on the ground.

Chairman Burgie: Carol, do you have anything?

Carol Dulski: No. I do not.

Jonathan Gage: The nature of the road is such that there are a lot of structures that have been there a long time prior to the code. There are quite a few places as you travel down that section of the road that are a lot closer to the road than this proposed one is. It does fit the character of the neighborhood in my observation.

Chairman Burgie: You partially addressed this. Obviously, that is the end of house facing the lake and that is the best view. Did you consider putting this addition on the back of the house extending the master bedroom in that direction?

John McKinnon: To the west design wise it would be difficult. It is not the master bedroom. The largest bedroom is to the east. At the back of the house are the kid's rooms and a bathroom. An open stairway foyer part of the stairway that is two stories. Design-wise it would be pretty difficult. There is an existing patio back there now that Amanda would not want to lose. It is a pretty nice feature. The purpose of the porch is to see the lake. Why would you put a porch on the back of the house to look at the back?

Chairman Burgie: Well, you would still see the lake, but from the end of the porch instead of the length of the porch from the back of the house. Just asking had you considered it and what are the difficulties in doing that. What you are telling me is it really doesn't meet the need for what you are attempting to do here.

John McKinnon: No. It would be a difficult build. There is a patio back there that is not very deep. Ten feet of something. Then it starts going up into the hill. It would be a chore.

Chairman Burgie: No. Not to west. To the north is what I am thinking about.

John McKinnon: Oh, I am sorry.

Chairman Burgie: The back length of the house is where I was thinking about.

John McKinnon: The master bedroom is the whole east face of the home. To add to that to come off that face is going to be the easiest. You would be making the master bedroom and L-shape type situation. You would land lock one of the small bedrooms.

Chairman Burgie: Okay. Thank you. Anything else? Any thoughts? I guess it is time to determine the findings. This is where we record our thought process in our evidence for whatever decision the board makes. There are essentially six items that are required to be determined here.

Finding 1:

Thomas Burgie made a motion that this request is a Type II action under paragraph 617.5 (c)(16), of the SEQR regulation “*granting of individual setback and lot line variances and adjustments.*” and therefore, requires no further review. Barbara Howard seconded the motion.

All in favor.

Ayes: 5, T. Burgie, C. Dulski, J. Gage, J. Holtz, B. Howard

Nays: 0

Motion carried.

Finding 2:

Thomas Burgie made a motion that an undesirable change will not be produced in the character of the neighborhood or a detriment to nearby properties created by granting the setback variance. Jonathan Gage seconded the motion.

All in favor.

Ayes: 5, T. Burgie, C. Dulski, J. Gage, J. Holtz, B. Howard

Nays: 0

Motion carried.

Finding 3:

Thomas Burgie made a motion that the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than the area variance. John Holtz seconded the motion.

All in favor.

Ayes: 5, T. Burgie, C. Dulski, J. Gage, J. Holtz, B. Howard

Nays: 0

Motion carried.

Finding 4:

Chairman Burgie: In a context of being twenty feet roughly above the road and as John pointed out. If you took a straight line down from the corner at an angle down toward the right-of-way.

Thomas Burgie made a motion that the requested variance of 24.14 feet is not substantial. Carol Dulski seconded the motion.

All in favor.

Ayes: 5, T. Burgie, C. Dulski, J. Gage, J. Holtz, B. Howard

Nays: 0

Motion carried.

Finding 5:

Thomas Burgie made a motion that the variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. Barbara Howard seconded the motion.

All in favor.

Ayes: 5, T. Burgie, C. Dulski, J. Gage, J. Holtz, B. Howard

Nays: 0

Motion carried.

Finding 6:

Thomas Burgie made a motion that the alleged difficulty was not self-created. Jonathan Gage seconded the motion.

All in favor.

Ayes: 5, T. Burgie, C. Dulski, J. Gage, J. Holtz, B. Howard

Nays: 0

Motion carried.

Chairman Burgie: Does anyone have any other findings that they believe we should address here? Carol?

Carol Dulski: No.

Chairman Burgie: Then we will address conditions. Anyone see any conditions that need to be applied to this if we grant the variance? Okay given that we are done with the findings and conditions. I would like to petition the board members to offer a motion to approve or deny the variance as written at the bottom of your sheet here.

Jonathan Gage moved to approve applicants request for a 24.14 foot variance for a 25.86 foot setback where 50 foot front setback is required by town code. Barbara Howard seconded the motion.

Roll Call Vote:

Thomas Burgie – Aye

Carol Dulski – Aye

Jonathan Gage – Aye

John Holtz – Aye

Barbara Howard – Aye

Motion carried.

Chairman Burgie: Your variance is approved. Decide what you really want to do with the garage. Come back and talk to the CEO. Let him make a determination of whether or not that qualifies as a second



residence. If it does, then as I said earlier a special use permit is not difficult at all, but you will have to make the application and come back to us at that point. If it is going to be qualified as a residence. Okay?

John McKinnon: Understood. Thank you.

## **Hearing**

### Appeals Application 2022-0029

Bristol Harbour Village Association Inc  
Regina Cushing, BHVA Board of Directors

### Legal Notice of Hearing

Please take notice that the Town of South Bristol Zoning Board of Appeals will hold a hearing on an appeal application 2022-0029 of the Bristol Harbour Village Association, Inc. on the determinations of Scott Martin, CEO and Alan Pearce, Deputy CEO, in response to the Bristol Harbour Village Association, Inc.'s complaint letters of July 7, 2022, July 8, 2022 and July 14, 2022.

Said hearing will take place on the 28th day of September, 2022 beginning at 7:00 pm at the South Bristol Town Hall, 6500 West Gannett Hill Road, Naples, NY 14512.

Diane Scholtz Graham, Board Assistant

Chairman Burgie: Let me address what we are here for tonight and how we will run this hearing. This is a little bit different. We are not requesting a variance or a special use, which requires an open meeting a public hearing. Allowing the public in general to speak. This is not that type of hearing. The parties that are primary in this are the Bristol Harbour Village Association and the Code Enforcement Officer. The representatives for Bristol Harbour who have filed this application can certainly call any witnesses that they would like to, but it is not going to be open just for the general public to discuss. This is a hearing to review any decisions from the Code Enforcement Officer. Let me read you directly from the town code and it afforded specifically from the state statutes the town law and the village law and general city law.

The town code specifically says in paragraph 170-92 the powers and duties of the Board of Appeals. One of them is the administrative review. The Board of Appeals shall hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by an administrative officer or body in the enforcement of this chapter.

We are going to limit our discussion to those things we are tasked by the Town Board through the town code to address. That is orders, requirements, decisions, or determinations made by the Code Enforcement Officer. If he is working on something. One of the issues that you have addressed and has not made a determination or an order or stated a requirement has not stated any decision then it is not within the purview of the Zoning Board of Appeals to address that. We do not have the authority by state code or by the town code to do those. So, we are going to limit those. That is where it gets a little bit difficult in working through these. Which ones of these you have addressed are actually decisions, orders, requirements or determinations that he has made. We are going to limit it to that.

One of our Board members felt a need to recuse himself from this due to close participation and contact with members of this appeal. Jonathan Gage will not be sitting in and making any input in this regard. We are now down to four Board members for any determination in our review to be made a majority of the

board members will have to vote as to supporting the decision or determination that the CEO made and saying that is in accordance with the town code or not supporting and identifying what should have been stated. Are there any questions on that?

Jeff Graff: Just to clarify the determinations based on the appeal application are only those determinations made in the CEO's August 1, 2022 letter. Not any other determinations that he may have made outside of that letter.

Chairman Burgie: Thank you for clarifying that. That is correct. The application are for determinations that have been made in the August 1<sup>st</sup> letter by the code enforcement officer. If he has made other determinations outside of that that is not within our purview because that is not what the application is for. Fair enough? Okay. Here is where we get into some discussion in reviewing the August 1<sup>st</sup> letter the third paragraph here deals with the bison being grazed on the property that your application says is in the Planned Development. As I understand at this time, correct me if I am wrong, the bison have been moved from that location and they are no longer in the Planned Development. Is that correct statement? Is Mr. Fields here?

Unknown: We are Mr. Fields attorney's and can speak on his behalf. The bison have been relocated. That issue is moot.

For purposes of the record my name is Robert Brenner of the law firm Mahoney Brenner and to my right is Jon Tantillo from Knauf Shaw.

Chairman Burgie: Nice to meet you.

Robert Brenner: Thank you.

Carol Dulski: I am sorry I cannot hear them.

Robert Brenner: Good evening, everybody. My name is Robert Brenner and attorney Fields Enterprises with the law firm of Mahoney Brenner LLP, 83 South Main Street, Canandaigua. Now I will let Jon introduce himself.

Jon Tantillo: My name is Jon Tantillo with the law firm Knauf Shaw also representing the Fields.

Chairman Burgie: What he said before he introduced himself, Carol, was that the bison had been moved to an adjacent parcel that is not in the Planned Development.

Carol Dulski: Okay. Thank you.

Chairman Burgie: In reading the paragraph if you want to make a case that he made a decision "*As far as Mr. Fields' bison on Hicks Road, we don't feel that is a town issue. You say it's against your bylaws,*" The code enforcement officer has no authority to enforce your bylaws. However, it is a moot point at this point since they are not in the Planned Development, however, I will say that in an R-3 stabling of livestock within 100 foot of the property line does require a special use. Whether they were still in the previous location or in the location now they are going to need a special use permit. Without the special use permit that would be a violation. So, we would need to clear that up. It is a moot point from the standpoint of the Planned Development.

In the paragraph of response from the code enforcement officer, *“the fence and gate he installed on the dock is a bit confusing because you claim you own the dock, but so does he.”*

Do you have any proof that you own the dock? We see no evidence of that ownership. The CEO goes on to say, *“The only document I have seen on that is a survey showing the marina’s area of submerged land license from the NYS DEC issued to Fields Enterprises, which shows that dock in it.”* Is there any evidence that you own the dock that he put a fence across?

David Fitch: Good evening. This is Erica Elliott and I am David Fitch from Underberg & Kessler. We represent Bristol Harbour. Thank you for your time. This is Shawn Grasby from Grasby Consulting on behalf of the association as well. He is also a code officer in other jurisdictions. Thank you for the opportunity to be here.

Carol Dulski: I am sorry. I cannot hear.

Diane Graham: Please pull your microphone to you please. These are ones that have to be closer to your mouths.

Carol Dulski: Thank you.

David Fitch: Thank you for the opportunity. I would like to say at the onset here the association is not here to critique the code officers. It is simply to challenge the determination on each of these issues so we appreciate the opportunity.

Chairman Burgie: I understand. We are going to keep it non-confrontational. We agree.

David Fitch: There is nothing to be confrontational about so thank you.

Chairman Burgie: Good.

David Fitch: The position of the association regarding the gate on the pier is that ownership at this time is not necessarily relevant. The gate requires a permit from the Planning Board either way. So, ultimately the association’s position is that the code office should have followed up and determined who has ownership and who put the gate up and proceed from there.

Chairman Burgie: Do you have a reference in the town code that shows a permit is required?

David Fitch: So as far as the Docking and Mooring Facilities. I believe the town code requires that there is a permit if there is going to be fencing put up.

Chairman Burgie: There is two different issues. One is the town code versus the Docking and Mooring Law. The Docking and Mooring Law would not address this because it is on the land side of the mean high water line. I believe, correct me if I am wrong. This would be a town code issue. Do you have a reference for where a permit is required for a gate to be installed?

Shawn Grasby: I believe any fence installed in the Planned Development district requires site plan review through the Planning Board.

Chairman Burgie: Any fence installed in the PD district requires site plan review. That is a PD requirement?

Shawn Grasby: Yes.

Jeff Graff: Mr. Chairman. Before we get too far down. Again, we need to concentrate on whether or not the code enforcement officer actually made a determination in this letter of August 1, 2022 relative to this. If he did not make a determination, there is nothing for the zoning board to be discussing on this.

David Fitch: Chairman, it is the position of the association that in response to a complaint if the code office determines by taking no action and pursuing an investigation possibly issuing a notice of violation that is making a determination.

Chairman Burgie: If he issues a notice of violation that is true.

David Fitch: If there is no violation issued in response to a complaint or a violation has not come into compliance that is also a determination by the code office that there isn't a violation and, therefore, there is no further action. So, in response to counsel I would simply pause that there is a determination being made on each and every issue complained of here in sense that the code office has determined there is not a violation to pursue.

Jeff Graff: I guess I would counter that because the code enforcement officer has not made a determination that there is not a violation. The lack of any determination in this specific letter that is being appealed means that the Zoning Board of Appeals has nothing to review at this time because the application was very specific to the August 1<sup>st</sup> letter. We really need to target the words in this letter. Not the absence of words in this letter that are the determinations that are under review.

Chairman Burgie: Thank you.

David Fitch: Again, the association's position is that there has been a decision made that for example there isn't a violation.

Chairman Burgie: Unless he has stated a decision, we have nothing to act on.

David Fitch: Again, our position is the August 1<sup>st</sup> letter comprises the town's decision, the code officer's decision on each and every issue. And if there has not been a determination then the code office is required to make a determination.

Jeff Graff: If there is not a determination then your appeal is too early. You would have to wait for him to issue a determination to appeal that determination.

David Fitch: It is our position the letter contains the decisions of the code officer.

Jeff Graff: If you could highlight for the Board exactly the parts of this letter that contains the determinations that you are appealing.

David Fitch: I can do that in each and every issue, if you will allow the opportunity.

Jeff Graff: Highlight the exact words that you claim are the CEO's determination so that the code enforcement officer can respond to it.

David Fitch: What issue are you referring to counsel?

Jeff Graff: We would like to go through the letter and have you highlight the words that you claim are the determinations, so that we could settle on what exactly is being appealed.

David Fitch: Regarding the response to the fence issue, issue number two or the gate comprised of two paragraphs in a response from the code office. The code office takes the position it cannot determine who owns the property and, therefore, doesn't pursue. It states in fact *"The fence and gate he installed on the dock is a bit confusing because you claim you own the dock, but so does he. The only document I have seen on that is a survey showing the marina's area of submerged land license and NYS dock issued to Fields Enterprises."* It goes on to say in the second paragraph that *"We contacted Mr. Fields as soon as his new dock was brought to our attention and asked him to remove it for lack of a permit. He refused saying it is a temporary floating dock"*

Scott Martin: It is two separate docks you are talking about.

David Fitch: I know, but these are both issues that were essentially the code office is making a determination, making a decision, by either for whatever reason whether it is saying this is an association issue. This is not a town issue, which is a common theme in some of these or we cannot figure out who owns the property. For whatever reason by not pursuing the complaint they have made a determination that either there is not a violation to pursue, or the violation has been corrected and therefore again, the association's position in the August 1<sup>st</sup> letter is essentially the decision on each and every complaint filed by the association.

Chairman Burgie: I would not agree with that synopsis that you just gave. That statement. He starts out with in response in the letter. *"I know you feel that my deputy and I have ignored your issues, but to make things clear that is not the case. We usually discuss them daily between trying to take care of the rest of the town and try to find time to work on them when we can."* He has indicated that he is working on these issues. Some of them he has made some kind of determination. Some of them he has not. If it is not stated what his determination is, we do not have the authority to review it.

David Fitch: I guess in due respect Chairman why was a hearing scheduled on these issues if that is the case?

Chairman Burgie: Because you requested it.

David Fitch: Ultimately, if we do not have grounds for the hearing, I guess I would have anticipated that either counsel or the clerk would have contacted the association to say that. In fact, these issues were not right for a hearing because it is the position of the town that the code office has not made a determination on each and every issue.

Chairman Burgie: On each and every. Every, is the key word.

Jeff Graff: That there are no determinations in this letter. There may be limited determinations that you are appealing. Your appeal application is very specific to the determinations made in the August 1<sup>st</sup> letter.

We need to hear for the record what contents of the letter make up the determinations. A statement of a fact. A statement of an opinion to me is not the same as a determination. A determination is where the CEO comes to a conclusion of something. There may be a few places here where he comes to a conclusion of something, a determination, and for that your appeal is right and you are here for those.

David Fitch: If I may stop you, I would like to address those issues in a moment. Perhaps you can communicate to me what the town's position is and what the determinations are.

Jeff Graff: It is your appeal. So, we are looking for you to indicate exactly what the determinations are you are appealing.

David Fitch: The town must ultimately make a decision on each and every issue. So, with that said, I understand that some of these issues you feel are not right because a decision has not been made by the code office. Counsel, would you like to tell me which issues you feel a determination has been made so we can address those.

Jeff Graff: So, you do not have for the board the determinations in this letter that you are actually appealing.

David Fitch: I can go each and every one and indicate to you, our position.

Jeff Graff: Not your position, but we need to highlight what the determinations actually are.

David Fitch: The next issue was regarding the pier put in. Again, I would refer to the response to the August 1<sup>st</sup> letter from the code office, which is contained in those two paragraphs previously referenced. This does pertain to the Uniform Docking and Mooring Law and a permit must be obtained prior to the construction of any permanent docking or mooring. Whether or not there is questions as to the dock or the type of dock that would certainly we would anticipate part of the investigation by the code office. The code office is essentially taking a position that a permit is not required pursuant to their conversation with the property owner. The association's position would be that is a determination by the code office.

Jeff Graff: Where is that stated in the letter?

David Fitch: At the conclusion of the two paragraphs the code office states, *"This is yet to be seen and is ongoing and we are trying to make sure he complies with the UDML."* I would submit that establishes the code officers have made a determination that the property owner needs to do more regarding that issue because it is not in compliance. It would be the association's position that a determination has been made on that issue by the town code office.

Chairman Burgie: The issue of whether or not a permit is required?

David Fitch: Correct, for the pier, which is listed, I believe, as issue number three in the application.

Chairman Burgie: In referencing the Uniform Docking and Mooring Law Tier 1 permit requirements for permanent facilities and there are no permit requirements for non-permanent facilities addressed in here. A Uniform Docks and Mooring permit must be obtained prior to construction of any permanent docking and mooring and associated facilities. Certificate of Compliance shall be issued after satisfactory inspection of the docking and mooring facility by the enforcement officer prior to use of any docking and

mooring facilities. It is talking about permanent facilities. If this is a floating dock, seasonal dock it is not a permanent facility.

David Fitch: I guess the question that would be a determination that the code officers made.

Chairman Burgie: I would agree personally that is a determination that he has made and that is one that we will review whether or not that is required to have a permit or not. It also references that the dock cannot be more than 60 feet out past the mean high-water line. It appears that they have found a solution to that where he will not project out past the mean high-water line more than 60 feet by pulling it up onto the shore, which is allowed.

David Fitch: The association would anticipate if this dock is a seasonal dock it would be removed at some point going into the winter.

Chairman Burgie: I guess I would have to say that would be a reasonable expectation. I am not sure how that would survive very well with the ice flows and everything by just hanging it out there over the water.

David Fitch: Certainly. Thank you. As far as the next issue raised by the association is commercial operations. This relates to several issues taking place at 5682 Shore Drive. Specifically, kayak rentals as well as carry out commercial business for dock building in from from the parcel including storing of his tug boat and barge at the dock or lakeside. A pier, as well as, a commercial kayak storage business in that location as well. Significant and large amounts of equipment supplies and materials clearly outside the necessities and parameters of the town's permitted use at that location.

Chairman Burgie: We have some information here *"I have seen copies of letters, sent to the office previously, supporting his use of the area for kayak racks from long time residents of Bristol Harbour including one from Fred Sarkis. They state that the area has always been used as long as Bristol Harbour has been there. He also has a certificate of non-conformity that was issued January 9, 2018."* What is the order, requirement, decision, or determination that the code enforcement officer has made here?

David Fitch: Thank you. Before I comment on that. I just want to be concise and clarify the association's position regarding is this that they know there is a pre-existing non-conforming use. The use has expanded and become a mixed use due to residential/commercial uses on the parcel. With that said, in the August 1<sup>st</sup> letter from code office it states *"I also was concerned with the changes to the site plan and after telling Mr. Fields he told me that the previous CEO was aware and was told we would only require an as-built survey when done."* He knows this is fairly common Mr. Fields feels that we would be treating him differently than everyone else if we required more. Being new I haven't had to deal with this yet, but know from my building days this has been done before." I think the code officer has memorized his concern regarding this issue and would be the position of the association that, in fact, the code office has failed to pursue that issue and issue a notice of violation. I understand this perhaps some of these issues were seasonal as far as the kayak rental. However, the association's position that code office should of pursued that after making its determination in his August 1<sup>st</sup> letter regarding the expanse of the commercial use at that location.

Chairman Burgie: He has not stated in here any determination that it is allowed, it is not allowed, it is an expanded use, therefore, requires a new variance or anything of that nature or use variance. There is nothing in there that I read in that paragraph, is there? Go ahead.

Ericka Elliott: I would submit under the code section 170.92 B. The Board of Appeals may reverse or affirm wholly or partly or may modify the order, requirement, decision, or determination. It need not necessarily be a determination. If it is a decision by the code enforcement officer not to act that is still a decision that is appealable here.

Jeff Graff: You are saying that everything that is not included in this letter is a decision?

Ericka Elliott: It is included in the letter because he specifically the CEO to call out the commercial operations complaint.

Jeff Graff: The application is very specifically appealing from his determinations. The Zoning Board's jurisdiction tonight is to only hear an appeal on his determinations in that letter. That is it.

Chairman Burgie: Lack of determinations it not a determination in my opinion.

Ericka Elliott: Even though the code says decision.

Jeff Graff: If you want to use that word, show us what the decisions are in this letter.

Ericka Elliott: The decision is that he is concerned with the changes to the site plan and has concerns about the commercial operations of the property, but he is not taking action based upon those concerns.

Jeff Graff: He may not be taking actions, but your appeal is about his determinations in the letter. He has done any number of things outside of this letter, but your appeal is specific to this letter. That is all this board can hear tonight.

Ericka Elliott: How does that play out practically speaking if the CEO neglects to ever issue any formal determination? Then we are precluded from ever making an appeal?

Jeff Graff: No you are allowed to appeal a determination. If he does not take an action, you may find another way to pursue it, but again this Zoning Board of Appeals on an appeal is limited to hear what you are appealing. Your application was appealing the determinations specifically in this letter. Not anything outside of this letter.

Ericka Elliott: This letter does specifically address the commercial operation. I respectfully disagree.

David Fitch: We are going to disagree. You want to take the position that there has been no determination.

Jeff Graff: In this letter.

David Fitch: Therefore, you try to limit the opportunity of my clients to present.

Jeff Graff: I am not trying to limit anything. We are trying to honor your application. I am not making any decision.

David Fitch: You are saying I do not see where a decision is, therefore, I am directing the board essentially that they do not have to entertain this issue.



Chairman Burgie: He is not directing the board anything. He is advising us.

David Fitch: Thank you. I apologize. Advising the board that they do not have to entertain this issue.

Jeff Graff: They have to hear the appeal on the determinations of this letter. We have to figure out what the determinations in this letter are. You are trying to argue that a lack of a determination is a determination.

David Fitch: Lack of action is a determination. I am not arguing that.

Jeff Graff: Let's say hypothetically that he wrote a second letter. Let's say hypothetically in that second letter he made various determinations relative to these things. Your application failed to site that you are appealing that second letter. You would argue that because the first letter that doesn't address it is being appealed. That he made no decision because it is not in that letter. We may have other things that he is doing, but your application is for his determinations in this letter.

David Fitch: If we had a second letter, we would include that counsel.

Jeff Graff: You may, but you didn't. You are trying to say that just because it is not in this letter that nothing has otherwise happened.

David Fitch: We are not saying that. We are simply referring to the August 1<sup>st</sup> letter. Our position is by taking no action that is a determination on each and every issue. However, I want to address the issues that you feel that there has been a determination and the board should be hearing this evening and we can certainly address any other issues outside of that where the town's position is we do not have grounds to address specific issues because as a determination has not been made. Again, if there are some issues that you feel there has been no determination by the code office, we can just address the ones that the town agrees we should be addressing this evening.

Chairman Burgie: You would certainly have the right to ask the code enforcement officer on each one of these. What is his decision, determination or the status of his investigation?

David Fitch: There was follow up on these issues Chairman. Ultimately, my client took the August 1<sup>st</sup> letter as a determination on their complaints up until that point.

Chairman Burgie: I see in here many places where he says he is working on it in one way or another. That tells me that not everything in here is a determination. We need to limit it to what we know is a final determination on his part and decide whether or not we believe that is in accordance with the town code. The commercial use of the property I see no determination, just a history. The spreading of topsoil for future garden. He has stated that he asked if he needed a permit and was told no. Also, unexpectedly a representative from the DEC walked the property and the area of disturbance was under one acre so he did not have any reason to act. That would be support of on not needing a permit. Is your case that the code enforcement officer has made a determination that he does not need a permit and you take exception to that that he needs a permit to spread topsoil for a garden? I am trying to understand the issue here.

David Fitch: I do not believe that was the main issue related to that complaint. You are referring to the under commercial operations, is that correct?

Chairman Burgie: This is the third paragraph on page two of his letter. *"After receiving a complaint that Mr. Fields was dumping soil on the lakeshore. We went down to check."*

David Fitch: I believe that falls under the commercial use. That was one of the issues. I do not know if one of the code officers can clarify on that issue or not, but I think that was all part of one of the issues regarding the topic of commercial use.

Scott Martin: That paragraph was addressing a completely different issue. Not the kayak racks. You are mixing two.

David Fitch: Would you please clarify?

Scott Martin: Let me find the letter. Each one of these paragraphs is responding to the letter I received.

David Fitch: Just to clarify I there were multiple letters regarding alleged violations that were provided. Is that what you are referring to?

Scott Martin: Yes. If I remember correctly that particular paragraph was in response to someone calling or sending us an email that Mr. Fields was dumping soil on the lakeshore. So we went down and looked. That is what we found.

Scott Martin: I apparently do not have that one.

Diane Graham: Do you need a copy of their letter?

Scott Martin: Yes.

Diane Graham: Okay.

David Fitch: I would just note that specific issue was not ultimately part of the appeal.

Chairman Burgie: Oh, okay. Basically skip that paragraph? Okay. Parking garages is another area of concern. I do not see a determination that he has made here. About the only option he has at this point is to close all parking areas until all repairs are complete. He has not done that. He has not made a determination or an order. What is it in this response that is a determination on his part?

David Fitch: I think if I may chairman to jump ahead to ultimately what the association's position is moving forward. There was an engineering report was done indicating that there were issues with the garage. Then my client had some work done and I think worked with the code enforcement officer a little bit regarding that. Ultimately, the association believes the garage is safe, but that they would like the town to follow up to have another engineer look at it just make sure moving forward that it is, in fact, safe. The association is not looking for the garage to be placard, if you will. To be shut down. Really the remedy here in the eyes of my client is to continue to work with the code office so that we can ensure structure is safe moving forward. Certainly if there are other issues with the structure, they need to be corrected pursuant to a typical protocol in working with the code office.

Chairman Burgie: Okay.

David Fitch: If I may, the next issue which also results in really a request by my client versus a decision being made by the board this evening is related to the burning of commercial materials located on the property as I know the town is aware of pursuant to the application there is allegations on July 13<sup>th</sup>. Large amounts of construction debris being burned on the site. The association would respectfully request that a determination is made by the code office that this in fact in the future is not allowed. This type of burning on the property. Therefore, as more a point of discussion that my clients looking for some confirmation from the code office related to that moving forward. So that this is not a frequent occurrence in the future.

Scott Martin: I have no problem with that.

Chairman Burgie: So that would not be a request to Zoning Board of Appeals to review his determination? You are getting on record that this is a concern and you would like to work with the code enforcement officer to make something happen here?

David Fitch: It is the position of the association that a violation occurred on July 13<sup>th</sup> when the burning occurred on the property. We understand that is not an ongoing violation, if you will. Therefore, just to be practical and reasonable the association wants to make sure that does not happen again. It would be confirmation from the town that, in fact, that type of activity is a violation and not allowed.

Chairman Burgie: Okay.

Scott Martin: Yes.

David Fitch: The next issue related to similar to parking not the garage, but parking and bathrooms at the south end of Cliffside Drive. Again, it is the position of my client that the changing of parking and bathroom use to a restriction for marina paying customers only constitutes a change of use under the code. The bathroom and parking lot are located in a PD district. With a change of use site plan review is required under the code pursuant to section 170-94 A.3. Therefore, the association would request that the town have the property owner go back to the Planning Board for site plan review. This also relates to a final overarching point related to the as-built property regarding the residential property being constructed by the property owner at that location. I know that Mr. Grasby has met with the code officers. This is my final point. I will wrap up. Ultimately, there is evidence and it has been discussed and I believe there has been indication from the code office to Mr. Grasby that, in fact, the property owner is outside of the original site plan that was approved. The association would request that the property owner be required to submit a revised site plan to the Planning Board and a stop work order be issue in the interim until that occurs. I will defer to counsel as to whether or not he would advise the board one way or the other as to whether a determination has to be made by the Zoning Board of Appeals this evening or further discussion with the code office regarding the issuance of a stop work order so that the work that is out of the original being done outside of the original site plan related building a residential property be ceased until a revised site plan is submitted.

Chairman Burgie: Work that has changed the site plan?

Shawn Grasby: So when I was there sir I noticed that there were several trees cut down in the hill that were not shown on the approved site plan. There was a rock wall in the driveway that now blocks Bristol Harbour's easement. That was not listed on the site plan as well. Now it is impeding what is going on

with Bristol Harbour. I believe SEQR should have looked at all the tree removal as well that was not considered under the first review.

Chairman Burgie: This did not come to the Zoning Board of Appeals because it did not require any variance, true? It was only reviewed site plan by the Planning Board.

Scott Martin: As far as I know. This project has been going on for years. We have been here for months.

Chairman Burgie: I hear you.

Shawn Grasby: I guess it is Bristol Harbour's position that the code office take a look at the final version of the site plan. See if the site matches that site plan. If it doesn't issue a stop work order and have them come back to the Planning Board for the amendments to what has changed.

Chairman Burgie: Again, that is not in the letter as far as a determination here. I guess the only thing that comes close to that is that he was told by the previous CEO that it would only require an as-built survey when done. He knows this is very common and feels that we would be treating him differently than everyone else if we required more.

Scott is this to the extent that it requires modification of the site plan and reviewed by the Planning Board because this is not a Zoning Board of Appeals issue originally?

Scott Martin: Yes and no. There are some changes made that probably should have been approved first.

Chairman Burgie: Then what is your position here as far as this goes?

Scott Martin: I think it would be best for everybody if came in and got an amended site plan.

Chairman Burgie: The question is then based upon this discussion are you going to require an amended site plan for this?

Scott Martin: I guess I have to. Yes.

David Fitch: As such chairman the association's position would be that a stop work order be issued until a revised site plan has been submitted.

Chairman Burgie: If a revised site plan is required based upon the amount of change to the site plan.

Scott Martin: The changes they are talking about have already been done. It is rock walls and some change to the road, which is not blocking anyone's easement. They can still get through there. They have been going back and forth through there all summer long. Do I tell him he has to stop building his house? That is the only thing the stop work order would do at this point. We would all love to see him get his house done. Putting a stop work order on that is not going to do anybody any good.

Unidentified: Can we also be heard at this point?

Chairman Burgie: Yes.

Jon Tantillo: I am Jon Tantillo, the attorney for the Fields. What we heard tonight is on administrative appeal submitted by BHVA. If there is going to be any code enforcement that is not in that letter, we ask that it take place with the code enforcement office and we be allowed to participate outside the context of this hearing.

Chairman Burgie: You are saying it very quickly and I am having trouble understanding your words.

Jon Tantillo: We ask if there is going to be any code enforcement that it take place in the normal code enforcement scenario and we be allowed to participate and work with the code enforcement officer. We do not feel that any modifications to the site plan have been made that require a new site plan. It is all just a lay of the land things that needed to be to the extent there is any change all the lay of the land things need to be slightly addressed. If a new site plan is required for these kind of things, the Planning Board would be meeting every night. It is not something that requires a new site plan.

Robert Brenner: In the spirit of having two attorneys talking for both sides here. Rob Brenner just a little bit to add to that. Dramatically the conversation tonight is improper right because the purpose of having limitations, periods or statutes of limitations in land uses is to allow folks to move forward with certainty when they build a project, right? The determination that we are talking about right now was rendered by Phil Sommer before his retirement and he has been retired for many many months, right. In reviewing the administrative appeal of the code enforcement officer there is a sixty day limitations period. These field changes were reviewed and approved by the prior code enforcement officer and this discussion is time barred.

Chairman Burgie: Do you have something written?

Robert Brenner: Yes. I believe it was submitted to the town by Mr. Fields and is in the file showing the field changes. The discussion on this point is totally improper. It is time barred. It should not be a matter of discussion before the board tonight.

Chairman Burgie: So he has submitted the change to the site plan?

Robert Brenner: My understanding is that Mr. Sommer met with Mr. Fields on site. He requested at that time an update site plan to show the changes to the site plan and that was filed in the town's records. I practiced in this town for seven years. I work for a prior client on Bristol Harbour matters. This town is a very careful town. It works on sophisticated lake development projects routinely. This project is not beyond the ordinary scope of what this town reviews. This town is a matter of practice always approves administratively minor field changes and deviations because we have challenging hillsides in this town along the lake. This project is not a typical. There are always minor changes to approve site plans during the pendency of construction and that is what happened here. The code officer, the prior code officer exercised the same level of discretion that he exercises on each and every other application. It is wildly inappropriate for the matter to be re-litigated and re-discussed here tonight after a decision was already rendered by a prior code officer. If this is the process that is going to be followed in town, there is no bar that Mr. Fields cannot file an appeal against the three hundred homes that are in Bristol Harbour. He can drive around and say that deck does not look right to me, please review it. I would like to discuss it with the Zoning Board. That is not the purpose of the process. What is happening here tonight is wildly improper. To drive the point home that the discussion in the change in use for the bathrooms or the parking garage. The association, this is a matter of private litigation, has restricted access to elevator and private roadways, staircase to non-residence for docking. A parallel argument could be made that they

should come in for site plan approval for their elevator because they have changed who is allowed to use it. All of these matters are being litigated in Supreme Court. They should not be litigated before the town Zoning Board.

David Fitch: If I may, I do not think we are asking on this issue in particular. We are not asking for a determination to be made by this board as this point. We make a point as to what we believe based on what the code officer has said to be the next step, but it does not entail the board having to make a determination on that issue.

Chairman Burgie: Once the code officer has made a formal determination then we have something to review, if you do appeal it. That is what I was about to say in both of these issues. The code enforcer officer has not made a formal determination on anything I could see on these issues, therefore, we have nothing to review here, but you have been heard. The code officer does not work for the Zoning Board of Appeals. You do understand that, right? We do not give direction to it. We are empowered by the Town Board to review his decisions and determine if they are in accordance with the town code, but we do not give him direction.

David Fitch: My client understands that. I act as municipal counsel and prosecutor on these issues and I work with code officers in other jurisdictions. Certainly, Miss Elliott and I are aware of that as well. Absolutely, yes. Chairman, I do not think there any other issues we had to address this evening with you and your fellow board members. Again, we appreciate the time.

[Regina Cushing asked for a moment to have a discussion outside meeting room with her counsel.]

John Holtz: Can he address the board?

Chairman Burgie: Can who, Scott? Of course.

Scott Martin: I wanted to point out that the floating temporary dock does not require a permit. I printed out a snapshot picture and I have the whole survey map showing that it complies with UDML.

Chairman Burgie: That is a determination we need to discuss.

Shawn Grasby: We are back.

Regina Cushing: I am Gina Cushing with Bristol Harbour Village Association.

Chairman Burgie: Hi, Gina.

Regina Cushing: So, the rules and regulations are new for me. I have told the code officers that I ask for help so that I do not make requests that are unreasonable. I got confused and I want to pull them out to make sure I could follow and we covered everything we could. So, counsel says we have. I want to thank you for your patience in letting me pull them out just now. I am just want to make sure while we are here that I understand what is going on.

Chairman Burgie: Thank you. There are two issues that you have raised tonight that are determinations that we need to document. We have discussed them at length, but I want to make sure that they are, in fact, documented. The first was the determination on the bison. We do not feel that is a town issue was his

determination. As we discussed it only an issue in that a special use permit has not been applied for because they are going to be within 100 foot of the lot line. They do require a special use permit, which will require another board hearing.

Scott Martin: He is in the process of that for the new lot.

Chairman Burgie: Okay. Understand, first determination that we can address and we know where we are going with that. The second one, he is saying that it is a temporary floating dock and they do not require permits. *"We met him with a local surveyor and Canandaigua Lake Watershed Inspector on site to discuss it. I had done a lot line adjustment for the two adjacent lots he own, which in my system as Lake Residential to make it compliant and after looking at a survey of the facility line prepared by Venezia Land Surveyors...the dock is well within the 10 foot setback of the facility line area allowed."* Based upon the drawings that we have it is ten feet away from the facility line and so it is compliant. He has pulled it to no more than sixty feet over the water so it is compliant in both of those regards and as I read the docking and mooring law it is a temporary dock and, therefore, does not require a permit. Other board members please give me your thoughts on this, but I do not see anything to reverse on his decision with the dock.

Jeff Graff: Mr. Chairman I would just interject that there should be a vote on those.

Chairman Burgie: I am looking for discussion first and then we will take a vote. Thank you. You are right. That is what she is here for to remind of that too.

David Fitch: Just allow me a moment, please. Thank you. All set. Go ahead. Please continue.

Chairman Burgie: Any discussion board members, Carol?

Carol Dulski: No.

John Holtz: I think you covered it well.

Chairman Burgie: Then on those two issues we need to take a vote.

Diane Graham: Do you want to do them separately?

Chairman Burgie: Yes. Separately. The first one that it is a town issue and that it requires a special use permit.

Diane Graham: For the other lot.

Chairman Burgie: For the bison regardless of which lot it is in.

I will make a motion that it is a town issue and that it requires a special use permit.

John Holtz: I have a question before we vote. Is this along the lines of if we say this is required and he, let's say hypothetically, does not go for it, but keeps the bison there?

Chairman Burgie: He will be in violation of the town code.

John Holtz: Do we need to put a time on that? He needs to by the next month. I heard it is already in process.

Diane Graham: I have an application.

John Holtz: So we do not need to do anything like that? Okay. Just so I understand.

Barbara Howard: I second it.

Vote of the Board

Thomas Burgie – Aye

Carol Dulski – Aye

John Holtz – Aye

Barbara Howard – Aye

Motion carried.

Chairman Burgie: The second determination is he did not make a determination on the permit. That is not something we are reviewing. You made the verbal determination here that he is in compliance with the UDML, but it does not actually say that in here, does it? *“We have been waiting for the final survey to determine these things.”* So we cannot rule on that because he has not made a final determination. He is waiting for the final survey.

Scott Martin: You have a survey. Well a portion of it.

Chairman Burgie: This is what we are reviewing. Your stated determinations in here. If you have made a determination after that then okay. That is not what we are doing tonight though.

Scott Martin: Okay. Got you.

Barbara Howard: Makes sense you cannot do a determination if he is waiting for a filed survey.

Chairman Burgie: So there really is the one. A special use permit will be required and the Zoning Board of Appeals will have a public hearing on that. You are welcome to attend and express any concerns that you may have for the special use permit for the bison.

David Fitch: Thank you.

Chairman Burgie: Do you have anything else that you want to add?

David Fitch: Not at this time. Thank you for everyone’s time. We appreciate it.

Chairman Burgie: Thank you. It has been a good discussion. You have aired a lot of things. We only have a certain amount of authority and many of those things are not within our purview.

David Fitch: Thank you.



Chairman Burgie: Do you have anything to add?

Jeff Graff: No.


Chairman Burgie: Any other business?

Diane Graham: No.

**Motion to Adjourn**

Being no further business, Barbara Howard moved to adjourn the meeting. Thomas Burgie seconded the motion. The motion was unanimously adopted, and the meeting was adjourned at 8:54 pm.

Respectfully submitted,

A handwritten signature in cursive script that reads "Diane S. Graham".

Diane Scholtz Graham  
Board Assistant

Appendix

Bristol Harbour Village Association Inc. July 14, 2022 Letter

Town of South Bristol Code Enforcement Office August 1, 2022 Letter

Bristol Harbour Village Association, Board of Directors  
30 Golfside Circle  
Canandaigua, NY 14424

July 14, 2022

Mr. Daniel Marshall, Supervisor  
Scott Martin, Code Enforcement Officer  
Alan Pearce, Deputy Code Enforcement Officer  
Town of South Bristol  
6500 West Gannett Hill Road  
Naples, NY 14512-9216

**RE: Code Violations at BHVA and Notifications Thereof**

Dear Mr. Marshall, Mr. Martin, and Mr. Pearce:

On July 7, 2022, BHVA submitted 3 Code Violation Notifications and on July 8, 2022 submitted a fourth to the Code Enforcement Office. The 4 violations are the following:

1. BISON. The 64 acre land owned by Fields Enterprises Inc. and Cartwright Farms, LLC is within the BHVA planned development and has Bison, which section 9.02 of our Declaration restricts. The section states: No birds, animals, reptiles, or insects shall be kept or maintained on any Lot except for domestic purposes. No domestic animal shall be permitted to run at large on the property. Moreover, the acreage is zoned residential and is not within the Town's agricultural overlay except for less than 5% of the total area, and specifically to that restricted area. A variance would require BHVA's approval.

BHVA demands that the Town issue a cease and desist order prohibiting bison on the property immediately.

2. FENCE. Jeremy Fields; James Bachman; Fields Enterprises Inc. and Bristol Harbour Marina, LLC have installed a gate on BHVA property without BHVA permission and without a Fence Permit on Dock A. Moreover, the fence is over the water requiring Planning Board review and approval, and BHVA's approval as the owner of Dock A.

BHVA demands that the Town issue an order for the removal of the fence immediately.

3. PIER. The pier owned by Fields Enterprises Inc. and Bristol Harbour Marina has been installed without BHVA permission and without a dock Permit. Moreover, the pier infringes onto BHVA water rights and is not 10 feet from the property line.

BHVA demands that the Town issue an order for the removal of the pier from the property immediately.

4. COMMERCIAL OPERATIONS. Cathy and Jeremy Fields (owner of 41 Cliffside Drive); Fields Enterprises Inc.; Bristol Harbour Marina, LLC; Finger Lakes Boat Repair 1, Inc.; Fields Equipment Co., Inc.; and Cartwright Farms, LLC are conducting illegal commercial operations on an exclusively residential zoned parcel. Moreover, all or some of these entities operate in conjunction with the docks at BHVA, which is a commercial operation and cannot be run out of or managed or supported by the residential parcel.

BHVA demands that the Town issue a cease and desist order to stop any and all commercial activities and to remove all equipment and material immediately from anywhere on the premises.

On Tuesday July 12, 2022, the Department of Environmental Conservation (DEC) and your enforcement office did a walk-through of the Fields Outparcel property and confirmed that the property is in violation of the existing Site Plan. Mr. Fields is required to receive approval from the Planning Board for a new site plan, which BHVA has the right and fiduciary duty to review and approve prior to the Planning Board's final approval. Any application for a Preliminary Planning Board hearing for the Fields new site plan MUST be rejected by the Town unless the Fields's initial application includes a letter of approval on all elements of the application from the BHVA for this parcel in the planned development.

Furthermore, BHVA is putting your office on notice that you are required to issue a stop work order and that the required procedures for approval must be followed precisely and completely. BHVA expects and demands your full cooperation on this matter.

Furthermore, BHVA seeks your full cooperation in enforcing all code violations, which continue to impact BHVA, its property and the quiet enjoyment of its residents. Your office continues to ignore the public safety hazard with the garage structure, which needs prompt enforcement. Our community has and will continue to support your office, but we must ensure that the rights of 366 homes under your supervision are protected and that our property values continue to support the Town's tax base. On Wednesday July 13 at about 7pm and through the night, Cathy and Jeremy Fields burned massive amounts of construction debris which had noxious smoke and flames exceeding 30 feet tall. This morning they covered the significant toxic burn area with topsoil. This is all happening in a buffer zone where BHVA gets its drinking water and where the toxins will leach into the lake for extended periods. The details of these egregious actions will be elaborated further and sent to your office.

The BHVA Board has hired Shawn Grasby, a highly experienced senior code enforcement officer from this region, to advise us all in being technically accurate, and to assist us in developing a cooperative and professional relationship with you, the new code enforcement officers.

BHVA also needs cooperation and support from you and the other departments for us to receive fair and equitable treatment across the broad administrative process. Again, we have witnessed and struggled with highly disparate requirements and outcomes relative to other commercial interests such Mr. Fields that directly impact conditions at BHVA. That must stop today. We must get back to a violation free and equitable environment at BHVA. If we exhaust all our remedies with the Town without a fair outcome within a reasonable period, we will begin the legal process to pursue and enforce all our rights and remedies at law or in equity or otherwise.

The stop work order on the Outparcel must be issued within the next 48 hours.  
BHVA reserves all its rights and surrender none.

Thank you for your cooperation and consideration in advance.

BY: Gloria Harrington

The BHVA Board of Directors;  
Gloria Harrington,  
BHVA Board President



# TOWN OF SOUTH BRISTOL

## Code Enforcement Office

6500 West Gannett Hill Road

Naples, New York 14512

(585) 374-6341

*ceo@townofsbny.org*

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August 1, 2022

To: Bristol Harbour Village Association, Board of Directors  
From: Scott Martin CEO and Alan Pearce Deputy CEO  
RE: Letter of Violations at BHVA

To whom it may concern,

In response to your letter dated July 14, 2022;

I know you feel that my deputy and I have ignored your issues, but to make things clear that is not the case. We usually discuss them daily between trying to take care of the rest of the town and try to find time to work on them when we can. Sometimes things take some time to iron out and all the issues created by you and Jeremy Fields can get downright confusing trying to keep them all straight. All this has been going on for years from my understanding and we've both only been in our positions for a few months. I wish I could just snap my fingers and make everything work out to everyone's satisfaction but I'm afraid that's impossible.

As far as Mr. Fields' bison on Hicks Road, we don't feel that is a town issue. You say it's against your by-laws so you should be the one to enforce that. Mr. Fields has informed us that he is going to move the bison off of that parcel, so if he follows through on that you won't have to worry about it any longer.

The fence and gate he installed on the dock is a bit confusing because you claim you own the dock but so does he. The only document I have seen on that is a survey showing the marina's area of submerged land license from the NYS DEC issued to Fields Enterprises, which shows that dock in it. I for one would like to know who really owns it. It is my understanding that they were made to remove the swim platform because it was outside of this approved area. He also removed a dock from the north end because he wasn't allowed to add any and has now towed it to his other property on the cove.

We contacted Mr. Fields as soon as his new dock was brought to our attention and asked him to remove it for lack of a permit. He refused saying it is a temporary floating dock and they don't require permits. We met him along with a local surveyor and the Canandaigua Lake Watershed Inspector on site to discuss it. I had done a lot line adjustment for the two adjacent lots he owns (Which in my system are both listed as LR) to make it compliant and after looking at a survey of the facility lines prepared by

Venezia Land Surveyors using the prescribed Canandaigua Lake UDML 200 foot intersecting line method, the dock is well within the 10 foot setback of the facility line area allowed. The survey showed the dock to be 60 feet long but we measured it and it was 70 feet so Mr. Fields asked the watershed inspector if he could pull it up onto shore 10 feet so that only 60 feet was out beyond the mean high water mark and was told that was alright to do. We have been waiting for a final survey but of course after getting approval from all he has decided to now move the dock 8 to 9 feet further to the south away from Bristol Harbour. This is yet to be seen and is ongoing and we are trying to make sure he complies with the UDML.

As far as Field's Enterprises commercial use of his property, I have seen copies of letters, sent to this office previously, supporting his use of the area for the kayak racks from longtime residents of Bristol Harbour, including one from Fred Sarkis. They state that area has always been used as such as long as Bristol Harbour has been there. He also has a certificate of non-conformity that was issued January 9, 2018 (Permit number 2018-0002).

After receiving a complaint that Mr. Fields was dumping soil on the lakeshore we went down to check and discovered he was spreading some topsoil in a future garden area that was well away from the lakeshore. He had called previously asking if he needed a permit for a garden and was told no. Also we met unexpectedly a representative from the DEC and walked the property. The area of disturbance was under 1 acre so he didn't have any reason to act. I also was concerned with the changes to the site plan and after telling Mr. Fields he told me that the previous CEO was aware and was told we would only require an as-built survey when done. He knows this is fairly common and feels that we would be treating him differently than everyone else if we required more. Being new I haven't had to deal with this yet, but know from my building days that this has been done before. We knew nothing of any fire that is alleged to have taken place.

The parking garages are another area of concern. We know they are in need of repairs and until talking with and meeting with Andy Morey we thought nothing was happening. He showed us the repairs that have been done already and talked about the future plans. We had also asked about the plans for repairs to the connecting bridge between Fields' parking garage and Condo 1's. Andy Morey had told us that you all had plans to repair the bridge and when we asked Gloria Harrington when they were going to start were told this October. I also was cc'd in an e-mail containing a letter from a lawyer to Mr. Fields requesting him to perform the repairs, then were told you were going to have the work done and make him pay for it. At this point it is seeming that our only option is to close all the parking areas until all repairs are completed. Mr. Fields would like nothing better than to have us condemn his so he can demolish it. We would like to avoid this if possible as I'm sure you are too. I also would like to avoid closing all the garages as I am aware that this is how everyone accesses their condominiums and would cause a huge dilemma for the residents. Plus I don't need 300 plus people calling me upset. Maybe I should just give them your phone numbers seeing you are alleging we are ignoring this issue and as I see it, closing them is our only option and you are demanding we do something.

We are trying to act on all these different issues, but are not experts on all this yet and have the Whole Town of South Bristol to take care of. Between building permit applications and inspections, Short Term Rental applications and inspections, Subdivisions, annexations, address assignments, other property issues, neighbor complaints, fire inspections and reports, phone calls, e-mails, etc. We are quite busy. Thank you for taking the time to read this and we would appreciate it if you would stop leading your residents to think we do nothing. Please share this with the community.

Scott and Alan