

Chairman
David L. Mammina, A.I.A.

Vice Chairman
Leslie Francis, Esq.

Members
Daniel Donatelli, Esq.
Jay Hernandez
Patricia A. Goodsell, Esq.

Town of North Hempstead



Board of Zoning Appeals

210 Plandome Road
Manhasset, NY 11030
(516) 869-7667
Fax (516) 869-7812

CALENDAR FOR SEPTEMBER 1, 2021

10:00 AM

APPEAL #21096 – Koray Oncel; 67 Colonial Parkway, Manhasset, Section 3, Block 28, Lot 28; Zoned Residence-AA

Variances from § 70-19.C and 70-21.A to construct additions to a home that are too big with side yards that are too small.

APPEAL #21068 – Frank Huang; 78 Clapham Avenue, Manhasset, Section 3, Block 132, Lot 5; Zoned Residence-C

Variance §70-52.3.A to subdivide a property keeping a home on a new lot within the sky exposure plane.

APPEAL #21097 - Russel Steinberg; 17 Capi Lane, Port Washington; Section 5, Block C, Lot 417; Zoned: Residence-A

Variance from §70-29.B to construct a sunroom that is too large.

APPEAL #21075 – Danny Shirazi; 30 & 42 Parkway Drive, Roslyn Heights, Section 7, Block 173, Lots 1 & 2; Zoned Residence-AA

Variance §70-210.2 to subdivide two properties into three irregular-shaped lots.

APPEAL #21098– Douglas Zullo; 41 Yorkshire Road, New Hyde Park; Section 9, Block 513, Lot 17, Zoned: Residence-C.

Variances from §§70-51.A and 70-100.2.A(4)(a)[5] to legalize fencing that is taller than permitted and a deck that is too close to the side property line and has smaller than required aggregate side yards.

APPEAL #21099- Michael Abramov; 39 Locust Street, Greenvale, Section 20, Block J6, Lot 481; Zoned Residence-C

Variances from §§70-102.C(1) and 70-102.C(5)(a) to install a semi in-ground pool (with waterfall) in the side yard and too close to the rear property line.

2:00 PM

COMMERICAL CALENDAR

APPEAL #21100 - Leon Petroleum, LLC (Sign); 540 Plandome Road, Manhasset; Section 3, Block 69, Lot 424; Zoned: Business-A

Variance §70-196.J(1)(a) to erect a sign that exceeds the number of signs permitted on a wall.

APPEAL #21092 - 679 Port Washington Blvd., LLC (Alma Bank); 679 Port Washington Boulevard, Port Washington; Section 6, Block 2, Lot 277; Zoned: Business-A

Variances §§ 70-203(T)(2)(j), 70-203(T)(2)(a)[2], & 48-11.1(B) to construct a new bank with a drive-through bypass lane that interferes with internal circulation of the site, an outbound vehicle space partially located off-site, and an outbound vehicle space partially located on a sidewalk.

APPEAL #21101 - Greenlove Associates, LLC (Jovia Financial Credit Union Sign); 90 Northern Boulevard, Greenvale; Section 7, Block D, Lot 231; Zoned: Business-A

Variance §70-196.J(1)(f) to erect a sign that is higher than permitted.

APPEAL #21102 - Target Corporation (signs); 1400 Union Turnpike, New Hyde Park, Section 8, Block 235, Lot 56; Zoned: Business-AA

Variances from §§70-196(J)(1)(a), 70-196(J)(1)(b), 70-196(J)(1)(f), and 70-196(J)(1)(i) to erect signs that exceed the number allowable on a wall, signs that are too tall, too large, and too high above the ground and that are not similar to other signs in the same shopping center.

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.

APPEAL #21103 – Sant’Agata De Goti, LLC; 101 Garden St., Westbury, Section 11, Block 70, Lot 50; Zoned Industrial-B

Variances from §§ 70-215.A & 70-191 to construct a wood frame bldg. (not permitted) on a lot that is too small.

APPEAL #21104 – Nelson Castro; 642 Union Ave., Westbury, Section 11, Block 97, Lot 61; Zoned Business-A

Conditional Use §70-126(F) and Variances from §§ 70-103(A)(1) and 70-103(B) to construct interior alterations to convert a retail store into a deli (a conditional use) with not enough parking and parking spaces that are too small.

APPEAL #21105 – F. Cancer, LLC; 790 Summa Ave., Westbury, Section 11, Block 28, Lots 141, 150 & 151; Zoned Industrial-B

Appeal for determination or in the alternative variances §§ 70-70-103(B), 70-103(M), 70-103(O), and 70-192(B) to construct alterations to the site with parking spaces that are too small, parking in the front yard setback, parking aisles not large enough, and a dumpster enclosure within a rear yard setback. Appeal for determination that site plan review is required by the Town Board under §70-219(A)(1)(e).

Town of North Hempstead

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David L. Mammìna, A.I.A.



Members
Leslie Francis, Esq.
David I. Levine, Esq.
Daniel Donatelli, Esq.
Jay Hernandez

Board of Zoning Appeals

210 Plandome Road
Manhasset, NY 11030
(516) 869-7667
Fax (516) 869-7812

TO: TOWN CLERK
FROM: Virginia M. Wagner, Secretary to the Board
CC: Building Dept.
DATE: September 2, 2021
RE: BZA Decisions for September 1, 2021

Appeal No.	Name	Sec.	Blk.	Lots
21094	New Cingular Wireless PCS, LLC	9	641	48C

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NOTICE OF DECISION

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.

Whereas, an application (21-101737) was filed with the Board of Zoning Appeals and a public hearing was held following due notice. That at a meeting of the Board held on **September 1, 2021**, the appeal in the above entitled matter was decided as follows:

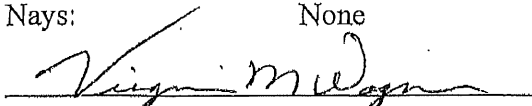
An Appeal for Determination to review the decision of the building official is **GRANTED** with respect to §75-7.C(6) (a manufactured generator enclosure of the type being proposed as part of this application, constitutes an "equipment shed or shelter" as required by §75-7.C(6) of the Code, and therefore a variance from §75-7.C(6) is not required) **AND** pursuant to the submission of revised plans which indicate that the removal of existing on-site vegetation will be mitigated by the replacement of trees to the north of the proposed generator, the variance sought under 75-7.C(7) is **DENIED as moot**. This decision is based on plans prepared by Antonio Alberto Gualtieri, P.E. dated August 23, 2021.

The vote of the **BOARD OF ZONING APPEALS** was recorded as follows:

Motioned by: Vice Chairman Francis Seconded by: Member Goodsell

Ayes: Member Goodsell, Member Hernandez, Member Donatelli,
Vice Chairman Francis, Chairman Mammìna

Nays: None


VIRGINIA M. WAGNER
SECRETARY

2021 SEP 17 10:00 AM
CLERK

THIS IS NOT A BUILDING PERMIT

Town of North Hempstead

Chairman
David L. Mammìna, A.I.A.

Members
Leslie Francis, Esq.
David I. Levine, Esq.
Daniel Donatelli, Esq.
Jay Hernandez



Board of Zoning Appeals

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TO: TOWN CLERK
FROM: Virginia M. Wagner, Secretary to the Board
CC: Building Dept.
DATE: September 8, 2021
RE: BZA Decisions for September 1, 2021

Appeal No.	Name	Sec.	Blk.	Lots
20931	Kami Holding Co.	11	56	101
20938	Vohora Realty	3	44	1
20987	Vigliotti	11	178	82
21065	Maria Vezza	5	43	34
21081	Jeremy Woo	3	231	4
21090	Manhasset Bay Yacht Club	5	C	9,16, 408 & 427
21103	Sant' Agata De Goti	11	70	50
21105	F. Cancer, LLC	11	28	141,150 & 151

SENT BY TOWN CLERK
SEP 10 2021

Chairman
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Town of North Hempstead



Board of Zoning Appeals

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NOTICE OF DECISION

APPEAL #20931 – Kami Holding Co.; Railroad Avenue and Broadway, Westbury; Section 11, Block 56, Lot 101; Zoned Residence-C & New Cassel Urban Renewal District

Variances from §§70-47.A, 70-47.1.D & G, 70-50.C, 70-50.B, & 70-101.H. to construct a new home on a lot that is too small and too narrow and with smaller than required primary and secondary front yard setbacks, and to place a central air conditioning unit too close to the street.

Whereas, an application (20-102693) was filed with the Board of Zoning Appeals and a public hearing was held following due notice. That at a meeting of the Board held on **September 1, 2021**, the appeal in the above entitled matter was decided as follows:

GRANTED of the dimension and in the location as shown on drawings prepared by Henry M. Monteverde, R.A. dated September 17, 2019 and revised through August 17, 2020
SUBJECT TO THE FOLLOWING CONDITIONS:

- 1. The applicant shall plant 6' high arborvitae 2' on center along the property line for a length which extends along the entire front of the house (facing Broadway).*
- 2. Irrigation shall be provided to the arborvitae in a manner sufficient to maintain the health of the vegetation.*

FILED IN TOWN CLERK
SEP 17 2021

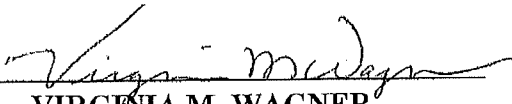
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The vote of the **BOARD OF ZONING APPEALS** was recorded as follows:

Motioned by: Vice Chairman Francis Seconded by: Member Donatelli

Ayes: Member Goodsell, Member Hernandez, Member Donatelli,
Vice Chairman Francis, Chairman Mammina

Nays: None



VIRGINIA M. WAGNER
SECRETARY

APPROVED BY THE BOARD OF ZONING APPEALS
ON 10/10/11

THIS IS NOT A BUILDING PERMIT

Board of Zoning Appeals

Town of North Hempstead

Findings of Fact for Appeal # 20931

APPEAL #20931 – Kami Holding Co.; Railroad Avenue and Broadway, Westbury; Section 11, Block 56, Lot 101; Zoned Residence-C & New Cassel Urban Renewal District

Variances from §§70-47.A, 70-47.1.D & G, 70-50.C, 70-50.B, & 70-101.H. to construct a new home on a lot that is too small and too narrow and with smaller than required primary and secondary front yard setbacks, and to place a central air conditioning unit too close to the street.

Under Section 267-b of the Town Law, the Board is empowered to grant area variances in cases where the benefit to the applicant outweighs the detriment to the health, safety and welfare of the neighborhood or community. The Board is also required to grant the *minimum* variance necessary. In making such determination the Board shall also consider: 1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; 2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; 3) whether the requested area variance is substantial; 4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and 5) whether the alleged difficulty was self-created. After careful consideration of the facts presented during the hearing, personal observations of the site and surrounding area, a review of Building Department files, and a review of the Town Code as it pertains to development of this property, the Board finds the following with respect to these criteria:

1. The Board finds that granting the requested variance will not have a negative impact on the character of the neighborhood. Based on personal observations it appears that this property has been neglected in the past and therefore, it is anticipated that its development will have a positive impact on the character of the neighborhood.
2. The applicant could not achieve the benefit of developing the parcel without the requested variances.
3. Although the variances could be considered substantial, due to the unique characteristics of the property and the positive impact of development on the surrounding neighborhood, the Board does not find this to be a factor which weighs in favor of denial.
4. For the reasons stated above, the Board finds that granting the requested variances would not result in adverse effects or impacts to the physical or environmental conditions of the surrounding neighborhood.

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5. The alleged difficulty is self-created since the applicant chooses to develop the subject property.

In conclusion the Board finds that the applicant's request for relief from the requirements of §§70-47.A, 70-47.1.D & G, 70-50.C, 70-50.B, & 70-101.H. are supported by the record herein.

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Board of Zoning Appeals

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NOTICE OF DECISION

**APPEAL #20938 – Vohora Realty; 27 Myrtle Street, Manhasset; Section 3, Block 44, Lot 1;
Zoned Business-B**

Variances from §§70-208.G and 70-208.F to convert a non-conforming mixed-use building entirely to residential (expanding a non-conforming use) and additions to the building (expanding a non-conforming building).

Whereas, an application (20-104996) was filed with the Board of Zoning Appeals and a public hearing was held following due notice; and

Whereas, a review was undertaken pursuant to the State Environmental Quality Review Act, and the Board of Zoning Appeals hereby establishes itself as "lead agency" and hereby determines that this Unlisted Action will not result in any significant adverse environmental impacts, therefore, at a meeting of the Board held on **September 1, 2021**, the appeal in the above entitled matter was decided as follows:

DENIED

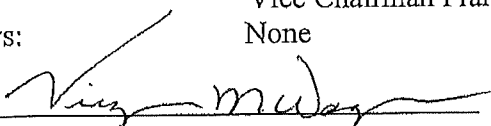
**IN REACHING THIS DETERMINATION, THE BOARD CONSIDERED THE
FACTORS SET FORTH IN THE ATTACHED FINDINGS OF FACT**

The vote of the **BOARD OF ZONING APPEALS** was recorded as follows:

Motioned by: Member Hernandez Seconded by: Member Donatelli

Ayes: Member Goodsell, Member Hernandez, Member Donatelli,
Vice Chairman Francis, Chairman Mammina

Nays: None


VIRGINIA M. WAGNER
SECRETARY

THIS IS NOT A BUILDING PERMIT

Board of Zoning Appeals

Town of North Hempstead

Findings of Fact for Appeal # 20938

APPEAL #20938 – Vohora Realty; 27 Myrtle Street, Manhasset; Section 3, Block 44, Lot 1; Zoned Business-B

Variances from §§70-208.G and 70-208.F to convert a non-conforming mixed-use building entirely to residential (expanding a non-conforming use) and additions to the building (expanding a non-conforming building).

With respect to the above referenced appeal the Board of Zoning Appeals (the “Board”) makes the following findings of fact:

1. The subject property is located at 27 Myrtle St. in Manhasset, NY and is identified as Nassau County Tax Map No. Section 3, Block 44, Lot 1 (the “Property”).
2. The Property is a 5,000 square foot rectangular shaped lot located at the intersection of Myrtle Street and Hillside Avenue.
3. The Property contains two buildings. A two story one family residential building and a mixed-use building with retail space on the first floor and an apartment on the second floor.
4. A Certificate of Existing Use (#1716) for the Property dated September 24, 1986 was submitted into the record as Exhibit 2 at the May 19, 2021 hearing. This certificate is for a one family residence with a detached garage used for retail with an apartment above.
5. The Applicant purchased the Property on May 2, 2019.
6. The immediate neighborhood is characterized by commercial and industrial zoned properties utilized for commercial and industrial purposes including a Verizon office building (directly across the street) and an auto body repair shop on the opposite corner.
7. The Property is located within the Business “B” zoning district which, according to § 70-138 of the Town Code permits the following uses:

A. All permitted uses set forth in Article XVI applicable to Business A Districts as follows:

Article XVI Business A District

§ 70-125 – Permitted Uses

A. *Offices, financial institution.*

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OFFICE OF THE CLERK
TOWN OF NORTH HEMPSTEAD

- B. Retail store, except those listed in § 70-126B and F and stores of the type known as "farmers' markets" and stores of a type known as "big-box commercial use" as defined in § 70-140B.*
- C. Sale or repair of jewelry, watches, clocks or optical goods, musical, professional or scientific instruments.*
- D. Shops for personal services, including beauty shops, barbershops, self-service laundrettes, and dry cleaning pickup shops.*
- E. Hand laundry, custom tailoring, hand dressmaking, millinery, shoemaking and repairing.*
- F. Employment office.*
- G. Funeral homes, funeral directing and embalming.*
- H. Greenhouse; flower shops.*
- I. A regularly organized institution of learning approved by the State Board of Regents and supported by public funds.*
- J. A public library, public art gallery, public museum, municipal or volunteer firehouse, municipal park for recreational use, railway passenger station.*
- K. Church or other building used for religious purposes.*
- L. Parish house, parochial school, private school.*
- M. Philanthropic or eleemosynary uses or institutions other than correctional institutions.*
- N. Hospital or sanatorium except those prohibited under § 70-207.*
- O. Nursing home.*
- P. Clubhouse, fraternity house, lodge, golf house or other recreational building.*
- Q. Public utility.*
- R. Government or municipal buildings, regardless of whether said buildings are erected for the purpose of discharging governmental or corporate functions.*
- S. Accessory uses on the same lot with and customarily incidental to any of the above permitted uses, except for accessory drive-through facilities, which shall be subject to the provisions of § 70-203T, and for below-grade parking structures, which shall be subject to the provisions of § 70-203U.*
- T. Buildings and uses provided in § 70-125J to S, inclusive, shall conform to the provisions of Article VI as to height, plot areas, lot coverage and open spaces.*
- U. Dry-cleaning establishments employing a maximum of five workers, and provided that the dry-cleaning equipment utilizes nonflammable fluids and bears the approval of the Fire Underwriters' Laboratory.*
- V. Mixed-use buildings within the New Cassel Urban Renewal Area.*
- W. A caretaker unit, as defined in § 70-231, located within a building or on a property designated on the National Register of Historic Places, State Register*

of Historic Places or designated as an individual landmark under Chapter 27 of this Code and having a portion of the building accessible to the public.

B. Shops for carpenters, hand cabinetmaking, furniture repair or upholstery, electrical work, hand metalworking, blacksmith, tinsmith, new and unused plumbing, gas, steam or hot water fittings, bicycle repair.

C. Barber, drafting, hairdressing or secretarial schools.

D. Medical or dental laboratories.

E. Radio or television studios.

F. Research laboratories in electronics or precision instruments.

G. Accessory uses on the same lot and customarily incidental to any of the above permitted uses, except for accessory drive-through facilities, which shall be subject to the provisions of § 70-203T, and for below-grade parking structures, which shall be subject to the provisions of § 70-203U.

8. On or about July 26, 2019 a Building Permit application was filed in order to complete renovations at the property including the conversion of the mixed use structure entirely to residential.

9. On or about June 24, 2020 a Notice of Disapproval ("NOD") was issued by the Building Department in conjunction with a building permit application which was filed to convert a the non-conforming mixed-use building on the Property entirely to residential (expanding a non-conforming use), and to construct additions to that building (expanding a non-conforming building). The NOD cited non-compliance with the following Sections of the Town Code:

§ 70-208G: A non-conforming use shall be altered or replaced only if such alteration replacement does not increase the existing nonconformity and is in accordance with the provisions of § 70-209. A nonconforming use shall be extended, enlarged, or moved only if such extension, enlargement, or move is in conformity with the provisions of this chapter.

Required: A Non-conforming Use cannot be expanded without BZA authorization

Proposed: Interior Alterations Changing the Use from Mixed Use to all Residential in a B-B therefore increasing a nonconforming Use.

§ 70-208G: A nonconforming building shall be extended, altered, enlarged, replaced or moved only if such extension, alteration, enlargement, replacement or move does not increase the existing nonconformity and is in accordance with the provisions of § 70-209

10. Pursuant to the NOD the applicant filed an appeal with this Board on or about July 2, 2020 requesting variances from the above enumerated sections of the Town Code. The application included the following:

APPEAL NO. 20-01
JULY 14, 2020

- An Application for Variance, Conditional Use or Permit form received by the Board on or about July 2, 2020;
 - A zoning analysis sheet prepared by Mark Anthony Munisteri, R.A.;
 - A SEQR classification form;
 - A short Environmental Assessment Form prepared by Mark Anthony Munisteri dated February 27, 2020;
 - A survey prepared by Christopher M. Buckley, L.S. dated November 2, 2011
 - A radius map prepared by Long Island Radius Maps, dated May 2, 2021;
 - Drawings prepared by Mark Anthony Munisteri, R.A. dated July 10, 2019.
11. On the application to the Board the applicant identifies the present use of the subject building as "mixed use" and the proposed use as "residential".
 12. As required by General Municipal Law § 239-m, this Board referred the matter to the Nassau County Planning Commission (the "NCPC") which recommended Local Determination by Resolution dated July 31, 2020.
 13. The proposed action was classified as "Unlisted" in accordance with the provisions of SEQRA and an EAF Part 3 was completed that determined the proposed action would not result in any significant adverse environmental impacts.
 14. A hearing was held on September 2, 2020.
 15. The applicant appeared by their attorney James Iannone, Esq.
 16. The transcript of the hearing is incorporated by reference herein.
 17. At the hearing a resident, John Minogue, spoke about the character of the neighborhood.

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18. At the hearing it was decided that the hearing would be adjourned in order to investigate whether the appeal should be heard as an appeal for a Use Variance or an Area Variance.
19. On January 29th the applicant was informed by letter prepared by Virginia M. Wagner, Secretary to the Board, that they should proceed with the Appeal as a request for "area variances".
20. On March 24, 2021 a second hearing was held.
21. The applicant appeared personally and by their attorney James Iannone, Esq.
22. Mr. Sol Hakimian, Real Estate Broker with Daniel Gale, Sotheby's International Realty, appeared on behalf of the applicant.
23. No one from the public appeared either in favor or in opposition.
24. The transcript of the hearing is incorporated by reference herein.
25. The applicant submitted the following exhibits:
 - Exhibit A: Notice of Hearing on Appeal for the March 24, 2021 hearing together with the Affidavit of Mailing and copies of certified mailing receipts.
 - Exhibit B: Notice of Hearing on Appeal for the March 24, 2021 hearing together with the Affidavit of Sign Posting.
 - Exhibit C: Renderings of the proposed renovations to both buildings on the property.
 - Exhibit D: Consent from the owner of the parking lot (Hillside Lot, LLC) between 57 Hillside Avenue and 47 Hillside Avenue dated December 21, 2020
 - Exhibit E: Statement of Qualifications for Sol Hakimian, Real Estate Broker with Daniel Gale, Sotheby's International Realty
 - Exhibit F: Certificate of Occupancy Search for 31 Myrtle St., Manhasset, prepared by Municipal Data Services dated May 14, 2019 and a Certificate of Existing Use (#1716) dated September 24, 1986.
 - Exhibit G: Town of North Hempstead Zoning Map for Section 3 dated March 18, 2014.
 - Exhibit H: Unlabeled photograph of residential building.
 - Exhibit I: Unlabeled photographs of commercial properties available for rent and Multiple Listing Sheets for 278 Plandome Road, Manhasset, 129 Plandome Road, Manhasset, and 124 Plandome Road, Manhasset
 - Exhibit J: Unlabeled photograph of office for rent
 - Exhibit K: Unlabeled photograph of commercial property for rent
26. The record was Reserved in order for the Board to consider all of the facts presented at the hearing.

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TOWN OF NORTH HEMPSTEAD

27. The transcript of the hearing is incorporated by reference herein.
28. Upon further review of the application by Deborah Algios, Esq., Counsel to the Board, it was determined that the Appeal should be reviewed as an Appeal for "Use variances".¹
29. The applicant was given the opportunity to have a new hearing to present evidence and testimony based upon the criteria required for a use variance.
30. A third hearing was held on May 19, 2021.
31. The applicant appeared personally and by their attorney James Iannone, Esq.
32. Mr. Sol Hakimian, Real Estate Broker with Daniel Gale, Sotheby's International Realty, appeared on behalf of the applicant.
33. No one from the public appeared at the hearing.
34. The transcript of the hearing is incorporated by reference herein.
35. The applicant submitted Exhibits 1-11 as follows:
 - Exhibit 1: Renderings of the proposed renovations to both buildings on the property.
 - Exhibit 2: Certificate of Occupancy Search for 31 Myrtle St., Manhasset, prepared by Municipal Data Services dated May 14, 2019 and a Certificate of Existing Use (#1716) dated September 24, 1986.
 - Exhibit 3: Photograph of 34 Bayview Ave, Manhasset accompanied by the Nassau County Tax Assessor's description of the property which indicates that the building is used as a two family residence.
 - Exhibit 4: Town of North Hempstead Zoning Map for Section 3 dated March 18, 2014.
 - Exhibit 5: Consent from the owner of the parking lot (Hillside Lot, LLC) between 57 Hillside Avenue and 47 Hillside Avenue dated December 21, 2020
 - Exhibit 6: Statement of Qualifications for Sol Hakimian, Real Estate Broker with Daniel Gale, Sotheby's International Realty

¹ The Applicant relies on two cases in support of its argument that the Appeal should be treated as an area variance, both of which can be distinguished from this Appeal. In *Mobil Oil Corp v. Village of Mamaroneck*, 740 N.Y.S 2d 456 (2002), it was determined by the Court that the erection of a canopy over three gas-pumping islands at a gas station operated as a prior nonconforming use, should be treated as an area variance where the canopy constituted a physical and dimensional characteristic and the essential use of the property remained a gas station. In *Matter of Hoffman v. Harris*, 269 N.Y.S.2nd 119 (1966), the petitioners had applied for a variance to maintain a gatehouse on their property for separate residential occupancy as a rental where such use was prohibited. The only permitted use for the gatehouse was as an accessory use to the main house for occupancy by servants (an outdated and obsolete use). To be used as a separate principal family residence, petitioners sought to vary from the requirement that all principal residences be on separate two-acre lots, and thus the Court held the variance should be treated as an area variance.

- Exhibit 7: Unlabeled photographs of commercial properties available for rent and Multiple Listing Sheets for 278 Plandome Road, Manhasset, 129 Plandome Road, Manhasset, and 124 Plandome Road, Manhasset
- Exhibit 8: Unlabeled photograph of office for rent
- Exhibit 9: Unlabeled photograph of commercial property for rent
- Exhibit 10: Letter from John Magnani, a licensed Real Estate agent with Daniel Gale Sotheby's International Realty in support of the application.
- Exhibit 11: A copy of the floor plans for the mixed use building prepared by Mark Anthony Munisteri, R.A. and dated July 10, 2019 and revised through January 6, 2020.

36. The hearing was continued in order to allow the applicant's attorney time to submit additional documentation in support of the Appeal.

37. On July 14, 2021 the applicant's attorney submitted the following additional information to the Board:

- Memorandum of Law in support of the Appeal.
- A proposal dated June 10, 2020 from Fantastic Finishes of New York to renovate the commercial space with a 2 bedroom apartment above. The proposal estimates a cost of \$191,750.00 for said work.
- A proposal dated June 10, 2020 from Fantastic Finishes of New York to renovate and convert the entire mixed use building to residential. The proposal estimates a cost of \$163,000 for said work.
- A proposal dated June 10, 2020, from Fantastic Finishes of New York to install a handicap bathroom in the commercial space. The proposal estimates a cost of \$32,500 for said work.
- A real estate appraisal of the property prepared by Daniel N. Aarons, NYS Certified General Appraiser.

38. Under Town Law § 267-B(2), this Board is empowered to grant use variances where the applicant demonstrates that; (1) the applicant cannot realize a reasonable return provided that lack of return is substantial as demonstrated by competent financial evidence; (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self-created.

(1) Reasonable return

In order to demonstrate that the applicant cannot realize a reasonable return they must provide "dollars and cents proof" that the return from each and every permitted use under the ordinance would not be reasonable. *Matter of Forrest v. Evershed*, 7 N.Y. 2d 256 (1959); *Matter of Westbury Laundromat, Inc. v. Mammina*, 879 N.Y. 2d 188 (2009).

APPROVED BY THE BOARD
JULY 14, 2021

“The appraiser has surveyed each use as allowed within the “permitted uses” of the zoning code and has determined that the potential for occupancy or the ability to provide a reasonable return on such occupancy and use is limited. Most, if not all permitted uses do require some level of “exposure” as best offered through such main streets as Bayview Avenue and Plandome Road. Myrtle Street, as earlier described is a blended street wedged behind the roads offering the needed level of exposure and away from both pedestrian and vehicular activity. This prevents a maximizing of best use to the improvements as such permitted tenancy really require surrounding characteristics not available to the site. This includes more visible locations, larger parcel size and/or higher density parking.

Based upon a review of the “permitted uses”, in my professional opinion, the subject parcel cannot realize a reasonable return from the site in its present use/form or from any of the permitted uses permitted in Zone Business-B based upon the site’s unique size, layout and configuration. The subject lot has a certificate of existing use for a “one-family residence with detached garage used for retail with apartment above”. There is a substantial lack of demand for this permitted use authorized by the certificate of existing use and any of the uses permitted in Zone Business-B, given the site’s unique size, layout, and configuration as well as the needs and demands of the market.

Instead, the appraisal concludes that the “highest and best use” of the Property is residential. However, it is well settled that a “use variance may not be granted merely because the zoning ordinance proscribes the highest and best use of the land, or because the variant use will yield a higher return than those permitted by the zoning regulations.” *Matter of Westbury Laundromat, Inc. v. Mammina, supra*; See

also Matter of Elwood Properties, Inc. v. Bohrer, 628 N.Y.S. 2d 799 (2d Dep't. 1995).

The Board finds that the applicant has not met their burden of proof with respect to this criteria.

- (2) That the alleged hardship is unique.

Applicant failed to show that the alleged hardship was special and unique to the Property (*See Clark v. Board of Zoning Appeals of the Town of Hempstead, 301 N.Y. 86 (1950).*

- (3) That the requested use variance, if granted, will not alter the essential character of the neighborhood.

The current use of the property is Mixed Use with part of the site being used as residential and part being used for commercial purposes within an area which is zoned for commercial use. If a use variance were granted, the entire property would be converted to residential use only. Therefore, the character of the property would change from Mixed Use to Residential Use on a site which is primarily surrounded by commercially used properties. In accordance with this criteria, the Board finds that if granted, the requested use variance would alter the essential character of the neighborhood.

- (4) That the alleged hardship has not been self-created.

The applicant failed to demonstrate that the claimed "hardship" was not self-created. The applicant purchased the property in 2019 when the current zoning restrictions were in effect. There was no evidence adduced at the hearings indicating that the Applicant was not aware of the current zoning regulations.

Additionally, the applicant purchased the property in 2019 and shortly thereafter filed a building permit application to convert the mixed use building entirely to residential. It seems implausible that the applicant would have suffered such a significant economic hardship in this period of time to conclude that the use of the property, either as a (mixed use) or for any of the permitted purposes was not viable. There was no evidence submitted to indicate that the applicant had even attempted to rent the commercial space. When questioned by Board Member Daniel Donatelli at the hearing (March 24th hearing, transcript page 101-102) about when the last time the space was occupied, the applicant, Mr. Vohora, replied as follows, "As far as we know, you know, as long as we have owned the property, it has been completely vacant. And it seemed to be vacant for some time before we took over."

Given these facts the Board finds that the hardship is self-created.

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DEPT OF ADOCS

The Board also acknowledges public policy which views nonconforming uses "as detrimental to zoning schemes...and favors their reasonable restriction and eventual elimination." 550 *Halstead Corp. v. Zoning Board of Appeals of the Town/Village of Harrison*, 1 N.Y.3d 561 (2003). Here, instead of moving the Property more toward compliance (converting the mixed-use building to entirely commercial), the applicant seeks to extinguish the conforming commercial use and expand the nonconforming residential use of the Property contrary to public policy.

For the reasons stated herein, and after careful consideration the Board determines that the applicant has not sustained its burden to demonstrate entitlement to the requested relief.

Dated: Manhasset, New York
September 1, 2021

The vote of the **BOARD OF ZONING APPEALS** was recorded as follows:

Motioned by:	Member Hernandez	Seconded by: Member Donatelli
Ayes:	Member Goodsell, Member Hernandez, Member Donatelli, Vice Chairman Francis, Chairman Mammina	
Nays:	None	

2021 SEP 1 10:00 AM
MANHASSET, NY

Chairman
David L. Mammina, A.I.A.

Vice Chairman
Leslie Francis, Esq.

Members
Daniel Donatelli, Esq.
Jay Hernandez
Patricia A. Goodsell, Esq.

Town of North Hempstead



Board of Zoning Appeals

210 Plandome Road
Manhasset, NY 11030
(516) 869-7667
Fax (516) 869-7812

NOTICE OF DECISION

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.

Whereas, an application (20-108157) was filed with the Board of Zoning Appeals and a public hearing was held following due notice; and

Whereas, a review was undertaken pursuant to the State Environmental Quality Review Act, and the Board of Zoning Appeals hereby establishes itself as “lead agency” and hereby determines that this Unlisted Action will not result in any significant adverse environmental impacts, therefore, at a meeting of the Board held on **September 1, 2021**, the appeal in the above entitled matter was decided as follows:

GRANTED of the dimension and in the location as shown on drawings prepared by Steven Morse Keller, R.A. dated July 20, 2017 and revised through September 19, 2019 (New 1 Story Building Foundation Plan; on drawings prepared by Steven Morse Keller, R.A. dated September 16, 2019 and revised through June 11, 2020 (Existing Building Old Maintenance Garage New Store/Warehouse); and on drawings prepared by Michael Marinis, P.E. dated August 28, 2018 and revised through September 18, 2019 (Existing Conditions Dimensional Plan) **SUBJECT TO THE FOLLOWING CONDITIONS:**

- 1. All vehicular entrance gates shall remain open during business hours.*
- 2. The facility must be in compliance with all conditions of its NYSDEC Permit, except where the Town Code's performance standards meet the goals of the permit conditions and the Town's requirements are more stringent.*

THIS IS NOT A BUILDING PERMIT

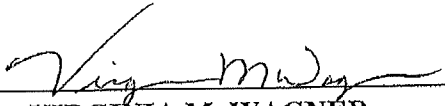
2021 SEP 12 10:17 AM
TOWN OF NORTH HEMPSTEAD

The vote of the **BOARD OF ZONING APPEALS** was recorded as follows:

Motioned by: Vice Chairman Francis Seconded by: Member Hernandez

Ayes: Member Goodsell, Member Hernandez, Member Donatelli,
Vice Chairman Francis, Chairman Mammina

Nays: None



VIRGINIA M. WAGNER
SECRETARY

1973 MAY 10 PM 4:30
1973 5 10 PM

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Chairman
David L. Mammina, A.I.A.

Vice Chairman
Leslie Francis, Esq.

Members
Daniel Donatelli, Esq.
Jay Hernandez
Patricia A. Goodsell, Esq.

Town of North Hempstead



Board of Zoning Appeals

210 Plandome Road
Manhasset, NY 11030
(516) 869-7667
Fax (516) 869-7812

NOTICE OF DECISION

APPEAL # 21065 – Maria Vezza; 19 Charles Street, Port Washington; Section 5, Block 43, Lot 34; Zoned: Residence C

Variances §§ 70-209.A, 70-49.A, 70-51.A, 70-52.3, & 70-52.5 to construct a new home (where 50% of the exterior structure and interior floor system of the existing home is being removed) on a non-conforming foundation that is too close the street, too close to a side property line, not in compliance with the height to setback ratio, and too much front yard paving.

Whereas, an application (21-103087) was filed with the Board of Zoning Appeals and a public hearing was held following due notice. That at a meeting of the Board held on **September 1, 2021**, the appeal in the above entitled matter was decided as follows:

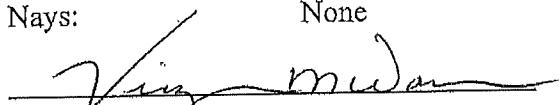
GRANTED of the dimension and in the location as shown on drawings prepared by Louis F. Baldino, R.A. dated May 15, 2020 and revised through January 19, 2021.

The vote of the **BOARD OF ZONING APPEALS** was recorded as follows:

Motioned by: Member Donatelli Seconded by: Member Hernandez

Ayes: Member Goodsell, Member Hernandez, Member Donatelli,
Vice Chairman Francis, Chairman Mammina

Nays: None


VIRGINIA M. WAGNER
SECRETARY

OWN CLERK
SEP 12 2021

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Chairman
David L. Mammina, A.I.A.

Vice Chairman
Leslie Francis, Esq.

Members
Daniel Donatelli, Esq.
Jay Hernandez
Patricia A. Goodsell, Esq.

Town of North Hempstead



Board of Zoning Appeals

210 Plandome Road
Manhasset, NY 11030
(516) 869-7667
Fax (516) 869-7812

NOTICE OF DECISION

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

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

Whereas, an application (21-104550) was filed with the Board of Zoning Appeals and a public hearing was held following due notice. That at a meeting of the Board held on **September 1, 2021**, the appeal in the above entitled matter was decided as follows:

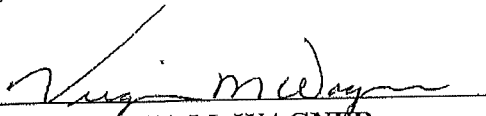
The Appeal for Determination to review the decision of the building official is **GRANTED** (The Board finds that the variance sought under §70-32.4 does not preclude the applicant from qualifying for a "bump-up" to the R-AA provisions of the Code, therefore, a variance under §70-29.C is not required) **AND** the variance sought under §70-32.4 is **GRANTED** of the dimension and in the location as shown on drawings prepared by Christopher Brian Stoddard, R.A. dated December 17, 2020.

The vote of the **BOARD OF ZONING APPEALS** was recorded as follows:

Motioned by: Member Hernandez Seconded by: Member Donatelli

Ayes: Member Goodsell, Member Hernandez, Member Donatelli,
Vice Chairman Francis, Chairman Mammina

Nays: None


VIRGINIA M. WAGNER
SECRETARY

APPROVED FOR THE TOWN OF NORTH HEMPSTEAD
SEP 17 2021

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Chairman
David L. Mammina, A.I.A.

Vice Chairman
Leslie Francis, Esq.

Members
Daniel Donatelli, Esq.
Jay Hernandez
Patricia A. Goodsell, Esq.

Town of North Hempstead



Board of Zoning Appeals

210 Plandome Road
Manhasset, NY 11030
(516) 869-7667
Fax (516) 869-7812

NOTICE OF DECISION

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.

Whereas, an application (21-104938) was filed with the Board of Zoning Appeals and a public hearing was held following due notice. That at a meeting of the Board held on **September 1, 2021**, the appeal in the above entitled matter was decided as follows:

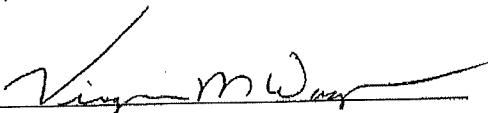
GRANTED of the dimension and in the location as shown on drawings prepared by Donald Alberto, R.A. dated November 16, 2020 and revised through May 3, 2021 and on plans prepared by Laura A. Casale, R.A. dated July 27, 2018 and revised through May 11, 2021.

The vote of the **BOARD OF ZONING APPEALS** was recorded as follows:

Motioned by: Member Donatelli Seconded by: Member Goodsell

Ayes: Member Goodsell, Member Hernandez, Member Donatelli,
Vice Chairman Francis, Chairman Mammina

Nays: None


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SECRETARY

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TOWN OF NORTH HEMPSTEAD
SEP 14 2021

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Chairman
David L. Mammina, A.I.A.

Vice Chairman
Leslie Francis, Esq.

Members
Daniel Donatelli, Esq.
Jay Hernandez
Patricia A. Goodsell, Esq.

Town of North Hempstead



Board of Zoning Appeals

210 Plandome Road
Manhasset, NY 11030
(516) 869-7667
Fax (516) 869-7812

NOTICE OF DECISION

APPEAL #21103 – Sant' Agata De Goti, LLC; 101 Garden St., Westbury, Section 11, Block 70, Lot 50; Zoned Industrial-B
Variances from §§ 70-215.A & 70-191 to construct a wood frame bldg. (not permitted) on a lot that is too small.

Whereas, an application (21-105142) was filed with the Board of Zoning Appeals and a public hearing was held following due notice. That at a meeting of the Board held on **September 1, 2021**, the appeal in the above entitled matter was decided as follows:

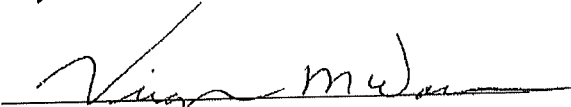
Pursuant to recent changes to the Town Code, the variance sought under § 70-215.A is **DENIED as moot**. The variance sought under §70-191 is **GRANTED** of the dimension and in the location as shown on drawings prepared by Peter A. Cinquemani, R.A. dated April 21, 2021 and revised through May 28, 2021. The variance sought under § 70-215.A is **DENIED as moot**

The vote of the **BOARD OF ZONING APPEALS** was recorded as follows:

Motioned by: Member Donatelli Seconded by: Vice Chairman Francis

Ayes: Member Goodsell, Member Hernandez, Member Donatelli,
Vice Chairman Francis, Chairman Mammina

Nays: None


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SECRETARY

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SEP 14 2021

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Chairman
David L. Mammina, A.I.A.

Vice Chairman
Leslie Francis, Esq.

Members
Daniel Donatelli, Esq.
Jay Hernandez
Patricia A. Goodsell, Esq.

Town of North Hempstead



Board of Zoning Appeals

210 Plandome Road
Manhasset, NY 11030
(516) 869-7667
Fax (516) 869-7812

NOTICE OF DECISION

APPEAL #21105 – F. Cancer, LLC; 790 Summa Ave., Westbury, Section 11, Block 28, Lots 141, 150 & 151; Zoned Industrial-B

Appeal for determination or in the alternative variances §§ 70-103(B), 70-103(M), 70-103(O), and 70-192(B) to construct alterations to the site with parking spaces that are too small, parking in the front yard setback, parking aisles not large enough, and a dumpster enclosure within a rear yard setback. Appeal for determination that site plan review is required by the Town Board under §70-219(A)(1)(e).

Whereas, an application (21-105259) was filed with the Board of Zoning Appeals and a public hearing was held following due notice; and

Whereas, a review was undertaken pursuant to the State Environmental Quality Review Act, and the Board of Zoning Appeals hereby establishes itself as "lead agency" and hereby determines that this Unlisted Action will not result in any significant adverse environmental impacts, therefore, at a meeting of the Board held on **September 1, 2021**, the appeal in the above entitled matter was decided as follows:

Pursuant to recent changes to the Town Code, An Appeal for Determination to review the decision of the building official with respect to the requirement that site plan review is required by the Town Board under §70-219(A)(1)(e) is **DENIED as moot**. An Appeal for Determination to review the decision of the building official with respect to the variances sought under §§ 70-70-103(B), 70-103(M), 70-103(O), and 70-192(B) is **DENIED** and the variances sought under §§ 70-70-103(B), 70-103(M), 70-103(O), and 70-192(B) are **GRANTED** of the dimension and in the location as shown on drawings prepared by John V. Catapano, P.E. dated April 7, 2020.

FILED IN TOWN CLERK
OFFICE
SEP 1 2021

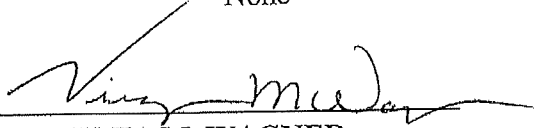
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The vote of the **BOARD OF ZONING APPEALS** was recorded as follows:

Motioned by: Vice Chairman Francis Seconded by: Member Donatelli

Ayes: Member Hernandez, Member Donatelli, Member Levine
Vice Chairman Francis, Chairman Mammina

Nays: None



VIRGINIA M. WAGNER
SECRETARY

APPROVED FOR THE BOARD OF ZONING APPEALS
JULY 1, 2015

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