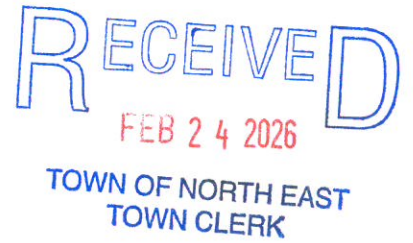


**TOWN OF NORTH EAST  
ZONING BOARD OF APPEALS  
MINUTES OF JANUARY 15, 2026**



The regularly scheduled monthly meeting of the Town of North East Zoning Board of Appeals, (“ZBA”) took place on Thursday, January 15, 2026, at 5:00pm in the Town of North East Town Hall, 19N Maple Ave., Millerton, NY. ZBA members present were Chair Edith Greenwood, Julie Schroeder, Jeffrey Stark, Karen Pitcher, Henry Smedley. Judy Carlson, secretary to the Board and Attorney for the Town Warren Replansky, also attended. Present in the audience were Ed Covert, Aly Morrissey,Carolynn Merwin, Dan Sternberg, and Josephine Vitiello.

**Josephine and Erasmo Vitiello**

**Discussion and review for a  
Reconsideration (rehearing) of  
2005 decision for 208 Cooper Road  
Tax parcel #7169-00-347714**

**5:00pm** – Chair Greenwood entertained a motion to open the meeting to discuss the application submitted by Josephine and Erasmo Vitiello to reconsider the ZBA decision rendered in 2005. Pitcher so moved; Schroeder seconded; all voted in favor and the motion passed.

Smedley, the newest member of the ZBA, recused himself from the topic of the meeting. Smedley knows Vitiello’s son who has worked and hunted on Smedley’s property.

Vitiello approached the ZBA to request they reconsider its decision from 2005. She presented a history of the situation. Vitiello stated that there are two conditions in that decision that are outstanding, the driveway and drainage. The other issues have been resolved. The process has caused hardship for her family and neighbors because of the animosity between neighbors. The driveway situation was not something the Vitiellos created – they used the driveway that was there.

Vitiello said that Cooper Road has been a user road and the travelled way since the 1800’s. Their driveway is like other driveways on Cooper Road. Vitiello’s house was vandalized

when the house was left empty. Fifty thousand dollars' worth of damage was done to the house and the District Attorney was involved. Presently, her son, his wife, and two children live in the house. The Vitiello family has been part of the community for over thirty years.

Stark stated that in the past twenty years, the Vitiellos have sued everyone, and everyone has sued the Vitiellos over this property except that the Vitiellos have not sued the Highway Superintendent or the Building Inspector. Stark asked why she did not. Vitiello stated that she is trying to work things out amicably and thought working with the ZBA would be neutral ground to discuss the situation. She does not understand why she needs to be adversarial to every town department.

Stark expressed his opinion that Vitiello was asking the Board to determine that the Building Inspector has abused his discretion and the ZBA should order him to grant her a certificate of occupancy. Vitiello replied that the Building Inspector said that the reason he could not issue a certificate of occupancy was that his hands were tied and suggested she go to the ZBA.

Stark stated that if the ZBA said it has no power or authority to direct the Building Inspector to issue a building permit on the grounds that your driveway does not meet the requirements of law, you would have to sue the Building Inspector if you think he is wrong. What would your position be? Vitiello replied that she would have to consult her attorney.

Vitiello explained that the building permit was issued, everything was completed, the inspection passed, and when she went to apply for the certificate of occupancy the building inspector said that there was an issue with the driveway permit. He had suggested that she might resolve that issue with the ZBA and then the Building Department can issue the certificate of occupancy.

Vitiello is asking the ZBA to reconsider the two driveway requirements. She has done everything possible. There is nothing else she can do without disturbing more land that she does not own. The Board should realize that her driveway is safe and has not caused any problems. There is no problem with her house and no violations. It is the sight line requirement of ninety feet that is the issue and she has seen driveways on Cooper Road that do not have a clearance of twenty feet. Vitiello would like the ZBA to decide that ninety feet is too much and will accept what the Vitiellos have done as sufficient.

Stark asked Vitiello if she was asking the ZBA to determine that her driveway is safe and Vitiello replied yes. She said that in testimony, when the Highway Superintendent was

asked if the driveway was safe, he said in his opinion it was safe, but it needs more sight line.

Stark asked Vitiello why do you think the ZBA has the power to rule that the driveway is safe if the Highway Superintendent says it is not safe? Vitiello explains that she has tried it all except for suing the Building Inspector or the Highway Superintendent. Stark asked why the Vitiello's lawyers have not written the Highway Superintendent or the Building Inspector to tell them that they believe they have addressed the issues involved. Vitiello said that they have always worked with Mr. Replansky. Her attorney, Mr. Walden, corresponded with Mr. Replansky.

Stark asked Vitiello if her engineer communicated with the Engineer for the Town. Vitiello replied yes. Stark asked what Vitiello's engineer told the Town's engineer. Vitiello stated that their engineer told the Town's engineer that we believe we have met all legal requirements for the issuance of a certificate of occupancy for the driveway requirement. Vitiello replied that the town's engineer disagreed, but he does not have the right to tell them what to do outside of the scope of the travelled road.

Schroeder stated that the Vitiello's engineer indicated they did not comply with one of the requirements. Vitiello confirmed that they cannot comply. Schroeder asked if there was a procedure to appeal to the County since they set the standards. Vitiello continued that the problem was that Cooper Road is not a county road, it is a user road and even the town is limited. The road is not deeded to the Town.

Stark asked Vitiello what her remedy would be if the Highway Superintendent told her she needed to make changes to her driveway to meet the requirements and the Building Inspector is telling her he can't issue you a permit until you meet those requirements. Stark again asked what the remedy would be. Vitiello stated she has tried every way to solve this problem.

Chair Greenwood asked the Board if there were any other questions. She then asked Replansky if he would give a brief overview of the history of the case.

Replansky explained that the problem was that a building permit should not have been issued for this property. It did not meet the road frontage requirements of the zoning code. It did not have direct access to public road frontage of forty feet. A building permit was issued for the property, and it was discovered that the building permit was based upon false information that was given to the Building Inspector. The building permit application was for a shed and not for a house, and the building permit was issued by mistake. A house

was built and it was discovered that the building permit should not have been issued. When it became time to issue a certificate of occupancy, the Building Inspector could not issue it. In the Town of North East under the zoning code, you cannot occupy the premises without a certificate of occupancy. There were problems with the site distance, road drainage, and the width of the driveway. The road requirement width was fifteen feet, but the Vitiellos' driveway was ten feet wide.

The Vitiellos came to the ZBA in 2005 for a variance. The ZBA issued a variance with several conditions. The two conditions that have not been met involve the sight distance from the driveway and the issue of poor drainage.

The Vitiellos filed a lawsuit challenging the above. During litigation, the Vitiellos submitted another application for reconsideration. It was a minor amendment to the variance. The Vitiellos filed a law suit challenging the determination of the Town. It went to trial before Judge Brands. There was a question as to whether the Vitiellos should apply again for reconsideration to the ZBA. There was an application submitted for reconsideration when the case was before Judge Brands and that was request for a rehearing was heard by the ZBA in 2013 and denied.

In 2014, Replansky filed an action on behalf of the Town to enjoin the Vitiellos from occupying the premises without a certificate of occupancy. The action was filed and went to trial before Judge Brands. He granted an injunction prohibiting the premises from being occupied before a certificate of occupancy could be obtained. That decision was taken to the Appellate Division. That court rendered its decision on March 7, 2018, upholding Judge Brands' decision to issue an injunction prohibiting the occupancy of the premises.

Replansky stated that the Vitiellos are in violation of the court injunction which raises several problems. The Vitiellos application has been considered at least two if not three times. Is the ZBA going to allow the current application to be heard? To reconsider this application the law requires a unanimous vote from all members of the Board present.

The other problem is that the property is occupied in violation of the Zoning Code, and the court injunction from the appellate division is still in effect. The North East Zoning Code states that if a property is in violation of the code, you cannot make any application for a permit or a variance. The Vitiellos are in violation of the code and Replansky does not think the ZBA has the authority under those circumstances to hear the Vitiellos application.

Chair Greenwood asks if a straw vote is in order. Replansky suggests that a member of the Board make a motion to reconsider. The vote can be taken this evening and Replansky will write a formal opinion so that if the case evolves to further litigation, the ZBA will have an opinion.

Stack questioned that Greenwood making a motion isn't a vote for reconsideration. Greenwood replied that our attorney has told us that is not the case. Stark stated that whatever our attorney has said, he (Stark) is telling us that he does not believe that and that in fact he does not believe much of what Replansky had just said.

Chair Greenwood made a motion to rehear the application of Josephine and Erasmo Vitiello submitted in September of 2025. There was no second to this motion. Greenwood withdrew her motion and decided to take a straw vote instead.

Carlson read the names of the board members, and a straw vote was taken:

Edith Greenwood - No

Julie Schroeder – No

Jeffrey Stark – No

Karen Pitcher – No

Replansky again said he would write a decision. Stark said he would not agree with that.

Stark went on to say that the first decision of this body that may or not have been written by Replansky was faulty in the extreme and led this unfortunate applicant to believe that we took over the determination as to whether her driveway met legal standards. We do not have the right to take over that decision. But by reading that first decision she might have believed we thought we did. She comes back to the ZBA to say you told me the first time that she did not meet legal standards and I would like you to change your opinion. We did not have the right to tell her she did not meet legal standards, which was the job of the Highway Superintendent.

Schroeder made a motion to ask Replansky to draft the decision.

Stark stated that he had already written a decision. He is going to sign the decision that he wrote. He does not believe that the Chairperson of the Board should determine if we need an attorney to advise us or write decisions. That should be a decision by the Board.

Stark also requested that any future decision as to whether we need counsel, usually at the cost of the applicant, be determined by the Board.

Chair Greenwood made a motion that Warren Replansky write a draft opinion for consideration for the next Zoning board meeting in February. Schroeder seconded; a vote was taken:

Jeffery Stark – No  
Karen Pitcher – Yes  
Julie Schroeder - Yes  
Chair Greenwood – Yes  
The motion carried.

Chair Greenwood asked for a motion to close the public meeting. Pitcher so moved; Schroeder seconded; all voted in favor and the motion passed.

Replansky left the meeting.

Chair Greenwood asked for a motion to accept the minutes of November 20, 2025. Schroeder made the motion, seconded by Stark and the motion was passed unanimously.

Chair Greenwood asked for a motion to accept the minutes of December 3, 2025. Stark noted that his name had been misspelled. Schroeder made the motion to accept the minutes as corrected, Pitcher seconded the motion and it was passed unanimously.

Chair Greenwood asked for a motion to accept the minutes of December 11, 2025. Schroeder made the motion to accept the minutes as written, seconded by Pitcher and was passed unanimously.

Chair Greenwood asked for a motion to accept the minutes of December 18, 2025. Pitcher made the motion, seconded by Greenwood and the motion passed unanimously.

Stark made a motion that we retain town counsel to give us an opinion as to whether the chair of this board can retain town counsel on a board matter without a vote of the ZBA. To clarify the motion Stark stated that he meant we hire Replansky to determine if Greenwood has the authority to retain counsel without Board approval.

Stark continued that it was his view that a ZBA vote was needed to incur legal expenses of the board. Schroeder said that it was automatically assumed that the chair could consult with the town attorney. She went on to explain that we establish escrow accounts for area variances and special permits when needed but we cannot charge for an interpretation.

Stark made the point that Replansky will charge the town for his time and since expenses are incurred, it should be a board decision, not the chair. Schroeder responded that if this was implemented, it would be totally impractical and would hold up applications for months.

Stark felt the Town Board had appointed us to understand our code. Schroeder said that until Replansky mentioned that our code prohibited us from hearing an application regarding a property when there is a current injunction in place, she had completely forgotten it existed. Stark responded that in this case, Replansky as counsel for the town that got the injunction, should have come to the ZBA as town counsel telling the ZBA that they are violating the Town's injunction and that he was going back into court to hold them in contempt or whatever, and that the ZBA should not consider this application.

Schroeder questioned how Replansky would have known about this application if Greenwood hadn't contacted him. Stark questioned how this town operates when it gets an injunction to vacate a property and that injunction is not being enforced. Schroeder stated that the Town Board does know about it and they have not acted yet.

Stark went on to say his point is that hiring counsel is expensive and is a serious decision for anybody. He reiterated his motion to ask Replansky whether there is any power given to the chair of a board to hire counsel without prior authorization from that board.

Smedley said he had just gone to training and suggested that we ask the New York State Department Division of Local Government Services for an answer to this question. Stark agreed that Smedley's suggestion was a good idea, offered to be on the call, and withdrew his motion.

Greenwood asked for a motion to close the meeting. Motion was made by Stark, seconded by Pitcher and was passed unanimously.

Respectfully submitted,



Judy Carlson

Zoning Board of Appeals Secretary

Date Approved: 2/19/26