

TOWN OF NORTH HEMPSTEAD

BOARD OF ZONING APPEALS

PUBLIC HEARINGS

200 Plandome Road
Manhasset, New York

Wednesday, October 6, 2021
12:16 p.m.

BOARD MEMBERS PRESENT:

DAVID L. MAMMINA, A.I.A., Chairman

LESLIE FRANCIS, ESQ., Vice Chairman

DANIEL DONATELLI, ESQ., Member

JAY HERNANDEZ, Member

PATRICIA A. GOODSSELL, ESQ., Member

ALSO PRESENT:

DEBORAH ALGIOS, ESQ., Deputy Town
Attorney

VIRGINIA WAGNER, Secretary

NICOLE WEXLER, Reporter

CHAIRMAN MAMMINA: If everyone would rise for the Pledge of Allegiance.

(Whereupon, the Pledge of Allegiance was recited in a body.)

CHAIRMAN MAMMINA: Okay. Good afternoon, ladies and gentlemen. Welcome to the Zoning Board of Appeals, Town of North Hempstead. And what I would like to do is just take a few minutes to go over the way that we conduct business here, in case you've never been to a Zoning hearing before or if you have been but we might do things a little bit differently. And if you've never been to a Zoning hearing, I'll ask you just to relax and when it's your turn, just talk to us, it's okay, and we'll do our best to help everyone.

So what will happen is as each case is called on the calendar, we'll ask for the applicant, the person whose case it is, to identify themselves by standing up and coming over the podium. And then I will ask if there's anyone who is interested in the case. Now, that could be in support or in opposition. And we just ask for a show of hands just so we know that there are other people who wish to speak.

So at that point, then, the applicant at the podium will give their name and address to the reporter and the podium then belongs to the applicant. The applicant will put its case on the record, and the Board will ask whatever questions it feels that it wants to ask. And we will then ask if there is anyone who had their hand up in terms of wishing to speak, we'll just ask the applicant to have a seat, you know, wherever. And then we'll ask those people to come up and give their name and address and they will then have the podium.

They'll put their statements onto the record and we'll ask whatever questions we wish, and then the next person. If there are a couple or two people who wish to come up at the same time, that's okay. When you come on up, we'll ask you each to give your name and address, and then we'll just ask that you try not to talk over one another because the young lady has a difficult enough job as it is and if two people are talking at the same time, then she obviously can't do that.

When any opposition or support has spoken, then the applicant gets to come back then. Typically, only the applicant speaks two times. So the applicant, then, can either support or respond to the -- any comments that were made. The Board then also has the opportunity to ask any questions of the applicant that might be raised by somebody else's testimony. And at that point, the hearing is done. And the Board will then do one of three things: We will either approve the application, deny the application, or we may continue -- I guess it's four things -- continue or reserve the application. If we continue the application, it's because we might offer some compromise on the drawings, we may want to see, you know, a document that was testified about, the Board may want to go and see the property again. We go to see the properties. So that would be continuing. Reserving is just that we're not prepared to make a decision at that time and at that point, then, the record will be closed, where if you continue, the record remains open.

So what I will ask everyone to do is if you could take out your phones, please, and anything else that makes noise and just flip it on to silent so that we don't disturb one another. If you need to make a telephone call or take a telephone call, it's okay at any time. Just stand up, nice, quiet, walk outside, you know, and you can make or take that call. If there's anyone else who's coming to join you and they're not here yet, we'll just ask that you do the same, ask them to shut off their electronics.

So I guess with that said, Virginia, do we have any modifications to the calendar this morning -- afternoon?

SECRETARY WAGNER: Yes, Chairman. We have an adjournment -- I'm sorry, a withdrawal of 21121, New Cingular Wireless, PCS, LLC, 802 West Shore Road, Port Washington, Section 6, Block 53, Lot 1020C in the Residence-AAA Zoning District. That was withdrawn by the applicant.

We also have an adjournment of Appeal No. 21104, Nelson Castro, 643 Union Avenue, Westbury, Section 11, Block 97, Lot 61 in the Business-A Zoning District. That's adjourned until October 20th.

And I believe that is all the adjournments there were.

CHAIRMAN MAMMINA: Okay. So if anyone is here for any of those cases, those will not be

heard today. Of course, you're welcome to stay, if you wish to, just so you can see maybe the way we conduct business, get a feel for that. But, otherwise, there's no reason for you to be here, and, you know, that case, 21104, is adjourned until October 20th.

Okay. So with that said, Virginia, will you please call the first case?

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SECRETARY WAGNER: Appeal 21113, Wayne and Loren King, 60 Rockywood Road, Manhasset, Section 3, Block 179, Lot 223 in the Residence-B Zoning District. Variance from 70-100.2.K, to legalize a generator that's too close to the property line.

CHAIRMAN MAMMINA: You've heard Appeal No. 21113, Wayne and Loren King. Is there anyone who wishes to speak regarding the application?

Seeing no one.

MR. ALBERTO: Good morning, Chairman and board members. Don Alberto, 68 Highland Avenue, Port Washington, New York. And I'm here assisting the owners, Wayne Loren King, and with this application. I do have the green cards, if I could submit them (handing).

So we're here for a generator that was installed without a permit, and we did file ultimately, the only relief we potentially had to file, and the generator is too far from the house. The code requires it to be no more than 5 feet from the house, and the generator was placed in the rear southwest corner a distance from the house. And the second issue is the setback. The code requires a 5-foot setback to the side and rear yards. And this generator is 3.1 feet from the side and 4.9 feet from the rear.

So there are two issues at stake: So about a year and a half ago, two years ago, the Kings embarked on an alteration. They did a large project. They had permits. They basically were nearing completion and had finished landscaping, walkways, patios in, and they had a power outage and realized, "We should get a generator."

Before the plumber left the job, they asked him to put it in, knowing they'd follow up with paperwork. The plumber has put in, or told them he put in, generators in the town with permits in the rear of properties. I don't think he's done one in a while because the codes apparently changed and now generators much be closer to the house.

So that's the history of how we got there -- we got here. I'd like to submit a bunch of photos, and I have five copies. Is that okay (handing)? And I think the photos tell the story of why we think this is a good place for the generator.

Now --

SECRETARY WAGNER: Mr. Alberto, that will be Exhibit 1.

MR. ALBERTO: Well, I labeled them A through G, if that's okay with you.

SECRETARY WAGNER: So A to G.

MR. ALBERTO: So generators, by building code, should be 18 inches minimum from a building. So now you have a 6.5-foot space required and most generators are around 2, 2 and a half feet. This generator is 2.2 feet wide. So at the very least, you need 8.7 feet to put the generator in a side yard. The west side yard is 7.7 so it couldn't go through without a variance. So the east side yard is 8.7 so, technically, you could put the generator in the exact spot. But if you're off by an inch either way, you need a variance.

I would like to point to Photo A which shows the east side yard, and you'll see there's a walkway there and a retaining wall. It's somewhat limited space, but there's also some windows. A third code we're concerned about is a building code that says gas generators must be at least 5 feet from a window or a door because of gas emissions. Also, there's an electric meter on that wall and you can't be close to the meter with a generator. So there's virtually hardly any place to put it on the east side. If you did, it would be on a walkway so that would be somewhat of a hardship.

If you go on to Photo B, that's the west side, and of course that doesn't have enough space. It would need a variance. There's a walkway there and windows, also. On Photo C, I show a photo of the rear of the property. So a generator has to be 5 feet from a window or door, so there's really no place you could put it. If it had -- I mean, you could, say, put it in the back of the house a few feet, 5 feet away from the window. But the code says it can't be further from 5 feet from the house, so you can't put it in the backyard without a variance.

So it's kind of in a particular lot where there really aren't many options. Where it did go is the southeast corner. And in an aerial

Photograph D, I have pinpointed where it is. I hope you can see it. I have an arrow. But as it turns out, it's the furthest point from all the affected houses. It's about 40 feet from the subject parcel but it's over 50 feet from the other houses, so it's in a good space, good location in terms of distance.

Now, the property slopes down, and on Photograph E, you can see that there's two retaining walls in the southeast corner and the generator's tucked at a low point, kind of in a little bit of a hole, and the fact that it's lower, the retaining wall, to the height of the generator, it's going to block most of the sound. If there's any sound emanating, it's going to bounce back to the house of the subject parcel. So I think E and F show that clearly. The topography lends itself to that location, the location for the generator.

There's also a shed on the neighbor's side Photo F. You can see that blocks sound. You can also see that in F, there's a lot of landscaping around the southeast -- southwest corner, and Photograph G explains this, also. There's a lot of landscaping.

So it's thick landscaping. You can't really see this generator from the adjoining property, so we think it's a good location. In terms of meeting the code, there's one precise spot where it can go, and as I said, if you're off by an inch, you have a varying situation. The impact is really minimal to the neighbors, and I have submitted, if you haven't seen, consent forms from every affected neighbors. There are five neighbors including the ones to the east, south, and west. They've all consented to this generator, which means, in my mind, they're not bothered by it. They can't see it and a lot of the sound is not reaching them in any case. So we think it's a good location, it's a good alternative to the code. There's no real environmental impact. If it was put in the side yard in that one spot, you would have more noise emanating to the person to the east, their house is about 12, 15 feet away, and you also have gas emissions close to a house. So it's really, we think, in a good spot and we think it's worth considering for a variance.

Mr. King is here. I don't know if he wants to add anything, if you have any questions.

CHAIRMAN MAMMINA: Mr. Alberto, first, as I look at the survey and the information that -- that we were provided, it does appear that there is a -- that there is a shed or some structure on the adjacent property. It doesn't show up on the -- on the surveys. It looks like it might be a little ways away, but there is landscaping that's in between those two. And you're 4.9 feet from the property line in the rear, or is that from that wall?

MR. ALBERTO: I believe that's the property line. That's what they're building upon on the side as well.

CHAIRMAN MAMMINA: So if you're at 3.1 feet or 5 feet, would that, then, comply? I guess I'm just a little bit confused as I read the ordinance.

MR. ALBERTO: We remove one of the variances if it was 5 feet.

CHAIRMAN MAMMINA: And the other variance is .1 feet; is that correct?

MR. ALBERTO: .1, that's an inch or two.

MEMBER DONATELLI: Mr. Alberto, I also have a question: I'm not -- as I look at your exhibit of photographs, photograph number D, or letter D, you do not identify that curved road that appears at the bottom of the photograph. Is that -- is that the road where the neighbors have actually given their consent?

MR. ALBERTO: Well, I can say in the -- in Photo D, the Lot 224, 232, 220, and 233 have all consented, the four surrounding the house.

MEMBER DONATELLI: That was my question because that road is not identified.

MR. ALBERTO: Yes, they all have.

MEMBER DONATELLI: That's Rolling Hill Road?

MR. ALBERTO: Yes, that's correct.

MEMBER DONATELLI: Thank you.

MEMBER HERNANDEZ: Mr. Chairman, I've looked at the documentation. I've gone by the house in my car, As I look at the house, I could see the little retaining wall in the back. Given we, generally speaking, do not like to see generators this far away from a house, gas lines, we don't like to see them buried 20 feet. We like to see them close. But in this particular case, given the layout of the house and the layout of the neighbors in relationship to the house, the topography of the land, the fact that it is lower than the neighbors, so it does make this particular spot sort of ideal.

It's unfortunate that when they built the path, they didn't move the path over another 3 inches north and another foot west because then at least that part of it would not require a variance. But given that it's already built, we're not going to make you move it for 2 inches. Doesn't seem to make much sense. So given the fact it is a unique problem, it's the best location, and that you have your neighbors the -- no disapproval or complaints from your neighbors, I move that we grant the application.

CHAIRMAN MAMMINA: 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: Chairman Mammina.

CHAIRMAN MAMMINA: Aye.
So is application the granted.

MR. ALBERTO: Thank you.

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SECRETARY WAGNER: Next appeal, Appeal No. 21085, Lewis Giannopoulos, 22 Irving Lane in New Hyde Park, Section 8, Block K-4, Lot 17 in the Residence-C Zoning District. 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.

CHAIRMAN MAMMINA: You've heard Appeal No. 21085, Lewis Giannopoulos. Is there anyone in the room interested in the application other than the applicant?

Seeing no one, please give your name and address.

MR. OLIVER: Dennis Oliver, 924 Newbridge Road, Bellmore, New York.

CHAIRMAN MAMMINA: Good afternoon, Mr. Oliver.

MR. OLIVER: Good afternoon, Mr. Chairman, members of the Board. I'm here representing Mr. Lewis Giannopoulos, 22 Irving Lane, New Hyde Park.

CHAIRMAN MAMMINA: Mr. Giannopoulos, if you would like to take your mask off while you're up there, that's fine.

MR. OLIVER: Thank you. It fogs up my glasses.

The property's zoned in the Residence-C. Requesting permission to maintain a single-family dwelling with the sky exposure plane and a front portico too close to the street.

A little background on this property: Mr. Giannopoulos was displaced by a fire on this property back in July 16th of 2017. He filed for and obtained building permits for the fire repair. Started construction in 2018. For one reason or another, during construction when they opened up the walls in the first floor, it was found that the first floor was considerably damaged by insects. So he decided to rebuild that rather than have the house fall down on his mother. Of course, during construction money becomes an issue. People make

changes, which leads us to today where we have a front portico that sticks too far out into the front yard. Now, currently, that portico is two stories tall.

I've consulted with my client, and if the Board sees fit, if we can drop that portico down so that the header that supports that portico is at the same level as the second floor, if that's acceptable as far as the height goes. What we're trying to do is get a little more height around the doorway, if the Board will consider that.

As far as the fact that it sticks too far into the -- out to the front, this neighborhood's been rather extensively renovated, the whole area. I think it would be easier for me to give you houses that don't have porticos as opposed to the ones who do. But just a short list of ones that have porches that are similar to what we're requesting: 23 Stephan Marc Lane, 26 Leslie Lane, 58 Leslie Lane, 50 Leslie Lane, and 7072 Stewart Lane. So it would be consistent with the character of the area if this porch was maintained in its -- well, not the height but at least the distance out from the house.

As far as the roof during construction, we built a standard gable roof. Had we constructed a hip roof, we would not be here at all. The reason why this gable roof is an issue is because his side yard, the side on the east side of the property, if you take the sky plane measurement even from that side yard because it's only 5 feet, the top part of that ridge is into that sky plane about 20 inches.

Now, I did drive around the neighborhood and I found three houses with similar side yards that have gable roofs, which, based on my calculations, show they have sky plane violations. Those property addresses are 5 Fairfield Lane, 22 Leslie Lane, and 20 Leslie Lane. I have the photos here, if the Board wants (handing).

SECRETARY WAGNER: These will be entered into the record as Exhibit 1.

MR. OLIVER: Thank you.

He's had no complaints from any of the neighbors. As far as I know, the neighbor on the side that is directly affected by the sky plane has no objection to this variance.

If the Board has any question, I'd be more than happy to answer.

MEMBER DONATELLI: I do have a question: I actually -- in preparation for this hearing, I drove by the premises just yesterday. And the one question that I had, and you kind of glanced over it, you said building plans were filed and then changes were made and somehow the building was built. How is it that this building was built with the violation of the sky plane, do you know?

MR. OLIVER: When he finally got to the point for framing inspection, the building inspection required he file an amended set of plans. So when the amended set of plans were filed, that brought up the violation for the sky plane and the portico.

MEMBER DONATELLI: So I'm not sure that I understand. Are you saying the amended building plans were filed showing the length as it currently exists?

MR. OLIVER: Yes.

MEMBER DONATELLI: And those plans were approved?

MR. OLIVER: No. They were rejected, which is why we're here.

MEMBER GOODSSELL: Mr. Oliver, did the original plans show a two-story portico or was that something that the homeowner wanted to add after?

MR. OLIVER: That's something that the homeowner wanted to add after.

MEMBER GOODSSELL: Are you aware the Board doesn't approve two-story porticos?

MR. OLIVER: I am, which is why I'm saying if we can bring it down where the Board accepts that height where the header itself is even with the second floor, if that's enough of a drop for the Board to accept that.

MEMBER GOODSSELL: It also doesn't look like anyone's living there. Is the house habitable?

MR. OLIVER: No, it's not habitable. They've been out of the since 2017. So it's a little bit of an economic hardship to try to get this done.

I wasn't the original architect on this. I kind of inherited this. I'm trying to straighten this out and get them back in the house as quickly as possible.

MEMBER GOODSSELL: Okay. Thank you.

MEMBER DONATELLI: So I -- following up on my question, then, sir, at some point when the owner decided that there was -- I think you said "insect infestation" or some sort of damage and the owner decided to totally raise the house, I guess it stopped being considered a -- a rehabilitation of the house and started -- it was actually considered a new house, is that correct, a new construction?

MR. OLIVER: That's my understanding. Yes, sir.

MEMBER DONATELLI: And my understanding is then the sky plane exposure would not have necessarily been considered had the house just been reconstructed following the fire. But once there was a determination to take the house down, it was considered a new construction and that's when the sky plane exposure came into effect; is that correct?

MR. OLIVER: That's my understanding.

MEMBER DONATELLI: So, again, I -- how is it that the amended plans were approved and then denied? How is it that this was built notwithstanding the denial of the plans?

MR. OLIVER: As far as I know, the amended plans were approved. They were submitted and the denial was issued, but they were submitted after the work was done. It wasn't a question of submitting the plans, getting approval, and finding out it was wrong. The fact is it was framed incorrectly in the first place.

CHAIRMAN MAMMINA: It was framed, though. I mean, "framed" means now it's raw wood.

MR. OLIVER: Roof rafters put up --

CHAIRMAN MAMMINA: Right.

MR. OLIVER: -- plywood put on.

CHAIRMAN MAMMINA: That's the time to change it.

MR. OLIVER: That's -- that was the change. That's what caused us to have to file the amended plan and that's what was rejected.

MEMBER DONATELLI: Do you know how long this has been going on? How long has the framing been up?

MR. OLIVER: I'd have to ask the owner that.

MR. GIANNOPOULOS: 2018.

MR. OLIVER: 2018.

CHAIRMAN MAMMINA: Can we put on the record that that answer -- why don't you give the owner's answer, unless he's on the record.

Please give your name and address, sir.

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

It was the end of 2018, I believe.

CHAIRMAN MAMMINA: So you filed, then, in the end of 2018?

MR. GIANNOPOULOS: My original permit was 2018, correct.

CHAIRMAN MAMMINA: When was the -- when was the framing inspection pointed to?

MR. GIANNOPOULOS: The end of 2018. They put a stop-work order on and this is why I'm...

MEMBER GOODSELL: So I have a question, Mr. Giannopoulos, about the house itself: I see from the deeds your mother -- is Donna Giannopoulos your mother?

MR. GIANNOPOULOS: Correct.

MEMBER GOODSELL: Okay. That was back in 1998, so your family's owned this house for a while.

MR. GIANNOPOULOS: My grandparents, right.

MEMBER GOODSELL: Is this the house she grew up in?

MR. GIANNOPOULOS: It is.

MEMBER GOODSELL: Okay. What was the second story like before the fire?

MR. GIANNOPOULOS: It was a cape. My mother lived upstairs; I lived on the main floor. There's smoke everywhere, I called the fire department, that's it.

MEMBER GOODSELL: And I completely sympathize. That's a traumatic thing to happen. When you came up with the original second story, this was a cape house, this was a one-and-a-half or a two-full-story house?

MR. GIANNOPOULOS: You're talking about when --

MEMBER GOODSELL: Prior to the fire.

MR. GIANNOPOULOS: It was a regular cape.

MEMBER GOODSELL: So there might not have been a sky plane issue with the original house.

CHAIRMAN MAMMINA: A question, potentially, for Mr. Oliver, because it's just slightly technical: Were the plans filed and

disapproved and then there was the fire, or was the fire prior to any of the -- any of the plans done for the second floor?

MR. GIANNOPOULOS: No. The plans were after the fire.

MR. OLIVER: The plans were after the fire.

MR. PERROTTA: Was there a set of plans prior to the fire?

MR. OLIVER: Yes.

MR. GIANNOPOULOS: Oh, prior to the fire? I did have a permit.

CHAIRMAN MAMMINA: Mr. Oliver, again, Mr. Giannopoulos might be able to answer this, but it might be something for you: So were these plans the plans that were filed prior -- filed and approved prior to the fire? Because at that point they would not have been considered a new house and would not be looked at for the -- for the sky plane. Is that the case?

MR. OLIVER: Yes, that's my understanding. The fire repair was filed. The building permit was issued. Because of the extent of the repair, it wasn't considered, at that point, a new house. It didn't become an issue until after the construction started when they got the frame inspection and it showed that he did more work than was previously approved on the permit.

CHAIRMAN MAMMINA: So your testimony is that he did more work because of the insect damage?

MR. OLIVER: Yes.

CHAIRMAN MAMMINA: Do you have those original plans?

MR. OLIVER: I don't have a complete set. I do have the floor plans.

CHAIRMAN MAMMINA: Mr. Oliver, was the entire house knocked down then or just that one side?

MR. OLIVER: I believe the whole house right down to the original deck.

CHAIRMAN MAMMINA: There was that much insect damage to the house?

MR. OLIVER: Yes. I didn't see it, though.

MR. GIANNOPOULOS: After they did the second story, they tore up the top, the second story. I was, like, "What should we do?" Tear it down and put it back the way it was.

CHAIRMAN MAMMINA: That just seems excessive. I'm the architect on the Board. I don't do a lot of houses, but I see a lot of wood construction. It just seems very odd that it would be so much insect that they would have to take the whole house down.

MEMBER DONATELLI: My experience with insect damage -- I'm the attorney -- one of the attorneys on the Board. My experience is when there is insect damage, typically, it doesn't extend to all four walls of the first floor. Usually, it's localized in just a couple of spots.

I do have another question: Was the house -- when it was rebuilt, was it built on the same foundation or was a new foundation poured?

MR. GIANNOPOULOS: Same foundation.

MEMBER DONATELLI: I'm sorry?

MR. GIANNOPOULOS: Same foundation.

MEMBER DONATELLI: If you can please speak into the microphone.

MR. GIANNOPOULOS: Same foundation.

MEMBER DONATELLI: Thank you.

Do we have any idea -- the house is still not inhabited; is that correct?

MR. OLIVER: That's correct.

MEMBER DONATELLI: And as I say, when I drove by it yesterday, I saw it was in rather -- it was looking a little --

MR. GIANNOPOULOS: Shabby.

MEMBER DONATELLI: Yeah, dirty and -- and there was the construction fencing around it, that I'm sure does not please the neighbors. So I think it behooves everyone to try and reach some resolution.

Do we have any idea what the cost might be to hip the roof such that it doesn't violate the sky plane?

MR. OLIVER: Off the top of my head --

SECRETARY WAGNER: Can you come back to the microphone?

MR. OLIVER: Off the top of my head without having numbers in front of me, if we just did the corner and not the whole side, basically, we clip both corners of the house --

MEMBER DONATELLI: It's one side of the house that violates the sky plane.

MR. OLIVER: Correct. But if you do one side, really, you have to do the other.

MEMBER DONATELLI: I'm a big fan symmetry.

MR. OLIVER: Yeah. It's not balanced, it drives me crazy. So if you do just the one side, I would say somewhat maybe in the vicinity of 5,000.

MEMBER DONATELLI: I'm sorry?

MR. OLIVER: Somewhere in the vicinity of 5,000 for the material.

MEMBER DONATELLI: 5,000? Thank you.

MEMBER GOODSELL: By hiping the roof, really, what you're cutting down is that storage area, the unfinished area. Right under the roof, that's not living space, correct?

MR. OLIVER: That's correct. That's the attic space.

MEMBER GOODSELL: And the applicant's aware of the Board's position on two-story porticos?

MR. OLIVER: Yes. I made that quite clear.

MEMBER GOODSELL: If you look at the original plans, the original plans show a one-story garage, a rather nice-looking garage.

MR. OLIVER: Absolutely.

MEMBER GOODSELL: Mr. Oliver and Mr. Giannopoulos, you should be aware that the Board is discussing two issues. Are you aware that if you hip the roof on both sides, because we understand about symmetry, and you lower the portico that you would not be in front of the Board, that you could actually proceed? Are you aware of that?

MR. OLIVER: Yes. We're aware of that, yes.

MEMBER GOODSELL: And your reason for being here is really the sky plane issue?

MR. OLIVER: Correct.

MEMBER GOODSELL: So the sky plane was built -- the roof was built after the fire, and we're trying to control this to previous plans or plans that were either drafted and built upon or drafted as-built. The Board has some reservations.

CHAIRMAN MAMMINA: Okay. I think what we're going to do is we'll continue this. I think I would -- I would -- I would like to see, you know, if the previous architect has any photographs of this -- this insect damage to the result -- to the extent

that is being represented, or if you Mr. Giannopoulos have, you know, photographs that would document the degree of damage, you know, to the house. As I said, I've seen lots of wood construction and I have seen termite damage but not to an extent where an entire house is so infested, you know, with termites that it's going to collapse.

MR. GIANNOPOULOS: So I came to the house and my contractor said, "Lewis, this is not going to hold the second floor," and he push and the whole brick and the wood fell apart.

CHAIRMAN MAMMINA: You may get a couple of studs that will do that.

MR. GIANNOPOULOS: I have no idea. All I want is a safe house for my mother. I don't want her to die while I'm at work.

CHAIRMAN MAMMINA: Nobody --

MR. GIANNOPOULOS: I didn't realize it would cause this much trouble. But whatever I have to do to get this resolved, I would like to move forward and go home.

CHAIRMAN MAMMINA: Well, I think we're going to reserve decision or we're going to continue this. And I would appreciate, you know, if we had a letter from your architect and from the contractor that the entire house had to be taken down. I mean, was the floor -- was the floor over the basement taken down? In other words, the existing first floor of the house.

MR. GIANNOPOULOS: The floor was destroyed.

CHAIRMAN MAMMINA: So the first floor was taken out as well?

MR. GIANNOPOULOS: Correct.

CHAIRMAN MAMMINA: So there was just a hole in the ground?

MR. GIANNOPOULOS: Foundation, basically.

CHAIRMAN MAMMINA: And nothing on the floor that would --

MR. GIANNOPOULOS: Nothing.

CHAIRMAN MAMMINA: That you would have walked on the floor is still there.

MR. GIANNOPOULOS: Correct.

MEMBER DONATELLI: Mr. Chairman, in the rendering at the very beginning of the applicant's presentation, they mentioned reducing the front -- the front portico from two stories to one. I would like to see a rendering of the proposed one-story portico.

CHAIRMAN MAMMINA: An elevation. Okay. Good. Then we'll continue the -- we'll continue the hearing, and as soon as you can get that in, you know, we'll -- we'll take a look at it. So that time frame is in your court.

MR. OLIVER: Okay. Thank you. We'll get that paperwork to you as quickly as we can and try to get this resolved as fast as possible.

CHAIRMAN MAMMINA: And just for the -- for the record, Mr. Oliver, I know you're not the architect of record for this, but you are an architect, correct?

MR. OLIVER: Yes, sir.

CHAIRMAN MAMMINA: Okay. Thank you.

MR. OLIVER: You're welcome.

CHAIRMAN MAMMINA: I knew the answer to that. I had to put it on the record.

MR. OLIVER: Thanks.

SECRETARY WAGNER: So this appeal is
continued.

* * *

SECRETARY WAGNER: Next appeal, Appeal
No. 21114, Lian Chen and Samantha Yuen, 55 Evergreen

Avenue, New Hyde Park, Section 8, Block 166, Lot 220 in the Residence-C Zoning District. Variance from 70-100.2.A(2), to erect fencing in the front yard which is not permitted.

CHAIRMAN MAMMINA: You've heard Appeal No. 21114, Lian Chen and Samantha Yuen. Is there anyone in the room interested in the application? Seeing no one, please give your name and address.

MR. CHEN: Chairman, my neighbor's here.

SECRETARY WAGNER: Sir, are you interested in speaking?

MR. POMMIER: Yes. I'm the neighbor.

SECRETARY WAGNER: You wanted to speak?

MR. POMMIER: Yes.

SECRETARY WAGNER: After the presentation you can speak.

CHAIRMAN MAMMINA: Please proceed.

MR. CHEN: My name is Lian Chen. I live at 55 Evergreen Avenue, New Hyde Park, New York 11040, and I'm here with my wife.

MS. YUEN: Hi, my name is Samantha Yuen. I live on 55 Evergreen Avenue in New Hyde Park.

CHAIRMAN MAMMINA: Good afternoon.

MR. CHEN: Good morning. Yeah. Good morning, Chairman, board members, and everyone. Please pardon our ignorance to this process.

CHAIRMAN MAMMINA: Like I said, we're here to try to assist you as much as we can.

MR. CHEN: Thank you. It's hard to follow two professionals.

So all we have are two pictures of the general -- our general fence and proposal.

SECRETARY WAGNER: We'll accept those as Exhibit 1.

MR. CHEN: Exhibit 1. Okay.

SECRETARY WAGNER: Do you want to bring them up?

MS. YUEN: (Handing.)

MR. CHEN: Not truly knowing the process, I ignorantly took some pictures on my cell phone. I don't know if I can even do that at the end.

CHAIRMAN MAMMINA: You can but then we keep your cell phone.

(Laughter.)

MR. CHEN: Okay. Let's not do that.

So our -- our situation is we moved to this house a little over four years ago. At that time we have a daughter two -- two and a half years of age. Now she's six and a half or better, and we have a son who's about to turn three in a few months.

So there is a fence there currently in the first picture. It was -- excuse me. It was on the survey. We did not know that it was not in the actual records. We thought, initially, we were filing for a fence to kind of push the fence out. Now we're just applying for a new fence.

So, yeah, I guess you would have to use your imagination a bit. Between the garage and our house, we don't really have much of a yard area for the kids to enjoy. And, you know, we'd just like to get more space. It's a corner property and our house -- it's a corner property and our house is -- it's a little higher. I would say about a foot or two feet in terms of elevation compared to the sidewalk space.

So on the -- on a side fence or what's considered our second front -- front yard, side yard, you can't really kick any balls anywhere because it keeps rolling toward the sidewalk or eventually gets to the street. So it -- you know, for small kids' activities, they're pretty limited. And -- and we

have in our appeal in regards to our particular location, we're at the corner of Evergreen and Leonard Boulevard, which is directly diagonally adjacent to -- to the New Hyde Park Memorial High School. So we get a lot of traffic. We get a lot of kids, also. And recently, in the past few years, especially, with this pandemic, there's a lot of people, younger people loitering around the area, too. So loitering comes with trash and other unwanted items. And even though from -- from Evergreen southward, there's a -- there are stop signs on every corner. We -- I would say if not a daily basis, close -- very close to it that you have people coming close to drag speed races going down Leonard Boulevard, totally ignoring the stop signs.

So with us, it's a safety issue. It's a -- it's a, you know, kids-growing-up issue. I have a loss of words. But, yeah, that's our -- that's our reason for the fence.

CHAIRMAN MAMMINA: Okay. The Board gets a lot of fence applications, and so many so that probably fifteen years ago or so, we had made a recommendation to the Town Board to take the -- the fencing ordinance the way that it existed and modify it so that certain liberties could be given to placing fences. And one of those was that no fences go beyond the front line of the house. We hold very hard to that. You know, we grant virtually none that are in the location where -- where you have it -- where you'd like to put it. Where you have it now is exactly where the Town Board would like it to be. Now, that doesn't mean that you can't put shrubbery. There, the shrubbery will grow together. I did that in my own house, not in the front but in the back. That will give you that privacy that you're looking for and then keep people off of your -- off of your front lawn.

But for -- you know, for the Zoning Board, and maybe I can speak for the Board in this instance, if we give you this, how do we tell the next person they can't have it. And it's -- the Town Board makes the zoning, not us, and we don't decide if we think the zoning is good or bad. It's -- we follow what that is and then we balance if we feel your case is different, and I don't see any difference in this than -- than the many that we get.

You do still have a pretty good-sized backyard, side yard, you know, in there and that is a problem of a corner house. I would say the few that we've granted, they have virtually no backyard anywhere.

MR. CHEN: Smaller than ours between the house and the garage?

CHAIRMAN MAMMINA: Smaller than yours, smaller than yours. So myself as one board member, I don't -- I don't see how we can approve this.

MR. CHEN: So, yeah, we came unprepared, you know, in my eyes. What if I come with more pictures of the entire landscape of -- of Leonard Boulevard? Because everyone has one.

CHAIRMAN MAMMINA: Well, then, I would guess that they're all illegal or they may have been put up before the ordinance. That's possible. I see your neighbor next door has it. I can see it from the survey.

MR. CHEN: Yeah.

CHAIRMAN MAMMINA: You're doing the right thing, and, unfortunately, people who do the right thing end up getting penalized for doing the right thing. But, again, if I -- I can virtually guarantee you that those fences were put up without permits.

MEMBER GOODSSELL: Mr. Chen?

MR. CHEN: Yes.

MEMBER GOODSSELL: Leonard Boulevard is a thoroughfare. I'm one of the attorneys on the Board, and I have a client who lives at the corner where there is a stop sign on Leonard Boulevard.

MR. CHEN: We have one, too.

MEMBER GOODSSELL: I'm well aware they ignore some of -- I have to believe some are kids and some are regular drivers. They roll right through

the stop sign. We're sensitive to the fact that there's traffic here. We're trying not to create these -- the wall up and down Leonard Boulevard. We're trying to maintain the residential character of the neighborhood and see what we can accommodate. The Building Department explained that to you --

MR. CHEN: Correct.

MEMBER GOODSSELL: -- when you put the application in?

MR. CHEN: To my wife, yes.

MEMBER GOODSSELL: So you're aware what the Town does allow as of right?

MR. CHEN: Yes.

MEMBER GOODSSELL: Okay.

MEMBER DONATELLI: May I ask a question? Do you -- do you have a permit for the fence that is currently on your property?

MR. CHEN: No, not that I'm aware of.

MEMBER DONATELLI: Okay. You indicated you've been the owner for approximately four years?

MR. CHEN: Yes, four-plus years.

MEMBER DONATELLI: Did you put up that fence or --

MR. CHEN: No, no.

MEMBER DONATELLI: -- the prior people?

MR. CHEN: Yes. We are the third owner. But the previous owner lived in the house from, I believe, 1962 to up until 2017.

MEMBER DONATELLI: Okay. So it -- without knowing, it's, I guess, conceivable the fence may predate the -- the building code, we don't know, the existing fence. The other point that I would

just like to point out to you, because I, too, am very sympathetic to your issues and we get many requests. Many applicants discover that they can achieve almost the exact same result by putting up landscaping which gives privacy, which gives protection.

I know in your application that you indicate that -- that, you know, you do find some beer cans and -- because of the park nearby. Fencing is not the be all and end all. There are other ways to achieve the same results, so I would urge you to consider that.

MR. CHEN: Yes. So it is something that we did consider. We wanted to go the fence route first, if we can kind of persuade the Town to consider that first. The reason is I've -- I've -- ever since we started, initially, we -- I didn't want the fence. I mean, my wife did want to have our own enclosure. But after seeing that -- you know, the fence pros and cons, the benefits of having an enclosure space and especially my -- the reasoning for the fence application is with shrubbery or landscaping, my son can still get through. It's not absolute comfort. A lot of times, kids are rascals, I guess, or if they're fetching a ball, it can get through the shrubs. And because of our slant on the front or side wall, a ball can get through. So it's -- it really -- it doesn't give us comfort. When we're outside, we're doing our things and the kid is -- we're constantly having distractions.

The second thing is I've had -- I do have neighbors who recommended, you know, "Put a few plants. It's better for the environment, too." The thing is with our rendering on the second picture with the projected 4-foot minimal fence height, it's -- it actually looks better than shrubbery because you have to maintain landscaping and I don't want it to -- if it's a bad year or something, it goes out of whack and it actually becomes a liability instead of a fence where it's easier to clean. And we're also asking for minimal space in terms of where our fence lines are, I mean, whether it's prior to the ordinance or not. But we're just pushing it out and having it flush with the chimney. So it kind of -- I hope it would actually add property value.

It would actually make our neighbors be more proud of our -- our new structure

CHAIRMAN MAMMINA: Mr. Chen, I --

MR. CHEN: Yeah.

CHAIRMAN MAMMINA: I really always go out of my way to be very courteous to people, and, hopefully, you'll agree that we've extended that to you as well. I'm only one board member. There's no way I can vote in favor of this.

MR. CHEN: Okay.

CHAIRMAN MAMMINA: I just can't. We deny these regularly. You know these are --

MR. CHEN: Understood.

CHAIRMAN MAMMINA: Come and sit and you'll see that we deny them. But there was one gentleman who wished to speak, and, you know, if we could give him the opportunity. If you could have a seat maybe right there, that would be wonderful. Thank you.

If we can just reflect on the record that Vice Chairman Francis is sitting now.

Please give your name and address.

MR. POMMIER: Good afternoon. I am a neighbor of this gentleman. As he said, eventually, they had to move --

SECRETARY WAGNER: If you can state your name.

ATTORNEY ALGIOS: Sir, your name and address for the record.

SECRETARY WAGNER: Your name.

MR. POMMIER: Oh, my name for the record? My name is Max Pommier, and I live at 615 Leonard Boulevard, across the street.

SECRETARY WAGNER: Could you spell that last name, sir? I'm sorry. Could you spell your last name?

MR. POMMIER: P-O-M-M-I-E-R.

SECRETARY WAGNER: Thank you.

MR. POMMIER: I am a neighbor of this gentleman, and they have problems and I have problems, a lot of problems. Number one, I live very close to the school, and this kids when they come out from the school, they park the car on my street sideways. They're allowed to park, but they bring McDonald's, Burger King, whatever they want. They open the door, take off (indicating). I have to be cleaning up all the time the garbage. The same thing as the gentleman, they put a lot of garbage in our street. That is almost nothing.

During the school -- during this pandemic time we do not have that. But before, every single night there is some kind of young guys, young, maybe the twenties, that they come to serve drugs. It's a drug dealing spot in my corner.

ATTORNEY ALGIOS: Sir, I'm just going to interrupt you. Pardon me. So your comments need to be confined to the application. This board does not take into consideration the issues with the school. If you're having issues related to the school, like you you've just expressed, I recommend you write a letter to your local councilperson.

MR. POMMIER: I went to the police.

ATTORNEY ALGIOS: Or the police, yes.

MR. POMMIER: I went to the school. They told me, "Once they're out of school, it's not our problem." They leave garbage for him and I. I'm not worried personally, you know. At the end of September, I'm selling the house for this reason. The drug dealers and this kids, they're stepping --

ATTORNEY ALGIOS: Sir, the application that's pending right now before the Board is to the installation of a fence in the secondary front yard. So do you have any comments related to that?

MR. POMMIER: Yeah. I would like to put a fence, too.

ATTORNEY ALGIOS: So you're in favor of their application?

MR. POMMIER: Yes.

CHAIRMAN MAMMINA: Thank you.

MR. POMMIER: I'm in favor. I am selling the house. Number one, this, they come to dig in my house and they have a big acorn in front of my house that I'm tired, they drop all the acorns in my house. I blow it away, all that. I'm getting out of there. This gentleman, I guess can. Well, thanks for allowing me the time, sir. Thanks very much.

ATTORNEY ALGIOS: Thank you. Thank you.

MEMBER GOODSSELL: I would like to continue your hearing because I would like copies of the pictures that you submitted to the Board and I would like to see pictures of your backyard. I realize they're on your phone, but if you could take them someplace else or have them printed, I, for one, would like to look at them and compare them to your application and to your survey and see what it is you're talking about.

SECRETARY WAGNER: Sir, you can e-mail the pictures to the Board of Zoning.

MS. YUEN: There's also another thing. There was a petition going around in our neighborhood with what's been going on.

MEMBER HERNANDEZ: I'm sorry. Move closer.

MS. YUEN: I want to show you a petition that was going on in the neighborhood with the cars speeding.

VICE CHAIRMAN FRANCIS: Ma'am, does it have to do with your application?

MS. YUEN: Yes. It's a petition.

MR. CHEN: So, today, I took the approach with -- I think this is a viable -- this fence thing is a viable thing for our family situation and our landscape situation. But with my wife, she has more of a concern of the safety situation and she's going to show.

MS. YUEN: (Hanging.)

CHAIRMAN MAMMINA: So we'll accept the -- we'll accept the petition.

SECRETARY WAGNER: Can you explain these photographs you're submitting? So you want to submit this petition?

MS. YUEN: No, I don't want to submit. It was submitted to -- I believe the police have a copy, the school have a copy. It's a petition that was going on in our neighborhood last year with what's going on in our area.

VICE CHAIRMAN FRANCIS: Is this a petition that's signed?

MS. YUEN: I don't have the signatures because my neighbor started this a petition so I asked for a copy of it. But I didn't ask for a signed copy.

CHAIRMAN MAMMINA: I think what we're going to do, you know, at the recommendation of Board Member Goodsell, we're going to take a look, you know, at the physical condition there and, you know, consider on the basis of, you know, of what -- what we see. And if you'll submit those other photographs, that would be -- that would be wonderful.

MS. YUEN: To me, it's really a safety issue. It's not about how pretty it is. It's the safety of my kids. A home is a place you should be comfortable and safe.

ATTORNEY ALGIOS: Since this appeal is being continued, I recommend that you get the signed copy of the petition because this there's no signatures on it. So if you want to get a copy from your neighbor of the signed petition, you can e-mail that to the Board as well.

MS. YUEN: Okay.

SECRETARY WAGNER: If you want, I'll set them as Exhibit 2. Just explain quickly what the photographs are about.

MS. YUEN: Those are pictures that we found like -- I don't know how often but it's that we found, broken glass bottles -- bottle, cans, and that's not acceptable.

CHAIRMAN MAMMINA: So those are part of the record and will be looked at by the Board as well as anything else you submit. So as I said to the previous applicant, the faster you get those things in to us, the better, then, for you. Okay? Thank you.

MS. YUEN: Thank you.

MR. CHEN: Thank you.

CHAIRMAN MAMMINA: We will continue this application.

* * *

SECRETARY WAGNER: Next appeal, Appeal No. 21115, Boaz Sharoni, 76 Nottingham Road in New Hyde Park, Section 8, Block 289, Lot 1 in the Residence-A Zoning District. Variance from 70-30.B, to construct a second-story terrace that is too close to the street.

CHAIRMAN MAMMINA: You've heard Appeal No. 21115, Boaz Sharoni. Is there anyone in the room interested in the application other than the applicant?

Seeing no one, please give your name and address.

MR. MANDEL: Good afternoon. Jared Mandel, architect, 25 Hillside Avenue, Williston Park, New York 11596.

CHAIRMAN MAMMINA: Good afternoon.

MR. MANDEL: Good afternoon, Mr. Chairman and members of the Board. I am here today representing Mr. and Mrs. Sharoni, part of a family that's lived in this home for several years at 76 Nottingham Road. It's located on the east side of the intersection of Nottingham Court. Pretty much we're here today for a primary scope of work related to a deck that we'd like to add onto the residence, primarily for outdoor living and enjoyment in the back of the house, which would be level with the kitchen level.

So in this house, this is a -- this is raised, a raised -- raised ranch. So at the end of the day, the living happens to be on the second floor. The "main primary living" meaning kitchen, living room, main functional areas of the property. So as we're requesting the deck to be added onto the rear and it falls out on denial to be a second-story terrace, it's really living space off of the primary function area of the home.

So as I go on for the deck that we're requesting, this deck we had designed for the residence that goes off of the rear of the home, which there is a rear yard setback. There happens to be a rear yard setback on this home of -- required of 25 feet and the deck happens to encroach on this rear yard setback and we're 11.6. I know originally from

just the typing on the application and how it reads, it definitely sounds aggressive, but there are unique characteristics of this property that I did want to bring to the Board's attention as we proceed.

The one major item that seems to be the factor that does through it into relation of falling into that setback is on the property, there happens to be three front yards on the --

MEMBER DONATELLI: Sorry, sir. If you're going to be away from the mike, if you could just speak up. Whatever you'd like, but it's just with all this plastic around --

MR. MANDEL: Yes. Okay. I'll -- if the Board wants me to point anything out on the presentation board, I'll step over and present it that way. But for now, I'll stand up at the stand.

So there are three front yards on this property which makes this property very unique. Most properties, obviously, have one rear yard for the most part. In this case -- and a corner lot, sometimes two. And in this case because there's a court that backs the rear yard of the property, there happens to be three, which is very unique. And the only reason I'm really here saying this is it's a unique property with these conditions.

Obviously, when they bought the home, they had certain ideas that they thought about having and, as typical homeowner, may have as -- as they thought about adding to the property before consulting with myself as a professional architect. They thought, "Well, we can add a deck just like anybody else can add on the back of the house." And especially with the challenge of having second-floor living as the primary focal -- primary position of the home, they said, "Oh, it would be easy to walk in the back of the deck and be able to function," not realizing there was three rear yard -- three front yards on the property that would create a problem.

So, obviously, the placement of the home and how the home existed is not a self-created situation. They didn't build the home. They moved into the home and had ideas and dreams like anybody else would have moving into a home, not realizing because of the unique character. The angles of the property also create --

CHAIRMAN MAMMINA: Excuse me. Just for the record, it is self-created because you bought the house. Just for the record.

MR. MANDEL: Understood.

One other item, as the Board could review the property itself and the property lines, as we are adding this deck on, there are lines that are not -- they're not straight lines. So as this aggressive 11.6 request that we do have is only really on a portion of the deck. It doesn't consistently carry across the entire deck. So it's really a corner clipping of this deck that's creating this variance, so it's not as aggressive as it sounds at 11.6. The location happens to be where this deck -- I know that trees and shrubs can be removed, and it isn't always a factor in that we're saying this is heavily screened. But at the moment, it is heavily screened, which is in the interest of the owner and also the interest of probably the neighbors that are within the court, because this is a front yard setback within the court. So if they were to be in the back of the property, they would essentially be into the court of homes. So this heavy-screened area is where this deck will sit.

And we did speak about how this deck is extending off the kitchen area. We did talk about -- and we said, "Well, can we bring this to possibly the other side," because we're always looking for an alternate way of designing. But essentially, if we were to bring it to the other side of the property where it wouldn't be an issue, at that rate it would be -- we would be exiting through or entering through the deck through bedrooms, which really doesn't make any functional sense.

So being the idea that we have these several challenges that exist, the three front yards, we have the walkout area that is on the one side of the house that creates this challenge of the front yard setback that's coming from the court on the third front yard, this was kind of a -- this was the only place that we saw feasible.

So we designed the deck with a minimal approach. We tried to take at least room as possible to be able to fit a table and some sort of grill that at least, you know, if you walk in from the kitchen, you don't have to go down a full set of steps,

because the homeowners are getting older in age so they're not looking forward to walking down a full flight of steps and then getting onto a patio and cooking and going to eat at that location. So we tried to minimize the area that's needed for the deck.

One of the indicators here as well as we only have that setback issue, there's no bulk regulations, there's no FAR issues, lot coverages issues that sometimes when you see it, there's one minor issue on a proposed design that might be an indicator that there is a unique situation. Otherwise, it would trigger other items or other variances and that hasn't happened.

CHAIRMAN MAMMINA: You're out on the street, you know. With -- with something that is two stories, it's at the second level, for all intents and purposes. I mean, your level of .6 feet from the street and one of the tests of law -- because these are tests of law, these are not opinions -- is "is there an alternative?" The alternative is you go down the steps and you have something at grade. I don't know. Just pointing it out for the record. There's two things: It's self-created and there is an alternative. There's five points.

MR. MANDEL: But the position of the house -- I -- I guess my point here is that the position of the house and the development of the house and the decisions made to construct the house in the position that it's in was not a self-created position.

CHAIRMAN MAMMINA: They brought the house, though.

VICE CHAIRMAN FRANCIS: That was their design. You can't really get away from the self-created issue.

CHAIRMAN MAMMINA: Take the deck and pull it all the way back to the other side of the house and connect from the kitchen over that way.

MR. MANDEL: I don't even think you can do that, to be honest.

CHAIRMAN MAMMINA: Why not?

MR. MANDEL: Regardless of what you put in that position, you would need a variance.

CHAIRMAN MAMMINA: No.

MR. MANDEL: As soon as you go off this corner, you would need a variance.

CHAIRMAN MAMMINA: No. Pull it all the way to top.

MR. MANDEL: So it would head into a bedroom?

CHAIRMAN MAMMINA: You can wrap around from the kitchen.

MR. MANDEL: If we wrap around from the kitchen, we would create a second-story deck.

CHAIRMAN MAMMINA: But your goal is to mitigate. Okay. So if you have something that now sticks out 4 feet and has no activity on it at all other than for someone to come out and walk around, now you've mitigated. That's one of the good tests. That one, you get points for.

MR. MANDEL: Yeah.

CHAIRMAN MAMMINA: So that's part of our job -- well, your job and then for us to look at it is "has the applicant mitigated" and "are they asking for the minimum variance that they're asking for". So that would be a much more -- a significantly less variance and also give your client what they're looking for.

MEMBER HERNANDEZ: How high off the ground is this deck?

MR. MANDEL: This deck --

MEMBER HERNANDEZ: I don't see the measurements.

MEMBER DONATELLI: It appears on the proposed left side elevation, it looks like it's 8, 10.

MR. MANDEL: Yeah. It's roughly 6.8 off of the ground.

MEMBER HERNANDEZ: So the space underneath it is really --

MR. MANDEL: We are excavating the space down below as well. We are estimating the space below it as well.

MEMBER HERNANDEZ: What the Chairman is suggesting -- and, again, I don't see it in the numbers, but it looks like you're putting the deck over where a brick path used to be.

MR. MANDEL: Yes.

MEMBER HERNANDEZ: And then you'd make a walkway that's elevated. I'm assuming the other side of the house is much lower because the ground slopes underneath, correct?

MR. MANDEL: Yes. But this would require a variance regardless.

MEMBER HERNANDEZ: You would be much further away from the cul-de-sac. You would not be 11 feet away. If the drawings are right, you would be much further away than 11 feet.

MR. MANDEL: Well, when it comes down to it, we did clip the corner to come off the setback to ease that edge. But the concern is as that as they walk out of the house, there's going to be elevated standpoint and that's the concern. It's still going to happen with the 4-foot walkout.

MEMBER HERNANDEZ: Right. But the 4-foot walkout would not be -- I don't see a measurement, but it looks like it's 10, 12 feet deep, right? How deep is the deck?

MR. MANDEL: 12 feet.

MEMBER HERNANDEZ: Now it's 4 feet versus 12, so you have an 8-foot difference that is not up against the screen or your neighbor in their front yard.

CHAIRMAN MAMMINA: Also, one of the other factors is what is the impact on the community. So the impact on the community is that you're driving by, somebody's deck -- you know, people having a party on it --

MR. MANDEL: There's no driving by. It's in a court.

CHAIRMAN MAMMINA: People live in the court. People live in the court. You know, that's --

MEMBER HERNANDEZ: The deck is 7, 8 feet high. A 6-foot person would be 13, 14 feet up in the air. You'll see people up there, even if you have -- I saw a lot of green shrubbery when I drove by. I really couldn't see the back of the house, just to the right. But at least they're not 20 feet high.

MR. MANDEL: I understand. I'm just taking a standpoint of whether they're further down and it becomes less functional, at that point, in my opinion, it has more challenges as we move towards the south, let's say, you're still going to see them standing on that deck.

CHAIRMAN MAMMINA: Opinions in zoning are wonderful, but there are points of law.

MR. MANDEL: Yeah.

CHAIRMAN MAMMINA: And you're rebuilding the back wall of the house. You're changing the whole kitchen around. You -- you could have that, you know, door directly next to your chimney.

MR. MANDEL: You know, it's just the idea, you know, even functional, you have to -- in this situation, we'll have a deck that's looking onto bathrooms and looking onto, you know, areas. That's just not -- it's not the best situation as we move

forward. It's looking into bedrooms. I mean, it's -- it's not the best. But if the Board is going to -- if this is going to prevent the situation -- it sounds like regardless, I'm going to need a variance for doing something like this. But if the Board feels like I need to change something, I'm open to it. We want this function of space for the family. But I honestly would have to say that from a standpoint of what the Board is considering being viewed from the court and all of that is still going to be the same issue if you're moving southeast. So I try to say and balance it -- as an architect, I try to balance and say, "Are we going to accomplish something different by moving it south other than just measurements."

CHAIRMAN MAMMINA: How about meeting the code?

MR. MANDEL: Measurements.

CHAIRMAN MAMMINA: How about that?

MR. MANDEL: I understand. But there is unique conditions as well, and this is a very unique.

CHAIRMAN MAMMINA: So we've given you an alternative that would still give your client what they're looking for and would not be something that in the neighborhood, you know, people that are up in the air. You know, people use their backyard for recreation, you know, so it's -- when someone has a deck off of their backyard, their only section of the zoning that they have to look at is rear yard. In your case, you're in the front yard.

MR. MANDEL: But the recommendation is to create a path that brings the deck further.

CHAIRMAN MAMMINA: First of all, I don't make recommendations.

MR. MANDEL: Okay.

CHAIRMAN MAMMINA: I mean, this is for you. I'm looking at what I think is an opportunity to mitigate what you're asking for.

MR. MANDEL: Okay. So if this deck were to...

CHAIRMAN MAMMINA: I mean, that, certainly, you can cut it back until it complies.

MR. MANDEL: I mean -- and I know you're not here to give recommendations. But if we were to create a path that goes to this deck that conforms in every way after it passes the setback and it's merely a walking path to get to the deck, does -- and I don't even want to put the Board in the position of saying, "Does it sound reasonable."

CHAIRMAN MAMMINA: No, no. I said in the beginning we try to be helpful. We don't want to say "no". We all pay lots of taxes to live in this part of the world. We want people to be able to have their house the way they want their house. We would certainly give you an opportunity to look at a couple of different alternatives with your client and see what they think to either mitigate it or eliminate it.

MR. MANDEL: Understood. Sounds like I should -- I should adjourn and come back with a --

CHAIRMAN MAMMINA: We do what's called a "continuation".

MR. MANDEL: Yeah.

CHAIRMAN MAMMINA: So you don't need to come back. Just submit the drawing.

MR. MANDEL: Okay.

CHAIRMAN MAMMINA: We'll take a look at it and see.

MR. MANDEL: Okay.

CHAIRMAN MAMMINA: So would that be your wish, Mr. Mandel?

MR. MANDEL: Yes, it is. I appreciate the Board's time and recommendations and looking out for the community.

CHAIRMAN MAMMINA: Thank you.

* * *

SECRETARY WAGNER: Next Appeal, Appeal No. 21116, Alan Cooper, 1 Tudor Drive, New Hyde Park, Section 8, Block 303, Lot 19 in the Residence-B Zoning District. 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.

CHAIRMAN MAMMINA: You've heard Appeal No. 21116, Alan Cooper. Is there anyone interested in the application other than the applicant?

Seeing no one, please give your name and address.

MR. BRAUM: Andrew Braum, 1924 Bellmore Avenue, Bellmore, New York 11710.

CHAIRMAN MAMMINA: Mr. Braum, what's your relationship to the property?

MR. BRAUM: I'm the engineer and representative of the applicant.

CHAIRMAN MAMMINA: And you are licensed?

MR. BRAUM: I am a licensed engineer.

CHAIRMAN MAMMINA: Not that you need to be.

MR. BRAUM: Good afternoon, Mr. Chairman, ladies and gentlemen. My name is Andrew Braum. I'm an engineer, and I'm representing the Cooper family. Alan Cooper would like to have been here today. He's a volunteer fireman that was exposed to COVID yesterday and sent me a text message apologizing that he's in quarantine or testing right now.

CHAIRMAN MAMMINA: Thank him for not coming. We wish him luck.

MR. BRAUM: We're seeking variances for two items: One is the legalization for a relocation of pool equipment into what's considered a side yard and to erect pool fencing beyond the rear building line into the side yard. If you have a moment to

look at the site plan, currently, the approved plans have a fence that goes from the corner of the garage to the corner of the house.

CHAIRMAN MAMMINA: We have an easel.

MR. BRAUM: Do you have site plans in front of you?

CHAIRMAN MAMMINA: Yes.

MEMBER HERNANDEZ: We have it on the computer.

SECRETARY WAGNER: You can put that on the easel.

MR. BRAUM: So the gate is here (indicating). And what we're seeking to do is have a 6-foot pool fence put here and here to create the same State-required and Town-required enclosure except moving the fence over to here (indicating). I know the Town of North Hempstead likes the fences to always be at the rear corner, and that's for safety reasons so nobody can be hiding, in quotes. But there happens to be a door right here and the only door that locks out into the rear, so there's never going to be a time when this area would become unsupervised.

I have a photograph I can show you.

MEMBER HERNANDEZ: Excuse me. How do you get to that masonry garage?

MR. BRAUM: How do you?

MEMBER HERNANDEZ: Yes.

MR. BRAUM: It's a freestanding garage

MEMBER HERNANDEZ: I take it it's not used.

MR. BRAUM: It is used.

MEMBER HERNANDEZ: Not as a garage.

MR. BRAUM: It is used as a garage.

MEMBER HERNANDEZ: I see all kinds of fences and gates.

MR. BRAUM: Double -- currently, there's a 4-foot double gate there now that would open up. I have a photograph that would make it nice and clear.

MEMBER HERNANDEZ: Okay.

SECRETARY WAGNER: This will be Exhibit 1.

MR. BRAUM: So this picture that I'm going to show you now is the currently-installed approved pool fence (handing).

SECRETARY WAGNER: This will be Exhibit 2.

MR. BRAUM: So essentially what we're seeking to do is replace that 4-foot PVC fence in the photo with a 6-foot PVC fence to essentially move the pool enclosure out so that when they walk out their door, they have free access to get to the pool and not have to use that large black chain-link fence that you see there in the photograph. And I've been in front of this board before and I've done plenty of swimming pools for the town, and I understand the purpose of always having that 6-foot gate at the rear of the house so there's no area that could become unsupervised and a child could be hiding. Whereby, if you look at the photograph where the door is, it's -- it's almost a no-brainer that you always see somebody and there'll never be a time when a child can be hiding there.

The fact that the garage is there, it's actually inside of the pool enclosure. So if somebody leaves the garage door open, it doesn't have any bearing on the safety of this swimming pool.

As the Board is looking through the photographs, I just want to make note that we previously submitted the official consent forms from all of the neighbors that touch the property both, next-door neighbors and rear-yard neighbors. For the record, number 5 Tudor Drive, number 165 Aster,

number 185 Lawrence Street, and number 181 Lawrence Street.

May I submit two other photos as they're taking a look (handing)?

SECRETARY WAGNER: These will be Exhibit 3.

MEMBER DONATELLI: Sir, let me ask a question: The Town Code requires a 6-foot fence around the pool, and as I look at the survey, I'm following the 6-foot existing fence but I lose it after the masonry garage. Where is the 6-foot fence as it proceeds -- well, I see it coming to a corner at the masonry garage where it says "barbecue center". And then where does the 6-foot fence resume after that?

MR. BRAUM: So the 6-foot fence hides into the masonry garage. Then you can see, also, a 6-foot chain link fence completely surrounding -- well, a portion on the south side and then there's a fence surrounding the entire property. This pool is already installed already and all of the current fences and gates are code-compliant and installed. What we're seeking to do is relocate or remove the one gate from the garage to the house that closes it off and install it as shown where the 4-foot fence is currently now. But to answer your question, there's a 6-foot chain link fence around.

MEMBER DONATELLI: I see. So the side yard lot line and the masonry garage, there is another 6-foot fence there?

MR. BRAUM: Yeah, a short piece about 3-foot 3.

MEMBER DONATELLI: And the photograph that you exhibited that you just introduced into evidence, I think it's marked as Exhibit 1. It appears to be a 4-foot fence which is a gate.

MR. BRAUM: Yes.

MEMBER DONATELLI: But then there appears to be some sort of extension making it higher.

Have you visited the site?

MR. BRAUM: I have. If I can approach and look at it, that may have been something that was put up for a dog that was jumping.

MEMBER HERNANDEZ: That's what it looks like.

MR. BRAUM: From memory.

MEMBER HERNANDEZ: It's a 4-foot fence.

MR. BRAUM: Yeah. I think they had a little dog that was jumping that they just threw up there temporary.

MEMBER HERNANDEZ: That's with where they would like to put the 6-foot fence?

MR. BRAUM: Yeah. There's a white picket fence with a double gate on it. That is where we're looking to put the 6-foot. And again, from the photographs, you can see that there's a human door. I used to refer to it as a "man door", but a single door that when the homeowner walks out of this door, they can see everything and when they return from the pool, they can see everything and it's not creating an area that a child could be hiding, which this Board in the past would not approve nor would your Building Department.

MEMBER HERNANDEZ: That door is the one that's by the dining area?

MR. BRAUM: Correct.

MEMBER HERNANDEZ: Actually, that is what gives me a problem is many people come to us and say, "Our access to the backyard where the pool is is not from the back wall of the house, it's from the side wall of the house," which is what your client has.

MR. BRAUM: Yeah.

MEMBER HERNANDEZ: And they want to move for an enclosure to include that access door, and the problem is that if you are standing on your way into that access door, anyone that is in the backyard proper, I mean towards the other side of the house, is completely on the other side of the street. The premises of the 180 that you can be standing at your back door and you can do this and see the whole backyard. That's the premise, at least my -- the way I envisioned.

Any time you go off to one side, you're 180 now becomes 270. That, you can't do because your house is in the way. And that's where I'm sort of struggling with that. It is a very common question because very often, access to the backyard is from a side door rather than a rear door.

MR. BRAUM: Understood. The application in front of you does meet and exceed all New York State requirements, and the door itself would then be equipped with an alarm that would ring continuously for thirty seconds when opened to let the homeowners know that the secure pool environment was pierced.

CHAIRMAN MAMMINA: Mr. Braum, you know that in anything you design, you have to look for the most stringent code and that's the code that you have to conform to. So it doesn't matter that the State Code is complied with. There's a more stringent code in the municipality. That's the one that you have to comply with.

MR. BRAUM: Understood.

CHAIRMAN MAMMINA: Okay. I'm just saying the example, this meets the State Code, doesn't really mean anything in the instance at hand.

MR. BRAUM: I was referring to it as a fact of matter stating that it doesn't violate anything by moving this fence from that location there.

CHAIRMAN MAMMINA: It does.

MEMBER HERNANDEZ: It does.

CHAIRMAN MAMMINA: It violates the Town of North Hempstead Zoning.

MR. BRAUM: Well, that's why we're seeking a variance, right?

CHAIRMAN MAMMINA: Of course, of course.

MEMBER DONATELLI: And, sir, can you address the issue of the pool equipment, the placement of the pool equipment?

MR. BRAUM: So as you can see from the site plan, the pool equipment is located where the air conditioning equipment is, behind a chimney, which is depicted by the "X" by the number 14.2 in the survey. Essentially, a side yard is most of the time thought of as the area behind or on the side of the main part of the house. This 14-foot by almost 18-foot extension in the rear is where the pool equipment is located. So by definition, it's a side yard but it's not the full main side yard of the house. So the equipment is -- still meets the set of zoning requirements for the amount of feet off of the side yard property line, and I have a photograph that I can show you exactly where that's located.

SECRETARY WAGNER: This will be Exhibit 5.

MR. BRAUM: So the pool equipment was installed in that location, and we're seeking to maintain it in that location.

MEMBER DONATELLI: When was this installed in this location?

MR. BRAUM: Two -- two years ago, within the past two years.

MEMBER DONATELLI: Was this done pursuant to permit?

MR. BRAUM: It was not. The original equipment location was behind the house in another

location, and the homeowner was led to believe by an installing contractor that this location was still considered in the rear yard and put the equipment there without asking my opinion or advice as well as -- because the air-conditioning equipment is there, they incorrectly thought that it would be acceptable to put the pool equipment here. And when the inspector came out to see it, that's when this was brought to our attention.

MEMBER DONATELLI: Let me just say, as one board member, that is very alarming, from my point of view.

MEMBER HERNANDEZ: Excuse me. Do we know where it was moved from? Do you have a record of that, by any chance?

MEMBER GOODSELL: Where was the pool location?

MR. BRAUM: I don't have that with me here today. But I can -- I can tell you for sure that it was clearly behind the -- as a matter of fact, I believe it was behind the masonry garage and the shed. 10 feet off and located back there was where my original plans had it shown.

MEMBER HERNANDEZ: So by the masonry shed directly behind the garage?

MR. BRAUM: Yes.

MEMBER HERNANDEZ: That would have been the backyard.

MR. BRAUM: Of course. Yeah. And if it was shown where it's currently shown, it -- I believe it would not have been approved by your Building Department.

Both of these requests have to do with the fact that there's an extension in the back and whether or not the Town considers the two portions along that 14-foot to be a side yard, which it is on the side but it's the side of an extension, not the actual side of a house.

MEMBER DONATELLI: But it was there at the time of this installation?

MR. BRAUM: Absolutely.

MEMBER DONATELLI: And the definitions and the interpretation of the code has not changed in the last two years. The reason why you're here is because -- in part is because your pool contractor, the applicant's contractor, chose to do something other than what is in the approved plans.

MR. BRAUM: That is correct.

VICE CHAIRMAN FRANCIS: And if the -- if the homeowner was to move the pool equipment back to where it was, I would imagine that they would have recourse against the original installer who gave them bad advice with regard to where to move the pool.

MR. BRAUM: Without the benefit of having Mr. Cooper here, I don't know whether he gave them the okay, not knowing as well. Because sometime a contractor will say, you know, "Hey, let's put the pool equipment over here. No problem. Let's just do it," and the homeowner says "all right" took their advice. So I don't know whether he would have recourse on that, and, unfortunately, he's not able to join us today.

CHAIRMAN MAMMINA: What we're going to do, Mr. Braum, we'll reserve the application, and we will definitely consider everything that you've put on the record. We appreciate you being as forthcoming as you've been. And I doubt that we'll -- that we'll act on this today, because just based on the fact that we have a long calendar and we didn't start until noontime. You can be in contact with the Zoning office.

MR. BRAUM: Thank you.

CHAIRMAN MAMMINA: Thank you.

SECRETARY WAGNER: We're going to take a five-minute break, for anyone who has to use the facilities or wants to stretch their legs.

(Whereupon, a brief recess was taken.)

* * *

SECRETARY WAGNER: Next appeal, Appeal No. 21117, Phillip Varghese, 52 Irwin Street, New Hyde Park, Section 9, Block 124, Lot 136 in the Residence-C Zoning District. Variances from 70-100.A(2), to erect new fencing within the front yard and secondary front yard which is not permitted.

CHAIRMAN MAMMINA: You've heard Appeal No. 21117, Phillip Varghese. Is there anyone in the room interested in the application other than the applicant?

MS. THOMAS: I'm the applicant's wife.

CHAIRMAN MAMMINA: You're in charge.

(Laughter.)

CHAIRMAN MAMMINA: I know my wife would be in charge.

MR. VARGHESE: I'd like to apologize to my wife for not putting her on the application.

CHAIRMAN MAMMINA: That's okay. She does have to put herself onto the record as well, even if the address is the same, just so that when she speaks, the record shows it, et cetera.

MR. VARGHESE: Yeah.

CHAIRMAN MAMMINA: Please give your name and address.

MR. VARGHESE: My name is Phillip Varghese, 52 Irwin Street, New Hyde Park, New York.

MS. THOMAS: My name is Debbie Thomas. I also live at 52 Irwin Street, New Hyde Park, New York.

CHAIRMAN MAMMINA: Good afternoon.

MR. VARGHESE: Good afternoon. Good afternoon, Chairperson and board members. Once again, we are here based on the variance for the fencing. I'm a high school teacher, a special

education high school teacher, and also a parent. And we had -- initially had submitted the application for the yard facing on South Street and Irwin Street. But since the time we've submitted the application, you know, we wanted to reconsider and we decided we are no longer seeking for a variance on the fence along South Street.

MS. THOMAS: Like my husband just said, we are only seeking fencing along the side of the Irwin -- the Irwin-Street-facing side of the home, and that's in consideration of our neighbors and, of course, what the Town would like.

My husband is going to pass out some of our exhibits. They're numbered 1 through 7 and tabbed for your convenience. We've also highlighted the relevant portions of articles that we would like the Board to consider.

MEMBER DONATELLI: Sorry to interrupt. Before you begin, did you or -- these exhibits that you're now handing out, does that show the new configuration of the fence that you're seeking to --

MS. THOMAS: No, it does not. We have not submitted any formal change to the application.

MEMBER DONATELLI: Okay. It would be helpful for us to see -- I mean, I know you just said it verbally, but it would be helpful for us to be able to see something as to what exactly it is that you are proposing for the fence. Yeah, that might be helpful.

Member Goodsell is going to hand back to you a survey --

MS. THOMAS: Yes.

MEMBER DONATELLI: For the current application. Perhaps you can just mark it up.

MR. VARGHESE: Yes.

MS. THOMAS: Yes.

MEMBER GOODSSELL: For my own -- for my own edification, I took your survey where you originally applied --

MS. THOMAS: Yes.

MEMBER GOODSSELL: -- and I just highlighted it in yellow. If you could take a pen and highlight what you're looking for now, then it would be -- it would be better for the Board. We could see that.

VICE CHAIRMAN FRANCIS: And while you're doing that, if you could also speak to the need for the fencing.

MS. THOMAS: Yes. I'll get into that. Thank you.

I just want to say, the last two -- the last exhibit, Exhibit No. 7, the last two pages of that are two photographs. I just want to warn everyone, they are slightly graphic. They are of a dog bite, if that's a trigger -- if that's a trigger for anyone.

VICE CHAIRMAN FRANCIS: I saw it before you warned me. That was hard to see.

MS. THOMAS: I'm sorry about that. It was hard for us as well.

The reason that we want the fence is we have a five-year-old daughter who is the love of our lives. She has been diagnosed with autism spectrum disorder.

CHAIRMAN MAMMINA: Go ahead. My apologies.

MS. THOMAS: I'm sorry. I don't know why I'm getting emotional.

VICE CHAIRMAN FRANCIS: Take as much time as you need.

CHAIRMAN MAMMINA: Just relax. I get it.

MS. THOMAS: Children with autism often wander from their homes and safe spaces. We have heard the Board's concerns with regard to another family that was requesting -- I'm sorry -- another family that was requesting fencing along a corner home, and we understand the Board's concerns. We do think that we have an additional safety concern in that our daughter has a diagnosis.

The first exhibit is a letter from Dr. Paskin from Cohen Children's Medical Center diagnosing her with autism spectrum disorder. The second part -- the second of that exhibit is an evaluation -- a diagnostic evaluation from Paula Calabrese Tzikas also confirming the ASD diagnosis.

We only received the diagnosis after we had already moved into the home, if that's of any value. We did not know that this was what we were dealing with until we were after already in the home. She has a propensity to wander. It has been extremely stressful for us to be in open spaces with her.

Right now, the home is completely open. We're on the corner of Irwin and South Street. Cars pass by very, very quickly on South Street. They drive by very fast. There are four streets in between two stop signs. We're on Irwin. There is a stop sign on Kent, and there's also a stop sign on Grattan. The letters are alphabetized. So there are four streets in between ours where there are no stop signs, and cars will often just speed through those streets because they're trying to bypass all of the lights between Herricks and Hillside Avenue. So to get around the traffic lights, they just zoom passed all of the streets and even sometimes pass those stop signs.

So we are very concerned for her safety when we are outside playing. Most of the time, it will take both of us to be outside with her when we're trying to enjoy any time together. If my husband wants to grill or do something else in the yard, it would require either myself or another caretaker to be present as well.

We've included several articles from the CDC, from Autism Speaks, from the National Autism Association that discusses the propensity for children with an ASD diagnosis to wander away from -- particularly from their homes, sometimes from their

schools or classrooms. The CDC article actually recommends fencing in a home.

That is the -- as you can see from the marked-up survey, we're really only requesting a small portion of the front of the yard be fenced, and really, what we want is for her to have a safe space where she can play. She needs -- she needs the sensory input of being able to run and jump and do all of those things safely and -- I'm sorry. I'm normally very composed.

MEMBER GOODSSELL: We are very sympathetic to your daughter's diagnosis, and we are well aware of the difficulties with autism. Please understand that you've presented more than enough evidence that she has a valid diagnosis, and you have the Board's sympathy. And we appreciate the sketch that you've now submitted. If you could -- if you could walk us through, because I'm sure everyone has looked at this property. I live not too far from there. I'm familiar with your street. I went to Herricks High School when I was growing up, and we cut through your streets to go back and forth. If you could walk us through what you're thinking -- and let the board members look at the picture that you submitted -- what you're thinking about the space that you want to fence, what you want to use it for.

MR. VARGHESE: I can speak to that. So there's already.

MEMBER GOODSSELL: Hold on one second. This diagram is very helpful.

MEMBER DONATELLI: In referring to that diagram, I see that you "Xed" out the one portion where I guess you're withdrawing the request but you're including the other portion. Is there a reason why you're "Xing" out one portion and not the other?

MR. VARGHESE: You know, I think just because it's -- that other side of the street, it's closer to South Street, which is the street we're really concerned about as well. Also, just -- I didn't -- you know, in the interest of my neighbors, I don't know if they would want a structure that's

surrounding that side, so I think we just thought better than that and decided, you know, we're not -- the idea for us is not "we want all the land in the entire corner". We just want that one section on the -- on the side of Irwin Street.

MEMBER DONATELLI: I guess what I'm asking is does it make a little bit more sense to have one area versus another based on the house and a rear door or something.

MR. VARGHESE: Yeah. Well, our -- the side we're requesting is where our kitchen door is, so that's the area we would go out into. If our daughter is playing out there, we're in the kitchen so we can see her outside. So what we're -- have been thing is just to do a 4-foot black rail fence that would just basically close off the -- the chain link fence goes all the way to the -- not to the sidewalk but, you know, a few feet from it. It's from the rear boundary of the house, and what we're hoping to do is just section off that area.

MEMBER DONATELLI: Understood. I guess this is a question for staff.

Ginny, we've introduced this as Exhibit 1, I guess.

SECRETARY WAGNER: No, I don't believe we have. So the mark-up drawing for the one variance for the side closest to South Street, that will be -- well, they submitted an exhibit packet, so this will be Exhibit 8.

MEMBER HERNANDEZ: That chain link fence is the neighbor's fence?

MS. THOMAS: We're not sure. We thought it was their fence the whole time, and I think it predates both of us.

MEMBER HERNANDEZ: Maybe they paid for it together and put it in the middle.

MS. THOMAS: Yeah.

MEMBER HERNANDEZ: It doesn't show any shrubbery or anything around it.

MS. THOMAS: There's some shrubbery to the side of it. There's nothing in front of it.

VICE CHAIRMAN FRANCIS: I'm looking at the survey, and there's clear access to the back part of your house, even if -- if the front lawn is fenced. Would you want her to have access to that back part, that part?

MR. VARGHESE: We're looking to fence that. We're looking to fence that as well.

VICE CHAIRMAN FRANCIS: Okay.

MS. THOMAS: Yeah. We're just really looking to enclose one space and one side of the home for her safety and enjoyment.

MR. VARGHESE: We actually thought -- that space, we thought, was just, legally, we were able to fence there anyway.

VICE CHAIRMAN FRANCIS: Exactly.

MEMBER DONATELLI: So can I jump in for a moment? You've been here, I think, since we started this morning.

MS. THOMAS: Yes.

MEMBER DONATELLI: So you probably heard some of the other applications.

We're very moved by your application. Of course, part of what we do is try to mitigate the impact that this would cause. Would you be willing to move the fence back on the Irwin Street side just a little bit and plant some vegetation in front of it?

MEMBER HERNANDEZ: A couple of feet.

MR. VARGHESE: A couple of feet? I guess maybe. I -- I don't know. I don't think we

were thinking to have the fence to the edge of the garage, if that's what you're interpreting.

MEMBER HERNANDEZ: That's what it looked like.

MR. VARGHESE: I thought, legally, we have to be at least 2 feet from the sidewalk.

MEMBER DONATELLI: Well, the question is, of course, you can only put the fence up to your own property.

MR. VARGHESE: Right.

MEMBER DONATELLI: Wherever that might be.

MR. VARGHESE: Right.

MEMBER DONATELLI: What I'm asking you is whether or not you could mitigate the visual impact --

MR. VARGHESE: Yeah.

MEMBER DONATELLI: -- of the fence by putting vegetation in front of it.

MR. VARGHESE: Yes. No. We -- we definitely considering -- we actually would love to put vegetation in front of the fence, but we just wanted the -- the -- the safety, the structure of the fence.

VICE CHAIRMAN FRANCIS: It would also be increasing the privacy of that side.

MS. THOMAS: Yes. We're very sensitive to what the Board and the Town would like the neighborhood to look like. Like my husband said, we're not trying to cordon off the entire house and put a fence around the entire house. We really are just looking for a small safe space for our daughter.

VICE CHAIRMAN FRANCIS: Unfortunately, this is not the first time we've seen this type of application.

MS. THOMAS: Understood.

VICE CHAIRMAN FRANCIS: And we're very sensitive to the need for safety. As far as I'm concerned, safety trumps everything when it comes to children, so we're going to do as much as we possibly can.

MS. THOMAS: Thank you. We appreciate it so much.

Just because I included it, I don't think it was the most compelling reason that we want the fence, but we did have two incidents with a neighborhood pit bull that has attacked our dog twice, completely unprovoked, off-leash, and unattended. It's another reason that we're very concerned for the safety of our daughter when she is out playing. We don't take her for walks with the dog anymore. It's just my husband and the dog that go walking. The second time, it was a very substantial bite. It was over \$800 in medical costs alone. That doesn't count the boarding fees or special medical equipment so that she could sleep comfortably. It was months of topical and oral antibiotics and wound cleaning and care and compression, so it was a very significant injury to our dog.

We did report it to pet control. We are pursuing a dangerous dog claim with the Town of North Hempstead. We've been in touch with Samantha Flores from the City's Attorney Office. So we are doing everything we can on our end to make sure that our family can just enjoy our property safely and just ask that the Board please consider our plight.

VICE CHAIRMAN FRANCIS: Of course.

MEMBER DONATELLI: Mr. Chairman, for the record, I would just like to note, I believe the Americans with Disabilities Act would apply in this instance, and so I do believe that is a factor that we need to consider in this application as opposed to

some of the other applications that we heard this morning where that was not involved.

CHAIRMAN MAMMINA: I think that's a very valid point.

MEMBER GOODSSELL: In light of the presentation of the homeowners, Mr. Chairman, I would like to make a motion that we grant the fencing as modified, as requested, with one condition, and that is on the fencing that faces Irwin Avenue between the sidewalk and the fencing, whether that's 2 feet or 3 feet, that you plant some sort of planting to minimize the impact. But with that condition, Mr. Chairman, I will move you grant the motion.

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

VICE CHAIRMAN FRANCIS: Second.

CHAIRMAN MAMMINA: We have a motion from Member Goodsell and a second from Vice Chairman Francis.

Please poll the Board.

SECRETARY WAGNER: Member Goodsell

MEMBER GOODSSELL: Aye.

SECRETARY WAGNER: Member Hernandez.

MEMBER HERNANDEZ: Aye.

SECRETARY WAGNER: Member Donatelli.

MEMBER DONATELLI: Aye.

SECRETARY WAGNER: Chairman Mammina.

CHAIRMAN MAMMINA: Aye.

SECRETARY WAGNER: Oh, sorry. Vice Chairman Francis.

VICE CHAIRMAN FRANCIS: Aye.

SECRETARY WAGNER: Chairman Mammina.

CHAIRMAN MAMMINA: Aye.

The application is granted as modified.

MR. VARGHESE: Thank you.

* * *

SECRETARY WAGNER: Next appeal, Appeal No. 21118, Gary Russell, 190 Urban Avenue in Westbury, Section 11, Block 28, Lot 20 in the Residence-C Zoning District. Variance from 70-100.2.A(4), to erect fencing that is too tall.

CHAIRMAN MAMMINA: You've heard Appeal No. 21118, Gary Russell. Is there anyone in the room interested in the application other than the applicant?

Seeing no one, please give your name and address.

MR. RUSSELL: My name Gary Russell. I reside at 190 Urban Avenue, Westbury, New York.

CHAIRMAN MAMMINA: If you would, just a description of what you're seeking, Mr. Russell.

MR. RUSSELL: Okay. Before I start, I have a survey to mark where I have a requested a fence.

SECRETARY WAGNER: This will be Exhibit 1.

MR. RUSSELL: I'm requesting this variance for the sole purpose of safety, privacy, protection, and for the use and enjoyment of our yard and our entire family which includes my two grandchildren and aging mother that lives with me. I live in a community that, with many stray and dangerous dogs that pose a nuisance and danger to my grandchildren and elderly mother, which is eighty-five and she's physically ill -- she has dementia and Alzheimer's. A 6-foot fence will greatly enhance the quality of life and the family's ability to use and enjoy our yard.

My mother, she actually loves to go outside and sit quietly and actually watch the planes go by. The grandkids, they're fascinated with butterflies and they're always chasing butterflies and end up in the front of the yard.

My -- my adjacent neighbors, they consent to my family having a 6-foot fence. It doesn't impact them in any sort of way, and the 6-foot fence will provide a vast benefit to my family

quality of life as well as keep them safe from dangerous dogs that have strong leaping abilities.

And that's it. It's actually more or less a gate as opposed to a fence. That's what I'm actually seeking.

VICE CHAIRMAN FRANCIS: A chain link type of -- like a chain link gate?

MR. RUSSELL: Vinyl.

MEMBER GOODSELL: Mr. Russell, because your survey is just a little bit old and a little bit blurry, could you tell us what fencing you've got now on the property? It looks like the neighbors have one fence.

MR. RUSSELL: On both sides there's 4-foot chain link fence, however, it's covered by shrubs. The shrub's about 6, 7 feet, maybe 8 feet tall.

MEMBER GOODSELL: So the chain link fence is kind of buried in that?

MR. RUSSELL: It's buried. It's buried. It's -- yeah.

MEMBER GOODSELL: And the chain link fence is on both sides of the property and in the back as well?

MR. RUSSELL: Correct.

MEMBER GOODSELL: Okay. So what you're really looking to do -- you've already got kind of a private enclosure. What you're really looking to do is to complete the enclosure with two, as you've described, gates?

MR. RUSSELL: That is correct. And it's at the rear of the -- of the house.

MEMBER GOODSELL: You don't have a corner house, do you?

MR. RUSSELL: No.

Like I said, the grandkids right now, they're fascinated with butterflies and also Mister Softees.

(Laughter.)

VICE CHAIRMAN FRANCIS: That must keep you going back and forth to the ATM machine.

MEMBER DONATELLI: It's funny because when we first moved into our neighborhood, there were like twenty or thirty kids that were under ten, so Mister Softee knew that this was a very important part of his route. Now, thirty years later, those kids are almost now forty-year-olds and Mister Softee doesn't come around anymore. He knows where the young kids live.

(Laughter.)

VICE CHAIRMAN FRANCIS: Mr. Russell, I want to take another look at your house. You know, I live in the neighborhood as well, and I want to take a closer look at it. I did go by your house, but I want to take another look at it.

MR. RUSSELL: Okay.

VICE CHAIRMAN FRANCIS: So, Mr. Chairman, I would recommend we reserve decision on this application until I can do a little bit more -- a little bit more research.

CHAIRMAN MAMMINA: Then that is what we will do. We'll reserve decision on this. And as I said a little earlier, because of our long calendar today and the fact that Mr. Francis wants to go take another look, we would not be considering this until the next board meeting.

MR. RUSSELL: Okay. Thank you.

CHAIRMAN MAMMINA: Okay.

SECRETARY WAGNER: That would be October 20th, the next Board meeting.

MR. RUSSELL: Do I have to appear again?

CHAIRMAN MAMMINA: No. You're all done.

MR. RUSSELL: Okay. Thank you.

CHAIRMAN MAMMINA: Thank you.

VICE CHAIRMAN FRANCIS: Thank you.

* * *

SECRETARY WAGNER: Next appeal, Appeal No. 21099, Michael Abramov, 39 Locust Street, Section 20, Block J6, Lot 481 in the Residence-C Zoning District. 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.

CHAIRMAN MAMMINA: You've heard Appeal No. 21099, Michael Abramov. Is there anyone in the room who wishes to speak other than the applicant? Seeing no one, please give your name and address.

MR. BRAUM: Andrew Braum, B-R-A-U-M, 1924 Bellmore Avenue, Bellmore, New York 11710.

Good afternoon, again, Mr. Chairman, ladies and gentlemen. My name is Andrew Braum. I'm an engineer -- a licensed engineer, and I'm representing Mr. and Mrs. Abramov who are here with us this afternoon.

Do you want to give your name for the record?

MR. ABRAMOV: Michael Abramov, 39 Locust Street, Greenvale.

CHAIRMAN MAMMINA: Good afternoon.

MR. BRAUM: Good afternoon. We're here before the Board for permission to install a semi in-ground pool with a waterfall in the side yard and a little bit too close to rear property line. I'd like to point out that a previously-approved variance for Application No. 13717 was granted for this property in 1988.

The Abramov family bought the house with the pool approximately five and a half years ago. The existing pool, which is an 8-foot by 18-foot pool, is a swim spa, and that type of pool has a jet in the front of it and it pushes resistance so you can swim against it. That type of pool, first, is in a state of disrepair from being as many years old as it is. In addition, it's not the type of pool that a family with children and want to enjoy some splashing around is appropriate for. So what we're looking to

do is increase the size of the previously-installed pool to make it a modest 12 by 24 pool.

VICE CHAIRMAN FRANCIS: What was the dimension of the original pool?

MR. BRAUM: 8 by 18.

So we're increasing it 1 foot on one side and 3 feet on the other side, and then we're looking to increase it 2 feet on one side and 4 feet from the other, to come up with the numbers that we came up with which is 12 by 24. It meets the side yard setback. And as you can see from the drawing, I believe we're 8 inches off on the rear to try to make it exactly work as best as possible. Nothing else is changing from the previously-approved variance.

Does the Board need a copy of that CO that shows this previously-approved variance? I have that

CHAIRMAN MAMMINA: I think we have that.

MR. BRAUM: We did submit it, but I have it here.

CHAIRMAN MAMMINA: We have it.

MR. BRAUM: You have it in the packet. Okay.

As part of the presentation, I also wanted to let you know that we did submit the consent -- neighbor consent form from the next-door neighbor and a notarized -- I'm sorry, a signed letter from the neighbor on the opposite side, giving both their approval for the application. As I mentioned, nothing else changes except the size of the previously-approved pool.

Does the Board have any questions on what I presented?

CHAIRMAN MAMMINA: Semi in-ground, how much above the ground is it?

MR. BRAUM: So there's a currently-installed deck now and it's actually installed into that deck. So I would say it's within 18 to 20 inches high. And it's basically a

removal of the old one, a modification of the deck, and then installing the new pool with the dimensions that I previously stated.

MEMBER HERNANDEZ: So is the deck covering the whole side yard and basically carving out a rectangle? Is that what it looks like?

MR. BRAUM: Currently -- do you have a copy of the survey?

MEMBER HERNANDEZ: Yes.

MR. BRAUM: Where the deck is, that portion is cut out so it's effectively flush. And now, once that swim spa is removed, it will make a little bit larger on the four dimensions for the dimensions that we show.

MEMBER HERNANDEZ: I guess the deck is all made level with the floor of the house.

MR. BRAUM: I'm sorry. Was there a question about --

MEMBER HERNANDEZ: No. I'm just saying it looks like there's an existing wood deck on the back of the house, the very narrow back.

MR. BRAUM: Right.

MEMBER HERNANDEZ: I guess it's all one level now.

MR. BRAUM: I think there's one step difference.

MR. ABRAMOV: Good afternoon. May I -- may I please say something?
When you come out the back --

SECRETARY WAGNER: Name and address.

MR. ABRAMOV: My name is Michael Abramov. I'm the owner of the house.

When you exit out from the backyard of the house where the double sliding doors are in the

kitchen, I have two steps going down where we -- where we enjoy the summer days and have our lunches and dinners. And then to go to the pool, we have to walk one step. So that portion of the deck where the pool is at is elevated higher than the other side of it.

MEMBER GOODSELL: Mr. Braum, I take it that the existing fencing complies with the pool fencing? You don't need to change the fencing and that looks like it's correct.

MR. BRAUM: That's correct. This application went back and forth a few times between myself and the Board of Zoning and Appeals and the plan examiner to include research on the existing approvals to get it to the point where we're at today. And to answer your question, that is correct, there's no change in the fencing.

MEMBER GOODSELL: And the equipment is -- in light of a previous case we heard this morning, the equipment is correctly located.

MR. BRAUM: And that's where it is and was previously approved, and the location will remain the same.

MEMBER DONATELLI: And as I read through the decision, the earlier action by this board, the plantings, are they still there?

MR. BRAUM: Yes, they are.

MEMBER DONATELLI: Mr. Chairman, having heard the application, I make a motion that we grant this application.

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

VICE CHAIRMAN FRANCIS: I would just -- I would second it. But I want to confirm and make the application conditioned on that you maintain the existing planting that is there. I think that's really important.

MR. BRAUM: On behalf of the owner, we agree to that.

VICE CHAIRMAN FRANCIS: Then I second the motion.

CHAIRMAN MAMMINA: Motion by Mr. Donatelli, seconded by Mr. Francis. 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.

VICE CHAIRMAN FRANCIS: Aye.

CHAIRMAN MAMMINA: Before I vote, I just want one other thing on the record: This piece of property is very irregularly shaped and there really is no place else that a pool could go, and it would be very oddly shaped if it were made to comply with the ordinance. It is level with the deck that's there. One of the major things that the Town Board is interested in with the required 10-foot setback is for -- I guess as it's concerning kids who might be pool hopping and when they go over that fence that they -- that there's at least 10 feet so they don't end up jumping directly into the pool. Your minimum dimension is 9-foot-4 and a little tangent point and that increases to 15.8. And as Vice Chairman Francis has put into his motion, as long as that row of tree stays back there, it appears to be in a planter, that would help in mitigating anybody going over that fence as it was and then still carry over that safety factor that the Town Board has in there.

So with that long dissertation, I vote
aye.

The application is approved.

MR. BRAUM: Thank you for your time and
consideration.

MR. ABRAMOV: Thank you. Have a good
day.

* * *

CHAIRMAN MAMMINA: Just for the record, before we get started, the Town Attorney's Office has a conflict on this, so she is sitting out on this case and we have another young lady from the Town Attorney's Office.

SECRETARY WAGNER: Samantha Flores.

MS. FLORES: Samantha Flores.

CHAIRMAN MAMMINA: Okay. It will be Samantha Flores.

SECRETARY WAGNER: Chairman, I just wanted to also, since this is technically the beginning of the commercial calendar, we read the adjournments.

CHAIRMAN MAMMINA: Good idea.

SECRETARY WAGNER: We have an adjournment -- actually a withdrawal of Appeal No. 21121, New Cingular Wireless PCS, LLC, 80 West Shore Road in Port Washington, Section 6, Block 53, Lot 1033C in the Residence-AAA Zoning District. The application is going to be withdrawn by the applicant.

We also have an adjournment of Appeal No. 21104, Nelson Castro, 642 Union Avenue, Westbury, Section 11, Block 97, Lot 61 in the Business-A Zoning District. That's adjourned until October 20th.

CHAIRMAN MAMMINA: Okay. So if anyone is here for either of those cases, those will not be heard today. Of course, you're welcome to stay and listen in.

Call the first case, Virginia.

* * *

SECRETARY WAGNER: Appeal No. 21100, Leon Petroleum, LCC, sign, at 540 Plandome Road, Manhasset, Section 3, Block 69, Lot 424 in the Business-A Zoning District. Variance from 70-196.J(1)(a), to erect a sign that exceeds the number of signs permitted on a wall.

CHAIRMAN MAMMINA: You've heard Appeal No. 21100, Leon Petroleum. Is there anyone here who wishes to speak regarding this application other than the applicant?

Okay. Seeing no one, please give your name and address.

MR. STUART: Good afternoon. My name is Andrew Stuart, S-T-U-A-R-T, High Point Engineering, 521 Conklin Street, Farmingdale, New York 11735. We are the engineer of record on behalf of the applicant.

VICE CHAIRMAN FRANCIS: Mr. Stuart, if you're comfortable, you may remove your mask while you testify.

MR. STUART: Thank you very much.

Good afternoon, Chairman, members of the Board. The application before you is for a variance to allow two wall signs on a single wall facing Plandome Road, a property at 540 Plandome Road in Manhasset. There's an existing wall sign that's currently at 30 square feet. The proposed wall sign would be an additional 30 square feet, whereas the allowable per code is -- for a single would be 2 square feet per linear foot of the wall. The wall is 48 linear feet and the allowable would be 96 square feet. The two signs would be 60, which is significantly less than the allowable 96.

There is a freestanding sign at the station as well, very minimal. It's one freestanding sign, total of 26 square feet permitted. The overall, as you know, the code allows two freestanding signs, both 24-square-foot each. So in all, it's significantly less than that. The overall signage at the site is very minimal. There's no canopy, no canopy signage, and the additional sign would be to identify the service -- the service bay

business whereas the existing wall sign is for the filling station business.

That's our case.

MEMBER GOODSELL: Mr. Stuart, one of the signs that has a certificate is the dino logo. Is that the old Sinclair gas dino logo? Because that's what it looks like.

MR. STUART: It could be. I'm not a hundred percent. I'm not too familiar with that, to be honest with you.

MEMBER GOODSELL: You're too young.

(Laughter.)

MR. STUART: I'm showing my age, possibly. But, yes, it's just a dino logo.

VICE CHAIRMAN FRANCIS: It is a Sinclair logo.

MEMBER GOODSELL: You're too young for that.

MEMBER HERNANDEZ: I am looking for the schematic of the sign.

MR. STUART: I have some handouts, if I -- I don't know if I'm allowed to pass them up. It shows the plan as well as the -- it has pictures of the existing signage with a -- with the square footage breakdowns and the codes I discussed.

SECRETARY WAGNER: That will be considered Exhibit 1.

MR. STUART: The sign would be 3 feet high by 10 feet high for the square foot.

MEMBER HERNANDEZ: So the sign for Sam's Auto Shop is going to go over the bays?

MR. STUART: Correct.

MEMBER GOODSSELL: Mr. Stuart, are they two businesses, the gas station is one, the repair shop is another, or is that common ownership?

MR. STUART: I believe it's two separate businesses. They lease the service station business to a separate owner.

MEMBER DONATELLI: And there will be no illumination on the Sam's Auto Shop sign?

MR. STUART: Correct, it's not illuminated. The board sign is attached to the -- so it will fit.

MEMBER HERNANDEZ: And I'm assuming that the price tag sign will now be removed. The picture you show has, clearly, a canvas-type sign sort of hanging.

MR. STUART: Yes. We'll make sure that's taken down.

MEMBER HERNANDEZ: Unless anyone else has any other questions they would like to ask, I am very familiar with that corner. It's right across the street from Walgreens, so we all know it very well. The signs they are proposing are -- it's not an excessively large sign. It's not overly lit. It doesn't face any residences. It should not be offensive to anyone. It is a wide-open space in front of it. Given those circumstances, I move we grant the application.

MEMBER GOODSSELL: And I would second.

CHAIRMAN MAMMINA: All right. We have a motion by Mr. Hernandez and a second 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.

VICE CHAIRMAN FRANCIS: Aye.

CHAIRMAN MAMMINA: Aye.
The application is granted.

MR. STUART: Thank you very much. Have
a nice afternoon.

CHAIRMAN MAMMINA: Thank you.
* * *

SECRETARY WAGNER: The next appeal is Appeal No. 21119, Cookie Doe, Inc., 433-453 Plandome Road, Section 3, Block 138-02, Lot 19, in the Business-B Zoning District. Conditional use under 70-126(F), to convert a retail space into a food use.

CHAIRMAN MAMMINA: You've heard Appeal No. 21119, Cookie Doe. Is there anyone in the room other than the applicant who wishes to speak?

Seeing no one, please give your name and address.

MR. DiPROPERZIO: Good afternoon, Mr. Chairman and members of the Board. Anthony DiProperzio, DiProperzio & Mallia Architects, 499 Jericho Turnpike, Mineola, New York.

The premises before you is 439 Plandome Road, Section 3, Block 138-02, Lot 19 in response to a notice of disapproval that was issued on August 12th, 2021 regarding Section 70-126(F) requiring a conditional use as a food establishment. The subject premises is consisting of 23,126 square feet, a larger space than the plan that's before you. The original space was occupied as Matty's Toy store, who vacated the space in 2019 and the premises has been vacant since that time.

In order to make the premises more attractive for rental purposes, the landlord decided to subdivide it in half, which creates the new space that's before you today which is going to be occupied by Cookie Doe, Inc., which is in the southerly portion of the space consisting of 1,163 square feet.

Cookie Doe is a franchise-type establishment that was established approximately four years ago. It currently has locations in Patchogue, Islip, Plainview, Oceanside, Roosevelt Field, Queens Center Mall, Whitestone, Astoria, and Eastern Pennsylvania. The proposed space consists of a customer service area of 429 square feet; a service area of 150.72 square feet; a storage area of 141.75; an office of 72 square feet in addition to an ADA toilet, janitor's closet, egress corridor with the balance of the original space that's a result of the subdivision currently being vacant.

The operation of the Cookie Doe, Inc. establishment includes sales of various types of cookies, coffee, and ice cream. There is a master

plant located in Ronkonkoma where they basically have like a factory where they mix the dough and create the product. The product is then vacuum sealed and delivered to the local location. At the local location, it is put into -- they're put into a convection oven to be finalized for sale to the public. They have both seating and takeout orders. They also have an app and with Uber Eats, which permits patrons to order and pick up at the premises.

The daily operation consists of four employees, that's a maximum, with operating hours from noon to nine p.m. seven days a week. Deliveries are made in small freezer-type trucks that are similar to the UPS vans that are current in the area, similar size. Their deliveries are usually about twice a month.

The proposed establishment is substantially small within the area and provides a food service that's unique to the area in a boutique-type setting. The conditional use permit is respectfully requested since the proposed use is consistent and comparable with other uses in the immediate area and will not have a negative impact on the surrounding properties and the proposed use is consistent with the intent of the zoning resolution.

I have with me today Jennifer Malin and Sophia Demetro with Cookie Doe, Inc. And if there are any questions to me or them, we would be happy to address them.

CHAIRMAN MAMMINA: I think the question that I have is in terms of meeting standard restaurant conditions for --

MR. DiPROPERZIO: We're providing -- we're providing a small refrigerated unit for putrescible waste. There really isn't much. You know, the cookies are pre-made. They're only cooked in a convection oven on site. The ice cream are in containers, 5-gallon drums, similar to Baskin-Robbins. So there isn't a lot of putrescible waste as a result of the operation, but there will be a unit that will take care of what putrescible waste there is.

CHAIRMAN MAMMINA: Do we have the hours of operation?

MR. DiPROPERZIO: From noon until nine p.m.

CHAIRMAN MAMMINA: And that's seven days?

MR. DiPROPERZIO: Yes.

MEMBER DONATELLI: And you mentioned delivery. How will things be delivered?

MR. DiPROPERZIO: Twice a month.

MEMBER DONATELLI: Twice a month.

MR. DiPROPERZIO: Yes.

MEMBER DONATELLI: Through the rear?

MR. DiPROPERZIO: You have the product, the raw product, coming from Ronkonkoma to the site. They store it and freeze the units, and as needed, they take the units out, bake them in a convection oven, and sell them to the public.

MEMBER DONATELLI: And you said the delivery trucks were small.

MR. DiPROPERZIO: The size of a UPS van.

MEMBER DONATELLI: Size of a UPS van. Does the landlord have any current plans now for the balance of the premises?

MR. DiPROPERZIO: The landlord is in discussion with one group. It's not final. But as of right now, it's vacant.

MEMBER GOODSSELL: I'm sure that the proposed tenant is aware that Plandome Road is a busy road, parking is limited. But, hopefully, on a nice day, kids during school, they come walking down and, you know, it's got the usual parking issues of any other busy road.

MEMBER HERNANDEZ: However, this property does have parking behind that.

MEMBER GOODSSELL: If you know that, if you know that. And they make the sign the size of a license plate that says "parking in rear".

Mr. Chairman, I have no objection to this.

CHAIRMAN MAMMINA: Okay. I consider that a motion.

MEMBER GOODSSELL: I will make a motion that we approve the application as presented.

CHAIRMAN MAMMINA: We have a motion by Mrs. Goodsell. Do we have a second?

MEMBER HERNANDEZ: Second.

CHAIRMAN MAMMINA: Seconded by Mr. Hernandez.

Please poll the Board.

SECRETARY WAGNER: Member Goodsell.

MEMBER GOODSSELL: Aye.

SECRETARY WAGNER: Member Hernandez.

MEMBER HERNANDEZ: Aye.

SECRETARY WAGNER: Member Donatelli.

MEMBER DONATELLI: Aye.

SECRETARY WAGNER: Vice Chairman Francis.

VICE CHAIRMAN FRANCIS: Aye.

SECRETARY WAGNER: Chairman Mammina.

CHAIRMAN MAMMINA: Aye.
The application is granted.

MR. DiPROPERZIO: Thank you very much.

* * *

SECRETARY WAGNER: Next appeal, Appeal No. 21120, Port Washington Wines & Liquors, 378 Port Washington Boulevard, Port Washington, Section 5, Block J, Lot 1020 in the Business-A Zoning District. 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 zoning.

CHAIRMAN MAMMINA: You've heard Appeal No. 21120, Port Washington Wines & Liquors. Is there anyone in the room interested in the application other than the applicant?

Seeing one -- oh.

MS. DAVISON: We're residents of Neulist Avenue.

CHAIRMAN MAMMINA: Okay. If you'd like to speak, we'll give you that opportunity. You don't have to. Sometimes people come just to listen, and sometimes they change their minds. All right. Thank you.

Give your name and address.

MR. NICOLAIDES: Good afternoon. All my name is Harry Nicolaides N2 Design. I'm the principal of N2 Design & Architecture. We're located 315 Main Street, Port Washington, New York.

I do have a few things to hand out, so I'll take a second (handing).

Okay. I'm back. We dispensed with the paperwork. We did provide copies of what I will be showing on the easel. It may be easier for you to follow. But before I start, I just wanted to get a couple things out of the way:

The applicant, again, is Port Washington Wines & Liquor. They're presently located on Port Washington Boulevard, and their proposed location and the building in question is 379 Port Washington Boulevard. Now, we're here, honestly, because of the unintended consequence of the variance you granted Uncle Giuseppe's. So while I support that, I certainly think there will be improvement. The gentleman has actually been in the location on the Uncle Giuseppe's property that was a liquor store forty years, and he's been the occupant of the store

for over fifteen years. So if Uncle Giuseppe's wasn't moving forward, he wouldn't be evicted and wouldn't be going across the street.

So the intention here is to keep him close by his existing clientele and not to disturb the business that he's established over many, many, years. The intent -- the owners are Paul and Kamal Bhagat. Paul is here and available for any questions that I can answer and you may have for him.

So the property's an interesting site. It was an insurance company for many years, and that actually has a parking variance already. And the unique set -- the way the strip center, this is part of it, is set up, it actually -- this location is providing an easement to allow the veterinarian, which is a few stores down, to get to his parking lot. As a result of that, the veterinarian has offered two spots that will be available and should handle all the employee parking for the liquor store. So we're actually required to have a total of three parking spots. We've actually taken care of two, and the balance of the parking, as Robert Eschbacher from VHB will show you, should be handled with street parking that's immediately in front.

I'm just going to go to the easel for a second. And just as a point of reference, this is the proposed location, Port Washington Boulevard here and Neulist is the side street (indicating). Uncle Giuseppe's is immediately across the street. I know at least some of you shop there and are familiar with it, including myself. Again, from the other direction, this is the side street and this is the -- basically, the cut-through that the new owner, our client, will be providing for the veterinarian to get into his parking to get into his building.

Again, other views: This is on Port Washington Boulevard and this is south of Port Washington Boulevard (indicating).

This is the site plan, and the building itself is roughly 1,600 hundred square feet. It's a one-story building with a basement for storage, but all the retail will happen on the first floor. We've actually met all the zoning requirements otherwise except for the parking. So we got the numbers here. Three spaces are required. And at this point, we have zero other than the permitted two spots by the veterinarian and the street parking that remains. I

wish I had more to say but that's really just about it. I'll check my notes but I'm running out of steam here.

The nature -- the nature of a liquor store is very transactional. So, you know, there isn't much length time that somebody stays in the spot. They go in, buy a bottle of wine, whatever they prefer, and leave. So there isn't going to be a long stay for a car parked in that location. And the rest, I'll really leave to our parking consultant. I'm just going to flip the page to his statistics.

MEMBER DONATELLI: Mr. Nicolaides, before you sit down, can I ask a question?

MR. NICOLAIDES: Absolutely.

MEMBER DONATELLI: Were you familiar with the prior tenants, the Folan Agency?

MR. NICOLAIDES: I'm sorry?

MEMBER DONATELLI: Were you familiar with the prior tenants?

MR. NICOLAIDES: Only in passing.

MEMBER DONATELLI: With their operation?

MR. NICOLAIDES: No. But he's here as well, if you have any questions.

MEMBER DONATELLI: I guess when the time comes for others to -- to enter their appearance and to make their presentation, I would just like to know how the proposed usage will compare to --

MR. NICOLAIDES: Actually, I was leaving this for Bob. But the usage for the liquor store is actually less than the required parking for the insurance company.

MEMBER DONATELLI: Okay.

MR. NICOLAIDES: Thank you for bringing that up.

MEMBER DONATELLI: Whoever is going to address that issue, that's an issue I would like to have raised.

MR. NICOLAIDES: Absolutely. With that, I'll introduce Robert Eschbacher, and he's here.

MEMBER DONATELLI: Thank you.

MR. ESCHBACHER: Good afternoon, Mr. Chairman and members of the Board. My name is Robert Eschbacher with VHB Engineering. My office is located at 100 Motor Parkway in Hauppauge.

I was retained by the applicants to review the adequacy of nearby parking to accommodate the actual demand of this new relocated business. Technically, as stated in the notice of disapproval, a parking variance is required for three spaces, based upon the square of the space and giving the 1,000 square foot extension. As Mr. Nicolaides just pointed out, this business, the liquor store, would replace a previous office use, and the office use parking requirement would be four spaces. So we actually have a use here that, in terms of the parking requirements, is less intense than what the previous use was.

There's several important considerations in my evaluation of the adequacy of parking: First of all, this is a relatively less active use, but the office use that was there previously, it's been stated to me by Mr. Bhagat that there were eight employees in the insurance business. Naturally, an office use like that would generally have employees that would be there for the better part of the day. So it used to be eight, and now there will be two employees with the liquor store. Generally, in addition to the two employees that are there at any one time, there's usually about one customer in the store at any one time. People come and go an average five-minute transactions. So, really, over the course of a sixty-minute period, you can accommodate, on average, twelve customers. But at any one time, it will be one customer and the two employees, so the actually parking demand in this case would be three spaces.

It's one of those actually-rare cases where the actual parking demand is in line with what

the code would require. So with the proposed liquor store, it will be a lower parking demand and a shorter parking duration. We need fewer spaces, and we need them for shorter periods.

As part of my study, I undertook a parking utilization survey. This was done during a typical weekday and a Saturday, and in the evening, every thirty minutes, we recorded the number of vacant parking spaces, first along Port Washington and we also looked part way down Neulist Avenue. We went down about three houses on each side, and we recorded the number of vacant parking spaces. Those are documented in my report. And as you can see from that, there are always an adequate number of spaces, not only to accommodate the technical three that we need but when you consider the arrangement to be able to park two at the veterinarian, certainly that can be counted. As a matter of fact, they can all be accommodated on Port Washington Boulevard.

One of the other variances being sought is a loading zone. There is none for this building or the adjacent buildings. And this is an unusual situation and, typically, the -- any deliveries would pull up either in front of the building for a quick loading or unloading, or around the corner on the side street. This will be able to handle the demand without any difficulty.

So in conclusion, based upon the results of my study and analysis, it's my professional opinion there will be adequate parking to accommodate the proposed relocation of the liquor store to this location and the loading will take place in a satisfactory manner. I'll be happy to answer any questions the Board may have.

MEMBER GOODSELL: Mr. Eschbacher, when I drove past this property, I noticed there is no parking or stopping lane on Port Washington Boulevard. So as I'm cutting south on Port Washington, I also almost went past it, took the corner on two wheels, and discovered there is no parking, no standing on Neulist. So I wound up parking in Uncle Giuseppe's parking lot any way. So I imagine it's what other people will do now.

MR. ESCHBACHER: You know, I officially can't say that because it's not our property, but I would expect that to be the case.

MEMBER GOODSSELL: That's going to be the case.

MR. ESCHBACHER: Customers park there now. And, you know, they make combined trips, go to Uncle Giuseppe's and literally walk across the street. But there is parking on Port Washington Boulevard. It's limited directly in front of the site. There are two parking spaces. And when you look at -- not only have I seen them being used, but when you look at aerials, you'll see there's parking.

MEMBER GOODSSELL: Okay. I did miss that, then --

MR. ESCHBACHER: Yeah.

MEMBER GOODSSELL: -- because I believe that section either repaved recently or doesn't have the right markings because I thought there was actually no parking. And I appreciate the fact a business wants to go in there.

MR. ESCHBACHER: Sure.

MEMBER GOODSSELL: Somebody's going to pull up, run in for a bottle of wine. I had a car breathing down my neck.

MR. ESCHBACHER: It's certainly not easy but it's available. When you go to the next block down, there's room for three cars to park. Between Hawthorne and Marino, there's no parking permitted, and then the next section, Marino and Chestnut, there are actually five meters at that location. But I agree with you that Uncle Giuseppe's parking lot is the logical place where people will park, yes.

MEMBER DONATELLI: You've mentioned the agreement with the veterinarian who is directly next door. Do you know what that agreement is? Does the vet have priority of those spots?

MR. ESCHBACHER: I can't speak to the exact arrangement there. I've just been told that. Perhaps Mr. Bhagat, the owner of the liquor store, can address that issue.

MR. BHAGAT: My name is Paul Bhagat. My address is 31 Gabriele Drive in East Norwich, and my store location is at 378 Port Washington Boulevard.

The agreement that we have with the veterinarian next door is that one of them is actually a legal spot that we have. That's on the deed and that can never be taken away, even if the property is sold by the veterinarian. So that's a permanent spot that we have. The second spot is an agreement that we have with the veterinarian to allow us to park a second car in that spot, you know, because we have the easement that goes into the property. So we do have two spots that are available.

And the third thing I want to say is that, as you mentioned, I've been there for fifteen years, and most of my customers are quick customers, five minutes in and out. Even the deliveries that I take, it's usually maybe twenty, thirty takes. The trucks come in and within five minutes, they unload, and they're gone. The second thing is there are three spots: Right in front of where the drugstore was, where I am right now, and where the Chinese restaurant was.

I hope I answered that question for you.

MEMBER DONATELLI: So forgive me, sir, if you don't mind, the agreement, again, that you have with the veterinarian is that first come, first served, whoever is using those two spots gets to use them first, or does the vet have certain hours?

MR. BHAGAT: Oh, there are. So the veterinarian has about two. So I believe there's ample parking for about six cars back there.

MEMBER DONATELLI: Okay.

MR. BHAGAT: But we have two current spots.

MEMBER DONATELLI: And one I would imagine that you have some days where the deliveries are dropped off; is that correct?

MR. BHAGAT: Yes, we can dictate to the trucker where they can stop. Most of the time, it's obviously one person at the store, either my wife, you know, she has the morning shift and I go in the afternoon. I mean, there's one or two overlap where both of us are there. Actually, in any given time, we only need one spot for parking.

MEMBER DONATELLI: I have no further questions.

MR. ESCHBACHER: Thank you.

CHAIRMAN MAMMINA: Ma'am, if you wish to speak or, sir, your call. You don't need to.

MS. DAVISON: It was just regarding the parking --

CHAIRMAN MAMMINA: Just come up and give your name and address.

MS. DAVISON: Hi, my name is Bonnie Davison, and I reside at 19 Neulist Avenue in Port Washington.

In front of the cat hospital and the previous Folan Agency and the other side, in front of the pharmacy and the Chinese restaurant, there are "no parking here to corner" signs erected and they lost several parking spaces there. I'm not sure how that happened, when it happened, or why it happened. I was wondering if the signs could be moved or adjusted to allow to get another parking spot in front of the cat hospital.

For the most part, people park there anyway. They run into the cleaners. They park illegally there anyway. So that -- maybe that will give Paul a little wiggle room to go by, whatever. And, again, on the opposite side of the street, it's the same thing. I know coming out of Neulist Avenue is very hard because they blocked the side road and the only traffic light is at the Giuseppe's property.

So that's just all I was thinking.

CHAIRMAN MAMMINA: But I guess I got to the Zoning Board thirty years ago through the civic association in Carle Place. And I know that many times, there are civil associations, people would raise, you know, parking areas and that sort of thing. And the Town Board make those decisions and I always -- my experience back then, you know, was that that we're typically very amenable to those sorts of things, you know, that -- that people in a community would ask for so that it in some way benefits the community. It doesn't necessarily mean for sure but it's certainly a --

MS. DAVISON: An option for them.

CHAIRMAN MAMMINA: You can start off with just a letter to your councilperson. They do look at that.

MS. DAVISON: Okay.

CHAIRMAN MAMMINA: My experience is it does -- it does happen with some frequency.

MS. DAVISON: Okay.

CHAIRMAN MAMMINA: Okay.

MS. DAVISON: That's it.

CHAIRMAN MAMMINA: Thank you.

MS. DAVISON: Thank you.

MEMBER DONATELLI: Anyone else?

CHAIRMAN MAMMINA: Anything further?

MR. NICOLAIDES: I'll just close the presentation and thank everyone and we're here if you think of anything else. Thank you.

MEMBER DONATELLI: Mr. Chairman, having reviewed the application and having heard the comments of the neighbors as well as of the applicant, I do believe that this use would be less intensive than the use that had been there before.

So, therefore, I'll make a motion that we grant the application.

CHAIRMAN MAMMINA: We have a motion by Mr. Donatelli. Do we have a second?

MEMBER HERNANDEZ: Second.

CHAIRMAN MAMMINA: Second Mr. Hernandez. Please poll the Board.

SECRETARY WAGNER: Member Goodsell.

MEMBER GOODSELL: Aye.

SECRETARY WAGNER: Member Hernandez.

MEMBER HERNANDEZ: Aye.

SECRETARY WAGNER: Member Donatelli.

MEMBER DONATELLI: Aye.

SECRETARY WAGNER: Vice Chairman Francis.

VICE CHAIRMAN FRANCIS: Aye.

SECRETARY WAGNER: Chairman Mammina.

CHAIRMAN MAMMINA: Aye.
The application is granted.

MEMBER DONATELLI: Thank you for coming down.

* * *

SECRETARY WAGNER: Next appeal, Appeal No. 21098, Douglas Zullo, 41 Yorkshire Road in New Hyde Park, Section 9, Block 513, Lot 17 in the Residence-C Zoning District. 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.

CHAIRMAN MAMMINA: You've heard Appeal No. 21098, Douglas Zullo. Is there anyone in the room interested in the application other than the applicant?

MR. STONE: Yes.

CHAIRMAN MAMMINA: One hand up over there.

MEMBER GOODSELL: Can I ask the applicant, was this property sold by Mr. And Mrs. Zullo two years ago? Did I see that correctly?

MR. LAZZARO: My name's Tom Lazzaro. I'm the architect.

MEMBER GOODSELL: Okay. And the applicant is either the Zulllos or the new owner, then?

MR. LAZZARO: The applicant is the Zulllos.

MEMBER GOODSELL: Okay.

MR. LAZZARO: Mr. Stone, a neighbor, is here to speak on behalf of the application as well.

CHAIRMAN MAMMINA: Okay. Please continue.

MR. LAZZARO: I'm sorry. I didn't hear you.

CHAIRMAN MAMMINA: Please give your name and address.

MR. LAZZARO: Thomas A. Lazzaro, architect -- registered architect, 74 North Pine Street, Massapequa, New York 11758.

SECRETARY WAGNER: Could you just put on the record what you submitted?

MR. LAZZARO: Yeah. I submitted a letter from Mr. Edward Stone in favor of granting the variance for the property.

SECRETARY WAGNER: That would be Exhibit 1.

CHAIRMAN MAMMINA: Okay.

MR. LAZZARO: Okay. There's an existing rear deck that was built sometime after the rear addition was built, and there's a set of stairs on the east -- the west side of the deck going down to grade, approximately a 2-foot vertical dimension. The setback from the property line to the edge of the stair is 2-foot, 1 inch, which encroaches into the side yard setback. The section of deck total would be -- if you measured to the deck would require approximately a little bit of over 2 feet to remove the edge of the decks so it complies with the 5-foot required setback and there are fences that are over the allowable height. My client would like to maintain the existing conditions.

MEMBER DONATELLI: I have a question: On the survey you submitted, it shows that there's just above the stairs or just -- I guess that would be south of the stairs -- there's a measurement of 4.7. Is that the setback, the side yard setback of the house?

MR. LAZZARO: Yes, it is, sir.

MEMBER HERNANDEZ: And said the deck was elevated how much?

MR. LAZZARO: 2 feet above grade.

MEMBER HERNANDEZ: Right. I guess so that it matches the exit from the house, essentially, one step.

MR. LAZZARO: Yeah. There's a little bit. It's not 8 inches and it's not an inch.

MEMBER HERNANDEZ: To prevent water from coming in the house?

MR. LAZZARO: Yes, sir.

MEMBER GOODSSELL: And the fencing is 6-foot fencing that the applicant would like to maintain. Would that be on the right-hand side -- I don't see where north is, but would that be the essentially the right if you're standing in the street?

MR. LAZZARO: So do you see the gate on the east side of the property, on the right side?

MEMBER GOODSSELL: Yes.

MR. LAZZARO: So the 6-foot PVC pipe extends from that gate south to the -- to almost the front edge of the house.

MEMBER GOODSSELL: Is that the applicant's fence? That looked like that was the next-door neighbor's fence.

MR. LAZZARO: I think that's the next-door neighbor's fence because it's beyond the property line. The fences in question are the rear fence and the side fence, the west side fence.

CHAIRMAN MAMMINA: The rear fence would be permitted, it seems.

MEMBER GOODSSELL: Right.

CHAIRMAN MAMMINA: The side fences that are 6 feet.

MR. LAZZARO: Yes.

MEMBER HERNANDEZ: Is that also a chain link fence in addition to the PVC fence?

MR. LAZZARO: Which one, sir?

MEMBER HERNANDEZ: If I'm standing in front of the house and I'm looking to the left -- I can't tell. I don't see the markings -- oh, yes on the west side of the house.

MR. LAZZARO: Okay.

MEMBER HERNANDEZ: I see a 6-foot PVC fence. Oh, I guess it looks like a chain link fence, but I guess it is PVC.

MR. LAZZARO: Yes, it is, sir.

MEMBER HERNANDEZ: And that's what they're trying to legalize, that 6-foot side?

MR. LAZZARO: I don't know if it helps: The -- by having -- and I know it's not allowed. By having a 6-foot fence on the west side of the property, it helps the neighbor's property to the west from a privacy point of view with people using the deck on my client's property.

MEMBER DONATELLI: Can I ask a practical question? Is there a reason why the steps leading from the deck to the yard -- is there a reason why the steps need to be in that location? Can they be put, for example, on the northerly side of the -- of the deck, which is I guess in the backyard?

MR. LAZZARO: Yeah. Are you saying -- yes. At that 14.3 dimension, yes.

MEMBER DONATELLI: Yes.

MR. LAZZARO: The stairs could be put at that location either going north and south or east and west to get it out of any setback issue. Yes. That is correct. They -- they -- I had looked at it as possibly going where the 3-foot-4 dimension is, but that doesn't work because you wind up running into a section of the bay window.

CHAIRMAN MAMMINA: Yeah, you have the bay window.

MR. LAZZARO: And just to --

CHAIRMAN MAMMINA: My only issue is the 6-foot fence. I mean, if we could move the stairs, we could get rid of that variance. But the 6-foot fence, there's really no good reason to include the 6-foot fence.

MR. LAZZARO: So with -- moving to the stair, I think is fine. I think that that would solve some encroachment issues. But if the deck stays at the western edge of the fence location, it's still not going to meet the 5-foot requirement setback issue, right. And then I would just --

MEMBER HERNANDEZ: But if the stairs were not there, it's a little bit of encroachment. It's minimal. Those stairs are significant encroachment. They are literally preventing you from going from the front of the house to the back on that side out of the house. They -- they're blocking the access. It's 4.7 feet at that point and the stairs have to be at least 36.

MR. LAZZARO: Yes. And I never --

MEMBER HERNANDEZ: I have to walk in sideways.

MR. LAZZARO: I've never seen anybody use the side yard to go to the back of the house. They've always come in on the eastern side.

MEMBER HERNANDEZ: That's the purpose of having the 5-foot setback, right? To allow access to the back.

MR. LAZZARO: I mean, I agree. Whatever is the reason for the setback, that should be maintained for the integrity of the requirements. I do feel that the 6-foot western fence would provide better privacy to the neighbor because of the close proximity. So when somebody's standing on the deck -- I know we're not 6 feet tall, but a 6-foot

tall person, they would be up at 8 feet. The top of their head would be 8 feet, and a 7-foot fence would be a blocking of a sight line into the neighbor's property for my privacy.

CHAIRMAN MAMMINA: I get it. But we -- we have lots of lots of decks that are out in the back -- off the back of a house, you know, where everyone would have that issue, you know. For me, I have that issue more from my side. I don't want to be looking at those people. You do have 5.7 feet, just that you've got 4.7 feet to the fence. The fence is just pushed over to the side.

MR. LAZZARO: When you get back to the house, it's on a skew. It's actually a little bit less.

CHAIRMAN MAMMINA: Not according to -- not according to the drawing that I'm looking at.

MR. LAZZARO: It would be 4.7 feet at that corner.

CHAIRMAN MAMMINA: 4.7 plus a foot. The fence is 1 foot east of the property.

MEMBER HERNANDEZ: I don't see that on the survey.

MR. LAZZARO: On the survey it says "6-foot PVC fence". So the fence is actually 1 foot east of the property line.

MEMBER HERNANDEZ: So he's right, then.

CHAIRMAN MAMMINA: Then you got 4.7 from the house to the fence. So 4.7 and one is 5.7.

VICE CHAIRMAN FRANCIS: Right.

CHAIRMAN MAMMINA: Same as the dimension at the rear.

MEMBER DONATELLI: Yeah, I agree. I think that that 4.7 I asked you about in the

beginning, that's to the fence and the fence is not on the run.

MR. LAZZARO: Okay.

MEMBER DONATELLI: So one of the things we're charged with is -- is to try and see whether or not there's some way to achieve the applicant's goals without requesting the variance, and in this instance, we can do that relatively easily. With respect to your issue and the applicant's issue of privacy, I don't know if you were here this morning but we have had many applications for fences. And what we tried to do is we try to be consistent with all the applicants which is there are other ways of achieving privacy and, in fact, the homeowner here should be congratulated that the hedges in the survey are in lots of different spots. It would seem to me that some planting of evergreens would achieve the same privacy as a 6-foot fence might, especially in the area of the -- of the wood deck. So I would really encourage the homeowner to consider that as an alternative.

MR. LAZZARO: Okay. I will bring that up with them. And just to your note, I got here probably about 1:30. The first case that I heard, it didn't seem to go as well for the applicant as I thought it may have. But almost every case after that, I thought that the Board was fair and sympathetic to the needs of the clients. So I do see that in the board members and their comments to different issues and projects that come up.

MEMBER DONATELLI: We appreciate that. The fact is what we do is we try to be consistent across the board so that if -- we were to grant the applicant a 6-foot fence here, as the chairman said earlier this morning, what would we then -- you know, if someone else comes in and requests the same thing, then we would also be obligated to do that.

We don't make up these rules. The Town Board does. And we're just -- we're trying to help people through some situations. In a case like this, it's very -- I can't remember when we've approved something like this.

CHAIRMAN MAMMINA: I'll just add onto that just to benefit, and we used to get many, many, many -- I don't know how many "manys" to put after it -- fence applications every year. We would get over 200. And what -- what the Zoning Board -- we started to do because you basically were allowed nothing and we would do 6 feet in the back, 5 on the side, and 4 in the front. We would a 4/5/6 rule. And because we were having so many applications taking up so much transcript time, taking up the time of the Town employees, the Board, we went to the Planning Department that maybe the codifying 4, 5, and 6, which they did.

So the Town Board basically established, you know, that 4, 5 and 6, you know, and there have to be extenuating circumstances, like Mr. Donatelli said, as when you would vary from that. Let's say you backed up to a town sump, you know, then, yeah, we'll give you a 6-foot fence on the side. We've done that. This is like any other house.

MR. LAZZARO: So if I'm hearing the criticism of the Board correctly, you would like me to remove the stair on the side and move it to the north side and you would like to have the 6-foot fence removed and we could put a 5-foot fence up but you would like some vegetation as well.

CHAIRMAN MAMMINA: If you put the 5-foot fence up, you've met your burden. You could take that 6-foot fence, cut it down to 5 feet. You don't have to do anything further. You can plant it, if you would like to. You don't have to. So, I mean, that's -- that would be, you know, your client's -- your client's choice as to if they'd like to do additional vegetation or not --

MR. LAZZARO: Okay.

CHAIRMAN MAMMINA: -- on there. I'll just say one other thing without beating it to death: Part of codifying the 4/5/6 was that people were bringing in contracts from fence companies who should know what the ordinance was and installing fences for people. Sometimes people are handy. I'm handy. I can put up a 5-foot fence or a 6-foot fence. Probably if I was looking for that, I'd buy the

things myself and do it, but the majority were paying fence companies to come. I would know it's 4, 5, and 6 but the fence company should now it's 4, 5, and 6 as well.

I don't know how long ago this fence was put up. As Mr. Francis said before to another applicant in a different matter, a homeowner has some rights against the fence company for installing something that doesn't comply to code.

MR. LAZZARO: Yeah. I would -- I don't know when the fence was put up, so, you know, I really don't think I can speak to that, you know. I do agree with you that pool -- pool contractors should know the requirements for where pool equipment should go and fencing contractors should know the heights they're limited to. But I'm glad I'm not -- that's not my profession. Also, too, I think they say, "Listen, a 5-foot fence is \$5, 6-foot fence is \$5.50," right, and, you know, they may say -- they may not go down the road of what's allowed and not allowed. They may be saying from an appealing point of view, you know, if you want something, you could get this for this dollar value. And it may not be in the best interest of the owner, but they don't know that when it happened. I'm not saying all people are like that. I'm saying I wouldn't be surprised if that happens.

CHAIRMAN MAMMINA: There is one fence company that no longer does business in the Town of North Hempstead because they so strenuously disagreed. Don't do business in the Town of North Hempstead. That's up to you. It's just something held very, very rigidly.

MR. LAZZARO: Sure.

CHAIRMAN MAMMINA: We did have someone who wanted to speak, and then you will get another opportunity as well.

MR. LAZZARO: Thank you, sir.

MR. STONE: Hi, my name is Edward Stone, 37 Yorkshire Road, New Hyde Park, New York 11040. The fence that -- the deck, I don't get to see it

because the deck is on their side and the fence keeps me from seeing whatever's going on over there and it's not -- not broken so we don't have to fix it. We have shrubs on both sides of the fence, and it hasn't been annoying.

I mean, I've been there since the mid-'50s, going to Wickshire School, Herricks Junior High School, and Herricks High School. But this fence has been up maybe twenty years, and it's just been there. So I hope you don't have to remove it. I hope we can get that part of it appealed.

CHAIRMAN MAMMINA: If the fence was put up with a permit twenty years -- I'm not sure if all of the Board is going to agree with what I'm going to say. There is some way to document that this fence has been there for twenty years.

MR. STONE: Like I said, I don't -- I don't know. I came in, I gave you my letter. They -- they had professional final come in, and I would presume that they had the rights or the documents that they needed. So, like I said, it's been like twenty years. It would be a shame to have to take it down and move our trees and shrubs.

MEMBER HERNANDEZ: Is there a fence around on both sides, the greenery on both sides of the fence?

MR. STONE: Yes. They have greenery and I have my stuff.

MEMBER GOODSSELL: What kind of fencing? Is it a chain link fence?

MR. STONE: No. It's a --

MEMBER GOODSSELL: A PVC fence?

MR. STONE: A PVC fence. About fifty years ago, we had a chain link fence.

MEMBER GOODSSELL: And then the hedges all grew.

MR. STONE: Right. We had to cut them out. So I'm just asking that the variance be applied, you know.

MEMBER GOODSELL: You're the neighbor who lives immediately next door?

MR. STONE: The property to the west, right.

MEMBER GOODSELL: You would have the greatest impact whether or not we grant this.

MR. STONE: Right.

VICE CHAIRMAN FRANCIS: How high are the hedges?

MR. STONE: Toward the back, there is some evergreens on the neighbor's, Zullo's, side. And I have some forsythias and grasses and stuff growing on my side and a rose bush my mother planted in 1953 is right there. So we just -- you know, I don't want to tear that stuff if we don't have to.

MEMBER DONATELLI: So would it be possible to lower the fence without tearing up that shrubbery?

MR. STONE: I don't know. I don't know. I don't know if you can cut a PVC.

MEMBER DONATELLI: I guess my question is if the applicant were to hire somebody, you know, they go in and they try to do the job as fast as possible. One of the things I think we should consider is how disruptive that will be, especially to you.

MR. STONE: In the back of the Zulllos' property, the new owners, they have a whole bunch of tall evergreens of some kind, so they cannot access the fence from their property. They have to come onto my property to do that. Anything's possible, but I don't mind the fence.

MR. LAZZARO: Typically, on a PVC fence, it's a top rail that the vertical slats slide into. In order to do that, I would think -- and that top rail is typically about 6 inches tall, maybe 7 inches tall. In order to do that, I think it's glued in place. They'd have to -- from a mechanical point of view, you'd have to drill a hole in the vertical slat of the PVC and saw cut horizontally. So it would probably be a reciprocating saw to do that. You take the whole thing off, and they would have to use a brand-new top rail to secure it to the top. So at best, they'd be standing on a ladder to get that done where they were able to get access to the fence.

MEMBER GOODSSELL: Mr. Lazzaro, is it possible that the homeowner has anything -- if not a permit, anything, a fence receipt, anything from the year when the fence went in.

MR. LAZZARO: I can ask them.

MEMBER GOODSSELL: Because the rules and regulations with respect to the fences have change over the years and not everybody knew in the old days that you needed a permit for a fence. If they don't have a permit -- and that's a record we can check, if you. See if there's anything else, a survey for something, the lumbar receipt, whatever, to show when that was.

MR. LAZZARO: Well, I was going, what about a photograph? There might be photographs of the kids when they were younger in the yard.

MEMBER GOODSSELL: It would be something to show when the fence went in, because we all know the fence regulations came in at certain times and then changed at certain times. And the Chairman explained why we changed from 4-foot to 4, 5, and 6. So if there's something the homeowner can present to us, even from where they are now, I see the address is out of state, I would be interested.

MR. LAZZARO: That's a tremendously fair request.

MR. STONE: I know it's been many, many years that fence has been up, many years. I'd be happy if it stayed.

MEMBER HERNANDEZ: Get to us an e-mail, if you can.

MR. LAZZARO: Okay. I should check with the BZA for the process for me to come back.

MEMBER DONATELLI: You don't have to come back.

SECRETARY WAGNER: Just submit the information.

CHAIRMAN MAMMINA: You can submit -- you can bring that -- let's say you find a picture. You can just bring that down to the office at any point.

MR. LAZZARO: Very good.

CHAIRMAN MAMMINA: You don't have to come back.

MEMBER DONATELLI: And the point is to try and give us a picture with something that might show the date. So if you have somebody who is forty years old who is five years old in the picture, just give us a little bit of background so we can try and place it. Because if we can determine that the fence predates the code, then your client will be pleased, the neighbor will be pleased, and we have something to determine that it predates the code.

MR. LAZZARO: I'm hoping that, like most people, they put the date on the back of the photograph.

MEMBER DONATELLI: If you remember that, then we're all dating ourselves.

MR. STONE: I have a question. If they find a photograph which is electronic, a digital photograph, and they find that, can they -- can they get that to you with the XF file on the back? I don't know if you're aware with digital cameras now.

MEMBER HERNANDEZ: As long as it documents the date, yeah. If it's a file date, we can do it from the file date. But I don't think going back in the early '90s, we had digital cameras.

MR. STONE: No, but 2002.

MR. LAZZARO: I think the quality of the photograph will help determine the date of the photograph.

VICE CHAIRMAN FRANCIS: Just so you know, the fence ordinance went in '96 or --

SECRETARY WAGNER: '97.

VICE CHAIRMAN FRANCIS: -- '97. We're talking about predating '97.

MR. LAZZARO: Okay. Very good. Okay.

CHAIRMAN MAMMINA: Okay.

MR. LAZZARO: Thank you very much.

CHAIRMAN MAMMINA: Thank you. We'll continue this.

MR. LAZZARO: Have a nice evening.

MEMBER GOODSELL: You too.

CHAIRMAN MAMMINA: Thank you.

* * *

SECRETARY WAGNER: Next appeal, Appeal No. 21122, Immer Canales, 611 Old Country Road in Westbury, Section 10, Block 60, Lot 225 in the Business-A Zoning District. Variances from 70-196J(1)(a) and 70-196J(1)(f), to legalize a sign on the wall exceeding the number of signs allowed on a wall and that is too high.

CHAIRMAN MAMMINA: You've heard Appeal No. 21122, Immer Canales. Is there anyone else interested in the application other than the applicant? Obviously, no.

Give your name and address.

MR. CANALES: My name is Immer Canales.

CHAIRMAN MAMMINA: Back up just a little bit from the mike.

SECRETARY WAGNER: And speak a little slower, sir. She needs to take you down.

MR. CANALES: Okay. Sorry.

Immer Canales, 1 Jefferson Avenue in Rockville Centre, New York 115070. I'm here representing Cinco de Mayo Restaurant to maintain a second sign on the same wall. Currently, there is a lower and upper sign on the wall. The lower sign, it's 2-foot height by 16 foot wide, 32 square feet. The upper sign, it's 2-foot-6 height by 12-foot wide, which should give us 30 square feet for a 62-square-foot overall.

The -- this restaurant is located at a shopping center facing Old Country Road. It's about 170 feet from the street, so when cars drive by, it's very hard to associate to the location. The upper sign has become a very resourceful advertisement for the restaurant. It has brought many new customers, and in a time with COVID where restaurants are closing, they have managed to stay open. This is thankful for new customers that see the upper sign, mainly, as they drive by and they come, take a look at it, they like the food, and they become regular customers. So we are respectfully requesting a variance to maintain both signs on the same wall.

MEMBER GOODSSELL: Mr. Canales, I went to take a look at this. When did both signs go in?

MR. CANALES: I'm not a hundred percent on the date. I would say about a year or so ago. I'm not a hundred percent on the date.

MEMBER GOODSSELL: Did they both go in at the same time?

MR. CANALES: No. The lower sign went in first and then the upper, because what happens was that the lower sign, not many people were realizing there was a Mexican restaurant in the shopping center. So the owner installed the second sign and he saw the difference of new customers coming in.

MEMBER DONATELLI: So what purpose does the lower sign serve? Does the lower sign serve any purpose that the upper sign does not?

MR. CANALES: The lower sign mainly maintains the -- the unit of the shopping centers to the left and the right of the -- of the restaurant, maintains the integrity, per se. As everyone -- you know, to the left and the right, you have a nail salon, you have a lot or car business right next to it, and they all are installed at that same height and at that same location. So it makes it an even look when you -- you know, when you see it. And, you know, if you're in the parking lot, you're able to see it. The upper sign serves to bring customers that are driving 170 feet away from the location on Old Country Road. So it does help a little bit, having a lower sign.

MEMBER DONATELLI: Well, I -- I guess my question is, was that the landlord's requirements of the shopping center, to install the lower sign where it is.

MR. CANALES: I believe so, yes. They have a -- like I said, a very uniform way that all the signs are installed at that particular height, and I have a picture in here that shows a little bit. I don't know if you want me to bring it to you, but it's a picture taken from Old Country Road (handing).

MR. PERROTTA: We'll mark this as an exhibit.

MR. CANALES: That picture is taken from Old Country Road, and as you'll see, the rest of the shopping centers are -- have the same...

MEMBER DONATELLI: Are there any other stores in this shopping center that have second signs?

MR. CANALES: There are. If you can see in the picture, there are a couple of them there.

MEMBER DONATELLI: I don't see any other stores that have a second sign. I see a temporary banner above CardSmart.

MEMBER GOODSSELL: When was your picture taken?

MR. CANALES: About last week.

MEMBER GOODSSELL: Last week?

MR. CANALES: Yeah.

MEMBER HERNANDEZ: I love the palm trees but they're covering up the sign.

MR. CANALES: Yeah, trying to put some green in the area. It's 3 inches too high.

MEMBER HERNANDEZ: The upper sign is
3 --

MR. CANALES: 3 inches, yeah.

MEMBER DONATELLI: How long has the lower sign been in the location.

MR. CANALES: That's probably been about five years.

MEMBER DONATELLI: And how long has the tenant been in this location?

MR. CANALES: The tenant has been about eight years, I believe. It used to be a different name. It had a different name, and he wasn't doing well so he changed the name, changed the menu and, you know, did a little bit of redesigning the kitchen as far as the menu. So it started to pick up more customers with the new name.

VICE CHAIRMAN FRANCIS: So there's no other sign at that height, though?

MR. CANALES: All the way to the right of the shopping center, there's a Fine Fare store.

VICE CHAIRMAN FRANCIS: Right.

MR. CANALES: And that has that sign that is probably higher than that.

VICE CHAIRMAN FRANCIS: And there's a tenant sign somewhere on that property, like a billboard sign?

MR. CANALES: A small one. It's on Old Country Road, but the signs for each store are microscopic. They're very, very small.

VICE CHAIRMAN FRANCIS: Right.

MEMBER GOODSELL: Speaking as one board member, Mr. Canales, I think your upper sign is far more effective than your lower sign.

MR. CANALES: Thank you.

MEMBER GOODSELL: That's the one that catches your eye, even when you're in the shopping center.

MEMBER DONATELLI: We certainly want businesses to succeed in the Town of North Hempstead.

MR. CANALES: Thank you.

MEMBER DONATELLI: I guess my first question is since most of the signs in the shopping center appear to be a uniform height at that height

of the first sign, would -- are you somehow or is the applicant somehow in violation of some lease requirement with the second sign?

MR. CANALES: No. The building owner is aware, and he knows that the upper sign, it's creating -- bringing more customers to the restaurant. So he's well aware of it and he's okay with it.

MEMBER DONATELLI: Then I guess my point would be that I can't remember when we've ever approved two signs that are almost identical, one direct above the other.

VICE CHAIRMAN FRANCIS: One above the other, right.

MEMBER DONATELLI: As I said, we want our businesses to succeed, but there's duplicative signs on a facade.

VICE CHAIRMAN FRANCIS: One of the issues for you is that you have that terra-cotta fake roof above the other sign, which pushes your second sign further up. If that terra-cotta roof was eliminated and that sign was brought down to the facade of the building, then I think you're okay, then I think you can even remove the second -- the lower sign.

MR. CANALES: The height, it's what catches is eye. Bringing it down to a lower height, it's not going to bring the same attention when you're driving by. So, I mean, I explored different options, and the height of the current location, it's really what catches the eye. When you're 170 feet away and you have so many signs at the same height level, you really don't differentiate.

VICE CHAIRMAN FRANCIS: I pass by this shopping center at least three times a week, and I can't tell you, other than Fine Fare, what else is in there.

MR. CANALES: Right.

VICE CHAIRMAN FRANCIS: You can't read any signs from Old Country Road. I agree with you. Again, as Mr. Donatelli said, I don't remember in the eleven years I've sat here where we've ever granted the signage that you're proposing.

CHAIRMAN MAMMINA: I think, also, just tagging onto what Mr. Francis said, for myself as one board member, the fact that the top sign is 18-foot, I don't care. That's okay. It's having one sign over the other sign that really is the issue. It would be as if this was a -- a gas station, you know, and it said "Sunoco" here and it said "Sunoco" there. It's just one right over the other. So I think the direction the Board is going in is that we would be willing to approve the extra height on the upper sign but not the two signs.

MR. CANALES: Okay.

MEMBER HERNANDEZ: Does the lease require you have to have the lower sign in there?

MR. CANALES: I'm not a hundred percent sure.

MEMBER HERNANDEZ: What you can explore with the landlord is -- the Zoning Board, obviously, won't let you have two. The one above, the higher sign, is more effective.

MR. CANALES: Right.

MEMBER HERNANDEZ: The lower one, you can't even be seen from the beautiful palm trees. Why do you have it? You have that one and you don't have a problem. I agree with the chairman. I also will vote to allow that sign to be a little bit too tall. I would approve that.

VICE CHAIRMAN FRANCIS: The upper sign is the one where you get the most economic bang for your buck. That lower sign, I don't believe it does anything for you.

MR. CANALES: Okay.

VICE CHAIRMAN FRANCIS: If you could eliminate that, I think we have a clear path granting what you're looking for, but not two signs.

MR. CANALES: Not two signs. Okay. So let's eliminate the lower one.

VICE CHAIRMAN FRANCIS: If you want to discuss this with the landlord first, we can reserve decision on your application or we can, I think, maybe continue it, if you're going to get back to us with what the landlord says.

SECRETARY WAGNER: I'll continue it and after you speak to your --

MR. CANALES: So I would have to come back?

VICE CHAIRMAN FRANCIS: No. You call the office.

MR. CANALES: So what will change if the landlord requires the lower sign, what will the Board's determination be in that aspect?

VICE CHAIRMAN FRANCIS: Well, as one board member --

ATTORNEY ALGIOS: The Board will consider that.

VICE CHAIRMAN FRANCIS: We have to consider the application.

MEMBER GOODSELL: We're sympathetic to a possible economic hardship that the landlord might require something or the lease might require something, which is why we're asking you to check that out. We have no objection to the sign. If we give you the upper, would you take down the lower? Can you take down the lower sign?

MR. CANALES: Okay. I understand. And who do I send that information to?

SECRETARY WAGNER: Send it to our office, the BZA department.

MR. CANALES: Okay. Michael or Victoria?

SECRETARY WAGNER: Ginny. There's no Victoria.

MR. CANALES: I'm sorry.

SECRETARY WAGNER: Just send us whatever. Your submission comes to us. You can e-mail them to us, drop it off.

MR. CANALES: Wonderful. Thank you, members of the Board. If you're ever in the area and want to stop by and get a steak, tell them you know Mr. Canales and you'll be taken care of.

MEMBER GOODSELL: Thank you for waiting to be the very last case. You've been sitting here a long time.

MR. CANALES: Thank you. I will get that information to you by this Friday.

CHAIRMAN MAMMINA: Okay. Thank you.

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SECRETARY WAGNER: ABM Realty, 1332 Northern Boulevard. They're filing a subdivision with Nassau and taking some extra time and requested their third filing extension to get all of their permits.

CHAIRMAN MAMMINA: I know how long it takes for those kinds of things in Nassau County.

MEMBER DONATELLI: This is in Great Neck?

SECRETARY WAGNER: Yes.

MEMBER DONATELLI: I'll make a motion.

CHAIRMAN MAMMINA: We have a motion from Mr. Donatelli. Do we have a second?

VICE CHAIRMAN FRANCIS: Second.

CHAIRMAN MAMMINA: Seconded by Mr. Francis.

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.

VICE CHAIRMAN FRANCIS: Aye.

SECRETARY WAGNER: Chairman Mammina.

CHAIRMAN MAMMINA: Aye.
So the extension of time is granted.

SECRETARY WAGNER: Then does someone want to motion to adopt SEQRA?

MEMBER HERNANDEZ: I will.

CHAIRMAN MAMMINA: Motion by Mr. Hernandez to adopt SEQRA.

VICE CHAIRMAN FRANCIS: Second.

CHAIRMAN MAMMINA: Seconded by Mr. Francis.
Please poll the Board.

SECRETARY WAGNER: Member Goodsell.

MEMBER GOODSELL: Aye.

SECRETARY WAGNER: Member Hernandez.

MEMBER HERNANDEZ: Aye.

SECRETARY WAGNER: Member Donatelli.

MEMBER DONATELLI: Aye.

SECRETARY WAGNER: Vice Chairman Francis.

VICE CHAIRMAN FRANCIS: Aye.

SECRETARY WAGNER: Chairman Mammina.

CHAIRMAN MAMMINA: Aye.
SEQRA has been adopted.

(Time noted: 4:30 p.m.)

C E R T I F I C A T I O N

I, NICOLE WEXLER, do hereby
certify that the within transcript is
a true, accurate and complete transcript
of the proceedings which took place in
the above Matter.

signature
NICOLE WEXLER