

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

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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 OCTOBER 6, 2021

12:00PM

RESIDENTIAL CALENDAR

APPEAL #21113 – Wayne & Loren King; 60 Rockywood Rd., Manhasset, Section 3, Block 179, Lot 223; Zoned Residence-B

Variance from § 70-100.2.K to legalize a generator that is too close to a property line and too far from a home.

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

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

APPEAL #20765.A – Narinder Kaur; 925 N. 7th Street, New Hyde Park; Section 8, Block 18, Lot 36; Zoned: Residence-A

Variances from §§70-49.A and 70-52.3 to legalize a dwelling that does not comply with the sky exposure plane requirements and is too close to the street.

APPEAL #21114 - Lian Chen & Samantha Yuen; 55 Evergreen Avenue, New Hyde Park; Section 8, Block 166, Lot 220; Zoned: Residence-C

Variance from §70-100.2.A(2) to erect fencing in the front yard (not permitted)

APPEAL #21115 - Boaz Sharoni; 76 Nottingham Road, New Hyde Park; Section 8, Block 289, Lot 1; Zoned: Residence-A

Variance from §70-30.B to construct a second story terrace that is too close to the street.

APPEAL #21116 - Alan Cooper; 1 Tudor Drive, New Hyde Park; Section 8, Block 303, Lot 19; Zoned: Residence-B

Variances from §70-102.C(2) and 70-102.C(5)(a) to legalize the relocation of pool equipment into a side yard and to erect pool fencing beyond the rear building line into the side yard.

APPEAL #21117 - Phillip Varghese; 52 Irwin Street, New Hyde Park, Section 9, Block 124, Lot 136; Zoned: Residence-C

Variances from §70-100.A(2) to erect new fencing within the front yard and secondary front yard (not permitted).

APPEAL #21118 – Gary Russell; 190 Urban Avenue., Westbury, Section 11, Block 28, Lot 20; Zoned Residence-C

Variance from § 70-100.2.A(4) to erect fencing that is too tall.

APPEAL #21110 – Adonay Pineda; 12 6th St., Westbury, Section 11, Block 109, Lot 393; Zoned Residence-C & New Cassel Urban Renewal Overlay District

Variance from § 70-50.C to legalize a new two-story single-family home built too close to the street.

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) within the side yard and too close to the rear property line.

2:00PM

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 #21119 – Cookie Doe, Inc.; 433-453 Plandome Road., Manhasset, Section 3, Block 138-02, Lot 19; Zoned Business-B

Conditional Use under § 70-126(F) to convert a retail space into a food use.

APPEAL #21120 - Port Washington Wines & Liquors; 378 Port Washington Boulevard, Port Washington; Section 5, Block J, Lot 1020; Zoned: Business-A

Variances from §§70-103.A and 70-103.F to construct interior alterations to convert an office space to a retail use with not enough on-site parking or loading zones.

APPEAL #21121 - New Cingular Wireless PCS, LLC; 802 West Shore Road, Port Washington; Section 6, Block 53, Lot 1033C; Zoned: Residence-AAA

Variance from §75-7.C(6) to install a generator and relocate existing ground equipment and equipment cabinets, all with no enclosure.

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 total side yards.

APPEAL #21122 – Immer Canales; 611 Old Country Road., Westbury, Section 10, Block 60, Lot 225; Zoned Business-A

Variances from § 70-196J(1)(a) & 70-196J(1)(f) to legalize a sign on a wall exceeding the number of signs allowed on a wall and that is too high.

**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.

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Board of Zoning Appeals

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NOTICE OF DECISION

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

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

Whereas, an application (21-104021) 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 **October 6, 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 **DENIED** and the **variances** sought under §§70-100.1(A) & 70-100.1(B) are **GRANTED** of the dimension and in the location as shown on drawings prepared by Edward M. Hogan, Jr., R.A. dated July 12, 2004 and on a survey prepared by Thomas Bremen, L.S. dated August 7, 2018 and revised through February 23, 2021.

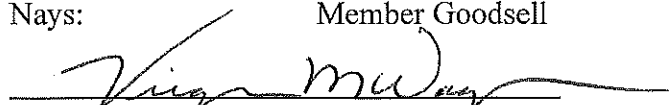
IN REACHING THIS DETERMINATION, THE BOARD CONSIDERED THE FACTORS SET FORTH IN THE ATTACHED FINDINGS OF FACT

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

Motioned by: Member Donatelli Seconded by: Member Hernandez

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

Nays: Member Goodsell


VIRGINIA M. WAGNER
SECRETARY

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Board of Zoning Appeals

Town of North Hempstead

Findings of Fact for Appeal # 21066

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

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

Appeal for Determination:

The Appeal for Determination to review the decision of the building official is **DENIED**. The Board finds that the Building official was correct in citing the application under §§70-100.1(A) & 70-100.1(B) of the Code. Although the Town Code did not specifically address planters and raised patios/terraces at the time the permit for the amendment was issued, 100.2(I) of the code, which was in effect at that time, stated "Other accessory structures not mentioned herein shall be located in accordance with the requirements for accessory buildings as provided in §70-100.1A to G". The planters and raised patio fall under this category and therefore must meet the requirements of §§70-100.1(A) & 70-100.1(B).

Area Variance:

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. The patio and planters are located in the rear yard of the dwelling and cannot be seen from the street. The outside wall of the planter is lower in height than a 5 or 6' fence which would be permitted in

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this location. The placement of the planters together with the vegetation planted therein serve to screen the raised terrace from the neighbors. Therefore, the Board finds that in granting the requested variances there will be minimal impacts to neighboring properties.

2. The applicant could not achieve the benefit of legalizing the planters and the patio without obtaining a variance unless the planters were moved to comply with the required setback and coverage requirements. The Board recognizes that this could only be accomplished at a significant expense to the applicant. In recognition of the fact the applicant relied in good faith upon a permit issued by the Building Department before constructing the planters and patio, the Board finds that the benefit to the applicant outweighs any impacts to the neighbors or neighborhood.
3. Although the variances could be considered substantial the Board does not find the substantiality of the variances to weigh in favor of denial.
4. 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. As shown on the plans submitted with the application, there is a drywell provided in the patio to capture runoff and the planters themselves are pervious as they do not have a bottom.
5. The alleged difficulty is self-created since the applicant chose to construct the patio and planters.

In consideration of the above, the Board finds that the benefit to the applicant outweighs the detriment to the health, safety and welfare of the neighborhood or community and that the applicant's request for relief from the requirements of §§70-100.1(A) & 70-100.1(B) is supported by the record herein.

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NOTICE OF DECISION

APPEAL #21069 - Debbie & Peter Giallilas; 138 Sussex Drive, Manhasset; Section 3, Block 184, Lot 167; Zoned: Residence-A

Variance from §§70-30.A and 70-101.B to construct an addition and a portico that are too close to the street.

Whereas, an application (21-104021) 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 **October 6, 2021** the appeal in the above entitled matter was decided as follows:

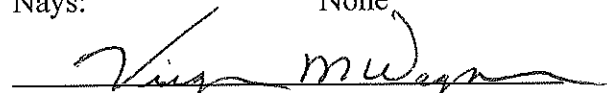
GRANTED of the dimension and in the location as shown on *revised* drawings prepared by Harriet Calos Nikakis, R.A. dated July 9, 2021 and revised through September 14, 2021..

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

Motioned by: Member Hernandez Seconded by: Vice Chairman Francis

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

Nays: None


VIRGINIA M. WAGNER
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NOTICE OF DECISION

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.

Whereas, an application (21-104254) 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 **October 6, 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 **DENIED** and the **variance** sought under **§70-44** is **GRANTED** of the dimension and in the location as shown on drawings prepared by Kevin J. Wisniewski, P.E. dated 1/3/19 and revised through 3/23/21 and on drawings prepared by Land Design Associates dated April 13, 2012 and revised through May 31, 2019.

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

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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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Board of Zoning Appeals

Town of North Hempstead

Findings of Fact for Appeal # 21091

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.

Appeal for Determination:

The Appeal for Determination to review the decision of the building official is **DENIED**. The Board finds that the Building official was correct in citing the application under §70-44 because the proposed expansion of the mausoleum expands the cemetery which is a prior nonconforming use. The Board disagrees with the Applicant that the proposed expansion of the mausoleum is governed by the New York Court of Appeals decision in *Matter of Syracuse Aggregate Corp. v. Weise*, 51 N.Y.2d 278 (1980). Unlike *Syracuse*, the use at issue here involves construction on top of the land and not the use of the land itself, as would be the case with a quarry or landfill.

Use Variance:

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. The Board is also required to grant the minimum variance necessary to address the unnecessary hardship proven by the applicant while preserving and protecting the character of the neighborhood and health, safety and welfare of the community.

The evidence presented to the Board does not contain the proof required by Town Law § 267-B(2). However, this Board concurs with the Applicant that the usual considerations for a use variance do not pertain to the instant application. In this regard, the Board affirms its findings as stated in its decision for Appeal No. 18771 which granted a use variance for the construction of a different mausoleum on the subject premises. In that earlier decision, the Board stated that “[u]nlike 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 public policy and use planning.”

Accordingly, in consideration of the Board’s prior precedent and determinations made with respect to the use of this property, as well as the facts presented at the hearing of this Appeal, the applicant’s request for relief from the requirements of §70-44 is granted.

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NOTICE OF DECISION

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) within the side yard and too close to the rear property line.

Whereas, an application (21-101894) 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 **October 6, 2021**, the appeal in the above entitled matter was decided as follows:

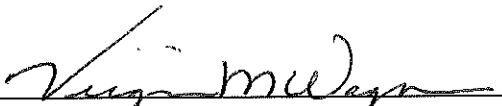
GRANTED of the dimension and in the location as shown on drawings prepared by Andrew S. Braum, P.E. dated April 5, 2021 and revised through May 24, 2021.

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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NOTICE OF DECISION

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.

Whereas, an application (21-105506) 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 **October 6, 2021**, the appeal in the above entitled matter was decided as follows:

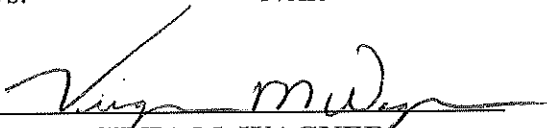
GRANTED of the dimension and in the location as shown on drawings prepared by Christopher M. Tartaglia, P.E. dated May 14, 2021.

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

Motioned by: Member Hernandez Seconded by: Member Goodsell

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

Nays: None


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NOTICE OF DECISION

APPEAL #21113 – Wayne & Loren King; 60 Rockywood Rd., Manhasset, Section 3, Block 179, Lot 223; Zoned Residence-B

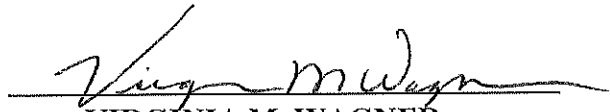
Variance from § 70-100.2.K to legalize a generator that is too close to a property line and too far from a home.

Whereas, an application (21-106210) 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 **October 6, 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 May 21, 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, Chairman Mammina	
Nays:	None	
Absent:	Vice Chairman Francis	


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NOTICE OF DECISION

APPEAL #21117 - Phillip Varghese; 52 Irwin Street, New Hyde Park, Section 9, Block 124, Lot 136; Zoned: Residence-C

Variances from §70-100.A(2) to erect new fencing within the front yard and secondary front yard (not permitted).

Whereas, an application (21-106731) 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 **October 6, 2021**, the appeal in the above entitled matter was decided as follows:

GRANTED of the dimension and in the location as shown on a survey prepared by Frank Galuzzo, L.S. *as annotated by the applicant and as amended by the BZA (the applicant withdrew the proposal to erect a fence in the secondary side yard)* **SUBJECT TO THE FOLLOWING CONDITION:**

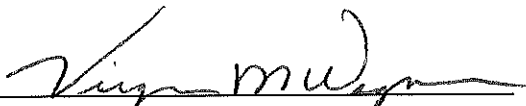
The applicant shall install plantings in front of the fence (between the fence and Irwin Street) sufficient to screen the fence.

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

Motioned by: Member Goodsell Seconded by: Vice Chairman Francis

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

Nays: None


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NOTICE OF DECISION

APPEAL #21119 – Cookie Doe, Inc.; 433-453 Plandome Road., Manhasset, Section 3, Block 138-02, Lot 19; Zoned Business-B

Conditional Use under § 70-126(F) to convert a retail space into a food use.

Whereas, an application (BZR-21-000001) 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 **October 6, 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 Thomas D. Reilly, P.E. dated September 8, 2019 and revised through February 14, 2020 and on a survey prepared by Michael K. Wicks, P.L.S. dated November 6, 2019
SUBJECT TO THE CONDITIONS CONTAINED IN THE ATTACHED RIDER.

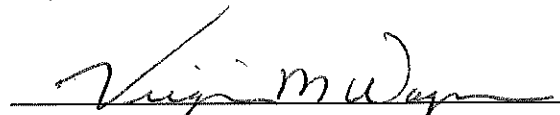
SEE ATTACHED RIDER

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

Motioned by: Member Goodsell Seconded by: Member Hernandez

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

Nays: None


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Board of Zoning Appeals

Town of North Hempstead

Rider to Appeal # 21119

APPEAL #21119 – Cookie Doe, Inc.; 433-453 Plandome Road., Manhasset, Section 3, Block 138-02, Lot 19; Zoned Business-B

Conditional Use under § 70-126(F) to convert a retail space into a food use.

1. That the applicant shall install and maintain a suitable refrigerated garbage locker within the building. There shall be no outdoor storage of putrescible waste generated by the proposed restaurant at any time. The applicant shall arrange for indoor carry-out pick-up with a licensed sanitation collector and shall forward a copy of the contract to the Building Official prior to approval and/or issuance of a Place of Assembly or Place of Public Assembly License, as defined in the Town Code, and at every subsequent inspection following the issuance of said Place of Assembly or Place of Public Assembly License. All pick-up of sanitation shall be performed after 8:00 a.m.
2. That all exterior doors (with the exception of the primary customer entrance door) shall be of solid construction in a material permitted under the New York State Fire Prevention and Building Code, shall be equipped with self-closing hardware, and shall remain closed at all times except for ingress and egress.
3. At no time may the number of seats on the premises exceed 8 as depicted on the drawings prepared by Anthony S. DiProperzio, R.A. dated April 8, 2021 and revised through August 20, 2021. For purposes of this condition, a seat is defined as any place on the premises where a patron may sit and be served, whether or not a person is seated there. A table set up with four chairs counts as four seats. The conditional use permit and/or variance set forth herein shall continue only for so long as there is compliance with this condition. If at any time the applicant is not in compliance with this condition, then the conditional use permit shall terminate, and the applicant must make a new application to the Board in order to continue the restaurant use.
4. That the applicant shall obtain a Place of Assembly or Place of Public Assembly License, if applicable, as defined in the Town Code, from the Building Department prior to the issuance of a Certificate of Occupancy or Completion.
5. That the applicant shall comply with all laws, ordinances, rules and regulations of all public authorities having jurisdiction over the premises and that no Certificate of Occupancy or Completion shall be issued until absolute compliance has been proven to the Commissioner of the Buildings.
6. That the applicant and or its successor shall comply with Code §70-225B(7)(a). Any restaurant or retail food use must apply to the board of Zoning and Appeals if any of the following occurs:
 - [1]. an increase in the size of an approved kitchen by 20% of floor area of said kitchen, or 250 square feet, whichever is less, inclusive of prep areas, is proposed.
 - [2]. The addition or removal of counter/kiosk service for the placement of a food order.

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7. That the conditional use permit set forth herein shall continue only for so long as there is compliance with these conditions. If at any time the applicant is not in compliance with these conditions, then the conditional use permit shall terminate, and applicant must make a new application to this Board in order to continue the premises as a restaurant/food use.

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NOTICE OF DECISION

APPEAL #21120 - Port Washington Wines & Liquors; 378 Port Washington Boulevard, Port Washington; Section 5, Block J, Lot 1020; Zoned: Business-A

Variances from §§70-103.A and 70-103.F to construct interior alterations to convert an office space to a retail use with not enough on-site parking or loading zones.

Whereas, an application (21-104730, 21-104731, 104732, 104733, 104734, 104735) 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 **October 6, 2021**, the appeal in the above entitled matter was decided as follows:

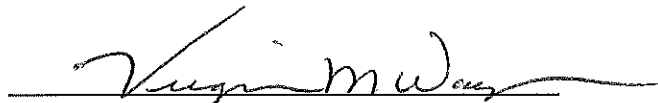
GRANTED of the dimension and in the location as shown on drawings prepared by Frank Genese, R.A. dated June 14, 2021 and revised through June 18, 2021.

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

THIS IS NOT A BUILDING PERMIT