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TOWN OF NORTH HEMPSTEAD
BOARD OF ZONING APPEALS
PUBLIC HEARINGS

Town of North Hempstead
Town Hall
210 Plandome Road,
Manhasset, New York
Wednesday, August 11, 2021
10:17 o'clock a.m.

BOARD MEMBERS PRESENT:

DAVID L. MAMMINA, Chairman

LESLIE FRANCIS, Vice-Chairman

DANIEL DONATELLI, Member

PATRICIA GOODSELL, Member

JAY HERNANDEZ, Member

ALSO PRESENT:

DEBRA ALGIOS, Town Attorney

STEVEN PERROTTA, Planner

VIRGINIA WAGNER, Secretary

STEPHANIE J. VALDER, Reporter.

1 Proceedings

2
3 CHAIRMAN MAMMINA: Okay, if everyone
4 will please rise and join Mr. Francis in the
5 Pledge of Allegiance.

6
7 (Whereupon, the Pledge of Allegiance
8 was recited in a body.)
9

10 CHAIRMAN MAMMINA: Good morning,
11 ladies and gentlemen. And welcome to the
12 Zoning Board of Appeals for the Town of
13 North Hempstead.

14 And what I'd like to do before we get
15 started is take a couple of minutes to go
16 through the way we do things here, in case
17 you've never been to a zoning hearing, or you
18 may have been to a different municipality, a
19 different village, or a different town and we
20 may, again, carry out business differently.

21 What I will say is if you've never
22 been to a zoning board before, I will ask you
23 to please try very hard not to be nervous;
24 okay? Just -- just -- you're just talking to
25 us. You know, it can be strange and
26 intimidating. I remember that as a very
27 young man when my hair was black and I
28 appeared before a zoning board for the first
29 time. But we don't bite and we try our best
30 to be very friendly.

31 So with that said, the way that we
32 carry out the proceeding is that as each case
33 is called, we'll ask for the applicant, okay,
34 the person whose case it is to identify
35 themselves by standing up, coming forward to
36 the podium. I'll then ask if there is anyone
37 else who has interest in the case and that
38 could be in support of the case or in
39 opposition to the case. In that, we just ask
40 for a show of hands or if there's no one,
41 there's no show of hands, just so that the
42 Board knows that we have other people, you
43 know, who wish to -- who wish to speak.

44 At that point, the applicant will put
45 their name and address onto the record. If
46 two people are coming up together, that's
47 okay. We'd just ask that you speak one at a
48 time, because as you can see, you know, we
49 have our reporter here and this is
50 quasi-judicial, so there is a transcript of

Proceedings

the hearing. And each person then will also give their name and address to the reporter, so that the record is nice and straight as to who is speaking and what they had to say.

And with that part done, then the applicant has the podium and they will put onto the record anything that they wish to say and -- and present, you know, to us. The Board will ask whatever questions it sees that it wants to ask. And if there is a second person, they'll get a turn then, you know, after.

And when that is completed, we will then see who else might want to speak. And other people who might want to speak will come up one at a time. And you don't need to speak because you're here. So, many people come just to listen so that, you know, they can understand what the application is. And, you know, many -- many times people come up and these can become, you know, a little bit impassioned at times.

And we'll just ask that people try not to repeat each other. And I think our -- our Board is extremely courteous and, you know, we give, you know, a certain amount of good slack to, you know, to someone. But, you know, if -- if somebody has said something before, if it's on the record two times it doesn't give it any more importance.

So if that is the case and someone else wishes to speak, the applicant and typically only the applicant will speak two times, because the applicant then gets to come back up to the -- the podium and the Board can ask whatever questions it might have from things that were raised by someone else who spoke. Or they also at the same time, get the chance to respond, you know, I guess either in -- in support of or, you know, or in opposition of what was said.

So at that point, the -- the hearing is over, so it's done. Very -- very seldom -- very seldom will we have a second hearing. You know, there are other municipalities where you can have six, seven, eight, nine, ten hearings, but we -- we do not do that here. Our calendars are, you

Proceedings

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know, are -- are too long.
And what we would do at that point is
we would do one of three things:
We would approve the application;
We would deny the application;
Or we would continue the application.
And if we continue the application,
what that does is because we don't have a
second hearing or a third hearing, it gives
the applicant, if the Board wishes to have a
document submitted, you know, they -- you
know, they want to -- we -- we want to see
a -- a, you know, a -- a case from the
Building Department previously, we go and
look at the cases in the field. We may want
to go back and look again. We may offer some
kind of a compromise, you know, to the
applicant. So we would be continuing that
case, you know, if we -- if we were looking
for some other documentation.
And if not that case, we would then
reserve the case, if we don't make a decision
today. And that, again, would give us the
chance to go and see the site again, you
know, or any other things that we may -- that
we may see fit that we need to do. So you
will probably -- most probably see cases
reserved today, and ones that are approved
and -- and ones that are denied.
So I -- I guess with all of that said,
what I will ask people to do, you know, which
is very -- very difficult for people to do
nowadays is hold your phones up high, shut
them off, put them on -- on mute, put them so
they make no noise at all. And at any time
at all it if you need to make a phone call or
take a phone call, you can just stand up, you
know, and go on outside. It's okay, you
know, it's okay. It's not -- not necessarily
interrupting what's, you know, what's going
on. You know, but certainly, you know, if
your music is playing on your phone as you're
trying to run out of the door, you know,
that's, you know, that's -- that's not good.
So, you know, we just ask ourselves, you
know, to be ladies and gentlemen.
If there is anyone else who is coming
to the hearing who's not here yet who is

Proceedings

going to join you, you know, we will ask you to take them outside, say whatever you need to say. And we will ask that talking in the room is zero, because that is extremely distracting, especially for our -- for our court reporter, you know. And we all just want to be courteous to each other, that's all.

So I think with all of that said, I think I hit it all.

* * *

1 APPEAL #21072

2

3 CHAIRMAN MAMMINA: Do we have any
4 modifications to the morning calendar? Do we
5 have any modifications to today's calendar.

6

7 (Stepping up.)

8

9 MR. PERROTTA: Good morning,

10 Mr. Chairman.

11 Yes, we have two adjournments from the
12 10 a.m. Calendar:

13 Appeal 21072, Heidi Davis, 10 Hampton
14 Court in Port Washington, section 5, block
15 134, lot 306 in the "R-A" District, for
16 variance "70-100.2(D)" to construct an
17 outdoor fireplace that was too tall.

18

19 APPEAL #21072 - Heidi Davis; 10
20 Hampton Court, Port Washington; Section 5,
21 Block 134, Lot 306; Zoned: Residence-A.

22 Variance from §70-100.2(D) to
23 construct an outdoor fireplace that is too
24 tall.

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1 APPEAL #21087

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3 MR. PERROTTA: And Appeal 21087,
4 Jonathan Owhe, 360 Grand Street in
5 Westbury, section 11, block 1, lot 33,
6 in the "RC" and "New Cassel Overlay Districts
7 for variances:

8 "70-195.16.B.2;"

9 "70-195.16.B.3;"

10 And "70.195.16.C.1;"

11 To renovate and legalize a cellar
12 bathroom with more than two fixtures;

13 And with plumbing lines to the shower,
14 the third fixture;

15 And to legalize exterior cellar
16 stairs.

17

18 APPEAL #21087 - Jonathan Owhe; 360
19 Grand Street., Westbury, Section 11, Block 1,
20 Lot 33; Zoned Residence-C & New Cassel
21 Overlay District.

22 Variances §§70-195.16.B.2,
23 70-195.16.B.3, & 70-195.16.C.1 to renovate
24 and legalize a cellar bathroom with more than
25 two fixtures and with plumbing lines to the
26 shower (3rd fixture), and to legalize
27 exterior cellar stairs.

28

29 CHAIRMAN MAMMINA: Okay.

30

31 (Stepping up.)

32

33 SECRETARY WAGNER: That one's
34 adjourned to September 15.

35

36 CHAIRMAN MAMMINA: Okay.

37

38 MR. PERROTTA: I'm sorry. Yes, that
39 was adjourned to September 15th.

40

41 CHAIRMAN MAMMINA: Thanks, Virginia.

42 So if anyone is here for any of those
43 cases, those will not be heard today.

44 We do have an afternoon calendar
45 today. So if you're here now for one of the
46 afternoon calendar, because we -- we try to
47 have people not wait around, you know, for --
48 for four or five hours, you know, so we -- we
49 will publish then there is a 2:00 Calendar.

50

So if you're here for the -- for

1 APPEAL #21087

2

3 something that's on the 2:00 Calendar, you
4 know, that's, you know, you -- you might as
5 well just -- just be on your way, unless
6 you're interested in, you know, in sitting
7 and hearing how we do things, which you're
8 always welcome then to do that.

9

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1 APPEAL #21081

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3 CHAIRMAN MAMMINA: So I guess with all
4 of that said, we will call the first case
5 then.

6

7 (Stepping up.)

8

9 SECRETARY WAGNER: The first appeal is
10 Appeal No. 21081, Jeremy Woo, 165 Aldershot
11 Lane in Manhasset, section 3, block 231,
12 lot 4 in the Residence "A" Zoning District.

13 An appeal for a determination, or in
14 the alternative, a variance from "70-29.C(1)
15 and variance from "70-32.4" to construct a
16 new dwelling that is too large with a slope
17 to the attached garage that is steeper than
18 permitted.

19

20 APPEAL #21081 - Jeremy Woo; 165
21 Aldershot Lane, Manhasset; Section 3, Block
22 231, Lot 4; Zoned: Residence-A.

23 Appeal for determination, or in the
24 alternative, variance from §70-29.C(1) and
25 variance from §70-32.4 to construct a new
26 dwelling that is too large with a slope to
27 the attached garage that is steeper than
28 permitted.

29

30 CHAIRMAN MAMMINA: You've heard Appeal
31 No. 21081, Jeremy Woo.

32 Is there anyone in the room who is
33 interested in the application other than the
34 applicant?

35

36 MR. NORJEN: (Gesturing.)

37

38 CHAIRMAN MAMMINA: Seeing Mr. Norjen,
39 our -- our --

40

41 MR. NORJEN: Deputy Commissioner.

42

43 CHAIRMAN MAMMINA: -- our Deputy
44 Commissioner.

45

46 (Laughter.)

47

48 CHAIRMAN MAMMINA: Thank you.

49 I was going to say Vice Commissioner,
50 but that would not be accurate -- thank you

1 APPEAL #21081

2
3 for that -- who also wishes to speak on the
4 application.

5 So please give your name, and address
6 and the floor is yours then.

7
8 (Stepping up.)
9

10 MR. STODDARD: Good morning,
11 Mr. Chairman, members of the Board. My name
12 is Christopher Stoddard with Harrison Design
13 Architects. I'm here today with Michael Rant
14 from Northcoast Civil and Danny Ostad of a
15 Rockwell Developers, the builders on the
16 project, representing our client, Jeremy Woo.

17
18 CHAIRMAN MAMMINA: Who -- who was the
19 second gentleman?

20
21 MR. STODDARD: Michael Rant of
22 Northcoast Civil.

23
24 CHAIRMAN MAMMINA: Oh no, I know him.
25 Okay.

26
27 MR. STODDARD: Civil engineer.

28
29 CHAIRMAN MAMMINA: Fine.

30
31 VICE-CHAIRMAN FRANCIS: Mr. Stoddard,
32 if you're comfortable, you can remove your
33 mask.

34
35 CHAIRMAN MAMMINA: Yeah.

36
37 MR. STODDARD: Sure, that'll make life
38 easier.

39
40 VICE-CHAIRMAN FRANCIS: Sure,
41 absolutely.

42
43 CHAIRMAN MAMMINA: And it's 'cause,
44 you know, we've, the Town has obviously tried
45 to take all, you know, all protections that
46 go beyond what's.

47
48 MR. STODDARD: I see that --

49
50 CHAIRMAN MAMMINA: -- being required

APPEAL #21081

now. But they're -- the masks, you know,
make it -- make it difficult to hear, so --

MR. STODDARD: Thank you.

I see that you have a very, very heavy
calendar today, so I will try and keep this
as succinct as possible.

Essentially, we're here for two
reasons:

One is the -- we're seeking a
determination for No. "70-29.C," which is
the -- the -- what's been commonly referred
to as the "bump up" in -- in zoning districts
based on lot size;

As well as the subsequent request for
a variance on the maximum driveway slope from
the street down to a -- an attached garage.

It -- it might be easier if I just
read from this. This is basically a
paraphrased version of the -- the letter
attached to the -- the application.

So again, we're seeking a
determination from "70-29.C," that the Code
specifies that lots in District "R-A" larger
than 14,000 feet shall comply with the
regulations of "Article 3," which is the
"R-AA" Zoning District, which has been
referred to as the "bump up."

The subject property is 21,802.8
square feet, which far exceeds the 14,000
square foot criteria for the -- that "bump
up." And so from the beginning of the,
project and -- and the design of the project
we were working with the -- the requirements
of the -- the "R-AA" District in mind, with
the exception of the driveway slope, which
I -- I'll touch on in a moment.

So the proposed house was designed to
meet all of the criteria of the "R-AA" Zone,
take advantage of that "bump up," mainly the
greater allowable floor area of 5,200 square
feet, opposed to the 4,000 square feet of the
"R-A" District.

It was our interpretation that because
the same driveway slope restraints are
consistent across all zones, that the "bump
up" will still be applicable. Once
submitted, we were informed because the

APPEAL #21081

criteria of the driveway slope was not met, that the proposed house was now no longer eligible for that "bump up." And therefore, we would need to comply with all the zoning criteria of "R-A" and therefore the much smaller maximum floor area of 4,000 square feet.

The preferred interpretation or determination that we're seeking today would be to allow this property, despite not meeting the driveway slope requirement, to still be eligible for that "bump up" to the "R-AA" Zoning District, and -- and therefore, not required the floor area variance that is listed on the -- the denial for this application. As part -- as -- as -- if -- if that is the determination that is made, we will still require the variance for the driveway maximum slope.

Our application is very similar to the existing conditions, which I -- I have photos of that I can submit as an exhibit in a moment. But just to give you the numbers, the -- the existing condition is a detached garage in a similar location on the property. And the slope is 5.42 percent, whereas the maximum is 3 percent. Our proposed application is -- is proposing 5.34 percent, which is a slight improvement in the -- the slope of the driveway.

I'd like to submit just some photos of the site that will really illustrate that it is a minimal ask, I believe, to maintain the -- the -- something similar to the existing driveway. (Handing.)

ATTORNEY ALGIOS: (Receiving.)

And would you like these submitted into evidence?

MR. STODDARD: Yes, please.

ATTORNEY ALGIOS: Okay. So let the record reflect that the applicant has submitted photos of the site, and they'll be marked as "Exhibit A."

MR. STODDARD: So the photos that --

1 APPEAL #21081

2
3 that you received are really a couple of
4 photos of the -- of the site, mostly
5 depicting the drive -- the existing driveway
6 condition. It's a -- it's a series of photos
7 going from an overview, a few views of the
8 front and then down the driveway from the
9 rear.

10 I think photo numbers 5 and 6 do
11 the best job illustrating what the -- the
12 actual existing conditions are, that we're
13 essentially trying to replicate.

14 I also have another drawing, which is
15 a -- a site section produced showing a cut
16 through the driveway, that can graphically
17 illustrate the -- the slope of the driveway
18 and that it is -- that it is not severe.
19 (Handing.)

20
21 ATTORNEY ALGIOS: (Receiving.)
22 And this is something that hasn't been
23 submitted previously?

24
25 MR. STODDARD: Correct.

26
27 ATTORNEY ALGIOS: So let the record
28 reflect that the applicant has submitted a
29 drawing, which will be marked as "Exhibit B."

30
31 MR. STODDARD: So -- so this drawing
32 is a -- a site section cut through the
33 driveway illustrating -- the dark line on the
34 bottom illustrates the -- the slope of the
35 driveway. This will refer the house sits on
36 the property.

37 But as you can see, the -- the
38 majority of the slope is in the first 20 or
39 so feet of the property, which essentially
40 already exists. And then we go to a -- a
41 parking spur in front of the house and then a
42 relatively flat driveway until we get to the
43 rear of the house, where the -- the natural
44 topography tapers off in the rear.

45 I think it's important to mention
46 why -- why we do need to go for this
47 variance, rather than trying to accommodate
48 the -- the Code in another way. And -- and
49 the reason for that is mostly because we're
50 trying to comply with the number of

APPEAL #21081

constraints, be it the maximum height from average grade, pre-existing average grade, as well as the maximum eave height.

The house essentially sits in a hole the way it is now. We are -- we are modifying the elevation of the -- the first floor slightly to improve it, but we are still held to the constraints that are determined by the pre-existing average grade. So the -- the easy thought on how to fix this attached garage, the slope condition, would be to elevate the house further. Unfortunately, we cannot do that, because of the -- the maximum height restriction, as well as the maximum eave height restriction taken from the average grade.

Additionally, I guess it's worth pointing out that the -- the proposed garage is a first-floor garage, not a -- a basement or a cellar garage, which I believe the intent of the -- the driveway slope code is to deter basement or cellar driveways and -- and reduce bulk of houses.

So we did attempt to do everything we could to make it as least impactful [sic] as possible.

And -- and one more point about why we chose to go this direction was in one of -- in one of the photos that I submitted looking down the property line, I believe it's photo number -- photo number 7, it shows that the topography between the two -- the two lots is -- is very -- very equal along that property line. The neighbor at 165 Aldershot is -- is screened very well.

And what we did not want to do was propose to elevate the driveway requiring a retaining wall along our -- our right or north side property line that would face the neighbor. We felt that the -- the existing slope of the driveway was de minimus to the neighbor and -- and that adding a retaining wall and elevating that would be more detrimentally impactful [sic] to that neighbor.

I -- I think that's the majority of my -- my presentation. I believe Mike Rant's here and he -- he could answer any questions

1 APPEAL #21081

2
3 you may have about the -- the engineering or
4 the topography of the site.

5 But again, everything -- everything
6 complies with the "R-A" [sic] or I'm sorry,
7 the "R-AA," if we were allowed to do that
8 "bump up," with the exception of this
9 driveway. And so we're asking, again, for
10 the determination that we can apply the
11 "R-AA" zoning, as well as a variance for --
12 for the driveway condition.

13
14 CHAIRMAN MAMMINA: I guess the -- the
15 only question that -- that I had,
16 Mr. Stoddard, but the -- the drawings that
17 I received this morning helped me to
18 understand. In the -- in the -- the set
19 that -- that we have, that I have
20 electronically, shows the existing house and
21 the garage in the back. And it appeared that
22 that was the site plan, because we don't have
23 any other site plan that was part of what was
24 submitted to the Zoning Board.

25 And you're -- you're not permitted --
26 this would just be a yes or a no answer --
27 you're -- you're not permitted to have two
28 garages. And I -- I just wanted to be
29 certain, you know, that it was just that we
30 didn't have that -- that, the -- the site
31 plan drawing, in what was submitted to the
32 Zoning Board or -- or it was not in our
33 packages.

34 So essentially as I said, yes or no
35 answer, is it the single car -- is it the
36 single two-car garage that's in the center of
37 the house at the first level, or is there
38 another garage that's behind the house?

39
40 MR. STODDARD: The existing detached
41 garage is being demolished along with the
42 existing house. We are proposing the
43 attached two-car garage and only the attache
44 two-car garage.

45
46 CHAIRMAN MAMMINA: Okay. And I -- I
47 guess just the -- the other question was not
48 a zoning question. And as an architect, I
49 don't do houses. But, you know, I see that
50 there's -- that there's like a maid's

APPEAL #21081

quarters that's in the -- that's in the cellar. And I was under the impression that you're not allowed to have habitable space, you know, in the -- in the cellar. It's okay for it to be like a family room, or a game room or, you know, or whatever, you know, but no sleeping space in the cellar.

So I mean that's up to the Building Department. But, you know, I'm just pointing that out. And as I said, I could be wrong. This is not my wheelhouse of, you know, of these types of projects.

I don't know, does -- does anybody else have any -- any questions before we hear from Mr. Norjen then?

VICE-CHAIRMAN FRANCIS: No.

CHAIRMAN MAMMINA: Okay -- okay.

VICE-CHAIRMAN FRANCIS: No, unless he wants to bring up his expert, I mean --

CHAIRMAN MAMMINA: Oh, if -- if you choose to bring your experts up, of course you may. You know, I -- I don't have any questions as one Board Member. But, you know, I mean I don't want to get in the way of your presentation.

MR. STODDARD: For -- for the sake of keeping things brief, I think any questions that you might have about the site, that -- that, Mike could -- could answer.

I don't think there is a need for any further presentation that needs to be made.

CHAIRMAN MAMMINA: Okay. So I -- I guess it's reasonable to assume that he's in agreement with your testimony?

MR. STODDARD: I hope so. I hope so, yeah.

CHAIRMAN MAMMINA: Okay.

Mr. Norjen?

You can have a seat wherever.

1 APPEAL #21081

2
3 MR. STODDARD: Sure.

4
5 (Stepping up.)

6
7 MR. NORJEN: Glenn Norjen, Deputy
8 Commissioner of the Building Department.

9 First to address your question, there
10 is no sleeping, no cooking in basements, or
11 cellars. So it would cellars. I mean if
12 it's a basement, it might be, but 98 percent
13 of lower levels are usually cellars.

14 I'm here just to discuss the -- the
15 requests for determination. The Code is very
16 specific. You must meet all the requirements
17 of the next highest zoning district in order
18 to get the "bump up." There are no
19 exceptions. In order to take advantage of
20 the "bump up," you don't come here, because
21 you have -- would have filed an "as-of-right"
22 application for the "bump up."

23 There's many things in the codes or at
24 least a few that are the same throughout the
25 different zoning districts. The building
26 height's 30 feet in every zoning district.
27 You can't say, well, I want to "bump up" to
28 the next highest one, but I'm going to
29 violate the height, but since I'm violating
30 the same height in both ones, I get to get
31 the "bump up" and just ask for a height
32 variance. No, that's not the way it works.
33 "Bump ups" are an "as-of-right" application.

34 Now, if they can come to the Board of
35 Zoning Appeals and seek the -- both the slope
36 and the gross floor area. And that's totally
37 up to the distinguished Board whether to give
38 them the variance based on -- well, yeah,
39 the -- the -- it's just the slope of the
40 garage that's in violation and if that
41 wasn't, or they could redesign it, make a
42 detached garage, which then the slope doesn't
43 count. There are ways around it, the
44 retaining wall. But that's, once again, up
45 to the Board to determine.

46 But as far as the "bump up" goes, that
47 has to be an "as-of-right" or you come here
48 for the -- for the gross floor area.

49 Any questions?

50

1 APPEAL #21081

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3 CHAIRMAN MAMMINA: No. Thank you,
4 Mr. Norjen.

5

6 MR. NORJEN: Okay.

7

8 CHAIRMAN MAMMINA: Well, Mr. Stoddard,
9 you -- you have the opportunity then to --

10

11 SECRETARY WAGNER: Chairman, I believe
12 there was somebody registered to speak.

13

14 CHAIRMAN MAMMINA: Oh, was there
15 somebody else? Maybe I didn't see with all
16 the --

17

18 SECRETARY WAGNER: Ms. Greene
19 (phonetic) --

20

21 CHAIRMAN MAMMINA: Sometimes I lose
22 somebody behind the (inaudible) board or --

23

24 SECRETARY WAGNER: Greene?

25

26 MR. PERROTTA: Is there anyone here
27 who'd like to speak on this application
28 that's not the applicant?

29

30 (No response.)

31

32 MR. PERROTTA: I see no one.

33

34 CHAIRMAN MAMMINA: And Virginia.
35 Thank you, because Virginia is our -- is our
36 eyes and ears. And, you know, we'll -- we'll
37 always try to put together a list, if there
38 are people who identify themselves, you know,
39 so that -- so that everyone has the
40 opportunity for this to -- to be played out
41 the way it's supposed to, you know, according
42 to law.

43

44 So Mr. Stoddard, I don't -- I don't
45 know if there if -- if you have any position
46 that you haven't already put onto the record,
47 and as I said, you know, the applicant, you
48 know, gets a, you know, gets a second turn at
49 the --

50

(Stepping up.)

APPEAL #21081

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3
4 MR. STODDARD: No. The only thing I'd
5 like to say is that we didn't really touch on
6 the proposed gross floor area amount in
7 comparison to the maximum of both the "R-A"
8 and the "R-AA" Zone.

9 But I -- I understand that it's --
10 it's the position of the -- of the -- the
11 Zoning Board that you don't want to set
12 precedent by granting a substantial floor
13 area variances, which -- that the proposed
14 gross floor area we are -- we have today is
15 5,198 square feet. The maximum for -- for
16 "R-A" is 4,000, which would be approximately
17 a -- a 1,200 square foot overage, which is
18 a -- a good amount. That's why we believe
19 that the appropriate course of action was to
20 seek relief on the "bump up," rather than the
21 gross floor area. We thought it would be
22 a -- a better ask, than to -- to come in here
23 and ask for a substantial floor area variance
24 like that.

25 That's -- that's really all I wanted
26 to add.

27 And -- and I guess lastly, the -- I
28 just wanted to add to the record, again, this
29 is the size of the lot, that the size of the
30 lot requirement for "R-AA" is 14,000 square
31 feet. Our -- our lot size is 21,802 square
32 feet. So we're -- we're substantially
33 greater than the minimum. And -- and that's
34 why I think that the -- a 5,200 square foot
35 max should be applicable to this property to
36 keep in line with -- with the rest of the
37 houses on the block that are on similar sized
38 properties. They -- they have similar-sized
39 houses. That's all.

40
41 MEMBER HERNANDEZ: Mr. Chairman, I --
42 I would like to ask a question. We didn't
43 see -- the only site plan that we have is of
44 the existing house. So this is not a
45 remodel. From what I understand, it's a
46 brand new built.

47
48 MR. STODDARD: Yes.

49
50 MEMBER HERNANDEZ: So your assumption

1 APPEAL #21081

2
3 is that it's not going to go over the
4 existing footprint. It's going to be shifted
5 somewhere. Could you please-- if you don't
6 have anything -- unless you have it, you
7 don't have to do it now, if you can provide
8 us where the proposed house will sit on the
9 site.

10
11 MR. STODDARD: The best way to do
12 that, I -- I apologize is that you don't
13 have the -- the proposed site plan. But
14 the drawing to my right, which may be hard
15 to read from there, is the proposed site
16 plan. I can bring it up if you want to take
17 a look.

18
19 MEMBER HERNANDEZ: If you could bring
20 it up for us, I appreciate it.

21
22 MR. STODDARD: Sure.
23 Essentially, it's -- it's seated in a
24 similar location of the house. It's rotated
25 slightly to address the street a little bit
26 more head on --

27
28 MEMBER HERNANDEZ: Uh-huh.

29
30 MR. STODDARD: -- but essentially in
31 the same location of the house.

32 The garage itself compared to the
33 existing detached garage is set a little
34 bit more towards the center of the property
35 than the -- than the existing garage does.

36
37 MEMBER HERNANDEZ: At the end of the
38 house itself appears to be, at least from my
39 angle here, appears to be -- that's fine.
40 You can keep it there -- it appears to be
41 almost where the old garage was.

42
43 MR. STODDARD: Similar to.

44
45 MEMBER HERNANDEZ: Yeah, okay. So
46 it's not getting any closer to the rear
47 neighbor and it's not getting any closer
48 towards the side neighbor.

49
50 MR. STODDARD: Correct. We -- we do

1 APPEAL #21081

2

3 comply with not only the setbacks of the
4 "R-A" District, but also the more restrictive
5 setbacks of the "R-AA" District.

6

7 MEMBER HERNANDEZ: Okay, very well.

8

9 CHAIRMAN MAMMINA: Okay, any other --
10 any other questions you may have?

11

12 (No response.)

13

14 CHAIRMAN MAMMINA: And by the way,
15 Mr. Stoddard, what I would, again, just point
16 out --- and it's got nothing to do with the
17 Zoning Board -- you know, is in all
18 probability the maid quarter and things in
19 the cellar are not going to be permitted. So
20 you may have to just consider that within
21 your -- within your design.

22

23 But that's up to -- but that's up to
24 the Building Department.

24

25 MR. STODDARD: Okay.

26

27 CHAIRMAN MAMMINA: That's not a --
28 that's not a Zoning objection. That's a --
29 that's a Building Code objection.

30

31 MR. STODDARD: Understood.

32

33 MEMBER HERNANDEZ: Mr. Chairman, I'd
34 like to go over this a little bit more, think
35 about it a little bit more. So if there's no
36 objection, I would like to postpone in making
37 a decision.

38

39 CHAIRMAN MAMMINA: All right. So
40 anyone have any issue with reserving?

41

42 MEMBER DONATELLI: No.

43

44 MR. PERROTTA: You want to reserve or
45 continue?

46

47 MEMBER HERNANDEZ: Reserve.

48

49 CHAIRMAN MAMMINA: Reserve.

50

1 APPEAL #21081

2
3 SECRETARY WAGNER: There's no
4 additional information.

5
6 CHAIRMAN MAMMINA: There's no
7 additional information.

8
9 MEMBER HERNANDEZ: You just showed us
10 what I needed. That's fine.

11
12 CHAIRMAN MAMMINA: That's fine.

13
14 MEMBER DONATELLI: I think we do have
15 a hand up.

16
17 CHAIRMAN MAMMINA: Oh, we do have a
18 hand up now?

19
20 MEMBER DONATELLI: Sorry.

21
22 MR. OSTAD: Good morning.

23
24 SECRETARY WAGNER: Please come up to
25 the podium please.

26
27 CHAIRMAN MAMMINA: You'll have to come
28 on up.

29
30 (Stepping up.)

31
32 MR. OSTAD: Good morning -- good
33 morning.

34 Danny Ostad, Rockwell Developers. I
35 represent Jeremy and Vivian Woo.

36
37 CHAIRMAN MAMMINA: Could you -- I'm
38 sorry.

39
40 VICE-CHAIRMAN FRANCIS: Name and
41 address.

42
43 CHAIRMAN MAMMINA: If you could just
44 slow down a little bit and --

45
46 SECRETARY WAGNER: Yeah, for the court
47 reporter, so she can get your name and
48 address.

49
50 MR. Ostad: Sorry, I apologize.

1 APPEAL #21081

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4 SECRETARY WAGNER: It's okay.

5

6 CHAIRMAN MAMMINA: Name and address.

7

8

9

10 MR. OSTAD: My name is Danny, my last
11 name is Ostad, O-s-t-a-d. My company is
12 Rockwell Developers, and I represent
13 Jeremy and Vivian Woo on this application.

14

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SECRETARY WAGNER: The next hearing
is September First.

MR. OSTAD: Fair enough. Thank
you for your -- thank you for your
consideration.

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APPEAL #21081

CHAIRMAN MAMMINA: Thank you,
appreciate it.

* * *

1 APPEAL #21082

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3 CHAIRMAN MAMMINA: Okay. Then if you
4 can call the next case, that would be great.

5

6 (Stepping up.)

7

8 SECRETARY WAGNER: The next appeal
9 is Appeal No. 20182, Annette Kasle,
10 25 Briarcliff Drive in Port Washington,
11 section 5, block 118, lot 747 in the
12 Residence "B" Zoning District.

13 Variance from "70-39.C" to construct
14 additions that are too large.

15

16 APPEAL #21082 - Annette Kasle; 25
17 Briarcliff Dr., Port Washington, Section 5,
18 Block 118, Lot 747; Zoned Residence-B

19 Variance § 70-39.C to construct
20 additions that are too large.

21

22 CHAIRMAN MAMMINA: You've heard Appeal
23 No. 21082, Annette Kasle.

24 Is there anyone in the room interested
25 in the application other than the applicant?

26

27 (No response.)

28

29 CHAIRMAN MAMMINA: Seeing no one,
30 please give your name and address.

31

32 (Stepping up.)

33

34 MR. KURKOWSKI: Yes, let me take off
35 my mask.

36 Good morning. My name is Leonard
37 Kurkowski. I'm the architect for Mr. and
38 Mrs. Kasle. They are in the audience also.
39 So if the Board does have any questions of
40 them, they'd be happy to answer any questions
41 that might arrive.

42 The application before you today is a
43 proposed expansion of an existing kitchen and
44 breakfast area. The house was built in 1938
45 and this -- the original configuration is
46 still that same layout, which is -- is
47 extremely small by today's comparison to --
48 to kitchens and breakfast areas.

49 What they're looking to do is expand
50 the breakfast area 40.9 square feet, which is

APPEAL #21082

a very small amount of space compared to the overall home size.

When this house -- I did an alteration to this home in 19 -- in 1993, and we expanded the home to its current size.

And -- and at the time that we did that, it conformed to all the zoning codes and it got us up to the 3,743 square feet. But then in 1999, the code had changed, and it had down-zoned and the "FAR" went down to 3400 square feet. So the home is currently a non-conforming residence.

But what we're asking for is -- is a minimum of 42 square feet. And as you can see by the plan, where we're proposing to push out, it -- there's an existing sliding door at that small breakfast area that we have now. We want to slide that door out another 4 1/2 feet and it's under an existing overhang.

And also, if you look at configuration of the plan, it's in the back of the house, it's in an inside corner of the notch. So it's my contention that, you know, this alteration will not have any visual impact and -- that -- that will, you know, effect any of the -- the surrounding neighbors.

And with -- with -- and with that being said, we had asked the adjoining property owners if they'd sign a consent form. And I'd like submit to the Board six consent letters in agreement with -- with our proposed alteration. (Handing.)

SECRETARY WAGNER: (Receiving.)

MR. KURKOWSKI: Okay, so that's the --

SECRETARY WAGNER: The consent forms are being entered into the record as Exhibit 1.

MR. KURKOWSKI: So if the -- the Board should have any specific questions, I mean I'd be glad to answer them. But as you can see, it's -- it's a -- a minimal request, and -- and I feel that, you know, the benefit to the applicant outweighs any detriment

1 APPEAL #21082

2

3 that -- that this alteration might present to
4 the community and surrounding neighborhood.

5

6 CHAIRMAN MAMMINA: The only question I
7 have as someone who exercises is what is a
8 dark exercise? I kind of like the idea.

9

10 MR. KURKOWSKI: It's -- it's a
11 combination, dark room and exercise room.

12

13 CHAIRMAN MAMMINA: Oh, a dark room.

14

15 MR. KURKOWSKI: Oh, okay.

16

17 CHAIRMAN MAMMINA: For a minute there,
18 I thought I'd be on my treadmill in the dark.

19

20 (Laughter.)

21

22 MR. KURKOWSKI: Yeah, just turn the
23 lights off, yeah.

24

25 (Laughter.)

26

27 MEMBER DONATELLI: Yeah, it just turns
28 the lights off.

29

30 (Laughter.)

31

32 VICE-CHAIRMAN FRANCIS: (Inaudible)
33 the darkroom still? Where's the (inaudible)
34 dark room --

35

36 (Laughter.)

37

38 CHAIRMAN MAMMINA: Yes. Yeah.

39

40 (Laughter.)

41

42 MEMBER HERNANDEZ: I'm surprised I
43 mean as -- as a photographer, I know -- I
44 used to -- I used to have a dark room in my
45 house at one time, four years ago. Now, it's
46 a digital dark room.

47

48 MR. KURKOWSKI: This is kind of a
49 carryover from when I did the alteration in
50 '93. It was a full-blown dark room. Then

1 APPEAL #21082

2
3 the advent of the digital camera came.

4
5 MEMBER HERNANDEZ: Yeah.

6
7 MR. KURKOWSKI: Now, it's an antique.

8
9 MEMBER HERNANDEZ: Now, it's a
10 computer.

11
12 (Laughter.)

13
14 MEMBER DONATELLI: Well, I have no
15 further questions.

16
17 MEMBER GOODSSELL: Well, I just -- I
18 just have one comment. And that is that the
19 back of this house seems incredibly private.
20 It looks like it is a heavily-wooded area and
21 the next adjoining neighbor is either down or
22 up a cliff.

23 There is no -- in your opinion, there
24 is no visual impact to anybody by doing this,
25 because you can't see the back of the house
26 from the adjoining neighbors. Would that be
27 fair and accurate.

28
29 MR. KURKOWSKI: That's a correct
30 observation, yes, absolutely.

31
32 MEMBER DONATELLI: So Mr. Chairman,
33 having reviewed the application and having
34 heard the applicant's presentation this
35 morning, I would note the following:

36 I would note that the house is a
37 pre-existing non-conforming;

38 I -- I would also note that the --
39 that the zoning was down-zoned on the
40 property;

41 I would note that the proposed
42 addition is in the rear of the property, as
43 Ms. Goodsell just indicated, and is really
44 not visible from the street or from the
45 adjoining neighbors;

46 And I would also note that is an
47 oversized property.

48 And so having taken all of that into
49 account, I make a motion that we grant the
50 application.

1 APPEAL #21082

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4 CHAIRMAN MAMMINA: We have a motion.
5 Do we have a second?

6

7 VICE-CHAIRMAN FRANCIS: Second.

8

9 CHAIRMAN MAMMINA: Okay. Motion by
10 Mr. Donatelli and seconded by Mr. Francis.
11 Please poll the Board.

12

13 SECRETARY WAGNER: Member Hernandez?

14

15 MEMBER HERNANDEZ: Aye.

16

17 SECRETARY WAGNER: Member Goodsell?

18

19 MEMBER GOODSSELL: Aye.

20

21 SECRETARY WAGNER: Member Donatelli?

22

23 MEMBER DONATELLI: Aye.

24

25 SECRETARY WAGNER: Vice-Chairman
26 Francis?

27

28 VICE-CHAIRMAN FRANCIS: Aye.

29

30 SECRETARY WAGNER: Chairman Mammina?

31

32 CHAIRMAN MAMMINA: And before I say
33 aye, I'm just going to expand just a tiny bit
34 and as to what Ms. Goodsell said. We look
35 very, very carefully at floor area and, you
36 know, floor area is scrutinized largely for
37 bulk, you know, and to a house and how that
38 fits the character of the neighborhood. So
39 her observation that essentially this is a
40 roofed over area that sits in the back of
41 the house, you know, is -- is completely
42 accurate, and would make this a proper
43 candidate for -- for a variance.

44 And -- and I -- I vote aye also.

45

46 MEMBER HERNANDEZ: Mr. Chairman, if I
47 may just add thing, that I know I counted
48 already.

49

50 CHAIRMAN MAMMINA: Uh-huh.

APPEAL #21082

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MEMBER HERNANDEZ: I also wanted to highlight that if someone were to look at the maximum gross floor area and what the house is supposed to have, it appears -- it could appear that we are granting a 377 square foot variance. That's not what we are doing.

MR. KURKOWSKI: That's not what you're doing, no.

MEMBER HERNANDEZ: What we are granting is a 42.75 square foot area variance.

MR. KURKOWSKI: 41.9 square foot.

MEMBER HERNANDEZ: Okay, I have the wrong number here. 41.9.

MR. KURKOWSKI: 41.9 square foot variance, yes.

CHAIRMAN MAMMINA: Okay, then -- then the application is granted.

SECRETARY WAGNER: Chairman, did you ask if there were speakers for the record?

CHAIRMAN MAMMINA: Yes, we did ask, yeah. We'll just double -- well, no we did -- we did ask.

SECRETARY WAGNER: I don't remember --

CHAIRMAN MAMMINA: Yes, was there -- was there anyone who wished to speak?

(No response.)

CHAIRMAN MAMMINA: I don't -- I didn't think so.

VICE-CHAIRMAN FRANCIS: No, I don't think so either.

CHAIRMAN MAMMINA: Okay.

1 APPEAL #21082

2

3 MR. KURKOWSKI: Okay. On behalf of my
4 client, thank you very much.

5

6 CHAIRMAN MAMMINA: Thank you,
7 Mr. Kurkowski.

8

9 * * *

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1 APPEAL #21066

2

3 (Stepping up.)

4

5 SECRETARY WAGNER: The next appeal
6 is Appeal No. 21066, Theodore Klumpp,
7 42 Highland Avenue in Port Washington,
8 section 6, block 9, lot 39 in the Residence
9 "C" Zoning District.

10 Appeal for determination or in the
11 alternative, variances from "70-100.1(A) and
12 "70-100.1(B) to legalize brick planters that
13 are too close to both rear and side property
14 lines, and to legalize brick planters and a
15 raised patio covering too much of the rear
16 yard.

17

18 APPEAL # 21066 - Theodore Klumpp, Jr.;
19 42 Highland Avenue, Port Washington; Section
20 6, Block 9, Lot 39; Zoned: Residence C.

21 Appeal for determination, or in the
22 alternative variances §§70-100.1(A) &
23 70-100.1(B) to legalize brick planters that
24 are too close to the rear and side property
25 lines and to legalize brick planters and
26 a raised patio covering too much of the rear
27 yard.

28

29 CHAIRMAN MAMMINA: You've heard Appeal
30 No. 20166, Theodore Klumpp, Junior.

31 Is there anyone in the room interested
32 in the application other than the applicant?

33

34 (No response.)

35

36 CHAIRMAN MAMMINA: Seeing no one,
37 please give your name and address.

38

39 (Stepping up.)

40

41 MR. MIGATZ: Bruce W. Migatz, Albanese
42 and Albanese, 1050 Franklin Avenue, Garden
43 City.

44 I see Deputy Commissioner Norjen here.
45 Is this (indicating) bulletproof?

46

47 CHAIRMAN MAMMINA: Yes, it is.

48

49 (Laughter.)

50

1 APPEAL #21066

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3 CHAIRMAN MAMMINA: Only -- only the
4 Board's aren't bulletproof.

5

6 MR. MIGATZ: I feel better now.

7

8 CHAIRMAN MAMMINA: I feel like the
9 Pope.

10

11 (Laughter.)

12

13 MR. MIGATZ: Ms. Goodsell, welcome --
14 welcome to the Board.

15

16 MEMBER GOODSELL: Thank you,
17 Mr. Migatz.

18

19 MR. MIGATZ: I hope you get your new
20 sign soon.

21

22 MEMBER GOODSELL: It's in the works.

23

24 MR. MIGATZ: Appearing for the
25 applicant, Theodore Klumpp, Junior who is
26 present with me here today.

27 The subject premises, 42 Highland
28 Avenue in Port Washington, New York,
29 section 6, block 9, lot 39, Residence "C"
30 Zone.

31 It has a lot area of 5,000 square
32 feet. It's a one-family dwelling.

33 The existing improvements that require
34 a determination or a variance today is a
35 raised terrace and planters.

36 And I have five exhibits. It might be
37 easier to submit them all at once, rather
38 than do it in a piecemeal.

39

40 CHAIRMAN MAMMINA: Sure.

41

42 MR. MIGATZ: And I'll -- I'll read
43 them into the record:

44 Exhibit 1 is a photograph of the
45 subject terrace and planters;

46 Exhibit 2 is a certificate of approval
47 for the dry well for the planters;

48 Exhibit 3 is a -- a portion of the
49 Local Law adopted last Thursday by the Town
50 Board, making various amendments to the

APPEAL #21066

Zoning Code. I -- I am marking as an exhibit, "Section 16" of that Local Law;

Exhibit 4 is a photograph of a prefabricated planting box;

And Exhibit 5 are five consent forms, which is five out of the six neighbors.

And I have a copy for each member of the Board, and one for the record and one for me. I just have one copy of the original consent form. (Handing.)

MR. PERROTTA: (Receiving.)

(Discussion held among Board Members off the record.)

CHAIRMAN MAMMINA: Go ahead, Mr. Migatz. Thank you.

MR. MIGATZ: All right.

Exhibit 1 is a photograph. It's a recent photograph of the rear yard of the subject premises, that shows:

A wood deck;

A -- a garage;

The subject raised terrace;

And the subject planters.

The building permit was granted for the construction of the deck, the terrace and the planters in 2004. The approved plans are filed with this application.

Exhibit 2 is the -- a certificate of approval for the dry well that was installed in 2005 for the raised terrace. Now, for various personal reasons that are not germane to this application, construction did not commence until around 2018 of the terrace and -- and the deck, the permit was reactivated.

Following completion of construction, the applicant was informed September of 2020, by the plans examiner Doris Redding (phonetic), that the 2004 permit was issued in error, in that the planting -- the planters did not comply with the 3 foot rear -- rear and side yard setbacks. That was the only issue that she raised.

After an exchange of e-mails where I

APPEAL #21066

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3 questioned whether or not those planters were
4 a landscaping feature or a -- a structure, an
5 accessory structure, I -- I was advised
6 by -- by a Scott Kohler (phonetic) that
7 Deputy Commissioner Norjen raised an
8 additional issue that is not -- was not
9 previously raised by either Ms. Redding or
10 Mr. Kohler, and that the terrace and the
11 planting, the planters combined with the --
12 the deck and the garage, exceeded the
13 permitted 40 percent of the coverage of the
14 rear yard for accessory structures.

15 Now, on this appeal, the applicant
16 seeks a determination in that the terrace and
17 the planters should not be included in the
18 calculation of permitted coverage of the
19 rear-yard for accessory structures, and the
20 planters do not need to comply with rear and
21 side-yard setback. Alternatively, the
22 applicant seeks variances to maintain these
23 structures.

24 Let me first address the determination
25 regarding why the terrace should not be part
26 of rear-yard coverage. The notice of
27 disapproval cites Section "70-100.1(A),"
28 which is labeled heavy accessory building.
29 And it states accessory building and or
30 structures, except as otherwise provided in
31 this article shall be located in the rear
32 yard, not to be over 15 feet in height at the
33 highest point and shall not occupy more than
34 40 percent of the area of the rear yard. The
35 terrace is not a building. The code does not
36 define accessory structure. It defines a
37 structure, which includes almost everything,
38 but it does not define what is deemed as an
39 accessory structure with respect to rear-yard
40 coverage.

41 Now, Section "100.2" entitled
42 accessory structures regulates accessory
43 structures. Until just last Thursday night,
44 that section never addressed a terrace or a
45 deck be an accessory structure, for rear-yard
46 coverage purposes. And last Thursday
47 evening, the Town Board adopted some
48 comprehensive changes to the Zoning Code.
49 And Exhibit 3 is "Section 16" of that Local
50 Law. And it adds a new "Subsection C" --

APPEAL #21066

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3 "Subsection C" marked reserved -- and adds a
4 new "Subsection C" now entitled accessory
5 porches, porticos, terraces and decks. And
6 this new section, as of last Thursday night
7 sets forth the requirement that terraces
8 and decks now more than 8 inches above
9 finished grade are to be included in the
10 calculation of 40 percent rear-yard coverage.
11 Now, the adoption of this amendment by
12 the Town Board can only be interpreted one
13 way, I submit to you as an attorney. It
14 means that prior to last Thursday night,
15 terraces and decks were not considered
16 accessory structures by the Town Board. And
17 that cannot be applied retroactively.
18 Prior to last Thursday, when you
19 looked up accessory structures in the
20 regulations, it addressed various accessory
21 structures, with no mention of terraces or
22 decks. Only now does it state, the code
23 state for the first time, that terraces and
24 decks are to be included in the rear-yard
25 coverage.
26 Zoning laws are in derogation of the
27 Common Law and are to be strictly construed
28 against the municipality. So what was not
29 said previously and is now said by an
30 amendment, I submit to you cannot be applied
31 retroactively. And it cannot be interpreted,
32 well -- well, this applied all along. It
33 wasn't in the code. Now, it's in the code.
34 Now, the applicant's terrace is more
35 than 8 inches above finished grade. If it
36 wasn't pursuant to this new code, it would
37 not count. So under the new code, it would
38 count. But the construction was completed
39 before this amendment was adopted. And I'd
40 submit to you legally, the applicant has a
41 right to a certificate of completion for this
42 terrace.
43 Now, let me turn to the determination
44 that the planters should not be included in
45 rear-yard coverage. The applicant submits
46 that the subject planters do not constitute
47 an accessory structure, but rather they are
48 landscaped features.
49 These planters, if you look at
50 photograph one, they consist of a wall around

APPEAL #21066

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3 dirt. There is no bottom. This is not a
4 box. There is no bottom, all right. That is
5 the natural curve that's been raised, but it
6 goes straight down. There's no -- there's no
7 bottom to -- to that -- that planter. It is
8 just wall around the dirt. Now, it is no
9 different than many homes that have railroad
10 ties around planters in front yards and rear
11 yards.

12 I had a case like that before this
13 Board -- I couldn't -- couldn't remember what
14 case it was, maybe the Board does -- where
15 the Building Department said the retaining
16 wall around the plants in the front yard was
17 a wall that needed a permit. And my
18 recollection is this Board overruled that and
19 said, no, that's -- that's just a landscaping
20 feature. That's not a wall that requires a
21 permit for a wall. And I submit this -- this
22 is no different. This is a landscaping
23 feature with a railroad tie, instead of
24 bricks.

25 Now, I don't always disagree with the
26 Building Department. You only see me here
27 when I do disagree. The Building Department
28 is very thorough. I have a lot of respect
29 for them. I -- I -- Mr. Norjen has, on
30 occasion, pointed out sections of the code
31 that I was not even aware of.

32 But one of the reasons, one of the
33 times I do disagree with them is when they
34 apply their current interpretation to
35 something that was granted seventeen years
36 ago by a different building commissioner.

37 And, you know, zoning codes are
38 subject to some interpretation. The case had
39 you had at least today just on -- on the
40 "bump up" provision, over the years that, as
41 this Board knows, that's been interpreted
42 many different ways by many different plans
43 examiners as to what you have to comply with
44 to "bump up."

45 And finally, the Commissioner
46 issued -- not this Commissioner -- issued
47 a -- a Commissioner memorandum that -- that
48 set forth a new reform policy.

49 So I don't know, in 2004, what the
50 Building Department considered a landscape

APPEAL #21066

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3 feature and what they do. By you -- since
4 it's certainly not specified in the code, and
5 it is subject to interpretation what is a
6 landscape feature and what is not, and I
7 think it's wrong for the current building
8 administration to say, well, we disagree with
9 your interpretation, therefore you were
10 wrong.

11 No, they were different, not
12 necessarily wrong. It's not a wrong
13 interpretation, a different interpretation.
14 And it was approved and the applicant relied
15 on that in good faith, and -- and spent a lot
16 of money building what we think is a very
17 nice feature to this property.

18 This -- if this Board disagrees that
19 the interpretation in 2004 shall not be
20 overruled -- I mean it can be overruled --
21 well then, I present to you your -- you can
22 make a final determination, is this a
23 landscape feature or is this an accessory
24 structure?

25 Exhibit 4 is a photograph of a
26 planting box, 8 feet long and I think it's
27 the same height, 36 inches of the planter
28 feature on the applicant's property. You can
29 walk into Home Depot, Lowe's, and you can buy
30 this. And the Building Department, in our
31 exchange of e-mails agrees with me that that
32 does -- that does not require a permit and
33 that is not an accessory structure, for
34 rear-yard coverage purposes.

35 So I ask you from a zoning
36 perspective, what is the difference whether
37 or not you buy a prefabricated 36 inch high,
38 8 foot long planting box and put it on the
39 boundary line of your property, or you
40 fabricate a planter on your property.

41 It's a distinction without a
42 difference, as far as the impacts on the
43 adjacent property lines. There's just
44 there's no -- no -- there's no difference in
45 being an impact, and that's why it should be
46 considered a landscape feature. The
47 fabricate -- the prefabricated planting box
48 is deemed a landscape feature by the Building
49 Department. But if you build it on site, now
50 it becomes an accessory structure.

APPEAL #21066

And also last Thursday when the Town Board amended the section regulating accessory structures, the Planning Commissioner and the Building Department that review your calendars were well aware that there was an application seeking a determination that a planting box is not an accessory structure.

Again, it was not included. The planters, the planting box was not included as an accessory structure for rear-yard coverage purposes, when the Town Board amended that section.

So I -- I submit to you that the determination should be granted and a variance for -- for rear-yard coverage is not required, and a variance for side and rear-yard setbacks for the planter is not required.

Alternatively, the applicant has filed for a variance of -- of those -- those sections. So assuming arguendo -- and I hope I'm wrong, but assuming arguendo, that this Board finds that in 2004, the terrace should be an accessory structure for rear-yard purposes, and so for the planting boxes, it was overlooked by the architect. It was also overlooked by the plans examiner in 2004.

This coverage was also initially overlooked by Ms. Redding and overlooked by Scott Kohler, in their e-mails exchanged with me. It was Deputy Commissioner Norjen who raised it that, oh, by the way, you also need a variance for rear-yard coverage. So it wasn't clear to the architect in 2004. It wasn't clear to the plans examiner in 2004. It wasn't initially clear to Doris Redding and it wasn't initially clear to -- to Scott Kohler on first look.

So if the architect made a mistake, it's an understandable mistake. If you look at accessory structures, there's no mention of planters in -- in the code.

This is an area variance weighing the benefit of the applicant against the detriment of the community. The benefit to the applicant is to maintain what was built in good faith, on what was thought to be a

APPEAL #21066

valid building permit.

Good faith reliance upon a permit found invalid is a consideration for this Board to take into effect, when weighing the benefit to the applicant and the detriment to the community. And I'm sure that counsel is aware of those many cases. The legal case I think is Jayne Estates versus Raynor, 22 New York, 4/17/1968 according to its decision.

So what is the detriment to the community if this terrace is allowed to -- to remain? The curvature of the garage and the deck, as you see in the photographs, assuming the deck -- and prior to Thursday, a deck wasn't included either, but now assuming you have to include the deck and the garage, that coverage is 27.52 percent, well below the 40 percent allowed. When you add the terrace, it becomes a 52.47 percent, 12.5 roughly over. I will submit that's not a -- a major deviation, but moreover, the Case Law says a deviation only really becomes relevant if it relates to an adverse effect on the community.

So what is the -- the adverse effect on the community? I submit to you, none. This terrace is not visible from the street. Because of the garage on the left side, it's not visible to that neighbor. Because of the landscaping in the rear and on the right side, it's not visible to that neighbor. And the two side neighbors have filed -- or have submitted consent forms. One of the two rear neighbors have submitted consent forms. The other one has not submitted anything to my -- to my knowledge.

Now, if you look at the -- the terrace, you -- you can't see, because the -- the planter is there, but the terrace starts on grade. This property, the topography of the property, it slopes fairly dramatically from the rear to the -- from the rear of the yard to the front, and from the east to the west.

So the terrace starts on grade. And but as you move towards the house, the grade drops and so the height of the terrace so is

APPEAL #21066

level, raises. So the height of the terrace is 0 inches at the rear and to a maximum at the front of 29 1/2 inches.

Now, pursuant to the new code if this terrace -- if this topography was level, this terrace would not be counted as lot coverage, 'cause it would be on grade. It would be less than 8 inches above grade. It's only above grade, because of the slope of the topography.

So what's the difference? What's the visual impact difference to the neighbors that can't see this to begin with? If the topography was level, you would have a terrace "as-of-right" on grade. The visual impact to the neighbors, the coverage impact is the same whether it's on grade or whether it has to be above grade due to the topography. It has no -- no impact if you grant a variance to -- to allow this to maintain, due to the topography of the property.

Whether the benefit sought by the applicant can be achieved by some means feasible, other than the requested variance? Well, the benefit sought is to maintain what was constructed pursuant to a permit. That cannot be obtained without a variance. The end result of having a terrace can be achieved by ripping this up, leveling the grade and putting a terrace on grade.

But what's the difference? Why -- why would the applicant have to be put through this expense after relying on -- in good faith on a permit, where you'd wind up with a same terrace except at a lower height?

Whether the proposed variance will have an adverse impact on the environmental conditions or aesthetic conditions? This is a "Type II Action" under SEQRA, "deemed not to have an adverse impact on the environment.

And whether the difficulty is self-created. By law, if you -- if you buy a property subject to the Zoning Code for which we now seek a variance, it's deemed self-created. But that is not a -- is not a determinative factor.

And what I think is more significant

APPEAL #21066

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3 is that a good faith reliance on the permit
4 is a factor that this Board can and should
5 consider.

6 Let me turn to the variance to
7 maintain the planting [sic] -- the planters.
8 Now, assuming arguendo, that the Board says
9 the interpretation in 2004 was wrong and the
10 applicant is bound by today's interpretation,
11 and -- and you agree with the today's
12 interpretation of the Building Department,
13 that these planters are accessory structures,
14 I guess it was a mistake by the architect in
15 2004 and the plans examiner in 2004, but
16 again, an understandable mistake since
17 landscape features are not set forth in the
18 code. Accessory structures are not defined
19 in the code. And there's no mention in the
20 code about planters.

21 The benefit to the applicant, once
22 again, is to maintain what was constructed
23 pursuant to a permit the applicant relied on,
24 in the good faith, seventeen years ago.

25 Is the variance substantial? The
26 Building Department, in calculating the
27 coverage, depict the garage, the deck, the
28 terrace and the entire dimensions of the
29 planters around the perimeter of the
30 planting. And I submitted to them and I
31 submit to you, that you can't count the dirt
32 and the plants as lot coverage. If you don't
33 count anything as lot coverage, it would be
34 just the wood structure around the earth,
35 which again has no bottom. It has no bottom.

36 So the Building Department calculation
37 counting the entire perimeter, including the
38 plants, including the dirt, comes to 66.82
39 percent coverage. If they don't count the
40 plants and the dirt they're in, the coverage
41 is only 56.67 percent, roughly 17 over for
42 the 40 percent allowed. I'll submit that's
43 not substantial. And once again, whether or
44 not a variance is substantial, it really only
45 has an effect if you have an adverse impact
46 on the community, so unless the adverse
47 impact on the neighbors.

48 Like I said, you can rip that out, go
49 to Home Depot, buy -- buy a pre-made planter
50 the same size, same shape, line them up and

1 APPEAL #21066

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3 get the same result. So how can that have
4 adverse impact on the neighbor if you say,
5 all right Mr. Klumpp, you don't have to rip
6 out these planters, you relied on in good
7 faith with the Building Department. We're
8 not going to make you rip them out, go to
9 Home Depot, and buy planting boxes and put
10 them in place.

11 The "Type II" application under
12 "SEQRA," deemed not to have not an adverse
13 impact on the community.

14 As I said before the difficulty as a
15 matter of law is self created, but the
16 applicant relied on a good faith permit. And
17 this Board should take into effect -- into
18 account in their decision.

19 Exhibit 5 is five of the six neighbors
20 signed a consent form for this application.

21 That's my direct case, unless the
22 Board has any further questions.

23

24 MEMBER HERNANDEZ: I have a -- I have
25 a couple of quick questions, Mr. Chairman, if
26 you don't mind.

27 I'm looking at the photograph. And
28 I'm trying to figure out -- and
29 unfortunately, I don't see any schematics
30 showing what's here in the heights. But you
31 drew a comparison of 36 inches to a planter.
32 So are -- are you suggesting that the part
33 above the deck --

34

35 MR. MIGATZ: 36 inches.

36

37 MEMBER HERNANDEZ: -- is 36 inches.
38 It appears to be more, based on the number of
39 blocks that were used.

40

41 MR. MIGATZ: Rough -- roughly 36
42 inches.

43

44 MEMBER HERNANDEZ: Okay. Like I said,
45 if I count the blocks at 8 inches each, it
46 appears to be more.

47

48 MR. MIGATZ: There's six.

49

50 MEMBER HERNANDEZ: 1, 2, 3, 4, 5,

1 APPEAL #21066

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3 6 -- 8. 40 plus the slab on top, which is
4 usually 4. It's 44; right? So it's not --
5 it's not to add to those -- the petty issues.
6 It appears to be over, that's --

7

8 MR. MIGATZ: Well --

9

10 MEMBER HERNANDEZ: -- that's all I'm
11 saying.

12 The one underneath, how tall is the
13 deck raised at?

14

15 MR. MIGATZ: Say that again.

16

17 MEMBER HERNANDEZ: How tall is the
18 deck? What is the deck?

19

20 MR. MIGATZ: The deck or the terrace?

21

22 MEMBER HERNANDEZ: The terrace.

23

24 MR. MIGATZ: Well, it -- it starts --
25 it starts at 0 at the rear property line.
26 And it -- and then in the front when you're
27 looking at the front wall of it, it --

28

29 MEMBER HERNANDEZ: Yup.

30

31 MR. MIGATZ: -- is 20 [sic] --
32 29 1/2 inches.

33

34

35 MEMBER HERNANDEZ: Okay, so roughly
36 30 inches high.

37

38 MR. MIGATZ: Okay.

39

40 MEMBER HERNANDEZ: Is the garage then
41 embedded into a hill?

42

43 MR. MIGATZ: Excuse me?

44

45 MEMBER HERNANDEZ: Is the garage then
46 embedded into a hill? If it's flush -- if
47 that terrace is flush in the back, how is the
48 garage not -- the -- the foundation or the
49 entrance to the garage not raised to that
50 level --

APPEAL #21066

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MR. MIGATZ: (Inaudible) --

MEMBER HERNANDEZ: -- unless, it was
embedded into the --

MR. MIGATZ: I -- I believe the grade
was finished there. But I can have Mr.
Klumpp ask -- answer that question if you'd
like.

MEMBER HERNANDEZ: Well, there seems
to be some -- the -- the lines just don't
seem to -- to match.

If he wants to answer it, let him
answer it.

MR. MIGATZ: I'm sorry, what -- what
doesn't match?

MEMBER HERNANDEZ: If the garage --
if -- if the property slopes forward, right,
which is what you're suggesting, the property
slopes forward, then the garage either has to
be raised to be flushed to the back, or it
has to be embedded into the hill itself
(inaudible) --

MR. MIGATZ: Let me have Mr. Klumpp
answer that, 'cause I wasn't focusing --

MEMBER HERNANDEZ: Sure.

MR. MIGATZ: -- I wasn't focusing on
the garage.

CHAIRMAN MAMMINA: Just one other
thing, and Mr. Migatz, and I don't know if
there's another survey or not, because what
would be very helpful in demonstrating your
point is if there were some spot elevations,
you know, across that back. I'm not talking
about twenty elevations, I'm talking about
four or five, you know, coming down the side
of the, you know, of the garage.

I mean I see that there are steps, you
know, that are -- that are in there. And,
you know, and speak to, you know, the point,

APPEAL #21066

because there is -- there is on -- there is on -- on the 2004 drawing, it says garage "FF," which is finished floor elevation minus 5 plus or minus. So where did that come from?

You know, and this is not a criticism. This is a question. You know, what is that grade, you know, across there that would demonstrate your point? Which I understand, you know, is that if the property, you know, at the rear property line is essentially the same as the top of -- of the underside of the paver on the, you know, on -- on the terrace, and then that this property continues to slope off, I mean a couple of spot elevations would -- would demonstrate that very, very quickly.

MR. MIGATZ: We -- we can get that for you. I -- I walked this property numerous times. And I can tell you, as a matter of fact, that that rear terrace is the -- the end of it is indeed on grade and I did observe the -- the slope. But if you'd like to have a spot elevations, we can get that for you.

CHAIRMAN MAMMINA: Yeah, I think potential and see what -- I'm not trying to make the owner spend money. You know, that's not, that's not where, you know, where we come from, you know.

But from, you know, what we --

MR. MIGATZ: But -- but --

CHAIRMAN MAMMINA: -- were, if -- if we were to approve the application on the basis of that logic, it would be helpful, you know, to show that the garage is built into the slope, you know, and what are those elevations on the side.

MEMBER GOODSSELL: And --

MR. MIGATZ: I think we can do that, of course, Mr. Chairman. But I don't want you to lose sight of we can let -- we can

1 APPEAL #21066

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3 regrade this and put the terrace back.

4
5 CHAIRMAN MAMMINA: I'm -- I'm not sure
6 that you can, you know, only because you
7 would be artificially creating the grade.

8
9 MR. MIGATZ: Well, it says finished --
10 the code says from finished grade.

11
12 CHAIRMAN MAMMINA: Yeah, but there's
13 a -- no point to do, you know, a -- a back
14 and forth. You know, I'm -- I'm -- I -- I
15 understand what you're saying and you
16 probably understand what I'm saying. You
17 know, so we can, we'll -- we'll just, it's
18 not, per se, that we can't agree, you know,
19 the argument that -- that --

20
21 MR. MIGATZ: All right.

22
23 CHAIRMAN MAMMINA: -- I think --

24
25 MR. MIGATZ: -- well, we'll --

26
27 CHAIRMAN MAMMINA: -- that --

28
29 MR. MIGATZ: -- we'll get the spot
30 elevations for you.

31
32 CHAIRMAN MAMMINA: All right. So
33 why -- why don't we hear from Mr. Klumpp and
34 then we could --

35
36 MEMBER GOODSSELL: If -- if I could
37 clarify one or two things before we hear from
38 Mr. Klumpp.

39
40 CHAIRMAN MAMMINA: Oh, I'm sorry.
41 Ms. Goodsell.

42
43 MEMBER GOODSSELL: Mr. Migatz, if we
44 could clarify one or two things, the survey
45 that you submitted as part of your
46 application says the brick terrace is under
47 construction. But when I look at the
48 property and I look at your picture, it looks
49 as if the brick terrace is, in fact,
50 finished.

1 APPEAL #21066

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3 Could we clarify that with the
4 homeowner?

5

6 MR. MIGATZ: Yeah, well, I -- I can
7 clarify that. The -- the survey was
8 originally done August 7th, 2018. It was
9 updated to add the -- the rear-yard coverage
10 calculation. The surveyor omitted to note
11 that, well, now, the terrace is complete.

12

13 MEMBER GOODSSELL: The other
14 clarification I'd like to point out is that
15 you have several times called the structure
16 on the picture a garage. But I think your
17 homeowner would indicate that it's called an
18 accessory structure, because it's actually
19 not being used as a garage, and in fact, I
20 believe contains a bathroom. There's no
21 garage doors. It is an existing -- it is a
22 structure, maybe where a garage was. But in
23 fact, it's not currently functioning as a
24 garage; is that correct?

25

26 MR. MIGATZ: That's -- that's correct.
27 And that -- that all -- all has permits.
28 That -- that bathroom has a permit a long
29 time ago from this Board.

30 I called it a garage, because on the
31 original plan in 2004, it was called a
32 garage. It's technically not a garage. It's
33 a -- it's a legal accessory structure.

34

35 MEMBER GOODSSELL: It's an accessory
36 structure.

37

38 MR. MIGATZ: With a legal bathroom.

39

40 MEMBER GOODSSELL: And the last
41 question I have for you is the photo that
42 you've submitted of a planter, this is a
43 sample; is this not correct? This is not
44 actually on the premises at this point, is
45 it?

46

47 MR. MIGATZ: No, of course not.
48 What's on the premises (inaudible) --

49

50 MEMBER GOODSSELL: Okay. So I can mark

1 APPEAL #21066

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3 this as a sample?

4
5 MR. MIGATZ: Yes.

6
7 MEMBER DONATELLI: While -- while
8 we're at it Mr. Migatz, I also have some
9 questions.

10 As I look at the plans, I see that
11 there are steps that are drawn on the
12 approved plans leading up to the new patio.
13 But as I look at your photograph which I
14 believe is Exhibit 1, I don't see those steps
15 on -- it would appear to be on the left side
16 of the -- of the patio, in the area of the
17 accessory structure that you've been
18 referring to as a garage. But was that
19 changed somehow from the plans?

20 I -- I see something covered in a
21 green tarp where I think the steps are
22 supposed to be.

23
24 MR. MIGATZ: No, the steps -- the
25 steps you see in the photograph are shown on
26 the 2004 plan.

27
28 MEMBER DONATELLI: You see the --

29
30 MR. MIGATZ: Those steps are from the
31 deck to the patio, to the terrace?

32
33 MEMBER DONATELLI: Yeah.

34
35 MEMBER HERNANDEZ: That's where the
36 barbecue is. That's where the barbecue is.

37
38 MEMBER DONATELLI: As -- as I'm
39 looking at the 2004 floor plans, the approved
40 plans, I see to the left of the -- is it Trex
41 lumber, to the left of the Trex lumber deck,
42 I see steps leading up to the new patio drawn
43 on the plans.

44
45 MR. MIGATZ: There -- there are steps
46 there, but that's not in this photograph.

47
48 MEMBER DONATELLI: Okay. And that's
49 what I'm saying, I do not see them in the
50 photograph.

APPEAL #21066

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MR. MIGATZ: No, of course.

MEMBER DONATELLI: Correct?

MR. MIGATZ: Right, but they are there. I took a photograph of the terrace, not -- not really the deck.

MEMBER HERNANDEZ: There are steps behind what appears to be a barbecue in that photograph?

MR. MIGATZ: I think that's a barbecue, yeah.

MEMBER HERNANDEZ: Behind that or because the steps in the plan are supposed to be where the barbecue is. So is that that there are steps there?

MR. MIGATZ: No, there's no steps on that side. The steps are on the right side of the deck, but all the --

MEMBER HERNANDEZ: Smack center -- smack center on the Trex deck?

MR. MIGATZ: Well, what -- what the question was -- there are -- the plan shows steps also on the right side, but they're not in the photograph. But they are there, but they're not in the photograph.

The -- the deck is not the subject of this application here. They didn't take a picture of the deck. The deck happened to be in the photograph of the terrace.

MEMBER DONATELLI: Yeah, and maybe I'm not being clear, so let me just try again.

The -- the steps lead up to the new patio. I don't think they lead up to the deck. They lead up to the new patio?

MR. MIGATZ: Right.

MEMBER DONATELLI: And as I read this photograph and the plans, I see it's probably

1 APPEAL #21066

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3 a barbecue that appears to be covered with a
4 green tarp, in the place where I think the
5 steps would be leading up to the new patio.
6 Am I reading that wrong?

7

8 MR. MIGATZ: You're reading it wrong.

9

10 MEMBER DONATELLI: All right. I also
11 don't see a stand-by generator. Is that what
12 that says?

13

14 MR. MIGATZ: (No response.)

15

16 MEMBER DONATELLI: I -- I also don't
17 see the generator, which would -- would be in
18 the vicinity of the accessory structure that
19 you're referring to as a garage. Was that
20 put in?

21

22 MR. MIGATZ: I -- I don't know and I
23 don't know why that's germane to the
24 application for the terrace.

25

26 Are you raising a new disapproval

27 notice?

28

29 MEMBER DONATELLI: I'm -- I'm trying
30 to determine whether or not the terrace, the
31 new patio was built in accordance with the
32 plans from 2004? That's really the subject
33 of my question.

34

35 MR. MIGATZ: Well, the Building
36 Department did not say it wasn't. They only
37 said that it exceeds lot coverage.

38

39 MEMBER DONATELLI: Understood.

40

41 MEMBER HERNANDEZ: Can we go back to
42 the elevations again, and that'd be the end
43 of my questions.

44

45 The approval of 2004 says that the
46 planters were not -- were not called
47 planters. They were called a retaining
48 wall 5 -- 56 inches high. And then planters
49 to be installed as per manufacturer's specs
50 and details. That's what the approval says.

51

52 So it doesn't show, at least anywhere
53 on this plan, where the new patio was

APPEAL #21066

supposed to be, the elevation of the new patio. It just shows a patio. It doesn't show what the planters were supposed to be, because they are supposed to be installed on top of the retaining wall. Am I reading that wrong?

MR. MIGATZ: No, you're reading that right. But -- but instead of buying planters, they -- they constructed their planters. Again, the Building Department didn't take issue with that -- that they didn't follow the plan. They -- they constructed the planter, as opposed to buying these planters.

It was originally explained to me, contemplated to buy the planters. Then it was decided, well, why buy them when you can build the nicer ones? Again, not -- not an issue raised by the Building Department, you know.

If you want us to rip that out and put ugly planting boxes there, you know, that can be done. I don't think that's the right decision to rip it out though, because what's -- what's the adverse -- what's the difference, vis-a-vis zoning, whether you have a pre-fabricated or a fabricated planter in your backyard with no setback? There's no difference.

MEMBER HERNANDEZ: Well, presumably planters sitting in your backyard is a -- not a structure. It's just a planter sitting in your backyard. Where you have a 5 foot high retaining wall, it's got a foundation underneath it. It's a lot more than just a planter. So there is a distinction.

MR. MIGATZ: But -- but it -- it is also serving on a -- on -- on the -- it is serving as a retaining wall in part, not the planter, but what is underneath the planter, because of the topography.

MEMBER HERNANDEZ: And I guess we don't have a topography map and that's why we can't see?

APPEAL #21066

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MR. MIGATZ: But -- but we're going to get that for you.

But look, with all due respect and you know I respect this Board, but, you know, that's seeing the forest for the trees here. And let's not get too technical, 'cause the -- what's the difference if it's a prefabricated planting box or a -- a fabricated box? What's the difference?

What you should be looking at is what's the difference? What's the adverse impact difference on the neighbor? There's none, you know.

You can over-examine this, but -- but let's not lose sight of what we could be looking at.

(Discussion held among Board Members off the record.)

CHAIRMAN MAMMINA: All right. So why -- why don't we do this at this point, let's hear from Mr. Klumpp.

MR. MIGATZ: Well -- well, all Mr. -- all Mr. Klumpp would tell you about the topography, but we'll get you a topographical spot elevation.

CHAIRMAN MAMMINA: Sure, okay. I'm -- I'm fine with that.

And Mr. Norjen?

(Stepping up.)

MR. NORJEN: Glenn Norjen, Deputy Commissioner of the Building Department.

I'm trying to keep this all straight in my mind, because I want to start off with any structure that's accessory to the main dwelling is an accessory structure.

If you look up the definition of an accessory structure in just common dictionaries, "FEMA," New York State Building Code, it basically says something along the lines of an accessory structure is a structure which is on the same parcel of

APPEAL #21066

property as a principal structure, and the use of which is incidental to the use of the principal structure. That's what an accessory structure is.

Even though our code doesn't call a swimming pool an accessory structure, or maybe it does, but it's an accessory structure. A shed is an accessory structure. Playground equipment is an accessory structure.

Any -- our code does define a structure as any accumulation of materials that forms something that's not habitable or for storage purposes. Playground equipment is a structure. It's accessory to the building. Decks are accessory structures. They're accessory to the dwelling. Anything on a property that is -- that is put together is an accessory structure.

But the argument about, well, I can go to Home Depot, and buy it, this thing, and put it that it's not an accessory structure, that would have to meet the Zoning Code, let's look at barbecues. You could go to Home Depot and buy a portable barbecue. You could put it 3 feet from the property line. We don't have any authority over that. You go to Home Depot, and you buy blocks and you build a fire pit, guess what, that's an accessory structure which our code regulates.

So the argument that I can go there and buy something pre-made or I can hire somebody and spend -- it looks beautiful, don't get me wrong. But this costs a fortune. This is an accessory structure. The terrace is an accessory structure. The planters are an accessory structure.

It's not something that, like the portable barbecue, I could remove in five minutes. No, it's something that's built. It's permanent. It's an accessory structure.

Like I said, I am trying to keep all this straight. Now -- now, the argument about, oh, the new code that was just passed. That code, in part, there was many, many things that were changed. A lot of it was to clarify things that we already have enforced. And one of those is terraces and deck.

APPEAL #21066

1
2
3 And the whole thing people have been
4 before this Board about, well, the deck is a
5 deck, but it's not attached to the house, so
6 which setbacks does it have to meet? And we
7 have taken the -- the rulings of the Zoning
8 Board in part to codify that, well, a deck
9 that is part of a swimming pool has to meet
10 the swimming pool setbacks, that a terrace,
11 or a deck, or a patio, a raised patio that is
12 a certain height and attached to -- visually
13 to the house, which this one is, even before
14 the code changed, obviously we interpreted it
15 that way, because we sent them to the Board
16 of Zoning Appeals before this code was
17 changed or revised to clarify what we've
18 always done.

19 Calling the planter a retaining wall,
20 well, that brings into the code the part that
21 says the height of the retaining wall cannot
22 be above grade. Well, this is what, 2 feet,
23 3 feet above grade, even the grade of the
24 terrace. And so if you wanted to call it a
25 retaining wall, great, well -- well, the
26 lower part of it would be a retaining wall,
27 retaining the terrace, the raised terrace
28 area. The upper part isn't.

29 Let me just check my phone for this.
30 I was doing notes.

31 And so -- so in summation, the terrace
32 we've always -- oh, that's another thing.
33 Mr. Migatz keeps on saying that the plans
34 examiner approved this. This was never
35 approved by a plans examiner. It was -- it
36 was an amendment approved by a building
37 inspector. And history has shown that
38 building inspectors don't know the zoning
39 code.

40 There was a 2002 permit. They filed
41 this amendment. Yes, it was approved by the
42 Board of Zoning Appeals -- I mean not by the
43 Building Department, but by a plans examiner
44 who looked at it -- I mean a building
45 inspector who looked at it, not a plans
46 examiner, and then approved by Deputy
47 Commissioner Joe Madden. And we understand
48 that anything that was approved by Joe Madden
49 in those days is suspect.

50 I -- I've only found one thing that he

1 APPEAL #21066

2
3 ever approved that didn't violate zoning. So
4 saying that it was approved, no errors or
5 omissions on part of the Building Department
6 shall legalize something that violated
7 zoning.

8 I think that covered it all. Any
9 questions?

10
11 CHAIRMAN MAMMINA: Any questions?

12
13 MEMBER GOODSSELL: I have a question
14 about a building permit from -- from 2004.
15 Don't building permits lapse after two years
16 and have to be renewed?

17
18 MR. NORJEN: Yeah. Well, this was a
19 2002 permit. This was a 2004 amendment.

20
21 MEMBER GOODSSELL: Okay.

22
23 MR. NORJEN: Yes, they do lapse. I
24 don't know if it was -- we'd have to -- I
25 didn't look to see if it was reactivated.

26
27 MEMBER GOODSSELL: And I see --

28
29 MR. NORJEN: But --

30
31 MEMBER GOODSSELL: -- I see --

32
33 MR. NORJEN: -- another thing that,
34 just common things that we see. If a
35 building permit from 2002, 2004 was never
36 signed off and a certificate issued, there's
37 usually a reason for it.
38 The paperwork wasn't the greatest back
39 then. But I bet you back then there was
40 questions about this and that's why it was
41 never closed out.

42
43 MEMBER GOODSSELL: So is -- is -- there
44 a gap, as Mr. Migatz pointed out, between
45 2004 and 2019, where I'm looking at a site
46 plan from 2004 and a site plan from 2019, and
47 they're not exactly the same.

48
49 MR. NORJEN: No. And that's why it's
50 all marked up and they're here now, because

APPEAL #21066

they did make changes.

MEMBER GOODSSELL: And just to go to your point back that you were first speaking of -- what is a movable temporary structure and what is a permanent structure, have we not, in the Town of North Hempstead always differentiated in sheds that you can go to Home Depot and buy, or a shed that you build on the property from different material? They're both sheds, but don't we differentiate between one is a structure and one is not a structure?

MR. NORJEN: Well, if it's -- it's by the size and also by the anchorage. If you build a portable shed, it has to be portable. It can't be anchored to the ground by our code. That's considered a portable shed. Whether you build it yourself or you go Home Depot to buy it, it's still considered a portable shed.

But if you build a 90 square foot shed and you put it on a foundation and anchor it, it no longer meets our definition of portable shed.

So and that's where I get it -- got into the barbecue, portable barbecues as compared to stationary barbecues. Portable generators, we don't regulate portable generators. But you want to put a stationary one there, we regulate it.

So that's why I'm saying the -- the planters that they show the picture of, that you can buy at Home Depot, great, that's a portable thing. You can empty the dirt out of it and move it away. You can't do that with these block planters that were built.

MEMBER GOODSSELL: Thank you.

CHAIRMAN MAMMINA: Thank you, Mr. Norjen.

MR. NORJEN: Okay, thank you.

CHAIRMAN MAMMINA: Mr. Migatz, any,

APPEAL #21066

anything else?

(Stepping up.)

MR. MIGATZ: Oh, just a few things.

Deputy Commissioner Norjen has just demonstrated the ambiguity in the zoning code and the Building Department's interpretation of what's an accessory structure. He says we don't regulate portable barbecues. You can buy that, put that on your property.

Then he says that playground equipment is an accessory structure. So if you go to Home Depot, and you buy a swing, and a barbecue, and put it in your backyard, then Deputy Commissioner Norjen says the swing is an accessory structure, but the barbecue is not. It's just another example of -- of how ambiguous the code is in accessory structures.

Now, the lawyers on the panel, all but the Chairman, know that in interpreting a statute -- Deputy Commissioner, you don't want to hear my rebuttal?

MR. NORJEN: Nah.

(Laughter.)

MR. MIGATZ: I'll take that as a good thing.

CHAIRMAN MAMMINA: I think that we laughed last time too.

(Laughter.)

MR. MIGATZ: The lawyers know that a Court never turns to Webster's Dictionary to interpret a statute, unless the statute they're interpreting is not clear.

This statute is now clear, because the code was amended to specifically add:

Porches;

Accessory porches;

Porticos;

Terraces;

And decks, as structures included in

APPEAL #21066

rear-yard coverage.

If the -- if -- if it -- if the Town Board put it there now and it wasn't there before, I don't -- I just don't think a Court is going to say we'll go with the Building Department's interpretation. It wasn't there then, it's there now. So only now does it count. And Mr. Norjen said the Local Law the Zoning Code changes were to clarify what the Building Department thought.

Well, that's not in these legislative intent of that code, of that Local Law, which reads the Board finds that it is in the best interest of the residents of the Town of North Hempstead to make amendments to Chapter "70" of the Town Code entitled zoning, nor to clarify procedural requirements -- and there were several having to do with notices, you know, and -- and traffic reports -- to eliminate duplicative and conflicting provisions, update certain outdated and obsolete provisions, and reduce the need to obtain certain common but minor variances. It does not say that the intent was to codify prior interpretations of the Building Department.

So Mr. Norjen is shooting from the hip when he says that. But I will thank Mr. Norjen, Deputy Commissioner Norjen for saying to this Board that what was built, in his word, "costs a fortune." And it was built pursuant to what was believed to be a valid permit. And the -- the reason for the gap -- and I explained that -- construction did not start until 2018. Mr. Norjen again speculated that, oh, back in 2004 they didn't sign off on it. They must have had questions about it, well, speculation on his part.

The building permit was reactivated. The construction only started in 2018. Nobody stopped the job. When they went to get the final sign off, that's when they first raised these questions.

But as Mr. -- Deputy Commissioner Norjen said, the applicant spent a fortune in good faith. And it just would be unjust whether you want to rule on the determination or grant the variance, it would be unjust to

1 APPEAL #21066

2
3 make this applicant remove what was built in
4 good faith.

5 Thank you.

6
7 CHAIRMAN MAMMINA: Okay. Thank you
8 very much.

9 And the Board will reserve [sic]
10 decision on this application. Oh, excuse me.

11
12 MEMBER DONATELLI: Continue.

13
14 CHAIRMAN MAMMINA: We will continue
15 for the spot elevations.
16 Was there anybody else who wished to
17 speak?

18
19 (No response.)

20
21 CHAIRMAN MAMMINA: No. Okay, thank
22 you.

23
24 (Discussion held among Board Members
25 off the record.)

26
27 CHAIRMAN MAMMINA: We're just going to
28 take a 10-minute break, if anyone needs to
29 use the men's or ladies' room.

30
31 (Whereupon, a recess was taken at
32 11:57 a.m. and the Hearing continued at
33 12:09 p.m.)

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1 APPEAL #21073

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3 (Stepping up.)

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5 SECRETARY WAGNER: The next appeal,
6 Appeal No. 21073, Christopher and Rachel
7 Cosolito.

8 Are you ready?

9

10 CHAIRMAN MAMMINA: Yes, I am.

11

12 SECRETARY WAGNER: 12 Plymouth Road,
13 Port Washington, section 6, block 45,
14 lot 113 in the Residence "B" Zoning District.

15 A variance from "70-101.B" to
16 construct a front porch that is too close to
17 the street.

18

19 APPEAL #21073 - Christopher & Rachel
20 Cosolito; 12 Plymouth Road, Port Washington,
21 Section 6, Block 45, Lot 113; Zoned
22 Residence-B.

23 Variance §70-101.B to construct a
24 front porch that is too close to a street.

25

26 CHAIRMAN MAMMINA: You've heard Appeal
27 No. 20173, Christopher and Rachel Cosolito.

28 Is there anyone in the room interested
29 in the application other than the applicant?

30

31 (No response.)

32

33 CHAIRMAN MAMMINA: Seeing no one,
34 please give you name and address for the
35 record.

36

37 (Stepping up.)

38

39 MS. MILLER: My name is Janice Miller,
40 I'm an architect. I'm -- I'm at 2 Lincoln
41 Place -- Place in Port Washington, New York.
42 I'm the architect for Chris and Rachel
43 Cosolito. They live at 12 Plymouth Road in
44 Port Washington.

45 We're here today 'cause they'd like
46 to build a front porch that will encroach
47 less than 1 foot from the required setback --
48 front-yard setback.

49

50 MEMBER DONATELLI: Sorry, Ms. Miller,

1 APPEAL #21073

2

3 would you mind, just if you're comfortable,
4 removing your mask.

5

6 MS. MILLER: (Shaking head no.)

7

8 MEMBER DONATELLI: You're not
9 comfortable? Okay.

10

11 MS. MILLER: Sorry -- sorry.

12

13 MEMBER DONATELLI: It's all right.
14 If you can just ask make an effort to
15 speak into the microphone.

16

17 MS. MILLER: Okay.

18

19 CHAIRMAN MAMMINA: There you go.

20

21 MEMBER DONATELLI: Thank you.

22

23 MS. MILLER: Anyway the long and short
24 of it is the road curves a little bit, so the
25 worst encroachment is 24. -- we would be
26 24.59 feet from the front. What's required
27 is 25.57, so it's really a very small
28 encroachment.

29

30 The reason we're going with that size
31 is we just want this porch to be usable. And
32 we felt if we any smaller it really would
33 be -- you know, it would look nice, but it
34 really wouldn't be very useful. So that's
35 how we arrived at the number, because after
36 the columns, you actually lose some space.
37 So it -- it protrude -- it's a 6 foot 6
38 porch. Minus the column, we really have,
39 you know, 6 feet.

39

40 It is consistent with the
41 neighborhood. It's a nice addition to this
42 home. And, you know, what else can I say?
43 It's consistent with this 1940s house, and
44 it will protect the front door from rain.

44

45 MEMBER GOODSSELL: If I could clarify
46 Ms. Miller, the front porch that is proposed
47 has columns. It's a flat porch with columns.
48 I don't see any enclosure. I don't see a
49 portico. I don't see any proposed addition
50 above the porch. It is simply the addition

1 APPEAL #21073

2

3 of the porch; is that correct?

4

5 MS. MILLER: It's a -- it's an open
6 porch, on grade basically, no railing.

7

8 MEMBER DONATELLI: Does anyone else
9 have any questions?

10

11 CHAIRMAN MAMMINA: I don't have any.

12

13 MEMBER DONATELLI: All right.
14 Mr. Chairman, I actually drove by the
15 premises yesterday in preparation for
16 this -- for this hearing. I would note
17 having reviewed the application that the --
18 the encroachment is de minimis and, in
19 fact, it is an open porch. And I personally
20 think that open porches tend to make the
21 neighborhood a little bit more inviting, a
22 little bit more opening.

23

24 And so that I make a motion that we
25 grant the application.

25

26 CHAIRMAN MAMMINA: Okay. We have a
27 motion from Mr. Donatelli.

28

29 Do we have a second?

30

31 MEMBER HERNANDEZ: Second.

32

33 MEMBER GOODSSELL: I'll second it.

34

35 CHAIRMAN MAMMINA: We'll give it to
36 the young lady down there. So Ms. Goodsell
37 is the second.

37

38 (Laughter.)

39

40 CHAIRMAN MAMMINA: Please poll the
41 Board.

42

43 SECRETARY WAGNER: Member Hernandez?

44

45 MEMBER HERNANDEZ: Aye.

46

47 SECRETARY WAGNER: Member Goodsell?

48

49 MEMBER GOODSSELL: Aye.

50

1 APPEAL #21073

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3 SECRETARY WAGNER: Member Donatelli?

4

5 MEMBER DONATELLI: Aye.

6

7 SECRETARY WAGNER: Vice-Chairman

8

Francis?

9

10 VICE-CHAIRMAN FRANCIS: Aye.

11

12 SECRETARY WAGNER: Chairman Mammina?

13

14 CHAIRMAN MAMMINA: Aye.

15

16 The application is granted.

17

18 MS. MILLER: Thank you.

19

20 CHAIRMAN MAMMINA: Thank you.

21

22 MEMBER DONATELLI: Thank you.

23

24 (Chairman Mammina exits the hearing.)

25

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1 APPEAL #21083

2

3 (Stepping up.)

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5 SECRETARY WAGNER: The next appeal,
6 Appeal No. 21083, Vijay Seetheram,
7 239 Hillturn Lane in Roslyn Heights,
8 section 7, block M08, lot 84 in the Residence
9 "B" Zoning District.

10 Variances from:

11 "70.40.C;"

12 "70-41;"

13 "70-208.F," to construct a portico too
14 close to the street and to construct
15 additions with total side yards, which are
16 too small on a non-conforming home.

17

18 APPEAL #21083 - Vijay Seetheram;
19 239 Hillturn Ln., Roslyn Heights, Section 7,
20 Block M08, Lot 84; Zoned Residence-B.

21 Variances §§ 70-40.C, 70-41 & 70-208.F
22 to construct a portico too close to the
23 street, and to construct additions with total
24 side yards which are too small on a
25 non-conforming home.

26

27 VICE-CHAIRMAN FRANCIS: You've heard
28 Appeal No. 21083, Vijay Seetheram.

29 Is there anyone interested in the
30 application other than the applicant?

31

32 (No response.)

33

34 VICE-CHAIRMAN FRANCIS: I see -- was
35 that a hand in the back?

36

37 MR. PERROTTA: I don't see one.

38

39 VICE-CHAIRMAN FRANCIS: Oh.

40 Seeing no one, please give your name
41 and address.

42

43 (Stepping up.)

44

45 MR. ADRAGNA: Good afternoon. My name
46 is Guiseppe Adragna of Adragna Designs. My
47 business address is 29 Main Street,
48 Cold Spring Harbor, New York 11724. I am the
49 architect, the -- for the homeowners at
50 239 Hillturn Lane in Roslyn Heights, Mr. and

APPEAL #21083

Ms. Seetheram.

We're proposing additions for the existing house. And to do so, variances are required for insufficient -- excuse me, for insufficient setbacks.

Currently, the lot contains a -- a two-story framed dwelling with an attached garage. And our proposed additions expand and open up the living spaces on the first floor, while the second-floor revisions allow for larger bedrooms, but not increasing the overall bedroom count.

So the grant of our application will not affect the health, welfare or safety of the neighborhood, nor will it adversely affect the character of the neighborhood.

This proposed improvement cannot reasonably be achieved without requiring setback variances, starting with the point, that this is a pre-existing non-conforming building. Therefore, any proposed additions that we do propose will require us to come to this Board for any approvals.

The existing one-story living room to the right or the west side of the house is only 2.4 feet from the side lot line. So this greatly impacts the required aggregate side-yard setbacks, triggering a variance.

It is worth noting that our proposed additions towards the east side are zoning compliant and all the second-story work complies with the setbacks as well.

The other setback variance we are requesting is for a front-yard setback. We are proposing a front-entry portico to the existing front door. And zoning regulations, they allow for a one-story front portico to encroach up to 5 feet into a required front-yard setback. So the portico that we are proposing, by definition, is greater than one story. So therefore, it requires a variance.

Please note that this portico is -- it's not nearly an imposing two-story portico, albeit it is greater than a one-story. So it's -- it's not an opposing two-story, but it is greater than one-story by definition. And if it were a one-story

APPEAL #21083

portico, it would comply with front-yard setback requirements. So based on the height being a little larger than allowable, another variance is required for that setback.

These requested variances, they are not substantial. The benefit to the applicant outweighs any detriment to the neighborhood.

And I note that the proposed work does also include a transformation to the overall character of this building. And it greatly increases the aesthetic of the neighborhood.

Right now, the house has vinyl siding and the second floor walls, they kind of taper in and out. It looks like a dated "mansard roof," but they are walls and -- and not roof.

So it looks awkward right now and the roof pitch is different. So thus creating this new stucco façade building is greatly -- it's greatly improving the aesthetic of the neighborhood.

So we're -- we're improving the house. We're here mainly because it's a pre-existing non-conforming, although we are not making those non-conforming issues worse. The second is it that front portico. Because it is greater than one story in height, it does not -- it does not allowed it to be considered for the portico encroachments that are allowed.

VICE-CHAIRMAN FRANCIS: It's still a very large portico. It's larger than we normally would grant.

MR. ADRAGNA: Yes.

VICE-CHAIRMAN FRANCIS: So other than the aesthetics of the -- of the portico, is there any other reason for it to be this large?

MR. ADRAGNA: So the existing entry to the house, it sticks out from the mass of the house for what's about 5 1/2 feet. And it is the height of the portico that we're proposing.

1 APPEAL #21083

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So the roof covering that one-story existing entry is just being extended into the portico. So it's -- it's the same roof line that exists on the one -- the existing entry bump. And we're kind of just pushing that forward, so it is not a lower roof stepped inside.

MEMBER HERNANDEZ: I'm -- I'm trying to understand, I'm -- I'm looking at a picture of the house.

MR. ADRAGNA: Yes.

MEMBER HERNANDEZ: The existing house. And I don't know if you have one that you can show our -- our Vice-Chairman. What is in that half floor above the front portico now? Is that just open space?

MR. ADRAGNA: It is -- it is in that small entry area. It's not in the second floor. It's not storage, because there's a bathroom behind it. It's just a mass --

MEMBER HERNANDEZ: So you walk in, and you have an opening and then you have a wall behind it?

MR. ADRAGNA: Yes.

MEMBER HERNANDEZ: I would suggest you bring the wall down and bring it to the (inaudible) --

MR. ADRAGNA: I should bring it flat in the inside.

MEMBER HERNANDEZ: It would look much nicer than having a hole in the ceiling.

MR. ADRAGNA: It would look nicer on the inside, but my -- my argument is the outside. The height of this portico on the outside does work with the design that we are proposing.

MEMBER HERNANDEZ: Yeah, the -- the

1 APPEAL #21083

2
3 problem is that we do not like to see
4 porticos that are that "grandiose" in a [sic]
5 area that is not of that type.

6 If you look in the area -- and we do
7 drive around all the houses. We just can't
8 always remember them, so I -- I photograph
9 them individually.

10
11 MR. ADRAGNA: Of course.

12
13 MEMBER HERNANDEZ: When you drive
14 through that neighborhood, you don't see
15 those 1 1/2, 2-story tall porticos as a
16 normal.

17
18 MR. ADRAGNA: Uh-huh.

19
20 MEMBER HERNANDEZ: There may be an
21 exceptional one once in a while, but you
22 generally don't see them. So we -- we shy
23 away from approving those, unless there is a
24 specific reason why it needs to be.

25 You are resurfacing the house, so it's
26 not a question of cost clearly.

27
28 MR. ADRAGNA: Yes.

29
30 MEMBER HERNANDEZ: Then it would seem
31 to me much more appropriate to surrender
32 empty space of 4 or 5 feet above an entryway
33 that's empty space that you have to heat?

34
35 MR. ADRAGNA: Correct. It is -- it is
36 empty space on the inside. It does give the
37 homeowners that front entry and iron door
38 look that -- that they do desire.

39
40 MEMBER HERNANDEZ: Yes.

41
42 MR. ADRAGNA: And although the
43 1 1/2-story portico might be out of character
44 for a house in the area, the actual house
45 that we're proposing is a stucco-improved
46 house. It is not uncharacteristic of those
47 on the --

48
49 MEMBER HERNANDEZ: Yup, that's --
50

1 APPEAL #21083

2

3 MR. ADRAGNA: -- on the street.

4

5 MEMBER HERNANDEZ: -- correct.

6

7 MR. ADRAGNA: So there are improved
8 houses. People are spending money. They are
9 also using stucco in so the material is not,
10 you know, it's not outlandish.

11

12 MEMBER HERNANDEZ: No -- no, that's
13 agreed.

14

15 MR. ADRAGNA: But we do -- we do like
16 the aesthetic look of the bold iron window
17 above the front door.

18

19 MEMBER HERNANDEZ: And as the Chairman
20 says, we're not an aesthetic board. But we
21 do shy away from approving those, except in
22 very, very, very rare circumstances.

23

24 I've been here for six years. I
25 honestly can't remember approving one so far.

26

27 With regards to your other requests
28 for approval, from what I can see, it appears
29 that you are -- there is -- you're basically
30 adding two little sections to the house;
31 correct?

32

33 MR. ADRAGNA: To the footprint, we're
34 adding to the space.

35

36 MEMBER HERNANDEZ: Right, you're
37 adding to the -- the rear left corner?

38

39 MR. ADRAGNA: Uh-huh.

40

41 MEMBER HERNANDEZ: So you're keeping
42 in line with the --

43

44 MR. ADRAGNA: With the building.

45

46 MEMBER HERNANDEZ: -- with the
47 building.

48

49 MR. ADRAGNA: And they do respect
50 setbacks.

51

52 MEMBER HERNANDEZ: Okay.

APPEAL #21083

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MR. ADRAGNA: The aggregate is the problem.

MEMBER HERNANDEZ: Is -- is a problem, okay fine.

And in the back, you're bumping out a little bit?

MR. ADRAGNA: Correct.

MEMBER HERNANDEZ: Yeah -- yeah. I, as one Board Member, have no objection to those two requests.

I do have a problem with the 1 1/2 front portico.

VICE-CHAIRMAN FRANCIS: You know, and part -- part of the -- part of the reason behind our thinking is that you're already building too close to the street. So to build something that's, you know, much larger than normal just makes it look that much closer to the street.

MR. ADRAGNA: My -- my argument is how much larger it is. I -- I agree it is larger than required. We're -- we're allowed a one-story portico. This is more of a 1 1/2 stories. It is -- the parts that are encroaching into the front-yard setbacks are exterior outdoor space, since it's just a roof being held up by the columns. The height of that roof was determined by the existing house, which -- which you mentioned is in the existing house. It's not necessarily something I would propose as a new structure.

VICE-CHAIRMAN FRANCIS: Right.

MR. ADRAGNA: But we're kind of just maintaining what they do have and they're comfortable with. So we -- we did use that as a factor to -- to move forward with the design to get to where we are today.

MEMBER HERNANDEZ: Okay. They will

1 APPEAL #21083

2

3 have better -- better rain cover and snow
4 cover if it was a one-story portico versus a
5 1 1/2-story.

6

7 MR. ADRAGNA: Right, I don't disagree
8 with you.

9

10 MEMBER HERNANDEZ: The snow drift is
11 a lot smaller with a one-story portico than a
12 1 1/2.

13

14 VICE-CHAIRMAN FRANCIS: That is true.
15 Anyone have anything else?

16

17 MEMBER DONATELLI: I -- I think I
18 would just also note for the record that we
19 are not increasing the aggregate side-yard
20 encroachment. It -- it is -- it is not
21 increasing from where it is right now.

22

23 VICE-CHAIRMAN FRANCIS: Right.

24

25 MEMBER HERNANDEZ: I don't have
26 anything else.

27

28 MEMBER DONATELLI: I don't have
29 anything else.

30

31 (Discussion held among Board Members
32 off the record.)

33

34 (Chairman Mammina enters the hearing.)

35

36 MEMBER HERNANDEZ: Mr. Chairman and
37 Vice-Chairman, I -- I move that we grant the
38 application in part, we grant the extensions
39 I think they're asking for on the side and
40 the rear of the house, but deny the
41 1 1/2-story portico in the front.

42

43 Did I say that properly?

44

45 VICE-CHAIRMAN FRANCIS: Yeah, I think
46 that came out right.

47

48 ATTORNEY ALGIOS: So just to clarify
49 then, so you're denying the variance --

50

MEMBER HERNANDEZ: The front portico.

1 APPEAL #21083

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3

4 ATTORNEY ALGIOS: -- under variance

5 "70-40.C" --

6

7 MEMBER HERNANDEZ: The front portico.

8

9 VICE-CHAIRMAN FRANCIS: Correct.

10

11 ATTORNEY ALGIOS: -- the front
12 portico. And you're granting the variances
13 for "70-41" and "70-208.F."

14

15 MEMBER HERNANDEZ: Which are the side
16 yard.

17 ATTORNEY ALGIOS: Side yard and the
18 non-conforming building.

19

20 MEMBER HERNANDEZ: Correct.

21

22 MEMBER DONATELLI: And I'm -- I'm
23 sorry, before we vote on that, may I just
24 seek a clarification?

25 So if the applicant were to want to
26 amend his application to include --

27

28 MEMBER HERNANDEZ: A one-story --

29

30 MEMBER DONATELLI: -- a one-story
31 portico --

32

33 MEMBER HERNANDEZ: -- yes, than we
34 would grant --

35

36 MEMBER DONATELLI: -- then he would be
37 free to do that --

38

39 MEMBER HERNANDEZ: -- yes, thank you.

40

41 MEMBER DONATELLI: -- through the
42 Building Department.

43

44 MEMBER HERNANDEZ: Well, fight, it
45 wouldn't be "as-of-right" because of --

46

47 ATTORNEY ALGIOS: We do need a
48 variance for that.

49

50 MEMBER HERNANDEZ: - the

1 APPEAL #21083

2

3 (inaudible) --

4

5 MEMBER DONATELLI: It wouldn't be
6 "as-of-right" because that would be through
7 the Building Department.

8

9 ATTORNEY ALGIOS: Right.

10

11 MEMBER HERNANDEZ: Is that encroaching
12 into the -- past the 5 feet?

13

14 MR. ADRAGNA: That would have been --
15 not require a variance for one-story.

16

17 VICE-CHAIRMAN FRANCIS: It would still
18 be to close to the setback.

19

20 MEMBER DONATELLI: It might require a
21 variance --

22

23 MEMBER HERNANDEZ: Okay, fine that
24 would be the 5 feet --

25

26 MR. ADRAGNA: If it is low enough to
27 be considered a one-story portico, I would
28 not need a variance --

29

30 MEMBER HERNANDEZ: All right.

31

32 MEMBER DONATELLI: Okay, fine.

33

34 MR. ADRAGNA: -- for locating the
35 portico (inaudible) --

36

37 MEMBER HERNANDEZ: We just wanted to
38 grant it in case you needed it.

39

40 MR. ADRAGNA: Okay, thank you.

41

42 MEMBER HERNANDEZ: We didn't want you
43 to have to come back.

44

45 MR. ADRAGNA: Right. So my -- my next
46 job is to redesign the look of the front of
47 the house, show the homeowner --

48

49 MEMBER HERNANDEZ: Yes.

50

1 APPEAL #21083

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MR. ADRAGNA: -- this complies. And once they give me the thumbs up, I submit for a permit and I am free with this (indicating) as well?

MEMBER DONATELLI: Well, why don't we find out first if there are any other interested parties and then we need to vote.

VICE-CHAIRMAN FRANCIS: Yeah, I don't believe there was, I asked.

MR. ADRAGNA: Yes.

VICE-CHAIRMAN FRANCIS: And I didn't see any hands.

MEMBER DONATELLI: Okay.

SECRETARY WAGNER: Is there anyone else here interested in this application?

(No response.)

MEMBER DONATELLI: All right. So did you make a motion?

MEMBER HERNANDEZ: I'll move -- I make a motion.

MEMBER DONATELLI: And I'll second.

VICE-CHAIRMAN FRANCIS: We have a motion and we have a second. Ginny, please poll the Board.

SECRETARY WAGNER: Member Goodsell?

MEMBER GOODSSELL: Aye, with respect to two of the three --

MEMBER HERNANDEZ: You can vote aye to all of it, because we denied the other half.

MEMBER GOODSSELL: Aye then.

SECRETARY WAGNER: Member Hernandez?

1 APPEAL #21083
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3 MEMBER HERNANDEZ: Aye.
4
5 SECRETARY WAGNER: Member Donatelli?
6
7 MEMBER DONATELLI: Aye.
8
9 SECRETARY WAGNER: Vice-Chairman
10 Francis?
11
12 VICE-CHAIRMAN FRANCIS: Aye.
13
14 SECRETARY WAGNER: Chairman Mammina.
15
16 CHAIRMAN MAMMINA: I will not be
17 voting, because I had to step out of the room
18 for part of the application.
19
20 SECRETARY WAGNER: Oh, okay.
21
22 VICE-CHAIRMAN FRANCIS: So the
23 application is granted in part, and denied in
24 part with respect to the front portico.
25
26 MR. ADRAGNA: All right. Board
27 Members, thank you for your time and thank
28 you for the -- the approval of the bulk of --
29
30 MEMBER HERNANDEZ: Thank you.
31
32 MR. ADRAGNA: -- the variances that
33 are very necessary for us.
34 And that's it, we don't have to see
35 you again, not for this project.
36
37 MEMBER HERNANDEZ: No problem.
38
39 MEMBER DONATELLI: Nothing personal.
40
41 MR. ADRAGNA: That's a great thing, in
42 my opinion.
43 Enjoy the rest of your day.
44
45 MEMBER DONATELLI: You too.
46
47 VICE-CHAIRMAN FRANCIS: Take care.
48 Have a good day.
49
50 * * *

1 APPEAL #21084

2

3 (Stepping up.)

4

5 SECRETARY WAGNER: The next appeal
6 is Appeal No. 20184, James Messina, 50 Van
7 Nostrand Avenue, Roslyn Heights, section 7,
8 block 17, lot 115 in the Residence "C" Zoning
9 District.

10 Variances from "70.100.2.A(4)" and
11 "70-100.2H," to legalize a fence that is too
12 tall and to legalize an air conditioning
13 located too close to the side property line.

14

15 APPEAL #21084 - James Messina;
16 50 Van Nostrand Ave., Roslyn Heights,
17 Section 7, Block 17, Lot 115; Zoned
18 Residence-C.

19 Variances §§ 70-100.2.A(4),
20 70-100.2.H to legalize a fence that is too
21 tall and to legalize an air
22 conditioning unit located to close to a side
23 property line.

24

25 CHAIRMAN MAMMINA: You've heard Appeal
26 No. 21084, James Messina.

27 Is there anyone in the room interested
28 in the application other than the applicant?

29

30 (No response.)

31

32 CHAIRMAN MAMMINA: Seeing no one,
33 please give your name and address.

34

35 (Stepping up.)

36

37 MR. RODGERS: Mr. Chairman, members of
38 the Board, Bernie Rodgers, architect. My
39 office is located at 2150 Wantagh Park Drive,
40 Wantagh, New York 11793. And I'm before you
41 today representing my client, James Messina
42 who is with us. He is the owner of
43 50 Van Nostrand Avenue, Roslyn Heights,
44 New York 11577, zoned Residence "C" by the
45 Town of North Hempstead.

46 We are seeking to maintain my client's
47 front-facing fencing and their existing air
48 conditioner unit.

49 My clients purchased this property in
50 1994. I'd like to submit copies of the

APPEAL #21084

fencing and the air conditioning units at this time (handing).

MR. PERROTTA: (Receiving.)
(Handing.)

SECRETARY WAGNER: (Receiving.)
So we'll enter this into the record as Exhibit 1.

MR. RODGERS: My clients have two sections of front-facing fencing. They are both 5 feet in height, where the code only allows for 4 feet high. The first section is at the north side of their property at their driveway. It is approximately 10 feet in length and is set back approximately 26 feet from the front building line of the house.

This fence abuts the next door neighbor's fence at 44 Van Nostrand Avenue. The neighbor's fence is of similar height. This situation is shown on picture 1. As you can see in the photo, this section of fence consists of two gates, which allows access to the backyard and to the garage.

The other section of front-facing fencing is at the south side of my client's property. It is approximately 5 feet in length and consists of a gate to access the rear of the property. It is set back approximately 6 feet from the front building line of the house. This is illustrated in photo number 2.

I'd like to note that these sections of fencing, along with the rest of the 5 foot high vinyl fencing on the Messina's property was installed in 2004. It replaced wood stockade fencing that was the same height. This fencing is well maintained and it has never been any sort of issue for the neighbors.

My client's exterior air conditioning unit is located on the south side of their property. It is 11 inches off of the side property line, where a minimum of 3 feet is required.

This unit was installed in 1994. It is well maintained and has never been an

APPEAL #21084

issue for the next door neighbor. This air conditioner unit is shown on the submitted pictures 3, 4 and 5.

Upon discovering that the unit was installed in a location that is not code-compliant, my client sought estimates to have it relocated. To do so would mean that the unit would have to be relocated over 30 linear feet behind their house.

My client got an estimate for the relocation from an HVAC company, Redmond (phonetic) Plumbing along with a separate estimate from an electrician, Brosnan Electric for the required work. The plumbing work for the relocation would come to a total of \$2,875, with an additional cost of 475 for the electric, bringing to a grand total of \$3,350.

The HVAC company stated that due to the age of the unit, they could not guarantee that it could be moved and continue to function properly. If that was the case, they then quoted a case of a cost of replacement for the unit \$9,789, plus the electrical cost, coming to a total of \$10,264.

I'd like to submit copies of these estimates to the Board at this time (handing).

SECRETARY WAGNER: (Receiving.)

This will be entered into the record as Exhibit 2.

MR. RODGERS: We feel that if they were forced to move this air conditioning unit, it would be a tremendous financial hardship to the Messinas. If they were to have to move it, there would be an issue that they'd have to potentially replace it, thus escalating the costs.

As I had mentioned, the unit is very well maintained and it is in fine operating condition.

Mr. Messina has spoken with his two next door neighbors, Karen Cantrell at 44 Van Nostrand Avenue, and Lorraine Sluka at 75 Maple Street. He has explained to them

APPEAL #21084

the situations with the fencing, and the air conditioner unit and why we must come before the Board to seek relief. They have both said that they completely understand and have no issues with either the fencing or the A/C unit. And they have both signed notarized consent letters that I'd like to submit at this time (handing).

MR. PERROTTA: (Receiving.)
(Handing.)

SECRETARY WAGNER: (Receiving.) These will be entered as Exhibit 3.

MR. RODGERS: We believe that if approved, these items would have no negative effect on the neighboring properties or the neighborhood in general.

So in conclusion, we'd like to thank you very much for your time and consideration with hearing our requests.

CHAIRMAN MAMMINA: All right. So I -- I guess as -- as I see this, 5 foot fences are permitted in a side yard, as long as they don't go past the front of the house.

The issue here in terms of the fencing is the -- are the two gates that face the street, which are 5 feet, and then also the location of the air conditioning equipment, which is 11 inches from the side property line. Would you agree with that --

MR. RODGERS: Correct.

CHAIRMAN MAMMINA: -- Mr. Rodgers?

MEMBER GOODSELL: And Mr. Rodgers, if I can ask, you indicated the homeowner bought the property in 1994 and the air conditioning unit was put in, in 1994. Was that put in by the owner?

A VOICE: Yes, it did.

MR. RODGERS: Yes, it was.

1 APPEAL #21084

2
3 MEMBER GOODSSELL: Thank you.

4
5 MEMBER HERNANDEZ: And you mentioned
6 there were -- there were -- it was a picket
7 fence before that was replaced. When was
8 that picket fence replaced, the year?

9
10 MR. RODGERS: In 2004.

11
12 MEMBER HERNANDEZ: 2004?

13
14 MR. RODGERS: Correct. And it was the
15 same 5 foot high as the current vinyl fencing
16 is.

17
18 CHAIRMAN MAMMINA: So here I guess
19 the -- the issue is that -- that I have, I
20 mean the -- the air conditioning equipment in
21 a Residence "C" is difficult to have in a
22 side yard. And that is the reason why the
23 Town Board, you know, gave it some leeway,
24 you know, on that. In a Residence "B," it
25 can work, because you -- you have a -- a --
26 you have a 7 foot side yard.

27
28 MR. RODGERS: Side yard.

29
30 CHAIRMAN MAMMINA: You know, with a --
31 with a 5 foot side yard, your -- your
32 equipment is going to be at least 30 inches,
33 you know, and -- and you got to pull it away
34 from the wall some, you know, as -- you know,
35 as well? The -- the fencing itself is -- is
36 legal except for the gates.

37 Now, we usually take a hard line on
38 anything facing the street just maintaining,
39 you know, what, you know, for a lot of years,
40 you know, we call that the "4, 5, 6"
41 unofficial rule of the Zoning Board, you
42 know, where we would grant 4 feet at the back
43 line of the house, and we would grant 5 feet
44 on the sides and we would grant 6 feet across
45 the -- the back. And the Town Board then did
46 choose to codify that, and that that was the
47 zoning. And it cut down on a lot of our
48 applications.

49 The question is how -- how do -- how
50 do we separate this one from other people who

1 APPEAL #21084

2
3 ask for the same thing?

4
5 MR. RODGERS: As I noted, this -- this
6 is kind of unique in that it's not right at
7 the front building line of the house.

8
9 CHAIRMAN MAMMINA: Yeah, but it's --

10
11 VICE-CHAIRMAN FRANCIS: It's still
12 facing it.

13
14 CHAIRMAN MAMMINA: It's still allowed
15 to be.

16
17 MR. RODGERS: It's still front facing.

18
19 CHAIRMAN MAMMINA: Yeah. Look, I
20 always -- I always wrestle with, you know,
21 with this. But what I, you know, what -- and
22 -- and the Town Board went back and forth,
23 you know, with these kinds of things and a
24 few other scenarios that were -- that were
25 difficult. And this is where, you know,
26 where we ended up. When I say we, I mean
27 the Town Board, and the Zoning Board and --
28 and the Planning Department.

29 Would your -- would your client be
30 willing to make those two gates 4 feet?

31
32 MR. RODGERS: If you don't mind, I
33 could bring Mr. Messina up for you.

34
35 CHAIRMAN MAMMINA: You can just ask
36 him the question or he can come on up,
37 whatever he wants.

38
39 (Stepping up.)

40
41 CHAIRMAN MAMMINA: Just give your name
42 and address, Mr. Messina.

43
44 MR. MESSINA: James Messina,
45 50 Van Nostrand Avenue, Roslyn Heights.
46 Would I be willing to lower the gate
47 to 4?

48
49 CHAIRMAN MAMMINA: No, those two
50 gates, okay, you know, to me granting the air

1 APPEAL #21084

2
3 conditioning unit with that gate in place
4 even, you know, at 4 feet, you're not going
5 to see the air conditioning equipment. And
6 again, part of what promulgated the Town
7 Board in its -- in its wisdom to permit some
8 setback was that what we would usually say
9 is okay, we can put landscaping that's
10 evergreen landscaping in front of it, so
11 nobody sees the front of it.

12
13 MR. MESSINA: Yeah.

14
15 CHAIRMAN MAMMINA: So I mean what --
16 what I'm saying, you know, is if -- if we
17 can screen it and have 4 foot fencing, so
18 that -- so that we -- so that we don't set a
19 precedent by saying it's okay in this case,
20 but it's not in all the other cases that we
21 routinely disapprove, you know, then you get
22 your air conditioning unit, we maintain the
23 fencing standard, you know, and everybody's a
24 little unhappy.

25
26 MR. MESSINA: That's fine -- that's
27 fine. That's fine, okay.

28
29 CHAIRMAN MAMMINA: Okay, I'm one Board
30 Member. I don't know what everybody else
31 thinks, but 4 feet would be -- and you could
32 even screen.

33
34 MEMBER HERNANDEZ: Yeah.

35
36 MEMBER DONATELLI: Yeah, I would
37 agree. I -- I would just like to note for
38 the record that of course, because this is
39 Residence "C," the survey is only showing
40 4 feet 9 inches.

41
42 MEMBER HERNANDEZ: In the front.

43
44 CHAIRMAN MAMMINA: 4.9, so it's really
45 about 4 foot 10 1/2.

46
47 MEMBER DONATELLI: Okay, well it's --

48
49 MEMBER HERNANDEZ: It's 5 1 in the
50 back.

APPEAL #21084

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MEMBER DONATELLI: -- it's under 5 feet of clearance between the side of the house and the side yard lot line, so that in all intents and purposes it really would be -- well, it would be impossible to have the clearance given the width of the unit.

VICE-CHAIRMAN FRANCIS: Right.

MEMBER DONATELLI: Also, I am -- as one Board Member, I'm persuaded by the estimates that the applicant has provided for the costs of relocating the -- the A/C unit in an area that would be compliant. So I -- I would be of the same opinion.

CHAIRMAN MAMMINA: All right. And then also, what I would suggest is maybe talk to your neighbor next door into doing that same thing for his, and then he won't have a problem with his. But -- but not that I'm suggesting that you should turn your neighbor in, you know, that's not good.

(Laughter.)

MR. MESSINA: Yeah.

CHAIRMAN MAMMINA: That's -- that's not a good thing to do. We don't like to create trouble; all right?

So we -- we have a motion.

Do we have a second?

MEMBER DONATELLI: I -- yeah, so I -- I make a motion that we deny the application pertaining to the fence, so that the fence be -- be made compliant at 4 feet, but that we approve the application as same extends to the grant of the A/C.

CHAIRMAN MAMMINA: Okay. So do we have a -- a second to that motion?

MEMBER HERNANDEZ: Second.

CHAIRMAN MAMMINA: Seconded by

1 APPEAL #21084
2
3 Mr. Hernandez.
4 So if you can please poll the Board.
5
6 SECRETARY WAGNER: Member Goodsell?
7
8 MEMBER GOODSELL: Aye.
9
10 SECRETARY WAGNER: Member Hernandez?
11
12 MEMBER HERNANDEZ: Aye.
13
14 SECRETARY WAGNER: Member Donatelli?
15
16 MEMBER DONATELLI: Aye.
17
18 SECRETARY WAGNER: Vice-Chairman
19 Francis?
20
21 VICE-CHAIRMAN FRANCIS: Aye.
22
23 SECRETARY WAGNER: Chairman Mammina?
24
25 CHAIRMAN MAMMINA: Aye.
26 So the application is granted as
27 modified.
28 Okay, very good.
29
30 MR. MESSINA: Very good. Thank you
31 very much.
32
33 SECRETARY WAGNER: So was that --
34 wouldn't that partially a denial on that --
35
36 MEMBER DONATELLI: Yes, it's a denial.
37
38 SECRETARY WAGNER: Granted in part and
39 denied in part.
40
41 MEMBER DONATELLI: Exactly.
42
43 CHAIRMAN MAMMINA: Right. Granted in
44 part and denied in part, yes.
45 Okay.
46
47 MR. RODGERS: Thank you for your time.
48 Enjoy the rest of your summer now.
49
50 CHAIRMAN MAMMINA: Thank you very

1 APPEAL #21084
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3 much. I appreciate it.
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1 APPEAL #21085

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3 (Stepping up.)

4

5 SECRETARY WAGNER: The next appeal is
6 Appeal No. 20185, Lewis Giannopoulos,
7 22 Irving Lane in New Hyde Park, section 8,
8 block K4, lot 17 in the Residence "C" Zoning
9 District.

10 Variances from "70-50.C" and
11 "70-52.3," to legalize a new single-family
12 dwelling that is within a sky exposure
13 plane -- or is within the sky exposure plane
14 and to legalize a portico that is located too
15 close to the street.

16

17 APPEAL #21085 - Lewis Giannopoulos;
18 22 Irving Lane, New Hyde Park; Section 8,
19 Block K-4, Lot 17; Zoned Residence-C.

20 Variances from §§70-50.C and 70-52.3
21 to legalize a new single-family dwelling that
22 is within the sky exposure plane and to
23 legalize a portico that is located too close
24 to the street.

25

26 CHAIRMAN MAMMINA: You've heard Appeal
27 No. 21085, Lewis Giannopoulos.

28 Is there anyone in the room interested
29 in the application other than the applicant?

30

31 (No response.)

32

33 CHAIRMAN MAMMINA: Seeing no one,
34 please give your name and address.

35

36 (Stepping up.)

37

38 MR. GIANNOPOULOS: Lewis Giannopoulos,
39 22 Irving Lane, New Hyde Park.

40

41 CHAIRMAN MAMMINA: Okay
42 Mr. Giannopoulos, good -- good morning.
43 Is it morning or afternoon?

44

45 MEMBER HERNANDEZ: No, it's afternoon.
46 It's afternoon.

47

48 CHAIRMAN MAMMINA: See, time flies
49 when you are having fun.

50

1 APPEAL #21085

2
3 (Laughter.)

4
5 CHAIRMAN MAMMINA: The floor is yours.
6 Go ahead.

7
8 MR. GIANNOPOULOS: I'm here to
9 legalize my house that's within the sky
10 exposure plane and to legalize my portico.

11
12 VICE-CHAIRMAN FRANCIS: Go ahead.

13
14 CHAIRMAN MAMMINA: So I guess the --

15
16 VICE-CHAIRMAN FRANCIS: Give us your
17 arguments for it.

18
19 MR. GIANNOPOULOS: Oh. I -- I don't
20 know, I was told to come here and get a
21 variance. I have no idea.

22
23 VICE-CHAIRMAN FRANCIS: Mr. Giannopoulos,
24 I don't believe that you're prepared to make
25 a [sic] application that would support what
26 you want to do here today.

27
28 MR. GIANNOPOULOS: Yeah.

29
30 VICE-CHAIRMAN FRANCIS: And we don't
31 want -- we want to give you a fair hearing
32 with regard to your application.

33
34 MR. GIANNOPOULOS: Okay.

35
36 VICE-CHAIRMAN FRANCIS: I would
37 suggest, as one Board Member, that you
38 adjourn this hearing and that you bring your
39 architect or somebody --

40
41 MR. GIANNOPOULOS: I see.

42
43 VICE-CHAIRMAN FRANCIS: -- to make the
44 argument for you.

45
46 MR. GIANNOPOULOS: Gotcha. All right.

47
48 CHAIRMAN MAMMINA: Which is your
49 prerogative. I mean you --
50

1 APPEAL #21085

2

3 MR. GIANNOPOULOS: Oh no, that's fine.

4

5 VICE-CHAIRMAN FRANCIS: I mean you can
6 go forward if you'd like.

7

8 MR. GIANNOPOULOS: No -- no -- no. I
9 was going to bring in my architect, but they
10 just said go on over, so I was like --

11

12 CHAIRMAN MAMMINA: All right, see,
13 because, you know --

14

15 SECRETARY WAGNER: Who -- who said
16 that you could come without an architect?

17

18 MR. GIANNOPOULOS: I -- I spoke to
19 many people. They just said go along, see
20 what they say and then bring your architect
21 if you need to. And I said okay.

22

23 CHAIRMAN MAMMINA: But if we deny it,
24 you know --

25

26 MR. GIANNOPOULOS: I don't want it to
27 be denied, so I'll bring my architect.

28

29 VICE-CHAIRMAN FRANCIS: No, of course
30 not.

31

32 CHAIRMAN MAMMINA: Yeah -- yeah, but
33 this is a -- it's a brand new structure?

34

35 MR. GIANNOPOULOS: Correct.

36

37 CHAIRMAN MAMMINA: So someone's got to
38 speak to how did -- how did we end up here.

39

40 MR. GIANNOPOULOS: Well, I know how we
41 ended up here. But if you want him to
42 explain it, that's fine.

43

44 VICE-CHAIRMAN FRANCIS: Well, yeah.
45 It's in your best interest, because if we
46 deny the application, you got to tear your
47 house down.

48

49 MR. GIANNOPOULOS: I didn't build it
50 yet.

1 APPEAL #21085

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3

4 VICE-CHAIRMAN FRANCIS: I thought he
5 did build it.

6

7 MEMBER HERNANDEZ: No -- no.

8

9 MEMBER DONATELLI: The -- the decision
10 is yours as to whether or not you want to
11 proceed.

12

13 MR. GIANNOPOULOS: Yeah, I'll adjourn
14 it. That's fine.

15

16 MEMBER DONATELLI: However, we want
17 you to put your best foot --

18

19 MR. GIANNOPOULOS: Okay.

20

21 MEMBER DONATELLI: -- forward.

22

23 MR. GIANNOPOULOS: That's fine, I'll
24 adjourn it.

25

26 CHAIRMAN MAMMINA: It says legalize in
27 here (indicating).

28

29 VICE-CHAIRMAN FRANCIS: Yeah, it says
30 it here.

31

32 MR. PERROTTA: The house was built;
33 correct?

34

35 MR. GIANNOPOULOS: The house is built,
36 yes.

37

38 MEMBER HERNANDEZ: Oh, the house is
39 built.

40

41 MEMBER GOODSELL: It's not quite
42 finished.

43

44 MEMBER DONATELLI: The house is
45 partially built.

46

47 MEMBER GOODSELL: Partially built,
48 it's not finished.

49

50 CHAIRMAN MAMMINA: Okay.

1 APPEAL #21085

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3

4 VICE-CHAIRMAN FRANCIS: So I think you
5 hear what we're saying. I think you would be
6 way better served --

7

8 MR. GIANNOPOULOS: I agree --

9

10 VICE-CHAIRMAN FRANCIS: -- if we were
11 to adjourn today.

12

13 MR. GIANNOPOULOS: -- I agree.

14

15 ATTORNEY ALGIOS: Mr. Giannopoulos,
16 just so you know when you speak to someone,
17 the Town Code is -- the State Law Section
18 "267-b" sets forth the criteria for a
19 granting area variances that you're seeking.
20 So I would advise you or your representative
21 to, you know, come prepared, have -- you
22 know, take a look at that section.

23

24 MR. GIANNOPOULOS: Okay.

25

26 ATTORNEY ALGIOS: And that will give
27 you the framework for making your argument to
28 the Board when you come back.

29

30 MR. GIANNOPOULOS: Yeah, I'm going to
31 bring my architect next time.

32

33 CHAIRMAN MAMMINA: Hopefully, they
34 know what that section is. I mean they know
35 the, you know, the -- I'll call them
36 arguments, but, you know --

37

38 MR. GIANNOPOULOS: All right.

39

40 CHAIRMAN MAMMINA: -- the arguments to
41 make in support of your application.

42

43 MR. GIANNOPOULOS: What date is it
44 adjourned for?

45

46 SECRETARY WAGNER: So we would
47 probably adjourn this to September 15th.

48

49 MR. GIANNOPOULOS: Oh, okay, sounds
50 good.

APPEAL #21085

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SECRETARY WAGNER: Is that a good date
for you?

MR. GIANNOPOULOS: That's fine.
You don't have nothing before it, do
you?

SECRETARY WAGNER: We have a hearing,
but we've already (inaudible).

MR. GIANNOPOULOS: Okay, September 15.

SECRETARY WAGNER: So you would get a
new notice -- actually, no, you -- you will
give him the same notice I would assume?

ATTORNEY ALGIOS: It can't be the same
notice.

SECRETARY WAGNER: Well, you're right.
It's going to be advertise the new date. And
we will give you -- we will be sending you a
new notice, that you will need to send it by
regular mail, since it's adjourned on the
11th.

MR. GIANNOPOULOS: Oh, okay. Thank
you.

VICE-CHAIRMAN FRANCIS: Thank you,
sir.

CHAIRMAN MAMMINA: Okay. So that is
adjourned until September 15th.

* * *

1 APPEAL #21095

2

3 (Stepping up.)

4

5 SECRETARY WAGNER: The next appeal is
6 Appeal No. 21095, Nitush Majumdar, 172 Willis
7 Avenue in Floral Park, section 8, block 90,
8 lot 30 in the Residence "C" Zoning District,
9 variances from:

10 "70-52.5;"

11 "70-51.H;"

12 "70-100.2.A(4)," to construct a
13 wheelchair ramp that would exceed permitted
14 front-yard paving, a cellar staircase located
15 too close to a side property line and fencing
16 that is too tall.

17

18 APPEAL #21095 - Nitush Majumdar;
19 172 Willis Avenue, Floral Park; Section 8,
20 Block 90, Lot 30; Zoned Residence-C.

21 Variances from §§70-52.5, 70-51.H and
22 70-100.2.A(4), to construct a wheelchair ramp
23 that would exceed permitted front yard
24 paving, a cellar staircase located too close
25 to a side property line, and fencing that is
26 too tall.

27

28 CHAIRMAN MAMMINA: You've heard Appeal
29 No. 21095, Nitush Majmudar.

30 Is there anyone in the room interested
31 in the application other than the applicant?

32

33 (No response.)

34

35 CHAIRMAN MAMMINA: Seeing no one,
36 please give your name and address.

37

38 (Stepping up.)

39

40 MR. IMHOF: John Imhof, design
41 professional of record for Mr. Majmudar. My
42 address is 161 Levittown Parkway,
43 Suite 13, Hicksville, New York 11801.

44

45 CHAIRMAN MAMMINA: And so -- so you
46 are -- you are also a licensed architect?

47

48 MR. IMHOF: Correct.

49

50 CHAIRMAN MAMMINA: Okay. Not that you

APPEAL #21095

need to be. I'm just -- I just thought
that's what you said.
Go ahead.

MR. IMHOF: I'm here today on behalf
of my client, Nitush Majumdar, 172 Willis
Avenue in Floral Park, which is in a
Residence "C" Zone.

We are proposing to install a
wheelchair ramp in the front yard, a cellar
entrance stairway along the side yard and a
PVC fence in line with the front wall of the
house.

We are seeking relief from:

Section "70-52.5," which permits a
maximum of 55 percent of paving in the front
yard, where we are proposing 60 percent for
the ramp;

Section "70-51.H," which requires a
minimum 4 foot side-yard setback to the
cellar entrance, where we are proposing 3 1/2
feet;

And Section "70-100.2.A," which
permits a fence along the front building line
with a maximum height of 4 feet, where we are
proposing 6 feet.

Although, this Board is very sensitive
to these types of variance requests,
particularly those involving fences and
rarely grants approvals for them, we believe
that our situation is unique, and as such,
will alleviate any concerns that this Board
may have about setting a legal precedence,
which could be exploited by future
applicants.

My client lives with his wife and two
daughters. His 18-year-old daughter
unfortunately has cerebral palsy, which poses
many challenges in their day-to-day lives and
is the reason for all the work proposed in
this application.

The ramp is needed to be able to
comfortably and reasonably bring their
full-grown daughter in, in and out of the
house. The 33.52 square foot overage is
justifiably minor and is needed to properly
construct a wheelchair ramp and no additional
paving is proposed, other than what's needed.

APPEAL #21095

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3 The cellar entrance will be used to be
4 bring the equipment necessary for her care in
5 and out of the house. The first floor is too
6 small to store the equipment and would impede
7 their ability to comfortably live in the
8 home.

9 The fence is being proposed in line
10 with the front wall of the house and just
11 behind the ramp. The fence does not reach
12 the side property line, complies with the
13 side-yard setback required for the actual
14 house and is set within the confines of the
15 buildable area permissible for an extension,
16 which cannot be said about most fences.
17 Furthermore, the fence reaches the edge of
18 the driveway, but does not return to the rear
19 yard, which means the yard is not enclosed,
20 something else that cannot be said about most
21 fences.

22 Additionally, nearly 50 percent of the
23 fence is obstructed by the ramp, and even
24 more so with the railing itself. The fence
25 is proposed in this location at a height of
26 6 feet, because they do not have a rear yard
27 and only a large side yard.

28 So his daughter engages in outdoor
29 physical therapy sessions. She
30 understandably feels embarrassed, since
31 she's visible from the street.

32 Other options were explored, but
33 constructing a living fence does not reliably
34 obstruct views. It requires constant
35 maintenance and will occupy more of their
36 yard than a fence.

37 The Board poses five critical
38 questions when considering variances. I will
39 try to address each of these concerns
40 directly.

41 Are they self created? Yes, but we
42 feel that the requests are warranted, due to
43 the medical hardship.

44 Are they substantial? No, the cellar
45 entrance only encroaches a mere 6 inches.
46 The front yard paving is only 33.52 square
47 feet over the permitted amount. And many
48 towns and villages allow 6 foot high fencing.
49 The Town of North Hempstead is one of the few
50 who prohibit it. But based on the homes --

APPEAL #21095

homeowners' concerns and the lack of rear yard, we feel the request is warranted. Additionally, since the yard will remain unenclosed and the fence complies with the side-yard setbacks required for the house, they will not create a legal precedence.

Is there an alternate approach? Yes, but not a favorable one. The cellar entrance and, or the ramp could be relocated to the side of the house. But that solution would be detrimental to the value and use of the property, because it would render their only yard space virtually unusable.

Are they a detriment to the neighbors or neighborhood? No, the side-yard variance and front-yard paving are all de minimis encroachments. And the fence is of a height that is commonly seen in other townships and jurisdictions.

And lastly, will they have an environmental impact? No, the work is minor and will have no adverse effect on the environment.

We feel that our request is justifiable. And we will be happy to answer any questions the Board may have.

MEMBER DONATELLI: Yeah, can you please, because on our plans, I don't really see the delineation of the fence.

MR. IMHOF: Yeah. If you look at the plot plan, it's right here behind the ramp. And if you look at the floor plan, you'll see it's along this (indicating) side of the property.

(Discussion held among Board Members off the record.)

MR. PERROTTA: It would be partially obscured by the railing?

MR. IMHOF: Almost completely obscured by the railing at least, yeah.

MR. DONATELLI: And what -- what purpose --

1 APPEAL #21095

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4 MEMBER HERNANDEZ: It's outside of the
5 fence?

6

7 MR. IMHOF: Correct, yeah.

8

9 MEMBER HERNANDEZ: All right.

10

11 MR. IMHOF: Yeah.

12

13 MEMBER DONATELLI: What purpose does
14 the fence serve? I'm sorry.

15

16 MR. IMHOF: His daughter can --
17 engages in a -- in physical therapy outdoors
18 and they don't have a rear yard to do that
19 privately in. So they only have a side yard.
20 So it's just there to obstruct views.

21

22 But we are, in good faith, not
23 returning the -- the fence to the back of the
24 or to the front of the garage and enclosing
25 the yard. We're leaving it open.

26

27 So it's just -- just there as a visual
28 boundary. So it's just --

29

30 MEMBER DONATELLI: As a visual what?

31

32 MR. IMHOF: Just a boundary, so that
33 you can't see beyond it. So but from the
34 side, it's still open. So this way we're
35 not -- we're not proposing a legal precedence
36 by enclosing a yard with a 6 foot fence in
37 the front of the house, 'cause, you know, I
38 know that's a -- a primary concern of the
39 Board.

40

41 MEMBER GOODSSELL: Can I ask, does the
42 homeowner in this proposal have any intention
43 of taking down the hedge that's currently
44 there?

45

46 MR. IMHOF: Yes, the -- well, where it
47 currently exists, where the ramp is, yes.

48

49 MEMBER GOODSSELL: Okay. There is a
50 front-yard hedge?

51

52 MR. IMHOF: And there is a planting in

1 APPEAL #21095

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3 the front -- and there is a planting in the
4 front here (indicating).

5
6 MEMBER GOODSSELL: So the front-yard
7 hedge would come down --

8
9 MR. IMHOF: Yes --

10
11 MEMBER GOODSSELL: -- in order to
12 construct --

13
14 MR. IMHOF: -- would be -- would be
15 replaced.

16
17 MEMBER GOODSSELL: Hence, the necessity
18 that you're saying for the fence in the
19 front?

20
21 MR. IMHOF: Well, no. The fence is
22 actually behind all that.

23
24 MEMBER GOODSSELL: Okay.

25
26 MEMBER HERNANDEZ: And I'm just trying
27 to understand clearly, because I'm -- I'm not
28 sure I understand the plans. But the ramp
29 itself is going in, obviously in the front of
30 the house?

31
32 MR. IMHOF: Correct.

33
34 MEMBER HERNANDEZ: The -- the lowest
35 part of the ramp is going to be where the
36 hedges were effectively?

37
38 MR. IMHOF: Right.

39
40 MEMBER HERNANDEZ: Or where the hedges
41 are presently?

42
43 MR. IMHOF: Correct.

44
45 MEMBER HERNANDEZ: And of course,
46 the -- there would be -- there would be
47 railings along those?

48
49 MR. IMHOF: Correct.

50

1 APPEAL #21095

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3 MEMBER HERNANDEZ: And then with the
4 fence that we're talking about is going to
5 be behind the second part of the ramp. The
6 ramp --

7

8 MR. IMHOF: Yeah.

9

10 MEMBER HERNANDEZ: -- sort of makes a
11 "U" -- "U-turn?"

12

13 MR. IMHOF: Yes.

14

15 MEMBER HERNANDEZ: Behind that ramp
16 there will be a -- a 6 foot tall fence that
17 you're proposing?

18

19 MR. IMHOF: Right, it's just going to
20 be --

21

22 MEMBER HERNANDEZ: How high --

23

24 MR. IMHOF: -- along here
25 (indicating).

26

27 MEMBER HERNANDEZ: Yeah.

28 How high is the railing on the ramp?

29

30 MR. IMHOF: The top of the ramp is 3.1
31 feet high roughly. And then the top of the
32 railing is another 3 feet on top of that. So
33 the top of the ramp right at this point --

34

35 MEMBER HERNANDEZ: This
36 part --

37

38 MR. IMHOF: -- this point right here
39 (indicating), this would be --

40

41 MEMBER HERNANDEZ: -- will
42 (inaudible) --

43

44 MR. IMHOF: -- 6 feet.

45

46 MEMBER HERNANDEZ: -- will be in
47 part --

48

49 MR. IMHOF: So the fence would barely
50 be visible over the --

1 APPEAL #21095

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4 MEMBER HERNANDEZ: So --

5

6 MR. IMHOF: -- the railing for it.

7

8 MEMBER HERNANDEZ: -- some of it will
9 be exposed?

10

11 MR. IMHOF: Correct.

12

13 MEMBER HERNANDEZ: Some of it will be
14 covered by the -- exactly.

15

16 VICE-CHAIRMAN FRANCIS: It's -- it's
17 hard to tell from the drawing where, whether
18 or not you're maintaining ingress and egress
19 for the ramp at the front door?

20

21 MR. IMHOF: Yeah, it is. It's right
22 here (indicating).

23

24 VICE-CHAIRMAN FRANCIS: Okay, 'cause
25 it looks like it -- it looks like it
26 terminates at those two windows.

27

28 MEMBER HERNANDEZ: Well, it goes to a
29 landing I presume -- I presume, right?
30 There's a landing there?

31

32 MR. IMHOF: Yeah, the landing's right
33 there.

34

35 MEMBER HERNANDEZ: Yeah.

36

37 VICE-CHAIRMAN FRANCIS: Yeah, the
38 landing for the front door.

39

40 MEMBER HERNANDEZ: It's hard to --

41

42 MR. IMHOF: This (indicating) is --

43

44 MEMBER HERNANDEZ: -- it's hard to see
45 in the drawings.

46

47 MR. IMHOF: -- the upper landing and
48 that's (indicating) the lower landing.

49

50 VICE-CHAIRMAN FRANCIS: Okay.

1 APPEAL #21095

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4 MEMBER HERNANDEZ: Okay. So it
5 terminates on the landing and then she can be
6 wheeled into the house.

7

8 VICE-CHAIRMAN FRANCIS: Into the
9 house, right, yeah.

10

11 MEMBER HERNANDEZ: And I don't see the
12 dimensions. How -- how wide is the yard
13 there between the house and the end of the --
14 of the fence?

15

16 MR. IMHOF: (No response.)

17

18 MEMBER HERNANDEZ: You said it doesn't
19 go to the property line?

20

21 MR. IMHOF: Uh-huh.

22

23 MEMBER HERNANDEZ: And you're
24 proposing the fence -- and again because I
25 don't see it, you are -- are you proposing
26 the fence to go to the property line or only
27 to the width of the ramp?

28

29 MR. IMHOF: Yeah, it's about -- it's
30 about -- about 15 feet from the edge of the
31 driveway to the house itself. It's more or
32 less around 15 feet.

33

34 MEMBER HERNANDEZ: No -- no, I'm
35 sorry. I didn't mean the depth. I meant
36 the -- the -- the side-yard setback.

37 You said the fence -- does -- does the
38 fence go all the way to the side-yard
39 property line?

40

41 MR. IMHOF: No -- no -- no. It only
42 goes to the edge of the driveway, which is
43 right here (indicating).

44

45 MEMBER HERNANDEZ: Right, yeah.

46

47 (Discussion held among Board Members
48 off the record.)

49

50 MR. IMHOF: The surveyor doesn't mark

1 APPEAL #21095

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3 off how wide it is. And but we have it on
4 ours as 10.7 feet.

5

6 MEMBER HERNANDEZ: Okay.

7

8 MR. IMHOF: So the fence terminates
9 10.7 feet, more or less, from the property.

10

11 MEMBER HERNANDEZ: Which is roughly
12 the same place where the -- where the ramp
13 makes the "U-turn?"

14

15 MR. IMHOF: Yes -- yes, which is why
16 this wouldn't set a precedence, because
17 nobody would ever know (inaudible) the fence
18 (inaudible) --

19

20 MEMBER HERNANDEZ: (Inaudible) close.

21

22 MR. IMHOF: Correct.

23

24 MEMBER HERNANDEZ: It sort of ends in
25 the --

26

27 MR. IMHOF: Right.

28

29 MEMBER HERNANDEZ: -- middle of the
30 side yard?

31

32 MR. IMHOF: So this makes this an
33 exception to the rule.

34

35 (Discussion held among Board Members
36 off the record.)

37

38 MEMBER HERNANDEZ: There's no --
39 there's no fence on the actual return?

40

41 MR. IMHOF: No.

42

43 MEMBER HERNANDEZ: The fence is only
44 on the back?

45

46 MR. IMHOF: In the back?

47

48 MEMBER HERNANDEZ: On the back of --
49 of the -- of the ramp?

50

1 APPEAL #21095

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3 MR. IMHOF: Of the ramp?

4

5 MEMBER HERNANDEZ: The ramp.

6

7 MR. IMHOF: Yes.

8

9 MEMBER HERNANDEZ: It's not on the
10 return the ramp.

11

12 MR. IMHOF: It doesn't return to the
13 garage, no.

14

15 MEMBER HERNANDEZ: Yeah, 'cause it
16 looks like there's a fence on the return,
17 and -- and that's why.

18

19 MR. IMHOF: Well, no, that's the edge
20 of the driveway.

21

22 MEMBER HERNANDEZ: Okay. So it's just
23 this.

24

25 CHAIRMAN MAMMINA: On the -- on the --

26

27 MEMBER HERNANDEZ: It's just this
28 (indicating).

29

30 CHAIRMAN MAMMINA: -- on the -- the
31 west side, there's definitely a fence in
32 there, over here (indicating). I mean it is
33 showing a fence right there (indicating).

34

35 MEMBER HERNANDEZ: That would be --

36

37 MR. IMHOF: The west side would be the
38 rear property line.

39

40 MEMBER HERNANDEZ: The rear on the
41 corner. Is there a fence back here?

42

43 MR. IMHOF: I not even sure. I think
44 there was, but I'm not even sure if it's his
45 or the neighbor's.

46

47 MEMBER DONATELLI: It looks like his
48 neighbor's.

49

50 MEMBER HERNANDEZ: Oh, it might be the

APPEAL #21095

neighbors, because we can't tell from the drawings?

MR. IMHOF: Yeah, that's from the surveyor, so --

Yeah, no, that fence is -- is on the neighbor's side.

MEMBER DONATELLI: Can you -- can you describe for me once again, the reason for the new cellar entrance and replacing the old cellar entrance with the window?

MR. IMHOF: Well, the old cellar entrance was being replaced by a previous applicant, prior to my client purchasing the home. There was another application filed to do some renovations in the basement. One of those renovations was to remove the BILCO doors and put in an egress window. So that -- that work is almost completed.

Ours is a separate application that has really nothing to do with that one.

The -- the proposed application that's currently on file, approved and permitted has no cellar entrance. My client wishes to install a new one. And now, the cellar entrance that we're proposing is due to her medical needs. Like I can rattle off a list of the equipment that he has to store and constantly bring in and out of the house for her benefit.

MEMBER DONATELLI: And -- and I'm sorry, just -- and I would like to hear that list, but are these items that would be stored in the basement?

MR. IMHOF: Yes.

MEMBER DONATELLI: Or -- or that -- well, all right. Go ahead with the --

MR. IMHOF: Yeah --

MEMBER DONATELLI: -- list, please.

MR. IMHOF: -- yeah, you couldn't

1 APPEAL #21095

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3 store them on the first floor, because it
4 would just render the house like completely
5 useless. It would be a giant storage shed.

6
7 MEMBER HERNANDEZ: But would it be
8 used in the basement or would they be brought
9 (inaudible) --

10
11 MR. IMHOF: No, they're -- they're
12 brought up as needed. Some of it's used in
13 yard. Some of it's used on a regular basis.
14 Like -- like it -- it really did -- does
15 depend.

16 And but they have:
17 A manual wheelchair;
18 A power wheelchair;
19 A gait trainer;
20 A stroller;
21 A joy stick with tray;
22 A bathroom chair;
23 A shower chair;
24 Therapy balls;
25 Eye gaze;
26 Braces;
27 Standards;
28 Sandbags;
29 Stabilizers;
30 Gait belt;
31 Like the list goes on, so --

32
33 MEMBER HERNANDEZ: And you're going to
34 bring all those up and down an external
35 stair?

36
37 MR. IMHOF: It's a lot more
38 comfortable than the stair that's inside the
39 house right now, because as you can imagine,
40 it's an old house. It's very narrow, this --
41 turn is difficult.

42
43 CHAIRMAN MAMMINA: Are ou telling me
44 you're going to carry a motorized wheelchair
45 down a flight of stairs? I don't think so.

46
47 MR. IMHOF: The -- the things that
48 they do right now -- the -- the things that
49 they do right now are much -- much worse, so,
50 than what we're proposing. But there's not

1 APPEAL #21095

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3 much more we can do.

4

5 CHAIRMAN MAMMINA: Here's -- here's
6 the deal. I see this and I see illegal
7 apartment to me. One, two, three, illegal
8 apartment, three-fixture bathroom.

9 There isn't even a note that says that
10 the -- that -- that the -- the cellar is
11 exclusively, you know, for the use of
12 storage. You know, and I've just seen it
13 too many times, you know. I'm -- I'm here a
14 whole bunch of decades at this point.

15

16 MEMBER DONATELLI: Can I --

17

18 MR. IMHOF: Well, if that's a concern
19 the Board, you can always put in a condition
20 to the approval, "subsequent inspection at a
21 later date."

22

23 MEMBER DONATELLI: -- I -- I -- I'm
24 sympathetic to your client's plight and to
25 his daughter's condition. But I guess what I
26 don't really see, some of the equipment, much
27 of the equipment that you mentioned is heavy.
28 If we were inclined to approve this ramp, it
29 would seem to be the logical thing to do
30 would --

31

32 CHAIRMAN MAMMINA: Right.

33

34 MEMBER DONATELLI: -- be to bring it
35 into the house through the ramp and not
36 through the cellar entrance.

37

38 CHAIRMAN MAMMINA: That's the --
39 the --

40

41 MR. IMHOF: Well, (inaudible) the
42 equipment, some of it will be, like the
43 wheel -- the power wheelchair for
44 (inaudible).

45

46 MEMBER DONATELLI: Yeah, and that's,
47 you know, we're -- we're -- like I said, I'm
48 sympathetic to your client's plight. What
49 I'm trying to grapple with is the great
50 ability -- and not necessarily by your

APPEAL #21095

client, but perhaps by some -- somebody who might subsequently purchase the place, this would be a perfect set up, if somebody wanted to have an illegal apartment, so --

MR. IMHOF: Well, the introduction of the stair that's -- they're permitted to do it by rights on the other side of the house. But their -- their wish is to put it on this side for a mere 6 inch variance, just to avoid having to render their only yard virtually useless.

But they can, by rights, to put in a cellar entrance on the other side of the house, so that wouldn't avert the Board's concerns. I mean you wouldn't be perpetuating this -- this situation. It can happen regardless.

VICE-CHAIRMAN FRANCIS: Well, I mean, wouldn't it make more sense to put the heavy equipment in the -- the garage? I mean you have enough room that -- to -- to park a car in the driveway and use the garage as most people do, which is for storage.

MR. IMHOF: Uh-huh.

VICE-CHAIRMAN FRANCIS: I mean it -- it would seem to me that it would be a lot easier to get a motorized wheelchair --

MR. IMHOF: Well, I can tell you from personal experience, I have a 14-year-old daughter. If I asked her to sit on anything that came out of my garage, that would be a no go.

(Laughter.)

CHAIRMAN MAMMINA: Yeah, but I'm -- I'm also looking at the BILCO door, you know. And I was going to say that's a whole lot easier to get stuff in and out of the BILCO door, than it is to come down some -- and that's 3 foot 3 wide, you know, especially something like a motorized wheelchair, you know, and, you know, and -- and turn?

APPEAL #21095

MR. IMHOF: Well, the -- the stair that's there right now is extremely narrow. It's not like your typical BILCO door where it's like a reasonable width.

But -- but most of them, those are built like marine stairs anyway. They're very, very steep, so that's even more uncomfortable.

CHAIRMAN MAMMINA: Yeah, but, you know, all the more easier, you know.

We can respectfully disagree. But the BILCO door that's shown here by scale is -- is wider than -- than the other one. You know, and I mean just, you know, for myself, you know, the fence, the 6 foot fence, I don't see the 6 foot fence.

You know, you call Home Depot and for \$50 a -- a shrub, they'll send you, you know, a -- a 6 foot arborvitaes. You get six of them, you know, and it's going to cost you that much to put the fence up. And now you got a green wall, you know, which is going to grow, and knit together, and be 10 feet high. And, you know, it'll -- it'll be -- it'll achieve what the, you know, what -- what this Board has always done, you know, in terms of suggesting a -- a solution, you know, for a, you know, for a fence, you know.

MEMBER DONATELLI: And the -- the arborvitae would provide more privacy than anything that a fence might provide. And it really -- we really don't grant 6 foot fences. And I understand a good portion of it would be obscured by the ramp, which is why it was difficult in the first place to understand why the applicant was seeking it.

I -- I would also echo that the arborvitae, I think is a great way to provide privacy.

CHAIRMAN MAMMINA: I'll -- I'll also just say one other thing unrelated to the variance, you know. And not only am I sympathetic to the plight of your -- of -- of your client, but, you know, in -- in terms of

APPEAL #21095

what I -- I -- what I do for a living, a lot of it has to be handicapped accessibility. And the bathroom, the way this is set up is not going to do anything for her, you know.

MR. IMHOF: Well, she's not mobile on her own.

CHAIRMAN MAMMINA: I know. So I'm saying, you're -- you're nowhere near your requirements of an accessible vanity.

MR. IMHOF: Oh, no, we're not trying to be, not with the bathroom. There's -- there's too many restrictive confines on -- on the floor itself.

CHAIRMAN MAMMINA: Say that again.

MR. IMHOF: It's -- it's too confined. There's too many restrictions with the -- the existing structure of the house. There's not much we can do with expanding the bathroom into adjacent areas.

CHAIRMAN MAMMINA: You -- you don't give a 5 foot -- excuse me, you don't give a first-floor plan -- and it's not my job to tell you how to layout the interior, but that wall that you show in there where you're moving the door and things already, and you have the existing wall that's to the left of that, that's where that -- that wall needs to be.

She needs all of that space to maneuver. You need 5 feet where her -- where the toilet is. You have 2 foot 10, you know. You -- you barely -- she couldn't possibly turn in there. She's not going to be able to get into -- into the shower. She probably has a shower chair, you know, also. It's not -- not going to get into there.

I don't know, it's just, again, you know, you'll -- you'll do as you -- as you wish. But, you know, I've done plenty of adaption of houses, and -- and things. And, you know, that's up to you.

1 APPEAL #21095

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MEMBER GOODSSELL: Mr. Imhof, I'd just like to go back to the ramp for a second. I believe the family does, in fact, have a portable ramp right now that they're using in the rear of the property.

MR. IMHOF: Uh-huh.

MEMBER GOODSSELL: Did I see that correctly?

MR. IMHOF: Yeah, they have something back there, yeah.

MEMBER GOODSSELL: Okay.

(Discussion held among Board Members off the record.)

MEMBER DONATELLI: How -- how long has your client lived in the premises?

MR. IMHOF: Since --

(Whereupon, a discussion was held off the record.)

MR. IMHOF: -- since 1999 [sic].

MEMBER DONATELLI: I'm sorry.

(Whereupon, a discussion was held off the record.)

MR. IMHOF: 2019. My bad, I'm sorry. 2019.

MEMBER DONATELLI: Thank you. So I'm sorry, two years?

MR. IMHOF: Yes.

CHAIRMAN MAMMINA: Okay. You know, look, it's -- it's not for -- for me to say, but, you know, I -- I just see things here that -- that are not logical. I mean if you're -- if you're bringing in equipment that's going to be brought down that cellar

1 APPEAL #21095

2

3 stair, wouldn't you flip that cellar stair
4 the other way and go straight down to the
5 cellar, instead of around the back of the
6 house or squeezing through?

7

8 MR. IMHOF: Originally it was.
9 Originally it was, but he decided to -- to
10 turn it the other way.

11

12 (Discussion held among Board Members
13 off the record.)

14

15 (Whereupon, a discussion was held off
16 the record.)

17

18 MR. IMHOF: One of the reasons why, it
19 was when the fence [sic] -- when the stairs
20 were facing the front of the house, we had to
21 construct a walkway to attach to the front.
22 It -- it further increased the front-yard
23 paving. So by flipping it, we avoided that
24 and we're just using the -- the walkway from
25 the side of the house.

26

27 CHAIRMAN MAMMINA: I mean it's not --
28 it's -- it's certainly not mine to say as one
29 Board Member, but I would put the stairs on
30 the other side.

31

32 MEMBER HERNANDEZ: Yeah.

33

34 CHAIRMAN MAMMINA: You know, where you
35 pull up a delivery truck for equipment or
36 whatever, you know, into the driveway and,
37 you know, there's the stair, brings it down
38 to the cellar and, you know, there you go.

39

40 MEMBER HERNANDEZ: And the stairs
41 to -- and the stairs to the ground floor are
42 also on the outside. So if you needed to
43 bring something up to the first floor of the
44 house, something coming up from that side of
45 the house, it goes right back in again.
46 Where you have it now, you got to basically
47 surround the whole house to get the other
48 side.

49

50 MR. IMHOF: Yeah.

APPEAL #21095

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4 MEMBER HERNANDEZ: Now, all I see on
5 that side, it seems there's some kind of a --
6 what appears to be a laundry room, a sort of
7 an "L-shaped" laundry room below the -- the
8 three-part piece bathroom. Between that
9 three-piece bathroom and that laundry room
10 would be the ideal location for the stairs
11 going downstairs.
12

13 (Discussion held among Board Members
14 off the record.)
15

16 MR. IMHOF: Yes. If I could add just
17 one more point, if the Board is concerned
18 about the construction of an illegal
19 apartment and an ingress into that apartment
20 through that stair, the stair location and
21 orientation as it exists right now on the
22 drawing is the least conducive for that kind
23 of an arrangement.
24

25 CHAIRMAN MAMMINA: It's also not as
26 conducive to putting that equipment down
27 there in the cellar, but --
28

29 MR. IMHOF: Still, but it minimizes
30 the variance for the front-yard paving.
31

32 CHAIRMAN MAMMINA: That's just my
33 opinion, you know, that's all.
34

35 (Discussion held among Board Members
36 off the record.)
37

38 CHAIRMAN MAMMINA: Okay. I, you know,
39 I -- I think I mean certainly just as human
40 beings, but also with the Americans with
41 Disabilities Act and American National
42 Standards Institutes and whatever, we want to
43 make, you know, a reasonable accomodation,
44 you know, to -- to assist the family. And
45 it's not, you know, it's not an easy -- you
46 know, it's an easy thing.

47 You know, and my -- my opinion as one
48 Board Member is that certainly the -- the
49 ramp, you know, and the granting of the ramp,
50 you know, is -- is not just a reasonable

APPEAL #21095

accomodation, it's what -- it's what should be there.

VICE-CHAIRMAN FRANCIS: Yeah, it's necessary.

CHAIRMAN MAMMINA: It's necessary, you know. They're going to have to get, you know, to get this young lady, you know, in -- you know, in and out.

You know, I guess normally I -- I would not be in favor of that variance in the side yard. You know, but again, I'll point to the "American with Disabilities Act" and say, you know, that I mean if -- if your client feels that on the basis, you know, of -- of the -- the handicap, which -- which his -- his daughter has, that that is the best location to bring equipment and things in and out for her, then, you know, I'd, you know, I -- I would look at it and say, okay, who are we to say that that's not -- that's not correct. We can all have a whole bunch of opinions, you know, regarding -- you know, regarding that.

So I think on both the -- the cellar entrance, and the front yard and the front-yard lot coverage, you know, we -- we, you know, we're -- we're doing whatever we can to -- to help the family out. You know, in -- in terms of the fencing at 6 feet facing the street, you know, we get a whole lot of that and we get a whole lot of that with a whole -- many, many different scenarios.

And, you know, our -- our standard suggestion there, you know, is to put in evergreen planting there. Many times people look at it as a barrier. Let's say for an Autistic child or whatever, we have granted, you know, that sort of thing. But in, you know, in this case, that's not the case. And the driveway is still open, you know, to -- to the back. You know, and we understand the need for privacy for, you know, for the physical therapy, you know, so, you know, there's probably a lot of railing of the -- of the ramp will do that, you know, in and of

APPEAL #21095

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3 itself. But the -- the landscaping there,
4 you know, is -- is a -- is a reasonable
5 alternative to the, you know, to the fencing,
6 that's in there.

7 As I said, you know, this -- this --
8 these are ordinances and things that are put
9 in place by the Town Board, you know. And,
10 you know, the reality is -- and I'm not
11 saying we agree or don't agree. But whether
12 we agree or don't agree, we're the Zoning
13 Board. You did the five tests. We look at
14 the five tests. You know, and that's the,
15 you know, that's -- that's the -- the
16 perspective.

17 So, you know, kind of recapping it,
18 you know, just as -- as one Board Member,
19 I -- I think the ramp, the side entrance on
20 the basis of the handicap and, you know, the
21 "American with Disabilities Act" and many
22 other, you know, State ordinances as well,
23 you know, we'd -- our -- our making that
24 accomodation is important.

25 And, you know, I think we should --
26 we -- we should be putting the shrubbery, you
27 know, in behind that. And I think in the
28 end, your -- your client will decide that --
29 that you've done them a favor. You know, as
30 it starts to get behind that --

31
32 MR. IMHOF: Well, the only reason why
33 he wants over the fence over the living fence
34 is just to minimize the amount of maintenance
35 work that he has to do. As you can imagine,
36 he has his hands full as it is, so --

37
38 CHAIRMAN MAMMINA: Yeah, no, I -- I
39 get it.

40
41 MR. IMHOF: But as -- as a suggestion,
42 what if the fence is approved with a
43 condition that it be removed upon sale of the
44 property?

45
46 CHAIRMAN MAMMINA: Well, I think we're
47 going to do that with the -- the -- we'll --
48 we'll do that with the ramp, you know,
49 anyway.
50

1 APPEAL #21095

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3 (Discussion held among Board Members
4 off the record.)

5

6 CHAIRMAN MAMMINA: But -- but well,
7 I -- I guess as our -- our Secretary Virginia
8 is pointing out, you -- you could
9 put a 4 foot fence there "as-of-right." You
10 know, you don't have to ask our --

11

12 MR. IMHOF: Right, but the 4 fence
13 wouldn't obstruct anything. That lower
14 landing is only about, it's about 2 feet off
15 the ground as it is. It wouldn't be anything
16 obstructed at that point. We even explored
17 the idea of doing a solid railing, but
18 they're kind of unsightly and irremovable
19 afterwards, so --

20

21 CHAIRMAN MAMMINA: Okay, well, I --
22 I'm just one Board Member. I -- I -- my
23 feeling is the landscaping, you know, would
24 be the, you know, would be the -- would be
25 the correct solution. You know, it's not a
26 question of preference. It's question of us
27 being consistent, you know, as a Board, you
28 know, in what we --

29

30 MR. IMHOF: Uh-huh.

31

32 CHAIRMAN MAMMINA: -- you know, in
33 what we do.

34 I -- I can't make a motion, you know,
35 that's not allowed. So someone else can make
36 a different motion.

37

38 MEMBER HERNANDEZ: The arborvitaes do
39 well. They really do not require
40 maintenance, except for watering them. So
41 one -- once they settle in, it's not a --
42 it's not a hedge that you constantly have to
43 keep watering (inaudible) --

44

45 MR. IMHOF: I -- I have them on my
46 property. You -- you still need -- you still
47 need to trim them. They've got weeds growing
48 them and the --

49

50 MEMBER HERNANDEZ: Oh, you do.

1 APPEAL #21095

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4 MR. IMHOF: -- vines and --

5

6 MEMBER HERNANDEZ: -- I have them 12
7 foot tall. I have it 12 feet tall at my
8 house.

9

10 MR. IMHOF: Yeah, but they also don't
11 reliably obstruct views, so --

12

13 MEMBER HERNANDEZ: If you put them in
14 a 5 foot centers, within two years they will
15 be grown into each other and then you can
16 make a screen out of them if you want to.

17

18 MR. IMHOF: Two years?

19

20 VICE-CHAIRMAN FRANCIS: Yeah, I mean I
21 have them in the front of my house as, you
22 know, as -- well, I have a fence. But -- but
23 I have them that really they obstruct my oil
24 tank. And I don't do a damn thing to them.

25

26 (Laughter.)

27

28 VICE-CHAIRMAN FRANCIS: I mean they
29 just grow, you know. And I don't trim them,
30 I don't do anything to them. And you can't
31 see my oil tank anymore. So very little
32 maintenance. It really is very little
33 maintenance.

34

35 MR. IMHOF: But it's going to take
36 time before it can obstruct.

37 She's 18, she's just starting college.
38 She's --

39

40 VICE-CHAIRMAN FRANCIS: I get it.

41

42 CHAIRMAN MAMMINA: Okay, so -- so
43 someone has to make a motion.

44

45 MEMBER DONATELLI: Yeah, Mr. Chairman,
46 I -- I make a motion that we grant the
47 application in part, and deny the application
48 in part. I make a motion that:

49 We grant the application as it
50 pertains to Section "70-52.5" for the -- for

APPEAL #21095

the front ramp;

And that we grant the application as to Section "70-51.H" as to the -- the entryway to the cellar;

But that we deny the application requested as to Section "70-100.2.A Subsection 4," as to it pertains to the fencing.

I -- I make a motion that we grant the application as to those first two sections of the application pursuant to the "American with Disabilities Act," and in so far as we are directed to make reasonable accommodations for the applicant.

And I would just note for the record, that the applicant's desire to seek privacy can certainly be accommodated from the planting of arborvitae, that I think will accomplish the exact same result, which is what the applicant is -- is trying to achieve.

So having said that, I make that motion.

CHAIRMAN MAMMINA: So we have a motion by Mr. Donatelli.
Do we have a second?

MEMBER GOODSSELL: I'll second that.

CHAIRMAN MAMMINA: Seconded by Ms. Goodsell.
Please poll the Board.

SECRETARY WAGNER: Member Hernandez?

MEMBER HERNANDEZ: Aye.

SECRETARY WAGNER: Member Goodsell?

MEMBER GOODSSELL: Aye.

SECRETARY WAGNER: Member Donatelli?

MEMBER DONATELLI: Aye.

SECRETARY WAGNER: Vice-Chairman Francis?

1 APPEAL #21095

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3

4 VICE-CHAIRMAN FRANCIS: Aye.

5

6 SECRETARY WAGNER: Chairman Mammina?

7

8 CHAIRMAN MAMMINA: Aye.

9 So the application is granted as per

10 motion made.

11

12 ATTORNEY ALGIOS: Part granted and

13 part denied.

14

15 CHAIRMAN MAMMINA: And part denied.

16 I'm sorry.

17 So motion is granted and -- and part

18 denied.

19 And -- and thank you very much for

20 making a very good application. And I think

21 you advocated extremely well for your client,

22 and also for wearing a shirt and tie. I

23 really wish that more of our profession --

24

25 MR. IMHOF: It's becoming very, very

26 rare.

27

28 CHAIRMAN MAMMINA: Yeah, it is.

29

30 MEMBER DONATELLI: Good luck to you,

31 sir.

32

33 MR. MAJUMDAR: Thank you.

34

35 CHAIRMAN MAMMINA: Thank you.

36

37 MR. IMHOF: Thank you.

38

39 MEMBER HERNANDEZ: Good luck.

40

41 (Whereupon, a discussion was held off
42 the record.)

43

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1 APPEAL #21086

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3 (Discussion held among Board Members
4 off the record.)

5

6 (Stepping up.)

7

8 SECRETARY WAGNER: The next appeal,
9 Appeal No. 21086, Maria Pappas, 26 Joy Drive
10 of New Hyde Park, section 8, block 270, lot
11 43, in the Residence "A" Zoning District.

12 Variance from "70-202.1(C)" to
13 construct a retaining wall taller than
14 permitted.

15

16 APPEAL #21086 - Maria Pappas; 26 Joy
17 Dr., New Hyde Park, Section 8, Block 270,
18 Lot 43; Zoned Residence-A.

19 Variance §70-202.1(C) to construct a
20 retaining wall taller than permitted.

21

22 CHAIRMAN MAMMINA: You've heard Appeal
23 No. 20186, Maria Pappas.

24 Is there anybody in the room
25 interested in the application other than the
26 applicant?

27

28 (No response.)

29

30 CHAIRMAN MAMMINA: I would assume
31 you're not here to oppose your own
32 application, so --

33

34 (Laughter.)

35

36 CHAIRMAN MAMMINA: -- seeing no one.

37

38 (Stepping up.)

39

40 MR. RANT: Yes, good afternoon,
41 Mr. Chairman and members of the Board. My
42 name is Michael Rant from Northcoast Civil.

43 I'm here this afternoon representing
44 the owners of 26 Joy Drive, seeking approval
45 to construct a retaining wall having a
46 greater height than allowed by code.

47 I'll get started by just submitting
48 some photographs of the existing wall
49 (handing).

50

APPEAL #21086

SECRETARY WAGNER: (Receiving.)

MR. RANT: These photographs were taken yesterday from the property to the south, looking up towards the north to the subject property.

So our -- our office was retained a few months ago to prepare plans to replace the delapidated retaining wall. Since then, the -- the wall has -- has collapsed and fallen. And these photographs show it's -- it's really hanging on. It's -- it's at a point where it needs to be replaced.

And so the existing walls are a partially tiered. It's a 5 foot and a 3 foot, only about a 1 foot of separation between the walls. And what we're looking to do is propose a single 8 foot wall in the same location.

The -- the landscaping that's shown in the photograph is on the -- the neighbor's property and that will remain, replace as necessary during construction of the wall. And -- and the purpose really for the single walls is to not have the maintenance necessary for -- that would be required for a multi-tier wall, where there's landscaping in between that becomes non-accessible once the fence is installed.

The property to the -- to the east actually has -- there's a series of I believe it's about 10 foot tall stack block walls in this area. So it is a -- it is a -- a -- it is a common amenity to see taller walls than what's allowable by code.

We feel that this is the most efficient way of utilizing and maintaining the backyard in its current -- current condition, creating walls that will be structurally sound and -- and can safeguard the property, and -- and in conformity with -- with the -- what's currently in the neighborhood and the surrounding properties. And we will not be a detrimental impact.

So we -- we seek approval from the Board. And if the Board has any questions, I'd be happy to answer them.

1 APPEAL #21086

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3 VICE-CHAIRMAN FRANCIS: So your --
4 your client's property is behind this fence?

5

6 MR. RANT: Correct. The home in the
7 back is -- is my client.

8

9 MEMBER HERNANDEZ: The white picket
10 fence is your client -- client's property;
11 right?

12

13 MR. RANT: Yes -- yes.

14

15 MEMBER HERNANDEZ: Right.

16

17 SECRETARY WAGNER: And -- and the
18 photographs will be entered into the record
19 as Exhibit 1.

20

21 CHAIRMAN MAMMINA: I think you hit
22 that geogrid?

23

24 MR. RANT: Well, we -- since my client
25 is on the high side, we can dig out her --
26 her -- her side of the property.

27

28 CHAIRMAN MAMMINA: Oh, I -- I just
29 thought you said that she was on the low
30 side.

31

32 MR. RANT: She's on the --

33

34 VICE-CHAIRMAN FRANCIS: She's on the
35 other side.

36

37 MR. RANT: -- the other side. So
38 this -- this photograph is taken from the
39 neighbor to the south.

40

41 MEMBER HERNANDEZ: To the
42 neighbor's -- to the neighbor's house though.

43

44 MR. RANT: Yes -- yes, taken from the
45 neighbor's. She's on top.

46

47 CHAIRMAN MAMMINA: Oh, I
48 misunderstood.

49

50 MR. RANT: And -- and we'll be able to

1 APPEAL #21086

2

3 dig out her side.

4

5 CHAIRMAN MAMMINA: Sure.

6

7 MR. RANT: Install the geogrid and --

8

9 and --

10

11 CHAIRMAN MAMMINA: Okay.

12

13 VICE-CHAIRMAN FRANCIS: So you're
14 not -- you're not going any higher than the
15 existing or what's left of the existing wall?

16

17 MR. RANT: We'll be at the same
18 finished elevation as what's there today.

19

20 VICE-CHAIRMAN FRANCIS: -- I mean
21 really, you really don't have any other
22 option. I mean you have to build it that
23 high, in order for it to do what it's meant
24 to do.

25

26 MR. RANT: Correct. There's --
27 there's currently 8 feet of cumulative
28 retaining currently and that's what we're
29 proposing.

30

31 CHAIRMAN MAMMINA: Well, I guess
32 the most-affected person isn't here.

33

34 MEMBER HERNANDEZ: The neighbor.

35

36 CHAIRMAN MAMMINA: The neighbor.

37

38 VICE-CHAIRMAN FRANCIS: The neighbor,
39 right.

40

41 MR. RANT: Yeah, they, you know,
42 they -- they were noticed obviously. They
43 let us on their property yesterday to take
44 photographs. They didn't raise any
45 objections or concerns. There are -- there
46 are new owners, but they've been notified and
47 they haven't raised any concerns with the
48 application.

49

50 MEMBER GOODSSELL: Mr. Rant, you've --
you heard the expression that "a photograph

1 APPEAL #21086

2
3 is worth a thousand words?"

4
5 MR. RANT: Yes.

6
7 MEMBER GOODSSELL: This is what you
8 can't see from the front of Ms. Pappas's
9 house.

10
11 MR. RANT: Yes.

12
13 MEMBER GOODSSELL: And this is very
14 clearly demonstrating to the Board that
15 something's got to get done --

16
17 MR. RANT: Yes.

18
19 MEMBER GOODSSELL: -- because it looks
20 like the neighbor could have a mud slide in
21 their backyard, the next time we have a rain
22 storm --

23
24 MR. RANT: Yeah.

25
26 MEMBER GOODSSELL: -- and probably
27 already has.

28
29 MR. RANT: Yeah, the recent rains --
30 rains have caused the damage that you see in
31 the photograph.

32
33 CHAIRMAN MAMMINA: Yeah, I -- I was
34 around when the Town Board made the ordinance
35 of the 5 foot steps. You know, quite
36 honestly, you know -- and Mr. Rant, I know
37 you to be an excellent engineer. I'd put two
38 excellents in front of excellent.

39
40 MR. RANT: Thank you.

41
42 CHAIRMAN MAMMINA: But I mean this was
43 exactly what they didn't want to see --

44
45 MR. RANT: Uh-huh.

46
47 CHAIRMAN MAMMINA: -- you know, where
48 it was an -- an 8 foot high tall wall. In
49 the instance that -- that it was put into
50 place, it was a 15 foot high wall. So I mean

1 APPEAL #21086

2
3 you can certainly argue that that was a
4 taller wall.

5
6 MR. RANT: Understood.

7
8 CHAIRMAN MAMMINA: I just don't know.
9 I know the railroad tie walls are, you know,
10 are -- are useless, especially the ones that
11 were put in 25 years ago before pressure
12 treating, you know, before good pressure
13 treating.

14
15 MR. RANT: Uh-huh.

16
17 CHAIRMAN MAMMINA: I -- I realize
18 you're not doing pressure treating. I mean
19 the wall that you're using now or proposing
20 is a state of the art wall in terms of how to
21 do this.

22 Some -- sometimes I just always just
23 wonder. Neighbors, you know, like to be good
24 neighbors. And then when it goes up, you
25 know, the question is do they -- do they
26 fully comprehend that they're going to see.

27
28 MEMBER DONATELLI: Can -- can I
29 ask this, because as we look at this
30 photograph -- and this photograph really does
31 help us. I wished that I had looked at this
32 prior to reviewing this -- this file earlier.

33 But as I look at this photograph, the
34 existing retaining wall, the -- the wood
35 retaining wall, pressure-treated wood
36 presumably, I see, I guess on just below the
37 white fence there are may be -- one, two,
38 three, four, five -- six courses of lumber.
39 And then I see a whole bunch of dirt. And
40 then I see another two courses of lumber. Is
41 that all part of the same retaining wall
42 that -- that has failed or is that stepped
43 back?

44
45 MR. RANT: The -- the step in the wall
46 was only about 1 foot. So there wasn't a
47 typical 5 foot step back like the code --
48 just like the code requires today. It wasn't
49 large enough for a planter, so -- so the --
50 the lower neighbor did see -- see 8 vertical

1 APPEAL #21086

2
3 feet of wall, without any type of
4 landscaping.

5
6 MEMBER DONATELLI: Okay.

7
8 MR. RANT: Yeah.

9
10 MEMBER DONATELLI: So I guess that's
11 my point. So that the -- the neighbor did
12 see one 8 foot wall, one 8 foot high wall?

13
14 MR. RANT: Correct. There was no
15 landscaping that visually blocked each tier,
16 which -- which -- so the -- the landscaping
17 that's there today and the visual view of an
18 8 foot wall is what that neighbor has seen,
19 since the wall has been there.

20
21 MEMBER DONATELLI: And the -- the
22 lower part of that wood retaining wall that
23 appears to be failing, is that still on your
24 client's property?

25
26 MR. RANT: It -- it kind of straddles
27 the property. It's -- it's -- it'll all be
28 moved back onto my client's property.

29
30 CHAIRMAN MAMMINA: See, because I --
31 I'm not seeing from the survey where the
32 existing wall lies --

33
34 MR. RANT: So the existing wall, if --
35 if --

36
37 CHAIRMAN MAMMINA: -- you know, as it
38 relates to what's there now.

39
40 MR. RANT: Sure.

41
42 CHAIRMAN MAMMINA: But where, Mike,
43 where you show -- where you show grade -- and
44 I recognize that -- that these -- these
45 details many times are, you know, are just
46 manufacturer details and there's nothing
47 wrong with that. But I mean you've probably
48 got, I don't know, it would look to me to be
49 at least a 20 to 22 foot change in
50 elevation --

1 APPEAL #21086

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3

4 MR. RANT: From -- I'm sorry.

5

6 CHAIRMAN MAMMINA: -- unless you want
7 to get down to the left side.

8

9 MR. RANT: Well, the bottom wall --
10 the bottom, so if -- if you look at the site
11 plan, there's a very faint dashed line.

12

13 CHAIRMAN MAMMINA: I see it.

14

15 VICE-CHAIR FRANCIS: Yeah.

16

17 MR. RANT: That's the existing wall,
18 the lower wall that has currently failed.

19 Where the proposed wall is, which is
20 on the property line, that's the same
21 location as the existing upper wall that you
22 see in the photographs.

23 So the -- the -- although, there's --
24 they were tiered, they're only about a foot
25 apart. So it -- so it looked like a single 8
26 foot retaining wall. The grade --

27

28 CHAIRMAN MAMMINA: So the survey
29 I'm -- I'm --

30

31 MR. RANT: -- to --

32

33 CHAIRMAN MAMMINA: -- looking at is
34 your client's house, not the person downhill?

35

36 MR. RANT: Correct.

37

38 CHAIRMAN MAMMINA: Right.

39

40 MR. RANT: Correct.

41

42 CHAIRMAN MAMMINA: So there are two
43 steps beyond -- coming toward me up on the
44 neighbor. And I'm just saying this, because
45 I want to understand. In other words,
46 that -- that picket fence is sitting on top
47 of that highest piece of -- of railroad tie
48 retaining wall. And then it steps in or it's
49 coming -- I'm -- I'm the neighbor now. Then
50 it steps in.

1 APPEAL #21086

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3

4 MR. RANT: About a foot.

5

6 CHAIRMAN MAMMINA: And then it steps
7 in again where it's brick?

8

9 MR. RANT: Well, the brick is
10 actually --

11

12 CHAIRMAN MAMMINA: And then it's brick
13 along the box.

14

15 MR. RANT: -- the -- the brick is set
16 into the neighbor's property about 5 feet.
17 So -- so the -- the brick wall that you see
18 in the photograph is about 5 feet into the
19 neighbor's property on the south. The --
20 the --

21

22 CHAIRMAN MAMMINA: Really? So that
23 other wall --

24

25 MEMBER HERNANDEZ: So the -- the brick
26 is -- is the neighbor's?

27

28 MR. RANT: The brick is the neighbor's
29 wall.

30

31 VICE-CHAIRMAN FRANCIS: The brick is
32 the neighbor's --

33

34 MR. RANT: Yeah, correct.

35

36 VICE-CHAIRMAN FRANCIS: -- yeah.

37

38 MR. RANT: And -- and all of this
39 landscaping is in front of the wall that's on
40 the neighbor's property.

41

42 MEMBER HERNANDEZ: Yeah.

43

44 CHAIRMAN MAMMINA: We get it.

45

46 MR. RANT: That'll all remain.

47

48 MEMBER HERNANDEZ: That's all the
49 neighbor's.

50

1 APPEAL #21086

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3 MR. RANT: And this new wall will go
4 from the wood wall, same height and
5 elevation.

6

7 MEMBER HERNANDEZ: Behind the tree,
8 the one behind the tree?

9

10 MR. RANT: The one behind the tree
11 will -- will be a single stack block
12 retaining wall. The visual view from this
13 side will be the same impact of 8 feet of
14 retaining wall, but instead of wood, it will
15 be stacked block and -- and --

16

17 CHAIRMAN MAMMINA: And you're --
18 you're not preparing that part that's on the
19 neighbor's property that's all collapsed?

20

21 MR. RANT: It's -- it's being removed
22 and replaced with a new wall, so that the --
23 the part that --

24

25 CHAIRMAN MAMMINA: They're -- they're
26 putting in their own wall?

27

28 MR. RANT: What's that?

29

30 CHAIRMAN MAMMINA: They're putting in
31 their own wall?

32

33 MR. RANT: No, 'cause the -- the wood
34 wall is about a foot into the neighbor's
35 property. That'll be removed and it'll be
36 moved back into my client's property.

37

38 CHAIRMAN MAMMINA: And all I have is
39 this drawing I think.

40

41 MR. RANT: Sure.

42

43 CHAIRMAN MAMMINA: That -- that I can
44 find in the file.

45

46 MR. RANT: I can show you the existing
47 conditions survey.

48

49 CHAIRMAN MAMMINA: I don't see any of
50 that, though.

APPEAL #21086

MR. RANT: Well, if you want, I can submit this for the record. It's an existing conditions topographic survey that shows the two existing walls (handing).

ATTORNEY ALGIOS: (Receiving.)
So this topographic map will be admitted as Exhibit 2.

(Discussion held among Board Members off the record.)

MEMBER HERNANDEZ: You said that it looks more than 8 feet?

MR. RANT: No, it's -- it's 8 feet.

MEMBER HERNANDEZ: Because we -- we can -- I can see the -- one, two, three, four, five, six -- we can see about eight or nine railroad ties already.

MR. RANT: Yeah, they're 5 1/2 inches each.

MEMBER HERNANDEZ: And there's a bunch of them missing.

CHAIRMAN MAMMINA: And then there's a whole bunch of dirt that --

MR. RANT: The grade elevation is 8 feet.

CHAIRMAN MAMMINA: Then there's -- then there's another three or four. So from --

MEMBER HERNANDEZ: From -- from this level?

MR. RANT: From the brick level to the top is 8 feet -- 8 feet.

MEMBER HERNANDEZ: All right.

(Discussion held among Board Members

1 APPEAL #21086

2

3 off the record.)

4

5 CHAIRMAN MAMMINA: If that's 8 feet,
6 I'll take -- I'll take all the money that
7 anybody wants to bet that that's not 8 feet.

8

9 MR. RANT: Well, I mean on the survey
10 it's -- it's --

11

12 MEMBER HERNANDEZ: This is 4 feet.
13 This certainly doesn't look like that.

14

15 (Discussion held among Board Members
16 off the record.)

17

18 MEMBER HERNANDEZ: Is there a
19 second -- did you ever have an additional
20 wall behind this one?

21

22 MR. RANT: No.

23

24 MEMBER HERNANDEZ: (Inaudible) behind
25 it?

26

27 MR. RANT: Yeah.

28

29 MEMBER HERNANDEZ: Well, that's good.

30

31 MR. RANT: It's good.

32

33 MEMBER HERNANDEZ: Is this picket
34 fence -- this picket fence is 4 feet? Is
35 that picket fence 4 feet, starting 5 or maybe
36 even 6?

37

38 MR. RANT: Yeah, that's a 4 foot vinyl
39 fence.

40

41 MEMBER HERNANDEZ: It is 4; okay. If
42 that's 4 feet, then this is between this --

43

44 MR. RANT: Yeah.

45

46 MEMBER HERNANDEZ: And the bottom of
47 that fence appears to be a hell of a lot more
48 than 8.

49

50 MR. RANT: What's that?

APPEAL #21086

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MEMBER HERNANDEZ: The distance between this brick, the bottom of that fence appears to be a lot more than 8. If this fence, if the white fence is (inaudible) --

MR. RANT: The bottom wall, the bottom elevation is 138.5 and the top is 1 -- 146.5.

MEMBER HERNANDEZ: What does it say here? Is that what the survey said on the topographical survey?

MR. RANT: 138.5 bottom wall.

MEMBER HERNANDEZ: Yeah and --

MR. RANT: I just submitted a copy of the survey and the top of the wall here is 146.5.

MEMBER HERNANDEZ: Yeah, if that's what the topographical survey says, that's what it is. It's 8 feet.

CHAIRMAN MAMMINA: I mean, look, the reality is this is a lawsuit waiting to happen.

(Discussion held among Board Members off the record.)

CHAIRMAN MAMMINA: Mike, this is not a survey of their -- of the neighbor's property; right? I mean this is --

MR. RANT: This is a survey of the property line.

CHAIRMAN MAMMINA: Of your client's property line?

MR. RANT: And the retaining wall, that -- that straddles the property line. The existing grade where the -- where that tree is in the photograph, that -- that big tree.

1 APPEAL #21086

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3 MEMBER HERNANDEZ: Yeah.

4

5 MR. RANT: Just -- just behind that
6 tree, the elevation is 138.5.

7

8 CHAIRMAN MAMMINA: To where though?

9

10 MR. RANT: Right in front of that wood
11 wall that's there in the photograph. And
12 then -- and then the top of the wall is
13 146.5.

14

15 CHAIRMAN MAMMINA: Yeah, I don't know.

16

17 MEMBER DONATELLI: Take a look and
18 see.

19

20 MEMBER HERNANDEZ: That's what we're
21 looking at.

22

23 CHAIRMAN MAMMINA: I --

24

25 MEMBER HERNANDEZ: Yeah, that's what
26 we're looking at.

27

28 CHAIRMAN MAMMINA: -- I see it. But
29 I'm still saying I don't -- I don't know. We
30 can't see that in the picture.

31

32 MR. RANT: You're saying the picture
33 looks like it's taller?

34

35 CHAIRMAN MAMMINA: So you're saying --
36 you're saying though on the other end, the
37 top of the wall is 143.8 and the bottom of
38 the wall is 142?

39

40 MR. RANT: No, 146.5.

41

42 MEMBER HERNANDEZ: No, on the right
43 side -- on the right side of your survey.

44

45 CHAIRMAN MAMMINA: It says 143.8 and
46 then 142?

47

48 MR. RANT: Yeah, that's the lower
49 wall. That's the lower wall. There's two
50 walls.

1 APPEAL #21086

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3

4 CHAIRMAN MAMMINA: And yeah, but I'm
5 saying, so that's that much.

6

7 MR. RANT: Wait, I'm sorry. 138.5 to
8 140 --

9

10 CHAIRMAN MAMMINA: 143 --

11

12 VICE-CHAIRMAN FRANCIS: 143.8 --

13

14 CHAIRMAN MAMMINA: -- 143.8 to 142.
15 Top of wall, (inaudible) 143.8 --

16

17 MR. RANT: I'm -- I'm sorry. At -- at
18 what point? I don't --

19

20 CHAIRMAN MAMMINA: -- bottom of wall,
21 142.

22

23 And understand, something's got to be
24 fixed here, and maybe this is the perfect
25 solution and we're going to approve it.

26

27 We -- we just need to make sure that
28 we understand what we're approving. That's
29 all.

30

31 MR. RANT: We're -- you're -- you're
32 approving -- what's proposed is an 8 foot
33 retaining wall that --

34

35 CHAIRMAN MAMMINA: But -- but when the
36 wall collapses and the two neighbors sue each
37 other, they're going to sue the Town too;
38 okay?

39

40 I'm just projecting. You know, but
41 after 45 years, I've seen lots of actions.

42

43 MEMBER HERNANDEZ: Uh-huh.

44

45 CHAIRMAN MAMMINA: You know, I -- I
46 been involved way more lawsuits than -- than,
47 you know, than I -- I want to talk about.

48

49 MR. RANT: Yeah.

50

51 CHAIRMAN MAMMINA: You know, and all
52 we want to do is understand where the wall's
53 going to go. We have counsel here. If -- if

1 APPEAL #21086

2
3 you disagree with me, you know, then I'm --
4 I'm with whatever you think.

5
6 MR. RANT: The new wall -- the new
7 wall will be built on my client's property,
8 just inside of the property line. And it'll
9 have -- it'll have a height of 8 foot, an 8
10 foot exposed height retaining wall. That's
11 what's proposed.

12 We have the elevation of -- of the --
13 where -- where the brick wall is on the
14 neighbor's property, the top of that brick
15 wall is 138.5.

16
17 VICE-CHAIRMAN FRANCIS: Right.

18
19 MR. RANT: And -- and the finished
20 elevation at the backyard of our property,
21 the upper side is 146.5. So unless I'm -- so
22 unless I'm missing something on the survey --

23
24 (Discussion held among Board Members
25 off the record.)

26
27 CHAIRMAN MAMMINA: All right. I guess
28 so apparently there's been some action at the
29 Building Department regarding this. You
30 know, and I think, as I said before, you
31 know, I'm pretty sure we're going to approve
32 this wall. You know, I just wanted to know
33 where it was going to go.

34
35 MR. RANT: Yeah, and -- and I -- I
36 think --

37
38 CHAIRMAN MAMMINA: But I guess just
39 based on, you know, on --

40
41 SECRETARY WAGNER: (Inaudible)?

42
43 CHAIRMAN MAMMINA: I think you
44 took it.

45
46 SECRETARY WAGNER: I (inaudible).

47
48 CHAIRMAN MAMMINA: You know, just --
49 just based on, you know, everybody's
50 (inaudible), if you're approved for an 8 foot

APPEAL #21086

1
2
3 wall, you put in an 8 foot wall. If you find
4 out that you have a problem when everything
5 gets staked out, you can reach out for -- I
6 guess, I don't know if it's okay if I can
7 give direction, but I think our, you know,
8 our -- our opinion is you'll reach out for
9 the Building Department and the Zoning
10 Office, you know. And, you know, we'll deal
11 with it at that time, 'cause I'm not saying
12 it would happen. But -- but I don't want the
13 wall to end up at 9 feet and then you have a
14 problem with the Building Department that
15 says it's an 8 foot wall, not a 9 foot wall.
16 You know, we -- we all recognize this is a
17 dangerous condition.

18
19 MR. RANT: Understood.

20
21 CHAIRMAN MAMMINA: You know, we
22 completely recognize that.

23
24 MR. RANT: Uh-huh.

25
26 CHAIRMAN MAMMINA: So, you know, I
27 think the, you know, the -- the perspective
28 of the, you know, of the Board, and I -- I am
29 persuaded, you know, to, you know, to -- to
30 agree wholeheartedly with everybody, you
31 know, with everybody that we -- we got to
32 start working on this thing. And hopefully,
33 the Building Department is ready to give you
34 a permit.

35
36 MR. RANT: Yeah.

37
38 CHAIRMAN MAMMINA: And off you go;
39 right?

40 It's a very good wall. There's no
41 doubt about it.

42
43 MR. RANT: Yeah. And like other
44 projects in the Town, you know, we'll be out
45 there to inspect the wall. We'll -- we'll
46 prepare a final survey. And the final survey
47 will delineate the final height of the wall,
48 to make sure that there's no discrepancies
49 and that the plan is properly followed.

50 But, you know, we did prepare the

1 APPEAL #21086

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3 initial survey. I know it seems, you know,
4 it's possibly deceiving visually looking
5 at -- at the photograph, because the brick
6 wall is actually 5, 6 feet in front of it.
7 There's some slope to the grade, so but we
8 did survey it.

9 I -- I myself will inspect the
10 installation. We'll do a final survey and
11 we'll ensure that everything is followed as
12 per the plan.

13

14 CHAIRMAN MAMMINA: Okay. Mr. Rant,
15 you know I -- I have confidence in you as a
16 professional.

17

18 MR. RANT: Appreciate it. Thank you.

19

20 CHAIRMAN MAMMINA: So -- so --

21

22 MEMBER DONATELLI: I'll move it.
23 So Mr. Chairman, in light of the
24 application and that the retaining wall that
25 is existing does appear to be failing as we
26 speak, I make a motion that we grant the
27 application for the construction of an 8 foot
28 tall -- of a -- a retaining wall not to
29 exceed 8 feet in height.

30

31 CHAIRMAN MAMMINA: Okay. We have a --
32 a -- we have a motion by Mr. Donatelli.

33

34 Do we -- do we have a second?

35

36 MEMBER HERNANDEZ: Second.

37

38 CHAIRMAN MAMMINA: Seconded by
39 Mr. Hernandez.

40

41 Can -- can you just hold on one
42 second? Can -- can I just ask one -- one
43 crazy question?

44

45 (Discussion held among Board Members
46 off the record.)

47

48 CHAIRMAN MAMMINA: Okay. Please poll
49 the Board.

50

51 SECRETARY WAGNER: Member Goodsell?

1 APPEAL #21086
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3 MEMBER GOODSSELL: Aye.
4
5 SECRETARY WAGNER: Member Hernandez?
6
7 MEMBER HERNANDEZ: Aye.
8
9 SECRETARY WAGNER: Member Donatelli?
10
11 MEMBER DONATELLI: Aye.
12
13 SECRETARY WAGNER: Vice-Chairman
14 Francis?
15
16 VICE-CHAIRMAN FRANCIS: Aye.
17
18 SECRETARY WAGNER: Chairman Mammìna?
19
20 CHAIRMAN MAMMÌNA: Aye.
21 The application is granted.
22
23 MR. RANT: Thank you very much.
24
25 CHAIRMAN MAMMÌNA: Take care.
26
27 MR. RANT: Have a good day.
28
29 CHAIRMAN MAMMÌNA: You will receive
30 your permit immediately.
31
32 MR. RANT: Yes -- yes.
33
34 A VOICE: Thank you -- thank you.
35
36 MEMBER DONATELLI: You're welcome.
37 Good luck.
38
39 MEMBER HERNANDEZ: Good luck.
40
41 CHAIRMAN MAMMÌNA: We're off the
42 record.
43
44 (Whereupon, a recess was taken at
45 1:48 p.m. and the Hearing continued at
46 2:24 p.m.)
47
48 * * *
49
50

1 APPEAL #21092

2

3 (Stepping up.)

4

5 SECRETARY WAGNER: The first appeal --
6 oh, actually we have two adjournments from
7 the Commercial Calendar.

8 We have an adjournment of Appeal
9 No. 21092, 679 Port Washington Boulevard,
10 LLC, Alma Bank, 679 Port Washington Boulevard
11 in Port Washington, section 6, block 2,
12 lot 277 in the Business "A" Zoning District.

13 That's adjourned to September First.

14

15 APPEAL #21092 - 679 Port Washington
16 Blvd., LLC (Alma Bank); 679 Port Washington
17 Boulevard, Port Washington; Section 6, Block
18 2, Lot 277; Zoned: Business-A.

19 Variances §§ 70-203(T)(2)(j),
20 70-203(T)(2)(a)[2], & 48-11.1(B) to construct
21 a new bank with a drive-through bypass lane
22 that interferes with internal circulation of
23 the site, an outbound vehicle space partially
24 located off-site, and an outbound vehicle
25 space partially located on a sidewalk.

26

27 * * *

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1 APPEAL #21094

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SECRETARY WAGNER: We also have an adjournment of Appeal No. 21094, New Cingular Wireless PCS, east side of Herricks Road, north of Center Street in Garden City Park, section 9, block 641, lot 48C in the Residence "C" Zoning District.

That's adjourned to September First also.

APPEAL #21094 - New Cingular Wireless PCS, LLC; E/side Herricks Road, North of Center Street, Garden City Park; Section 9, Block 641, Lot 48C; Zoned: Residence-C Variances from §§75-7.C(6) and 75-7.C(7) to construct a generator that is not enclosed with removal of landscaping at that location without replacement.

SECRETARY WAGNER: The first appeal on the afternoon calendar is Appeal No. 21089, Kissaki Manhasset, LLC --

CHAIRMAN MAMMINA: I think some people are here for that one, I'm assuming.

So -- so if -- if anyone is here for either of those two cases, those will not be heard today. So did we have dates on those, Ginny.

SECRETARY WAGNER: Was anyone here for Appeal No. 21094, the Cingular Wireless application?

(Gesturing.)

SECRETARY WAGNER: That's been adjourned until September First.

A VOICE: Yeah, I can't come September First, so what is this (inaudible).

ATTORNEY ALGIOS: So -- so you can put any comments -- you can put them in writing, and you can e-mail them to the Board of Appeals and they will be made part of the record.

A VOICE: Can't you -- you have to an

1 APPEAL #21094

2

3 opportunity to speak at that time and the
4 wireless company will?

5

6 MEMBER HERNANDEZ: Oh, you can come
7 back on that date --

8

9 CHAIRMAN MAMMINA: Sure --

10

11 MEMBER HERNANDEZ: -- if you want.

12

13 CHAIRMAN MAMMINA: -- you can come
14 back.

15

16 A VOICE: Well, the way they've got
17 the adjournment, then are we allowed an
18 adjournment as well. If these people can't
19 make it, they (inaudible) --

20

21 VICE-CHAIRMAN FRANCIS: It's their
22 application.

23

24 CHAIRMAN MAMMINA: So that's -- it's
25 their application. And typical -- not
26 typically, always, we will typically give a
27 single adjournment.

28

29 A VOICE: Okay. So can I ask, how do
30 I go through that process if I want to do
31 that?

32

33 VICE-CHAIRMAN FRANCIS: Do what?

34

35 A VOICE: An adjournment, for another
36 adjournment, to ask -- ask for another
37 adjournment.

38

39 CHAIRMAN MAMMINA: Well, it's -- it's
40 their application, so they -- they asked for
41 the adjournment.

42

43 A VOICE: Okay. I didn't know that
44 process, so --

45

46 SECRETARY WAGNER: No, we don't have a
47 process for an adjournment made by the
48 public. As counsel explained, if you have
49 comments you can put them on the record by
50 submitting them prior (inaudible) --

1 APPEAL #21094

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3

4

A VOICE: That's already -- that's
been done already. I've done that.

6

7

And so I was hoping to be here to have
the Board Members hear my side of the story
when it comes to --

9

10

CHAIRMAN MAMMINA: Are we still on
Bruce?

12

13

SECRETARY WAGNER: Well, no.

14

15

VICE-CHAIRMAN FRANCIS: No.

16

17

SECRETARY WAGNER: No.

18

19

CHAIRMAN MAMMINA: No.

20

21

SECRETARY WAGNER: Well, the -- the
Board Members will be made aware of your
comments.

23

24

A VOICE: Okay.

26

27

Will I get another registered letter
for the time and the -- so it's September
First at what time or is that it?

30

31

SECRETARY WAGNER: I told you they
have to re-notice; right?

33

34

ATTORNEY ALGIOS: Yes, they're
re-noticing.

36

37

SECRETARY WAGNER: Well, the applicant
has to do re-noticing for the hearing,
possibly just by regular mail, but I do have
an e-mail account --

40

41

42

A VOICE: I had a letter the last

44

time.

45

ATTORNEY ALGIOS: No -- no -- no.

46

47

CHAIRMAN MAMMINA: Did you get a
letter (inaudible)?

48

49

50

SECRETARY WAGNER: They're re-noticing

1 APPEAL #21094

2
3 it.

4
5 SECRETARY WAGNER: Certified letter.

6
7 A VOICE: Okay. I just want to make
8 sure that, you know, that my neighbors can
9 make it. I -- I'll -- I'll make sure I make
10 it, but I just want to make sure that the
11 Board is -- I'll get an opportunity to speak
12 at that time.

13
14 ATTORNEY ALGIOS: You'll -- you'll
15 receive notice.

16
17 A VOICE: Okay.

18
19 ATTORNEY ALGIOS: You'll receive
20 notice.

21
22 SECRETARY WAGNER: And -- and we're
23 letting you know now that it will be
24 scheduled right as -- and you can always call
25 our office just to make sure it hasn't been
26 adjourned for some other reason from that
27 date.

28
29 A VOICE: Okay.

30
31 SECRETARY WAGNER: So --

32
33 A VOICE: September First?

34
35 SECRETARY WAGNER: September First,
36 yeah.

37
38 A VOICE: Okay, thank you.

39
40 SECRETARY WAGNER: You're welcome.

41
42 CHAIRMAN MAMMINA: Okay, thank you.
43 Apologies. Remember, this does happen
44 all the time.

45
46 A VOICE: Okay. I know.

47
48 CHAIRMAN MAMMINA: I know.

49
50 SECRETARY WAGNER: I did e-mail a few

1 APPEAL #21094

2
3 people back to let them know that it was
4 adjourned.

5
6 A VOICE: I feel bad for the, you
7 know, my neighbors and they want to hear it
8 too.

9
10 CHAIRMAN MAMMINA: I understand.

11
12 SECRETARY WAGNER: Yeah.

13
14 (Whereupon, a discussion held off the
15 record.)

16
17
18 (Discussion held among Board Members
19 off the record.)

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21 * * *

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1 APPEAL #21089

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3 SECRETARY WAGNER: Well, let me --
4 maybe we got interrupted in the middle.

5 Appeal No. 21089, Kissaki Manhasset,
6 LLC, 407 and 411 Plandome Road, Manhasset,
7 section 3, block 138-02, lot 812 in the
8 Business "A" Zoning District.

9 A variance from "70-103.A(1)" and a
10 conditional use "70-126.A," to construct
11 interior alterations to expand an existing
12 restaurant or a conditional use into retail
13 space with not enough parking on the site.

14

15 APPEAL #21089 - Kissaki Manhasset,
16 LLC; 407 & 411 Plandome Road, Manhasset;
17 Section 3, Block 138-02, Lot 821; Zoned:
18 Business-A.

19 Variance from §70-103.A(1) and a
20 conditional use §70-126.A to construct
21 interior alterations to expand an existing
22 restaurant (a conditional use) into a retail
23 space with not enough parking on site.

24

25 CHAIRMAN MAMMINA: You've heard Appeal
26 No. 21089, Kissaki Manhasset, LLC.

27 Is there anyone in the room interested
28 in the application other than the applicant?

29

30 (No response.)

31

32 CHAIRMAN MAMMINA: Seeing no hands,
33 Mr. Migatz.

34

35 (Stepping up.)

36

37 MR. MIGATZ: For the applicant,
38 Bruce W. Migatz, Albanese and Albanese,
39 1050 Franklin Avenue, Garden City, New York.
40 Good afternoon.

41 Let me, at the outset, introduce
42 some -- some exhibits, so you can mark them
43 at -- at once:

44 Exhibit 1 contains two photographs.
45 The first photograph is of the subject
46 premises as it looks today. And the second
47 photograph attached to that is how the
48 subject premises looked prior to the
49 extensive renovation recently done by the
50 landlord;

1 APPEAL #21089

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3 Exhibit 2 is the decision of the
4 Zoning Board in Appeal No. 10830 for --

5

6 MEMBER HERNANDEZ: Mr. Migatz,
7 could -- could --

8

9 MR. MIGATZ: -- one of the former
10 restaurants --

11

12 MEMBER HERNANDEZ: -- you bring the
13 microphone closer to you? I can barely hear
14 you.

15

16 MR. MIGATZ: Yes.

17

18 MEMBER HERNANDEZ: One of the
19 former --

20

21 MR. MIGATZ: Better?

22

23 MEMBER HERNANDEZ: Yeah, perfect.
24 Thank you.

25

26 MR. MIGATZ: Exhibit 2 is a decision
27 of the Zoning Board in Appeal 10830, granted
28 a conditional use permit and a parking
29 variance to Taby's (phonetic) Burger House
30 back in 1986, one of the prior restaurants in
31 the subject premises.

32 Exhibit 3 are the original consent
33 forms signed by three property owners within
34 300 feet.

35 I'll also hand in the additional
36 return receipts (handing).

37

38 SECRETARY WAGNER: (Receiving.)

39

40 MR. MIGATZ: So the subject properties
41 are known as 407 and 411 Plandome Road in
42 Manhasset. The applicant before you today is
43 Kissaki Manhasset, LLC. The owner of the
44 strip mall is Plandome (inaudible)
45 Properties, LLC.

46 And with me today is Gary Kamfer,
47 K-a-m-f-e-r. He is the principal of Kissaki
48 Manhasset.

49 And Gary is an experienced owner of
50 sushi restaurants. He has:

APPEAL #21089

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Two in Manhattan;
He has one in Long Island City;
He has one in Water Mill;
And one in Greenwich;
And hopefully soon one in Manhasset.
And also with me is the project

architect, Anthony DiProperzio, and traffic
engineer, Robert Eschbacher.

The applicant proposes to alter the
vacant restaurant space at 411 Plandome Road,
last occupied by Misaki Japanese Restaurant,
and prior to that, a Taby's Burger House, and
to then expand it into a vacant retail store
at 407 Plandome Road.

The restaurant requires a conditional
use permit and off-street parking variance
since the strip mall is a prior
non-conforming strip mall with insufficient
parking.

Now, just for the record, it is on
the west side of Plandome Road, section 3,
block 138-02, lots 821 and 822.

The -- the strip mall actually starts
on Bayview Avenue and swings around to
Plandome Road or vice-versa. It's a corner
strip mall with a parking lot that is behind
the mall that Mr. Eschbacher will -- will
address.

Exhibit 1 is what the subject premises
look like now. And you do see that there is
a sign up there for Kissaki. I'm not trying
to count their eggs before they hatch, but
they just want to get that -- get that sign
up. And then compare that to the photograph
behind that, how that building used to look.
And I think the new owners deserve a
compliment for doing a very nice job in
renovating that building on Plandome Road
and -- and Bayview Avenue.

Exhibit 2, as I said, is the prior
decision of -- of the Board granting a
conditional use for this location for a
restaurant and for a parking variance.

The conditional use standards are well
familiar to this Board. I will go through
them quickly. I know you -- you have a long
day.

The purpose is set forth in the -- in

APPEAL #21089

the Town Law and the use is permitted. The Town Code permits restaurants as a conditional use. And Case Law says a conditional use is tantamount to a permitted use.

Whether the use is of such a character, size, location, design and layout to be appropriate to and in harmony with the surrounding properties, once again, the Courts upheld that the inclusion of a conditional use in the district is tantamount to a legislative finding that the use is in harmony with the general zoning plan and will not adversely effect the neighborhood.

There are numerous food uses on Plandome Road. This property had and still has a -- a valid conditional use permit for what was there, Misaki, and is looking to expand that into the adjacent restaurant and the adjacent retail store.

Now, whether the proposed use will provide a desirable service for convenience to the community, we all know working and living in Manhasset, that these food stores, food uses, restaurants are very desirable for people that work in Town Hall to walk down the block, other -- other businesses in the -- in the area and for the residents as well.

And whether the use would be hazardous, conflicting or incongruous to the neighborhood by means -- by reason of excessive traffic, Mr. Eschbacher will address that when he addresses the parking variance standards.

And lastly, whether the use would be objectionable to nearby residences. There are no residences immediately adjacent to this -- these premises. And once again, there's been a restaurant in half of the subject premises since 1986.

Let me call on Mr. Eschbacher to address the parking variance. The parking variance is an area variance pursuant to the Town Code. And I ask Mr. Eschbacher to address whether or not it would be an undesirable change in the community character, by reason of a granting of this

APPEAL #21089

parking variance.

Mr. Eschbacher?

(Stepping up.)

MR. ESCHBACHER: Good afternoon, Mr. Chairman and members of the Board. It's good to see you in-person again.

My name is Robert Eschbacher. I'm with VHB Engineering and my office is located at 100 Motor Parkway in Hauppauge.

I was retained by the applicant to review the parking situation with regard to this application.

As Mr. Migatz indicated, we're seeking a parking variance among the conditional use as well. The particular building in which this restaurant would be operating, it's consisting of two adjoining spaces, which would be combined to provide space for the -- the new Kissaki Restaurant.

As a result of this, we are effectively only changing 991 square feet. The north side of the building is already a restaurant. It will continue as a restaurant. The south side which was retail, will now become a restaurant.

When you look at the difference in parking requirements by converting the 991 spaces from retail to restaurant, it shows that an additional nine parking spaces would be needed for that.

Now, it was in discussion with Mr. Migatz, it -- it was also determined that we're providing some bar space in the new area. And there would be more parking required for that, pursuant to the requirements in the -- in the Town Code. However, this is kind of one of those unique situations where, if the applicant had eliminated the eight bar seats from -- from the bar area and simply added two tables with four seats for each, there'd be no more parking required for that.

So really when you look at it in that sense, we're dealing with a minimal change in the parking. Now, as we're all aware, very few of the buildings along Plandome Road have

APPEAL #21089

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3 their own on -- on-site parking. This is an
4 exception. There is parking in the rear that
5 is shared by the other uses as well.

6 However, we have two time periods that
7 we looked at with regard to the parking
8 demand. We have lunchtime, early evening and
9 dinner. At lunchtime, typically the
10 restaurant does not operate anywhere near
11 full capacity and the customers are really
12 drawn to walk-in traffic from the surrounding
13 area, whether it be from Town Hall, shoppers
14 along there, workers along there, people
15 getting off the railroad and so on.

16 So -- so the most critical time for
17 the parking, the existing parking conditions
18 is lunchtime. That's when all the retail
19 stores are generally operating. But that's
20 when we don't need all the parking that is
21 technically required by the code. And the
22 adjoining municipal parking is what was
23 placed there by the Town, in order to address
24 the parking needs of these businesses.

25 Now, I've had the opportunity now on
26 several occasions to go and take a look at
27 the parking on both sides of -- of Locust and
28 determined that there is very adequate
29 parking to accommodate the needs of this
30 restaurant, while also serving the other
31 businesses.

32 In the evening, when the restaurant
33 would more closely require all of its,
34 parking for all of its seats, the actual
35 parking in the municipal lots, as well as
36 along Plandome Road too is greatly reduced,
37 because many of the retail stores are not
38 open.

39 So it's a very good combination of
40 parking supply and demand, both in terms of
41 lunch business and evening business. And in
42 my professional opinion, there will be
43 adequate parking to continue to serve the
44 needs, not only of the proposed Kissaki
45 Restaurant, but the other uses as well.

46 With respect to the general traffic
47 flow, downtown area is a very busy area. And
48 but many of the customers that are coming
49 there are already either going to be there in
50 the -- in the midday for the lunchtime,

1 APPEAL #21089

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3 because they've come there for other reasons,
4 and the evening, they -- they -- the traffic
5 volumes are lower. So there's really no
6 conflict between the two of those, and in my
7 opinion there would not be any undue
8 congestion caused as a result of this.

9 So I recommend that the Board approve
10 the application. And I'd be happy to answer
11 any questions you may have.

12

13 MEMBER GOODSSELL: I have one.

14 How easy access is there to the
15 parking in the rear? Is it delineated? Is
16 it general parking for the strip? Is it
17 exclusive?

18

19 MR. ESCHBACHER: As -- as a practical
20 matter, the people that park back there are
21 associated with the existing tenants. If I'm
22 going to the restaurant as a customer, I
23 don't really -- I'm not familiar with back
24 there, and I would shy away from going in
25 there and finding it difficult to come out.
26 So it really serves the -- the owners and
27 employees of those businesses.

28

29 MEMBER GOODSSELL: Does the restaurant
30 intend to continue as a take-out, do you
31 know, or as a sit-down dinner or both? I
32 mean parking for both would be -- would be --

33

34 MR. ESCHBACHER: Yeah --

35

36 MEMBER GOODSSELL: -- separate
37 concerns?

38

39 MR. ESCHBACHER: -- it's -- well --
40 well, things are changing, as -- as we see.
41 I -- I understand that it would most likely
42 continue to be indoor dining going forward.
43 We've seen over the last year or so, an
44 increase in the take-out activity. And I
45 would expect that a certain amount of that
46 will continue.

47 But, you know, the way it's been laid
48 out with the seats and so on, they really
49 want to encourage customers to come in, sit
50 and enjoy the environment.

1 APPEAL #21089

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4 MEMBER GOODSSELL: Thank you.

5

6 MR. ESCHBACHER: Okay?

7

8 (No response.)

9

10 MR. ESCHBACHER: Thank you.

11

12 CHAIRMAN MAMMINA: Thank you,

13 Mr. Eschbacher.

14 Mr. Migatz?

15

16 (Stepping up.)

17

18 MR. MIGATZ: Let me just expand on
19 that. Kissaki is an upscale sushi
20 restaurant. And you -- you -- every
21 restaurant has take-out, but this is not a
22 take-out restaurant. It is an upscale
23 restaurant that is -- oh, I been off before
24 but this is a new --

25

26 (Laughter.)

27

28 MEMBER GOODSSELL: It's something you
29 said, Mr. Migatz.

30

31 MEMBER DONATELLI: I bet it's Glenn in
32 the -- in the --

33

34 (Laughter.)

35

36 CHAIRMAN MAMMINA: Glenn -- Glenn
37 pulled the plug on you the --

38

39 (Laughter.)

40

41 MR. MIGATZ: I -- I guess I have
42 nothing further to say.

43

44 A VOICE: There -- there is a utility
45 pole at the south end of Plandome Road, two
46 actually that came down. And that's probably
47 the power source of the power outage.

48

49 CHAIRMAN MAMMINA: Bruce, when the
50 other wall slides down from the ceiling, then

1 APPEAL #21089

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3 you know you're in trouble.

4

5 (Laughter.)

6

7 MR. MIGATZ: Like I -- like I was
8 saying --

9

10 MEMBER HERNANDEZ: Excuse me,
11 stenographer, you have no power?

12

13 THE STENOGRAPHER: I don't have power
14 for my computer.

15

16 MEMBER HERNANDEZ: She can't record.

17

18 MEMBER DONATELLI: But you can hear
19 the speakers.

20

21 MR. MIGATZ: You have to do it the old
22 fashioned way.

23

24 A VOICE: The speakers are getting
25 powered.

26

27 THE STENOGRAPHER: I don't do it
28 old --

29

30 CHAIRMAN MAMMINA: No, she has to take
31 a record.

32

33 A VOICE: Don't you have a battery?

34

35 THE STENOGRAPHER: I do, but it's on a
36 strip, so if it dies --

37

38 ATTORNEY ALGIOS: Let just take --
39 let's just take a five-minute break. Let me
40 see if I can find out what's going on.

41

42 (Whereupon, a recess was taken at
43 2:44 p.m. and the hearing continued at
44 3:00 p.m.)

45

46 SECRETARY WAGNER: Mr. Migatz, you
47 want to come -- you want to give it a shot
48 without a microphone?

49

50 And the court reporter has asked
everybody if you could, speak very clearly

1 APPEAL #21089

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3 and loudly, because she's going to have
4 difficulty without a microphone.

5
6 VICE-CHAIRMAN FRANCIS: The
7 microphones are working.

8
9 SECRETARY WAGNER: Yeah.
10 But just speak one at a time.

11
12 (Stepping up.)

13
14 MR. MIGATZ: Right. Just to follow up
15 on the -- the other factors of the Board to
16 consider:

17 Whether or not the variance is
18 substantial. Numerically the percentage
19 deviation appears on paper to be substantial.
20 But Case Law also says that the -- the
21 substantiality of a variance really only is
22 significant if it has -- if it has an adverse
23 impact on the community. And Mr. Eschbacher
24 has testified that in his expert opinion, it
25 will not have an adverse impact on the
26 community to grant this variance;

27 Whether there's some feasible method
28 for the applicant to pursue rather than a
29 variance. Well, the Board knows there's no
30 other parking available in Manhasset. This
31 center is fortunate enough to have some
32 parking and -- and there is municipal parking
33 nearby;

34 And lastly, whether the difficulty --
35 whether -- well, not lastly, whether the
36 variance, if granted, will have an adverse
37 impact on the environment. This is a
38 conditional use. It is an unlisted action.
39 Parking variances, area variance, that's
40 deemed not to have an adverse impact as a
41 matter of law. And the conditional use is an
42 "unlisted action." And based upon the "SEQRA
43 Form" submitted, we submit it will have not
44 adverse impact on the community;

45 And lastly, whether the difficulty is
46 self-created. As a matter of law this is a
47 self-created difficulty, but that is not
48 determinative of an area variance.

49 I did submit three consent forms.
50 And just in conclusion, the applicant

1 APPEAL #21089

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3 has been trying to open a restaurant in the
4 most of difficult times for restaurants. And
5 I -- I commend him for -- for that effort.
6 It's been a very long process for him, going
7 through the Building Department and getting
8 here. And if this Board could render a
9 decision today, I know he would greatly
10 appreciate that.

11 Thank you.

12

13 MEMBER HERNANDEZ: Mr. Chairman,
14 usually you have some comments, so that's why
15 I was waiting for you to --

16

17 CHAIRMAN MAMMINA: No -- no -- no.

18

19 MEMBER HERNANDEZ: Okay.

20

21 CHAIRMAN MAMMINA: Any -- any comments
22 from any of you?

23

24 MEMBER DONATELLI: No comments.

25

26 CHAIRMAN MAMMINA: No.

27

28 MEMBER HERNANDEZ: Mr. Migatz, the
29 only thing that -- that I -- I don't see and
30 I'm sure it's there somewhere and if not, it
31 would need to be obviously, is I don't a see
32 refrigerated garbage in the -- in your
33 kitchen.

34

35 MR. MIGATZ: It's in -- in the
36 basement, is it not?

37

38 MEMBER HERNANDEZ: It's -- it's in the
39 basement? Oh, maybe it's -- it's not marked.
40 But it would need -- obviously needs to be
41 there.

42

43 MR. MIGATZ: Right.

44

45 CHAIRMAN MAMMINA: With standard
46 restaurant conditions.

47

48 MEMBER HERNANDEZ: Yes.

49

50 VICE-CHAIRMAN FRANCIS: Yes.

APPEAL #21089

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MEMBER HERNANDEZ: Okay, I -- I -- no one has any comments.

Mr. Chairman, Plandome Road is a -- a downtown area that was built many, many years ago, not before cars were made, but some of the -- a lot of the houses were or the buildings were. As a result, we have no parking.

It's essentially very, very minimal parking on Plandome Road. So all of those businesses have a deficiency of parking. It's understandable. It is self-containing to some degree, because if you want to go to a restaurant or some -- someplace else and you can't park your car in the street, you pretty much got to go somewhere else. You can't stay there. But it's the nature of doing business on Plandome Road.

The only thing that I -- I said was the -- the refrigerated garbage, which obviously needs to be there. So having said that, I would say that including standard restaurant conditions, I move that we grant the application.

CHAIRMAN MAMMINA: Okay. We have a motion by Mr. Hernandez.
Do we have a second?

MEMBER DONATELLI: Second.

CHAIRMAN MAMMINA: Seconded by Mr. Donatelli.
Please poll the Board.

SECRETARY WAGNER: Member Hernandez?

MEMBER HERNANDEZ: Aye.

SECRETARY WAGNER: Member Goodsell?

MEMBER GOODSSELL: Aye.

SECRETARY WAGNER: Member Donatelli?

MEMBER DONATELLI: Aye.

SECRETARY WAGNER: Vice-Chairman

1 APPEAL #21089

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3 Francis?

4

5 VICE-CHAIRMAN FRANCIS: Aye.

6

7 SECRETARY WAGNER: Chairman Mammina?

8

9 CHAIRMAN MAMMINA: Aye.

10 The application is granted.

11

12 MEMBER HERNANDEZ: And good luck.

13

14 CHAIRMAN MAMMINA: And good luck.

15

16 MEMBER HERNANDEZ: Look forward to
17 going there.

18

19 CHAIRMAN MAMMINA: And if it makes the
20 owner feel any -- any better, I was going
21 with a friend to Vincent's Clam Bar, no big
22 deal; okay? Last night, an hour and-a-half
23 wait.

24

25 So thank you. You know, it's --

26

27 MEMBER HERNANDEZ: It's a good sign.

28

29 CHAIRMAN MAMMINA: -- things are
30 coming back to normal, so --

31

32 A VOICE: Thank you. Thank you so
33 much.

34

35 CHAIRMAN MAMMINA: And so I do commend
36 you on moving forward.

37

38 A VOICE: We're looking forward to it.

39

40 MEMBER DONATELLI: And may you have
41 electricity there as well.

42

43 A VOICE: Thank you.

44

45 (Laughter.)

46

47 * * *

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1 APPEAL #21090

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SECRETARY WAGNER: The next appeal is
Appeal No. 21090, Manhasset Bay Yacht Club,
455 Main Street in Port Washington,
section 5, block C, lots 9, 16, 408 and 427
in the "Waterfront Business Zoning District."

Variances from "70-103.A" and
"70-148.16," to construct a paddle tennis
court with not enough parking and to
construct fences that are too tall.

APPEAL #21090 - Manhasset Bay Yacht
Club; 455 Main Street., Port Washington,
Section 5, Block C, Lots 9, 16, 408 & 427;
Zoned Waterfront Business (B-W).

Variances §§ 70-103.A & 70-148.16 to
construct a paddle tennis court with not
enough parking and to construct fences that
are too tall.

CHAIRMAN MAMMINA: You've heard
Appeal No. 21090, Manhasset Bay Yacht Club.
Is there anyone in the room interested
in the application other than the applicant?

(Gesturing.)

CHAIRMAN MAMMINA: Okay. I'm seeing a
hand up. Okay, fine. So you'll have an
opportunity to speak after the, you know,
after the presentation if you -- if you
choose to.

A VOICE: Thank you.

(Stepping up.)

MR. SAHN: Good -- good afternoon,
Mr. Chairman, members of the Board. Mike --
Michael Sahn, Sahn Ward, 333 Earle Ovington
Boulevard, Uniondale, New York, representing
the applicant this afternoon.

And attending the hearing with me is
Mr. Robert Eschbacher, who will testify with
the Board's permission after I make a few
brief remarks. And William Cornachio, who is
both an attorney and the past Commodore of
the Yacht Club. And Mr. Cornachio can answer
any questions that the Board has.

APPEAL #21090

I -- I will do my best to be brief, not on the substance, but in terms of my remarks given the circumstances without lights and air conditioning.

Fortunately, we have provided the Board already with a memorandum of facts and law in support of the application, that I'd like to refer the Board's attention to. And Mr. Eschbacher has provided his parking study report based on his observations. So I will try not to repeat things in those documents.

As indicated on the legal notice, there are two variances that are requested this afternoon. One is with respect to insufficient off-street parking at the Yacht Club premises, and the other is for a fence height variance.

As indicated, the property is at 455 Main Street in Port Washington, section 5, block C, lots 9, 16, 408 and 427. This is a "Waterfront Business District." And it is a very unique property, because it encompasses 7.12 acres approximately in area.

There are a variety of different structures on the property, including:

- The main building;
- The swimming pool;
- There is storage buildings;
- There are tennis courts;

And already existing are two paddle tennis courts of the same nature as proposed in this application.

This application seeks permission for one additional court.

Paddle tennis, as you may know, has become very popular. It's more or less a seasonal sport played mostly in the fall and the winter and uniquely very often at nighttime. So we have a situation where there are different uses on the property and they don't occur simultaneously at time or simultaneously in terms of the calendar.

This court requires an additional eight parking spaces. So although, the notice of disapproval indicates that there is already a substantial shortage, the difference between the existing shortage and the proposal with the tennis court is only

APPEAL #21090

eight spaces.

As Mr. Eschbacher has detailed and will explain in his testimony, there is ample parking available onsite to accommodate this differential. And it would not provide any adverse consequence or impact to the community.

Likewise, with respect to the fencing, the existing courts have fencing, the tennis courts have fencing. Fencing for a court of this nature requires 12 feet in height. And it's a unique type of fence that is surrounding the court braced by aluminum panels, if you will, or stanchions. And the courts are situated above grade. That's the nature of this sport and how it's played. And so the fencing is not different in kind or nature that than already exists on the premises and would not change, we submit, the character of the area or the existing use.

That being said, unless there are any questions of me, I would call Mr. Eschbacher to provide his testimony.

CHAIRMAN MAMMINA: Any questions for Mr. Sahn?

MEMBER HERNANDEZ: No.

MEMBER DONATELLI: No.

MR. SAHN: Thank you.
Mr. Eschbacher?

(Stepping up.)

MR. ESCHBACHER: Good afternoon.
Robert Eschbacher again.

I was retained by the applicant to evaluate the parking with the proposed addition of this paddle tennis court. As was indicated by Mr. Sahn and in my report, this single court will require, based on the code, eight additional parking spaces.

First, let me just touch briefly upon the overall requirements for the site. The notice of disapproval has detailed the overall parking based on the different

APPEAL #21090

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3 component uses that are in here, and it was
4 done very properly. However, the Town of
5 North Hempstead Code, as almost every other
6 code on Long Island, does not recognize that
7 there are certain non-simultaneous uses. So
8 as a result, they simply add up each use for
9 each component and determine that's the
10 overall requirement. In this case, it's not
11 really applicable, because of the differing
12 nature of the facilities and when various
13 activities are taking place.

14 I've outlined in my report several
15 reasons that I believe that the additional
16 eight spaces are -- are not needed and would
17 not, say, significantly change what the
18 overall parking demand would be. The site
19 plan shows there are really two different
20 areas for parking on the site, the area with
21 the paved striped spaces and some grass area,
22 and then there's also the seasonal parking
23 which is in the gravel area on the north side
24 of the property. That area is used for boat
25 storage during the non-boating season. But
26 during boating season, that area is available
27 for any special events that might take place
28 on the property and need more than the -- the
29 regular parking can be provided.

30 As part of in my work, I was out there
31 two Saturdays ago. There was a wedding
32 scheduled at 6:00. One hundred twenty-five
33 people were expected to attend.

34 And the first thing that happened and
35 based on my discussions with the -- the
36 former Commodore, when there's a -- an event
37 like a wedding, generally one of two things
38 will take place. Either the -- the wedding
39 organizers will provide a bus to transport a
40 number of people there, which is what
41 happened when I was there, or if those
42 provisions are not set, they would require
43 valet parking.

44 Now, when I was there for this one
45 event, the bus was there, as I mentioned.
46 But all of the parking associated with the
47 wedding guests, and the staff and so on was
48 accommodated in the, if you will, the
49 full-time year-round parking available. I
50 did not observe any parking in the graveled

APPEAL #21090

area, other than some maintenance work that taking place in conjunction with the boats that were there.

So it was all contained on the site, plenty of additional room, should it have been needed. And certainly, if there were a paddle tennis game going on, it would not have had any significant change in this whatsoever.

And it's also important to realize that the Manhasset Bay Yacht Club wants to accommodate all of the users of the site. If they were concerned about how the paddle tennis court might affect the overall parking, they would perhaps not be pursuing this. But they're doing it to accommodate the greater demand.

I was there one time when the -- the existing facilities were in operation and there were people waiting to play. That's what the additional court is, intended, to accommodate the people that are there. And they're already parked on the site, so that's not necessarily going to generate more cars coming there.

And also just with the nature of the number of players with paddle tennis, you generally would have two players on each team. And if they all drove separately, that's four cars. And that would only be if they were coming specifically to play that and not do anything else.

So in my professional opinion, the proposed additional parking demand which may result from this would certainly be able to be accommodated on the site, without any adverse impact in the surrounding area.

I'd be happy to answer questions the Board may have.

MEMBER DONATELLI: I -- I do have one question. And I'm not sure if it's appropriate to direct my question towards you or perhaps toward someone else.

The -- the sport paddle ball, is that --

MR. ESCHBACHER: Yeah --

APPEAL #21090

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MEMBER DONATELLI: -- something that is played year round? Is that something that's played primarily in summer? Are you able to tell me, is it played 12 months out of the year?

MR. CORNACHIO: May -- may I answer that, sir?

MR. ESCHBACHER: We're going to -- we're going to have the -- the past Commodore speak about that.

MEMBER DONATELLI: Very good.

CHAIRMAN MAMMINA: Come on up.

MEMBER DONATELLI: Please just give your name and address.

(Stepping up.)

MR. CORNACHIO: Sure, will do. My name is William Cornachio. I reside here in Manhasset at 4 Shoredale Drive. I've been a member of Manhasset Bay Yacht Club for over thirty years.

So it's important to recognize that the paddle season begins when the tennis season ends. Two seasons do not overlap.

So that, you know, again, deals with this fiction that Mr. Eschbacher pointed out about non-simultaneous or simultaneous use. At the time the paddle season begins, our pool is closed. Boating activities are sharply diminished. So activities generally at the Yacht Club have wound down quite considerably once paddle gets underway.

Likewise, when the paddle season ends there is -- there is not an overlap with tennis, nor one with swimming, except quite frankly now and again since the sport is so popular, occasionally you'll see people knocking the ball around on a Saturday during -- during the months of June, May and June.

But again, this fiction of

1 APPEAL #21090

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3 simultaneous use driving the parking
4 requirement clearly is something that should
5 be recognized. It is -- it is not at all
6 applicable, given the nature of our
7 activities at Manhasset Bay Yacht Club.

8
9 CHAIRMAN MAMMINA: Thank you, sir.

10
11 MEMBER DONATELLI: Thank you.

12
13 CHAIRMAN MAMMINA: Anybody have any
14 other questions for, Mr. Eschbacher?

15
16 (No response.)

17
18 CHAIRMAN MAMMINA: No.

19
20 (Stepping up.)

21
22 MR. SAHN: At this point, we have
23 nothing further, unless there are questions
24 of the Board. But we certainly would like to
25 respond to any comments from the person who's
26 here and interested in the case.

27
28 MEMBER HERNANDEZ: Mr. Sahn, I have --
29 have one question and I apologize, because I
30 have no Internet, so I can't look up what you
31 have sent in ahead of time.

32 But could you describe where this --
33 this is the third paddle tennis court --

34
35 MR. SAHN: Correct --

36
37 MEMBER HERNANDEZ: -- that you have;
38 right?

39
40 MR. SAHN: -- (no audible.)

41
42 MEMBER HERNANDEZ: Where is that
43 tennis court -- I know the area well. But if
44 you have a map of it or something you can
45 show.

46
47 MR. SAHN: Yes. So if I could refer
48 the Board there, the Board should have a
49 site plan that Mr. Don Alberto prepared.

50

1 APPEAL #21090

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3 MEMBER HERNANDEZ: Uh-huh.

4

5 MR. SAHN: And in the -- sort of in
6 the middle of the site, you'll see in --
7 in -- and it's -- it's highlighted in, you
8 know, dark black color is the location of the
9 proposed court, which is immediately next to
10 and adjacent to the two existing courts. So
11 you'll see, it's very much on the interior of
12 the site and not visible from the street, nor
13 adjacent properties.

14

15 ATTORNEY ALGIOS: I can show them the
16 pictures --

17

18 MR. SAHN: Oh.

19

20 ATTORNEY ALGIOS: -- that you had
21 attached to your brief.

22

23 MR. SAHN: Thank you.

24

25 MEMBER HERNANDEZ: Okay. We see the
26 one that's right up against the parking lot.
27 There's another one directly behind it.
28 Where is the third one going?

29

30 ATTORNEY ALGIOS: Jay, I have the
31 photo. Maybe this will --

32

33 MEMBER HERNANDEZ: Okay.

34

35 ATTORNEY ALGIOS: -- make it clearer
36 (handing).

37

38 MEMBER HERNANDEZ: (Receiving.) Yeah,
39 it's going to -- is it going to go in the
40 boat yard?

41

42 CHAIRMAN MAMMINA: Where the
43 building's coming down?

44

45 MR. CORNACHIO: No, directly --
46 directly behind the existing courts.

47

48 MEMBER HERNANDEZ: So it's going to be
49 over the -- where the boat yard now begins?
50

1 APPEAL #21090

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3

4 MR. CORNACHIO: Yes.

5

6 MEMBER HERNANDEZ: Where you have the
7 boats stored there now?

8

9 MR. CORNACHIO: Yes, there is -- there
10 is --

11

12 SECRETARY WAGNER: Sir, if you're
13 going to speak, can you come up to the podium
14 please?

15

16 MR. SAHN: Let me see if I can only
17 approach in a -- in a limited fashion.

18

19 (Discussion held among Board Members
20 off the record.)

21

22 MEMBER DONATELLI: Yeah, no,
23 we -- we have that in our application.

24

25 MR. SAHN: I mean the I'm holding up
26 the plan that I referred to that Mr. Alberto
27 prepared.

28

29 VICE-CHAIRMAN FRANCIS: Right.

30

31 MR. SAHN: In the dark box
32 (indicating) --

33

34 CHAIRMAN MAMMINA: We don't have a
35 dark box.

36

37 MEMBER GOODSSELL: Yes, we do.

38

39 CHAIRMAN MAMMINA: No.

40

41 MEMBER GOODSSELL: Yes, we do -- yes,
42 we do.

43

44 SECRETARY WAGNER: Yeah.

45

46 MEMBER HERNANDEZ: So we have --oh,
47 so it's not behind it. It's the next one.
48 This (indicating) one?

49

50 MR. SAHN: Yeah.

1 APPEAL #21090

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3

4 MEMBER HERNANDEZ: This (indicating)

5 one?

6

7

MR. SAHN: Yes.

8

9

MEMBER HERNANDEZ: Okay.

10

11

MR. SAHN: Number 11.

12

13

MEMBER HERNANDEZ: Got it.

14

15

VICE-CHAIRMAN FRANCIS: Okay.

16

17

CHAIRMAN MAMMINA: Got it.

18

19

20

MR. SAHN: This -- this plan itemizes
by number the various structures and
improvements.

21

22

23

CHAIRMAN MAMMINA: One, two, three.

24

25

26

MEMBER GOODSSELL: Yeah, I have it
right here.

27

28

29

(Discussion held among Board Members
off the record.)

30

31

32

33

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35

36

MEMBER HERNANDEZ: Are you going to
lose a couple of parking spaces then, when
you build that server? Because right now,
I'm -- I'm assuming the -- the shed is the
keep-warm shed for the players for the
winter?

37

38

39

40

41

42

MR. SAHN: I don't believe we'd lose
any spaces, because there may -- they may be
showing some stripping here that -- that
retains the same number as on in the
disapproval.

43

44

45

46

47

48

49

MEMBER HERNANDEZ: Yeah, if it's
directly the one-story frame, No. 8, 11 then
you have to be losing some parking spaces.
And it's not a big deal. I -- I'm not
worried about that. But I'm -- I just want
to understand where it's going.

50

1 APPEAL #21090

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3 CHAIRMAN MAMMINA: It -- it says
4 four parking spaces on the site plan and in
5 the existing plan there are seven.

6

7 CHAIRMAN MAMMINA: Yeah, 'cause it
8 looks like they're taking the shed out.

9

10 MEMBER HERNANDEZ: They're taking the
11 shed down.

12

13 SECRETARY WAGNER: Oh, uh-huh.

14

15 (Discussion held among Board Members
16 off the record.)

17

18 (Stepping up.)

19

20 MR. CORNACHIO: If I -- if I may?

21

22 MEMBER HERNANDEZ: Yes, sir.

23

24 MR. CORNACHIO: As you see the dark
25 area on the Don Alberto plan --

26

27 MEMBER HERNANDEZ: Okay.

28

29 MR. CORNACHIO: -- it's located behind
30 the two existing paddle courts.

31

32 MEMBER HERNANDEZ: Yes.

33

34 VICE-CHAIRMAN FRANCIS: Yeah -- yeah.

35

36 MR. CORNACHIO: Okay. And that area
37 is not presently used for parking, so it
38 doesn't have any impact on --

39

40 MEMBER HERNANDEZ: Well, maybe it's
41 not being used, but it's stripped --

42

43 CHAIRMAN MAMMINA: Stripped.

44

45 MEMBER HERNANDEZ: -- as -- as -- as
46 being -- as being parking. On your plans,
47 it's stripped as being as parking. Maybe you
48 don't use it for that, but that's what it's
49 stripped as.

50

1 APPEAL #21090

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3 MR. CORNACHIO: Yeah, and I see that.
4 That's really overflow parking on the -- on
5 the gravel area.

6

7 (Discussion held among Board Members
8 off the record.)

9

10 (Stepping up.)

11

12 MR. SAHN: Mr. Eschbacher pointed out
13 to me that the notice of disapproval
14 reflected the total number of spaces
15 provided --

16

17 MEMBER HERNANDEZ: Right.

18

19 MR. SAHN: -- based on this plan with
20 the court, so that's our --

21

22 MEMBER HERNANDEZ: I just wanted to
23 make sure you knew where I was going.

24

25 MR. SAHN: Right, I understand.

26

27 MEMBER HERNANDEZ: I just wanted to
28 make sure you --

29

30 MR. SAHN: Yeah.

31

32 MEMBER HERNANDEZ: -- knew where it's
33 going.

34

35 MR. SAHN: I understand.

36

37 MEMBER HERNANDEZ: I wasn't -- I just
38 wanted to make sure I understood --

39

40 MR. SAHN: Yeah.

41

42 MEMBER HERNANDEZ: -- where it was
43 going, that's all.

44

45 MS. AUTZ: Those are my questions
46 actually.

47

48 MR. SAHN: Oh, okay.

49

50 MS. AUTZ: They're among them, but I

1 APPEAL #21090

2
3 do have a couple of more questions.

4
5 MR. SAHN: Oh, okay.

6
7 MS. AUTZ: Thank you.

8
9 (Discussion held among Board Members
10 off the record.)

11
12 MR. SAHN: And so I'm -- I'm going to
13 yield, if that's appropriate, to the person
14 who's here and interested.

15
16 CHAIRMAN MAMMINA: Please.

17
18 VICE-CHAIRMAN FRANCIS: Please.

19
20 CHAIRMAN MAMMINA: Please.

21
22 VICE-CHAIRMAN FRANCIS: For sure.

23
24 (Stepping up.)

25
26 MS. AUTZ: Thank you, sir.

27
28 MR. SAHN: Thank you.

29
30 CHAIRMAN MAMMINA: Please just give
31 your name and address.

32
33 MS. AUTZ: Of course.

34
35 CHAIRMAN MAMMINA: Pull the microphone
36 on over toward you.

37
38 MS. AUTZ: Yes. Shahnaz Autz,
39 A-u-t-z.

40
41 THE STENOGRAPHER: I can't hear.

42
43 CHAIRMAN MAMMINA: She can't hear you.

44
45 THE STENOGRAPHER: I can't hear.

46
47 MS. AUTZ: Shahnaz Autz, A-u-t-z,
48 "MFNA Neighborhood Association."

49 Thank you. Actually, thank you for
50 taking the time to listen to my questions.

APPEAL #21090

Some of my questions were answered, because of what you just asked.

I just wanted to urge the Board to consider the fact that parking spots are very precious down by lower Main Street and in the waterfront area, as you all know. We know that the Manhasset Yacht Club has been in our community for over 100 years and we consider them a -- a good neighbor. But at the same time, we would like to urge you to think about the importance of giving away parking spaces at this time and in the future.

The other question I had was -- and of course, the point is also that they already at the very high level of, you know, variance at the same time. And the -- the seasonal, if you're pretty generous about understanding that, it -- it doesn't make sense to me, because the -- the game is played in the wintertime and the fall time, so that the -- that the boats are back on the -- on the premises. So I don't know if that, that is not a good reason.

But I do have two questions as well. Is that some neighbors were concerned about the lighting at night, and how strong is the lighting to, you know, to -- to help the players playing the -- in the courts and would that disturb the neighbors who are close by? And the noise, I -- they were wondering because -- I'm sorry, the aluminum walls, are they banging the -- the balls against the -- the walls, or is that like a tennis that goes back and forth on the -- I'm not sure exactly how that is played. So basically those are my -- those are my questions and comments. Thank you for your time.

MEMBER DONATELLI: May I -- may I just ask you a question first? I'm sorry, I didn't hear at the beginning. What organization are you from?

MS. AUTZ: "MFNA," the Mitchell Farm --

MEMBER DONATELLI: Mitchell Farm.

1 APPEAL #21090

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3 MS. AUTZ: -- Neighborhood
4 Association.

5
6 MEMBER DONATELLI: Okay.

7
8 MS. AUTZ: Yes. Yes.

9
10 MEMBER DONATELLI: And --

11
12 MS. AUTZ: And we represent the
13 down -- Main Street, all the residents in
14 those --

15
16 MEMBER DONATELLI: Yes.

17
18 MS. AUTZ: -- areas.

19
20 MEMBER DONATELLI: -- no, I'm -- I'm
21 familiar with Mitchell Farms.

22
23 MS. AUTZ: Thank you.

24
25 MEMBER DONATELLI: May -- I -- I have
26 another question.

27
28 MS. AUTZ: Yes.

29
30 MEMBER DONATELLI: Does your
31 neighborhood right now feel any impact from
32 the existing courts that are there? Are you
33 aware of any issues with noise or with light?

34
35 MS. AUTZ: With the light, yes. But I
36 don't have any issues -- there are no issues
37 for parking at the moment. But there are --
38 generally a lot of people are concerned with
39 parking. I'm -- I'm not sure if they're the
40 members of the -- the Yacht Club. But there
41 are many, many cars that are parked in front
42 of people's houses and -- and --

43
44 MEMBER DONATELLI: Well, yes.

45
46 MS. AUTZ: -- parking is very sparse.
47 And Mr. Donatelli, if -- I'm sure
48 you -- you know that many of the businesses
49 down by the waterfront are at variance.
50 "Louie's" at variance and there's several.

1 APPEAL #21090

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3 "H on the Harbor" has no parking and they're
4 using the -- the parking lot by the water to
5 park their cars. And the other businesses
6 are basically grandfathered in or don't have
7 enough space. So you can understand the
8 concern of the residents in that area.

9
10 MEMBER DONATELLI: I'm -- I'm well
11 familiar with the issues down there.

12
13 MS. AUTZ: Thank you.

14
15 MEMBER DONATELLI: My -- my concern --
16 and -- and the roads have been built the way
17 they are. The houses have been built the way
18 they are. It's all been in existence for a
19 very long time.

20
21 MS. AUTZ: Yes -- yes.

22
23 MEMBER DONATELLI: So we try to
24 balance all of this when we review each
25 application on its merits.

26 But I would like to get back to your
27 comment about the lights. Are -- are you
28 able to -- when you say that some of your
29 neighbors, some of your members are concerned
30 about the lighting, are they specifically
31 concerned about the lighting of this paddle
32 court, or are they concerned about other
33 lighting? Is there -- or they're just
34 generally concerned about noise and lighting?

35
36 MS. AUTZ: Yes, generally concerned
37 about noise and lighting. And also, one more
38 point is that I would assume the fence will
39 not be obstructing any views, because it's in
40 the middle of the premises, and so I think
41 that's moot.

42 But I -- but I think the noise and
43 the -- and the lighting, if it's very strong
44 and, you know, would be disturbing to the
45 surrounding neighborhood, or homes in --
46 inside of their rooms or something like that,
47 they would -- they would be concerned about
48 that.

49
50 MEMBER DONATELLI: Thank you for

1 APPEAL #21090

2
3 coming down.

4
5 MS. AUTZ: Thank you for listening.

6
7 CHAIRMAN MAMMINA: Thank you so much.
8 Was there anyone else?

9
10 (Stepping up.)

11
12 MR. CORNACHIO: Well, may -- may I
13 address some of those concerns?

14
15 CHAIRMAN MAMMINA: Of course.

16
17 MR. CORNACHIO: Thank you very much.

18
19 CHAIRMAN MAMMINA: Sure.

20
21 MR. CORNACHIO: Is it Autz is that how
22 you pronounce your name?

23
24 MS. AUTZ: Uh-huh.

25
26 MR. CORNACHIO: Ms. Autz raised a
27 question about parking in front of neighbor's
28 houses. I am well aware of that concern, and
29 the Club's management is well aware of that
30 concern. And I can say unequivocally, we
31 contain all our member and guest property on
32 Manhasset Bay Yacht Club property. We do not
33 utilize street parking for any of our
34 activities.

35 As was pointed out earlier in this
36 presentation, when there's a large gathering
37 at the Yacht Club, we either require the host
38 to charter a bus as occurred on July 29th or
39 hire valet parking where we could stack up in
40 the boat yard.

41 And yes Ms. Autz, it is correct that
42 in the winter months the boat yard is filled
43 with boats. And but at that time, there's
44 less demand for other activities at the Yacht
45 Club, so there's adequate parking in the --
46 in the other areas.

47 Finally, in terms of the lighting, we
48 purposely placed this court seaward away from
49 the neighbors, so any additional lighting
50 impacts won't affect the neighborhood,

1 APPEAL #21090

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3 because of it's on the seaward side of our
4 property, as opposed to the road side or the
5 neighborhood side. So, you know, all -- all
6 this was done -- I should say much of what we
7 did, we did out of sensitivity to known
8 concerns of residents surrounding our
9 property.

10 Thank you.

11

12 (Stepping up.)

13

14 MS. AUTZ: Thank you.

15 I actually have one more point, may I?

16

17 CHAIRMAN MAMMINA: Sure.

18

19 MS. AUTZ: Thank you.

20 Thank you for that explanation. We do

21 appreciate the sensitivity for the parking.

22 You understand.

23

24 CHAIRMAN MAMMINA: Oh, yea.

25

26 MEMBER DONATELLI: Let there be light.

27

28 (Laughter.)

29

30 MS. AUTZ: One last question is that
31 is there a way that the Manhasset Bay Yacht
32 Club can use other spaces available?

33

34 MEMBER DONATELLI: I'm -- I'm sorry,
35 I'm getting some noise back here, so I can't
36 quite hear.

37

38 MS. AUTZ: Okay.

39 Is there a way that the Manhasset Bay
40 Yacht Club can use any other space on their
41 property for parking, to add some -- some
42 more parking to their, to the additional
43 parking that they have right now?

44 Thank you.

45

46 CHAIRMAN MAMMINA: Maybe Mr. Eschbacher
47 can -- can answer that.

48

49 MS. AUTZ: Or is that the only option?

50

APPEAL #21090

(Stepping up.)

MR. ESCHBACHER: The parking layout has really been maxed out. They've -- the -- the parking in the paved area, the grass area, that's about all you can do over there. That's why they've made the arrangements for the seasonal gravel area in the boat yard, when needed. And they've used up pretty much every bit of that.

So but, you know, I think the key point, is as you've heard times several times, all of the parking demand is accommodated on the site. So to the extent that there may be parking problems along Main Street or elsewhere, they're not caused by the Yacht Club. They're taking care of their own needs.

CHAIRMAN MAMMINA: During bigger events -- and I don't know if you can answer, you know, this or ask comment of the, Commodore -- do they use attended parking if there's -- if there is a big --

MR. ESCHBACHER: I'm sorry.

CHAIRMAN MAMMINA: Do they -- do they attended parking if there is a big event?

MR. ESCHBACHER: Yes -- yes. Yeah, the -- the -- that's -- that's one of the requirements for those events, to either have a bus as they did recently, or to have attended parking. Yes, it's a requirement. And they use it and -- and it works well.

And, you know, with the parking they have available, it can accommodate quite a bit. But we're maxed out with the -- between the traditional parking and the -- the boatyard parking.

CHAIRMAN MAMMINA: Okay. Thank you, Mr. Eschbacher.

(Stepping up.)

1 APPEAL #21090

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3 MR. SAHN: Thank you. I -- I would
4 only conclude by again expressing that we're
5 fortunate, in the sense that we have the
6 existing courts already. And we have the
7 experience of the existing courts and we're
8 not aware of complaints with respect to
9 parking, or lighting or noise of any nature.

10 So we -- we're not introducing
11 something new or different to the site. We
12 are continuing something we've already had.
13 And hopefully, the Board will feel that we've
14 respected those considerations in the way the
15 application has been presented.

16 And if the Board is amendable, I would
17 ask perhaps that the Board could consider
18 approving this afternoon, so that the permit
19 process can continue at the Building
20 Department.

21 But we have no further comments and
22 appreciate very much the Board's
23 consideration.

24
25 MEMBER DONATELLI: Okay. Mr.
26 Chairman, having heard the application and
27 also from the representative from Mitchell
28 Farms, I ask that we just reserve decision
29 on this. I'd like to study the application
30 in -- in a little bit more detail, so I ask
31 that we reserve decision.

32
33 CHAIRMAN MAMMINA: Okay.

34 (Stepping up.)

35
36
37 MR. SAHN: May I just inquire, the
38 next meeting of the Board is September 1 --

39
40 SECRETARY WAGNER: First.

41
42 MR. SAHN: -- I believe?

43
44 ATTORNEY ALGIOS: Uh-huh, correct.
45 Yeah.

46
47 MR. SAHN: SO -- so we -- we would be
48 reserved until September 1. Okay.

49
50 CHAIRMAN MAMMINA: Okay, thank you.

1 APPEAL #21090

2
3
4 MR. SAHN: Thank you.

5
6 CHAIRMAN MAMMINA: And particularly,
7 the lighting of the -- of the courts is -- is
8 what -- what Mr. Donatelli has -- has, you
9 know, has concern over. So I mean if there
10 is an installer who they're dealing with, who
11 the club is dealing with, that may be could
12 help out with providing us with information.

13
14 MEMBER DONATELLI: Is there a
15 photometric plan?

16
17 MR. SAHN: There is no specific
18 lighting plan, but I would certainly invite
19 Mr. Donatelli or any member to come to the
20 club and see the existing courts as they are.
21 That would give you a very clear
22 illustration.

23
24 MEMBER DONATELLI: And this is a
25 somewhat unique situation, in as much as we
26 already have some courts there, we're just
27 adding one more.

28
29 MR. SAHN: Correct.

30
31 MEMBER DONATELLI: And so I would
32 imagine that it would just be imagining that
33 new court in the place of -- of -- or beside
34 the old court.

35 So I could probably get a sense for it
36 myself, and I may just do that. And I may
37 not need an actual lighting plan. So I don't
38 think we need to continue this, as much as
39 just reserve it to give an opportunity to
40 just review the application.

41
42 MEMBER HERNANDEZ: Okay.

43
44 CHAIRMAN MAMMINA: Yeah.

45
46 MR. SAHN: Yes, and -- and most
47 certainly invited to come at any time.
48 And -- and if there's a particular time, I'm
49 sure Mr. Cornachio will accommodate and meet
50 you there.

1 APPEAL #21090

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4 MEMBER DONATELLI: Thank you. I will
5 be discrete.

6

7 (Laughter.)

8

9 MR. SAHN: Most welcome to come
10 anytime.

11

12 CHAIRMAN MAMMINA: He'll wear his
13 BZA Officer --

14

15 (Laughter.)

16

17 CHAIRMAN MAMMINA: -- when he comes
18 down.

19

20 Okay so --

21

22 MR. SAHN: I -- I believe

23

24 Mr. Cornachio has one comment perhaps.

25

26 (Stepping up.)

27

28 MR. CORNACHIO: Yeah, may -- may I --
29 may I just suggest that it is a private
30 club. So if you're going to pay a visit,
31 just -- just place a call, ask for the
32 manager and -- and, you know -- I wouldn't
33 want you to be embarrassed by someone saying
34 what the heck are you doing here? Okay.

35

36 MEMBER DONATELLI: Oh, we get that all
37 the time.

38

39 (Laughter.)

40

41 MR. CORNACHIO: Thank you.

42

43 CHAIRMAN MAMMINA: All right.

44

45 VICE-CHAIRMAN FRANCIS: I get that at
46 home.

47

48 CHAIRMAN MAMMINA: Thank you.

49

50 (Laughter.)

51

52 CHAIRMAN MAMMINA: We'll reserve

1 APPEAL #21090

2
3 decision, you know, on this. It'll probably
4 be decided at our next hearing.

5
6 MR. SAHN: Thank you.

7
8 MR. CORNACHIO: Thank you.

9
10 CHAIRMAN MAMMINA: Thank you, all.

11
12 (Discussion held among Board Members
13 off the record.)

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1 APPEAL #21091

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SECRETARY WAGNER: The next appeal is Appeal No. 21091, the Nassau Cemetery Association, 500 Port Washington Boulevard, Port Washington, section 5, block J, lot 702 in the Residence "C" District.

Appeal for determination or in the alternative a variance from "70-44" to construct an extension to a mausoleum, which is not a permitted use.

APPEAL #21091 - The Nassau Cemetery Association; 500 Port Washington Blvd., Port Washington, Section 5, Block J, Lot 702; Zoned Residence-C.

Appeal for determination or in the alternative a variance §70-44 to construct an extension to a mausoleum which is not a permitted use.

CHAIRMAN MAMMINA: You've heard Appeal No. 21091, the Nassau Cemetery Association.

Is there anyone in the room interested in the application other than the applicant?

(No response.)

CHAIRMAN MAMMINA: Seeing no one, please give your name and address.

(Stepping up.)

MR. MIGATZ: Bruce W. Migatz, Albanese and Albanese, 1050 Franklin Avenue, Garden City, New York. Good afternoon once again.

Let me -- I have three exhibits that I would like to have marked before I begin my presentation. And I also have some additional return receipt cards.

Exhibit 1 would be a photograph of the existing "Evergreen" mausoleum, to which the proposed addition is proposed.

Exhibit 2 is a photograph of the outside wall of the "Harbor of Peace" existing mausoleum, not the subject of this application, but just to show you what the proposed wall would look like.

And Exhibit 3 are sixteen original

APPEAL #21091

consent forms (handing).

MR. PERROTTA: (Receiving.)

(Discussion held among Board Members
off the record.)

MR. MIGATZ: The -- the Nassau
Cemetery Association, better known
as "Nassau Knolls" is located at 500 Port
Washington Boulevard in Port Washington,
section 5, block J, lot 702. And it is a
zoned Residence "C."

The application before you is to
construct an addition to the existing
"Evergreen" mausoleum. The photograph which
is marked as Exhibit 1 shows you that
existing mausoleum.

Now as part of my application, I did
submit a detailed description of facts and
law with other exhibits. And I presume they
are part of this record, so I -- I have not
submitted them again, but I will briefly
summarize that -- those facts.

The Cemetery is a not-for-profit
corporation incorporated on March 5th, 1990.
That's Exhibit A in my application. The
Cemetery acquired title to the subject
property in 1900 and commenced operation of a
Cemetery prior to the adoption of the first
zoning code of the Town in 1929. This would
be this documentation as to when the Cemetery
commenced operations.

The Cemetery property was zoned
Residence "C" in 1929, so the Cemetery became
a prior non-conforming use at that time.

In 1978 in Appeal No. 1348,
Exhibit C of the application, this Board
granted the Cemetery a use variance to
construct the existing "Evergreen" mausoleum.

In Appeal 15010 in 1993, this Board
granted the Cemetery a use variance to
construct three additional crypt museum --
crypt mausoleum buildings that are now
known as the "Harbor of Peace." And
Exhibit D is that Board's -- is this Board's
decision in that appeal. And a photograph
marked Exhibit 2 is a -- a section of that

APPEAL #21091

"Harbor of Peace" mausoleum.

The appeal granted permission to grant -- to construct three buildings in -- in stages. And the building permit was issued in 1993 for the first building and I'm talking about "Harbor of Peace." And this has relevance to the -- to the law. And a building permit was issued in 2002 for the construction of the second building of the "Harbor of Peace" mausoleum.

In Appeal 18771, the Cemetery sought a determination that the building official committed an error in determining that a further use variance was required to construct a third building, and alternatively sought a use variance to construct the third building. The Building Department took the position that the variance had expired and therefore, a new application was required. Exhibit E is the Board's decision in that appeal that denied the determination, but granted a use variance to construct a third building in the "Harbor of Peace" mausoleum section.

In Appeal No. 19204, Exhibit F of the application, this Board granted an extension of time to get a building permit for that.

Now, in the present application, the applicant was denied a building permit to construct an addition to the "Evergreen" mausoleum on the grounds that it was a non-permitted use.

Now, the existing mausoleum which is Exhibit 1's photograph, you'll see it's irregular in shape, it has a maximum length of 81 feet 9 and 1/2 inches, a maximum width of 54 feet 2 inches and a maximum height of 20 feet. In this mausoleum the crypts are inside the building. The visitors walk inside the building and the crypts are in -- in the wall inside that building.

Now, that -- that mausoleum is sold out and there is a demand for more crypts. And you could just imagine what this Cemetery has been through with "COVID" in the past year-and-a-half. Family members want to be nearby to their other family members when they pass away.

APPEAL #21091

So what is being proposed is to build what will look like the "Harbor of Peace" mausoleum, to build an addition around the perimeter of the "Evergreen" mausoleum. And these crypts with visitors would visit them from the outside, just like they do in the "Harbor of Peace."

Now, Exhibit 2 is the "Harbor of Peace." The "Evergreen" will not -- will not have an overhang as shown in Exhibit 2. And but it will have the marble wall, which would look very, very similar to the marble wall in the "Harbor of Peace."

Now, the proposed addition only increases the length of the existing mausoleum by 13 feet and only increases the width by approximately 9 feet. So in essence, if you can look at the plans, you can see if these -- just around the perimeter of the existing building does not impinge upon any of the graveyards and the graves are around that -- that mausoleum. And the height will be no higher than what is there now.

Now, we seek a determination that a use variance is not required, since the Cemetery acquired a vested right to extend its non-conforming use throughout the premises. And I rely upon the case in the Matter of Syracuse Aggregate Corp. versus Weise. The citation is in my -- is in my application, and subsequent case law after that decision.

Now, in the last appeal before this Board when I appeared before you and I argued that we did not need a use variance to build another crypt, I also relied upon the same theory and on the same case matter, Syracuse Aggregate Corp.

And this Board rejected that determination. And I'll just quote a part of this Board's decision. "The applicant assumes that graveyard share a similar character to quarries, despite the Court of Appeals characterization of such use as unique." As an aside, the matter of Syracuse was a quarry and they were seeking to extend their -- their mining operation into the

APPEAL #21091

other land they owned.

Continuing with the quote from the decision. "The applicant, however, has uncovered no cases extending Syracuse to Cemetery." Assuming for the purpose of argument that graves and quarries contemplates the excavation and sale of land itself as a resource, the same does not hold true for mausoleums. They are constructed on top of the land for the purpose of storing remains."

Now, although I have not yet uncovered a case on point with the cemeteries, extending Syracuse to the cemeteries, in Jones versus Town of Carroll Court of Appeals 2010 decision, the Court applied the same rationale to -- of quarries to a 'C & D landfill.' And the Court of Appeals stated here, "we conclude that the C & D landfill in this case is sufficiently similar in nature to the quarries in Syracuse Aggregate, Buffalo Crush Stone and Glacial Aggregates. As opposed to other non-conforming uses in which the land is merely incidental to the activities conducted upon it, the use of the property as a landfill, like a mine, is unique, because it necessarily envisioned that the land itself is a resource that will be consumed over time. Additionally, the owner of the landfill property can reasonably be expected the to hold a portion of the land in reserve for future expansion of that activity, just as a quarry operating may find necessary."

Now, just as a 'C & D landfill' buries the structure remains, the Cemetery buries the remains of loved ones. And the land is the asset of the Cemetery. It is not incidental to the Cemetery, just like the -- a 'C & D landfill' or a quarry.

So the cemetery use is unique, just like the quarries and just like landfills. So if there was additional vacant land and the cemetery wanted to dig more graves, I submit to you the case law is clear now, that they have the right to dig further into their property and -- and dig more graves.

And it should be no different for a

APPEAL #21091

mausoleum. Now, every cemetery that I know of -- and I've been to many unfortunately -- they have graves and they have mausoleums. And they keep land aside to build additional mausoleums, just like they keep land aside for future graves.

So based upon the case law, I submit to you that this Cemetery should not have to be coming back to you this time, or any time in the future when they need to devote their land to a prior non-conforming use that is grandfathered in, when there's not any further appeal to this Board. Otherwise, they'll be coming back every time you want to build another mausoleum or expand the graveyard sites.

Now, alternatively of course, we have sought the use variance. But I really hope that this can be decided on a determination to prevent future costs, time and energy of all of us.

In Appeal No. -- the last appeal this Board decided, 18771, the Board stated that while the 1993 decision that was for "Harbor of Peace" mausoleum did not track the requirements of "Town Law Section 267-b(2)," the usual considerations for a use variance do not pertain. This is what this Board said, "unlike a typical non-conforming use which is expected to wither away and be extinguished over time, the conversion of the Cemetery to residential use is neither feasible, nor consistent with sound policy in use only. So they granted the use variance recognizing that the typical standards for a use variance for this Cemetery just don't apply.

The key standard for use variance is can the applicant yield a reasonable return on its investment from a permitted use? The Cemetery's not for profit. It doesn't get any return on its investment. And there's no other use that this Cemetery can be put to, period. So the Board decision in 1993 is correct, that the normal standards do not apply to -- for a use variance to this Cemetery.

And this Board also stated that

APPEAL #21091

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2
3 respect for a prior precedent of the Board
4 should ordinarily leave the Board to adhere
5 to its earlier decisions. So the Board
6 granted that use variance in reliance on its
7 prior precedent of granting a use variance
8 for the Cemetery and as well as defining that
9 the normal standards for a use variance do
10 not apply to the Cemetery.

11 I believe the Planning Commission
12 issued a "Local Determination" on this.

13 And we did submit sixteen consent
14 forms. One hundred and eighty-nine notices
15 were mailed out on this application, which I
16 wish the Board would reconsider perhaps some
17 of their mailing requirements. Their mailing
18 bill was \$1,400. I haven't told my client
19 that yet.

20
21 MEMBER GOODSSELL: You just did.

22
23 (Laughter.)

24
25 MR. MIGATZ: It cost us \$1,400 for a
26 certified mailing and "First Class" mailing.
27 So maybe we have some large properties.
28 Maybe the Board can consider maybe changing
29 what the code requires.

30 That's -- that's the application. You
31 know, I know everybody asks the Board for a
32 prompt decision, but, you know, we, too, are
33 asking for that. And there is a waiting
34 list, unfortunately, for the mausoleum's
35 space. We would like to break ground, at
36 least get the foundation in before the land
37 freezes. And there is about a two- to
38 three-month wait time to get your permit,
39 once we get our decision from this Board, so
40 we're really pushing the limit on getting
41 that foundation in. So a quick decision
42 would greatly be appreciated.

43 You have any questions?

44
45 (No response.)

46
47 MEMBER GOODSSELL: I just want to
48 comment, Mr. Migatz. While I agree with you
49 that the Cemetery really has no other use
50 except as a Cemetery, I do disagree with you

APPEAL #21091

in that the Cemetery should not have to come back to the Board for permission to construct additional structures, because I think that there are neighborhood considerations:

Concerning height;

Concerning views;

Concerning use.

Here, this is clearly an application for something that is already existing on the premises and will be used. But supposing a cell phone tower approached you? We would hope that that would be something that the Board or the Building Department would have to approve. So I do disagree with part of your argument, but I agree with part of it. And that's my comment.

MR. MIGATZ: Well, a cell phone tower is not part of a cemetery use. But that would certainly have to come to this Board. Only when they are devoting the land to the uses of the cemetery do I submit that they don't have to come back. And they are bound by the setback and height limits of the Residence "C" District.

MEMBER GOODSELL: Agreed. But the original cemeteries were all very small graves. Mausoleums, in the general scheme of things, are a much more recent addition to cemeteries. And I can see why, we're running out of space.

MR. MIGATZ: Well, I -- I don't want to be argumentative, but sometimes that's my nature.

(Laughter.)

MR. MIGATZ: But my family is -- my family is in St. John's --

CHAIRMAN MAMMINA: Honestly?

MR. MIGATZ: -- Cemetery.

(Laughter.)

1 APPEAL #21091

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MR. MIGATZ: And that -- and that mausoleum has been there almost from day one that I -- that I know of. So I don't think that they're -- I don't think they're recent -- recent additions to -- to -- you drive through these cemeteries, you know, there are many small little mausoleum buildings. And you -- you look at the dates on those --

MEMBER GOODSELL: They've very old.

MR. MIGATZ: -- and I know they go back.

MEMBER DONATELLI: Mr. Migatz, when you mentioned you have a waiting list, I feel obligated to remind everyone that if Mr. Levine had been here, he would said that people are dying to get in there.

MR. MIGATZ: Dying to get in. I know. I didn't want to use that line.

MEMBER DONATELLI: I felt obligated to just remind everyone of that.

(Laughter.)

MR. MIGATZ: I didn't want to use that line.

(Laughter.)

MEMBER DONATELLI: You're -- you're -- you've -- you've made a very good argument. And you've given me, as one Board Member, quite a bit to think about.

I would like to reread the -- the brief that Mr. Migatz submitted in support of it, so I ask that we reserve decision on this.

CHAIRMAN MAMMINA: I think I'm -- I'm in agreement, you know, with that, because we want make the right decision on -- on this, you know, on -- on this, so --

1 APPEAL #21091

2
3 MR. MIGATZ: I can't hear you.

4
5 THE STENOGRAPHER: I can't hear you
6 either.

7
8 CHAIRMAN MAMMINA: I said, yes, I
9 think we're all in agreement with that,
10 because we want to make certain that we make
11 the right decision --

12
13 MR. MIGATZ: I appreciate --

14
15 CHAIRMAN MAMMINA: -- on this --

16
17 MR. MIGATZ: -- that.

18
19 CHAIRMAN MAMMINA: -- on this case,
20 so --

21
22 MR. MIGATZ: So if you could not go
23 beyond September First, that would be greatly
24 appreciated.

25
26 CHAIRMAN MAMMINA: We will certainly
27 try our best.

28
29 MR. MIGATZ: Thank you very much.

30
31 CHAIRMAN MAMMINA: Thank you,
32 Mr. Migatz.

33
34 MEMBER DONATELLI: Thank you.
35 Mr. Chairman, I have to be excused.

36
37 (Member Donatelli exits the hearing.)

38
39 (Discussion held among Board Members
40 off the record.)

41
42 MR. MIGATZ: Off the record.

43
44 (Whereupon, a discussion was held off
45 the record.)

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1 APPEAL #21093

2

3 (Stepping up.)

4

5 MR. PERROTTA: Mr. Chairman, the next
6 appeal is 21093, Brian Degaray, 81 Seaview
7 Boulevard, Port Washington, section 6,
8 block 89, lot 62 in the "Modified Planned
9 Industrial Park," for a conditional use under
10 "70-184.3(A) and a variance from "70-103.A,"
11 to construct interior alterations to an
12 existing building, to create a skating rink,
13 a conditional use, with not enough parking on
14 the site.

15

16 APPEAL #21093 - Brian Degaray;
17 81 Seaview Boulevard, Port Washington;
18 Section 6, Block 89, Lot 62; Zoned: Modified
19 Planned Industrial Park.

20 Conditional use 70-184.3(A) and
21 variance from 70-103.A to construct interior
22 alterations to an existing building to create
23 a skating rink (a conditional use) with not
24 enough parking on site.

25

26 CHAIRMAN MAMMINA: You've heard Appeal
27 No. 21093, Brian -- Brian Degaray.

28 Is there anyone in the room interested
29 in the application other than the applicant?

30

31 (No response.)

32

33 CHAIRMAN MAMMINA: Seeing no one,
34 please give your name and address.

35

36 (Stepping up.)

37

38 MR. O'BRIEN: Yes, good afternoon.
39 May I take off my mask? Is that okay?

40

41 CHAIRMAN MAMMINA: Yes, please.

42

43 MR. O'BRIEN: I was vaccinated in
44 January, so I should be okay.

45

46 CHAIRMAN MAMMINA: Good point.

47

48 MR. O'BRIEN: So Kevin O'Brien. Good
49 afternoon, Mr. Chairman, honorable members
50 of the Board.

APPEAL #21093

Kevin O'Brien from O'Brien Law, PC, 462 Sagamore Avenue, East Williston, New York, here this afternoon on behalf of the applicant, which noted was Appeal No. 21093, which involves a premises at 81 Seaview Boulevard, Port Washington, section 6, block 89, lot 62.

And as noted the property is located in the "Modified Planned Industrial Park District."

I also have here with me this afternoon Carlo Zaskorski of -- of -- he's the principal of Zaskorski and Associates. They're design professionals who prepared the plans which are before you.

I just wanted to make sure that Mr. Eschbacher had enough work, so we -- we have brought Mr. Eschbacher back here as well to -- as, you know, he's qualified as a traffic and parking expert.

And I also have here the owners and operators, if there are any ownership or operational questions.

The applicant seeks a conditional use permit, parking variance, to construct essentially interior alterations with respect to an existing building, to utilize same as a skating rink in conjunction with the existing use, which is a warehouse at the subject premises.

The property is located at 81 Seaview, deep within the "Modified Planning Industrial District."

The property is rectangular in nature. It's east of Osprey Court about -- and it's approximately 171 feet by 313 feet deep. The current improvements include an existing one-story concrete building with parking sort of in the side area, and in the back. And there's landscaping in the front. The lot area is 53,694 square feet. Existing building is approximately 20,060 square feet.

We are not proposing any changes to the footprint of the building. Everything is -- is interior. And basically, the warehouse space which exists and basically what we have is one tenant, which is a pharmaceutical tenant in the front of the

APPEAL #21093

building had left, and we're seeking to use -- utilize this as a skating annex.

The warehouse area is approximately 12,152 square feet. The skating area proposed is about, you know, roughly 8,400 square feet.

But we are deficient in the -- in the parking -- in the parking area. Sixty-four spaces are technically required, while we are providing twenty-four spaces and the -- the nature of such -- and I'll let Mr. Eschbacher go into this -- is that as a practical matter, the warehouse doesn't really utilize a whole heck of a lot of parking. And part of the beauty of this type of operation is that most of the people that go over there, they get dropped off. They get dropped off for a period of about three hours and then they come back.

And the conditional use aspect of things, skating, if you go through the code and it is section-- what is it -- "Chapter 70 Article Roman Number XIX" and it is -- is Section "70-184.3," conditional uses. So conditional use is presumptively a conditional use subject to certain conditions, and skating is one of them.

And it kind of works out nicely. As you go across the street, there is the skating academy. And the concept and sort of what we're looking to do over here is kind of work together with the Skating Academy. A conditional use had previously been issued with respect to that use. And here, this is going to be designed a little bit more fine tuned to:

Training;

Injury prevention;

Hockey;

Figure skating type of a -- a -- type of use.

So with respect to the parking, instead of me going into it, why don't I introduce Mr. Eschbacher? I would normally go through, you know, my preparatory questions. But I believe this Board has accepted Mr. Eschbacher as a traffic and parking experts in the past and maybe as

APPEAL #21093

recently as today. So if I can dispense with his curriculum vitae and preparatory questions, I would just ask that Mr. Eschbacher perhaps either submit your -- I -- I believe his report has been submitted, but perhaps he could state his findings and the basis for those findings.

CHAIRMAN MAMMINA: Okay, thank you very much, Mr. O'Brien.

MR. O'BRIEN: Mr. Eschbacher?

CHAIRMAN MAMMINA: Mr. Eschbacher, you're up.

(Stepping up.)

MR. ESCHBACHER: The good thing about testifying, I can breathe a little bit and take this off.

(Laughter.)

MR. ESCHBACHER: Good afternoon again, Robert Eschbacher.

Once again, I was retained by the applicant to review the adequacy of the parking for this particular property.

This is another case of non-simultaneous use. We have two distinct tenants that would be on the property, the warehouse, which is in the -- the rear part of the building. And that only has three employees, and they generally operate five days a week. And they are pretty much finished up with business by 4:00 in the afternoon, which is when the skating activities would take place.

The -- the code requires a total of sixty-five spaces. Twenty-one of them are associated with the warehouse and forty-four would be for the skating rink annex.

With the way the annex operates, as Mr. O'Brien indicated, this is used in conjunction with the Academy across the street. And this facility would have more skills training and so on. They're not

APPEAL #21093

1
2
3 playing games here. It's -- it's generally
4 youngsters between the ages of eleven and
5 eighteen. And they're dropped off by the
6 parents, and -- and often times there's
7 carpooling involved. So they, essentially
8 the parents or the other teammate's parents
9 may come, drop the skaters off and then they
10 leave.

11 There would be more of a longer term
12 need for parking associated with the
13 players -- and the -- the coaches rather and
14 the managers. And generally there would only
15 be about six of those that would park, you
16 know, for an extended period of time, once
17 again, beginning after the warehouse
18 operations are completed.

19 As part of my study as documented in
20 the report, we observed the on-site parking,
21 not only a weekday, but also on a Saturday.
22 On the weekday, we started 4:00 in the
23 afternoon and continued every half hour until
24 9:00 in the evening. And there were
25 generally eighteen to twenty vacant spaces
26 available, which would clearly be very
27 adequate to accommodate the needs of the
28 relatively handful of coaches, and very brief
29 turnover of parents that are -- that are
30 dropping the skaters off.

31 On the weekday, we went for the whole
32 day -- I'm sorry, for the Saturday we went
33 from 10 in the morning until 6. And it
34 showed similar results eighteen, nineteen,
35 twenty vacant spaces, clearly very adequate
36 to accommodate this particular use, which
37 benefits from the unique complimentary
38 tenants that would be in the building.

39 So based upon the results of my study
40 and observations, it's my professional
41 opinion there will be adequate parking to
42 accommodate both tenants on this property,
43 without any adverse impact on local parking
44 conditions.

45 I'm happy to answer any questions.
46

47 CHAIRMAN MAMMINA: I guess the
48 questions that I always ask in this part of
49 the world, if the -- if the Board were to
50 grant this and be wrong, what would be the

APPEAL #21093

impact on the surrounding neighborhood?

MR. ESCHBACHER: Okay. There -- there'd be two aspects to it. First, on-street parking on Seaview is permitted on the south side of Seaview. We also, as part of our study, observed how much on-street parking is taking place. And there's very adequate parking within a block in each direction to accommodate any possible overflow. And also the fact that this operates in conjunction with the skating academy across the street, and they have parking that is not always used during this time. So we have really two safeguards that could accommodate them.

CHAIRMAN MAMMINA: I -- I was corrected that the Board is never wrong, but --

(Laughter.)

CHAIRMAN MAMMINA: -- there are no residences or anything within that area --

MR. ESCHBACHER: That's correct.

CHAIRMAN MAMMINA: -- that -- that would be impacted, you know, by that?

MR. ESCHBACHER: And, you know, and especially Saturdays, the -- the "Modified Industrial Park" is very, very quiet. So if parking had to extend even further than a block in each direction, there's plenty there.

CHAIRMAN MAMMINA: Are there any other questions for Mr. Eschbacher?

(Stepping up.)

MR. ESCHBACHER: Okay, thank you.

MEMBER GOODSSELL: I have no further questions.

1 APPEAL #21093

2
3 CHAIRMAN MAMMINA: Thank you.

4
5 (Stepping up.)

6
7 MR. O'BRIEN: Thank you,
8 Mr. Eschbacher.

9
10 CHAIRMAN MAMMINA: Mr. O'Brien, I do
11 have a question though, for you.

12
13 MR. O'BRIEN: Certainly, yes.

14
15 CHAIRMAN MAMMINA: What is artificial
16 ice?

17
18 MR. O'BRIEN: Basically, it's a great
19 question. It's synthetic, you know, they use
20 synthetic materials. You've seen sometimes
21 it's kind of like a -- a --

22
23 A VOICE: A plastic.

24
25 MR. O'BRIEN: -- yeah, it's a plastic
26 essentially, you know, when they --

27
28 CHAIRMAN MAMMINA: Really?

29
30 A VOICE: Kind of like Teflon.

31
32 MR. O'BRIEN: And they've got -- I --
33 I've -- I've used, sometimes myself, because
34 I'm a snowboarder, you know, they have
35 certain places where they'll have like the
36 stuff where it's sort of fake material that
37 you can kind of go and utilize -- utilize
38 that.

39 So as part of -- I think as
40 Mr. Eschbacher was indicating, we do --
41 there's -- there's a lot of training. Like I
42 said, this is sort of the family skating
43 training annex you -- you've got across the
44 street.

45 So here, this is not going to be the
46 kind of place where would -- one would go to
47 have a game or anything along those lines.
48 This is -- this is more for the training,
49 "A," injury prevention, but also and way more
50 technical than -- than I can understand.

1 APPEAL #21093

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But there is certain things where,
like there's even like a -- a virtual thing,
where they'll put a thing around, and the --
the pucks will come out them. So you'll be
standing on an are, which will have this sort
of plastic and -- and sort of a synthetic
ice, artificial, for lack of a better term.
So there is -- there is that.

CHAIRMAN MAMMINA: Do you skate on it
with skates?

MR. O'BRIEN: Yes, you know, you can
skate on it. And -- and actually you can
also, and -- and as part of the conditional
uses in the -- in the code, you could do a,
for lack of a better term -- I'm sure there's
a more sophisticated term and I don't need to
know it -- roller -- roller blades and stuff
like that --

CHAIRMAN MAMMINA: Right.

MR. O'BRIEN: -- as well. So you'll
see where sometimes they'll use skates and
you'll use roller blades as -- as well.

(Discussion held among Board Members
off the record.)

MR. O'BRIEN: Any -- any further
questions of myself or anyone else?
Otherwise, I could just sort of briefly sum
up and conclude.

MEMBER HERNANDEZ: So there will be no
open sessions in this? This -- this will be
strictly for lessons, or specific training
or --

MR. O'BRIEN: Correct, absolutely
correctly. And --

CHAIRMAN MAMMINA: I just have one
question for Mr. Zaskorski. You got your
license in 1980 I assume?

MR. ZASKORSKI: 1979.

1 APPEAL #21093

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3

4 CHAIRMAN MAMMINA: '79. Oh.

5

6 (Laughter.)

7

8 MR. ZASKORSKI: It's only been 42
9 years and I'm finally starting to learn
10 things.

11

12 (Laughter.)

13

14 CHAIRMAN MAMMINA: I was '81 and --
15 and, you know, I'm -- I'm only about maybe
16 50 or 60 numbers after you. It just proves
17 my point that the licensing exam is much
18 tougher now [sic] -- then, than it -- than it
19 is now. Now the --

20

21 MR. ZASKORSKI: I took it at the
22 New York Coliseum. It's not even there --

23

24 CHAIRMAN MAMMINA: Yeah, Nassau
25 Coliseum, yeah, and I --

26

27 MR. ZASKORSKI: And they were on paper
28 and pencil.

29

30 (Laughter.)

31

32 CHAIRMAN MAMMINA: Now they hand them
33 out like Halloween candy.

34

35 (Laughter.)

36

37 CHAIRMAN MAMMINA: And the kids still
38 complain.

39

40 (Laughter.)

41

42 MR. ZASKORSKI: Exactly.

43

44 CHAIRMAN MAMMINA: That's -- that's
45 amazing, two years between, you know, less
46 than a hundred numbers?

47

48 MR. ZASKORSKI: And we're still
49 working.

50

1 APPEAL #21093

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3 CHAIRMAN MAMMINA: Yup, me too -- me
4 too.

5

6 A VOICE: I know I'm still at it.

7

8 (Stepping up.)

9

10 MR. O'BRIEN: It shows you it's a
11 blink of an eye, isn't it?

12

13 CHAIRMAN MAMMINA: That's for sure.

14

15 MR. O'BRIEN: A blink of an eye.

16

17 CHAIRMAN MAMMINA: That's for sure.

18

19 MR. O'BRIEN: So in conclusion, I
20 think we meet the -- the criteria set forth
21 in Section "267-b" of the Town Law, as well
22 as the conditional requirements and criteria,
23 which talks about:

24 The location;

25 The size;

26 Compatibility use;

27 Impacts on surrounding areas;

28 The desire for the use, which I

29 think is a very desirable use;

30 That it's not hazardous or anything
31 along those lines.

32 I do mention a little about in the
33 conditional use is the architectural
34 elements. However, we're not really changing
35 any architectural elements, because
36 everything that we're doing is within the
37 interior.

38 So we think the use is good and we
39 think it's compatible. We think it's
40 reasonable, and necessary. And we just look
41 for the Board's favorable discretion on this
42 application.

43 Thank you.

44

45 CHAIRMAN MAMMINA: Okay. I think it
46 was a -- it was an ice skating rink there at
47 one time, not necessarily in this building,
48 but in the industrial park.

49

50 MR. O'BRIEN: Oh, well, I'm -- I'm,

APPEAL #21093

you know, not sure, no -- no.

Thank you.

MEMBER GOODSELL: It -- it doesn't strike me that you're going to get much more walk-in trade, because it's way at the end of the street. And I can't believe the tenant could actually -- or the business could actually make money without all the moms buying vending machine snacks, and sitting there and having birthday parties.

So I gather it's not going to be open to the general public in the sense that the public's invited in. It's going to be open in the sense that registered skaters and teams are going to be invited in.

MR. O'BRIEN: A keenly astute observation. Yes, it's -- it's really more private in nature. And like I said it is sort of symbiotic with the premises across the street. And yes, like teams like that training, safety training, injury prevention, you know, as well as skilled training. But -- but you're -- you're right, I'm not going there. And I --

(Discussion held among Board Members off the record.)

MEMBER GOODSELL: I was one of those moms who brought the kid at 6:00 in the morning for a practice at Skateland.

MR. O'BRIEN: There you go. Figure -- figure or hockey?

MEMBER GOODSELL: And so this -- and this was -- this was ice hockey. Bought the equipment, bought the vending machine stuff, did all of that. But it was a much more high use.

So in looking at this property, I don't think the parking bothers me as much. No one's mentioned how many parking spaces are across the street at the skating center, but there look to be a fair number.

And the only comment I have is that

1 APPEAL #21093

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3 it's sort of like the street parking is
4 relatively limited. It's one side. If
5 you're going to spill over, you're going to
6 spill over to somebody else's lot. There's a
7 number of buildings and lots. They all have
8 their own private lots.

9 But in general, it -- based upon what
10 you described, I -- I have no objection to
11 it.

12

13 MR. O'BRIEN: Uh-huh.

14

15 MEMBER GOODSSELL: And I would make a
16 motion that we approve the application as it
17 is presented.

18

19 CHAIRMAN MAMMINA: Okay, we have a
20 motion by Ms. Goodsell.

21 Do we have a second?

22

23 MEMBER HERNANDEZ: Second.

24

25 CHAIRMAN MAMMINA: Seconded by
26 Mr. Hernandez.

27 Please poll the Board.

28

29 MR. PERROTTA: Member Goodsell?

30

31 MEMBER GOODSSELL: Aye.

32

33 MR. PERROTTA: Member Hernandez?

34

35 MEMBER HERNANDEZ: Aye.

36

37 MR. PERROTTA: Mr. Vice-Chairman?

38

39 VICE-CHAIRMAN FRANCIS: Aye.

40

41 MR. PERROTTA: Mr. Chairman?

42

43 CHAIRMAN MAMMINA: Aye.

44 The application is granted.

45

46 MR. O'BRIEN: Well, I thank you so
47 much, greatly appreciate it.

48 And thank you for bringing children
49 too, because I was one of those who my
50 daughter played hockey ages ago. And she was

1 APPEAL #21093

2

3 the only one that had a ponytail out of the
4 back of her helmet and it was supposed to be
5 a no-checking league and all the fathers were
6 always thrilled when there was a check, and I
7 was like that's my daughter out there.

8

9 VICE-CHAIRMAN FRANCIS: (Laughter.)

10

11 MR. O'BRIEN: You know, so -- so we
12 appreciate that. Thank you so much. Thank
13 you for your decision.

14

15 CHAIRMAN MAMMINA: Okay.

16

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1 APPEAL #21079

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3 CHAIRMAN MAMMINA: Okay, so next up.

4

5 (Stepping up.)

6

7 MR. PERROTTA: Mr. Chairman, the next
8 appeal is Appeal 21079, Dos Toros NHP, LLC,
9 1624 Marcus Avenue, New Hyde Park, section 8,
10 block 302, lot 27 in the Business "A"
11 District, for a conditional use of
12 "70-126(A)," to construct interior
13 alterations to construct a new restaurant.

14

15 APPEAL #21079 - Dos Toros NHP, LLC;
16 1624 Marcus Avenue, New Hyde Park, Section 8,
17 Block 302, Lot 27; Zoned Business-A.

18 Conditional Use §70-126(A) to
19 construct interior alterations to construct a
20 new restaurant.

21

22 CHAIRMAN MAMMINA: You've heard Appeal
23 No. 21079, Dos Toros, NHP, LLC.

24 Is there anyone in the room interested
25 in the application other than the applicant?

26

27 (No response.)

28

29 CHAIRMAN MAMMINA: Seeing no one,
30 please give your name and address.

31

32 (Stepping up.)

33

34 MS. TSOUKALAS CURTO: Okay. Andrea
35 Tsoukalas Curto, I'm with the firm of
36 Forchelli Deegan Terrana, 333 Earle Ovington
37 Boulevard, Uniondale, New York.

38 Good afternoon, Chairman, members of
39 the Board.

40

41 CHAIRMAN MAMMINA: Good afternoon.

42

43 MS. TSOUKALAS CURTO: I'm here on
44 behalf of Dos Toros New Hyde Park, LLC. I
45 just want to introduce my team. I have three
46 representatives here today from Dos Toros:

47 Justin Gould (phonetic) is the
48 Director of Construction;

49 Jeff Tieger, District Manager;

50 Patrick Fitzgerald -- sorry,

APPEAL #21079

Fitzgerald, VP of Operations.

And also last but not least,
Robert Eschbacher, the applicant's traffic
and parking expert.

This is an application for a
conditional use permit for a new Dos Toros
Restaurant at the New Hyde Park Center. The
applicant proposes an interior alteration to
an existing 3,100 square foot tenant space in
a shopping center known as New Hyde Park
Center.

The premises is located -- the
premises is located on the southeast corner
of New Hyde Park Road and Marcus Avenue.
It's situated in the Town's Business "A"
Zoning District and has a lot area of 2.63
acres.

Access to the site, ingress and egress
is off New Hyde Park Road, and there's an
egress only onto -- onto Marcus Avenue.
There's no access to the back of the building
where the premises abuts residences.

The premises is improved with a
mixed-use shopping center. The tenancies
include:

A bank;

A Pilates studio;

And other restaurants to include a
Chinese food restaurant, a Smashburger and
Chopt;

There's also a PetSmart, which is a
large retail use.

A conditional use permit to expand
this restaurant space was granted under
Appeal No. 16726 on October 10th, 2001. That
was for an Italian restaurant known as
Papa Ciro's.

So the application is for a Mexican
restaurant known as Dos Toros. It's -- it's
a taqueria.

I do have a sample menu for you, which
I would like to submit as Applicant's Exhibit
A (handing).

MR. PERROTTA: (Receiving.)

CHAIRMAN MAMMINA: (Inaudible) brought
samples.

APPEAL #21079

MEMBER GOODSSELL: It's only a piece of paper. It's not a meal.

MS. TSOUKALAS CURTO: There is a seating capacity for 70 [sic] -- oh, sorry for 57 patrons at the restaurant. The parking is based on square footage as you know. So we need one stall for every 80 square feet of gross floor area, which comes out to 40 parking stalls. We do not need a parking variance for this application. The applicant did, however, evaluate the adequacy of the off-street parking.

Mr. Eschbacher found that there is more than adequate parking at the site to accommodate the proposed use. He's here today, if you do have any questions for him.

A little bit of background regarding Dos Toros. They were founded in 2009, so they've been in operation for about twelve years. The restaurant chain is part of the "Founder's Table Umbrella," which also owns "Chopt." They are very familiar with this site, because they do have a "Chopt" at this center.

Dos Toros has about twenty locations, primarily in New York City and then two in New Jersey and one in Chicago. The proposed hours of operation are 10:30 a.m. to 10 p.m., seven days a week. And they have about twenty to twenty-five employees, eight to ten per shift, for a total of two shifts, a.m. and p.m.

Just to give a little bit regarding the character of the neighborhood, I'm -- I'm sure you're all very familiar with the site, but just for the record, across the street from the Center is the Town of North Hempstead Clinton G. Martin Park and Community Pool. On the corner of Marcus and New Hyde Park Road is a gas station. And on the other side of New Hyde Park Road, there's another strip mall with a Starbucks and other retail uses. There are residences further south on New Hyde Park Road and east of the premises on Marcus Avenue.

The site is in close proximity to

APPEAL #21079

1
2
3 other office and medical buildings on
4 Marcus Avenue. And the proposed restaurant
5 will be a complimentary use to those
6 commercial uses within the district. The
7 restaurant will also provide an additional
8 food alternative for residents in the area,
9 local employees and customers of nearby
10 businesses.

11 The use is in harmony within this
12 district and specific location. And the
13 parking and traffic circulation patterns --
14 patterns in this shopping center are adequate
15 to accommodate this new restaurant. As I
16 said, this was a restaurant before and so
17 we're replacing a restaurant with a
18 restaurant.

19 The requested conditional use for the
20 proposed Dos Toros Restaurant will conform to
21 the general character of the neighborhood,
22 and therefore, the public health, moral,
23 safety and general welfare of the
24 neighborhood will not be affected by the
25 granting of this conditional use permit.

26 As I said, I do have Mr. Eschbacher
27 here today. I don't know if you have any
28 specific questions for him. I did provide
29 his study as part of this application
30 package.

31 We are providing a refrigerated
32 garbage, as you could see on the refuse plan.
33 So I don't know if you any questions with
34 respect to that. There are dumpsters on
35 site, in front of the parking lot abutting
36 the gas station. It's shared with other food
37 service tenants -- tenants in that center.

38
39 VICE-CHAIRMAN FRANCIS: Yeah, I just
40 was discussing with the Chairman that, you
41 know, for the first time ever I've ever seen
42 that this, that a restaurant uses compost as
43 a way of getting rid of food waste I would
44 imagine. But I guess some things can't be
45 composted, so you would still need
46 refrigerated garbage. Would that be correct?
47

48 MS. TSOUKALAS CURTO: Yes, that is
49 correct.
50

1 APPEAL #21079

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3 VICE-CHAIRMAN FRANCIS: Okay, all
4 right. Very good though, right. That's --
5 that's actually a good sign. Hopefully more
6 people follow suit.

7

8 CHAIRMAN MAMMINA: They's --
9 (inaudible) --

10

11 MR. PERROTTA: We should make these
12 standard restaurant conditions.

13

14 VICE-CHAIRMAN FRANCIS: Yes, we
15 should.

16

17 CHAIRMAN MAMMINA: Yeah.

18

19 (Laughter.)

20

21 CHAIRMAN MAMMINA: The other question
22 that I -- I have is why do you have put all
23 the calories on it?

24

25 (Laughter.)

26

27 CHAIRMAN MAMMINA: Then I walk out.

28

29 VICE-CHAIRMAN FRANCIS: You're
30 required.

31

32 CHAIRMAN MAMMINA: Do you know how
33 many miles I'd have to run?

34

35 MS. TSOUKALAS CURTO: It's actually a
36 healthier alternative. They're using, you
37 know, hormone-free food and so it is
38 healthier.

39

40 CHAIRMAN MAMMINA: Like a thousand
41 calories, that's -- that's ten miles.

42

43 (Laughter.)

44

45 VICE-CHAIRMAN FRANCIS: Well, I'm
46 saying what about with the burritos?

47

48 MS. TSOUKALAS CURTO: Well, look,
49 burritos -- burritos are big. You've got to
50 eat half at a time.

1 APPEAL #21079

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3

4 CHAIRMAN MAMMINA: That's right.

5

6 MS. TSOUKALAS CURTO: You can't eat
7 the whole thing.

8

9 (Laughter.)

10

11 CHAIRMAN MAMMINA: Half at a time.

12

13 (Laughter.)

14

15 CHAIRMAN MAMMINA: I like that. One
16 for lunch, one for dinner, then I'm done.

17

18 MS. TSOUKALAS CURTO: Then you're
19 done.

20

21 (Laughter.)

22

23 CHAIRMAN MAMMINA: Well --

24

25 MEMBER GOODSSELL: I -- I do want to
26 point to Ms. Curto, and to the Board and to
27 everybody that there is adequate parking
28 there despite --

29

30 MS. TSOUKALAS CURTO: It is --

31

32 MEMBER GOODSSELL: -- except during the
33 holidays. Try going there around Christmas
34 season. There isn't a parking space to be
35 had.

36

37 MS. TSOUKALAS CURTO: Yes.

38

39 MEMBER GOODSSELL: So that seems to be
40 the only time of year that lot fills up very
41 quickly.

42

43 MS. TSOUKALAS CURTO: Right.

44

45 MEMBER GOODSSELL: There have been
46 other food services. I have tried to get in
47 there to pick up food. You have to bring
48 another driver. But otherwise on 10 months,
49 11 months of the year, the parking does seem
50 to be adequate.

1 APPEAL #21079

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3

4 MS. TSOUKALAS CURTO: Yes.

5

6 MEMBER GOODSSELL: And good luck to
7 them. Papa Ciro's was there for a very long
8 time.

9

10 MS. TSOUKALAS CURTO: Yeah, they have.

11

12 CHAIRMAN MAMMINA: Would you like to
13 make a motion?

14

15 MEMBER GOODSSELL: I'd like to make a
16 motion.

17

18 VICE-CHAIRMAN FRANCIS: Sounds like a
19 motion.

20

21 CHAIRMAN MAMMINA: Sounds like a
22 motion to me.

23

24 MEMBER GOODSSELL: I -- I make a motion
25 that despite the fact that it was a menu and
26 not food samples that were submitted, that we
27 approve the application for Dos Toros NHP,
28 LLC as presented.

29

30 (Laughter.)

31

32 CHAIRMAN MAMMINA: Okay.

33

34 SECRETARY WAGNER: With restaurant
35 conditions?

36

37 MEMBER GOODSSELL: With restaurant
38 conditions.

39

40 CHAIRMAN MAMMINA: With restaurant
conditions.

41

42 We have a motion by Ms. Goodsell.
43 Do we have a second?

44

45 VICE-CHAIRMAN FRANCIS: Second.

46

47 CHAIRMAN MAMMINA: Seconded by
48 Mr. Francis.

49

Please poll the Board.

50

SECRETARY WAGNER: Member Hernandez?

1 APPEAL #21079
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3
4 MEMBER HERNANDEZ: Aye.
5
6 SECRETARY WAGNER: Member Goodsell?
7
8 MEMBER GOODSSELL: Aye.
9
10 SECRETARY WAGNER: Vice-Chairman
11 Francis?
12
13 VICE-CHAIRMAN FRANCIS: Aye.
14
15 SECRETARY WAGNER: Chairman Mammina?
16
17 CHAIRMAN MAMMINA: Aye.
18 The application is granted.
19
20 MS. TSOUKALAS CURTO: Thank you very
21 much.
22
23 VICE-CHAIRMAN FRANCIS: Good luck.
24
25 A VOICE: Thank you.
26
27 A VOICE: Good luck.
28
29 MEMBER GOODSSELL: Good luck.
30
31 CHAIRMAN MAMMINA: Well, I know
32 nothing about hockey especially, but it's
33 three times was a hat trick, right, or four
34 times?
35
36 VICE-CHAIRMAN FRANCIS: Four times.
37
38 (Discussion held among Board Members
39 off the record.)
40
41 * * *
42
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APPEAL #20987

(Stepping up.)

SECRETARY WAGNER: The next appeal
Appeal No. 20987, Vigliotti Enterprises LLC,
100 Urban Avenue in Westbury, Section 11,
block 178, lot 82 in the Industrial "B"
Zoning District.

Variances from:

"70-103.A;"

"70-103.B;"

"70-103.M;"

"70-192.A;"

"70-203.J;"

And "70-212.B;"

To legalize the change of use to a
yard waste transfer facility having less
parking than required;

Parking spaces smaller than required;

Parking spaces within the required
front yard;

A building constructed too close the
street;

A vehicular access gate located too
close to the street;

And an outdoor storage area located
too close to the street.

APPEAL #20987 - Vigliotti Enterprises
LLC; 100 Urban Avenue, Westbury; Section 11,
Block 178, Lot 82; Zoned Industrial-B.

Variances from §§70-103.A, 70-103.B,
70-103.M, 70-192.A, 70-203.J, & 70-212.B, to
legalize the change of use to a yard waste
transfer facility having less parking than
required, parking spaces smaller than
required, parking spaces within a required
front yard, a building constructed too close
to the street(s), a vehicular access gate
located too close to the street, and an
outdoor storage area located too close to the
street.

CHAIRMAN MAMMINA: You've heard Appeal
No. 20987, Vigliotti Enterprises LLC.

Is there anyone in the room interested
in the application other than the applicant?

(No response.)

1 APPEAL #20987

2

3 CHAIRMAN MAMMINA: Seeing no one,
4 please give your name and address.

5

6 (Stepping up.)

7

8 MR. O'BRIEN: Good afternoon,
9 Mr. Chairman, honorable members of the Board,
10 Kevin O'Brien, O'Brien Law PC, 462 Sagamore
11 Avenue, East Williston, New York 11596, here
12 on behalf of applicant.

13 This one straggler came in (handing).

14

15 MR. PERROTTA: (Receiving.)

16

17 MR. O'BRIEN: I guess maybe while I'm
18 handing things out, maybe it might just be
19 helpful. I'm not sure. We might have
20 submitted some of these as part of the
21 application. But I do have some aerial
22 photographs that might be helpful. And I
23 might have a reduced -- let me see, do I have
24 any -- nope, okay.

25 Oh, wait yes -- yes. And I do have
26 some just 11 1/2 by 17, sometimes it makes it
27 a little easier to follow along some of the
28 site plans (handing).

29

30 MR. PERROTTA: (Receiving.) So
31 Exhibits 1 and 2?

32

33 MR. O'BRIEN: Yes.

34

35 (Discussion held among Board Members
36 off the record.)

37

38 MR. O'BRIEN: Good afternoon, once
39 again.

40

41 SECRETARY WAGNER: Mr. O'Brien, could
42 you just address what the exhibits are?

43

44 MR. O'BRIEN: Oh, sure.

45

46 SECRETARY WAGNER: Yeah, just read
47 them into the record please.

48

49 MR. O'BRIEN: I -- I had just -- I --
50 I wasn't not sure whether or not that they --

1 APPEAL #20987

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3 they had been submitted previously. But one
4 is just a reduced-sized copy of the site
5 plan. I just thought it might make it little
6 easier. And the second one is just an aerial
7 photograph where you could actually see the
8 property itself as well as the surrounding
9 area.

10
11 (Discussion held among Board Members
12 off the record.)

13
14 MR. PERROTTA: Exhibit 1 is the
15 photograph.

16
17 ATTORNEY ALGIOS: So Exhibit 1 is the
18 photograph and Exhibit 2 is the site plan
19 exhibit.

20
21 CHAIRMAN MAMMINA: Yeah.

22
23 SECRETARY WAGNER: Exhibit 1 is the
24 aerial photograph. And Exhibit 2 is?

25
26 MR. PERROTTA: Is the reduced-sized
27 site plan.

28
29 CHAIRMAN MAMMINA: Yes.

30
31 MR. O'BRIEN: Okay, when the Board is
32 ready.

33
34 CHAIRMAN MAMMINA: Take it away, sir.

35
36 MR. O'BRIEN: Okay, certainly. Well
37 I'm glad we have light. We can see what
38 we're doing.

39 So this is Appeal No. 20987, Vigliotti
40 Enterprises, premises address, 100 Urban
41 Avenue, Westbury, New York, section 11,
42 block 11 [sic], lot 82.

43 And we are located deep within the
44 Industrial "B" Zoning District.

45 I also have here with me today,
46 Mr. Charles Vigliotti. He is the principal
47 of Vigliotti Enterprises, the owner of the
48 premises and the applicant. I also have
49 Mr. Steven Keller, RA, registered architect,
50 a design professional. He's been involved

APPEAL #20987

with the project, as well as Mr. Michael Marinis, PE, design professional from Barrett, Bonacci and Van Weele, who've been intimately involved in the preparation of the plans, as well as the parking study and analysis that was submitted as part of the application.

The sum and substance of the application is to maintain a yard waste acceptance and processing facility, and all attendant improvements that go along with that, which would include:

- The office area;
- A storage area;
- Some retail;
- Warehousing;
- A tipping building, and the like.

There are specific variances that go along with some of these various structures, which we'll go -- which we'll go into.

But the one thing that I also just want to sort of mention from the get-go is this isn't sort of the end of the road here with respect to this application. We -- obviously we had to go to the Building Department in order to get here. And then from here, hopefully we'll also go to the Town Board, because this happens to be sort of a very unique type of use, wherein the applicant actually worked very closely with the Town Board in developing the ordinance, that's -- this is really one of the only, you know, types of uses of its kind and worked with the Town Board. And basically after we get through here, we're going to go before the Town Board for a conditional use, which is not a conditional use permit that the Zoning Board of Appeals grants. It's -- it's a -- a conditional use permit that's by the Town Board.

So after this step in the process, we do have to go back to the Town Board in connection with that. And we can't go to the Town Board until we go through this process here. So just by way of background, I just kind of wanted to let you -- let you know that.

The property itself is comprised of

APPEAL #20987

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125,350 square feet or 2.2 acres. Like I said, it's located right in the heart of the Industrial "B" Zoning District in Westbury. It is contiguous to the train tracks. And you're sort of bounded by three streets: You've got:
100 Urban Avenue or Urban Avenue, which is kind of where the office is. So if you look at the aerial photograph, you can see that and that would be on the west; And there is Kinkel Street; And there is Sylvester.
Now previously, 100 -- well, Urban Avenue was where most of the access came from. But as the Board I'm sure is aware of, recently you had that third tracking going on with respect to the railroad, which was a large part of this application as well, because our access used to be from Urban Avenue, and now, it was no longer. So there's a little bit of parking over there, but you can't really can't access the facility. And the facility is really now accessed on Sylvester which is not a thru-street, and Kinkel which also is not a thru-street. So -- so we're kind of really a -- a dead-end property.
And just for purposes of sort of the area, and the operation and what have you, the -- the aerial photograph that you have before you really kind of does show you the -- the nature. We're in a very heavy industrial area. We are this yard waste processing type of facility, surrounded by other types of -- you know, you've -- you've got Daniel F. Allen. You've -- you've got steel recycling and -- and the like. So this is the sort of nature of -- of the area.
With -- with respect to the improvements we've got:
The one-story office building;
We've got another one-story building;
The mezzanine and warehousing use;
We've got scale buildings;
We've got outdoor storage;
We have the tipping building, which is what the -- the Town had basically requested that we put up over there;

APPEAL #20987

We've got on-site storage, staging and queuing;

And we have lighting and -- and security lighting.

As indicated, we do have to go to the Town Board. And I think that's pursuant to "70-188.C."

But with respect to some of the specifics in the parking -- and I'm going to introduce Mr. Marinis in a moment. But the bulk of the variances that are before the Board today really do kind of deal with parking. We've got seventy-five spaces that are actually required. We provide thirty-one.

But this is a type of facility that essentially it's really just our employees. You know, it's not the kind of place where people are going to come in and shop or anything along those lines. And the people that are sort of operationally using it -- and -- and Mr. Marinis will go into this more than I will -- but they drive in, drive out. You know, most of them don't even, you know, leave their -- leave their trucks.

But their -- their parking is principally employee parking. We have parking size issues, where your standard parking stall would be 10 by 20. But once again, these parking spaces are really just -- are -- are just for -- for, you know, for us. We've got parking in the -- in the front yard.

And then some of the other variances that we're dealing with are setback issues, wherein 10 foot setbacks are required in some of the -- in some of the roadways, where we're -- we're less than that. We've got the tipping building by -- by Sylvester. We've got the office building, which is actually existing. And I was even surprised that that one came up, because that -- that has always been there. But it's been 10 feet, and that's 9.3 feet.

We've got some bulk storage, which that encroaches. And similar to the -- to the parking, we've got the fencing and the gates. And they're sort of encroachments

APPEAL #20987

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into the front yard on that, wherein, you know, I'm sure as the Board is familiar in, you know, the gate sort of requirement, particularly, you know, some of the industrial areas is that they want to set them back 18 feet. Most of ours are close to the property line or just shortly after that.

And I believe the genesis of -- of that ordinance is that, particularly of trucks coming early from overnight, if they're long haulers or something like that, they didn't want them hanging out and blocking traffic, you know, going by. And in this particular instance, we're -- we're essentially, our access on a dead end. So there is no thru-traffic. There's no issues, you know, with respect to that.

So perhaps maybe now might be a good time to just introduce Mr. Marinis. He has prepared the -- a parking analysis, which is before the Board. And perhaps he can just sort of briefly indicate the basis of that analysis and ask -- answer any questions that the Board might have.

Mr. Marinis?

(Stepping up.)

MR. MARINIS: Good afternoon.

CHAIRMAN MAMMINA: Good afternoon.

MR. MARINIS: My name is Michael Marinis. I'm a licensed professional engineer in the State of New York. I work for the firm of Barrett, Bonacci and Van Weele, 175A Commerce Drive, Hauppauge, New York.

Our office prepared the site plan and survey that's before you for this application. And in addition, my office was retained to prepare a parking study to evaluate the viability of the requested parking variances. I -- I won't get into the site description, as I think that Mr. O'Brien kind of went into that already.

But essentially, the Town Code requires seventy-five parking spaces for the

APPEAL #20987

project, and the existing property provides twenty-nine spaces and two handicapped spaces.

As the existing site use is proposed to remain unchanged, the best way to study this parking was to physically count vehicles accessing the property. We were on site on Tuesday, October 27th from 8 a.m. to 4 p.m., and Wednesday, October 28th from 9 a.m. to 5 p.m. to count all of the cars over that entire timeframe. And what we found was that the peak number of vehicles parking at any one time was eighteen vehicles on either day, with thirteen vacant parking stalls also available at that time.

In addition, this office looked at some of the queuing then and access pads that the -- that the trucks take, to make sure there was no backing up of the trucks onto the neighboring properties. And what we found there was there that's nineteen spaces available -- made available specifically for vehicle queuing for the trucks as they entered the property. And on Friday, November 13th during the peak time of usage, we noticed that no more than six trucks accessed the property at any one time. So there was plenty of room for queuing as well.

As -- as I already indicated, since the site is proposed to remain unchanged in the use, the -- no increase, no anticipated increase of parking or queuing is anticipated. And based upon our study, the amount of parking and queuing that's provided is and will be sufficient to accommodate the parking demands generated by the facility.

The site also allows for an adequate amount of truck queuing, without having trucks needing to back out into the residence -- the adjacent streets.

In addition, I did want to point out some of the other variances having to do with parking stall dimensions. Presently, the stalls were measured at 18 feet. A couple of the stalls were measured at 18 feet, where 20 feet is required. There's plenty of room to add the 2 feet that's required by Code. What we -- what we've noted is what the actual

1 APPEAL #20987

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3 stall dimension was.

4 And then in addition, I wanted to note
5 that the -- some of the parking setbacks are
6 required, because the site does front on
7 three properties. And what we're trying to
8 do is leave the center area for vehicle
9 access.

10 I'm happy to answer any questions that
11 you might have with regard to the project.

12

13 CHAIRMAN MAMMINA: I think if you --
14 if you could walk us through or drive us
15 through what happens where, how does a truck
16 come in, what are the processes, where --

17

18 MR. MARINIS: Sure --

19

20 CHAIRMAN MAMMINA: -- are -- are
21 offices?

22

23 MR. MARINIS: -- yup, absolutely.

24 If you look at the last -- did -- did
25 we -- did we give them the copy of --

26

27 MEMBER HERNANDEZ: This (indicating)
28 one?

29

30 MR. MARINIS: -- okay. Yes, thank
31 you.

32

33 So the -- the parking that's noted on
34 the plan is essentially for employees. And
35 that's why there's really not a heavy demand
36 for other people to park. But essentially,
37 the trucks would come in off of Sylvester.
38 They would pull in and back onto the scale,
39 which is located in the tipping building.

40

41 I'm sorry?

42

43 (Stepping up.)

44

45 MR. O'BRIEN: You know, if I could.
46 Mr. Vigliotti is there every day, so he sees
47 how the place operates. So Mr. Vigliotti you
48 want to perhaps -- I guess you could swear
49 him in and perhaps state some of the
50 (inaudible) --

51

52 SECRETARY WAGNER: Mr. O'Brien?

APPEAL #20987

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MR. O'BRIEN: Oh, I'm sorry.

SECRETARY WAGNER: If you could just make sure you speak into the microphone, so the court reporter --

MR. O'BRIEN: Oh, I'm sorry --

SECRETARY WAGNER: -- hear you for the record.

MR. O'BRIEN: -- I'm sorry, forgive me.

SECRETARY WAGNER: Sorry.

MR. O'BRIEN: If I can just introduce Mr. Vigliotti for a moment, because he was sort of intimately involved in sort of some of the design features of how the vehicles get in, and get out, and he's actually there every day.

So perhaps you can swear Mr. Vigliotti in and he could indicate some of the -- some of the design elements that went into. And actually maybe take the Board through a day in the life, as what it -- how -- how does it operate.

CHAIRMAN MAMMINA: Great.

(Stepping up.)

MR. VIGLIOTTI: I'm Charles Vigliotti. I'm the president and CEO of Vigliotti Enterprises, Vigliotti Recycling, Long Island Compost and American Organic Energy.

The reason why I -- I --

CHAIRMAN MAMMINA: And just give me the address of the business. It's fine, it doesn't have to be your home address.

MR. VIGLIOTTI: The business is at 100 Urban Avenue, Westbury, New York.

The reason I laid that out is because it's important for the Board, if -- if you

1 APPEAL #20987

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3 really want to understand what we do, I
4 appreciate the fact that you appreciate they
5 compost --

6
7 CHAIRMAN MAMMINA: Oh.

8
9 MR. VIGLIOTTI: -- the --

10
11 MEMBER HERNANDEZ: Okay.

12
13 MR. VIGLIOTTI: -- the -- with the
14 previous restaurant. We're the largest
15 composter in New York State. We also
16 appreciate composting.

17 And this facility is part of an entire
18 integrated system, between the landscapers by
19 and large that work in Nassau County and in
20 the Town of North Hempstead, two are
21 processing facilities in Suffolk County,
22 Yaphank, New York, back to this facility for
23 part of the distribution. That's what that
24 outdoor storage is.

25 Now, the way the trucks operate -- and
26 understand, this is the busiest yard waste
27 transfer station in the northeast. Trucks
28 come up Sylvester Street. They go to the end
29 of the street, the end of the dead end, make
30 a left-hand turn directly into the facility
31 where they pull on top of an in-ground scale.

32 There is a sign on the side of the
33 scale house that exists there, not a sign --
34 a -- a light. And it's always red until they
35 get logged in. We capture their weight, who
36 they are, et cetera. And then it goes green
37 and then they proceed straight forward, make
38 a left-hand turn, pull down to the tipping
39 building.

40 That was a request from -- from the
41 Town, that we enclose that activity that for
42 25 years was totally outside. We built that
43 building so that the landscapers could then
44 back into the building, tip 100 percent
45 inside the building, exit the building, pull
46 along the south side of the scale house,
47 where we have the outbound scales. The
48 attendant puts in their identification
49 number, which is on the side of every truck,
50 come up with the gross weight, the empty

APPEAL #20987

weight, the difference is the amount of the load, and take care of the transaction there and they are back to work. That's how material is offloaded at this facility.

CHAIRMAN MAMMINA: They come in and out of Sylvester?

MR. VIGLIOTTI: They come in and out of Sylvester Street, yes. Virtually 100 percent of the truck activity is on Sylvester Street. The positioning of everything here, because these are -- you know, a couple of the variances are with regards to the positioning:

The building too close to the property line;

The outdoor storage too close to the property line;

The gates too close to -- to the property line.

We've been operating at this facility for over thirty years. And as Mr. O'Brien was expressing, Urban Avenue was our main way in and out. And that was very convenient. It caused some problems, particularly, with trucks queuing up outside waiting to access the facility during busy times. And those trucks would queue up on the -- on the north side of the railroad tracks near the residential community. That was a concern to the residential community as it was a concern to us.

When we had the opportunity to reengineer the building, we had a golden opportunity to remove those trucks from the residential neighborhood 100 percent by putting the traffic on Sylvester Street, a dead end street in an industrial neighborhood, and keep the traffic over there. It works perfectly.

No trucks any longer queue up on -- on Railroad Avenue. And because of how we've positioned things at the facility, the gates, the outdoor storage, where the tipping building is located, what we've done is we've allowed for multiple trucks that are accessing our drop-off to be on the site,

APPEAL #20987

rather than in the -- either the residential community or on the local industrial streets. We're able to keep twenty trucks at this site, besides the five or six trucks that may be in the building offloading. This is -- it worked very -- very well.

The outdoor storage -- this is a recycling facility. We take material in and we process it off site. But we mark it, some of the organic products, to the very same landscapers that brought us the waste in the beginning. And when you think about it, it's perfect recycling circle, one of the very few perfect recycling circles.

The landscaper goes to the property, cuts the lawn, rakes the leaves, trims the bushes, brings the material into us. We compost it, process it, it's, et cetera, out in Suffolk County, bring the finished product back here, sell it back to the landscapers who then use it in the same homes that generated the waste in the first place.

And this is an operation. This is an award-winning operation. You know, many environmental organizations, including Stony Brook Waste Management Institute, have cited our work and given us special awards for this.

And we've been doing this all of our lives. My brother and I are in the waste business for almost forty-five years now. And we've been exclusively in the composting and organic waste recycling business for over thirty years.

It works well. It works well because of, you know, the -- the way it's laid out, in spite of the limitations that kind of exist over here.

I -- I can say that complaints about our operation since we've done this, residents complaining about traffic, odor, noise, they've totally disappeared. We've basically eliminated that. And we're very proud of the facility that we constructed.

If you have any questions for me?

MEMBER HERNANDEZ: Yeah, I actually have one question.

1 APPEAL #20987

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Right in the middle of all of that turning around of the trucks, from the aerial view, there appears to be I guess movable cement blocks creating cubicles where you have, I guess some of the -- the mulch and other --

MR. VIGLIOTTI: Yeah, yes --

MEMBER HERNANDEZ: -- recycled products.

MR. VIGLIOTTI: -- yes.

MEMBER HERNANDEZ: -- the mulch that you are selling out.

How tall are those concrete bunkers, because they -- the material appears to be almost overflowing from those?

MR. VIGLIOTTI: The material sits in it. The height of the -- of the blocks is about this (indicate) and the material sits 10 or 12 feet tall.

MEMBER HERNANDEZ: And how tall is the fence surrounding the property?

MR. VIGLIOTTI: Eight feet.

MEMBER HERNANDEZ: So the material goes past the fence?

MR. VIGLIOTTI: Conceivably on the east side of the building, you know, it might be a couple of feet higher. But you have to understand it's -- those two bins are topsoil in one and compost in the other. You know, we're proud of this stuff. We think it's great.

MEMBER HERNANDEZ: Right.

Oh, the fence is 10 feet.

MR. VIGLIOTTI: Oh, the fence is 10 feet.

Sorry, I -- I stand corrected, we're a 10 foot fence.

1 APPEAL #20987

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4 MEMBER HERNANDEZ: Oh, okay.

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6 MR. VIGLIOTTI: So it's about the same
7 height.

8
9 MEMBER HERNANDEZ: Okay, very good.
10 Thank you.

11
12 VICE-CHAIRMAN FRANCIS: Now, you
13 mentioned -- I'm familiar with this property,
14 because I live in Westbury.

15
16 MR. VIGLIOTTI: Okay.

17
18 VICE-CHAIRMAN FRANCIS: You mentioned
19 that you've been in operation for thirty
20 years. Absolutely you have. And -- and I --
21 I know that because I've been there since
22 1976. I remember when the trucks used to
23 come in on the Urban Avenue side and what a
24 nightmare that used to be.

25
26 MR. VIGLIOTTI: Right.

27
28 VICE-CHAIRMAN FRANCIS: So the change
29 was amazing. I mean that was great.
30 When I looked at the application, I
31 was confused though, because knowing that
32 it's been in operation that long, the
33 application says that it's -- let me just
34 find my -- that it's to legalize a change in
35 use to a yard waste transfer. That that's --
36 it's always been that. So I was confused by
37 that. Maybe you can clear that up.

38
39 MR. VIGLIOTTI: We were confused when
40 the Town was taking that position. We were
41 permitted by New York State DEC back in the
42 early 1990s. As part of that permitting
43 process, we had to go through a coordinated
44 "SEQRA." The Town was -- was an involved
45 agency at the time and, you know, had no
46 objection to it and allowed the DEC to be
47 lead agency on it. We got our permit and we
48 -- and we've been operating. And when this
49 came up that it's an un-permitted use in the
50 neighborhood, we were like, huh?

APPEAL #20987

(Stepping up.)

MR. O'BRIEN: And if I may, I think it -- I don't think it was -- there was always some sort of kind of recycling whatever you want to call it over there. I don't think the Town specifically had in its zoning ordinance something that dealt with this processing of yard waste and the like.

So it was maybe about a year, a year-and-a-half ago, I know we met with council people from the area, the Town Attorney's Office and stuff, where I think they -- they saw that it wasn't, quote, unquote, "specifically delineated." There was other uses that could be -- or uses of a similar nature. And so they just, as matter of fact, they just created this -- this conditional use. If you look at it, it's probably within the last year, year-and-a-half.

So we -- we are as part of that process making the application. But you're a hundred percent right, it's been going on in one -- one way, shape, or form or another for about the last, you know, thirty-some-odd years now, without issue other than, you know, as -- as you had noted and as Mr. Vigliotti had noted, that there was some complaints, quite frankly being honest, about the access from Urban Avenue. And -- and that would back up. That would be an issue.

And I think as Mr. Vigliotti had indicated, and -- and I think part of what he was explaining is that we pushed the buildings back along the property lines, as -- as close as we possibly can to allow for as much interior on-site circulation as possible. So this way, you can keep the trucks off the roadways on the property. But in so doing, you know, we did encroach on some of the setback areas and that's why we're here for some of those variances for the setback encroachment.

And this is a very, very unusual use, and piece -- and piece of property and -- and that's why we think it's, you know, so

APPEAL #20987

important and -- and why we're looking for the Board's favorable discretion.

In that regard, I think even our traffic engineer said that, yeah, we probably could have made some of those parking spaces wider and maybe complied. But if we did that, that would impinge on that open area that you see in the center, which allows for that on-site traffic circulation, which allows us to keep the trucks off the surrounding roadways and on the property.

So that's -- that's really the sum and substance as to why we're seeking the Board's relief.

And if I could, this is Mr. Marinis's curriculum vitae that -- that I would submit to the Board (handing).

MR. PERROTTA: (Receiving.) Are you submitting this as an exhibit?

MR. O'BRIEN: Sure.

MEMBER HERNANDEZ: The -- the tipping building, is that a three-sided building or does it have those giant doors at points?

MR. O'BRIEN: It -- it's a three-sided building. It does have sort of curtains in the front. So when it's operational, you know, it's -- it's metal on three sides.

That was discussed with the Town when we were -- as this ordinance was being set up. They wanted it. They did approach. As Mr. Vigliotti had indicated, they wanted all this operation had gone on outside. And they said they wanted it interior, so that's where the tipping building came up, the design of it, three-sided, the front. And then so why we're operating it a three-sided, I -- I think it might -- it's -- it's some sort of material. It's almost like a curtain for lack of a better term --

CHAIRMAN MAMMINA: Right.

MR. O'BRIEN: -- that closes.

APPEAL #20987

CHAIRMAN MAMMINA: So -- so the process the truck drives in there, it dumps itself. What -- what happens to it inside -- inside the building? And now, I assume it's -- it's -- and I mean it all the way I'm saying it, it's laying on the ground so --

(Stepping up.)

MR. VIGLIOTTI: Okay. The -- the material comes into the building. The trucks come in, they back in. Our personnel are in the building. Our machinery is operating in the building, so we have payloaders and a -- a grinder for -- for the processing. And because the yard waste is very seasonal, the yard waste that comes in -- in March during early spring clean ups is different than the yard waste that's generated in grass season in May, obviously different than -- than, you know, in -- in heavy leaf season in the fall.

But by and large, the material is categorized. Grass goes over here, brush goes over there. And our personnel direct the -- the customer back.

Our customers, at this point are very well trained. You know, they understand the process.

We then will take a great deal of the material, grind it, we mix the grass clippings with the brush into -- in effect, set the material up for composting. You know, it gets loaded in the trucks.

This -- this all gets done every single day. So the material that comes in gets processed, gets put in our trucks. We own the trucks. We own the tractor trailers, bring it -- brings it out to our facilities that we control in -- in eastern -- eastern Suffolk. Those are the same trucks that bring the finished product back to the site.

So we prep the material ahead of time for efficient composting, efficient trucking also. That's basically what goes on in -- in the building.

We also have in the building, besides the lighting system, we have -- we have two

APPEAL #20987

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3 types of irrigation. We have an irrigation
4 system that just moistens the material -- you
5 know, we can control it, so that it's a light
6 mist -- and also an odor mitigation system in
7 the building. Different times of the year,
8 particularly heavy grass during the month of
9 May you want to try to neutralize any type of
10 odors. It's a little tough to work in -- in
11 that space.

12 Any other questions?

13
14 CHAIRMAN MAMMINA: Basically, the
15 whole operation happens on the east side of
16 the building, between the railroad tracks
17 heading to the south of the -- the tipping
18 building. And then the other half of the
19 site is basically office space and the like?

20
21 MR. VIGLIOTTI: Well --

22
23 MR. O'BRIEN: That's it, you got the
24 building --

25
26 CHAIRMAN MAMMINA: Does that make
27 sense, what I said to there?

28
29 MR. O'BRIEN: Yeah, so yeah, I --
30 yeah, I think you're right, Mr. Chairman.

31
32 MR. VIGLIOTTI: Yes -- yes, because it
33 does -- most of this activity that I've --
34 I've just described goes on in the eastern
35 half of the property --

36
37 CHAIRMAN MAMMINA: Right.

38
39 MR. VIGLIOTTI: -- coming in Sylvester
40 Street, coming off there.

41 The other half of the property,
42 there's a 7,000 square foot pre-existing
43 office building. We've been in it since 1989
44 I think. And a large warehouse-type building
45 on the northwest corner, that building
46 provides supplies to our customer base.

47 So our customers use equipment. Well,
48 we sell them weed whackers. We service
49 their -- their lawnmowers. We provide them
50 organic fertilizers, and standard

1 APPEAL #20987

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3 fertilizers, grass seed, you know, the
4 various different products, allowing them to,
5 in effect, one-stop shop. They can drop off,
6 purchase their needs that they would have
7 historically gone to an Agway, or the Home
8 Depot or something like that and also
9 purchase the bulk product.

10
11 CHAIRMAN MAMMINA: Okay. So just one
12 other question, the site that's to the south
13 immediately of you, that -- just take it the
14 way I mean it -- it looks pretty nasty. And
15 that -- that has nothing to do with you?

16
17 MR. VIGLIOTTI: Absolutely not.
18 That's why we always spend a good deal of
19 time fighting. You know, that's a metal
20 recycler --

21
22 CHAIRMAN MAMMINA: Right.

23
24 VICE-CHAIRMAN FRANCIS: Right --
25 right.

26
27 MR. VIGLIOTTI: -- a big outdoor --
28 you know.

29
30 VICE-CHAIRMAN FRANCIS: Okay -- okay.

31
32 CHAIRMAN MAMMINA: That's all.
33 That -- that was what I -- I thought.

34
35 VICE-CHAIRMAN FRANCIS: Yeah.

36
37 CHAIRMAN MAMMINA: Getting everything
38 on the record.

39
40 (Stepping up.)

41
42 MR. O'BRIEN: Yup, absolutely correct.
43 That has nothing to do with us. Similar,
44 on the other side of Sylvester is
45 Daniel F. Allen. They have their facility
46 over there as well. I think they're
47 partially enclosed also.

48
49 CHAIRMAN MAMMINA: Yeah.
50

1 APPEAL #20987

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3 MR. O'BRIEN: But -- but that's the
4 sum and substance of the operation. That
5 kind of shows the needs, and the basis and
6 why we're seeking the Board's relief in
7 connection with this.

8 We certainly don't think it has any
9 negative impact on -- on any of the
10 surrounding community. If anything,
11 operationally, we've really kind of worked
12 with the Town on improving the operation and
13 we're -- we're happy with the result.

14 So if there aren't any further
15 questions of myself or the design
16 professionals, we just would look for the
17 Board's favorable discretion on this
18 application.

19 Thank you.

20

21 (Discussion held among Board Members
22 off the record.)

23

24 VICE-CHAIRMAN FRANCIS: Yeah
25 Mr. Chairman, yeah, there's -- there's a lot
26 going on in -- in -- at -- at this site. And
27 while I do -- while I am fairly familiar with
28 it, I -- I really want to give it some
29 thought before I vote on it. So I would
30 request that we reserve decision at least
31 until our -- our next meeting.

32 And I actually want to physically go
33 to the site again and just kind of spend some
34 time watching the operation.

35

36 CHAIRMAN MAMMINA: Okay, so our next
37 meeting is what, September --

38

39 MR. O'BRIEN: First.

40

41 VICE-CHAIRMAN FRANCIS: First.

42

43 CHAIRMAN MAMMINA: September First,
44 yeah.

45

46 MR. O'BRIEN: First.

47 Certainly and by absolutely by all
48 means. And if there is any information that
49 perhaps you don't think we gave you that
50 would be helpful, we'd certainly be willing

1 APPEAL #20987

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3 to do that. If you want to come in
4 unannounced, it's fine. If you want an
5 introduction, that's whatever -- whatever
6 works best for any of the Board Members.

7

8 CHAIRMAN MAMMINA: Do we have to call
9 the Commander of the Yacht Club?

10

11 (Laughter.)

12

13 MR. O'BRIEN: No, we're not a -- we're
14 not a country club.

15

16 (Laughter.)

17

18 MR. O'BRIEN: Okay. (Inaudible.)

19

20 MR. VIGLIOTTI: Yeah, Mr. Francis, I'm
21 going to give you my card, I've put my cell
22 phone number on it. You call me any time,
23 we're an open book.

24

25 VICE-CHAIRMAN FRANCIS: Okay, very
26 good. Thank you. I appreciate it.

27

28 MR. VIGLIOTTI: (Handing.)

29

30 MR. PERROTTA: (Receiving.)

31

32 VICE-CHAIRMAN FRANCIS: Mr. O'Brien, a
33 very good presentation, as always, so thank
34 you.

35

36 MR. O'BRIEN: Thank -- thank you for
37 listening to us.

38

39 SECRETARY WAGNER: Mr. O'Brien, I just
40 want to confirm you're submitting this CV for
41 the record?

42

43 MR. O'BRIEN: Yes -- yes.

44

45 SECRETARY WAGNER: So the curriculum
46 vitae will be Exhibit 3.
47 Thank you.

48

49 CHAIRMAN MAMMINA: Thank you.

50

1 APPEAL #20987

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3 MR. O'BRIEN: Thank you so much.

4

5 ATTORNEY ALGIOS: Thank you.

6

7 VICE-CHAIRMAN FRANCIS: Have a good
8 afternoon. Thank you.

9

10 CHAIRMAN MAMMINA: Thank you, all.

11

12 * * *

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1 Proceedings

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3 SECRETARY WAGNER: Can we just vote on
4 "SEQRA," so that the reporter can go home?

5
6 VICE-CHAIRMAN FRANCIS: Yeah, I move
7 that we grant "SEQRA."
8 Take care.

9
10 SECRETARY WAGNER: So the
11 Vice-Chairman motioned to grant "SEQRA."

12
13 VICE-CHAIRMAN FRANCIS: We need a
14 second on the "SEQRA."

15
16 MEMBER HERNANDEZ: Second -- second.

17
18 CHAIRMAN MAMMINA: Please poll the
19 Board.

20
21 SECRETARY WAGNER: Member Hernandez?

22
23 MEMBER HERNANDEZ: Aye.

24
25 SECRETARY WAGNER: Member Goodsell?

26
27 MEMBER GOODSSELL: Aye.

28
29 SECRETARY WAGNER: Vice-Chairman
30 Francis?

31
32 VICE-CHAIRMAN FRANCIS: Aye.

33
34 SECRETARY WAGNER: Chairman Mammina?

35
36 CHAIRMAN MAMMINA: Aye.

37
38 (Time Noted: 5:08 p.m.)
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C E R T I F I C A T I O N

I, STEPHANIE J. VALDER, do hereby
certify that the within transcript is
a true, accurate and complete transcript of
the proceedings which took place in the above
matter.

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STEPHANIE J. VALDER