

# THE CITY OF GROTON CONNECTICUT

## APPLICATION TO ZONING BOARD OF APPEALS

ZBA # \_\_\_\_\_

DATE: April 29, 2021

APPLICANT: Thames River, LLC PHONE NO: 860-861-4852

ADDRESS: 34 Church St. CITY: Mystic ST: CT

OWNER: \_\_\_\_\_ PHONE NO: \_\_\_\_\_

LOCATION OF PROPERTY	<u>137 Thames Street</u>		
ZONE DESIGNATION	<u>WBR</u>	MAP <u>168981</u>	BLOCK <u>22</u> LOT <u>7260</u>

PRESENT USE OF PROPERTY: \_\_\_\_\_

This applicant respectfully requests a Hearing on the following:

- 1. There is an error in the order, requirement, or decision of the Zoning Official.
- 2. The applicant seeks a variance from the requirements of the Zoning Regulations.
- 3. This is a matter upon which the Zoning Board of Appeals is required to pass on by specific terms of the Zoning Regulations.
- 4. This hearing is required by State Statute.

The order or decision appealed from, and list the appropriate Section of the Zoning Regulations.  
(Attach a copy of the Zoning Official's order or decision if issued in writing)

see attached

The applicant requests the Board to take the following action:

see attached

This application will not be complete unless the following items accompany the application:

- A check in the amount of \$325.00, plus \$60.00 for the DEP, made payable to the CITY OF GROTON.
- Sixteen (16) copies of the plot plan and application.
- Abutting property owners list signed by Applicant

NOTE: Any statements, dimensions, or accompanying sketches must be strictly adhered to unless a variance conditions / changes such statements or dimensions that were submitted.

Additional comments: (A brief statement in your own words on why this relief is needed)

Please see attached.

DATE April 29, 2021 PROPERTY OWNER Thames River, LLC

DATE April 29, 2021 APPLICANT Thames River, LLC

DATE \_\_\_\_\_

Received by ZONING BOARD OF APPEALS

TO THE ZONING BOARD OF APPEALS ON THE MATTER INVOLVING PROPERTY

OWNED BY: Thames River LLC

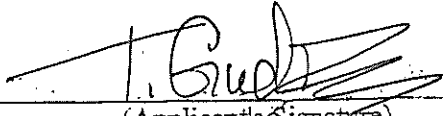
OWNERS ADDRESS: 34 Church Street, Mystic, CT 06355

LOCATED AT: 131 Thames Street MAP 168918 BLOCK 22 LOT 7256

ABUTTING PROPERTY OWNERS

<u>NAME AND ADDRESS</u>	<u>MAP</u>	<u>BLOCK</u>	<u>LOT</u>
Avery Copp Museum, Inc. 154 Thames Street Groton, CT 06340	168918 168981 168981 166981	22 21 22 22	7059 9983 9215 7166
Athana, LLC 193 Thames Street Groton, CT 06340	168981 168981	22 22	7337 7337
Moyna J., Richardson 128 Thames Street Groton, CT 06340	168981	22	8390
Virginia M. Ager (L/U) & Suzanne Simpson 100 Eastwood Road Groton, CT 06340	168981	22	7351
Robyn Hoffman 159 Parker Hill Rd. Killingworth, CT 06519	168981	22	9128
Shawn Hoar P. O. 330476 West Hartford, CT 06133	168981	22	7260
Thames River, LLC 34 Church Street Mystic, CT 06355	168981	22	7256
Rashad Carter 132 Thames Street Groton, CT 06340	168981	22	9215
Steven K. Clark 122 Thames Street Groton, CT 06340	168981	22	8395

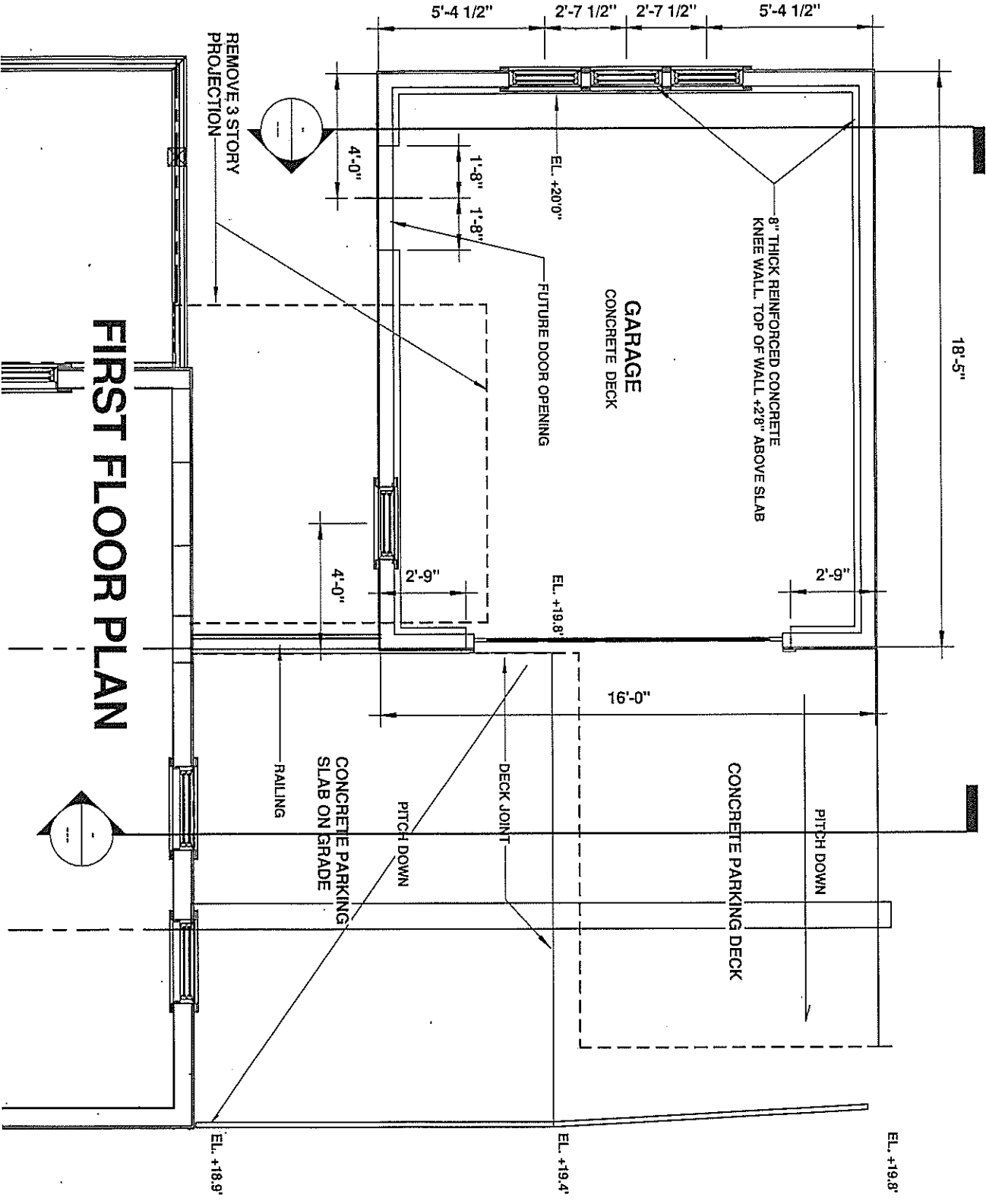
SIGNED: \_\_\_\_\_

  
(Applicant's Signature)

DATE: \_\_\_\_\_

04/30/21

(Information for this form can be obtained at the Town of Groton, Tax Assessor's Office, 45 Fort Hill Road, Groton, CT 06340)



# FIRST FLOOR PLAN

5'-4 1/2"    2'-7 1/2"    2'-7 1/2"    5'-4 1/2"

18'-5"

**GARAGE**  
CONCRETE DECK

8" THICK REINFORCED CONCRETE  
KNEE WALL, TOP OF WALL +2'8" ABOVE SLAB

FUTURE DOOR OPENING

CONCRETE PARKING DECK

CONCRETE PARKING  
SLAB ON GRADE

REMOVE 3 STORY  
PROJECTION

EL. +18.9'

EL. +19.4'

EL. +19.8'

EL. +19.8'

EL. +20.0'

16'-0"

4'-0"

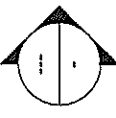
4'-0"

PITCH DOWN

PITCH DOWN

DECK JOINT

RAILING



## Summary of the Appeal

Applicant, Thames River, LLC, is the owner of the property at 131 Thames Street, Groton, Connecticut. The applicant's property abuts 137 Thames Street, which is owned by Shawn Hoar.

Mr. Hoar had applied for a variance in 2016 to allow expansion of his pre-existing, nonconforming garage that occupied the side yard setback area of his property adjacent to 137 Thames Street so as to include an increase of its height within the setback, which was denied by the Zoning Board of Appeals (ZBA) for lack of a legal hardship. He was told that he was entitled to rebuild what was there, which was a structure that had occupied the same location and volume for approximately a century. The present applicant, Thames River, LLC, relied upon the ZBA's decision to deny Mr. Hoar's 2016 variance application, which was not reversed through any court appeal.

Some years afterward, Mr. Hoar obtained permits to replace the existing garage, and had a right to do so subject to the requirements of the zoning regulations, as long as the nonconformity within the side setback area was not increased. In other words, to the extent allowed by the regulations, he could expand the garage footprint and increase its height outside of the side setback adjacent to 131 Thames Street, but within the setback area was limited to the volume (including height at eaves and height at roof peak) that was occupied by the then-existing nonconforming structure.

Subsequently, the then-existing structure was removed and completely replaced by a new garage, which exceeds the height of the old one by several feet (see attached before-and-after photos). In a sworn deposition, Mr. Hoar's own surveyor has testified that the new garage is 2 feet, 8-1/2 inches higher than the old one was (see attached deposition excerpt). Moreover, as anyone may see for themselves, the attached photographs demonstrate that the new garage is taller than the old one where it abuts upon the 131 Thames Street structure.

During 2020, during construction of the new garage when the increased height became apparent, Thames River, LLC appealed the permitting of the new garage to the ZBA, and on February 23, 2021 after a public hearing, the ZBA found that its appeal was timely, but denied the appeal upon the motion of one of its members, Gretchen Gauthier. Subsequently, Thames River, LLC discovered that Ms. Gauthier had an undisclosed conflict of interest which affected the ZBA's deliberations and decision, for reasons which include the facts that (1) Mr. Hoar is the President of an abutting property owner, Avery-Copp Museum, Inc., (2) Ms. Gauthier's husband, George Gauthier, is a member of Board of the said Museum; (3) both Gretchen Gauthier and George Gauthier are listed in materials published by the Museum in one of its highest categories of annual financial donors. Thames River LLC appealed the ZBA's February 23, 2021 decision to the Superior Court, for reasons including but not limited to the undisclosed conflicts of interest which tainted the proceedings.

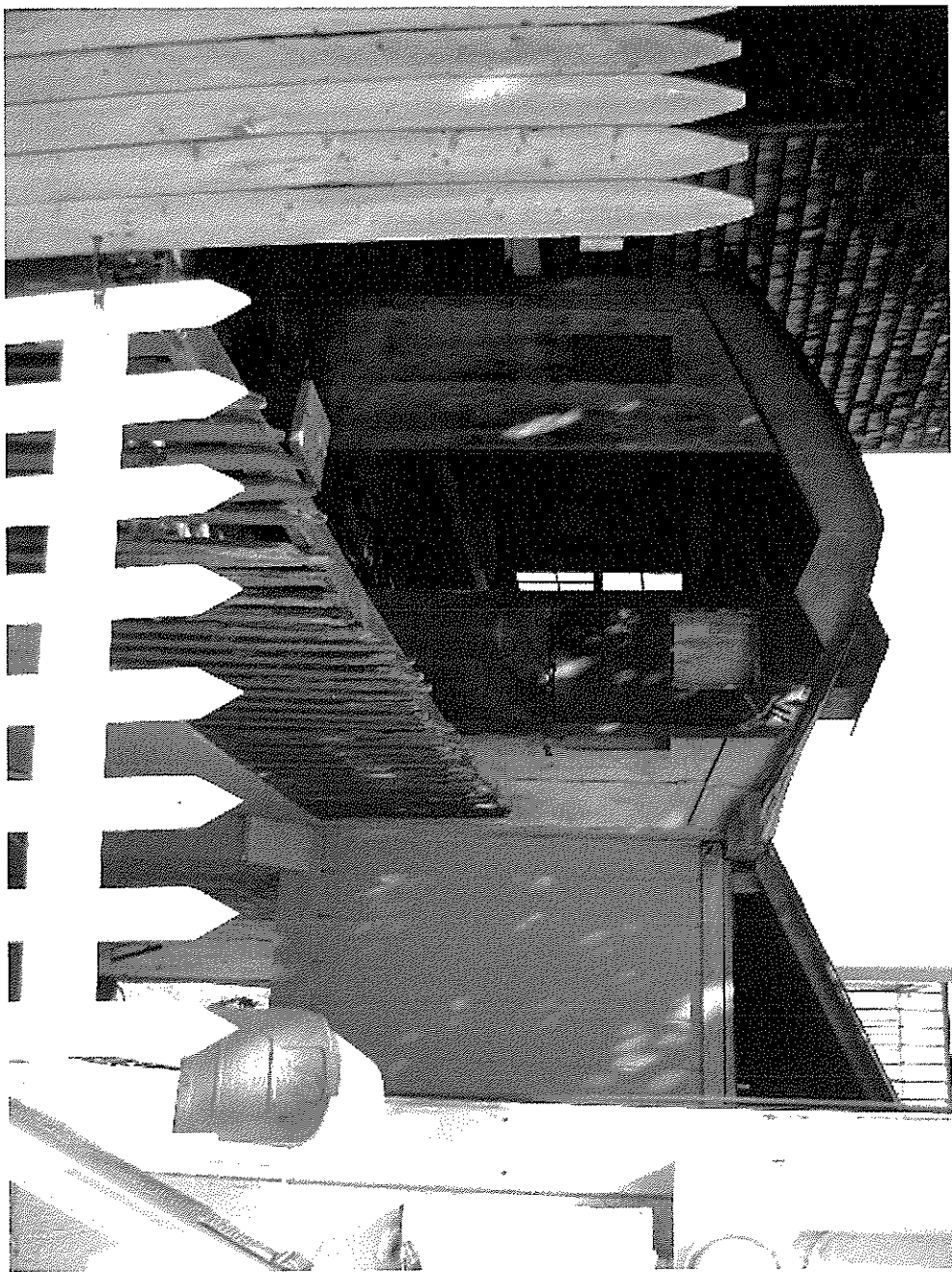
Subsequently, on April 9, 2021 Walter Woycik, Assistant Building Official of the City of Groton, issued a "Certificate of Approval" (copy attached) for the work performed to replace the existing garage.

Connecticut General Statutes § 8-3(f) provides in relevant part that "[n]o building permit or certificate of occupancy shall be issued for a building, use or structure subject to the zoning regulations of a municipality without certification in writing by the official charged with the enforcement of such regulations that such building, use or structure is in conformity with such regulations or is a valid nonconforming use under such regulations."

Thames River, LLC now appeals any and all such written certification by the official charged with the enforcement of the zoning regulations as underlies or forms the antecedent basis, as required under C.G.S. §8-3(f), for the April 9, 2021 approval by Mr. Woycik.

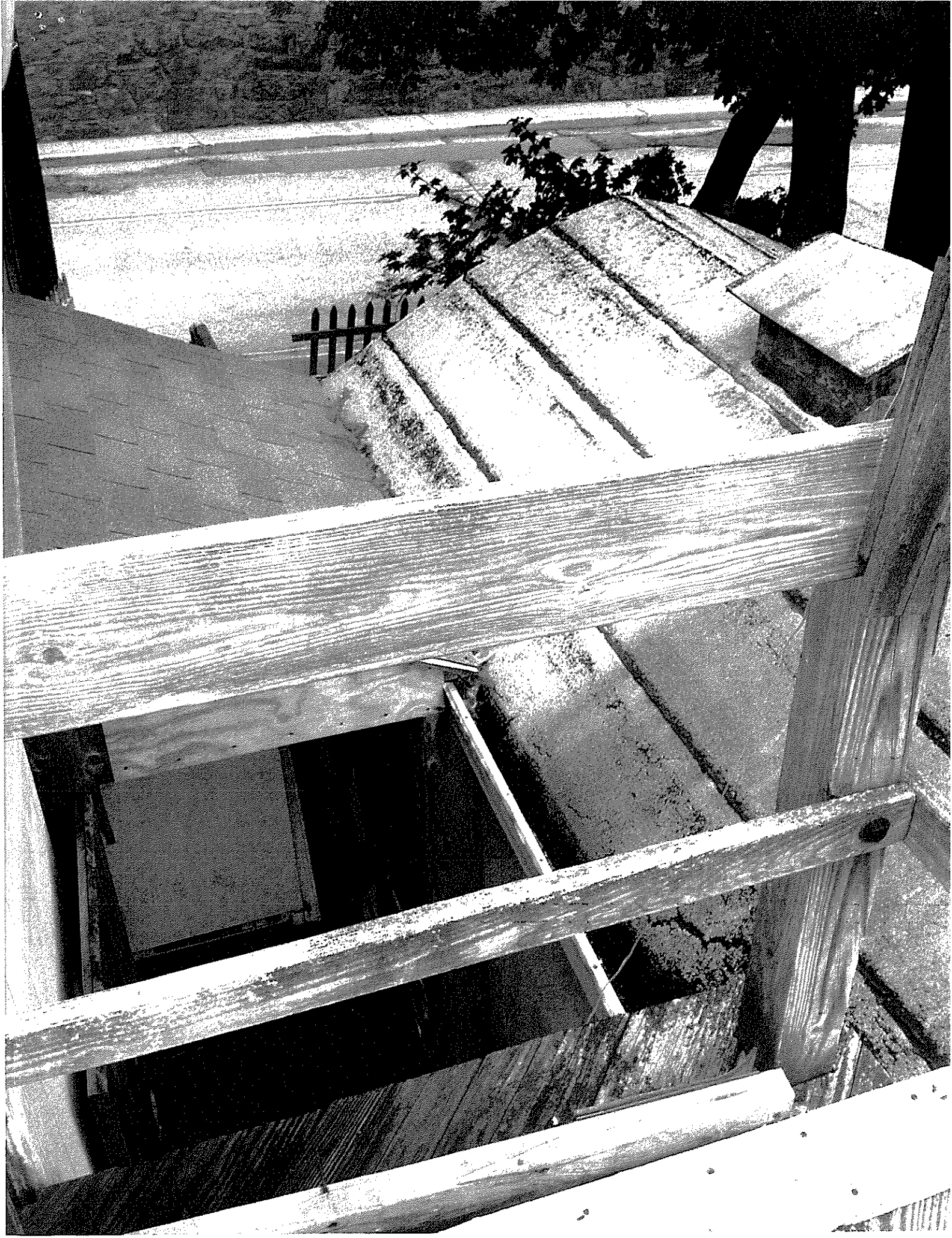
Any such underlying certification of conformity amounts to an illegal variance of the City of Groton Zoning Regulations. It is clear to see from the photographs, and from the sworn testimony of Mr. Hoar's own surveyor, that that the new structure violates the regulations, and a municipal official cannot hide behind a smokescreen of absolutely obvious misrepresentations to the contrary in order to grant such certification. Nor in these circumstances can a municipal official grant a certificate of conformity which lacks an antecedent variance from the Zoning Board of Appeals.

In the present appeal, the applicant, Thames River, LLC, expects a fundamentally fair hearing and absolute impartiality, and based upon its research revealing the previously-undisclosed facts recited above, ZBA member Gretchen Gauthier must recuse herself. The applicant also expects forthright disclosure of any and all other conflicts of interest or even mere appearances of conflicts, including but not limited to communications or relationships, directly or indirectly, both financial and nonfinancial, between any other ZBA members and Mr. Hoar and/or Avery-Copp Museum, Inc.













DOCKET NO. KNL-CV20-6046659-S : SUPERIOR COURT  
THAMES RIVER, LLC : J.D. OF NEW LONDON  
vs. : AT NEW LONDON  
SHAWN HOAR, et al. : NOVEMBER 20, 2020

DEPOSITION OF JEROME J. DEMPSEY

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

OFFICES OF JON B. CHASE, PLC  
Attorney at Law  
34 Church Street  
Mystic, Connecticut 06355  
BY: JON B. CHASE, ESQ.  
Representing the Plaintiff

HELLER, HELLER & McCOY  
Attorneys at Law  
736 Norwich-New London Turnpike  
Uncasville, Connecticut 06382  
BY: WILLIAM E. McCOY, ESQ.  
Representing the Defendants

Kimberly A. Riley  
Shea & Driscoll, LLC  
Court Reporting Associates  
30 Pepperbox Road  
Waterford, Connecticut 06385

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DEPONENT: Jerome J. Dempsey

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(Marked for Identification)

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(Exhibits retained by Attorney Chase.)

1                   Deposition of JEROME J. DEMPSEY, a witness in  
2                   the above-entitled action, taken at the request of the  
3                   Plaintiff before Kimberly A. Riley, a Notary Public  
4                   within and for the State of Connecticut, at the offices  
5                   of Jon B. Chase, PLC, 34 Church Street, Mystic,  
6                   Connecticut, commencing at 2:05 p.m.

7                                   \* \* \* \* \*

8                                   STIPULATIONS

9                   It was stipulated by and between counsel for  
10                  the parties that the requirements of notice of the  
11                  taking of the deposition have been complied; that proof  
12                  of the qualifications of the Notary Public before whom  
13                  the deposition is taken be waived; that objections,  
14                  except as to matter of form, be reserved to the time of  
15                  trial; and that the reading and signing of the  
16                  deposition were waived.

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25                                   \* \* \* \* \*

1           J E R O M E J. D E M P S E Y, a witness in  
2           the above-entitled action, having been duly sworn by  
3           Kimberly A. Riley, a Notary Public within and for the  
4           State of Connecticut, was examined and testified on his  
5           oath as follows:

6                           \* \* \* \* \*

7           EXAMINATION BY MR. CHASE:

8           Q     We're here today on a deposition of  
9           Jerome J. Dempsey of J Dempsey Associates.

10           Mr. Dempsey, you had spoken to me anecdotally a  
11           little bit earlier indicating that this is the first time  
12           you've had your deposition --

13           A     I think first deposition, I think so.

14           Q     Okay. Well, the first time for everything. Have  
15           you, nevertheless, ever had occasion to make statements  
16           under oath before?

17           A     Yes.

18           Q     You have?

19           A     Recently this year in New London, I was at a court  
20           case.

21           Q     Oh, I see. So you understand the significance and  
22           the consequence and the meaning of being under oath?

23           A     Yes.

24           Q     Thank you. So just a couple of basic, I'll call  
25           them ground rules, in respect to depositions, Mr. Dempsey.

1 we'd say, oh, that --

2 Q That would raise an alarm bell?

3 A Right. Yeah. Yeah.

4 Q So let me see. I think you've been very clear in  
5 indicating what the data point consisted of or was and that  
6 it was the same --

7 A This is the new one, right?

8 Q Yeah. This is the new drawing.

9 A Okay.

10 Q And if that data point, you know, that was used  
11 was the same at both times in 2015 and 2020 --

12 A Relative to each other.

13 Q Relative to each other, that's a good way to put  
14 it.

15 A Yes.

16 Q So that being the case, and exclusive of any  
17 cupolas or anything like that, what is shown on the second  
18 page of Exhibit 2 is new garage with a peak of 31.2 feet,  
19 and what's shown on the earlier 2015 plan as garage on piers  
20 peak 28.5 feet, that does represent a difference, doesn't  
21 it, sir?

22 A Yes.

23 Q Do you believe that the difference between 31.2  
24 feet and 28.5 feet can be accounted for by any of the minor  
25 variations or mistakes that you've indicated can creep into



1 the measurement processes?

2 A Yes.

3 Q So let me make sure I understand that. You  
4 testified earlier that the measurement systems that you use  
5 could produce an error of a couple of inches, which you  
6 quantified as two to four inches?

7 A Yes.

8 Q So in respect to the difference between 31.2 feet  
9 and 28.5 feet, that is substantially more than a couple of  
10 inches --

11 A Yes.

12 Q -- would you not agree?

13 A Yes.

14 Q Is it therefore your position, sir, that the new  
15 garage as shown on the plan marked as Exhibit 2 and the old  
16 garage indicated on the plan marked as -- I'm sorry.  
17 Exhibit 3 -- and the old garage as shown on the plan marked  
18 as Exhibit 2 are of a different height?

19 A Yes.

20 Q That the new garage is taller than the old  
21 garage --

22 A Yes.

23 Q -- regardless of any minor difference or variation  
24 of a couple of inches in measurement techniques?

25 A Correct.

1 Q Thank you.

2 A The -- just to add a note, when I saw the plans  
3 from Peter Springsteel, the architect, the elevations came  
4 out relatively close to what his design was. So it gives us  
5 a sense that we checked this, it's right about where Peter  
6 has it designed, so we felt like, you know, we were  
7 confident.

8 Q Yeah. I don't have Mr. Springsteel's drawing in  
9 front of me, but what I'm just going to -- let's see. So  
10 31.2, 28.5. So if my math is correct the difference between  
11 31.2 and 28.5 is 2.7. Now, I'll ask you to do a little bit  
12 of math in your head, sir, because obviously these are  
13 decimals. Or on a piece of scrap paper, if you'd like.

14 A These are things with a calculator I would use.

15 Q Sure. Sure. I'll give you a piece of paper here,  
16 if you'd like.

17 A Okay. So what did we say? 32.1?

18 Q 31.2.

19 A 31.2, I already messed it up. And --

20 MR. McCOY: 28.5.

21 Q 28.5.

22 A That's peak to peak, right?

23 Q Yes. According to your -- well --

24 A Yeah. It's 2.7. That's what you said, right?

25 Q 2.7. Now, again, with the fractional part being

1 expressed as a decimal it is, what does that roughly equate  
2 to in terms of inches? Two feet and how many inches?

3 A So .33 is four inches. So if we varied by four  
4 inches, that would be 2.4.

5 Q Actually hold that thought. That's not really  
6 what I asked. What I meant was, if the difference between  
7 the two elevations is 2.7, what would that translate to in  
8 terms of feet and inches? In other words, 2.7 --

9 A So 7 is -- 75 would be 9 inches.

10 Q So the difference of 2.7 inches, according to what  
11 you've just said, translates to 2.9 inches?

12 A Two-foot, eight and a half inches, I believe.

13 Q Two-foot, eight and a half inches, okay. Now,  
14 taking into account a couple of inches of potential error  
15 based on measurement techniques and so on as you've  
16 indicated, and as you further indicated a couple could mean  
17 two to four inches as you've quantified it, if we assume  
18 that the lower elevation on the earlier plan, 28.5 feet, was  
19 in error by as much as four inches, and that higher  
20 elevation on the newer plan was likewise in error by as much  
21 as four inches, and you've indicated that the difference  
22 between those two figures is two feet, eight and a half  
23 inches, are you still -- are you confident that out of an  
24 abundance of caution accounting for the possibility of four  
25 inches of error in either measurement that the difference

1 between the two heights is therefore at least two feet?

2 A Yes.

3 Q And it could be more if the errors were the other  
4 way, right?

5 A Right. Yes.

6 Q But you're confident, as you said, that the  
7 difference between the two is at least two feet?

8 A Yes.

9 Q Thank you. Sir, I'm just going to refer, for my  
10 own memory, to Exhibit 1, a copy of the subpoena you were  
11 served with. And I'm going to ask you if you brought with  
12 you today any of the documents contained within the scope of  
13 Attachment A.

14 A Yes. I have some plans and --

15 Q Do you mind if I take a look at those items?

16 THE WITNESS: Is that okay?

17 Q Just as a brief aside, I'm going to ask that the  
18 record note that the deponent just asked -- I believe asked  
19 Attorney McCoy if it was all right if I were shown these  
20 documents. And I know this is your first time being  
21 deposed, sir, and so I just want to be perfectly clear that  
22 I understand. You're not represented here by Attorney  
23 McCoy? He's not your attorney. Is that correct?

24 A Correct.

25 Q Okay, thank you. I wasn't sure because you seemed

CITY OF GROTON  
CERTIFICATE OF APPROVAL

DATE: April 9, 2021

ADDRESS: 137 Thames Street

**I HAVE INSPECTED** the work performed as authorized under **Permits #12884BP, #17397E.**

The work performed appears to substantially comply with the applicable **2016 Connecticut State Building Code with 2012 IRC**

Work performed: Replace existing garage

NOTE: New foundation under garage is not to be enclosed this has been design for the flood zone. The garage exit door has been blocked off for safety reasons pictures taken at time of this inspection.



Walter J. Woycik  
Assistant Building Official