

ZONING BOARD OF APPEALS
TOWN OF CANAAN
COLUMBIA COUNTY, NEW YORK
April 25, 2017

Present: David Cooper, Pat Liddle, Jack Steffek, Christy Ransford, Bill Wallace, Sandy Haakonsen

Chairman Cooper opened the meeting at 7:00 p.m. with seventeen people in the audience.

There are two Public Hearings on the agenda and one file to consider. David stated that we would not be able to deliberate on the two hearings from the last meeting due to fact that the paperwork and referrals sent to the Planning Board last month have not been acted upon yet.

David asked the Board if there were any changes to the March draft meeting minutes, and Bill Wallace stated that on the last page there was a line that should have read "Bill said if the Planning Board was going to require it, that they have a right to ask for a retainer to get an engineer", instead of what was written which was "Bill said if the Planning board was going to require it, that they have a right to place a retainer to get an engineer." There were no other corrections so David made a motion to accept the minutes with the correction, with a 2nd by Bill Wallace. All in favor. Pat Liddle abstained due to not being present at the last meeting.

7:03 David read the Legal Notice for the Public Hearing on file **#2017-4, Mark Meppen, 13190 State Route 22, Tax ID # 60.-1-35** for a Plumbing and Heating Warehouse. Mr. Meppen turned in his receipts for his notice to abutters, along with the \$25.00 Special Permit Fee.

David asked Mark if he wanted to briefly give an overview. Mark said that he was building storage facilities for his HVAC business, being used for storage of equipment, tools and vehicles. There will be no public access and no employees other than himself. It will not be a store, and he will use it for approximately a half an hour in the morning, a half an hour in the evening, and maybe sometimes he will be working there during the day. For the most part he will be working in other people's houses. Bill asked if there would be deliveries there, to which the reply was yes, and I don't plan on expanding so as a rule I usually get two deliveries a year and any other deliveries usually come in the back of a pickup truck.

David inquired how Mark came up with the scale of the building. The answer was that reason the larger building will be there is because he needs to access the building from three sides so he can drive through on the 80' side and have shelving there so he can load his vehicle and drive out the other end. The reason the front building has additions is because Mark wants to start out in that building. He doesn't plan to start the large building this fall but wants to get something that suits his needs.

Bill noted that the building was one story and asked how tall it would be. Mark said he couldn't say for sure about the whole thing yet, but the eave end would be 14'. The building that he wants to put the addition on will be no higher than that. Bill asked if the building that was going to get the addition was shown as 36'x48', to which the answer was yes.

David asked the current status with the Planning Board and was told that it obviously wasn't approved yet, and that the Board had asked for a topography map and a lighting schematic. David said that just to

clarify, the Board needs to follow the letter of the Zoning Law, and before they can deliberate the Site Plan needs to be in place. This is why the Zoning Board makes the referral to the Planning Board. David suggests that there are a couple of options after hearing from anyone who wants to speak. The Board can either close the hearing or choose to continue it and pick it up again.

Mark stated that because of the way the meetings run, he had called Planning Board Chair Pierre Gontier and asked if he needed the lighting and all the other stuff on the map, and Pierre told him not to worry about it until Mark came back to the Planning Board. David said the Planning Board was in charge of approving all of the Setbacks.

Pat Little asked if Mark had submitted a design for the building and he had not. It was just a footprint. I made a square building because I haven't designed one yet.

Christy Ransford asked what his thought on a sign was. He said that the sign used to be down at State Line Rentals. He may have to cut it down to make it the square footage that it needs to be. It is a plexiglass sign on both sides with lights inside. No flashing lights or anything, and he doesn't foresee really turning the light on at all. It is just to mark his spot.

David read the response from the Columbia County Planning Board in regards to this file. They suggest the following: That the applicant contact New York State Department of Transportation regarding the proposed commercial driveway off of NYS Route 22. That Pursuant to the Canaan Zoning Law, Article VI, Site Plan Review is required by the Planning Board. The applicant needs to contact the Columbia County Department of Health regarding any necessary reviews for a well and septic system. They also suggest that the well and septic system be added to the Site Plan. Per Canaan Zoning Law, article IV, The Planning Board has the authority to establish Setbacks. It is recommended that once determined during the Site Plan Review process, that the required Setbacks be noted on the Site Plan. The applicant should provide information regarding the number of employees, customers and business owned vehicles in order to establish that adequate parking is provided. The applicant should provide information regarding any chemical, gases, fuels, refrigerants, etc. that may be stored on the site, especially those that may be part of the HVAC business component. The CCPB suggests that the local fire chief review the plans.

Chairman Cooper then read the SEQR parts 2 and 3, which will be in draft form until the hearing is complete. The Narrative is based on two field visits (4-08 & 15-2017). Project is located in commercial zone (C2) on State Route 22. There is a modest existing structure and it is purposed to have an addition (approximate total size 48x36) and a new building (60x80) constructed. The lot immediately adjacent to the north is a field is planted with conifers (2'-3'high). Where this field ends, the terrain rises and a rather dense wood lot is present. There is a single, family residence located there but it is not visible from the project lot. To the immediate south there is an automotive business located on the adjacent lot and across Route 22 there is a large farm complex. The speed limit on Route 22 is 55 MPH but the road is straight and sight distances in both directions are very good. There are existing curb cuts and a business sign is shown to be behind these cuts and should not adversely impact sight distances on Route 22.

David asked if anyone wanted to speak favorably or negatively on the matter. Allen Miller who is the brother of abutter Cary Miller said he would like to speak. David noted that Mr. Miller had sent a letter to the Board and asked if he wanted to read it. He declined. The letter is on permanent file at the Town Hall.

Mr. Miller said that he is his brother's attorney. He wanted to shape the discussion. He said there are three forms being dealt with. Allen said that they got the notice for the hearing and he thought it was to give Mr. Meppen a chance to get the variances he needs. Chairman Cooper said he didn't need variances but Mr. Miller disagreed. He said that the zoning law was enacted in 1967 and in 1970 the owner alienated 84 of her 85 acres of land and in so doing created a lot that doesn't have enough frontage. In 1978 when this property was sold to the predecessor Telergy, it was an illegal lot. It also didn't have enough setbacks. There are factors that need to be considered. There is a 600, square foot building that was not used. A law was written for Telergy to get around the Use requirements and Telergy abandoned the use. It was used to store junk and there is now a squatter who is occupying allegedly not under Mr. Meppen's ownership rights. It is alleged that Telergy said it could be used for storage by Randy Gillespie. So now there are two uses on the property. There are questions of Title, Planning Law jurisdiction, Setback issues, lot requirements and an illegal subdivision that took place in 1970.

He doesn't know if these matters get argued in front of the Planning board or if a Title action is needed. He wants to know what considerations there are for his bother Cary who plans on having a Christmas tree lot. If Mr. Meppen is allowed to triple the footprint and build this building, it will completely block the view of his brother's tree lot. The corner of the existing building is only two feet from Cary's property. He said that the Board alleges that it is a preexisting allowance, but it was illegally subdivided. He said he doesn't want to litigate in court but this absolutely requires Mark go for a variance because he doesn't have the 2 acres he is required to have.

David said it was represented to us that it is a legal lot. Mr Miller wanted to know by whom. David replied that first off Columbia County who sold it. Mr. Miller said that didn't matter because it was a tax sale. They are considering a Title action to eject Mr. Meppen from it. You can only give to Mr. Meppen the right to use the property that he acquired. I don't want to sue it out, but would rather negotiate. David asked that if it was a quick sale why didn't Mr. Miller bid on it. They had bid on it, but Mr. Meppen outbid them. In his opinion they should have won the bid because they had superior title. They didn't bid more because they didn't have assurance that their title would be insurable or bankable for a mortgage. They still feel they own the land. If forced they will bring the Quiet Title action suit and apply for a stay.

Pat asked what it is he thinks the board can do. Well between you and the Planning Board somebody has to talk about the expansion of the existing building, which is an eyesore as it is now and shouldn't be able to improve it. Pat said so you think that he should only be able to use the building as it is now. Mr Miller said or tear it down and build his warehouse. He can't have his cake and eat it too. He's talking about expanding a 580, square foot building and triple the size to make a commercial use of the building. He is allowing Mr. Gillespie to encroach. Mr. Meppen spoke up and said you don't know the discussions I've had with Mr. Gillespie and Allen said that it doesn't matter what your discussing if you are allowing him to use it. Bill Wallace said this is all hearsay.

Pat said regardless of who owns the property, you are saying that if he only sticks with this small building that's it, or else you will try to go to court. What I am saying is that you are being asked to approve two commercial buildings, one of which is in no way improvable legally because of the time it was sold in 1978. The Use was abandoned and you can't reincarnate and expand threefold. I don't want a lawsuit, but if you allow it I will. It would be better if Mr. Meppen says he'll tear it down and work with Cary to come up with a low profile building that is not visibly intrusive so that Cary can have his retirement business which is a Christmas tree farm, winery and a retail location. Right now, if Mr. Meppen expands the existing building it completely blocks any view of my brother's retail location. That

Christmas tree lot is a buffer between the most historic house in town and the commercial zone. Not every use in the C2 zone is purely Commercial. My brother happens to be an owner of an extremely important historic house and we are going to put it on the registry. At the very least we are going to start getting barn credits, and barn restoration and get the house under a restoration credit which will play somewhat into the commercial use of his entire 47 acres for a recreational facility and possibly a B&B. If there is a warehouse times two, that is all trumped out. My brother and sister-in-law have a real problem, they have 47 acres with no developable residential land in the back that will have to be sold off as huge 10 acre parcels and they look down on something that is a commercial eyesore. So, through legislation and natural conformity this will make their property near worthless. This is one of my brother's exit plans. He is in his sixties and he doesn't want to thwart Mr. Meppen from having his use of the property. It is just that Mr. Meppen is going from a one acre parcel to using close to 7,000 square feet and two buildings in a supposedly sole proprietary business and it makes no sense to me. It smacks of a suggestion that he is really looking for another kind of return which is to flip it. You would have to put incredible restrictions, and that is what we are here to negotiate. Negotiate with Mr. Meppen and with the Boards to make sure an intelligent use is made of this 1.17 acres. My brother has kind of a business plan he would like to read to you if you have time to hear it. The problem is we got a certified letter from Mr. Bowe which I apologize for calling informal, but if you mail a gum wrapper in a certified letter, it is still a gum wrapper. There was nothing in it telling us what we are or are not fighting here. We don't know what the battle lines are and would like the privilege of having a conversation with all of you, and not just come here and see Mr. Cooper pretty much rule in advance what the board is going to say. Pat said you are not doing yourself any favors here. I am doing this favor for myself, I am asking for a definition of what the discussions are because we haven't had a discussion. Pat said, you haven't had a discussion yet? You don't know what my brother's been through. He's been told by the Planning Board that we can do anything we want. We can grant any variances we want, the Setbacks don't matter, your house is of no consequence to us as you are not on the National Registry. We are a little gun shy. Pat said we are here to get information. We don't sit down and negotiate with an adjoining person. We get information and deliberate it. Am I correct? Bill said he agrees with that and David also said yes, but we are very interested in your information and we want to get as much information as we can. Mr. Miller said, there are three parties in this. It's the town through the various boards, it's Mr. Meppen and it's my brother and sister-in-law. Three separate parties. I don't want to go to court, but we are not having much choice. We own the property, and are willing to kind of quick claim it like the town did but we need to have the negotiation exploiting all of the deterrents that this board is required to impose, and you haven't been doing that. Pat said we have just got this. Mr. Miller said that they were told that this was it to approve this. David and Pat both said that is not what is said. Mr. Miller said it is a Public hearing and any other questions to ask Matt Bowe. Bill said this is the public hearing and we are going to hear from everyone. Then we will take it under advisement. We may not do that tonight. It may happen in thirty days. We listen to everyone. Mr. Miller said that would be ideal. If you will listen to the dialog. We came to a hearing thinking this is it. When we were here last, we watched Mr. Meppen be advised to go to ZEO Heim to get a denial so he would have standing. We thought this was a formality. My brother has sat through many Planning Board meetings and is not being heard, so we are arming for battle if we have to. I don't want to, I want to have a dialog.

Pat asked what do you think we are going to do tonight. Mr. Miller said he would suggest that in the interest of everyone, that Mr. Meppen, his lawyer, my brother and his lawyer all sit down and negotiate, because we may not need to fight it out. Pat said that no one is stopping you from doing that, but we wouldn't be telling you that. We are just getting information. Allen said that basically what my brother has been told up until now is there are no variance questions in play, the lot line requirement is trumped because it was a preexisting lot even though it wasn't because it was created after the zoning law was

put into place. It doesn't have the right frontage and in fact the northwest corner is 2 feet from my brother's property, so he can't put a road in without sending it off from that, so he is very limited in what he can do. He needs to go to the County just like Telergy did, so he can buy that little sliver so he has frontage.

Christy said she had walked the line and the trees were really close to the building and would be concerned about the roots causing issues. If those trees are going to grow they will cause serious issue. Mr. Miller said they are Christmas trees and will be excavated. Usually they are planted on 7 or 8 foot squares and then you take out 75%. Christy said that is little close. Allen said the building is two feet from the property line, and the Telergy chain encroached. It is not our doing. Not so long ago my brother and sister-in-law were taxed for that little shack.

Bill said that when you are talking about the 2 feet, are you talking about the existing building that is there? Yes, and we don't think that Mr. Meppen owns it, but if he does by being able to reinforce the Telergy title by going back to 1991, may take litigation but I think he would have to Quick Claim just like we would have to from each other. Someone has to give in and we think we have the higher road. I hope not, because I've done my battle and I don't like doing it, but right now our backs are against the wall and we thought tonight was decision time. Christy said then we can say, take a deep breath because we are just here to listen to everyone. Allen said I think it would help if this discussion did retrench back to Meppen and Miller. I think that would help because they need to map out what they are going to do. Pat said have you talked to him, and Mr. Meppen said he has talked to Mr. Miller. Allen said they are not seeing eye to eye. We have consulted with a trial attorney who unfortunately is partners with town attorney Andrew Howard, so we have to go back to square one.

Pat said there is nothing that precludes you guys from talking. If you think we as a board are going to say that you guys need to talk, we are not going to do that. Mr Miller said that if you go back to the 1967 law, and trace back all the title issues, you will find out that when the property was sold she subdivided it and alienated the Telergy property. (If she owned it.) In doing so it created a nonconforming illegal lot. Bill said so you are saying that the regulations required for Article IV doesn't apply. Allen said it is very complex because you have, 1967 and 1973 and then you have this intervening court that Telergy apparently secured a special rule for that parcel that didn't apply and absolved Telergy for having to get a Variance for Setback. I interpret it as a municipal law and back in the dark ages I used to interpret variances regarding setbacks, densities and footprints required for zoning. There are three separate things, and I think variances are needed for all three. We are still going through some really complex analysis of what Telergy's bankruptcy did and even if they gave notification to the right subsidiary or whether the chapter XIII Trustee has cheated the property, but my brother and sister-in-law never got notice of it. The only thing they would possibly admit to notice of is that they were aware that Telergy was trying to do it but they weren't very plussed up, because it was a Telecommunications facility.

We are also looking to come to you someday not too far in the future with a business plan that would use the old 1760's Cape House and possibly the barn which will be part of the retail, there will be some B&B considerations possibly. It will be a mixed use that involves plans for all 47 acres, but if the 600' shack becomes an 1,800, square foot Site construction and even if Mark sticks to the building heights which I think will be hard because if he is going to put 5 and 12 on a 36' wide building, obviously, he is going to have to raise the roof. This is going to be a problem, and that coupled with another commercial warehouse which will eventually be adjoined with the interior lot that Gillespie owns in terms of another offensive use, there is no way they can come up with a compatible business plan that kind of buffers in the high density commercial applications that are below us.

Cary Miller spoke up and said that he wanted to know why Mr. Meppen needs 6,800 square feet for storage for a business that has two truckloads of deliveries a year. You could put that in one tiny corner of one of the warehouses. To give you an idea of the scale of the warehouse that I would be looking at from my house, the Bemiss building at the corner of 22 and 295 is 7,500 square feet, which is only 10% more, than Mr. Meppens proposal on this grossly non-conforming lot. This lot is only 125' wide and I think the survey is very misleading because it shows 100' foot frontage but doesn't show that the actual frontage on the highway is only 125'. Mr. Meppen says he needs an 80' long building so that he can drive through it because the lot is narrow. Why should concessions be given to Mr. Meppen for a non-conforming lot when he has to make the building bigger which is an eyesore for me as a residential neighbor. My use is residential and that was permitted in the C1 zone back in 1967. I was told by the Planning Board that the market value of my property is not a consideration, because my residential use in a C2 zone requires a Special Permit. It is clear that there are a handful of commercial properties in this C2 zone, but there are many, many more residential properties in this zone. If I were to ask any one of you to build a 6,800, square foot warehouse 2' from your yard and wouldn't that affect your value in some way. I have legitimately started businesses and have planted 10 acres of Christmas trees, I have planted 11/2 acres of wine grape vine and as soon as I have 4 acres planted I will be eligible for a farm winery. People come to this business because they like coming to a rural environment and having a rurally produced product, and If you build a 6,800, square foot warehouse on this narrow lot so Mr. Meppen can drive his Mercedes truck through it two times a year, it is not appropriate. Somewhere along the line someone has to look at the non-conforming uses of this proposal. The Planning Board said anything goes in this town. It doesn't matter and they can make Setbacks wherever they want, he can make it as big as he wants, and the Building Inspector says that as long as it is within the 20% area of the lot it is ok. You are overlooking that this lot from the beginning was illegal and non-conforming and that should carry through to the present. He needs to make a pretty good explanation as to why he should be allowed to make this very narrow, non-conforming lot into an eyesore for 2 business buildings.

Allen Miller then showed the Site Plan that surveyor Matt Bowe had given to ZEO Lee Heim. He pointed out the box wire fence and said it is inaccurately drawn. When Telergy, had the land surveyed in 2,000 the wire was shown in different locations. He said that they own part of this land and what has happened in the succession of deaths and passing of Telergy from the picture, is that the original line that was still in existence in 2000 has gotten obscured and supplanted by suggestion.

David Cooper asked that if this is their property why haven't they pursued this before. Allen said that Cary had and lost. He tried to buy it back from the county. David said it sounded like they had this information way before. Allen said his brother doesn't have to say when he did it, but he has been trying to find out and doing inquiries. He was trying to figure out what to bid and the more he dug into it going back to the 1870's he found out that his predecessors had never forfeited the property and Telergy's predecessors had never owned the property. We are hiring a Title Company, a surveyor and an attorney. I would rather not see this become a possible war. I think Mr. Meppen has to be more conciliatory and the Planning Board should stand down awhile, while this is explored because I think they will find out that there is a really big title case. The way to settle it is to find out how the land will be used going forward. It means not building a warehouse that is huge and one that is aesthetically compatible with a historic property like my brothers. It needs to fit with the house and the barn and the roads. You are more than a partner in this, you are part of the discussion. Right now, the discussions are very one sided. Mr. Meppen believes that he is right and we are wrong. I will do what I have to do to make sure that things are leveled out on the seesaw, but I think the time has come to take an adjournment for 30 days and let the people talk and see what goes on. We thought we had to come here tonight to defend

ourselves for good or face the wand waves of the Planning Board. The Variance issues are very important. Bill asked why it was that the Variance issues never came up before the Planning Board. Allen said that when you have a non-conforming lot like this one, that is grossly non-conforming and obviously never a part of the 85, acre parcel across the road. Why is it that no one on the Planning Board would say that this is an awfully narrow lot for this size of a building, and isn't there some kind of consideration to the effect on a residential neighbor, even if the house is up on the hill and you can't see it. His yard is right on the edge and you are putting something that would normally not be allowed in this area. Two acres is what is required. This is totally inappropriate for my back yard, and someone in one of these groups should be saying okay you need to formally ask someone for a variance to do this, rather than listen to the Planning Board say we have the authority to do anything we please because we are the Planning Board. This includes Setbacks. I imagine that when the rule was created for the Planning Board to create Setbacks, it didn't mean you can put Setbacks anywhere you want. The spirit of the law is 25' of Setback. I want to see that observed, I don't want to see a building extended when it's already 2' from my property. I don't want to see it extended along my property unless it is 25' away. I really prefer to see the building in the center of the property. The idea of having two buildings, and it's obvious that he can't use two buildings for the same business purpose. And there is no control of the zoning decision, obviously because of what Mr. Gillespie has done after the Planning Board said you can have only 8 cars for sale and 5 spots for employees. The Town of Canaan forces you to pit neighbor against neighbor. Unless you file a complaint against someone it is not going to get enforced, so what is to say that in the future Mr. Meppen creates 2 commercial buildings and before you know it, Randy Gillespie will have his cars parked all over Mr. Meppen's. There is just no reason to have two separate buildings or warehouses. Chairman Cooper said that he has made complaints and that he has made them stick. I have gotten the ZEO to act on them. I have had to recuse myself but I've made complaints, and I resent the fact that you say the ZEO isn't doing his job. Mr. Miller said, well the thing is if I make a complaint, the ZEO will go to him and say someone has made a complaint and will not say who it was. I am told by town employees that this person is very nasty and that you should really watch out because your property is not going to be safe. David said well how is this relevant to what we are talking about. What I am talking about is Canaan's Planning board. You set rules about what people can do, and then there is no voluntary enforcement. It is obvious that Gillespie Automotive is way out of compliance and yet you would think some member of the Town Board would say look, you have 50 cars on the property and you are only supposed to have 8. You are making neighbors put themselves at risk by angering this person who is volatile. There is a potential here for Mr. Gillespie to have thirty cars on Mr. Meppen's property, and who is to know if Mr. Meppen is in business with Mr. Gillespie. And why does Mr. Meppen need two warehouses. Christy said that this is Mr. Meppen's business. Why does he need 6,800 square feet of warehouse on a non-conforming lot that is next to a residential property. I submit Mr. Cooper, Town Law 267-B, as voluntary interference is needed. If you apply the waiting factors, Mr. Meppen only has one in his favor but that requires you to decide and my brother to lose and we can go to court, which is ludicrous. The conversation should be with Mr. Meppen's lawyer, and my brother's lawyer, the two surveyors and eventually a discussion between the Boards. There is no problem solving happening and my brother has been pushed to a point where he has to fight. He owns the property and that is the sad part. He is willing to give up his ownership rights if he were to get a really good result. As long as this doesn't interfere with his future commercial developments and is sympathetic with his historic applications to the north, but no one is listening to him. David said that we are. David said the SEQR is just a draft, and it can be amended and that is why it is a draft. It is not written in stone. Allen said he used to draft them, and the proponent drafts them and throws them at the Board and as long as no one is in contention it becomes final. David said he generally does the Part 2 and Part 3 of the SEQR and he takes it very seriously. I go out to these properties and I spent 5 hours out at this location. I haven't spent as much time as you people have because I don't live there. I drove the road up and down, I'm the

guy who has been walking up and down out there. Allen asked if David would like to meet with his brother. David said that is not why we are here. You are challenging us because we propose a draft SEQR, and you're saying we aren't taking into account your special needs. Cary said let me bring up a point now that you are looking at things that count. One concern is hydrology. I know this land very well. It is a very flat piece and the water table is about 18" below the surface. If you add 6,800 square feet of roof plus all the hard clay or whatever it is Mr. Meppen is going to use for the driveway is going to change the hydrology. It is the drainage from the stream that already seeps to the middle of the lower part of my property. I am not sure what the solution is here, but it is a concern of mine that this large project is going to have big effect on the hydrology. Allen said that based on the County's assessment that there weren't going to be any significant environmental factors to take into account. I am not sure anyone has interviewed the adjacent land owner to see his calculus for the use of the 3 acres to the north or to the impact of the overall involvement. It is a very difficult to contend with parcel that is 47 acres. He actually has two pieces of property. He has to ask you or the ZEO for a Special Permit to put an addition on his house which is under 400' which seems kind of crazy, and then there is no value to the land to the east unless he can sell it off to someone who wants to have a wooded estate on 10 or 15 acres. Obviously if they are looking at Mr. Meppen's sodium vapor lights going up without any impediments they are not going to want to buy it. Unless you're prepared to entertain discussions on limitations placed on the use of the 1.17 acres when Mark gets his permit this is a real difficult situation. I don't know who makes the decisions, and it seems like a toss-up between the two Boards with what the division of labor is. David said we review the criteria for Special Permits. Allen asked if that included Variances, and David said that it was a different issue. So how do we put that on the table to discuss. Do we make a complaint to the ZEO and have him say he doesn't want to talk about it and send us to the ZBA. I have been practicing law for 40 years and always get confused as to the meaning of Board of Appeals. In theory, I could have my brother go down and ask to have Mr. Meppen precluded from doing anything with this property and the building officer can laugh and send him to you, because you are the Board of Appeals. We just don't know what the jurisdictional positions are, and we just want to get the discourse going so we don't go to court. David said he would tell him one more time that we deal specifically with Special Permitted Use. As part of that review the Appellant is required to get a Site Plan put into place and approved and we can't act until there is one. Okay so basically, we are still going back to the Planning Board. David said absolutely. If we close the hearing we can't deliberate until there is a Site Plan in place. Allen said we are trying to find out who entertains a grievance about Mr. Meppen not having the Variances he needs. David said that it has only been determined by you and your brother that he actually needs a Variance. That is correct, that is our opinion. It's been the Planning Board and the ZEO's opinion, that that is poppycock and it is all grandfathered. David said that the Board of Appeals can't initiate. This came to the Board as a request for a Special Permitted Use on an established nonconforming lot for improvements. Allen stated that it is a problem.

David made a motion to continue the hearing when a Site Plan is in place, with a 2nd from Pat. All in favor. David said the Planning Board will have to develop the Site Plan before we reconvene the hearing. When we have it we will reconvene and the Board will take care of the Public Notices.

8:12

Mr. Miller asked what the procedural advise would be to show a Variance is needed. There must be some kind of action besides going to the Supreme Court. David said he is not a lawyer. Are the Planning laws adopted by law or are they adopted by the Planning Board. David believes that the Town Board approves the Zoning Law. If there is a Zoning Ordinance then there has to be a Zoning Board of Appeals and we are it. Mr. Miller said then where do you lodge a complaint if it seems the freight train is rolling into the station. David said it will be at least a month before the Planning Board acts on this.

Bill asked that at this point can we ask the appellant to get us some additional information such as building heights. David said that would be good. Bill said that way we will have some more information at the meeting. David said we will open the next hearing and then discuss how we want to handle the reconvening.

8:15 Chairman Cooper read the Public Notice for file **#2017-5, East Chatham Food Company, 1267 Route 295, Tax Map ID #37.-1-71**, for a Use Variance to build an outside deck. Rick Newton turned in his signatures from abutters, as well as some receipts.

David asked Mr. Newton if he had anything to add other than the narrative that he had previously given to the Board, which can be found in the permanent file at the Canaan Town Hall. Rick said he didn't have anything to add, but he said that since Pat had not been able to make the last meeting he would catch her up. Pat stated that she had gone to the Site to take a look.

David asked Rick if he wanted to paraphrase the narrative. Rick said he would. Basically, the gist of it is that we want to build an outside deck off the back of the restaurant to have some outside dining. Not too big, but we have the same problem Mr. Meppen has with being a Nonconforming Allowable Use. We didn't make the Area Setbacks, we need an Area Variance. We don't make the front yard Setback and.... David said to stop right there. David said in the 1967 Ordinance the Setback is already allowed. Rick said then it is more of a Use Variance. We would be expanding the nonconforming and that's where we are asking for relief. David said Article IV Regulations, Section A, Subsection C. "A nonconforming Front Yard Setback does not restrict additions to a structure that is a conforming Use as long as the location of the front of the addition equals or exceeds the existing Front Yard Setback." David said if the Use Variance is granted then he will be Conforming. David went on to say that what they are talking about is if you have a nonconforming Front Yard Setback you can't further encroach into the Front Yard Setback, which if we work through this, we will help determine your Front Yard Setback as being where the building is located the shortest distance from the road to the building. Rick said that if it's approved than it is then a moot point. David said it will be a Use Variance that you can work with. Within reason you can't expand that until you get a new Site Plan or challenge the Use Variance. If we go through this whole process you will achieve some sort of protection for your business.

Chairman Cooper then read the SEQR part 3, which was from Site Visits on April 8th and April 15th. "From part 2, any identifiable impacts appear to be minor. A site overview: Restaurant facility is located on State Route 295 somewhat isolated at the very easterly end of the Hamlet of East Chatham. It is reported to have been in operation prior to Canaan Zoning (1960's) and as such is allowed to continue in operation in the residential zone. It is located at grade with the highway and has a well, established parking area. At the rear of the facility the topography drops to a large open farmed field that is flanked on the west by a row of large spruce trees (affording delineation and natural screening.) The field rises slightly to Bradley's Crossing Road and a lane to a farm and residence. The railway and a crossing are clearly visible form the facility. To the east there is an over pass over the CSX railway and to the west near the parking lot end the speed zone changes to 30 mph. The road sight distances are very good and are impacted favorably by the change in the speed zone. The ambient background noise near the facility is primarily the traffic on Rt. 295 and is impacted by the overpass grade and the acceleration and deceleration due to the speed zone. The railway and grade cross are also a source of noise. The owners have requested a permit to construct a modest deck attached to the facility to provide seasonal outdoor

seating and dining at their facility. In order to accomplish even a seasonal expansion of a continuous non-conforming use may necessitate the approval of a use variance for the business.” That is a draft.

David then read the letter from the **Columbia County Planning Board**. Their recommendation was “The CCPB finds that this proposed action has no significant county-wide or intercommunity impacts associated with it. Therefore, the Town of Canaan Zoning Board of Appeals may take final action with a simple majority vote.” The whole letter is on file at the Canaan Town Hall. Chairman Cooper then

When asked if there was anything to add Rick said it is going to be a modest deck. (Maybe that is in the eye of the beholder). It is going to be 25'x50' or 1,000' with a privacy screen. David asked if State Liquor Authority will have input on the additional square footage in the summer. Rick said they have to file an amendment with the S.L.A. just to have outside alcohol. Patrons need to gain access through the facility to get to the deck, and they have to leave back through the facility unless it's an emergency. We were going to install a handicap ramp with a one-way door off the deck into the back, parking lot so people can exit.

David asked if there were going to be live bands and Rick said no. We have a three, piece folk band that come to play once a week. It has been well received. David said how about their neighbors. Rick responded that this was the reason he personally went to the abutters to get signatures. Number one, to show who we are, and also to explain to them what we are planning on doing, to give them an opportunity to come and voice either pros or cons. We have not received any complaints from anyone thus far in regards to the business in any capacity. I would say the only complaint we ever had and it's not really a complaint, but there was one car accident when someone was trying to pull into the restaurant. I am trying to petition the town so it can go to the county in hopes of lowering the speed limit.

Bill said he assumes the location of the deck is driven by a couple of things. One is access to the building and the others being location of grease pits and septic. Rick said yes, there are underground facilities to handle waste water etcetera. How many people could be on the deck. Rick stated that what it will do is basically double the capacity, meaning right now we can seat roughly 60 people and we are looking to have roughly between 50 and 60 seats outside. There is certainly potential to have 120 people. David asked if the kitchen could handle it, and the answer was no, not at this point. David said that was kind of self, limiting. Rick said that would have to grow as well.

Bill said it looks like there could be plenty of expansion of parking if needed, and it looked like it could be doubled. Rick said they could certainly double to the west if they had to and he will kind of adjust the spaces in the parking lot. There is an existing hump as you roll into the parking lot that can be changed and we would gain a bunch of spots just by addressing those issues. Since the very beginning we have invited the town and the ZEO to stay in the loop. We don't want to circumvent anything and do it to the best of our ability so everyone is happy and satisfied.

David asked if there is an apartment, and Rick said yes there is a one bedroom apartment. David said he hadn't realized that until one of his Site visits. Rick said the apartment was added in the 1970's and in

error pushed it into Dick Klingler's property so a deal was made and that is how the property actually got to be 1 acre.

Rick said going back to making everyone happy, the apartment didn't have firewalls when we bought the place and we have added it to separate the apartment from the restaurant. We are trying to do everything right.

David said he hadn't realized how many employees there were until he read the narrative. (The narrative is in the file at the Canaan Town Hall.) Rick said they are covering three shifts so the potential exists to hire a lot more people in the future if the variance gets passed and the deck is built. We will certainly balloon up employees in the summertime or we will not be able to handle it. David asked how business was and Rick said weekends are busy and the weekdays are hot and cold but he believes the deck will go a long way to help. Rick mentioned that in his narrative he had discussed the cost of starting the business in New York. David said when we asked you to apply the criteria for a Use Variance I think you did a very credible job. You were very forthcoming and it is helpful.

Does anyone in the gallery want to speak. Elaine Berlt said that she had no objection to the deck, but what she is concerned with is the added noise, say if you were having music out there. This would be upsetting to me because I think I am the closest one. David said he thinks that the business plan that they presented said they weren't trying to generate loud noise, but rather ambient noise. David said he thought that being good neighbors, if the bass was too deep they would change it. Elaine said she is also concerned with a larger parking lot and that she has spoken to Mr. Newton about the water situation coming down the road and this does create a problem for me if it is extended and the water comes down onto my property. David asked if it was a grading issue that could be dealt with, and Rick said the problem exists because her property contains the only culvert that goes under the road. All of the watershed water on the northside of 295 goes there. Elaine and I did have this discussion in person. Even if the parking lot got extended a little bit the amount of water catch there is not going to change and we have discussed if there is a better way to disperse the water directly to the culvert. We have already diverted water on the east side of the property and we haven't had any heavy rains since then to test it. Elaine said that what she was thinking is, that as the parking lot comes over if there is a way of heading that water down onto your property instead of all coming onto mine. Rick said yes it should be addressed and Elaine then said that it isn't all from their property, but coming down from the road as well. The road tips, but it just gets to be too much in the wet weather. The other thing that I forgot to ask is where the deck would be and how large. Rick explained it would be in the back, and come into the side. Bill Wallace showed Elaine the drawing of the proposed deck. Rick said that what they were hoping to do in the future is have a covered roof on the section that attaches to the building. From your house, you will be able to see the deck but not the people because of the privacy screen. Elaine said she wasn't worried about the deck, just loud music. Rick said it would just be ambient music like it is now, and Elaine said she didn't hear it but wanted to make sure it wouldn't be piped out. Rick said it would be nothing that you couldn't speak over because people are having dinner. Christy Ransford said she has been at the restaurant when the folk band was playing, and it was quiet. Elaine said the deck wasn't the issue, and she was just worried about music and dancing. Rick said that is not the type of business they want to run. Elaine is not against it because to run a business you have to charge people to come.

David asked if there were any other comments or questions, and Pat asked if the screen was going to be solid and how high is it. Rick said he thinks it will be solid and facing the Klingler property in the back it

would just be a railing, but on the roadside and Elaine's side it will probably go up 8' off of the deck surface. Not only do we want to be good neighbors, we don't want road noise or grit. This will kill two birds with one stone because we can put the panic door in which helps the requirement for the State Liquor Authority

David asked if there were any other questions. Chairman Cooper said that after speaking with the Town Attorney and since this referral actually came from the Canaan Planning Board who felt they couldn't act because it was an expansion of business and it required a Use Variance, the Zoning Board was encouraged to deliberate if they could close the hearing. We could condition this decision on getting the proper permits including an approved Site Plan.

Bill made a motion to close the hearing with a 2nd from Christy. All in favor. Hearing closed at **8:45**.

Deliberation: Bill said they have given us a lot of information and have explained everything that they are planning on doing. I think the drawings are pretty clear on what they plan to do, and my three questions have been answered. Christy said we have heard from the neighbors. David said all of the neighbors were notified, and the other thing is that this is a business that has been there a long while and is a feature. Some of the things in favor are that it is right at the end of the Hamlet, it is flanked by the railroad on one side and the road on the other. The spruce trees are healthy and the branches are real low. The request seems reasonable and I think helping to mitigate the whole thing is that even though it is a sizeable increase, it is seasonal and maybe a trial thing. It is in everyone's interest to see the business stay intact. Some of the things we want to consider are that they have established some personal protocols in their narrative. The decision should probably reinforce those that are concerning things like their septic and water. The main one would be to get the Site Plan in place and that they would be responsible for getting any permits that they may need, such as that from The State Liquor Authority and the Board of Health. Rick said he has not spoken to the State Liquor Authority, but have spoken to the Health Department and they have to come and do an inspection for both safety and health reasons. Obviously before the State Liquor Authority can entertain an amendment, we have to have pictures of the space, which means the deck has to be built first. We will go through the design phase now, but the deck has to be built before they come. David suggested that with the agenda looking the way it does that they diligently pursue the Planning Board.

Elaine Berlt asked if she could ask one more question. She said that she happened to know that when Ben put this up and put the septic in, he did not do so correctly. She is kind of concerned with 50 or 60 people sitting out on the deck. Rick said they had spoken to the Health Department about that and as far as the system not being installed correctly, we had it inspected and it is fine. Elaine said she called the County when it was first installed and they never came to inspect it, which annoyed her because her well is directly down from there. David said that what they have been doing to compensate for any inadequacy's is aggressively having it pumped out. More times than most people do. Elaine said she just wanted them to know this.

Bill made a motion to accept the Use Variance as submitted with the narrative as a caveat. The appellant also needs to get the necessary State and Local Permits. Pat with a 2nd.

The clerk polled the Board.

Jack: Aye

David: Aye

Pat: Aye

Bill: Aye

Christy: Aye

All in favor. 8:55

David then went back to Mark Meppen and said that we couldn't deliberate on his file yet. Mark asked if his next step should be to go back to the Planning Board. David said yes, and we will send you a letter and suggest that you flush out the buildings height wise and make sure they are identifiable. Bill said both the buildings and the height. Mark asked if he can make notations on a separate piece of paper to which the answer was yes. Bill asked for better information on sign details and if you are going to have lights, will they be inside or outside the sign. Mark said, so that should be on the new Site Plan. Mark stated that he is going to make the sign fit into the zoning. Pat asked for information on lights in the parking lot.

Chairman Cooper asked if anyone was present from Monolith Solar for consideration of a new file and there wasn't.

David then told the board there were going to be classes in Green County on the 26th if anyone was interested.

David entertained a motion to adjourn with a 2nd from Jack.

Meeting adjourned at **9:02**.